



The Right to Information and Media Practice



Centre for Policy Alternatives

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The Right to Information and Media Practice



Centre for Policy Alternatives

The Right to Information and Media Practice

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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The Right to information and media practice

The discussion on the Right to Information and the use of media dates back to 2016. Every human being needs information to sustain his or her life. Government information is important to the public. Citizens have the right to question the role of publicly elected rulers and the services of public servants.

We cannot accept the Right to Information Act (RTI) of Sri Lanka as a subject known by all the people of the country. However, some activists have a certain understanding of this Act. The dialogue on the Right to Information Act based on the needs of the people is slowly developing among the people. However, there is limited understanding in many communities. Over several years, the Centre for Policy Alternatives (CPA) has made a great commitment to bring awareness to many, including the general

public, university students, government officials, and local government representatives.

We are committed to continuing this service. We have designed a number of small booklets on the Right to Information provisions, as well as many pamphlets. We are the only group as a civil society to offer a telephone (hotline) service for inquiries regarding the Information Act and the process of obtaining information through the Act. We have also organised several radio programs on the Right to Information Act. Several investigative reports on the functional process of the RTI Act have been made public. We have also acted on behalf of the public on a number of occasions taking the information requesting process right up to the Commission.

We have been involved in the discourse on the use by media of the Right to Information Act. A significant number of journalists are using the RTI Act to make a very important social contribution. We have seen it in the last few years. However, it seems that a larger number have not incorporated this bill into their work. Therefore, we were inspired to compile this creation in appreciation of the efforts of a handful of journalists. We appreciate the commitment of the journalists who participated in this journey. We would also like to thank Jayasiri Jayasekara, Senior Journalist, for his support in writing the foreword to this book.

The journalists who contributed articles for this book seem to have a unique understanding of their scope. Some have exposed corruption through the information obtained. There have also been numerous attempts to draw the attention of the public and policy makers to the various problems that exist in society. They have presented various issues in the North, South, and in the plantations in a very robust manner. Numerous journalists have found sources for a number of different news articles

through the information obtained under the RTI Act. Exploratory and investigative information based on those sources has been provided by only a handful of authors who have contributed to this publication. One of the aims of this publication is to encourage and motivate other journalists to strengthen this social component based on their enthusiasm and commitment. We aim to create a wider dialogue in society by the publication of this book in all three languages.

This book contains a number of decisions taken by the Commission to make the content more effective, as well as the text of the Right to Information Act and related application forms.

We would like to thank the authors, translators, all media institutions, journalists, and those who have contributed in numerous ways to make this publication a reality. We hope that this book will contribute to a broader public dialogue and discourse.

Lionel Guruge
Senior Resercher
Centre for Policy Alternatives

December 2020

The Right to Information and the Role of the Media

British academic and politician Harold Laski said that if a nation does not receive the right information it would one day be the slaves of others. Therefore, the Right to information becomes key to overcoming slavery. Until recently, this key was placed in a golden box and secured safely in a secret vault shielded by seven doors. This key was transferred to the public domain and handed over to the citizens through the Right to Information Act (RTI) No. 12 of 2016. Today any citizen in Sri Lanka can take hold of this key, open these highly guarded secret vaults, previously forbidden territory for the public, and dive into them to see what is stored in them. This is a great privilege for journalists, where exploring and investigating these hidden secrets are part and parcel of the profession.

The collection of articles presented in this publication can be considered as a sample of how Sri Lankan journalists have used this key for almost four years since the Act came into force on February 3, 2017. It includes selected articles written by a number of journalists engaged in Sinhala, Tamil and English media who were interested in using RTI as a tool for journalism. It should be also noted that this is the first time such a compilation has been published pertaining to the use of RTI by journalists in Sri Lanka.

The right to information is not a new experience in the world. When you look at the Asian region, Sri Lanka was far behind. In neighbouring India this was at a progressive state. In many countries, the need to win

the right to information surfaced through citizens. Massive agitations took place among the lower strata of society for the right to information to materialise in India. Simultaneously, there was a robust struggle by social organisations, community leaders, professionals and the media. In India, the right to information was finally provided to the people, after they had been campaigning for the right to information for a very long time. Even without the right to information, they besieged corrupt institutions, sat for days in them, in front of them, protested, and obtained the information required.

However, the experience in Sri Lanka is very different. The right to information was not a slogan among ordinary people or even civil society organisations. At the same time, no culture or tradition was evolving to explore and investigate matters of state governance. Even the limited opportunities afforded to citizens to engage through legislations such as the 1987 Pradeshiya Sabha Act were not adequately utilised. On the contrary, even institutions that were completely under the control of citizens, such as cooperatives, eventually came under the heavy influence of party politics. Citizens did not have the right to information,

but representatives appointed by them have that right. Questioning the Minister in charge of the subject in Parliament was the most powerful tool available for obtaining information. However, the representatives in Parliament rarely used this opportunity. There was also no pressure exerted to obtain information in this manner by the citizens who appointed these members of parliament or a powerful lobby from civil society that was representing civil rights.

The debate on the right to information in Sri Lanka originates with the civil society, led by the media community that was interested in constitutional reform. It is not an overstatement to say that this intervention was also limited to several organisations and individuals. In the case of the media community, the discourse was limited to a few leading organisations based on the 1998 'Colombo Declaration on Media Freedom and Social Responsibility'. The Right to Information request was first included in the 1994 media reform proposals submitted by the Free Media Movement to the Chandrika Kumaratunga government.

The first RTI bill for Sri Lanka was drafted in 2003. The draft bill, prepared by a committee comprising of senior civil servants, lawyers, newspaper

editors, activists and scholars appointed by Prime Minister Ranil Wickremesinghe, was approved by the Cabinet but did not get approval in Parliament. Subsequently, Karu Jayasuriya presented it as a private member's motion but that too was not approved. The draft bill, which was formulated in 2003, was the basis for the drafting of a more advanced Act in 2015. (A detailed commentary on this was written by Kishali Pinto Jayawardena, Senior Counsel, who contributed to the drafting of the Bill, on the 25th Anniversary of the Free Media Movement). The coalition government, before they went off track from their published manifesto, was able to present this bill and get it approved within a year and start implementing it by 3 February 2017 because there was a draft bill prepared in advance. Otherwise, the RTI Act would have suffered the same fate as the government's constitutional reform process.

Responsibility of the media and civil society

The importance in detailing this backdrop is to emphasize the special responsibility that lies with the media fraternity to ensure that the Right to Information is made meaningful to the people and to protect this right in

Sri Lanka. This is because there is no community or civil society group in Sri Lanka that considers this as a Right that has been won through a hard struggle and a tireless effort, and is committed to working and protecting it, as it was in India. This was a privilege bestowed on civil society without a request. It is clear that very few people have an understanding of the value of the RTI when one looks at the statistics and the information requests submitted to various institutions over the past four years. Even if one was to consider the qualitative aspect, the picture is still not satisfactory. Therefore, the media and civil society organisations have a tremendous responsibility to educate the public regarding the right to information as well as setting an example to the society on its meaningful use.

The active contribution of these two stakeholders is an important element from another dimension. That is, to contribute to the building of an open information culture in the public service, which has long been accustomed to withholding information as opposed to making it available. It means making a wide range of requests, from the simplest to the most complex and information which is not freely available and accessible and challenging decisions to withhold such

by making use of the opportunity to appeal when information is refused at the institutional level. The right to information is a guaranteed and powerful right of the citizen not only based on the strength of the provisions of the relevant Act. It is also important to set strong precedents for its use. For example, in Sri Lanka, the field of fundamental rights was expanded and strengthened by the various cases brought forward by civil society organisations that went beyond the mere use of individual citizens. Such is the role of the media and civil society regarding the right to information.

The above two stakeholders can also contribute to an attitudinal change where the right to information is not seen as a hostile activity against public authorities and officials, but a process of evaluation of the work. It strengthens officials to act in accordance with the law, especially in the face of pressure. This is because the right to information belongs to citizens and all the information about their activities can be checked by citizens at any time. It provides them with a fair and powerful response to reject the undue pressure exerted. The proliferation of such interventions can give solidarity to their position. This can also provide an opportunity for extending media

coverage to interested organisations, government officials, and NGOs, encouraging the disclosure of progressive information. It will also help the media to maintain friendly relations with public authorities and the non-government sector.

However, protecting and strengthening the right to information is not something that only the media and civil society can do. They also have an intermediate role in the practical and sustainable application of that legally conferred right. Several things can be accomplished in this regard - educating citizens about the right to information, encouraging and guiding them to exercise their right to information in matters related to their personal affairs and communities and motivating them to go beyond citizen journalism. A platform can be provided in media forums to highlight the achievements of the general public through the use of the right to information, and empowering citizen activists who use the right to information for common and public accountability purposes. Similar activities are already taking place in civil society organisations and the media, but these interventions seem to be insignificant compared to the needs of society.

Content of the book

Now, from this background, we can look more objectively and openly at the professional work carried out by journalists utilising the right to information over the past four years. As mentioned earlier, this book contains a collection of articles submitted by journalists and social activists engaged in Sinhala, Tamil and English language media who have used the right to information. Due to the limited time to source articles and the inability of some journalists to access relevant articles and source files since they are working from home during the Covid pandemic, some unique articles could not be added. Therefore, it has to be said in advance that the articles included here may not be the best round-up of articles of the relevant authors and this collection may not be the best collection or compilation of examples related to the use of RTI in Sri Lanka. This is a collection of articles that authors have agreed to provide in this context and what was available for collection. However, this will undoubtedly help us understand the nature, scope and trends of media usage of RTI in Sri Lanka over the past four years. Journalists, as well as those who study and are interested in journalism, will have the opportunity to

critically examine RTI and use it as an example for their work.

A wide range of articles from information that have been revealed from reports obtained without much effort, to research articles that have analysed detailed information obtained through submission of hundreds of requests to various institutions, and sometimes through lengthy appeals, can be seen. Each of them has an inherent significance and diversity from each other. A significant part of the content of some articles is the author's struggle to obtain that information. It provides a realistic picture of the practical application of RTI, as well as the attitudes of institutions and officials, as well as the strengths and limitations of the Information Commission. The problem with the non-functioning Official Languages Policy is evident from the responses to the submissions made in Tamil. If the requests were made in Sinhala or English, the reality would not have been revealed.

Anyone who uses this collection of articles can gain a comprehensive understanding of how the right to information can be exercised for journalism. It is clear from some of the tedious efforts that have been reflected here that the pioneering journalistic efforts at the international level, which have been discussed in

various training programs on RTI based journalism, have had a positive impact on journalists. Due to such exhaustive examples, it has been questioned whether there is an attitude among journalists that reporting using the right to information as a tool should always be exhaustive and tedious. Therefore, the examples here on how the right to information can be exercised, even in the context of day-to-day reporting, are particularly encouraging to novice journalists. The only factor that assesses the value of reporting using the right to information is not the difficult endeavour of obtaining information through RTI reporting. If what you find is important, it will not diminish in value, even if it is the result of a simple effort.

Challenges Facing Journalists

One notable observation about the use of RTI reporting in Sri Lanka is that very few journalists use it. The tendency to use it is not based on the assignments handed over or the encouragement of the media institutions but the personal interest of the journalists concerned that has contributed to the usage. Unfortunately, some media outlets have not responded with any encouragement to any of these efforts. Another key reason is the lack

of interest in improving the quality of news content in their media (the issue of media ethics is also associated with it). There are also unfortunate examples of people not being given reasonable attention and due value, even for tedious investigation using personal finances. Various media organisations and civil society organisations have worked towards educating the public on the right to information, to train journalists, and to encourage them to engage in reporting using the right to information. As a result, some journalists have experienced being discriminated against by media institutions with the use of RTI being labelled as an NGO-sponsored project. Another unfortunate incident that has come to light recently is that the certain media, that support the state and government, discourage RTI reporting, considering RTI to be a project of the previous government.

Openly discussing all these challenges will help protect the right to information and make citizens more inclined towards it.

Jayasiri Jayasekara

Senior citizen deposits:

Treasury owes banks Rs. 22.92 billion

The Treasury owes commercial banks more than Rs 22.92 billion in reimbursement for higher interest rates paid on senior citizens fixed deposits on Government instructions, data gathered under the Right to Information Act show. The Government through its 2015 budget mandated commercial banks to grant a special interest rate of 15 percent for senior citizens' fixed deposits up to Rs 1 million. In 2017, the Finance Ministry increased the upper limit of the fixed deposit to Rs 1.5 million but the interest rate remained at 15 percent.

The Treasury was to pay the difference between the special interest rate and the market standard interest rate offered by commercial banks. However, the last payment made to the

banks was in 2016. Since then, arrears have run up but no reimbursements were made. For instance, a total of Rs 13.462 billion was owed to banks in 2017 but none of it was paid, data from the Ministry of Information show. In the first quarter of this year, Rs 3.304 billion was owed. This, too, was not settled.

In 2016, only a part reimbursement was done—out of the Rs 14.518 billion owed by the Treasury, a total of Rs 6.156 billion was paid. Only in 2015, the first year of the scheme, was the full amount of Rs 3.361 billion settled. Up to now, however, the Treasury has paid Rs 11.723 billion to banks out of the Rs 34.646 billion owed in total since 2015. The number of senior citizen fixed deposits ballooned after the introduction of the scheme.



www.dailymirror.lk

SriLankan's million plus salary details out following pilots' RTI petition

A year-long effort by the Airline Pilots Guild of Sri Lanka (APGSL) to secure details of salaries, allowances and other benefits of the Chief Executive Officer (CEO), the Head of Human Resources and the Chief Commercial Officer of SriLankan has borne fruit, with the details being released to the Right to Information Commission (RTIC) this Tuesday.

Also released were the cost of personal flight training of the CEO; agreement for the wet lease of one of SriLankan's A330 aircraft to Pakistan International Airlines (PIA); agreements cancelling leases on A350-900 aircraft taken by SriLankan from AerCap; and minutes of board meetings that discussed and approved the purchase and lease of several A350 aircraft.

The RTIC had directed SriLankan to redact what is sought to be withheld on the basis of commercial confidence sections of reports commissioned by the airline from aviation specialists Nyras Ltd, SeaWorks Training and Consulting, and Seabury Consulting. These will be submitted to the Commission to be scrutinised for conformity with the RTI Act after August 21, 2018. The RTIC will make its assessment by September 11.

The APGSL filed an RTI request in June 2017 for all correspondence and information, including profits, losses and damages, related to PIA's entry into a lease agreement with SriLankan and the subsequent termination of that contract; as well as information related to the cancellation of orders for Airbus

In 2016, it was reported that the Central Bank's Bank Supervision Department had issued a letter stating that the Treasury was delaying the rebate as financial institutions had calculated claims on the basis of very low interest rates prevailing at the beginning of 2015. It said the rebate must be calculated by banks and forwarded to the regulator during each quarter.

Since then, however, there has been no resolution to the issue. Instead, the Finance Ministry has introduced further schemes that operate on a similar principle. Under the recently launched Enterprise Sri Lanka loans, the Government has undertaken to

subsidise between 25 and 75 percent of interest rates granted on a range of products.

For instance, a new 'Riya Shakthi' loan of up to Rs 4 million for school van owners to buy a new 32-seat bus carries with it an annual interest rate of 13.5 percent of which the borrower will pay just 3.38 percent while the Government will subsidise 75 percent of it. The same applies to the 'Govi Navoda' scheme for small-scale farmers and farmer organisations to mechanise cultivation.

By Namini Wijedasa

The Sunday Times - September 09, 2018



A350s from Airbus SAS. It also asked for all information related to the cost of personal flight training for the A320 jet conversion, borne by SriLankan Airlines for the CEO Suren Ratwatte.

After the carrier's information and designated officers refused the request citing exemptions, the APGSL lodged an appeal with the RTIC in September 2017. Later, SriLankan raised a preliminary objection that it was not subjected to the jurisdiction of the RTI Act which was dismissed by the Commission earlier this year, which dismissal was accepted by SriLankan.

Last month, the Commission ordered SriLankan to release the salaries of top management and

disclose the cost of the CEO's flying training. It also called for disclosure of all agreements entered into for the wet lease of its A330 aircraft to PIA and information related to the rental of several A350 airbuses from AerCap as well as subsequent cancellation of those leases as the matter is now concluded.

However, the RTIC upheld SriLankan's decision to withhold information related to the cancellation of purchase of aircraft from Airbus SAS as negotiations are still ongoing. But all minutes and board papers pertinent to the above were ordered to be released subject to any redaction that the public authority may establish in law as necessary regarding commercial

confidence or excluded as coming within the ambit of information given by a third party, which was treated as confidential at the time. However, SriLankan has opted not to redact any section of the minutes.

The release of information—with SriLankan declining to exercise its option to appeal to the Court of Appeal against the RTIC order—marks an important step for release of salaries of top officials and board meeting minutes and for release of agreements notwithstanding confidentiality clauses, impacting positively on the growth of the emerging RTI regime in Sri Lanka.

According to the documents, CEO Suren Ratwatte was earning a basic monthly salary of Rs 3.27 million (net salary was Rs 2,140,884). His flight training cost the national carrier US\$ 23,568 (Rs 3.74 million).

He received a company-maintained vehicle and driver, actual fuel cost and reimbursement of one annual membership subscription at any club in Sri Lanka, among other benefits.

The information released also detailed the basic salary of the Head of Human Resources (HHR) and the Chief Commercial Officer (CCO) as LKR 998,004/- and GBP 9500/- respectively, along with similar benefits as the CEO with the addition of furnished accommodation of up to max Rs. 250,000 a month for the CCO.

The documents confirm that SriLankan agreed to pay a total of US\$ 161,770,000 (Rs 25,698,782,200) to AerCap for the termination of lease agreements for four Airbus A350s.

By Namini Wijedasa

The Sunday Times - July 22, 2018

Lakvijaya's Unit 1

under-powered for half the time since 2015

One of the Lakvijaya coal power plant's units has been running below capacity for nearly half of the time in operation since 2015 and the Government will have to spend a further Rs 330mn to bring it back to full potential, data and documents seen by the Sunday Times show.

Data obtained from the regulator, the Public Utilities Commission of Sri Lanka (PUCSL) shows that Unit 1—the Chinese-built plant's oldest and first to be commissioned—last ran at full capacity in April 2017, adding 270mw to the national grid. (While each unit of the three units is meant to generate 300mw of electricity, around 30mw is used to power their own operations).

Unit 1 was not functioning for 41 percent of the time between January

2015 and April 2018 (when it was delivering around 80mw less). It ran at full capacity for just 27 percent of the time and at low capacity, generating around 190mw of power, for 24 percent of the time. There were also 12 major outages during this period.

On April 17 and 24, 2017, two explosions in the boiler of Unit 1 caused cracks in its "water wall tubes", a report obtained under the Right to Information (RTI) Act shows. Produced by the Material Research Institute of Harbin Boiler Company Ltd, the Chinese manufacturer of the boiler, it concludes that the cracking failure was caused by "boiler water of low quality" that caused alkaline corrosion which compromised the thickness of the tubes.



The crisis-ridden Lakvijaya coal power plant

A boiler is an essential component of a power plant and converts liquid to steam that drives the turbines. Ensuring that the proper quality of water, meeting design specifications, is fed into the boiler, an energy expert said, is "the most elementary thing in boiler management". The Ceylon Electricity Board (CEB) had failed to maintain these standards.

Unit 1 is now scheduled to shut down for a major upgrade next month. The boiler has to be tested and, possibly, replaced at enormous cost. Responding to information requested under the RTI, the CEB said "The estimated cost for the rehabilitation of Lakvijaya Plant # 1 to bring back to full load capacity would be Rs. 330mn."

Turbine blades and condenser tubes, among other things, have also been replaced in Unit 1 where the electrostatic precipitator (ESP) and flue-gas desulphurizer (FGD) have failed continuously. The ESP is a filtration device that removes fine particles, in this case fly ash, from a flowing gas. The FGD removes sulphur dioxide from the flue gas.

"This level of failure or unavailability of a base-load plant is very expensive, when the country has a tight power system," the expert said, opting to remain unnamed. "Even if we have power, it requires us to generate matching power from other sources, primarily diesel."

A shortage of 80mw for more than a year also comes at high cost, both in terms of capacity and generation from diesel, he continued. It amounts to around Rs 10bn a month so there is no reason for the CEB not to spend Rs 330mn and fix the problem.

“Looking at the system running parameters, there are 14 system shutdowns within a period of 40 months,” he observed. “This is a shutdown of more than once a quarter. Base-load systems are not expected to shut down more than twice per year.”

“Excessive starts and stops create thermal fatigue in the boiler, leading to multiple components going beyond expected endurance limit for cyclic thermal variation, with significant reduction of lifetime and reliability,” he warned.

Meanwhile, despite intense pressure from the Power and Energy Ministry and the CEB—including during a site visit this week— the Wayamba

Provincial Council Environmental Authority (WPCEA) has still not restored the Lakvijaya coal power plant’s environmental protection licence (EPL) which expired last year.

Earlier, a monitoring committee was set up comprising more than 15 representatives of multiple agencies to look into environmental concerns. This group is expected to meet again next week under the chairmanship of the Wayamba Provincial Council Chief Secretary to decide whether the EPL could be restored.

“We were asked to give the licence,” said Saman Lenaduwa, WPCEA’s head. “We have to assess whether the CEB has met all our environmental standards before a decision is taken.” The committee will convene either in Kurunegala or at coal power plant in Kalpitiya.

By Namini Wijedasa

The Sunday Times - June 17, 2018

Dutch company gets large contract for groundwater monitoring

A Dutch company has secured a multimillion euro (Rs 4.4bn) pilot project to establish a ‘groundwater monitoring network’ for the Malwathu Oya, Maduru Oya and Kumbukkan Oya basins—three areas identified as being most susceptible to chronic kidney disease (CKD).

The project envisages the drilling of 150 boreholes to install devices that will collect real time data such as groundwater levels, nitrate concentration and pH values. This will be directly transmitted to a data management centre at the Water Resources Board (WRB) and processed. A daily forecast on the country’s groundwater situation is also being planned.

The Netherlands-based M/ Eijkelkamp Earth Sampling Group first

submitted its unsolicited proposal to the Sri Lankan Government in 2013. Two years later, after the change of government, it was again taken up for consideration by the Cabinet Committee on Economic Management (CCEM) headed by Prime Minister Ranil Wickremesinghe, according to documents obtained under the Right to Information Act.

While the original proposal was for a full-scale network covering the whole country and costing around 32mn euros, the Government opted for a pilot project priced (inclusive of local taxes) at around 23.3mn euros.

The smaller initiative is a massive 65 percent of the total cost of the full-scale project. But the price has been justified on several grounds, including that Eijkelkamp has absorbed a nine



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percent cost escalation that took place since its first bid was submitted. The project will be funded through a loan from the Rabobank Netherlands backed by Atradius DSB, the Dutch export credit agency. Repayment will be over 15 years with a grace period of three years.

Groundwater conditions vary considerably throughout Sri Lanka, a project committee report states. In some areas, there are shallow aquifers which are replenished fast during the rainy season or from nearby surface water sources. This form of groundwater is usually over-used.

Widespread well-drilling and pumping have increased the risk of over-extraction and groundwater contamination. Meanwhile, long periods of sustained rainfall flood

aquifers and cause water tables to rise above normal levels.

In 2011, the report points out, high arsenic and mercury content was detected in almost all drinking water samples collected from dry zone areas hit by Chronic Kidney Disease of Unknown Etiology (CKDu). "These areas overlap with the distribution pattern of high ground 'water hardness' in this country," it states. "Calcium is prevalent in 'hard water', which is a feature of our dry zone areas. Arsenic forms strong bonds with calcium and is difficult to elicit in 'hard water'."

Subsidies have been introduced for shallow wells in some areas and "groundwater exploitation is being actively promoted by some State, provincial as well as non-governmental organisations, often without adequate

knowledge of the availability of the resource," the report continues. "Policymakers, aid agencies and NGOs must realise that unregulated and unmanaged groundwater development can have serious consequences."

Many of these situations could be controlled and minimised if effective groundwater monitoring and management systems were in place and comprise regular collection, analysis and storage of data. It will enable accurate and well-informed decision-making to manage water, the report adds.

It is anticipated that a monitoring system, particularly when it expands to the rest of the country, will enable improved water supply for public, commercial and industrial use; in irrigation, provide information of water levels and tables in specific areas for current and future development; in agriculture, identify and obtain new, sustainable sources of water or better yields while avoiding contaminated or unsuitable water sources that may save crops from disease; and, in healthcare, prevent water-borne diseases caused by contamination of groundwater resources due to excessive use of fertiliser, pesticide, weedicide and improperly planned waste dumping sites as well as during flood and drought.

The report states that natural disasters such as droughts, landslides, earth slips and many other natural disasters can be predicted by monitoring groundwater behaviour. In the area of environmental protection, a monitoring system could help conserve the environment by preventing pollution such as fertiliser overuse or leeching of industrial chemicals.

The project committee has emphasised the importance of widening the project area to the whole country and said the transfer of technology is a vital feature of the proposed pilot initiative. "After the completion of the pilot project, the committee is of the opinion that the Water Resources Board shall have all the expected skills and expertise in expanding the monitoring network to cover the whole country with limited involvement of the proponent [Eijekelkamp]," it asserts. Four local subcontractors have been nominated for the project. There will be a team of four hydrogeologists—one expatriate and three local. At the stage of expanding the project, it is expected that Eijekelkamp will only be involved in equipment supply and a short-term consultancy.

By Namini Wijedasa

The Sunday Times - May 13, 2018

Maintenance lapse

in a SriLankan plane causes regulator crackdown

SriLankan Airlines lost certification to operate its new A320neo and A321neo aircraft for more than an hour outside the range of airports suitable for emergency landings, after its Maintenance Department released one of the planes (registration 4R-ANE) for use despite having detected debris in the oil monitoring system of an engine.

As a result, the A321neo aircraft flying as UL 898 to Hong Kong on 21.08.2018, was forced to shut down the engine in question and divert to Bangkok on a single engine. The Civil Aviation Authority of Sri Lanka (CAASL) investigated and immediately withdrew certification granted to the airline "to conduct A320/321 aircraft on ETOPs [Extended-range Twin-engine Operational Performance Standards]

with 90 minutes diversion time", documents obtained by the Sunday Times under the Right to Information (RTI) Act show. The safety lapse is being treated by the regulator as very serious.

Without ETOPS approval, a flight must always be within 60 minutes of an emergency or diversion airport. With certification, however, it may fly longer—in the case of the A320-321neos, at least 90 minutes—outside the range of a suitable landing area. The suspension means that flights to such destinations as Hong Kong, Bangkok and Canton, for which the A320-321neos are used, clock additional flying times of at least one-and-a-half hours (both ways) as their routes are adjusted to ensure they comply with the 60 minutes rule. Five



<http://www.aviationvoice.lk/>

aircraft have been affected. Recently, the airline changed the plane on the Canton route, to A330.

Without ETOPS certification, the aircraft also have to carry about 2000 extra kilograms of fuel. In addition to competitiveness, crew productivity takes a hit due to repeated delayed arrivals and departures. The Sunday Times reported last week that more than 900 SriLankan departures were late in February, with 280 of them leaving the airport over an hour behind. The February on-time performance of the airline was even worse than its January record when 840 departures were more than 15 minutes delayed (it

was 911 in February), with 121 of them more than one hour behind.

Now, despite pleas from the troubled airline to restore the certification, CAASL is holding out till it is completely satisfied that maintenance standards pass muster. A fresh inspection last week did not engender sufficient confidence in the regulator to renew ETOPS approval, said H M C Nimalsiri, Director General of Civil Aviation (DGCA).

In a letter sent in January to the SriLankan Airlines Chairman, the DGCA said that CAASL did not find any cogent reason for the company's

Maintenance Department to have released the A321neo aircraft for service after detecting debris in the oil monitoring system of one engine (which has direct impact on flight safety) "without analysing the debris and taking appropriate preventive/ corrective measures".

His office was, therefore, of the firm belief that the engine in-flight shutdown (known as an IFSD in aviation) of the A321neo aircraft was totally preventable, had the Maintenance Department complied with approved procedures and been responsive enough to the timely application of sound maintenance principles and practices, Mr Nimalsiri says.

"At the same time, the incident also raises significant alarms in this office as to the competency, credibility and professionalism of the SriLankan Maintenance Department as to compliance with the regulations and application of sound aircraft maintenance practices for enhanced flight safety," he warns.

Neo engines are electronically monitored, thereby allowing the manufacturer—in this case, the US-based CFM International (CFMI)—to flag potential issues. "When the engine manufacturer gets an alarm, they advise the operator what to do," Mr Nimalsiri told the Sunday Times. "After the information is received, there

should be a system to analyse and take immediate action."

"In this instance, the manufacturer raised an urgent work card but the relevant department did not give due recognition to it and released the aircraft for commercial flights," he held. A work card is a "tailored description of a maintenance task prepared from original documentation by a technical support office to facilitate the correct completion of that task by those assigned to complete it".

As far back as 05.01.2018, CFMI alerted SriLankan of an issue in the oil debris monitoring system (ODMS) of the No 1 engine in the respective airplane. After further communication with the manufacturer, SriLankan Engineering issued a special work card dated January 8 requiring the Maintenance Department to investigate the ODMS sensor immediately.

However, SriLankan Maintenance only examined the engine on January 19, later stating that the "aircraft was not available due to engagement in commercial flights", the DGCA notes in his letter to the SriLankan Chairman. Even then, the complete analysis process was not done before releasing the aircraft back to service.

The CAASL underscores "with serious concern" that debris was detected on the ODMS sensor

during this inspection. And SriLankan Engineering had clearly called for an analysis of debris to determine the serviceability of the engine. Two days later, the engine had to be shut down. The CAASL inquiry found that "the event correlates to the previous ODMS sensor findings and engine bearing failure is a likelihood leading to the IFSD". This caused the regulator to lose confidence in SriLankan's maintenance arrangements, the DGCA told the Sunday Times.

To regain ETOPS certification, the operator must show they will not "do this type of loose, lackadaisical business again," he said. "There must be a thorough audit to ensure a sound and reliable system in place."

Meanwhile, SriLankan Airlines has claimed that the in-flight engine shutdown on January 21 was due to a manufacturing defect in the particular engine. This was published in an explanation written by Tyrone Navaratne, Senior Manager Engineering Quality, forwarded via Chief Executive Officer Suren Ratwatte to the Airline Pilots' Guild of Sri Lanka.

The union wrote to the CEO asking whether certification was withdrawn "due to an inherent problem with the engine variant and, therefore, a manufacturer problem or due to negligence on the part of SriLankan Airlines". This is despite the CAASL ruling that the IFSD was "not attributable to any manufacturing error but due to very poor maintenance practices of the operator".

Mr Navaratne says that CFM International "has still not provided the reason for the failure". However, he adds, "CFMI has increased the oversight and close monitoring of the other SriLankan Airlines neo engines".

SriLankan Engineering Management has taken action to prevent another In-Flight Shutdown (IFSD), he asserts, while adding that reinstatement of ETOPS "is in the final stages, pending only the approval of documentation/procedures with CAASL".

By Namini Wijedasa

The Sunday Times - April 08, 2018

Usually late:

900 SriLankan flights delayed in a month

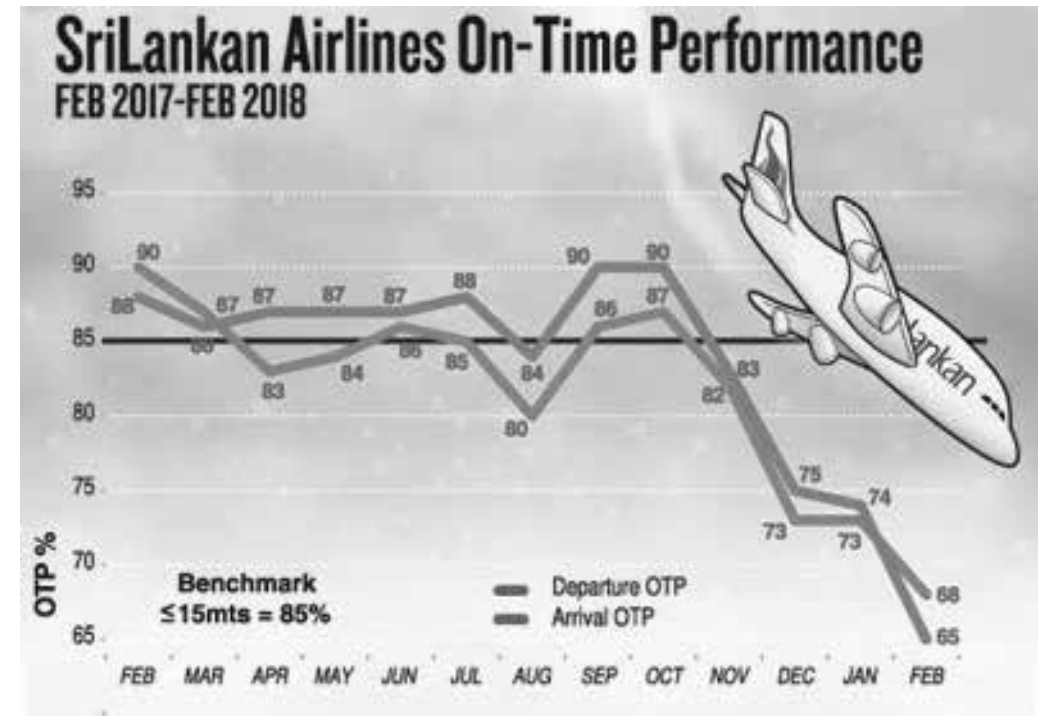
More than 900 SriLankan Airlines departures were delayed in February, with 280 of them leaving Bandaranaike International Airport (BIA) and other airports more than one hour late, according to data obtained under the Right to Information (RTI) Act. The February on-time performance (OTP) of the airline was even worse than its January record when 840 departures were more than 15 minutes late (it was 911 in February), with 121 of them being more than one hour behind.

The Sunday Times received monthly OTP data for SriLankan Airlines from January 2015 to February 2018. The industry definition of “on-time” is the percentage of flights that

leave within 15 minutes of scheduled departure.

Flagging punctuality is the latest predicament faced by the struggling national carrier for which there is no taker despite the Government trying for months to find a partner. Unions have repeatedly criticised the airline’s management and Chief Executive Officer for the airline’s accelerated slide since 2015. SriLankan has responded by contracting an international aviation consultant to float a restructuring plan.

Of 2,826 departures in February, 145 were delayed between one and two hours; 88 were delayed between two and four hours; 35 were delayed between four and six hours; and 12 were delayed by more than six hours.



And of 3,155 departures in January, 97 were delayed between one and two hours; 10 between two and four hours; three between four and six hours; and three more than six hours. Such disruptions translate into millions of dollars in losses for the airline.

A large number of delays in February - 39 direct and 308 consequential — are attributed to “technical” reasons. Eighteen of them were experienced on the airline’s narrow body aircraft while 21 afflicted the wide body planes. Thirty-three of these flights were held back more than four hours. The February OTP

report says technical delays have “significantly” increased by eight percentage points from 3.8 percent in January to 11.8 percent the following month.

Major disruptions last month include two aircraft returning to ramps, 12 “AOG” or aircraft on ground situations and two diversions. A total of 1,060 hours is listed as being wasted due to delays. The departure OTP percentage for February is a miserable 68 percent. This means that 32 percent of scheduled flights were late. It was 73 percent the previous month.

The last time the departure OTP percentage dipped to 68 was in December 2015. The arrival OTP also dropped to 67 percent that month. (The departure OTP benchmark is 85 percent). In January this year, there were 36 direct technical delays—26 of them on narrow body aircraft—and 79 consequential technical delays. Twelve of them were late by more than one hour. For instance, on January 18, a flight was nearly three hours behind due to “nose landing gear strut fluid leaking from gland seal”.

Two days later, there was a disruption of two hours and 35 minutes to allow an aircraft change owing to the late release of 4R-MRE [an airbus A320-232] after change of an engine. And on January 25, there was a lag of three hours as an aircraft was changed over the on-availability of 4R-ALD [an airbus A330-243].

The AOGs in January were due to birds striking the aircraft in Colombo and in Abu Dhabi; a technical issue while the aircraft was in Bangkok; and snow and exceeding flight duty period while in Shanghai.

Airline insiders claim that OTP data for March “is likely to be worse”. They cited one example of UL226 which, owing to technical issues, left Dubai airport several hours late on March 26

and then made an unscheduled stop at Cochin airport in South India for a crew change. Passengers stewed inside the plane for four hours in Dubai before spending another two hours on board in Cochin.

Earlier last month, the Airline Pilots’ Guild of Sri Lanka (APGSL) said the loss of a critical operational certification called Extended Twin Operations (ETOPs) by the company prevents newly-leased narrow body aircraft from operating on a direct route between destinations. The union warned that the absence of such certification and the grounding of aircraft due to technical failures had resulted in flight cancellations and disruptions that caused “further unprecedented colossal losses”.

System-wide arrival OTP also dropped by 9 percent from 74 percent in January to 65 percent in February. This means 35 percent of SriLankan flights flew into BIA late. Some delays are divided into punctuality, technical, airline responsible and non airline responsible. In the airline responsible category in February are late closure of check-in counters due to sorting out “overbooking situation”; locating missing passengers; loading equipment breakdown; lack of loading equipment; and late completion of boarding. There are also delays caused

by late cleaning due to lack of staff; and late loading due to shortage of ramp staff.

Under engineering delays is late release of aircraft after ‘A’ check; late positioning of aircraft; waiting for ground engineer to sign the journey log (23 minutes on February 21); waiting for ground engineer (31 minutes on February 24); and late release of aircraft after scheduled maintenance. And under flight operations is late flight crew pick-up by transport provider (46 minutes on February 1). Delays caused by shortcomings in airport facilities include check-in counter congestion; remote gate congestion; congestion at scanning; unavailability of gates; and immigration congestion.

Delays at foreign airports are caused by, among other things, air traffic control challenges. SriLankan has said in the past that, for all airlines from West Asia, over-Oman airspace “is a stubborn corridor to fly through with a narrow gateway, an impasse which is not able to cope with the present

volume of air traffic in Muscat”. As a result, nearly all of SriLankan’s flights are held on ground in Dubai and Abu Dhabi awaiting pushback clearance despite being ready to leave.

In February, 86 percent of flights from Abu Dhabi; 82 percent of flights from Mumbai; 80 percent of flights from Dubai; and 79 percent of flights from Kuwait were late. But there has, for many years, been a consistent pattern of late departures from certain airports, particularly in West Asia. Aviation experts insist this could be dealt with by “accepting the realities and adjusting the airline’s schedules accordingly”.

Flights arriving late at BIA cause a ripple effect on other routes. “When we have historical data to show our flights from certain airports routinely arrive late, we need to change our schedules to absorb those delays,” one expert said.

By Namini Wijedasa

The Sunday Times - April 01, 2018

RTI Com dismisses

SriLankan Airlines refusal to divulge info on CEO's salary

The Right to Information (RTI) Commission has dismissed an objection by SriLankan Airlines that it was exempt from divulging such information as salaries and allowances of its Chief Executive Officer (CEO) on the grounds that it did not fall within the jurisdiction of the RTI Act.

In its decision dated March 23, the Commission says it is in no doubt that SriLankan Airlines falls within the ambit of the RTI Act. "A contrary finding would disturb an effective and smooth working system as contemplated by the RTI Act, bringing about uncertainty, friction and confusion," it holds.

The Commission also states that the "cure and remedy" proposed by

the RTI Act must not be rendered redundant. Neither must the legislative intent in the Act's avowed purpose to "foster a culture of transparency and accountability in Public Authorities", be defeated.

In its view, the Commission maintains, it would be an anathema to give a ruling that places the national carrier as lying outside the definition of a "Public Authority" as contemplated in the RTI Act.

"This would give rise to the possibility that, not just the respondent national carrier, but a vast number of other companies may see fit to purportedly claim the benefit of that same exemption and render



<http://www.stg747.com/>

themselves outside the reach of the RTI Act, consequently resulting in Section 43 (e) of the said Act being reduced to a futility," it affirms.

SriLankan Airlines may now seek redress against the decision in the Court of Appeal. This will require further expenditure of public funds in the struggling national carrier's quest to withhold information on salaries, allowances and benefits of the CEO, Head of Human Resources and Chief Commercial Officer; information connected to its aircraft deal with Pakistan International Airlines; information on the cancellation of the Airbus A350 order; and information on the cost of personal flying training borne by SriLankan for the CEO.

The application for such information was first filed under the RTI Act in June 2017 by the Airline Pilots' Guild of Sri Lanka (APGSL). The Guild appealed against its rejection to the RTI Commission in September 2017. The appellant, APGSL, filed written submissions in December 2017 and in January and February this year. The respondent, SriLankan Airlines, filed its submissions in January and February this year.

In the course of the hearings, SriLankan took up a preliminary objection that it was not a company incorporated under the Companies Act No 7 of 2007 and, therefore, not a "public authority" as defined in Section 43 (e) of the RTI Act.

The RTI Act defines a company as one incorporated under the Companies Act "in which the State, or a public corporation or the State and a public corporation together hold twenty five per centum or more of the shares or otherwise has a controlling interest".

SriLankan Airlines submitted that it was incorporated as Air Lanka in 1979 under the Companies Ordinance. It changed its name to SriLankan Airlines in 1999 under the Companies Act No 17 of 1982. It then re-registered under the Companies Act No 7 of 2007 as required by the Act.

SriLankan maintained that, since it was not "incorporated" under the 2007 Act but merely reregistered as an existing company, the definition in Section 43 (e) of the RTI Act did not apply to it. But SriLankan did not dispute the fact that it was an entity owned by the Government of Sri Lanka.

In its decision, the RTI Commission observes that the certificate of incorporation of SriLankan Airlines as a limited company under the Companies Act of 2007 describes it as an "existing company" which is registered as a

limited company "as if incorporated" under the Act.

Even if a distinction were to be drawn between a company newly incorporated under the 2007 Act or an "an existing company" incorporated under previous legislation, that is an artificial distinction that takes on colour for the limited purposes of regulating the regime under the 2007 Act at the precise point of that Act coming into force, rather than as a distinction that is meant to continue in perpetuity.

The carrier's objection that the RTI Act does not apply to it was raised after more than one year of SriLankan Airlines acting in compliance with the said Act, including making the appointment of an Information Officer and a Designated Officer, the Commission points out.

Further, SriLankan Airlines has affirmed on record that it is incorporated under the Companies Act (2007) in its official documentation as well as in the legal notice available on its website.

By Namini Wijedasa

The Sunday Times - April 01, 2018

Railway runs off track

on gender issue

Sri Lanka's 160-year-old Railway Department freezes women out of all its top-level skilled and executive positions and recruits them only to minor positions, provided there are applications received, data obtained through the Right to Information (RTI) Act show.

The Railway Department does not issue application forms for women employees, said J. A. D. R. Pushpakumara, Director (Planning) and Information Officer, in response to an RTI request lodged by the Sunday Times. When applications are received for minor positions, for which forms are issued, women are recruited based

on suitability. The Department's 2017 annual performance report says that it has 15,413 employees. The RTI application reveals that, of this, only 1,202 are women. This is just seven per cent of the total work force. Of this, 148 women are casual or substitute workers.

The majority (276) are technician attendants or railway attendants, while the next highest category is railway clerk (217), followed by public management assistant (185), "office employees service" (178) and development officers (126). Across the Department, there is only one female Additional General Manager



<https://rogueramblers.com/>

(Admin) who is from the Sri Lanka Administration Service and 17 engineers.

Advertisements for senior Railway Department positions also provide in sight into this policy of gender discrimination. Applications were recently called for the open competitive examination for recruitment to "Executive Service Category of Grade III of Assistant Superintendent (Commercial/Transportation)". Twelve appointments were to be made. One of the criteria to sit the exam was: "Be a citizen of Sri Lanka & be a male applicant". Other criteria are sound moral character; and be physically and mentally fit to serve in any part of the island.

Entrance to executive-level categories, therefore, is through exams

which are restricted to males. Higher-level job eligibility is then limited to internal promotions from among those men. These are job grades significantly with higher pay. The RTI application also asked for the number of women currently enrolled at the Sri Lanka German Railway Technical Training Centre. There are 21 women now receiving instruction there out of a total annual intake of 90. This works out to 23 percent of students.

However, although intake is open to both men and women (there is no gender criterion there), female trainees have low career prospects at Sri Lanka Railways owing to the inherent restrictions.

By Namini Wijedasa

The Sunday Times - 14 Jul 2019

Garbage management

gone to waste

With no practical strategies for garbage disposal in Sri Lanka, the issue has grown to a national crisis. While experts claim properly-managed garbage could be turned into a public resource, this article highlights how some officials have turned it into private resource that endangers both the public and the environment at large. Sri Lanka's daily turnover of solid waste is some 9,800 metric tonnes and the annual turnover is 3,531,934 metric tonnes. Only two-thirds of this waste is collected daily, which amounts to 3,700 metric tonnes. This includes 400 metric tonnes of plastic, which is on the rise. Several institutions are responsible for garbage disposal, but primary powers

are vested with local government (LG) bodies. In addition, the Environment Ministry, Central Environment Authority (CEA), Marine Environment Protection Authority (MEPA), Coast Conservation Department (CCD), Urban Development Authority (UDA) and the Board of Investment (BOI) are responsible for garbage disposal. The Environment Ministry is currently preparing a national policy on waste management.

Foreign Tours

As garbage disposal problems grow, so have the number of foreign training and exposure programmes for LG representatives and central



Amount of money spent for waste management workshops (by province)

| | Year | Province | Amount spent |
|----|------|---------------|---------------|
| 01 | 2010 | Central | 900,000.00 |
| | | Western | 1,807,000.00 |
| | | Wayamba | 103,293.00 |
| | | Sabaragamuwa | 88,000.00 |
| 02 | 2011 | Sabaragamuwa | 945,000.00 |
| 03 | 2012 | Southern | 127,582.00 |
| 04 | 2013 | Central | 403,568.00 |
| | | Western | 7,260,802.17 |
| | | Sabaragamuwa | 944,135.00 |
| | | Uva | 368,290.00 |
| 05 | 2014 | Central | 860,000.00 |
| | | Western | 6,166,046.38 |
| | | Wayamba | 13,042,944.90 |
| | | Southern | 4,100,231.70 |
| | | Sabaragamuwa | 3,816,354.00 |
| | | Uva | 550,000.00 |
| 06 | 2015 | Central | 12,378,023.30 |
| | | Sabaragamuwa | 160,000.00 |
| | | North Central | 200,000.00 |
| 07 | 2016 | Western | 80,021.75 |
| | | Southern | 53,107.50 |
| 08 | 2018 | Wayamba | 2,113,409.95 |
| | | Uva | 1,150,601.00 |
| | | Sabaragamuwa | 1,728,842.11 |
| | | Southern | 295,776.60 |
| 09 | 2019 | Central | 588,161.70 |
| | | Wayamba | 121,000.00 |

Number of local government representatives that have participated in international solid waste management training programmes from 2010 – 2019

| Year | No. of Representatives |
|------|------------------------|
| 2010 | 06 |
| 2011 | 11 |
| 2012 | 07 |
| 2013 | 55 |
| 2014 | 156 |
| 2015 | 73 |
| 2016 | 03 |
| 2017 | -- |
| 2018 | 15 |
| 2019 | 09 (Till May 31) |

government members. These tours aim at arming officials with necessary training and technical assistance to combat the garbage crisis. According to parliamentary reports and details obtained from Right to Information applications, a total of 335 LG representatives participated in such foreign tours from 2010 to 2019 at a cost of Rs 60,620,351.

According to parliamentary reports, officials attached to the CEA, MEPA, CCD, National Zoological Department and other such departments are required to present their garbage management implementation plans to the relevant subject ministry following foreign tours. Ministry officials are required to take policy and management decisions based on these reports and periodically summon officers who participated in foreign tours to discuss and implement their plans. They must also monitor the functions of institutions responsible for waste management and provide them with necessary measures and guidelines.

From 2010 to 2019, the Chairman, Directors-General and other senior and divisional officers of CEA had toured various countries to study garbage management. Accordingly, 84 officers

had gone on 84 foreign tours at a cost of Rs.5,882,241. During the same period of time, an officer attached to the National Zoological Department had participated in a US tour spending Rs.135,261. Five MEPA officers had toured India, Kenya, Indonesia and Thailand on five occasions, but at no government expense, as they were sponsored by international environmental organisations.

Failed Projects

Some LG bodies attempted to initiate garbage management projects after their members participated in foreign training programmes. However, many of these projects outright failed or underperformed. In many instances, projects did not get off the ground. This highlights that though colossal amounts of public funds were spent on foreign tours, there had been no tangible benefit to the public.

In contrast, there has been a countrywide increase in polythene and plastic use, adding to the daily accumulation of non-biodegradable waste. Despite this grave situation, LG bodies have failed to implement viable garbage disposal schemes. Furthermore, many touted projects remain stuck at the 'planning stage.'



"Of 3,700MT waste collected daily, 400MT are plastic"

It is clear that the enormous amounts of public funds spent in the last ten years under the guise of 'garbage management' have gone to waste. Moreover, it is clear to whom garbage has become a resource. While this political and bureaucratic stagnation continues, mountains of garbage are piling up in urban and rural areas. With LG bodies arbitrarily transporting and dumping garbage in

swamps and wetlands, these protected and valuable environmental resources are being encroached upon and polluted. It is high time that relevant authorities opened their eyes to the wanton environmental destruction being caused due to haphazard garbage disposal. If prompt action is not taken and this corrupt and negligent behaviour continues, it won't be long before nature turns on us.

By Chamara Sampath

Daily Mirror - 21 February 2020

Police investigators

still sifting the ashes from the embers

Police investigations into the 2012 fire that gutted the Colombo Kachcheri at Dam Street, causing the loss of valuable documents, as well as over Rs 92 million in material losses, remain inconclusive, with investigators still at a loss over whether the fire was accidental or deliberate.

According to the latest report submitted to the Colombo District Secretariat (CDS), by the Office of the Senior Deputy Inspector General of Police (SDIG) Western Province, the Government Analyst report states that, given the speed with which the fire spread, a highly inflammable material caused the fire on the wooden floor of a higher level, which soon spread

throughout the building. However, the Chief Engineer (Colombo-West) of the Ceylon Electricity Board, who also submitted a report, states he cannot conclusively say that the fire was caused by an electric short-circuit.

The scanty nature of the investigation was revealed when Sunday Times first submitted an application, under the Right to Information (RTI) Act, to the Ministry of Public Administration. The Ministry said it had no report related to the Kachcheri fire. Then a RTI Application to the CDS resulted in a 2-page report by a 3-member committee appointed to look into the cause of the fire, being made available to



<http://www.daily-mirror.lk>

the Sunday Times, along with a one page Police report. Other than this information, what is available is a great deal of correspondence between the investigators, the CDS and the Public Administration Ministry.

The Police report submitted in December 2017, said there were neither eyewitnesses to the incident nor any suspects, and extensive discussions with CDS officials also did not yield any fruitful information regarding the fire. It said that further investigations were necessary to ascertain the actual cause of the fire.

The three member Committee, in its report, states that a three member valuation team said that 153 items were destroyed in the fire and their

estimated value was Rs 16,606,687.93, while the loss to the building was estimated at Rs 76,000,000, with the total loss estimated at Rs 92,606,687.93.

The Committee said it was not possible to conclude that any CDS officials were responsible for the fire or, if external factors contributed to it. The Committee further said that the loss caused by the fire should be absorbed by the State and, if Police investigations find that any person or persons were responsible for the fire, legal action be taken against them.

By Chandani Kirinde

The Sunday Times : May 20, 2018

Despite denial, serious implications by ex-STF Chief

The deployment of a staggering number of 798 armed STF personnel to conduct a search of two wards of the Welikada Prisons in November 2012, in violation of all laid down procedure to be followed when prison premises are searched, led to the riot there which resulted in the death of 27 inmates and caused injuries to many more, the report of a fact-finding committee states.

Welikada prison compound

The three member committee to look into facts pertaining to the incident that occurred at the Welikada Prison on 9.11.2012, was appointed by

former Minister of Justice Wijeyadasa Rajapakse. Its report was tabled in Parliament in February this year by Prime Minister Ranil Wickremesinghe. The Sunday Times filed an application under the Right to Information (RTI) Act to obtain a copy from Parliament early this month.

Among the disturbing findings of the Committee was evidence that, in the case of six of the inmates killed in the incident, T-56 automatic weapons had been introduced where the bodies were found, with a view to projecting they had used the weapons, and thus justifying their extermination. As evidence, the Committee produced photographs in which the weapons



<http://www.dailymirror.lk>

are absent in the photos taken by the Prison Depts' official photographer, soon after the incident, but the T-56 are clearly seen near the bodies when the Magistrate visited the scene for the inquest, a few hours later.

Also going by the evidence of the Judicial Medical Officer (JMO), the Committee concluded that three of the inmates were selectively killed.

Among those who gave evidence before this Committee were former Defence Secretary Gotabaya Rajapaksa as well as senior Prison and Police Dept officials, but when it came to the question of who had authorised the use of STF personnel to conduct the search, they either said they were acting on the directive of more senior

officials or claimed they were unaware of any such decision.

As the Committee said in its Report, "Ironically, the responsibility with regard to the use of the STF had been found to be nobody's liability in this instance."

Mr Rajapaksa was among the witnesses who denied knowledge about either the search operation or the use of STF personnel, stating it was not legally permissible to carry any arms and ammunition into a Prison facility. He had also told the Committee that it was up to the Prison Dept officials to prevent the entry of STF or police officials with arms to conduct a search.

However, the evidence of other officials who came before the Committee was in conflict with the evidence of the former Defence Secretary.

STF Commandant- Deputy Inspector General of Police (DIG-Rtd) Chandrasiri Ranawana in his evidence, told the Committee that the search conducted on 9.11.2012 was not done on its own accord by the STF, but on the direction of the then Defence Secretary, with the coordination of DIG Nimal Wakishta [Director-State Intelligence Service (SIS) and DIG Terrorist Investigation Division (TID) during 2012], after a series of discussions with senior officers of the Prison Dept.

According to DIG Ranawana, the STF was functioning under the Ministry of Defence until the beginning of 2013, and thereafter came under the purview of the Inspector General of Police (IGP). However, on the day the search operation took place, it was still under the administrative control of the Ministry of Defence.

The evidence by the then Commissioner General of Prisons, P.W. Kodipilli, also supported the position of the STF Commandant, that the need for conducting search operations using 798 STF personnel was made at a

meeting held at the Ministry of Defence on 17.07.2012, at which Mr Rajapaksa was present.

Mr Kodippili admitted the search was organised under his direct intervention and supervision, in a very secretive manner, to prevent it being leaked to other prison officers including the then Superintendent of the Welikada Prisons, Gamini Jayasinghe.

The Committee which heard from nearly 90 witnesses including inmates, Prisons, Police and STF officials, Defence Ministry and Prisons Reforms Ministry officials as well as JMOs and fingerprint experts, made several observations and recommendations in its report.

The Committee said it found a request had been made by Mr Kodippili to the Inspector General of Police (IGP) N.K. Illangkoon about three months prior to the incident, seeking the assistance of 300 STF personnel to conduct a combined search operation covering Colombo Remand, Magazine and Welikada Prisons. However, the IGP had responded unfavourably to the request, stating that "search operations inside Prison facilities have to be conducted with a proper action plan and coordinated in an organised manner by the STF and Prison officials.



However, in the search operation conducted on 9.11.2012, which took place when the IGP was overseas on an official assignment, the number of STF personnel had risen to 798, to conduct the search at only the Welikada prison, that too only in two wards, namely the 'L' ward and Chapel building. The Committee held the view that the presence of 798 STF armed personnel inside a prison facility will itself give way for the formation of a turbulent situation among the inmates, and the use of a paramilitary unit to conduct a search in a civilian institution, was an "appalling decision", while their entry into the Welikada Prison with weapons was in total violation of the law.

The Committee also condemned the firing of tear gas into two padlocked

cells in the Prison, which was identified as the main cause for the provocation of the inmates. "This action of the STF could be classified as an act of inhuman treatment, as the inmates could not move out of a closed area to surmount the effects of tear gas smoke. It was evident from the evidence that transpired before the Committee that the tense situation within the Welikada prison was a creation of the STF and not the inmates."

The Committee comprised retired High Court Judge Wimal Nambuwasam (Chairman), Rtd. DIG Asoka Wijetillake and Rtd. Additional Secretary (SLAS), Ministry of Local Govt and Provincial Councils, S.K.Liyanage.

By Chandani Kirinde

The Sunday Times : October 15, 2017

Sri Lanka Military collects

intelligence reports on journalists, RTI appeal reveals

Responding to queries by the RTI Commission of Sri Lanka, the Sri Lanka Army has indirectly admitted that it collects intelligence reports on journalists. Uthayan print journalist, G. Dileep Amuthan, of 361 Kasthuriyar Road, Jaffna has made a RTI request on 28.09.2017 to obtain information on Military run businesses and the allegations of Sri Lankan peacekeepers deployed to Haiti being perpetrators of sexual abuse of Haitian citizens in 2007.

Instead of providing the requested information the military has asked Dileep Amuthan to submit his national ID certified by a relevant authority. It further said that it was in possession of a Military Intelligence Report on journalist Dileep Amuthan and was

hesitant to release the information as a result.

In its order the RTIC says that "In principle, it must be strongly emphasised that if any Public Authority commences to obtain Military Intelligence reports in regard to citizens purely on the basis that they are filing Right to Information requests which is a legitimate and legal procedure under the Right to Information (RTI) Act passed by the Sri Lanka Parliament, then the fundamental objectives of the Act would be negated"

*Excerpts from the RTIC Appeal
Dileep Amuthan v. Ministry of Defence:*

The Public Authority (SLA) submitted that it was in possession of a Military Intelligence Report concerning

the Appellant and was hesitant to release the information as a result.

Responding, the Appellant stated that the PA (the SLA) has engaged in a background check on him merely because he filed information requests under and in terms of the RTI Act, thus defeating the purpose of the RTI Act. The Public Authority (SLA) counter responded that the Military Intelligence report that it had in its possession was prior to the Appellant commencing to use the RTI Act.

The Commission drew the attention of the SLA to the fact that the background of an Appellant or the purpose of an information request is not a ground of refusal under the Act. The SLA submitted that it relied on Section 5 (b) (i), namely, "disclosure of such information would undermine the defence of the State, or its territorial integrity or national security" as the concern was that the Appellant being a journalist, will use this information to perpetuate a negative image of the SLA by showing that it is conducting such business ventures. The SLA submitted that this could eventually lead to an unnecessary conflict between the SLA and the Business Communities of the Northern and Eastern Provinces which may in fact affect the 'defence of the State, and/or „national security. as contemplated by the RTI Act.

Order

In principle, it must be strongly emphasised that if any Public Authority commences to obtain Military Intelligence reports in regard to citizens purely on the basis that they are filing Right to Information requests which is a legitimate and legal procedure under the Right to Information (RTI) Act passed by the Sri Lanka Parliament, then the fundamental objectives of the Act would be negated.

While the Commission is not in a position to assess at this stage as to whether this has actually happened in this case or not on the facts before us, it must also be stated that in principle, this would be a matter of grave concern befitting the specific intervention of the Commission if RTI applicants are sought to be intimidated in any way whatsoever.

We note particularly that the background of an Appellant or the purpose of an information request is not a relevant consideration under and in terms of the RTI Act to deny information.

Section 24 (5) (d) of the Act states that; "A citizen making a request for information shall... not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her."

By Dileep Amuthan

Sri Lanka Brief - 17/07/2018

Illegal fishing:

The Sunday Times invokes RTI law to get to the bottom

As many as 641 permits were issued to foreign fishing vessels between 2012 and 2015 despite warnings by the European Union (EU) that many of them were engaged in illegal fishing practices which ultimately cost Sri Lanka a ban on exports, the first application by the Sunday Times under the new Right to Information Act has revealed.

The EU eventually banned Sri Lanka's fish imports in 2015 costing the country more than 75 million euro (Rs. 12 billion).

This information was hitherto not provided by the Fisheries Department despite several requests.



BBC
FOIA This! Tips on Using FOI/RTI Laws from Sri Lanka, Brazil, UK
By Toby McIntosh | March 8, 2017
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Freedom of information requests can generate unique stories on a wide range of subjects. Here's a sampling that covers fishing, Uber, football, and a suspect land deal.
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They're united in revealing the potential for developing stories based on requesting information — about government permits, local crime statistics and official correspondence.

The former government had repeatedly declined to disclose details of licences issued to foreign vessels for fishing.

The permits were given to fish in the Exclusive Economic Zone (EEZ) – a zone beyond the territorial sea of 12 nautical miles (22.2 km) from the shores of Sri Lankan waters.



edition.mv

The licences were issued to foreign vessels registered in Indonesia, Taiwan and Malaysia.

Imposing the ban on Sri Lanka in 2015, the EU said it was urging Sri Lanka to implement measures to dissuade illegal fishing by Sri Lankan vessels or by foreign vessels using Sri Lankan ports.

The Fisheries Department said that since February 2015, with the imposition of a ban on Tuna imports to EU countries, Sri Lanka denied port facilities to foreign vessels.

The highest number of licences amounting to 257 were issued to foreign fishing vessels in 2012 followed by 256 in 2013. In 2014 the Department issued 159 licences and nine in 2015 until the scheme was suspended.

The Government went on to implement recommendations set out by EU to stop Illegal, Unreported and Unregulated (IUU) fishing in Sri Lanka and eventually the ban on fish exports to the EU countries was lifted in April last year.

Though the foreign fishing vessels were allowed to carry out fishing only in the EEZ, local fishermen regularly complained that they also engaged in fishing in Sri Lankan waters disrupting their fishing activities.

Local fishermen accused the then Fisheries Minister Rajitha Senarathne of involvement in issuing licences to foreign vessels. The charge was denied by the minister.

This is the first RTI related story published in mainstream media since implementation on Feb 4, 2017.

FOIA This! Tips on Using FOI/RTI Laws from Sri Lanka, Brazil, UK

By Toby McIntosh | March 8, 2017

Freedom of information requests can generate unique stories on a wide range of subjects. Here's a sampling that covers fishing, Uber, football, and a suspect land deal.

They're united in revealing the potential for developing stories based on requesting information — about government permits, local crime statistics and official correspondence.

Have a great story you mined from a FOI/RTI request? Send it to us and we'll share it with journalists worldwide.

Permit Records Tell a Story

The Sri Lankan Right to Information Act is only a few months old but Sunday Times reporter Sandran Rubatheesan wasted no time using it. The resulting article shows that many fishing permits were issued despite warnings by the European Union that the recipients were engaged in illegal fishing practices. The EU eventually banned Sri Lanka's fish imports in 2015, at a high cost to the country.

By S. Rubatheesan

The Sunday Times : February 26, 2017

Rs. 1 billion worth

jewellery and gold to be returned to owners soon

The Defence Ministry has decided to fast-track the process of returning almost one billion rupees worth of gold and other valuable ornaments seized by the military from the custody of the Liberation Tigers of Tamil Eelam (LTTE) and found in abandoned houses during the final phases of the conflict, a senior official said. "The committee which was appointed to look into this forwarded its recommendations to the President recently. A high level meeting with all stakeholders has been fixed for next week to determine the next steps to be taken in this regard," Additional Defence Secretary R.M.S Sarath Kumara told the Sunday Times.

In a response to a Right to Information (RTI) application filed by

the Sunday Times, the Central Bank of Sri Lanka (CBSL) disclosed that it had 37.7 kilograms (37,708.472 grams) of gold in its custody. This had been received from the Army. The Central Bank said it accepted from the Army parcels said to contain gold jewellery on 28 occasions during the period between September 7, 2010 and January 26, 2012. The street value of the items totals one billion rupees.

"All the items have been weighed and valued by the National Gem and Jewellery Authority before they were given to the CBSL. On each occasion, the CBSL had weighed each packet of jewellery in the presence of Army personnel and internal auditors of the CBSL and issued a letter to the Army as



a proof of receipt of these parcels said to contain gold," the Central Bank said in its RTI response.

The CBSL also acknowledged that last year, the Army handed over another parcel said to contain gold items weighing 6003.132 grams and those items had not been weighed or valued by the National Gem and Jewellery Authority before handing them over to the CBSL. "These parcels had not been checked by the CBSL prior to accepting them. These parcels said to contain gold still remain in CBSL custody,"

Additional Secretary Kumara said the military still had a significant amount of gold and valuable ornaments in its custody.

Meanwhile, the Peoples' Bank has informed the Defence Ministry that some of the jewellery belongs to the bank. In 2014, the previous

government claimed it took steps to return the gold and other valuables to the owners after careful study of their legitimate ownership. The Government identified 2,377 people from the North as rightful owners of the gold jewellery which they pawned to LTTE-run banks during the conflict period. Among them only 25 people were given back their jewellery at a ceremony held at Temple Trees. There has been no further action taken to return the gold to those who claim to be the rightful owners.

Residents who lived in LTTE-held areas for decades claim they have documents to prove their legitimate ownership of their jewellery pawned at the 'Tamilleela Vaippakam' or 'Bank of Tamilleelam'.

By S. Rubatheesan

The Sunday Times : April 16, 2017

Sirisena poured more than Rs. 25 billion into his Polonnaruwa

During the Presidency of Maithripala Sirisena from January 8, 2015 to November 16, 2019, Rs 25.293 billion was used for various development projects in his Polonnaruwa district as direct government expenditure through various state agencies besides foreign funded projects.

This information was obtained by the Sunday Times through a Right to Information (RTI) query.

According to the information provided by the Presidential Secretariat, an ambitious five year long programme called the 'Pibidemu Polonnaruwa' (Let's awaken Polonnaruwa) development programme was rapidly implemented

following a Cabinet decision taken soon after the former President took office in January 2015.

Former President Sirisena who hailed from the Polonnaruwa district oversaw the whole implementation process of the dedicated development programme by conducting periodic meetings, writing personal letters and requests to senior government officials on the state of the ongoing projects. This was revealed in the selected sections of the performance reports of the Presidential Secretariat from 2015 to 2019. The reports were sent as part of the response to the RTI query.

In 2015, Rs 4 billion was spent on 152 projects. The projects varied



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from school-related development work, sanitary facilities for schools, development of pirivenas and hospitals and the conservation of wildlife, forests and roads. In 2016, out of 908 approved projects, 618 of them were completed while Rs 5.63 billion was allocated to complete 2,338 approved projects, of which 1,781 were implemented fully in 2017.

In 2018 and 2019, out of allocated funds of Rs 20 billion, Rs 15.663 billion was spent to carry out 6,765 projects through ministries, the provincial council and local government authorities under the purview of the Presidential Secretariat.

Details of funds spent on former President Sirisena's official and unofficial visits during his near five-year tenure are not available at the Presidential Secretariat, according to

the response sent by the Secretariat to the RTI query. "A separate register for the foreign visits of His Excellency the President has not been maintained by this authority," the response said while indicating the Presidential Secretariat has decided to withhold the relevant information.

Responding to another query whether there are any payments pending for these official visits undertaken by the former President, the Presidential Secretariat said there were no pending payments nor has it been informed on such pending payments by the General Treasury or any other institution.

By S. Rubatheesan

The Sunday Times : January 26, 2020

Big holes in cadre

cadre from top to bottom leave Archaeology Dept. teetering

The Department of Archaeology is severely understaffed, with most of its top level positions being vacant. Senior officials there acknowledged that continuing shortfall at all levels of the department are hindering their efforts to protect and preserve archaeological sites around the country.

The situation persists despite a directive from President Maithripala Sirisena in January last year, to take immediate steps to fill the vacant senior positions. According to statistics obtained by the Sunday Times through a Right to Information (RTI) application, 459 vacant positions remain across all different levels in the Department.

The issue is most glaring at the executive level, with a majority of the senior positions being vacant. According to data released as per the RTI request, only 13 of the 53 positions at the executive level have been filled as at March 31, this year. Among the positions still vacant are eight of the nine Director posts. They include Exploration and Registration, Excavation, Museums, Maintenance, Project Planning & Monitoring, and Chemical Conservation.

Meanwhile, all 15 Deputy / Assistant Director (Regional) posts are yet to be filled. The three Deputy / Assistant Director (Exploration and Registration) posts are also vacant,



as are the two positions of Deputy / Assistant Director (Excavation), and the two posts for Deputy / Assistant Director (Maintenance). Altogether, 27 Deputy / Assistant Director posts at the department are vacant. The department also has no Chief Engineer, Internal Auditor or Legal Officer.

At the tertiary level, which has an approved cadre of 56 posts, there are 23 vacancies, while 217 of the 812 positions at the secondary level are vacant. At the primary level, the department is short of 179 staff members.

Information released by the department as per the RTI request notes that regarding a significant number of positions, the Archaeological Department has requested the Ministry of Public Administration and Management

to fill the vacancies. Approval has been sought from the Public Service Commission (PSC) and other relevant agencies to change the Scheme of Recruitment (SoR) due to insufficient number of qualified candidates. Meanwhile, a Fundamental Rights (FR) petition filed by some employees of the department has prevented the recruitment for deputy / assistant director posts until the conclusion of the case.

The situation has caused concern at the highest levels of government. So much so that in January, last year, President Sirisena chaired a special discussion at the Presidential Secretariat regarding protecting archaeological sites and antiquities. According to a media release issued by the President's Media Unit (PMD) at the time, the President instructed the relevant authorities "to take



/archaeologynewnetwork.blogspot.com

immediate steps to fill the vacancies of senior officials at the Department of Archaeology.” The President had further said that this step should be taken immediately to eliminate the obstacles pertaining to archaeological issues and to protect archaeological sites.

The lack of senior officials at the department means that there aren’t enough officials to give junior officials the direction and guidance they need to carry out their work successfully, said a former senior official at the Department of Archaeology, who spoke on condition of anonymity. Without such direction, the

department’s most important function, which is to safeguard the country’s archaeological treasures, inevitably suffers, the source added.

The Ven. Ellawala Medhananda Thera, who has been studying and recording details of Buddhist archaeological sites around the country for decades, and who was among those who were present at last year’s meeting with President Sirisena, bemoaned the continued staff shortfall at the Archaeological Department.

“Due to a lack of experienced archaeologists, we have very young and inexperienced people handling artefacts, increasing the risks of

them suffering damage,” the Thera observed. He said this was also contributing to what he claimed was an organised campaign to destroy Buddhist archaeological sites in the North and East. He said many of the incidents may be going unrecorded by police since the Archaeological Department had not identified the sites, mainly because it lacks the personnel required to verify their existence, and subsequently to protect these sites.

“The delays in recruitment are mainly due to procedural matters,” insisted Prof. P.B. Mandawala, Director General of Archaeology. The DG noted, that according to the existing SoR, officers must be promoted from within the department for the posts of director. “To fill the director posts, we have to promote our deputy / assistant directors, but they have to complete 15 years with the department to be eligible to hold a director post. As of now, we don’t have enough of them to promote,” he explained.

Given the difficulty, the department has written to the relevant authorities seeking permission for a one-time only exemption which would allow any qualified candidate from within the state service to apply for the posts. This however, would require approval from several agencies including the Wages

Board and the PSC. The process is still ongoing.

A competitive examination was to be held by the Sri Lanka Institute of Development Administration on August 28, 2016 to recruit candidates for the 27 deputy / assistant director posts at the Department of Archaeology. A group of graduates within the department however, filed an FR petition with the Supreme Court challenging the recruitment process. The SC had thereafter issued an injunction preventing the examination from being held until the conclusion of the case. Prof. Mandawala, who was appointed as DG of the department in June, last year, said they made the necessary changes to the SoR to remove anomalies that would do injustice to these graduates and also held discussions with the department’s trade unions. “We have now sent the amended SoR to the PSC for approval and once it is received, we will go before the SC and lay out this solution.”

Graduates will have to be recruited to fill vacancies at the secondary level. Prof. Mandawala said, adding that they had already asked the relevant authorities for graduates. “We have however, made it clear that we wish to have those who have a degree in archaeology, given that this is a specialised field,” he pointed out.

Prof. Mandawala added that, except for the positions of director, moves are underway to get existing officials to cover up the work in other positions. For example, though all 15 positions of Deputy / Assistant Director (Regional) are vacant, Regional Officers (ROs) who are already permanently employed in various districts are covering these duties. "Nevertheless, issues regarding their authority when it comes to taking decisions do arise, and as such, most of the files come to my desk. Vacancies in such posts mean that a lot of the things that could normally be referred to a director by an assistant director go to the DG."

At the primary level, the shortage of qualified masons and watchers was the main challenge. There are 35 vacancies for masons at the department. The position is important given the amount of restoration work that is taking place in archaeological sites. Nevertheless, qualified masons, who can earn about Rs.3000 a day, are reluctant to apply for a government position where they would have to settle for a monthly wage. The department also needs far more

watchers to safeguard archaeological sites. Currently, the approved cadre of watchers is 150, though even here, there is a shortfall of 35. "But, in reality, our estimate is that we need some 2000 permanent watchers if we are to properly look after the archaeological sites. Therefore, we have made a request to increase the cadre numbers," he emphasised.

Nevertheless, Prof. Mandawala strongly disputed claims of a campaign being waged to destroy Buddhist archaeological sites in the north and east. He noted that, according to reports received by police, there were 290 instances of archaeological sites being destroyed or vandalised last year. A majority of them were from Anuradhapura (81), Kurunegala (30) and Moneragala (28). In contrast, just three incidents have been reported from Batticaloa, two from Kilinochchi and one from Mullaitivu. There have been no reports from Jaffna or Mannar, he stated.

By Sandun Jayawardana

The Sunday Times - Sunday, July 29, 2018

Lanka's jails dens of corruption

says report

Slain underworld leader maintained Facebook account while incarcerated

A notorious underworld leader killed when two prison buses were ambushed in Kalutara in February maintained a personal Facebook account while incarcerated and posted photographs of himself posing with prison officers, the report of a fact-finding committee states.

The report also held that there was widespread corruption in Sri Lanka's jails and said the Prisons Department was doing nothing to root it out. Prison Reforms Minister D.M. Swaminathan appointed the committee to inquire into the ambush in Etanamadala. It

left Aruna Udayanga Pathirana alias Samayang, four of his associates and two prison guards dead.

The report was handed over in May, at which time the Sunday Times filed an application under the Right to Information (RTI) Act to obtain a copy. This was finally made available last month. A separate RTI application filed with the Department of Prisons for information about the quantity of mobile phones and drugs recovered in jails between 2011 and 2017 and number of prisons officers who were disciplined has gone unaddressed.



Prisons officers carried out illegal activities, including use of mobile phones inside prisons; making mobile phones available to prisoners; facilitating contact between prisoners, their cohorts and families; and conducting monetary transactions through 'eZ Cash' and other systems.

Corruption allowed underworld-linked inmates to maintain contact with associates outside as well as plan, initiate and monitor crimes from inside, the report states. The drugs trade was also conducted from within. "How many such corrupt officers have been punished by prisons authorities?" the report asks.

"Those responsible officers of whichever the positions are [sic] should be dealt (with) severely and if the authorities are not capable of doing this they should be removed from their positions and should see to

an end of this menace," the committee recommends. "The Ministry has a greater role in this."

"There is ample evidence that corrupt officials make things worse in the prison environment," it adds. "They should be dealt with severely. The prison police should be given sufficient authority to handle such officials and they should be mandated to take deterrent measures and protect the good name of the 'house of corrections'."

The committee states that officers from the Kalutara prison and the police believe information about the movements of Pathirana and his associates were leaked to the assailants from inside jail. Three other buses left prison on the same route at different times that morning.

The plan could not have been successfully managed without

accurate details—such as date, time of departure, the route and its condition, where and how the suspects were positioned inside the bus and the precise time the two buses would reach the ambush site—being fed to attackers beforehand. But there is no mechanism now for the Prisons Department to gather information on how such details are being leaked.

A double-cab blocked the path of the bus and a group of attackers from an embankment on the left opened fire while another fired from the road. All had been clothed in police-like uniforms with decorations similar to those of police officers. Prison guards were not prepared to face the situation. The attackers studied the geography of the area. The route they took avoided almost all major roads.

Many mobile phones were found inside the Kalutara prison, officers told the Committee. Seizing of some of these instruments helped thwart a plot devised by Pathirana to kill his main rival 'Angoda Lokka'. Pathirana was first housed in the E ward but was transferred to the A ward over suspicions that he was involved in clandestine activity. There was evidence he used mobile phones freely within prison.

Pathirana's second wife told the committee she spoke to him nearly every day while he was in prison. She said he used mobile phones given to

him by friends and relatives who visited him. At other times, he used the phones of prisons officers. He was also said to be using Skype, Viber, etc, to have contact with women outside the jail. "This should drive the authorities to find out what is exactly happening inside the prisons without simply denying," the committee asserts.

The illegal use of phones has become endemic within prisons, it continues. Efforts such as forming a special unit to detect them and installing jamming units around Welikada have been ineffective. Pathirana had been wearing several items of jewellery including bracelets and rings. "It is surprising that some prisoners and suspects are enjoying undue privileges in a place where the law should be enforced without any fear or favour," the committee observes.

The report highlights glaring security lapses that led to the death of seven people. Pathirana had survived an assassination attempt at the Kaduwela Magistrate's Court in September 2015. There was a serious threat to his life but there was no preparedness. All five suspects were in one bus. A request for police protection, which should have been made at least 24 hours before the scheduled transport, was conveyed only 18 hours prior.



roar.media/

Officers' leave records are incomplete. Reasons for obtaining leave are not clearly or are incorrectly recorded. At least 18 officers from the Kalutara prison were away on the day of the attack. "Any change of the pattern in obtaining leave and surreptitious reasons given for leave, if any, should be investigated," the report emphasises.

"Safety of the suspects is not limited to this kind of attacks but is a problem all the way to the courts," it states. "Ordinary civilians, school children, office workers, private sector workers, all those who are going to earn a living and those who return home after the chores of the day are in danger in the absence of proper plans for prison transport."

"This is the first incident of its kind," it points out. "We cannot be

complacent that this is the last. It may be the beginning. Therefore it is a challenging event. The underworld has tested and found that the prisons are a lackluster, languish [sic] or sluggish lot. They know the weak points of the Department of Prisons and the prisons establishments. It is therefore necessary for the Ministry to be forward-looking."

The committee was chaired by Rummy Marzook, former Magistrate and former Commissioner General of Prisons. Other members were former Additional Secretary to the Ministry of Defence S Medawewa and former Senior Deputy Inspector General (SDIG) of Police Gamini Nawaratne.

By Sandun Jayawardana

The Sunday Times - Sunday, September 10, 2017

Hundreds killed

each year on tracks

Tragically, 718 people have died in train accidents in the past three years with the most in 2020 even though the tracks were virtually bare of activity for months during the coronavirus lockdown.

Most deaths are classified by the Department of Railways as suicides or accidents occurring as a result of trespass on rail tracks.

The Sunday Times obtained details through a Right to Information (RTI) request.

There were 230 deaths due to train accidents in 2018 and 215 deaths in 2019. Fatalities have risen significantly this year - 273 up to August 10, a disturbing statistic given that most

train travel was cancelled for almost three months due to the islandwide COVID-19 lockdown.

Of the 230 deaths and 477 cases of injury from 1,456 train accidents in 2018, 212 fatalities were classified as suicides or due to trespass on tracks. The vast majority of victims (167) were male. In 2018, level crossing accidents have caused 13 deaths and 69 cases of injury. Five people lost their lives falling off trains. In 2019, there were 215 deaths and 369 injuries coming from 1,385 train accidents. All but 15 of the deaths were classified as suicides/trespass on tracks. A further 10 deaths came from level crossing accidents, and five more from 76 cases of people falling off trains.

In 2020, meanwhile 107 deaths have been recorded in train accidents while 166 other deaths are classified as suicides. Other statistics are still being compiled.

Derailments are frequent although none have resulted in death or injury. In both 2018 and 2019 there were about 112 derailments. Last year there were six collisions between trains but with no harm suffered by passengers while the year before there was one collision, resulting in 32 injuries.

The department is installing bell-and-light warning systems at level crossings that do not have gates to minimise accidents but General Manager of Railways Dilantha Fernando says the job will not be completed until 2023.

“Until such systems are in place, we have asked the police to be deployed at level crossings which do not have the warning system. The police are withdrawn from a crossing after the system is installed,” he said.

The department could not afford to install gates at every level crossing as it required employing people to work them, Mr. Fernando said. “We need three persons to man a level crossing at a single line, six if it’s a double line. The salary of a gate-keeper is Rs 50,000

and we don’t have the resources to employ that many.”

The Railway GM argued that most train accidents occurred due to carelessness because motorists and pedestrians were not obeying the bell-and-light warnings at level crossings.

In three of the most high-profile recent accidents, it was found that motorists had driven onto the level crossings even while the warning bell was ringing and the lights were flashing red. Different level crossings presented varied problems for motorists, Mr. Fernando added.

“On the Northern Line for example, the line is straight and clear and the trains can go at up to 100km per hour,” he said.

“Often, on this line, drivers miscalculate how fast the train is approaching and believe they can cross the tracks before it gets there – they put the vehicle onto the tracks even when the bell-and-light system is warning them not to do so. By the time they realise their error, it is often too late.”

The Coastal Line presented another set of problems with its many bends. “Motorists and even pedestrians can’t see the train because unauthorised



<http://archives.sundayobserver.lk/>

structures have been put up next to the rail tracks. This is a cause for accidents. We have initiated legal action to remove such structures but it is a lengthy process,” Mr. Fernando noted.

He appealed to people not to trespass onto tracks. “We have even fined people caught doing so but

many still do it. This is a risk that is not worth taking. While warning systems must be in place, we also need a change of attitude among the public to minimise such incidents,” the Railways chief insisted.

By Sandun Jayawardana

The Sunday Times - Sunday, August 16, 2020

RTI reveals

annual trade union membership fees collected from plantation workers

Editor's Note: The following article is a translation of a story by our citizen journalism sister site Maatram.

On 12.10.2018, Maatram filed a Right to Information request with the Labour Department for information on subscription fees for six trade unions that represent plantation workers, requesting the following:

According to the last documents received from the unions by the Labour Department;

1. Number of members in each union, and a breakdown by gender
2. The membership fee levied from one worker

3. Total membership fees obtained by unions in the year 2017
4. Total membership fees obtained by unions in September 2018
5. Total membership fees obtained by unions in December 2017
6. Total amount spent by unions in 2017, and what this amount was spent on
7. Total amount spent by unions in 2017 specifically on issues related to tea plantation workers, including but not limited to campaigns, welfare, health and education.

Information of the following six unions was requested;



<https://mapio.net/>

- CWC – Ceylon Workers' Congress
- LJEWU – Ceylon National Estate Workers Union
- NUW – National Union for Workers
- UPF – Upcountry People's Front
- JPTUC – Estate Sector Workers Alliance
- SRFU – Sri Lanka Red Flag Union

Membership fees might seem like an innocuous request to make, but they are significant. The unions represent members who are Malaiyaha Tamil tea estate workers, a community that face significant barriers to accessing essential services such as education. They often struggle to provide their families with nutritious food. These issues tend to come to the forefront during wage negotiations, where the unions act as middlemen between the workers and the Regional Plantation Companies (RPCs).

For years, tea plantation workers have been calling for an increase in their basic wage to Rs. 1000. A protest held on 22.10.2019 at Galle Face Green, mobilised by youth from the Malaiyaha Tamil families who have come to Colombo for work, drew thousands of people. In December, workers began a hunger strike outside the Colombo Fort Railway Station, to make the same demand. Each time, the unions negotiate for an increase, usually amounting to around Rs 50 or Rs. 100. The estate owners say a more significant increase is impossible given factors such as conditions in the global market (including competition) and climate change.

Against this backdrop, the workers view the role of the unions with scepticism. In a recent article by Maatram, titled *'We don't know the colour of the union'*, tea plantation workers who were interviewed said, "We are giving a membership fee of Rs. 150, to speak on behalf of us whenever we have problems. But we have not received any help so far." They also commented on the actions of the union leaders, "They are living on the membership fee we give. They are living luxuriously."

After Maatram handed over the original RTI application on 12.10.2018,

it took exactly two months for the Labour Department to respond with the information requested in the application. The Information Officer said that the acknowledgement could not be given immediately, as he did not know Tamil. Maatram received the receipt of acknowledgement on October 25, and this was within the response time period stipulated in the RTI Act (2 weeks). Editor Selvaraja Rajasegar has previously spoken to Groundviews at length on the difficulties in place for individuals requesting information from government offices in Tamil.

Only questions No. 1 through No. 3 raised by Maatram were answered in the response that was received on December 12th. The Labour Department stated that the information pertaining to the other four questions was not with them.

Maatram was compelled to contact the Information Officer over the telephone as the response was delayed by two months. "Since the people here do not know Tamil, your application has to be translated to Sinhala or English. The entire department has only one translator. We all give it to him/her, that is why there is a delay," was the Information Officer's explanation.



Maatram was able to obtain information around the members of the worker unions, the membership fees levied from a single worker, and the total amount in membership fees obtained in one year by these unions.

What the information reveals

Maatram requested information based on the most recent documents that the Labour Department had received from the six unions. The information that the Department provided was based on reports from 2017.

According to these documents, the Ceylon Workers Congress has a membership of 400,000. The Ceylon National Estate Workers Union has 150,000 members while National Union for Workers has 21,280 members.

It has been reported that the total number of workers in the estate sector has fallen to 150,000, however the total number of members in these three unions alone surpass 550,000. It is evident therefore that while the unions possibly submit outdated details to the Labour Department, the Department inputs these records unquestioningly, without carrying out any formal follow-up of its own.



<http://www.onlanka.net/>

According to the details received, in the one-year period between 01.04.2016 and 30.03.2017, the Ceylon Workers' Congress received Rs. 77,751,933 as membership fees from workers. Likewise, the Ceylon National Estate Workers Union received Rs. 22,437,558.53 while the National Union for Workers received Rs. 34, 524, 328.41 through membership fees.

Maatram appealed to the Labour Department for answers to questions No. 4 through No. 7 (which had not been provided in the first response) and for the annual reports of the unions. The Department responded stating that the reports cannot be provided according to Clause 5(1) f of the Right to Information Act. The clause lays out a criteria for the denial of access to information;

5(1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where-

This clause lays out a condition for refusal, the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;

Maatram has appealed this decision before the Right to Information Commission.

By Selvaraja Rajasegar

"Maatram" websie

What is happening to Trade Union Subscription monies?

One finds it impossible to get information from the Labour Department regarding the plantation workers in Sri Lanka and the Trade Unions in which they are members. Though we applied to the Labour Department asking for information regarding the plantation workers last February, after many appeals to the Commission, we were only able to obtain the information by June. Accordingly, in response to our question (03/01/06) we came to know that Ceylon Workers Congress has a membership of 38,3007 (2016-2019), the Workers National Union has a membership of 26,172 (2017-2018) and the Sri Lanka National Plantation Workers Union has a membership of 148,242(2017-2018).

No information was given regarding the other trade unions. Under these circumstances, the Labour Department refused to provide information regarding the subscription monies obtained by the trade unions. However, a reply was already given to a person regarding the request for this information. When we made an effort to find information about the fate of the subscription monies paid to trade unions, we applied to the Elections Commission under the Right to Information Act, and we were able to obtain the Annual Finance Reports of Registered Political Parties (23/199). So we were able to gather information regarding the Ceylon Workers Congress, The Hill Country

People's Front, The Citizens Front and the Workers National Front.

A subscription of 150/- Rupees is deducted from the workers' wages every month. The total amount of this money is in the region of millions. What is important is the fate of these crores of money, and the benefits accruing to the people. During the period 2015/2016 the CWC which had a membership of 396,869 obtained Rs. 94,731,687/- as subscriptions. During the period 2016/2017 it has obtained Rs. 77,751,933/- and in the period 2017/2018 Rs. 7,758,020/-.

Under these conditions in 2015/2016 Rs. 10,525,743/-, in 2016/2017 Rs. 8,639,104/-, and in 2017/2018 Rs. 19,668,944/- were obtained as political financing. Under other receipts the interests, rentals, interest on loans and insurance amounted to an income of Rs. 20,879,977/- in 2015/2016, Rs. 23,375,980/- in 2016/2017, and Rs. 19,668,944/- in 2017/2018. Other receipts amounted to Rs. 126,37,407/- in 2015/2016, Rs. 109,767,017/- in 2016/2017, and Rs. 973,49,464/- in 2017/2018. Though the Estate Workers toil in the plantation for 30-40 years, they get only 10-15 lakhs as EPF/ETF. However, the Trade Unions earn crores of profit in a single year.

That is why, there are 34 Trade Unions in the plantation areas (Labour Department - RTI). Nothing was mentioned in these Reports of Accounts regarding any welfare measures for the estate workers. They spend a major portion of their finances to defray administration expenses. This is the characteristic of all the political parties. Accordingly, the CWC has spent Rs. 98,743,604/- in 2015/2016, Rs. 98,444,643/- in 2016/2017, Rs. 67,597,127/- in 2017/2018 on administrative matters.

In these expenses, only the internal needs like office workers' payments and other payments for them have been fulfilled. They have spent for the District Committees who act as the agents of the union at the District and Estate levels engaging in Trade Union activities, Rs. 3,002,000/- in 2015/2016, Rs. 2,530,000/- in 2016/2017 and Rs. 935,080/- in 2017/2018. The reserves for estate committees amounted to Rs. 5,149,071/- in 2015/2016, and Rs. 4,282,765/- in 2016/2017.

As May Day expenses the CWC spent Rs. 5,007,940/- in 2015/2016, Rs. 5,448,872/- in 2016/2017 and Rs. 4,939,560/- in 2017/2018. Accordingly, approximately 50 lakhs of Rupees are spent for every May Day celebration.



dailynews.lk

What are the rights that they have obtained for their workers through these mammoth May Days?

According to the Hill Country People's Front's Financial Report, it has obtained Rs. 1,934,000/- during the period of 01.04.2015 to 31.03.2016 as financial support. Out of this amount Rs. 1,920,928/52 was expended on payments, transport payments and festival advances. During the period 01.05.2017 - 31.05.2018 a sum of Rs. 252,647/18 has been received as financial support and this amount has

been used entirely for administrative expenses.

The Workers National Front has received Rs. 1,080,230/- as subscriptions in 2015/2016 and a sum of Rs. 906,170/- in 2016/2017. They have been used for administrative expenses.

In the meantime the Citizen's Front of Ranga that influenced the people of the Hill Country through Television programmes had a balance of Rs. 31,650/- in the years 201, 2017 and 2018.

The Democratic People's Front under the leadership of Minister Mano Ganeshan has shown in its financial report that it has received Rs. 1,400,000/- as donations by 31st March 2018.

We were only able to obtain the financial reports of the above parties from the Elections Commission by using the Right to Information Act. As the Workers National Union is not a party registered with the Election Commission, we were not able to obtain their Financial Reports. However, according to information from the Labour Department, they have received subscriptions to the value of Rs. 34,524,328/- during the period 01.04.2016 - 31.03.2017.

What has been done for the workers by these Trade Unions that collect

these subscriptions from the workers? Those who come to power launch development programmes using Government funds? They use the income obtained by the party for party expenses and their own expenses and they use the subscription money to have their own birthday celebrations. For a very long time these parties would use their influence to make the Government launch development programmes and then claim that they are their own achievements. They use the workers for their income and positions. At the end of the day no one appears to promote the interests of the workers.

By Selvaraja Rajasegar

Maatram website

The Hatton Bus Station

that is fast becoming a waste dump

- Public toilets not maintained
- Unduly high charges collected at the Public toilets
- High income through leasing

The face-lifting programme for Hatton was launched as the concept of the Former Minister of the Hill Country New Villages Infra-Structure and Social Development (Now MP) Thihambaram under the UNP Government. As the first phase of the above programme, construction work was undertaken in the Hatton Railway Station. However, after the change of Government, there are doubts about the continuation of this programme. Keeping the toilets clean and their maintenance are as important as the face-lifting programme

for Hatton. At present an effort is made to make Hatton more pleasant through paintings on the walls. However, the state of the Bus Station tells a different story.

When buses are parked at the Hatton Bus-Stand, people use the sheltered space behind the buses as a urinating area. Though there is a public toilet close-by, this has become the choice of the majority of people. No action has been taken to check and improve this situation for a very long time and it continues to affect users of these public spaces.

There was a recent newspaper report that they charge very high fees at the public toilets situated in the Talawakelle and Hatton Bus-Stands

and the passengers have made complaints. It is mentioned in this newspaper report that thousands of bus passengers use these toilets daily in these towns and they find these exorbitant charges very annoying. The public point out that school children cannot afford to pay such rates, which are as high as Rs.20/=.

In the meantime, it has been pointed out in social media that the public toilet in the Bus-Stand of the Nuwara-Eliya Municipal Council area is not at all suitable for public use. It is also pointed out that the public toilet facilities at the Welimada Bus-Stand under the Welimada Urban Council Administration are provided free of charge. Some information has been obtained regarding the issue of toilets from the Talawakelle - Lindula Urban Council (CPS/N/TUC/5/1/RTI) and the Hatton - Dickoya Urban Council using the Right to Information Act. According to this information there is only one public toilet situated in the border area of the Talawakelle-Lindula Urban Council; it has been leased out on a tender procedure and it brings an income of Rs. 52,170/= per month. Rs. 20/= is charged at the public toilet per head. In the meantime, it is also stated that no complaints have been

recorded in the Talawakelle - Lindula Urban Council regarding exorbitant charges.

The Talawakelle-Lindula Urban Council public toilet was leased in 2016 for 360,000/= Rupees per year (30,000/= Rupees per month) through the tender procedure; it was leased in 2017 for 375,000/= Rupees per year (31,290/= Rupees per month); it was leased in 2018 for 475,000/= Rupees per year (39,580/= Rupees per month) and in 2019 it was leased for 626,000/= Rupees per year (52,170/= Rupees per month). Therefore, if the public is facing any inconveniences regarding the Public toilets complaints can be made with the relevant authorities.

Three public toilets are being administered by the Hatton - Dickoya Urban Council. Two of them are situated in Hatton and one in Dock-oya. It is notable that the Dick-oya public toilet is not leased out and services are free of charge. The Hatton Bus-Stand public toilet and the Hatton Star Square public toilet are leased out and an income of several lakhs of rupees is obtained. Accordingly, the Hatton Dick-oya Urban Council has obtained as lease income in 2016 Rs. 3,874,643.49; in 2017 Rs. 4,845,061.86;



www.alamy.com

in 2018 4,211,809.92 and in 2019 till 30.09.2019 Rs. 2,952,108.29.

10/= Rupees is the acceptable fee for the use of public toilets. However, there are complaints from the public that more than this amount is charged. The Hatton - Dick-oya Urban Council administration has stated that complaints have been received that exorbitant amounts are charged from the users of public toilets, and action is being taken against those that are responsible. Many people use open spaces to relieve themselves as the public toilets charge high fees and they are not properly maintained. The sewers found behind the buses in the

Hatton Bus-Stand are used by many as a urinal.

As a result, passengers who board these buses find it difficult to sit there tolerating the stink. They have to breathe in air that is polluted by urine fumes. It is a farce that the Urban Council that makes millions of rupees as income from the public toilets claim that they are taking action. In the meantime, the public toilet near the Bus-Stand is not maintained properly, and garbage is dumped in the premises. These factors are hazardous to people's health and they also impact the restaurants and shops nearby. Fried food prepared in these stinking areas is



livandletravel.wordpress.com

brought in baskets and sold to the bus passengers. There is no guarantee that these food items are not contaminated by the polluted air.

According to the concept of the new president, blank walls all over the country are painted and they depict attractive visuals in different colours. But these wall paintings cannot override the stink in the Hatton Bus-Stand. A proper waste removal system and a prohibition against using the sewage canals as urinals are required. Drivers and conductors

of buses also use the sewage canal as a urinal. A system of stringent fines and penalties has to be introduced. The Hatton Public and Private Bus-Stands should be absorbed into the face-lifting programme for Hatton. The Hatton - Dick-o-ya Urban Council, Hatton Bus Depot, the Central Province Public Transport authority and the Hatton Police should work with the participation of the public to address these issues.

K. Prasanna

Thinakkural - 03rd January 2020

Are funds allocated to provide the Minister's meals?

The plan for a single separate house has been a long-time dream of the people of the Hill Country Plantations. The Ministry of Hill Country New Villages Infra-Structure and Social Development has stated that the first phase of the construction of 4,000 separate houses financed by the Indian Government has reached the final stages and a further construction of 10,000 houses under the second phase will be under way in July. Though the Indian Housing Programme is launched by the above Ministry, the implementation is carried out mainly by the Plantations Human Development Fund.

Though several defects in the separate housing schemes have

been pointed out many times, no action has been taken so far to examine or address them. The Green Gold Housing Scheme comprising 25 housing units launched in the Maskeliya Brownswick Estate in 2016 spawned many issues, Apart from the funds allocated for road development and electricity, the residents had to spend many thousands of their own money. All facilities are provided to the beneficiaries out of the funds allocated to the Housing Schemes launched in the Hill Country Plantation areas. No further charges are levied from them.

When information was requested under the Right to Information Act pertaining to the 25 houses constructed in the Brownswick Estate,



<http://www.redcross.lk/>

it was revealed that a sum of Rs. 704,086.20 was allocated and spent for the provision of electricity. However, electricity was not provided to the beneficiaries of the Housing Scheme for more than a year. They paid the Electricity Board privately a sum of Rs. 472,879.00 (25x18,915) for the supply of electricity. Similarly, though the allocation of Rs. 604,316.98 for road construction has been spent, the construction of the concrete road has progressed only half way. As improper spending has been evident in the Housing Schemes, it is amazing that expenses incurred in advertisements,

helicopter trips and providing meals and mixture snacks to the Minister are also included in the expenses for constructing houses. When information was requested under the Right to Information Act regarding the projects launched by the Ministry of Hill Country New Villages Infra-Structure and Social Development and implemented by the Plantations Human Development Fund Letterhead with No.MANG/2/8/3/2/KKI(2019) gave details regarding the Housing schemes implemented by the Fund (2014-2019).

In the Accounts Report of 2014, a total of Rs. 1,164,494.94 was spent for

a meeting held in the BMICH regarding the Indian Housing Programme. (This includes water + Mid-day meal + mixture snacks + Minister's mid-day meal + 600 +20845 + 19575).

It is irrefutable that single house construction projects are launched in several places now in the plantation areas. At the same time, it is doubtful whether funds allocated to the people percolate to them.

The owners of 08 houses that were fully damaged in the fire accident that occurred in the 07th row of the Akkarappattana Praymore Estate on 10.05.2015, have not been provided with alternative houses so far. They live in the temporary tents put up by the Plantations Human Development Fund. No action has been taken so far to build houses for those victims of the fire accident that occurred on 29.12.2018 in the Fourdice 30 Acres Estate.

Though at the outset priority was given to those affected in disasters in the matter of launching housing schemes in the Hill Country Plantation areas, now the beneficiaries in housing

schemes are selected on the basis of political support and prestige. However, the entire retinue of the Minister congregates in Colombo for meetings in the Ministry. When it is well known that the expenses incurred in conducting a meeting regarding a housing scheme can cover the construction expenses of two houses, is there a requirement for such pomp and grandeur?

The Action Report - 2018 of the Ministry of Hill Country New Villages Infra-Structure and Social Development states that in areas like Nuwara-Eliya, Badulla, Kandy, Ratnapura, Galle, Kegalle, Monaragala, Matale, Kalutara and Matara Districts there live 943,390 plantation people and they need a total of 186,298 houses. In view of the above facts, it is the request of all concerned that development programmes should be launched considering the needs of the plantation people and taking steps to prevent all forms of financial abuses.

K. Prasanna

Thinakkural - 05th August 2019

Who is accountable

for the Tiger Cadres who surrendered?

There are no responses to the applications requesting information sent through email to President Maithiripala Sirisena regarding this matter.

When the President's Office is thus irresponsible and unanswerable we can understand how difficult it is to obtain information through email from other State Institutions.

So, consequently, we have to confirm several times whether the applications sent through email asking for information have been received.

After four days of sending my email application to the Army I confirmed over the phone that it has been received (08.04.2019).

An officer from the other end acknowledged the RTI application; said that it was translated and forwarded to the Director; that he didn't know if he had read it or not and said that a reply would be sent.

In a letter in Sinhala dated 18 April, it was stated that action was being taken to obtain the information requested by me.

According to Rule No.07 of the Right to Information Act No.12 of 2016, it is the duty of the Information Officer to send the required information within 14 days.

However, the Sri Lankan Army which doesn't follow these rules properly, did not provide a reply to my RTI inquiries for more than a month.



www.newsfirst.lk

So, I called the Army Headquarters again on 8 May and told Major Ranasinghe that I had received no response for my RTI application for more than a month.

He stated that I could find out the situation from Colonel Nirmala Perera. Colonel Nirmala said that my letter was in Tamil; they had sent it to the Official Languages Department to get it translated and they would do the translation in a week's time.

He further stated that a letter had been sent to me in this connection.

However, the above letter dated 5 May, reached my hands on 16 May. During the period of 16 May to 30 June I had to make several calls to the Army Headquarters and wait for a reply.

The reply dated 25.06.2019, which was a response to my RTI application reached my hands on 1 July. The Army that doesn't follow the rules in the Rights to Information Act No.12 of 2016 properly, stated that no members of the Liberation Tigers of Tamil Eelam surrendered to them and that "they surrendered to the Sri Lankan Government".

The manner in which the Army has washed its hands off the matter by stating that in the final stages of the war no Liberation Tigers surrendered to them has to be gone comprehensively. The Army has replied to the RTI inquiries through their official Army email addresses, viz., demedia@army.lk and slarmymedia@gmail.com.

This reply which has been sent to me was signed by Information Officer Brigadier A.M.S.P. Atapattu.

Furthermore, it is stated in the reply received in Sinhala three months after the RTI application as follows:

In the final stages of the war the members of Liberation Tigers of Tamil Eelam Movement did not surrender to the Sri Lankan Army. They surrendered to the Sri Lankan Government.

Furthermore, it is stated that information regarding the surrendered members of the Tiger Movement can be obtained from the Office of the Commissioner of Rehabilitation which has the authority over such matters.

The Tamil people are of the firm view that there is ample evidence that the Tamil Eelam Liberation Tigers surrendered to the Army in the final stages of the war. What happened

to the members of the Tamil Eelam Liberation Movement who surrendered in this manner? The question remains as to who is accountable.

Mathiapparanam Abraham Sumanthiran/ Speaker of the Tamil National Alliance:

The Army acted as the representative of the Government during the final stages of the war. Therefore, the assertion of the Army that the Tamil Eelam Liberation Tigers never surrendered to them is totally unacceptable. The Army cannot escape from accountability by making such statements.

It has been accepted that the Tamil Eelam Liberation Tigers surrendered to the Government. A resolution has been passed in a recent meeting of the National Security Council that the Government must take the responsibility for matters regarding enforced disappearances. The whole world knows that the Army acted as the agent of the Government.

Hon. Minister Mano Ganesan:

The claim of the Army that the Tamil Eelam Liberation Tigers didn't surrender to them is amazing. If there is war in any country, they



<http://www.airforce.lk/>

usually surrender to the Army of that country.

Quite apart from considerations of the past Government and the present Government, the Sri Lankan Government is accountable. The Army is an arm of the Government.

Sritharan, Parliament Member of the Tamil National Alliance:

The Tamil Eelam Liberation Tigers surrendered to the Army in Omanthai. There are eye-witness accounts of several people. Under these circumstances, the statement of the genocidal Army that the Tigers didn't surrender to them is totally unacceptable.

Former President Mahinda Rajapakse:

The Tigers didn't surrender in my house or in that of the Former Defence Secretary, Gotabaya Rajapakse.

This may be cited as a good example of the fact that the Tamils can never hope for justice in Sri Lanka. That is why we are resolute that an International inquiry should be instituted in the matter of war crimes.

The Government that obtains a solution in the Court for the erroneous action of the President, will never offer a solution to the injustices meted out to the Tamils.

Sivamohan, M.P, Ilankai Thamil Arasu Katchi:

If the Liberation Tigers hadn't surrendered to the Army, then what happened to the Tamil Eelam Liberation Tigers that went with the white flag. Accept responsibility and accountability without trying to say that they surrendered to the Government and shift the blame among one another.

Several facts have been highlighted in the Darusman Report of the United Nations. There is strong evidence that the Tamil Eelam Liberation Tigers that surrendered were shot and massacred.

If you say that they didn't surrender to the Army, then why fear an international investigation?

Anandhi Sasitharan who is a witness in the war crimes investigations described the fate of her husband in the United Nations.

Rev.Father M.Sakthivel - Marimuthu Sakthivel

The Army cannot extricate itself from accountability for the Tamil Eelam Liberation Tigers who surrendered. In

the final stages of the war, the Army was there as the representative of the Government.

Hundreds of Tiger Movement members brought from Mullaitivu were kept under the control of the Army in the Poonthoddam camp and in the Vavuniya University Faculty on the Mannar Road.

I have met them personally, spoken to them and distributed cooking utensils among them. When these facts speak for themselves, the claim that the Tigers didn't surrender to the Army is totally unacceptable.

During the final stages of the war, it was the Former Defence Secretary that led the Army. Consequently, he has the duty of accepting accountability. The Tamil people who came from Tiger controlled areas were taken to the Refugee Camps and the Tamil Eelam Liberation Tigers who surrendered were taken to the Rehabilitation camps.

By P. Niros

Tamil Mirror website - 5th July 2019

Details of Sirisena's

helicopter trips exposed following RTI inquiry

Could have gone on a round-the-world helicopter trip three times

No charges paid, no justifications given

(Those who engage in copy paste, especially Websites can quote the name of Tamil Mirror when they publish the news. Obtaining information through the RTI application is not as easy as engaging in copy paste).

In his five years of office, former President Maithripala Sirisena has journeyed a distance of over 131,277 km using helicopters belonging to the Sri Lanka Air Force.

The above fact has been revealed in information received by the "Tamil Mirror" from the Sri Lanka Air Force Headquarters under the Right to Information Act.

When Maithripala Sirisena was the President, the Sri Lanka Air Force provided him helicopters which were assigned only to the VVIPs.

Sirisena has used the MI-17 helicopters and the B-412 helicopters belonging to the Sri Lanka Air Force 535 times and 22 times respectively.

Sirisena who has used helicopters on an average of 111 times per year



www.alamy.com

has travelled a distance of 70884 nautical miles or 131,277.7 Kilometres.

No charges have been paid for the 557 helicopter trips made by former President Maithripala Sirisena during the period of five years. No justifications for these trips were provided by the Air Force Headquarters.

The average perimeter of the earth is 40,030 kms. According to records of helicopter trips undertaken by Sirisena, he could have made three trips around the globe along the equator.

By P. Niros

Tamil Mirror website

99% have violated health laws with election rallies!

The law has not been enforced against anyone

Revelations based on 155 inquiries made using RTI

The last parliamentary election, initially postponed indefinitely due to the coronavirus pandemic, was finally conducted after formulating the legal framework to protect the public health.

It should be considered a serious responsibility taken by the Election Commission and the health sector regarding the lives of people.

However, to what extent were the relevant authorities led by the government, able to fulfil that responsibility in reality? What is the

assessment of the government and the relevant authorities in this regard?

Unfortunately, even though it has been a long time since the election has been done and dusted with, the relevant sectors have not pursued any fact-finding mission on this matter. The information that has surfaced during this writer's challenging task as a citizen, using the right to information is unbelievable!

In short, the percentage of those who have adhered to the health criteria and guidelines at the political meetings



www.washingtontimes.com

and rallies is one percent. In other words, the percentage of violations is a disheartening 99 percent! The percentage of law enforcement against those violations is zero percent!

The purpose of this article is to draw the attention of the authorities, civil society and all citizens to this dangerous situation. It is important that this is not repeated in the future.

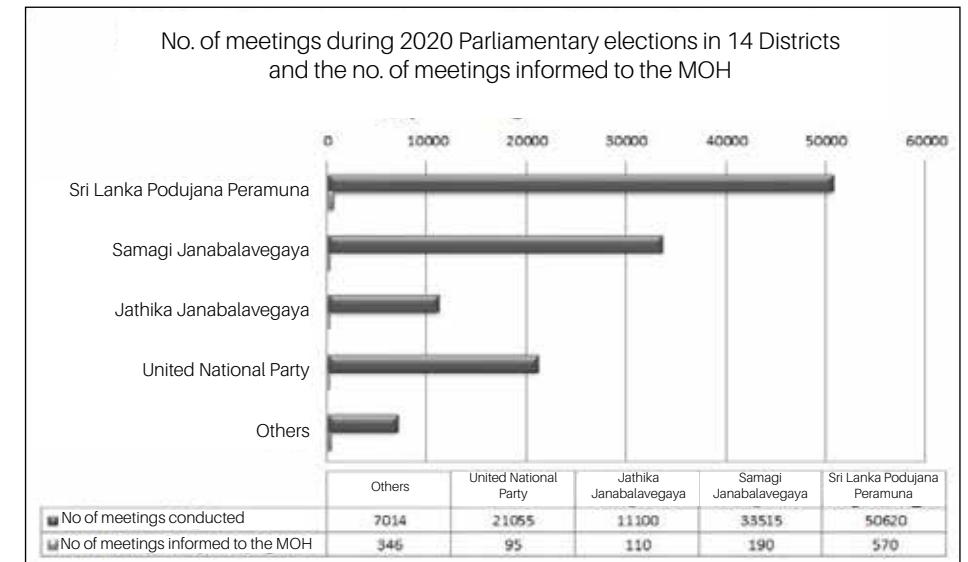
Extraordinary Gazette Notification

The Extraordinary Gazette Notification No. 2184/34 prepared under Sections 2 and 3 of the QUARANTINE AND PREVENTION OF DISEASES ORDINANCE was published on 20.07.2020 in connection with the propaganda activities of the last Parliamentary Election cited as the

Corona Virus Disease 2019 (COVID-19) (Elections) Regulations, No. 1 of 2020 .

Accordingly, the criteria to be adhered in conducting meetings in relation to the election were laid down, with clauses 1 to 7 among the nine clauses covering the requirements pertaining to the pre-election period. One of the main conditions was the need to inform the relevant Medical Officer of Health (MOH) offices about all meetings.

In this study, applications were sent to 362 Medical Officer of Health offices in all districts of the island seeking information under the Right of Information Act. However only 155 Medical Officer of Health offices from 14 districts provided the relevant information.



The main inquiry was to find out the number of political meetings that the relevant offices were informed based on the requirement.

The MOH offices in the districts of Matara, Galle, Anuradhapura, Polonnaruwa, Colombo, Kalutara, Puttalam, Badulla, Kilinochchi and Mullaitivu failed to provide information under the Right to Information Act.

Election rallies that violated the law

However, the compliance to health regulations according to the information provided by the MOH offices in 14 districts as well as

what was revealed through further investigations regarding the meetings held in 14 districts during the 2 day period from 20th July to 02nd August is as follows;

While the Sri Lanka Podujana Peramuna has held 50,620 meetings and the MOH offices have been informed of only 570 meetings.

The Jathika Jana Balavegaya has conducted 11,100 meetings but the MOH offices have been informed of only 110 meetings.

The Samagi Janabalavegaya has held 33,515 meetings, of which the MOH offices have been informed of only 190 meetings.

The United National Party has held 21,055 meetings but the MOH offices have been informed of only 95 meetings.

In addition, Tamil and Muslim parties including independent groups in the North and East held 7,014 meetings, and the MOH offices have been informed of only 346 meetings. It is a higher percentage in comparison to the reports from the South.

According to the above information, around 123,304 political rallies have been held for the last parliamentary election during the period from 20th July to 2nd August. However, it can be observed that only 1,331 meetings have been conducted in accordance with Section 2 of the Extraordinary Gazette Notification No. 2184/34 prepared under the Quarantine and Prevention of Diseases Ordinance of 20.07.2020, with notice in writing prior to not less than twenty-four hours of the commencement of such meeting given to the Medical Officer of Health offices.

As a percentage, the compliance to health guidance was limited to one percent. Therefore, for every one hundred meetings held, only one of them has been held in accordance with the law and in compliance with health instructions!

According to the information obtained using the Right to Information Act, it has been revealed that in Hambantota during the period from 17.07.2020 to 02.08.2020, only 202 meetings have been held in accordance with the relevant Gazette Notification, while major political parties have conducted more than 6,814 political rallies.

According to section 3.2, the organiser who gives the notice under regulation 2 should ensure that the number of persons attending such meetings shall not exceed three hundred. However more than 50 of these political meetings have been held with crowds of more than 500 people. No legal action has been taken against the organisers of these meetings and instead police protection has been provided.

The organiser has to maintain a record of the name, identity card number and contact details of every person attending such meetings under Section 4 (a) of the relevant Gazette but most of the organisers have violated these rules.

Under Article (b) of the same Act, the organiser has to provide adequate facilities for hand washing with soap or sanitiser for the persons attending



such meeting and ensure that every person who attends such premises washes their hands before entering the premises, but it was observed that such facilities were not adequate and most attendees have avoided using them.

Metre distance not adhered to

Articles 4 (c) to (e) of the relevant gazette notification stated that the organiser shall ensure social distancing not less than one metre between two persons including speakers attending such meetings. However, this did not happen in most cases and people were queuing around the relevant candidates and especially during times of food distribution and refreshments. Even though the regulations stated

that every person who attends such a meeting wears a face mask at all times it was also very clear that most of them were not wearing protective face masks.

According to information obtained from the Police Superintendent's office, it was noted that although the election meetings were held in this manner without following any health guidelines, no one who violated the health guidelines was arrested during the election meetings.

However, when questioned as to why the election campaign rallies could not be held following the quarantine rules, it was noted by several candidates, regardless of party affiliation, that health guidelines were

ignored because of the intense battle for preference votes.

It was also noted that most of the small meetings were organised by the local divisional organisers at the village level and most of them were not aware that the MOH office of the area had to be informed in writing 24 hours prior to the meeting.

"We were not aware of the requirement to inform. Nevertheless, whenever possible we organised the meeting according to quarantine rules. However, the people who came for the meetings did not care much about the health guidelines. We also did not pay much attention to it as we could not afford to displease the party members," said R.P. Priyantha, who organised several meetings for the Samagi Janabalavegaya in Hambantota.

"We informed the police and held the meetings. However, we did not inform the MOH office" said an organiser of the Sri Lanka Podujana Peramuna, who did not want to be identified.

We also sought the views of those who contested as candidates, among several parties regarding the meetings that were held without informing the MOH office.

Minister Mahinda Amaraweera a candidate of the Sri Lanka Podujana Peramuna;

"Even though it was not in writing, we informed it to some extent. Also, those who organised were requested to conduct meetings after informing the MOH office. The meetings were held in accordance with the health guidelines to some extent, even though it was not 100 percent."

Dilip Wedaarachchi, Member of Parliament who contested as a candidate of the Samagi Janabalavegaya

"Initially, we held meetings correctly following the health guidelines. However, many election rallies of the ruling party were held in violation of the law. However, whenever possible we conducted the meetings after obtaining permission."

Nihal Galappaththi, a candidate of the Jathika Jana Balavegaya

"Although we have not notified the Medical Officer of Health office in writing regarding each meeting, we have arranged for the meeting to be held in accordance with health guidelines as much as possible. The ruling party violated all laws and gathered the people. However, no official inquired about it. I complained to the officials several times but the law was not enforced".

However, when questioned about the activities of the health sector during

the political meetings, Dr. A.T.M.D. Patabendige, the Director of Health Services, Hambantota District, said that they had guided how to conduct the meetings for those that informed them before conducting the meetings. "All we did was to provide health guidance for the meeting for those that informed us. If they have not followed the regulations that had to be looked into, and the police should have enforced the law," she added.

Responsibility of the Election Commission and monitoring organisations

We sought the views of several election monitoring organisations in this regard. Executive Director of PAFFREL, Rohana Hettiarachchi said the following;

"From the moment the Covid issue arose, the publication of this gazette imposing rules for this election was deliberately delayed thinking that it would not allow them to conduct the elections as they wished.

Even after the gazette was issued, they did not carry out their election campaigns according to the guidelines. Fortunately, the health situation was not as bad as it is now, if it was it could have been disastrous."

Rohana Hettiarachchi further stated that his monitoring organisation

had received over 600 complaints regarding election rallies held in violation of the quarantine rules and have inquired regarding imposing these rules to the general public after ignoring to impose them during the election period.

Convener of the Center for Monitoring Election Violence (CMEV) Manjula Gajanayake said that his organisation had received frequent reports of election rallies held in violation of the quarantine rules and that they had informed the election commission regarding the same.

He also said that the Election Commission's inability to stand firm on this matter after the election and its failure to evaluate its own operation was a serious obstacle to getting the election process on the right track in the future.

The Election Commission is the sole authority in all matters relating to elections during the election period. They have been given broad powers to control the activities of the government that could adversely influence the elections and even the police should act on the instructions of the commission during this period.

We inquired from the Commissioner-General of Elections Saman Sri Ratnayake about the issue

of holding election rallies in violation of health instructions.

"We requested the Ministry of Justice to give the power to arrest and prosecute, to our 25 District Assistant Commissioners during the election, but we did not receive permission. Election officials alone are not allowed to enter a private place. So when we received a complaint, we had to go with the police. This is the duty of the police." said the Commissioner General of Elections.

Police power had not been activated

Information received from six Superintendent's offices to the information applications submitted to 42 SPs' offices revealed that no one had been arrested for violating quarantine laws at the political meetings that were held without following health guidelines. Other SPs' offices have failed to provide the information requested under the Right to Information Act.

Attorney-at-Law Jagath Liyana Arachchi commenting on this matter said that the police had the power to execute the orders of the gazette notification, which included procedures to be followed at the elections to control the coronavirus pandemic.

"This order has been issued under Section 2 of the Quarantine and Prevention of Diseases Ordinance. According to Section 06 of the Act, a police officer and an inspector appointed under the Act have the power to prevent and detain a person who commits an offense under the Act."

Attorney-at-Law Jagath Liyana Arachchi also stated that a police officer does not need to receive a complaint to take action to prevent an offense when the law is violated in front of them.

"Every political party wanted the elections, but this situation is a health crisis and that is why the team including the Director-General of Health developed the guidelines for health laws to be followed". However, Attorney-at-Law Jagath Liyana Arachchi stressed that the contents of those guidelines changed according to the political requirements.

The coronavirus pandemic is spreading across the island at a faster pace with the second wave. Therefore, the government has taken steps to formulate new rules and regulations in this regard. There are also reports of arrests of those violating the law. However, given the above, it is clear that the rules and regulations



imposed to control the coronavirus spread during the 2020 parliamentary elections have not been applied to election campaign meetings and have been ignored since it is a political matter. This is confirmed by the fact that the police have not arrested anyone who violated the quarantine rules during election campaigns.

When the matter was queried with DIG Ajith Rohana regarding the failure to arrest those who violated the quarantine rules during election campaign rallies, he said that this should be inquired from DIG Priyantha Weerasuriya, who was in charge of the election period.

Accordingly, when inquired from DIG Priyantha Weerasuriya, he said:

"The gazette issued during the election period (the gazette issued on 15.10.2020) was not strictly enforced. And the coronavirus situation that existed in those days is not what it is today. The virus did not spread because the election was held. So

it's not something that should be taken seriously. There may have been lapses but we can't hold on to that and go back in time. But we will call the divisions (SPs' offices) and find out why this happened".

It is clear from the information that although a health criterion was imposed, there was no mechanism to implement it properly. It seems as if all the authorities have reached a consensus to adopt a relaxed policy on law enforcement. It is unbelievable that despite 99% of 120,000 meetings having violated the relevant laws, no legal action has been taken against any of the culprits. It is clear from the response of the police authorities that they do not expect to take any legal action in this regard in the future. A very bad precedent could be set with this chain of events.

By Rahul Samantha Hettiarachchi

"Ada" - 19th November 2020

Politicisation of Samurdhi:

T-shirt contracts for Rs 1.5 billion



Jayantha Hewamanna was entitled to Samurdhi benefits, but he has never received them. He has been a frequent patient at the Hambantota General Hospital for many years due to kidney failure. A father of four, he spends 8,000 rupees a month on his one-and-a-half-year-old twins, who suffer from thalassemia.

“I am sick and can't even work. Therefore, I handed over applications to the required officers of the Hambantota Divisional Secretariat to obtain Samurdhi assistance. Since I was not given the Samurdhi assistance, I handed over appeals about 4 months ago. However, I have not been given Samurdhi assistance yet. Samurdhi assistance has been provided to those who are better off.” said Jayantha

Hewamanne (38), a resident of Siribopura 12, Hambantota.

Thousands of Sri Lankans such as Hewamanna who are eligible for Samurdhi benefits have been excluded. Investigations into the Samurdhi expenditure reveal that the authorities have spent funds for Samurdhi distribution events, related promotions and to provide T-shirts to the participants in the first nine months of 2019, which would have been sufficient to provide Samurdhi benefits for three months.

The Department of Samurdhi Development, which was under the Ministry of Primary Industries and Social Empowerment of the previous government, has utilised one billion seven hundred and ninety-nine million

and two thousand five hundred (1,799,002,515.76) of public funds belonging to the people of the country claiming to be for the eradication of poverty. However, this has been utilised for Samurdhi distribution events from January to September 2019. One billion four hundred and ninety-nine million and one hundred and ninety-seven thousand five hundred rupees (1,499,197,500.00) from that allocation have been used to provide T-shirts to participants attending distribution events. A sum of two hundred and ninety-nine million eight hundred and five thousand and sixteen rupees (Rs. 299,805,016) has been spent on these events as revealed in the information obtained from the Department of Samurdhi Development under the Right to Information Act.

During the year 2018, over ten million six hundred and seventy-two thousand six hundred and ninety-five rupees (Rs. 10,672,695.50) has been spent on ceremonies held to provide Samurdhi assistance and media campaigns. Information obtained using the Right to Information Act also revealed that Samurdhi assistance had been provided to the poor in 2016 and 2017 without spending any funds on such festivals.

The amount spent on festivals which is 5% of the value of the Samurdhi benefits provided to the recipients would have been sufficient to provide Samurdhi benefits to these selected beneficiaries for about 03 months. The government provides Samurdhi benefits ranging from Rs.

1500 to Rs. 3500 per family per month depending on the number of members in the beneficiary family.

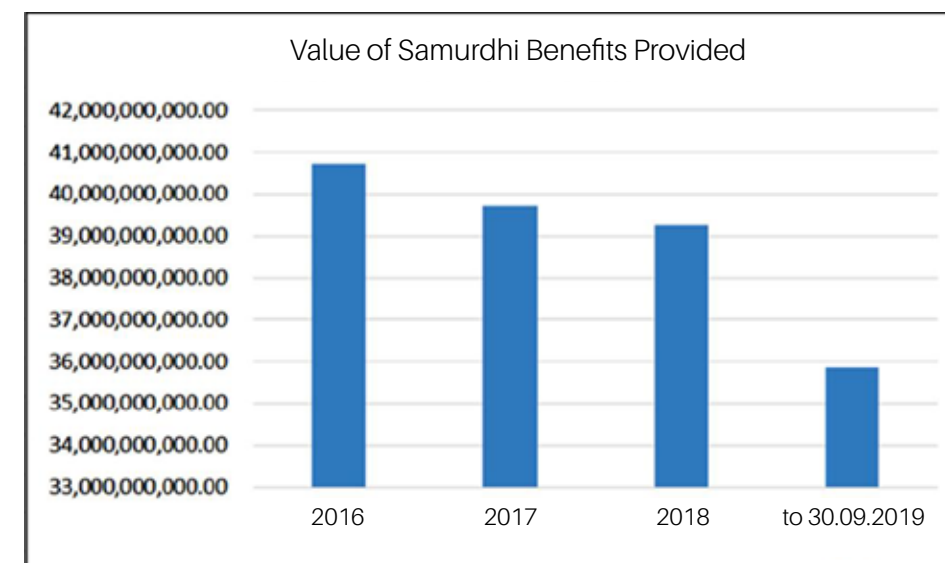
Most of the money spent on the Samurdhi distribution ceremonies in 2019 was to provide T-shirts to the people who attend the events. It was discovered from the information obtained from the Department of Samurdhi Development that the contracts had been awarded to a private company by the name of Comfort International Lanka (Pvt) Ltd.

However, when we searched for the private company in the Ratmalana area called Comfort International Lanka (Pvt) Ltd, which is said to have been awarded the contract for the t-shirts, we were not able to find any information about such a company. Subsequently based on information obtained from the internet we called the given contact number of the company which was not in use and therefore we contacted the Accounts Division of the Department of Samurdhi Development to inquire into the matter. An official of the department who was present said that the Department of Samurdhi Development does not have any information regarding this company since the relevant documents have been taken for an audit regarding the t-shirt supply and several other matters.

When queried, the Audit Superintendent in charge of the Department of Samurdhi Development at the Auditor General's Department said that an audit is being conducted on several matters including the issuance of T-shirts by the Department of Samurdhi Development during the previous government and that the audit in this regard is nearing completion. However, the Audit Superintendent said that he could not provide the information since confidentiality should be protected."

However, when inquired from Daya Gamage, the former Minister in charge of the Ministry of Primary Industries and Social Empowerment of the previous government regarding the expenditure on Samurdhi distribution ceremonies and various activities carried out for this purpose, he said that this t-shirt was obtained at a cost less than Rs. 450 and was provided to the Samurdhi beneficiaries.

However, according to the former minister, the T-shirts have been printed to raise awareness among 125,000 Samurdhi recipients in 25 districts, covering 5,000 in each district. According to him, only Rs. 56,250,000 has been spent for this purpose. However, he said that he was not aware of spending nearly 1.49 billion for this purpose.



Former Minister Daya Gamage also said that he did not know how the T-shirt supplier, Comfort International Lanka (Pvt) Ltd, was selected and how they were paid. Although officials of the Department of Samurdhi Development were contacted for information in this regard, they declined to comment.

When probing into how funds have been utilised during the relevant period for the year 2019 in other areas, it was revealed that a sum of two hundred and ninety-one million two hundred and ten thousand four hundred and thirty-four rupees (Rs. 291,210,434) have been spent on Samurdhi recipient ceremonies. A sum of eight million one hundred and ninety thousand

rupees (Rs. 8,190,000.00) has been spent on posters and cut-outs. A sum of four hundred and four thousand five hundred and eighty-one rupees (Rs. 404,581.50) has been spent on media advertisements including newspaper advertisements for these events.

Despite such a large sum of money spent by the previous government on Samurdhi distribution ceremonies, it appears that the money spent during this period to provide Samurdhi benefits in terms of the monetary value as well as the number of families who received benefits in comparison to previous years have reduced.

In comparison to 2018, the Samurdhi benefit per family has

decreased by 10.6% this year, according to official data. In 2018, the Samurdhi beneficiaries were provided approximately Rs. 2,363 per family per month while the Samurdhi assistance provided in 2019 has been reduced to Rs 2,114.

The Department of Samurdhi Development has been providing Samurdhi assistance in this manner from the year 2016 to the year 2018 but in the period of nine months in the year 2019 the number of beneficiaries has been increased but the benefit provided per family has reduced in comparison to previous years.

Misusing the taxpayers' money in this manner to promote the personal power base through the process of providing Samurdhi assistance, implemented to protect the human right of eradicating poverty, will further burden the common person of the country by making them more indebted and impoverished.

"The problem is between spending one's own finances and spending the finances of others. An attempt has to be made to minimise wasteful and inefficient spending in the context of a country's government revenue and expenditure including the adjustments required to ensure that every rupee spent is worth more than the value of

that rupee," says Sirimal Abeyratne, Professor of Economics at the University of Colombo.

"But the objective of these expenditures are often not economic in nature, and therefore using them for other purposes would have an impact on the economy of any country," he said.

Although Samurdhi benefit ceremonies were held in this manner at a great expense, the token distributions made that day were only symbolic. At the local level, politicians were seen bringing Samurdhi recipients again to the Divisional Secretariats to provide them with the Samurdhi assistance. Samurdhi recipients say that they had to attend these events, repeatedly, to get money after attending the main events.

If a person applies for Samurdhi assistance, there is a procedure to be followed. The applicant can submit his request to the Samurdhi Development Officer in charge of his Grama Niladhari division, the Divisional Secretariat, the District Secretariat, or the Head Office of the Department of Samurdhi Development.

The information obtained through the Right to Information Act from the Department of Samurdhi Development reveals that the request would be



first analysed by a committee and then based on the recommendation of the Divisional Secretary with the approval of the Director-General of the Department of Samurdhi Development, the application would be processed to provide Samurdhi assistance.

In examining the eligibility for Samurdhi assistance, based on the information provided by the Samurdhi Development Authority, it was revealed that the focus areas of the Samurdhi Development Authority's regulations would be on the number of family members, women-headed families, loss of parents and continued exposure to disasters. According to the information obtained by the Samurdhi Development Authority, the

Divisional Committees and GN division committees comprising the Samurdhi Headquarters Manager, three members nominated for Samurdhi Regional Organisations by the Director-General, Divisional Secretary, Assistant Divisional Secretary or an authorised officer, will make the selection.

However, the investigation revealed that the families who should have received the Samurdhi benefits have not received the assistance. The main reason has been that a document prepared by the representatives of the ruling party to provide Samurdhi assistance has also been submitted to the selection process and only the persons who were on both of the lists, the one prepared by the above

committees and the lists selected by these political representatives, have been provided Samurdhi assistance.

Therefore, Samurdhi assistance is effectively provided to those who are loyal to their political party.

Following queries from several Divisional Secretaries as well as several Grama Niladharis in several districts across the island, they said that the people who were not in the list prepared by the committees set up by them, have received Samurdhi benefits while those who were on the list have lost the Samurdhi benefit.

Due to these reasons, many families who should be receiving Samurdhi

assistance have not received benefits and have staged various protests in the recent past.

"I have given Samurdhi assistance to everyone who owns paddy lands in our area in Sooriyawewa Nabada Gaswewa division but my name and the names of a few people in our village who were selected have not received the Samurdhi assistance," said A. Priyanthi of the Sooriyawewa Divisional Secretariat area in the Hambantota District.

By Rahul Samantha Hettiarachchi

"Silumina" - 08th December 2019

Elephant Fences:

Millions lost in a proposed solution for a problem without solutions

You'll need some real determination if you plan to walk the coastline of Sri Lanka in all its 1340 kilometres. For a small island like Sri Lanka it seems to be a rather enormous distance. And yet you are not supposed to be surprised to learn that elephant fences have been set up in Sri Lanka across a much larger perimeter than this, adding up to a total of 4,400 kilometres! That's about three times the distance around Sri Lanka...in fact it's enough to set up a fence from here to China...!

In Sri Lanka at this time where the human-elephant conflict has reached proportions that are almost insurmountable, regardless of

whatever lengths of elephant fence have been set up, the fact that they are not functioning is clear from the amount of invasions by elephants into villages.

In this background, it has been possible to investigate a number of matters through an application to the Department of Wildlife Conservation on the subject of use of elephant fences in Sri Lanka, making use of the Right to Information Act.

Although it's not clear as to when such human elephant conflict began in Sri Lanka it can be said that a catalyst for its aggravation was the Mahaweli



Development project in the 1970s¹. Development projects such as these, initiated without proper planning have resulted in elephants and other valuable fauna of Sri Lanka losing their habitats, as well as food sources. The destruction of forests has resulted in drying up of natural streams robbing wildlife of their access to water. Elephant grounds are dwindling. For many such reasons wild elephants began invading villages, entering human cultivations in search of food. In this way the worst human elephant conflict is apparent in the development areas of the Mahaweli zone.

With this kind of destruction of their natural habitats, the entry of wild elephants into human settlements is

¹ <http://www.dailynews.lk/2020/06/26/local/221620/take-action-minimise-human-elephant-conflict-pm>

inevitable. In recent years this situation has escalated. But if you look into the reason behind this alleged invasion of wild elephants into villages, it becomes clear that these are all areas of the Mahaweli and other similar development endeavours which have destroyed their habitat through forest clearing. This goes to show that wild elephants are reluctant to let go of the areas they originally occupied. This is the reason for the human elephant conflict.

The illegal felling of forests for human agriculture is another reason for the decline in natural habitat of elephants. Subsequently these lands carry the kind of cultivated food they prefer and they are able to access it easily which means they will naturally keep returning to such farms for more.

Whereas they previously had to eat grass, tree barks and foliage growing wild in the forests, our elephants have now naturally developed a fondness for the cultivated produce that is available in those lands. Elephants tend to be creatures of habit. And now they are accustomed to helping themselves to the succulent produce easily available in cultivated lands. It's important to understand, though, that all these developments stem from the selfish acts of humankind.

Among districts where high levels of human elephant conflict are apparent, the considerable human elephant conflict found in the Hambantota district too stems from this kind of deforestation of protected areas of the Mahaweli zones carried out for large scale commercial cultivations and development purposes. Investigations made using the Right to Information Act, through applications to the Mahaweli Development Authority, and reaching the Right to Information Commission, reveal that all such forest clearing, carried out with the blessing of officials, is completely illegal.

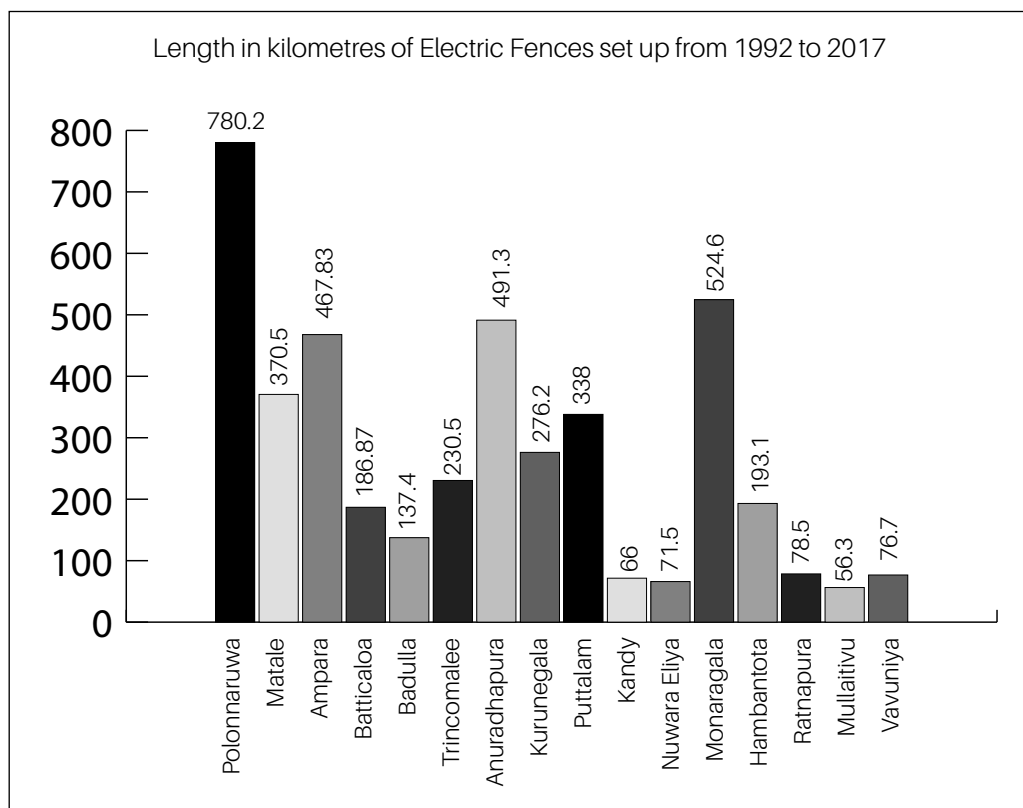
With this escalation of human elephant conflict, the first electric elephant fence a twenty kilometre length, the Ranawaranawa fence, was set up in the Lunugamvehera National Park in the Hambantota district in

1992. Beginning from that time the total length of electric elephant fences erected in districts of human elephant conflict in Sri Lanka is 4349.1 kilometres. While the longest lengths of such elephant fences have been erected in Polonnaruwa district, in that district alone a total of 52 such fences have been made reaching a total length of 524 kilometres, which is a distance longer than the length of Sri Lanka itself, if measured from Point Pedro to Dondra.

In the meantime, whilst the longest elephant fence was launched by then President Maithripala Sirisena on 19 September 2018, the length of this fence was 30 kilometres. At a cost of Rs 196 lakhs this stretched from Gomarankadawala to Medawachchiya.

Similarly, a considerable financial outlay is spent towards the erection of these electric fences. To date the recent cost for installation of one kilometres length of electric fencing is a sum of approximately Rs 1,360,606.37. Statistics obtained from the Department of Wildlife Conservation indicate that from 2013 to 2017 the total expenditure on such electric fences alone has come to around 10% of the income received from tourism to the Department during those years. Apart from this, aside from the three districts of Mullaitivu, Nuwara Eliya

Length of Elephant Fences by District

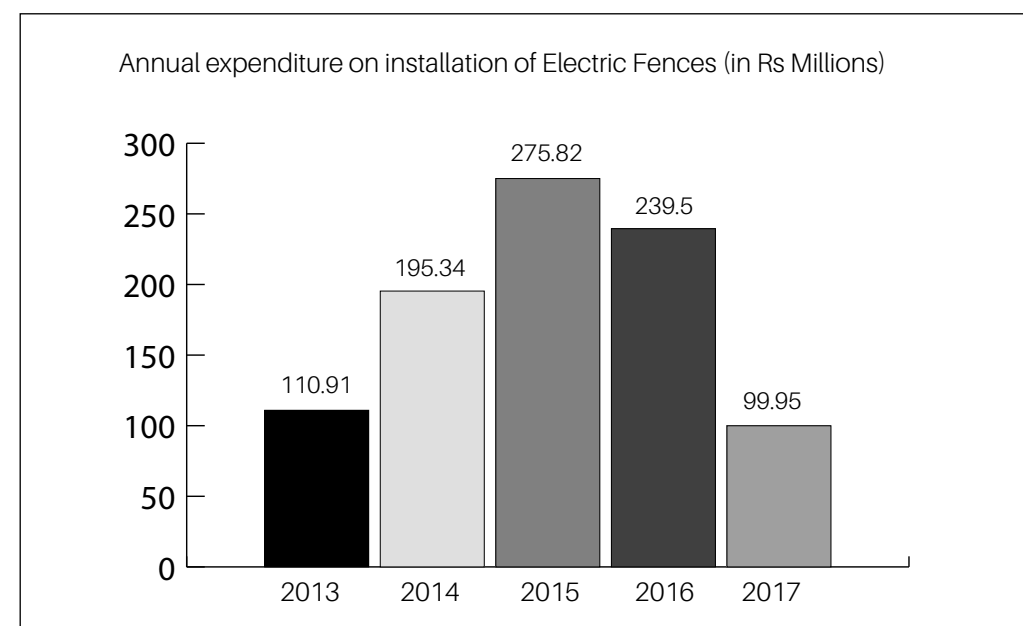


Source- Information obtained from the Department of Wildlife Conservation through use of Right to Information Act.

and Trincomalee indicated in above statistics, according to information received from the Department of Wildlife Conservation via Right to Information requests, plans are in place for 2021 to install elephant fences in the other 13 districts of varying lengths adding up to a total of 2,256.1 kilometres of fencing. Accordingly, by 2021 the length of electric fencing in

Sri Lanka will have increased to a total of 6605.2 kilometres.

In spite of the annual installation of such large expanses of electric fencing under the belief that this is a successful tactic for deterring elephants, this has not in fact shown results. This is due to the continued unauthorised deforestation of the traditional habitats



of wild elephants for commercial and illegal purposes.

However according to information given by Wildlife officials, in certain locations these electric fences do not function properly due to failures by the villagers. Some of these include: deliberate harm caused by people to the fences, stealing of equipment kept inside the energizer hut, as well as the damage caused by wild elephants to the electric fences are among the reasons for the malfunctioning of electric fences- as revealed by information provided by the Department of Wildlife Conservation. In any case, although electric fences are set up at the cost of millions of rupees,

it is necessary to post Civil Security guards, at a rate of at least 3 per ten-kilometre stretch of wiring, and it is required that they maintain both sides of the fences and keep the area clear of foliage, according to information supplied by the Wildlife Department. Civil Security officers point out that it is not practical to expect such a small number of people to maintain such a large area.

Similarly, even if electric fences have been set up, if the required number of energizer huts, and the necessary water, electricity, and elephant crackers are not supplied, or if the guard huts are not maintained as required, most of these elephant fences will malfunction

and be rendered useless. Accordingly, in the Ruhuna zone alone, there are an estimated 30 such fences with various shortcomings, as notified by the Civil Security Department to the Department of Wildlife Conservation.

Elephants that overcome the Electric fences

Villagers in areas where elephants invade allege that even though they give prompt notice when electric fences have malfunctioned, due to the indifference of the officials of the Wildlife Department, elephants are able to damage the fences beyond repair. In a background where the government has accepted the theory of senior environmentalists that the electric fences are the best solution for the problem and where millions of rupees are spent on these, a situation is developing in certain locations, where the fences are overridden by wild elephants. Analysis carried out in this regard shows that elephants are developing a resistance to the electric shocks. Accordingly, a situation is developing where these creatures are undeterred by the electric fences and are invading villages in spite of them. For example, in regard to the electric fences installed in the Velgam Vehera village area of Trincomalee District at great expense to the public, before



three months had passed from the time of installation of these, the batteries had run down in the Velgam Vehera Village Electric Fence, rendering it a veritable white elephant. Villagers allege that officials are maintaining a silence on this.

“Having lived many years in camps, we returned to our villages. And we asked the government only for a solution to the problem of wild elephants, since we are traditionally farmers from old times, and we never ask for charity from anyone, but live on our own strengths, facing a daily struggle with the earth,” says one of the

oldest farmers of the Velgam Vehera village area, S.A. Hemachandra, adding that now elephants are invading the villages, and it would not be so upsetting if the fence requested from the Wildlife Department had lasted for more than three months at least.

While Hemachandra, who is a disabled person, has managed by his own efforts to cultivate an area of around three acres, currently the benefits of it are claimed by wild elephants, he said. At least half of the produce of an area of about two acres of papaya trees have been destroyed

by wild elephants, other cultivations of coconuts and bananas have suffered no less a fate.

Under the Right to Information Act we were able to obtain information regarding the Velgam Vehera Electric fence. Following requests for information from the Trincomalee Urban Council and the Kadawath District Secretariat the funds expended on this amount to Rs 3,711,128.00, for an electric fence 11.2 kilometres long which provides protection for 109 families of the Velgam Vehera village area.

While the Manahara Lanka Company is responsible for having set up this fence, permission was also granted by the Department of Wildlife Conservation.

“Nowadays they fix L.E.D bulbs to find out if there is electricity in the fence. It's the same in the Morawewa fence. But ours doesn't have L.E.D bulbs fixed. When we asked how to find out if the electricity was there or not, the company said to take a grass stalk and touch it on the wire... furthermore when there are no concrete posts, and only iron poles, even if a cow jumps the poles get twisted. There is no place to get these poles. When the wires are broken there are no wires available to replace these. From this the whole fence becomes inactive. Although we were told the battery has a five-year warranty, within three months it was inactive. The company told us to collect money and replace the battery. There are lots of problems like this,” said one Sanjeevani.

Similarly, due to the fact that a number of electric fences in areas such as Madunagala in the Hambantota District, are in this manner inactive, the farming community suffers considerably from day to day,” said Sumananda from Madunagala. “A month did not pass from the date this

fence was installed, the elephants broke and destroyed the fence and now there isn't a single wire to be seen. Everyday, the elephants invade the village and attack people. They cause damage to the crops and we have no means of livelihood,” said Sumananda.

In this way whilst electric fences are installed at great costs to the public, due to the lack of proper maintenance they are rendered inactive and overtaken by the jungle, allowing elephants to continue to invade villages, and cause increasing damage to property and human lives as well as resulting in the death of elephants.

An excellent example of this is the Sooriyawewa Madunagala Electric Fence: Whilst it was installed about five years ago at an expense of about Rs 75 lakhs, it was rendered inactive in a few months' time. Today there are only a few random posts to be seen. For this reason, cultivations in that area are regularly destroyed by wild elephants.

Similarly, about two months after installation of the Agunukola Wewa Electric Fence in the Hambantota Lunugamvehera DS Division area all the electric cables as well as all the solar power generation equipment had been removed by thieves, according to statements by the villagers. In the Agunukola wewa Grama Seva area

alone there are 110 families who have been affected by wild elephants and the Department of Wildlife Conservation has utilised Rs 30 lakhs in installing an electric fence to cover the 12 kilometre distance from Agunu Kalawewa village to Kumaragama for the purpose of solving the problem of the human elephant conflict in the area. However, the villagers point out that the result is only wastage of funds. The then Minister of Sustainable Development, Wildlife & Regional Development Hon Field Marshal Sarath Fonseka on July 8th 2018, during a fact finding tour² held in the Matale district on the human elephant conflict said that there is not a single electric fence matching proper standards, in the whole of Sri Lanka. From this too it can be confirmed that the establishment of elephant fences at the cost of millions, is not a proper solution for the problem of the human elephant conflict and that these have not been installed according to proper standards.

In particular, the entry of elephants into villages following their overriding of these fences is due to their natural habitat being destroyed. And their inability to find the necessary food and water sources, according to environmental activist Sajeewa

² <http://www.dailynews.lk/2018/07/10/local/156395/gigametre-long-protective-fence-be-erected-soon?page=8>

Chamikara, who adds that “The fence should be in the correct place”

In any case, in an inquiry into the problematic situation in Sri Lanka, elephant expert and Chairman of the Centre for Conservation and Research (CCR) Dr Prithiviraj Fernando stated that a reason for this situation being exacerbated with invading elephants was that elephant fences were not in the correct locations.

Currently one of the successful ways of preventing damage occurring due to the human elephant conflict was elephant fences, however at this stage elephant fences had become unsuccessful because they were placed in the wrong locations.

As an example if you start at Yala Kirinda, and continue to Wedihiti Kanda in Kataragama, you will observe elephants on both sides of the fence. On one side is wildlife and on the other side is forest conservation so it is impossible to prevent human elephant conflict through fences like this because there are elephants on both sides

Similarly, in the case of the electric fence running from Lunugamvehera to the Lunugamwehera Reservoir Bund there are elephants on both sides of the fence; this is the biggest problem. If these elephants are corralled

somewhere, they will die of starvation. Therefore if we actually set up the fences in the correct places this would be successful. Among the fences that are thus successful currently there are 30 including the Thammanawa and Wayamba fences which are good examples," he said.

For this reason, in cases where there are elephant fences within development areas, wild elephants do not necessarily invade these. If there is a village, a paddy field or a cultivated plot there is no way for an elephant to come through this, because people can watch over this. Erecting fences in the jungle to contain elephants is not a ploy that will work, according to Dr Prithiviraj Fernando. Similarly clearing jungles and chasing elephants around the country results only in the increase in human elephant conflict

Whilst a wild elephant habitually travels a distance of about five to eight kilometres a day in search of its food, accordingly, if the objective is to prevent them from entering farms, it is important to address elephants' feeding requirements. Taking these

points into consideration, in order to prevent elephants from invading villages a solution should be found to the problem of their food requirements. Instead of this spending large amounts of funds only on electric fences is simply a waste of resources and will not lead to solutions for the problem. An investigation into these issues reveals that while a new system of solutions has been proposed, it will be completed in approximately a year's time, according to the Director General of the Department of Wildlife Conservation, M.G.C. Sooriyabandara. In any case, in the search for solutions for the human elephant conflict, what is more important than political interventions is a proper study of elephants' living habits and basing solutions on these.

Until such time there will be no solution to this problem regardless of how many electric fences are put up.

By Rahul Samantha Hettiarachchi

"Resa" - 26th October 2018

Rs 30 million

Ambalantota-Wanduruppa road construction

Minimum standards for the construction not followed – revealed through the RTI Act

According to the residents, the Ambalantota-Wanduruppa road within several months of construction has started to sink in several places and bumps have started to appear. They point out that this road has been constructed without adhering to proper standards.

The tenders called by the Hambantota District Secretariat and the provisional allocations, estimated the cost for the construction of this road at Rs 35,775,611.54 while the contractor estimated the cost at Rs. 29,123,711.00 according to the information received from the Southern Provincial Road

Development Authority based on the Right to Information Act.

Accordingly, the work on the Ambalantota Wanduruppa road commenced on 30.10.2017 based on the above-mentioned costing for a stretch of 1.6 km with a varying width of 6, 5 and 4 meters.

This road was constructed under the supervision of the Tissamaharama Regional Engineer of the Southern Provincial Road Development Authority. One of the main reasons that this reflects another instance of irregular construction is the fact that the carpet has been applied without



adhering to the required standards and the thickness varies from place to place. Meanwhile, bumps have emerged in several places and the soil laid haphazardly on both sides of the road without meeting the required criteria are causing great inconvenience to pedestrians.

Information obtained from the Southern Road Development Authority under the Right to Information Act,

reveals that the carpet laid on this road should not be more than 50 millimeters in thickness and not less than 33 millimeters.

However, a few days before the road was completed, the Water Board had to dig the road near the Ambalantota town from the starting point of the construction to repair a water leak. Examinations revealed that the thickness of the carpet at

that location was limited to 10 to 12 millimeters. It turned out that in many places the thickness of the carpet was 20 millimeters less than the minimum requirement.

The information obtained reveals that all funds have been released to the contractor for this road which was constructed for Rs 29,123,711.00 excluding the standard retention. It was also noted that despite such shortcomings regarding this road, no issues have been reported to the Provincial Road Development Authority in this regard.

Residents say that it is rather surprising that the local engineer, the district engineer and laboratory assistant who conducted the quality check after the road was completed, were not aware of any shortcomings or faults.

When questioned about this, the Hambantota District Engineer of the Southern Provincial Road

Development Authority, said that he could not comment on the matter and asked to contact the General Superintendent of the Southern Provincial Road Development Authority. Accordingly, when we inquired from Upali Liyanage the General Superintendent of the Southern Provincial Road Development Authority, he said that no complaint or report has been received regarding the irregularities and that action will be taken in the future to investigate this matter.

Minister Mahinda Amaraweera also stated that the projects carried out in the Hambantota district at such a high cost would be investigated to see if they met the required standards and that steps would be taken to inform the authorities to take legal action regarding such irregularities in projects.

By Rahul Samantha Hettiarachchi

"Mavbima" - 09th August 2018

There is no shortage of paddy in the country

The real story behind the rice mafia

The purpose of this article is to draw the attention of the authorities, civil society and all citizens pertaining to this dangerous situation. It is important that this does not happen in the future.

The government has purchased only 1.88% of the total paddy production from the 2015 Yala season to the 2019/2020 Maha season

At a time when Sri Lanka, like many countries in the world, is in a very difficult situation in the face of the corona virus pandemic, several sectors have been severely impacted. Paddy cultivation is one such sector.

However, the situation faced by the paddy farmer is not a new situation that cropped up yesterday or today.

Many governments have come up with various programs and proposals for this purpose, but decisions regarding the paddy prices and rice prices have been reduced to a political issue of the times in a backdrop where no real solution for these issues has been found so far.

Farmers' organisations as well as farmers point out that while there has been a lot of talk about paddy purchases in the first quarter of 2020, it has not been practical. In particular, the government has set a guaranteed price



<http://staging.globalpressjournal.com/>

| | Cultivated land area Acres | Yield obtained from (Metric Ton O) |
|-----------------------|-------------------------------|---------------------------------------|
| 2015 Yala Season | 1,103,861.87 | 1,942,408 |
| 2015/2016 Maha Season | 1,169,137.27 | 2,902,693 |
| 2016 Yala season | 1,268,174.52 | 1,517,392 |
| 2016/2017 Maha Season | 1,394,574.43 | 1,473,832 |
| 2017 Yala Season | 676,944.29 | 909,321 |
| 2017/2018 Maha Season | 1,568,684.28 | 2,396,926 |
| 2018 Yala Season | 868,029.33 | 1,532,905 |
| 2018/2019 Maha Season | 1,638,013.21 | 3,072,581 |
| 2019 Yala Season | 760,830.60 | 1,519,475 |
| 2019/2020 Maha Season | 1,655,256.94 | 3,196,752 |
| | | 19,554,964 |

(Source - Obtained from the Department of Census and Statistics and the Department of Agrarian Development under the Right to Information Act)

of 50 rupees for the purchase of paddy, but most of the paddy mill owners have purchased paddy for around 30 to 35 rupees, according to farmers' organisations.

However, the government, which became active in providing a guaranteed price for paddy, which was a political pledge, deployed the Army to purchase paddy with the assistance of the Paddy Marketing Board. However, with the large-scale rice mill owners disagreeing with the guaranteed price set by the government, the government eventually had to accept the price imposed by the owners of large-scale rice mills as the maximum retail price.

Sufficient paddy is produced within the country negating the need to

import rice but still, the government has not been able to control the price of rice as well as the purchase price of paddy since private mill owners purchase nearly 94% of the paddy harvest in the country.

Although there is no shortage of paddy, the main reason for the increase in rice prices is that the majority of paddy purchases are out of government control. This has created a strong mafia among the rice industry in the country.

The process of purchasing paddy in Sri Lanka is in the hands of the private sector large-scale rice mill owners to such an extent that they have a monopoly to control the price of rice in the country and to create an artificial shortage with no control

mechanism. This was revealed through the information obtained for the past few years from the Paddy Marketing Board as well as the Agrarian Services Department through use of the Right to Information Act.

According to the information, when the paddy production process in the island is observed from 2015 to 2020, it can be seen that the total area of paddy land in the island at present is 1,944,112 acres, with a marginal change annually during the Yala and Maha seasons. The amount of paddy harvested during the Yala and Maha seasons are given below.

Paddy and rice market

Even though paddy is produced in this manner in the country, the owners of large-scale paddy mills have a monopoly by maintaining large buffer stocks of paddy and rice in the market as the quantity of paddy purchased annually by the Paddy Marketing Board is very low.

In particular, the rice industry includes government agencies, consumers, paddy farmers, private paddy rice traders and small, medium and large-scale paddy mill owners. Mainly public consumers, armed forces and state agencies generate demand. The government purchases only 6-8%

of the paddy quantity while the small and medium scale paddy mill owners and cooperatives purchase about 10% of the paddy. The owners of large-scale paddy mills purchase the remaining quantity of paddy.

According to the above data, the total paddy production in the country during the period from the Yala season in 2015 to the Maha season in 2019/2020 was 19,554,964 metric tons (Nineteen million five hundred and fifty-four thousand nine hundred and sixty-four). Only 369,183.8 (three hundred and sixty-nine thousand one hundred and eighty-three) metric tons have been purchased by the government. It is 1.88% of the total paddy production during the period.

Therefore, it appears that the majority of the paddy production of the country is in the hands of private traders. The large mill owners purchase a huge quantity of paddy at the point of harvesting. Not surprisingly, they also have control over a large proportion of the country's rice stocks.

Difficulties in controlling rice prices

The Paddy Marketing Board has 307 paddy stores located in 21 districts of the country with storage facilities of 310,040 metric tons (Three hundred

Quantity of paddy purchased by the government (metric tons)

| | | |
|--|-----------|-------------------------------------|
| 2015 | 130,529.8 | 6.72% |
| 2016 | 157,429 | 3.56% |
| No purchase of paddy has been made in 2017 | | |
| 2018 | 6,687 | 0.23% |
| 2019 | 48,869 | 1.12% (by the District Secretaries) |
| 2019/2020 Maha Season | 25,869 | 0.85% |
| 2020 Yala Season | 369183.8 | |



www.facebook.com

and ten thousand and forty) of paddy, but the Paddy Marketing Board has to restrict the purchase of paddy due to the inadequacy of the storage facilities in most occasions. The Paddy Marketing Board loses the opportunity to purchase paddy at the correct time since there are delays when the funds are released from the government and therefore existing paddy stores cannot be filled.

The paddy Marketing Board obtains paddy at a higher price but is unable to take up and process as much as they anticipate and within this backdrop, the private mill owners take advantage of this situation to buy the paddy from the farmers and dry them with their own

dryers. The lack of similar technical facilities has also contributed to the Paddy Marketing Board not receiving an adequate supply of paddy stocks.

“We would like to sell paddy to the Paddy Marketing Board at higher prices. But we as farmers face a lot of difficulties to supply paddy according to the way they ask. The private mill owners come to our places and take the paddy, it is very convenient for us ” said Priyantha Gamage, a farmer in the Bandagiriya area in Hambantota.

A good example of this is that despite the government allocating Rs. 5,000 million to purchase 100,000 metric tons of paddy in the 2020 Yala

season, the government's paddy reserves have dwindled due to insufficient paddy stocks supplied by the farmers to the Paddy Marketing Board. The government has lost millions of rupees in the recent past with large quantities of paddy assigned as animal feed or destroyed because the stocks of paddy had not been issued properly.

The Paddy Marketing Board also has a massive issue in releasing paddy stocks. Paddy is purchased for the Maha season from March to May. The Paddy Marketing Board has not prepared a proper program to issue stocks of paddy in June and July and to purchase paddy stocks during the Yala season. Generally, the price for paddy in the Sri Lankan market from December to January is high. If the Paddy Marketing Board has stocks of paddy during this period, they have the opportunity to sell those stocks easily. However, it is the private paddy mill owners that are taking advantage of this business opportunity, which has not been identified by the Paddy Marketing Board. Owners of large-scale paddy mills are also engaged in this process.

While the private mill owners make a huge profit, the consumer does not get the benefit and the price increase depends on the whims and fancies of

the rice mill owners. It has now reached a point where it is beyond the control of the government.

“Currently, several large scale mill owners control the rice and paddy market. The relevant ministry of the government does not intervene to control it. They are also running a separate business behind this,” said Namal Karunaratne, convener of the All Ceylon Farmers Federation.

“We need approximately 3.6 million metric tons of paddy a year, for a month the requirement is only 300,000 metric tons of paddy. Nearly 6 million metric tons of paddy have been collected in the recent past. In this situation, there is no way for a shortage of rice. Because there was paddy sufficient for the next year as well. Paddy mill owners do not grind the paddy purchased during the current season. They keep it for about 6 months. Because demand is created when it gets old. Most of them have purchased paddy at forty rupees. Now they are artificially creating a shortage of rice and increasing the price of paddy. The consumer thinks that the increase in the price of rice is due to the shortage of paddy. ”

Namal Karunaratne points out that the owners of these large scale paddy mills make a huge profit when they sell paddy purchased for around 40 rupees

saying that they purchase for over Rs. 50 and sell them for around Rs. 70.

Convener of the All Ceylon Farmers Federation Namal Karunaratne said that there is no shortage of rice in the country and that it was artificially created and this is a regular occurrence under all governments. To eliminate this situation the government should obtain at least 20 percent of the paddy production and establish a paddy reserve, he recommended.

When inquired about this situation, Chairman of the Paddy Marketing Board Dr. Jatal Mannapperuma expressed his views in this regard and he said;

"There is a proposal to make it compulsory for the farmers who receive the fertiliser subsidy from next season, to provide their paddy to the Paddy Marketing Board. We have proposed to obtain 1000 or 500 kilos of paddy at a guaranteed price from farmers who have paddy fields of more than one hectare. Since we purchase paddy that has been dried by the farmers using their technology we do not need to develop new technology to dry paddy, and if we fill up the existing paddy warehouses, we will be able to control the market. "

Chairman of the Paddy Marketing Board Jatal Mannapperuma further stated that in the future, PMB will release ten times more rice to the market.

What should be done?

A mechanism should be set up to make it compulsory to hand over a portion of the paddy harvest to the Paddy Marketing Board, especially by the farmers who cultivate using the subsidised fertiliser provided by the government. Besides, a methodology must be devised for the Paddy Marketing Board to go to the farmers similar to the private paddy mill owners and purchase paddy.

New non-traditional methods have to be introduced and the officers of the Paddy Marketing Board trained in modern methods and to employ officers who can implement it in practice. The rice mafia in the country cannot be put to an end unless the government implements a programme that maintains stocks of paddy, converts them into rice through identified paddy mills, and releases them to the market as PMB rice.

By Rahul Samantha Hettiarachchi

"Ada" - 11th November 2020

Two companies that secretly swallow the revenue due to the port

The purpose of this article is to draw the attention of the authorities, civil society and all citizens to this dangerous situation. It is important that this does not happen in the future

The port tonnage due to be paid by vessels entering the Sri Lankan ports is the main source of income for a port among various income sources. The charge is half a dollar for a tonne per ship and must be paid by large and small cruise ships, warships, merchant ships as well as project ships arriving at a port.

While the other vessels are paying this fee, two major companies using the Trincomalee Port to bring in raw material have avoided paying this fee

resulting in a loss of approximately Rs 120 million annually to the Ports Authority.

Trincomalee port facility has significant importance among the commercial ports in Sri Lanka. The Indian Oil company pays the standard port fee due from all ships entering the Trincomalee Harbour and for the use of the port and the operations within the port premises. However, the Tokyo Cement Company and the Prima Lanka Company, which use



these same facilities, have avoided payment of the port tonnage fee for over 16 years causing a colossal loss to the Ports Authority. This was confirmed with the information obtained from an inquiry submitted using the Right to Information Act.

Shipping costs are charged at US\$ 32 per tonne for ships over 30,000 tons, US\$ 1 per tonne for port tonnage, US\$ 1.5 per tonne for landing and delivery, and US\$ 5 per tonne for cargo freight.

All ships arriving at the Port of Trincomalee pay all these charges, but surprisingly only ships carrying raw materials to Prima Lanka and the Tokyo Cement Company have been exempted from all charges except the shipping charge.

The allegation by port workers

A standard fee is charged for the entry and exit of a ship from a port as well as for all operations carried out by a vessel from within the port and the same fee is charged at every port in the country. It is also a common feature of the Trincomalee port. Accordingly, it is mandatory for the port tonnage charges, landing, delivery charges, and shipping charges to be paid to the port.

However, Prima Lanka and Tokyo Cement, which use the Trincomalee Port, have been exempted from all charges except for shipping charges, said Nandasiri Rohanadeera, President of the Port Employees Union. He further points out that a large revenue source is lost to the country with this exemption.



Prima Lanka company

“Rs 15,161,749 should be charged under the above charges for the ship that carried 17,500 metric tons of unassembled cement, which was brought by the Tokyo Cement Company on February 15 last year. Can you imagine the amount of money lost due to non-payment of dues from one ship that has come to the port for one company?” he questions.

In 2018, the port lost approximately US \$ 47 million in revenue due to non-payment of all the previously mentioned charges by these companies. Rohanadheera alleges that these companies are entitled to these privileges as per the agreement signed with these companies by an Additional Secretary during the tenure of Rauff Hakeem as the Minister of Ports and Shipping in 2002.

Rohanadheera further points out that it is unthinkable the amount

of money that a country would lose in revenue in a year due to the full exemption provided to these companies regarding port charges by an agreement allegedly signed by an Additional Secretary.

A high-quality natural harbour

The Port of Trincomalee, which has the largest fuel terminal in Southeast Asia and the largest grinding mill owned by Prima, is one of the best natural harbours in the world. The port legally owns 1630 hectares of water area assigned through Extraordinary Gazette Notification No. 1720/42 dated 26.08.2011 and 2255 hectares of land by Gazette Notification No. 314/10 dated 12.09.1984.

The Trincomalee Port, the deepest natural harbour in the country, has a depth of 25 metres in the centre. The



Tokyo Lanka company

width of the water body at the port entrance is 500 metres. The port is also equipped with five large jetties that can bring in large ships generating a large revenue from them, as well as a safe berth where five 180-metre-long ships with a capacity of 30,000 tons can be anchored at once.

The night operations of this port operated by 470 employees and 6 executive grade officers had been stalled for more than three decades due to the LTTE terrorist activities.

The Port Management and Modernisation Project with Japanese assistance has modernised the port with a night light buoy system guiding ships and two 230-metre long mooring buoys with a capacity of 75,000 tons also upgrading the old lighthouses at the port with two solar-powered lamps with streams of light and made them suitable for day and night operations

Port workers allege that although the port has been developed to a high standard for commercial purposes, the revenue earned from it is negligible since two out of three operating companies using the Trincomalee Port and its jetties to unload and deliver their products have not even paid the port tonnage.

Two companies that do not pay fees

Prima Lanka, a Singaporean company that started its import and export operations in the port in 1980, is the leading company using the port. It was, in the 80's, the world's largest flour mill, and can grind 3650 metric tons of wheat per day and store 350,000 metric tons of flour.

Prima handled 948,546 metric tons in 2018. About 90 percent of the ships that call at the port are cargo ships for

Prima. They are ships that arrive from Canada, Australia, USA and Russia and the company's products are exported to Bulgaria, Malaysia, Singapore and Bangkok.

The second company to use the port is Tokyo Cement. The number of metric tons handled in 2018 was 1,466,390. Ships from Indonesia, India and the United Arab Emirates arrive for Tokyo Cement with the raw material clinker needed to make cement.

Although the cargo ships entering the port are required to pay the port tonnage fee, these two companies have not paid the port tonnage fee to the Ports Authority since 2003. According to the Ports Authority, the Indian Oil Company is the only company in the port that pays the tonnage to the port due for its operations.

Loss of revenue US\$ 14 million

However, the unpaid port tonnage charge for the handling of 948,546 metric tons of cargo by Prima Lanka in 2018 alone is US \$ 474,273. Tokyo Cement also handled 1,466,399 metric tons that year resulting in a port tonnage charge of US \$ 733,195. Therefore, based on the figures for the year 2018 the revenue lost from Prima Company and Tokyo Cement for not

paying the port tonnage fee for over 16 years can be calculated.

Accordingly, the unpaid port tonne charge for the port operations carried out by Prima from 2003 to 2018 alone was US \$ 6,837,340.73 while Tokyo Cement had not paid US \$ 6,809,135.78 for that period. The country had lost a large amount of revenue during the 16 years.

According to information from unofficial sources, the companies do not pay the port charges including port tonnage charges due to an agreement reached. Meanwhile, a letter sent by the Ministry of Ports and Shipping and Southern Development Ministry to the then Member of Parliament Susantha Punchinilame on 23.08.2019 states that the ships carrying raw materials for these companies have been fully and completely exempted from all charges other than shipping charges.

Companies that avoid charges

When the Prima Lanka Company was questioned as to why they do not pay the port fees when the Indian Oil Company, which is using a portion of the port, is paying all the dues, the company's human resources manager, Wathsala Mendis, said:

"We pay all the taxes legally, but the General Manager says that it is difficult to say whether there is any understanding with the government."

Although she said that they pay all fees legally to the Ports Authority, in a letter addressed to Parliamentarian Susantha Punchinilame sent by the Ministry of Ports and Shipping and Southern Development Ministry, says that Prima Lanka had not paid the port tonnage fee for 16 years and as a result, a large amount of revenue has been lost. It has also been stated that the Trincomalee Port does not have any files or documentation to identify the reason for the special privileges granted.

The Tokyo Cement Company has not responded to clarify or provide a responsible person to answer the phone regarding the inquiries made several times regarding these allegations of non-payment of port charges.

When asked about the port fee that has not been charged including port tonnage charges for goods handled by Prima Lanka and the Tokyo Cement Company, Trincomalee Port Regional Manager T.K. G. L. Hemachandra said that he could not comment on the matter and added;

"All requests for information have been sent to the Colombo head office and we will be able to provide the information as soon as it arrives from Colombo, but since the Tokyo Cement Company is not under our control, there is no way to provide that information. Although the company is located in the port, I think they are guided according to the agreements."

Port workers point out that no one has the power in any way to stop the payment of port tonnage charges due to the government even if it is obtained by an agreement.

However, it is reported that the reason for granting such a privilege to these two companies is a result of an effort to find the finances for the payment to port workers for the voluntary retirement scheme offered in 2002. Accordingly, Tokyo Cement Company has paid a sum of Rs. 300 million to the Ports Authority, and therefore since 2003 the port has stopped charging them the port tonnage fee. The workers point out that Tokyo Cement has agreed with the Ports Authority to refrain from hiring Ports Authority employees for loading and unloading its products since 20.02.2003, and to construct a 160-meter-long jetty. Therefore, the company has been exempted from all fees other than shipping fees.



oil tanks belonging to the Indian Company

Subject Minister who has not seen the agreement

It is also surprising that the Ports Authority has stated in its letter to MP Susantha Punchinilame that there are no documents relevant to this agreement to identify the basis of granting these privileges to the two companies and that neither the Ports Authority nor the Prima Lanka Company is aware of an agreement. Despite not having an agreement or the relevant files to grant the privileges, the country has lost a large amount of revenue due to the non-collection of port tonnage charges from these two companies since 2003.

When asked about this the Minister of Ports, Shipping and Highways Johnston Fernando said that this situation is because of two adverse agreements reached during the Chandrika regime and added that he has not yet seen the agreements.

"I told the Secretary to look into the alleged agreements signed with Prima and Tokyo and take necessary legal action possible according to the terms of those agreements and to work towards terminating those agreements. We do not even receive the state share because of these agreements. I do not think there is any benefit to us in this agreement, these are agreements entered during the time of the Chandrika government for the sake of commissions that involved massive fraud. However, I will look into this matter," said the Minister in charge of the subject.

Since the Minister was also not aware of the agreements, several requests were made to the Ports Authority under the Right to Information Act to explore further into the non-payment of port charges by these companies. However, the Ports Authority has failed to respond to the

information requests submitted under the Right to Information Act.

Requests US\$ 102 for information

The reply letter sent to the application for information states that US\$ 102 must be paid to provide the requested information. The Director of Information (Services) Upul Jayatissa has informed that a fee of two dollars has to be paid for each copy since there are 51 copies pertaining to the information requested.

The Ports Authority has been requested to provide a copy of any agreement available for not charging fees for 16 years from the Prima and Tokyo companies. They have responded saying that they do not have any documents about this request.

The irony is that the Ports Authority, which is losing US\$ 14 million a year by not charging mandatory fees from these companies, would request an average citizen to pay US\$ 102 to provide information.

According to the port employees, if an agreement signed by an Additional Secretary to the Ministry has given any authority to these companies, the legality of such agreement has to be explored. If the Ports Authority has signed an agreement with these two companies, a comprehensive investigation should also be launched to figure out why these agreements are not available at the Trincomalee Port and regarding the officials who are responsible for the loss of revenue for 16 years due to these special privileges afforded to these companies.

It is the responsibility of the authorities to ascertain the scope of the legal authority of an Additional Secretary to sign such an agreement which would deprive the country of such huge revenue streams while even the Indian Oil Company is paying all the dues to the Ports Authority, as well as to find out by whose order and for whose purpose this agreement was signed.

By Lakmal K. Baduge

"Ravaya" - 08th March 2020

Small hydropower plants that are detrimental to the environment

There has been a lot of controversy over small hydropower projects in recent times. Protests were staged against small hydropower plants being built in various areas. Environmentalists have accused the small hydropower plant mafia of causing major environmental damage. This exploration is about small hydropower projects.

The date was 21st October in the year 2016. Since there were reports of major environmental damage caused in the Deraniyagala area from small hydropower plants, we visited the area. We were able to witness a tiny stream of water flowing down the Magal River. The 'Magal River' which starts from the Siripada area is known as the

'Seethawa River' when it flows through Deraniyagala. Although the water level in the river was very low, a large body of water was flowing along a large concrete channel built parallel to the river.

The article on small hydropower plants required a list of small hydropower plants approved by the Central Environmental Authority and in 2016 when we requested information from the Authority they refused to provide the list. After the advent of the Right to Information Act on 03.02.2017, eight requests for information on small power plants were submitted to the Central Environmental Authority, the Ministry of Power and Energy, the Ceylon Electricity Board,



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the Sustainable Energy Authority, the Registrar of Companies and the Public Utilities Commission and two appeals to the nominated officer and one appeal to the Information Commission in 2016. Therefore, this article contains information obtained for over two and a half years since October 2016.

Small hydropower plants

Hydropower plants are commonly classified according to their energy production capacity, expressed in megawatts and plants that generate less than 10 Mega Watts are commonly

referred to as small hydropower plants. It is reported that the construction of small hydropower plants commenced during the period when Sri Lanka was ruled by the British. Most of these projects involve the construction of a dam across waterfalls and rivers and then carrying the water body along large concrete channels for two to three kilometers, and making the water flow to rotate a turbine that generates electricity. After spinning the turbine, the water is released back to the river. There are three or four such small hydropower plants along some rivers.

Since the water is taken separately through a concrete drain, the water

flow of the river from the point of the dam to the point of spinning the turbine is extremely limited. This limited flow runs for about two to three kilometres while the larger body of water flows through the concrete channel. (the image shows a small hydroelectric power plant)

When constructing a small hydropower plant, there is a process that needs to be followed. First, the Central Environmental Authority must be informed of the water source that will be used for the small hydropower plant and the permission of the Environmental Authority must be obtained and, accordingly, approval must be obtained from the local authorities as well. The approval of the Sustainable Energy Authority has to be obtained followed by a power purchase agreement signed with the Ceylon Electricity Board and finally, the power generation license has to be obtained from the Public Utilities Commission for the power generation activities of the power plant.

Before the Public Utilities Commission issues a generation license for a small hydropower plant, it informs the public through a public notice and looks into whether there are any objections. A spokesperson for the Public Utilities Commission said that they also check whether the approvals

such as the environmental permit have been obtained.

According to statistics given on the Ceylon Electricity Board website, 4018 MWs have been purchased from 232 power plants in 2016 and 342 MWs have been obtained from 172 small hydropower plants.

In 2017, a total of 4087 MWs were provided by 247 power plants while 182 small hydropower plants provided 354 MWs.

According to information provided by the Ceylon Electricity Board for the information requested using the Right to Information Act, 1073.91 Megawatt-hours were purchased from small hydropower plants in 2015 and 856.81 Megawatt-hours in 2016 and 2109.97 Megawatt-hours in 2017.

Environmental impact

On our way to explore the small hydroelectric power plants, the large body of water that can be seen when going further up the Magal River cannot be seen when it comes down several kilometres. Since a large dam is constructed across the river diverting the water through a channel into a power plant, the river was dry for about two to three kilometres between the dam and the power plant.

Once again, after the power plant, the large body of water flowing along the river, as usual, was diverted with a dam taking the water yet again through a concrete channel for another two to three kilometres. More than five small hydroelectric power plants were constructed on the Magal River alone.

According to environmentalists, the greatest environmental damage caused by small hydroelectric power plants is the extinction faced by endangered freshwater fish and aquatic life unique to Sri Lanka.

Crossing a natural stream of water and taking the water through a drain directly interferes with the lifestyle of freshwater fish and aquatic life. For example, the red-lipped sandpiper breeds by spawning eggs on the water, which flows downstream and hatch in lagoon water. The fry moves up the river back to their mother's habitat. Environmentalists say that small hydropower plants are threatening their lifestyle and they are faced with the danger of extinction.

Carrying water along a concrete drain reduces the flow of water along the river, destroying plants on both sides of the river by causing moisture to dry up, which also severely affects the surrounding agricultural economy. Building concrete drains to carry water

on both sides of the river destroy the self-preservation zones on both sides of the river. Environmentalists point out that this disturbs the ecological balance and impacts people's lives in various ways.

The small hydropower plant mafia, which is not second to the electricity mafia

One aspect of the electricity mafia in Sri Lanka was presented in an 'Exploration of the Truth' feature article published in the 'Lankadeepa' on Wednesday, October 17, 2018. Environmentalists say that there is such a mafia behind small hydropower projects as well and our investigation has revealed certain information that confirms this statement.

As mentioned earlier in this article, an Environmental Assessment has to be conducted and approved by the Central Environmental Authority (CEA) before the construction of small hydropower plants. There are several areas where it is doubtful whether such approval has been obtained for the construction of some small hydropower plants.

Some small hydropower plants have been built in areas where the environment is highly sensitive. Environmental assessment reports



of some of the constructed small hydropower plants do not include details of the species of fish and rare plant species associated with the relevant rivers. Several small hydropower plants have been built along certain rivers with approvals given despite the environmental damage caused.

At the hearing of the appeal at the Right to Information Commission, on contradictory information provided for small hydropower plants, the Central Environmental Authority stated that it has not documented certain information related to this matter. This is mentioned in the order of the

Information Commission which is given below. The Public Authority referred to here is the Central Environmental Authority.

The Public Authority stated that the Central Environmental Authority (CEA) alone does not give approvals for small-scale power plants and there could be instances of approvals from the Department of Forest Conservation and the Mahaweli Authority. The Public Authority further stated that the projects approved by the Public Utilities Commission were not included in this list. The Commission at this time inquired whether these approvals are given parallel to the Central

Environmental Authority approvals. The Public Authority responded in the affirmative but stated that a list of such projects has not been maintained. This is a classic example of the Central Environmental Authority's inability to understand the scope of the mafia surrounding the small-scale power plants. The Public Utilities Commission (PUC) stated that the Environment Authority's statement is unacceptable since it approves only after the environmental approval is provided.

Conflicting reports

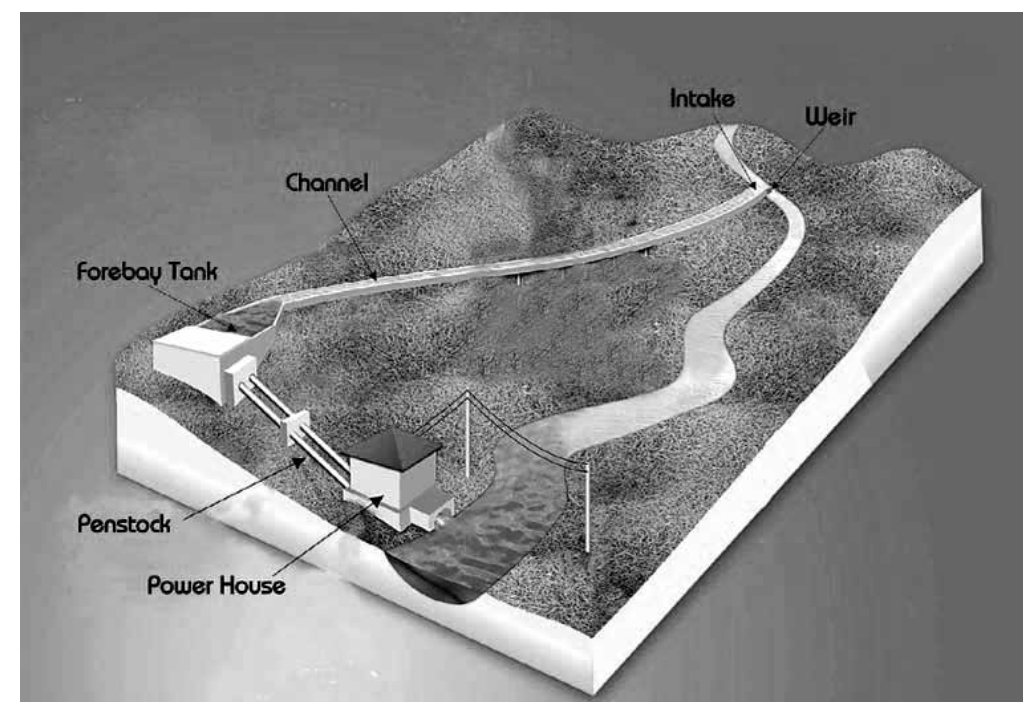
This article required the list of small hydropower plants approved by the Central Environmental Authority but when requested those days, the Authority stated that the list could not be provided. Following the enactment of the Right to Information Act on 03.02.2017, we made a request to the Central Environmental Authority on 17.02.2017 for a list of small-scale hydropower plants that have been approved for the period from 2010 to 2017. In response, the Central Environmental Authority (CEA) issued a list of 131 under the heading 'List of small hydropower plants that have been approved from 2016 to 2017'.

Upon receipt of the list, applications were submitted to the Ministry of Power

and Energy, Ceylon Electricity Board, Sustainable Energy Authority and the Public Utilities Commission requesting further information. We made a request on 22.01.2018 for the list of small hydropower plants that were approved from January 2015 to January 2018. In reply, the Information Officer again gave the same list of 131 previously given with only a change in the title. "The information requested has already been provided by the letter dated 09.03.2017 and the copy is attached herewith," said the Acting Director, of the Environmental Management and Evaluation Division at the Central Environmental Authority.

An appeal was lodged with the RTI Commission regarding these discrepancies and its hearing commenced on 04.12.2018. In the meantime, we once again sent a request to the Central Environmental Authority for a list of all the small hydropower plants that have been built up to January 2019. In three cases, the information provided by the Environmental Authority was contradictory. The information provided by the Environmental Authority in all cases can be analysed and summarised as follows.

The number of small hydropower plants approved from 2016 to 2017 is 131 according to the first information



<http://www.ft.lk/>

request. According to the third information request it is 09.

The number of small hydropower plants approved from 2010 to 2018 is 131 in relation to the first information request. According to the third information request, it is 115. The total number of small hydropower plants approved up to January 1, 2019, is 240 according to the third request. After this request following the order given by the commission the final information provided indicates the number as 256.

From time to time, the Central Environmental Authority (CEA) has

provided contradictory information, this shows that either they are not keeping specific records of the information or are deliberately concealing statistics.

In response to a request for information from the Sustainable Energy Authority, they have stated that 188 small hydropower plants had started generating electricity by 01.08.2018, and that approval had been granted for another 80 small hydropower plants, but the work had not yet been completed. The Sustainable Energy Authority thereby had approved 286 small hydropower



plants. Accordingly, there is a discrepancy between the information given by the Central Environmental Authority and the information given by the Sustainable Energy Authority.

Addressing the media recently in Ratnapura on April 1, the Director of Renewable Energy of the Sustainable Energy Authority revealed several details about small hydropower plants. He said that about 3,500 applications have been received for the construction of small hydropower plants but small-scale hydropower plants have not been approved since 2015. Although the director made this statement to the media, information obtained from the Sustainable Energy Authority under the Right to Information Act indicates that 26 small hydropower plants have been approved from January 1, 2015, to January 1, 2018. The Sustainable

Energy Authority has also provided information based on the RTI Act, regarding the rivers associated with the power plants. Accordingly, the director has made a false statement to the media.

According to the information provided by the Ceylon Electricity Board under the Right to Information Act, 190 small hydropower plants have been approved by the Ceylon Electricity Board up to August 1, 2018, while approval for 67 small hydropower plants have not been given even though agreements have been signed, bringing the total to 257.

According to the information provided by the Public Utilities Commission in response to the RTI Act, 209 small hydropower plants have been given the power generation license by the Commission from 2010 to 2019.

“We need to move towards alternative energy”

Environmentalist Dr. Ravindra Kariyawasam

“A small hydropower plant is built near a water source like a river or a waterfall in Sri Lanka. Too often, these things are constructed without any consideration of the environmental law. The latest trend is that western countries are removing small hydropower plants. They are now identifying sources such as wind energy and solar energy. It is in such a context that small hydropower plants are constructed in Sri Lanka.

The construction of small hydropower plants could lead to the extinction of fish species in Sri Lanka because it affects their behavioural patterns. There are many species of fish in Sri Lanka such as the ‘Bulath Hapaya’ (Black Ruby Barb) and ‘Thal Kossa’ (Belontia signata/ SL comb tail). In other countries when these are constructed they build a fish ladder, also known as a fishway, which provides a detour route for fish past a particular obstruction on the river. The water is diverted and sent through a drain to rotate the turbine. The fish that go along the drain has no way to come back. In other countries, they use fish ladders to assist the fish to come back.

Small scale hydropower plants are being built in Sri Lanka without even looking at such basic things.

The construction of these will destroy the water sources. The sun shines brightly on our country. Solar panels can be installed on roofs to generate electricity. They can be used for domestic purposes and we can develop a process to add the surplus to the main system. This can solve the energy crisis in Sri Lanka.

'Allegations are false'

Owner of a small hydropower plant

“Small hydropower plants provide a great service to the power grid in Sri Lanka. Electricity is purchased from small hydropower plants as well when there is an emergency. The statement that this harms the environment is a lie. We operate power plants in a way that does not harm the environment. We work according to the law. Various NGOs are making false allegations against us. They do so out of sheer jealousy. There is no other reason.”:

By Tharindu Jayawardhana

“Lankadeepa”

Seven additional vehicles for Minister Rishard, violating circulars

According to circulars issued by the Secretary to the President, the maximum number of vehicles that should be allocated for the use of a minister and security is three. However, it has been revealed that the Minister of Industry and Commerce Rishad Bathiudeen has been given seven additional vehicles in violation of the circulars issued by the Secretary to the President.

This was discovered from the information obtained from the Ministry of Industry and Commerce based on the Right to Information Act. A

request was submitted to the Ministry of Industry and Commerce on 11 July, for information regarding the use of the Ministry vehicles. The information has been released under the signature of its Additional Secretary (Administration) T.D.P.S. Perera.

The maximum number of official vehicles that can be allocated for the use of Ministers and Deputy Ministers and their security is three as per the provisions of paragraph number three of Public Expenditure Management Circular No. CA/ 1/17/1 dated 14.05.2010 issued by the Secretary



to the President. According to circular No. CSA/ 1/5 dated 19.04.2016, this number is also valid for State Ministers.

However, information obtained through the RTI Act reveals that 10 vehicles have been provided to the Minister of Industry and Commerce by the Ministry of Industry and Commerce. The number of drivers allocated to the Minister of Industry and Commerce is eight.

There are 23 vehicles in the vehicle pool of the Ministry of Industry and Commerce and another 16 vehicles have been reserved for the officials of the Ministry. Two of the vehicles used by the officers are on an operational lease.

Nine vehicles in the ministry's vehicle pool have no drivers and two of the 16 vehicles reserved for officials have been used by employing drivers from corporations and statutory boards.

The number of drivers in the Ministry is 28, including the drivers allocated to the two vehicles assigned to the Minister and eight regional drivers.

Vehicles provided to the Minister include vehicles beginning with the letters CAV, CAE, PF, PH, KY and KG.

According to the Public Expenditure Management Circular, the fuel allowance for an official vehicle of a Minister is given in the table below.

| | | |
|------------------------|------------------------------|-----------------------------|
| | outside the Western Province | Within the Western Province |
| for one petrol vehicle | 750 litres | 600 litres |
| for one diesel vehicle | 600 litres | 500 litres |

The table below shows the cost of fuel and maintenance for vehicles of the Ministry of Industry and Commerce in 2015, 2016 and 2017.

| Year | Fuel Cost | Maintenance Cost |
|------|------------|------------------|
| 2015 | 25,184,335 | 36,555,039 |
| 2016 | 17,143,901 | 33,861,171 |
| 2017 | 16,723,187 | 37,841,376 |

Attempts to contact the Minister of Industry and Commerce to inquire into the matter were unsuccessful. When inquiries were made about this from the Secretary to the Ministry K.D.N.R. Asoka, he said that since the Additional Secretary to the Administration deals on the matter, he should be contacted.

However, this information has been released with the signature of the Additional Secretary Administration T.D.P.S. Perera.

By **Tharindu Jayawardhana**

"Lankadeepa"

Death of the Tzu Chi school principal

Education authorities are also responsible

An inquiry conducted by the Investigations Branch of the Ministry of Education has revealed that all activities from the procurement process of selecting an institution for the Self and Institutional Discipline and Leadership Training Workshop

organised by the Ministry of Education for National School Principals, had not been implemented properly.

The principal of Tzu Chi National School in Hambantota fell and died during this training workshop. The

<http://www.gazzan.net/>



The Tzu Chi National School. Hambantota

investigation team has concluded that although the death of the principal was an accident, the negligence, ignorance and lack of responsibility of the relevant officials from the planning stage of the training, the calling of bids, selection of institutions and organising the training, has indirectly contributed to the death of the principal.

Although the Ministry of Education had earlier stated that it had carried out an investigation into the death of the principal and had taken action against the relevant officials, the Ministry of Education had not released the report of the investigation. The Education

Department took action to release the report after an appeal hearing at the Right to Information Commission.

According to the report, almost all the activities of the leadership workshop held for the principals of the national schools have not been conducted according to due process. The report also states that there are concerns regarding the methodology used to select the institute to provide the training.

By Tharindu Jayawardhana

"Lankadeepa"

The Director of Physical Education

recruited outside the standard procedure

Colonel Manjula Kariyawasam had been recruited to the post of Director of the Ministry of Education (Sports and Physical Education) without the call for an interview published in the Gazette or a public newspaper advertisement. This was discovered from an inquiry made using the Right to Information Act.

The Ministry of Education stated that the advertisement for the selection of a suitable candidate for the post was displayed only on the notice boards of five institutions and that only Colonel Manjula Kariyawasam and K.W. Mihal

Somawardena had participated in the interview.

The Ministry of Education revealed this during an appeal hearing at the Right to Information Commission. The hearing of the appeal was based on the refusal of the Education Ministry to provide the information requested regarding the selection of an officer for the post of Director (Physical Education Development and Training) in the Ministry of Education.

The methodology prepared by the Ministry of Education regarding the recruitment process for the post



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Isurupaya

has been sent to the Public Services Commission on 22.06.2017 and it has been approved by the Public Service Commission on 03.07.2017 and has been forwarded back to the Ministry. It states that applications should be called by publication in the Government Gazette or by posting public advertisements or posting on the website. However, it was revealed at the Right to Information Commission that the Ministry of Education has called for applications only by posting the relevant advertisement on the notice boards of five institutions.

Communication has been forwarded on 21.07.2017 under the signature of the Additional Secretary to the Ministry of Education (Administration and Finance) to the offices of the Director-General of

the Department of Archaeology, the Director of the Janakala Kendraya, the Kaduwela Divisional Secretariat, the Sri Jayawardenapura Kotte Divisional Secretariat and the Assistant Secretary (planning) of the Education Ministry, requesting the notice to be displayed in their institutions.

The Teachers' Unions state that the person currently recruited to the post does not represent any of these institutions.

Director (Physical Education Development and Training) is recruited under contract for three years.

By Tharindu Jayawardhana

"Lankadeepa"

Exploration into the Truth: saving the Sinharaja

Following the change of government, investigations have been initiated regarding various cases of corruption and fraud said to have been carried out during the tenure of the previous government. Yet no investigation has been opened into environmental crimes, which affect not only humans but animals too. A number of incidents have been unveiled through this investigation during this time period such as large scale projects including the preparation of deeds to lease land in the Knuckles, sans any environmental impact assessment. The information to be presented from the special investigation this time is regarding such an environmental crime as the preparation of such deeds, which continues from the time of the previous government.

The rainforests of the world are available in very limited quantities. The speciality of rainforests is not just that they received abundant rainfall. They contribute considerably to the promotion of rainfall all across the globe. In the previous year due to forest fires and deforestation around 40 % of rainforest have been damaged according to international reports.

The main rainforest in Sri Lanka is the Sinharaja World Heritage site. Whilst many environmentalists decried the large scale environmental damage that would occur if the forest was cleared to create a roadway to meet the requirements of a few companies, the current government and officials rejected this. Following an investigation into this matter, which ran for the

period of a year, collecting information obtained via the Right to Information Act, it was found that the claim that the previous government and officials had agreed on this is completely unfounded. This edition of the Special Investigation examines this subject.

The large scale felling of trees in what is considered the main rainforest of Sri Lanka, the Sinharaja, happened during the time period from 1971-1972. This was carried out officially. This was for the purpose of obtaining required timber for the Ceylon Plywood Corporation: for this large tracts of trees were felled and an access roadway was erected for the transport of the logs. This was not a tarred or concreted road. In any case following its declaration by UNESCO in 1978 as a protected biodiversity site, based on its borders it was subsequently named a World Heritage Site in 1989. The site contains 8864 hectares, and apart from this under the National Heritage and Wilderness Areas Act a total of 11,187 hectares were named as national heritage lands.

The felling of timber and clearing of roadways to transport these to the Plywood Corporation, occurred before the declaration of the Sinharaja as either National or a World Heritage site. Apart from that imore recently in a background where the forest had

once more grown to cover these areas, in more recent times namely 2004, a roadway was prepared along with a bridge of a width of four meters and a ditch. Officials claimed that these had been set up for the convenience of local and foreign tourists. Whilst there are many places for local and foreign tourists to observe in Sri Lanka officials have not paid attention to the implications of turning Sinharaja, which is a World Heritage site and the largest rainforest in Sri Lanka, into a tourist paradise.

As a result of paving the way for local and foreign tourists into the Sinharaja, the route has also facilitated the smuggling abroad of various certain genetic material from plants and animals endemic to Sri Lanka and only available in the Sinharaja rainforest. These allowed Sri Lanka to become a centre for international based racketeers operating to plunder and sell endemic genes. When some countries have taken such genetic material endemic to the Sinharaja and patented by various foreign countries to be harvested and resold at exorbitant amounts, Sri Lankan officials are silent as usual.

In a number of instances (even) when expanding the borders of the Sinharaja the proposed routes belong to the World Heritage site Sinharaja and



President Gotabaya Rajapaksa on an inspection tour of the area

adjoining rainforests. In such cases the problem again arose in 2018 where the World Bank funded project Ecosystem Conservation and Management Plan (ESCOMP) which set aside a grant of around Rs 640 Million for the Sinharaja. In response to a number of environmental organisations which expressed opposition to the plan to construct an accessway to the Sinharaja, politicians and officials of the previous government stated that this money would only be used to renovate accessways that already existed in the rainforest. In justification of that the Department of Forest Conservation had produced a letter stating as follows:

“Afterwards, (from 2004) to date over this time due to substantial rainfall, erosion and earth slippage this roadway has become difficult to pass. Therefore, local and foreign tourists, school children and others who come to visit the Sinharaja World Heritage Site are using these pathways which are difficult and dangerous. With the aim of preventing these various difficulties, dangers and inconveniences including erosion and earth slips, the Department of Forest Conservation had begun to repair this roadway. Here, while there would be no expansion of the width of the existing roadway, repairs would be carried out and interlocked stones

and retaining walls would be set in the areas which are susceptible to earth slips. Accordingly the renovation would only involve areas where the pathway was wider than 10 feet. Here there would be no increase of the width of the road, under any circumstances. In these renovation efforts, all guidelines including protective measures would be followed to ensure that the environment would not be adversely affected; the minimum of equipment would be used as required, and no further felling of trees will occur. Therefore it is clear that this is an untruthful accusation made by the environmental organisations, that the road was to be widened.”

The above paragraph was extracted from a letter sent to the Ministry of Mahaweli Development by Director Environment Conservation and Management Unit Forest Conservator Mahinda Senevirathne on 4 January 2019 on behalf of the Conservator General of the Department of Forest Conservation. The Forest Department had to send this letter in response to the complaints made by the Centre for Environment and Nature Studies (CENS) to the UNESCO and the World Bank organisation in relation to the roadways constructed in the Sinharaja.

With the advent of these new activities in the Sinharaja, the National Coordinator of the Centre for Environment and Nature Studies, Dr Ravindra Kariyawasam issued a letter¹ to UNESCO 26.12.2018 outlining the destruction of this World Heritage Site through the setting up of this illegal roadway. In its complaint, the Centre requested that action be taken against this illegal roadway going on in the Sinharaja World Heritage Site. On 26.12.2018, the General Secretary of the Sri Lanka National Commission for UNESCO, Premalal Ratnaweera whilst submitting this complaint to Secretary of the Ministry of Mahaweli Development and Environment Anura Dissanayake, requested that necessary action be taken. Apart from the Centre for Environment and Nature Studies, a number of environmental organisations such as Action Sri Lanka Organisation, National Environmental Foundation, Sinharaja Sumithuro Organisation and Sinharaja Udesa Jana Pawra² also joined in the request³ to prevent the construction of this illegal accessway.

1 <http://dailyexpress.lk/glocal/710/>

2 <https://www.escamp.lk/wp-content/uploads/2019/12/ESMP-for-Sinharaja-Final-12.12.19.pdf>
<http://documents1.worldbank.org/curated/fr/107401577769576577/pdf/Environment-and-Social-Management-Plan-for-the-Kudawa-Doranaela-Wathurawa-Access-Road-Rehabilitation-Balance-Work.pdf>

3 <https://economynext.com/environmentalists-protest-against-road-construction-in-sinharaja-for-est-73093/>



ejatlas.org

According to the UNESCO letter, whilst a report was called from the Conservation Department of the Ministry of Mahaweli Development and Environment, a report including the previously mentioned paragraph was presented to the Ministry of Mahaweli Development and Environment by the Forest Department. Accordingly on 21.01.2019 the Ministry notified the General Secretary of the Sri Lanka National Commission for UNESCO, that the accesway would not be widened. In any case while complaints began to flow in, in regard to this matter, accusations began to flow from environmental organisations. Instead of examining the complaints the officials responsible wasted more money to collect together a group

of journalists and take them to the Kuduwa campsite area of the Sinharaja and try to convince them of their case. The then state Minister of Environment too participated in this event according to investigation into the records of the Forest Department. Apart from this, a discussion was called with a number of environmental and non governmental organisations on 13.05.2019.

The relevant officials were exposed following examination of various documents that were unearthed from this investigation using the Right to Information Act.

Environmental organisations began to raise their voices against this accessway from 2018 October onwards. In spite of this the

Department of Forest Conservation had taken steps to issue an advance payment for work on the accessway on 23 November 2018. The advance amounted to Rs 10,874,595.00 and had been paid to the Wijesekera Construction private company, with documentation on this matter being filled out on 12 November 2018. On 23 November 2019, payment by cheque had been authorised. The advance is 30% of the total amount. The full amount planned for payment to the contractors was 36,248,650.00. (The payment voucher no 53/11 for the advance is shown herewith).

Prior to the payment of monies the estimate for the expenses of this project has been approved. The Sabaragamuwa Provincial Council (Engineering Services) had approved this estimate on 7 March 2017. That expense estimate appears to have been prepared for the construction of a 1.45 kilometre accessway as well as to renovate an existing roadway. The full estimate for the necessary work including renovation and other expenses amounts to Rs 52,119,000.00.

In the statements by officials that construction will be carried out without any harm to existing trees, and renovation of the roadway will be while keeping it the same way it is, began

to be exposed when the project Bill of Quantities was investigated. The first subsection of the second item in the estimated expenses of the Sinharaja Rainforest accessway was described as follows:

Preliminary clearing of forest by uprooting or by cutting and uprooting plants with substantial growth

This clarifies that even whilst authorities had continuously reiterated that there would not be any deforestation, plans had already been set down for such forest clearing by uprooting large trees.

Furthermore budgetary provisions had included breakdowns for constructing of drains, retaining walls, ditches, numerous renovations including car parks, cutting and levelling using required heavy machinery, concreting and blasting to remove boulders, and other such actions. Environmentalist Dr Ravindra Kariyawasam speaking of the harm to the environment from such activities, clarified as follows:

“Sinharaja is a World Heritage site containing a number of plant and animal species that are found only in this region. That means not only are they not available anywhere else in the world, they are also not found anywhere else in Sri Lanka. They are



www.rapidadventures.lk

only to be found in the Sinharaja. Due to the nature of this forest, if various artificial changes are made, that is in making roads, in concreting the place, in blasting the area, plant and animal species will be destroyed.”

Similarly these roadways set up for the convenience of tourists, to develop the tourism sector, will end up with roads cleared upto the other end of the Sinharaja, today it will be two kilometres, the next day it will be more, and more and more until the Sinharaja is finished. Instead of protecting these rainforests the officials are making plans to destroy it. It is not necessary to bring tourists into the Sinharaja. The biopiracy of genes in Sri Lanka is increasing because of bringing tourists into the Sinharaja. They

are trying to deprive us of our own precious resources. We complained to UNESCO about this. The officials had told their lies to UNESCO too. When we went to that area we witnessed the destruction they were carrying out. We took photographs and presented our information with details to UNESCO and the World Bank. The World Bank has informed us that it would inspect the area this week, in regard to our complaint. We intend to provide them with all the plans of this destruction, if this destruction is not halted, we intend to take our case to court.

A group of environmentalists named Sinharaja Surakeema Jana Pawra have been campaigning for the halt of these constructions. Committee member of this organisation Chaminda

Jayasuriya⁴ stated that the final result of this kind of action ruining Sinharaja would be that people would have to buy the oxygen they need from shops in Colombo.

We went to the locations where the Sinharaja roadways were planned. In this regard they had organised a discussion and invited organisations. In these discussions, the officials agreed that their plans were unsuitable. We are averse to them merely changing these plans a little because they are wrong and continuing with them. The parts that have already been cut should be conserved in a way that minimises the environmental damage caused. The consequence of thus sporadically destroying the forest would be that in about ten years time, a situation can arise that the people will have to buy the oxygen they require for breathing, from shops in Colombo. Therefore this destruction should be stopped as soon as possible.

Environmental crimes are at the forefront of all the frauds and corruption happening in Sri Lanka. In Mannar the forests were destroyed and people were settled into those areas. In Vavuniya there is the possibility of forests being destroyed and five villages being set up including

4 <https://www.lankanewsweb.net/67-general-news/54856-World-Bank-agents-to-visit-the-endangered-Sinharaja-Forest--VIDEO->

Bogaswewa and people being settled there. Around the country more forests are destroyed under various pretexts. Legal action has not been taken against such acts. During the previous regime, plans had been prepared to lease out lands of the Knuckles World Heritage forest and these could not be implemented because media and environmental organisations drew attention to these and took action. After this the Sinharaja was targeted. As yet this has not been halted. Organisations and people should express their opposition to this without any religious or ethnic barriers because if these forests are destroyed people will not be able to survive, as there will be no country left to live in.

**By Bingun mekaka and
Tharindu jayawardhana**

"Lankadeepa"

The Ghosts of political henchmen in the Ministry

It was in November 2016 that the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, D.M. Swaminathan, grabbed the attention of the country by cancelling the prison jail guard interviews last minute, alleging irregularities.

The Minister said that the appointments of prison guards have been suspended and a fresh interview will be held for the 350 vacancies for jail guards. He stated that the reason for the suspension was that he had received reports of soliciting bribes and other irregularities in the recruitment process.

However, by this time, the minister was facing accusations from the media stating that a list of 150 names with

political influence had been included in the list by the Minister.

Commenting on the matter, the Minister did not completely refute the allegations but added that the list did include names sent by representatives in parliament. The Secretary to the Ministry lost his position based on this incident. Minister Swaminathan said that the same reason had influenced the removal of the secretary from the post. He further stated that 6,000 candidates who had appeared for the second interview would be given a fresh interview and appointed for the vacant posts. The writers of the 'Sathaya Gaveshanaya' (Exploration of the truth) exposed the political face and influence of the recruitment process in an article dated 05.06.2017.

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File Photo

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However, after the minister's press conference, an investigation committee was appointed to hold an inquiry into the incident on the minister's own initiative. The committee was appointed under the leadership of Commissioner General of Rehabilitation Major General R.M.J.A. Ratnayake. The rest of the members of the investigation committee included the Additional Secretary to the Ministry of Public Enterprise Development J. M. A. Douglas, Assistant Secretary to the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, Dhammika Wickramasinghe and the Legal Officer of the Office of the Commissioner-General of Rehabilitation, Major, Attorney-at-Law, D.P.P.K. Heiyanthuduge.

The authors pursued information through an RTI application that was submitted to obtain the report to ascertain whether the Minister's allegations had been substantiated and whether justice had been served to the victims. We were able to experience first-hand how the Fundamental Right of the right to information does not apply to the Ministry of Prisons. This process is explained briefly. According to the report compiled by the investigation committee this incident is purely an administrative mishap. The report states that 45 files that should have been kept under high security at the prison headquarters have disappeared. A reader of the committee report would not be surprised at this disappearance but wonder how the Prison



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headquarters survived so far with such administrative blunders.

The Commissioner-General of Prisons is authorised for recruitment by the Public Service Commission. During this period, the Department of Prisons had 1262 vacancies for 1098 prison guards (jailors) and 164 female guards (jailors). The department intended to recruit 500 in 2015, a further 350 in 2016 and the rest in 2017. This was approved by the Secretary of the Public Service Commission and the National Budget Department. However, the committee report states that the Minister had given his approval later for the 2016 recruitment.

The gazette notification for the recruitment of 305 prison guards and 45 female prison guards was published on 05.08.2016. Accordingly, 20758 applications were received by all prisons islandwide and preliminary interviews regarding the recruitment of 305 prison guards and 45 female guards were conducted regionally by the prisons between 19.10.2016 and 27.10.2016.

However, the Prisons Headquarters has not issued due letters appointing the Chairman and members of the Preliminary Interview Boards to conduct the preliminary interviews. And the regional prisons were

instructed to submit the list of applicants meeting the minimum requirements after the completion of the preliminary interviews on each day by e-mail to the prison headquarters. However, a proper procedure has not been followed by the Prisons Headquarters to ascertain whether the lists were duly received and whether the names of all the eligible persons were received by the Prisons Headquarters.

This was why the clerk in charge of the subject had failed to send letters regarding the final interview to all the candidates who were eligible from the preliminary examination held on 23.10.2016 at the Batticaloa Prison. The error was noticed only after the candidates inquired from the prison headquarters and the ministry regarding their applications.

Although the results of the preliminary investigation conducted from the Batticaloa Prison were scanned and sent to the Prison Headquarters by e-mail, the suitable candidates included in the list had not been entered into the computer system at the Prison Headquarters. The final interviews could have been conducted at least if the score sheets received by e-mail and original documents had been called to the Prison Headquarters to be compared and verified. The Investigation Committee also states

that the results of an interview conducted anywhere on the island could have been called into the prison headquarters within a day. However, this has not taken place.

Even though one candidate from Matara and one from Tangalle prisons and six from the Kandy prison were eligible, they were not called for a final interview. The administrators were not even aware of this omission until the candidates had inquired from the Prison Headquarters and the ministry regarding their application status.

Ignoring due procedure followed by the Interview board and panels has been the reason for this lapse. The final interviews were conducted by 18 Interview boards at the Prison Headquarters on November 03rd, 04th, 08th, 10th and 11th. Final interviews have been conducted on November 12th with only two interview boards. Only 287 male and 38 female applicants were selected for recruitment for the post of prison guard based on obtaining equal marks, and letters were issued calling them to sign contracts. However, the marks given to some applicants were not correct and even the totaling of the marks was incorrect. The same erroneous scores were entered into the computer as the final selection marks of those applicants.



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Handing over the work of the officers to the peon

Another fact that reflects the haphazard nature of the department is that the schedule containing the marks of the final interview had not been accepted by a responsible officer of the administration division and was left irresponsibly on the desk of the administrative officer 11 (Acting) without any adherence to confidentiality or security. Therefore, the data entry of the marks given by the interview panel of the final interviews had not taken place from one central place under the supervision of a staff grade officer until the formal completion of the work. The result was

that the credibility of the computerised scores for the final selection could not be vouched. One of the people involved in computerising the scores given by the final interview board was J.W. K. R. Kumara. He was the office assistant of the Superintendent of Prisons (Administration) at that time.

The most important and the most dangerous aspect of this process is that files containing the certified photocopies of the certificates that marks were given for at the time of the final interview of the 45 candidates had disappeared. These are the candidates that have been sent letters offer letters of recruitment after been selected from the final interview The Commissioner

General of Prisons had informed this matter regarding the missing files to the Investigating Committee in writing. However, files cannot escape a prison like a prisoner jumping over a wall. There must be something that has happened to these documents.

According to him, if the documents from the prison headquarters are missing it is not a simple matter. The prison headquarters is not a roadside kiosk. The investigating committee has made several important revelations in their observations. They are mainly about the administration of the prison headquarters. The administrative officers on duty at the prison headquarters, subject clerks and management assistants have been in the same roles for a very long time.

'It is not a trivial matter that the Investigating Committee has highlighted stating that the prison officers do not perform their duties in close association with their superiors and that each person acts according to their own will act without heeding to the proper guidance from the officers. The committee states they observed the conduct of the Chief Administrative Officer C.N. Amarawickrama and Administrative Officer 11 (Acting) P.W.U. Amarapramema, when they visited the Prisons Headquarters to take over the relevant documents into their custody. It has been evident through

their behaviour and attitude that these two officers were not responsible for discharging their duties. The chain of events that have unfolded can be seen as a good example of the disunity among the senior officers of the prison headquarters.

This is a serious hindrance to the work of the prison headquarters. There had been no reasonable support and cooperation with the Commissioner-General of Prisons, H.M.M.C. Dhanasinghe, during this period of inquiry by the senior-most officers, Commissioner of Prisons (Administration) M.V. Gunawardena and Superintendent (Administration) of Prisons. R. Lamahewage.

This is why the recruitment process has been taken directly under the control of the Commissioner of Prisons. There has been no formal procedure established to monitor the step by step process of recruitment of prison guards and there has been no proper communication between the staff of the administration division including the Commissioner of Prisons (Administration) and the Superintendent of Prisons (Administration).

The reports state that during the entire recruitment process, the task had not been properly planned, implemented, monitored and evaluated. Therefore, the question

surfaces as to what has been done at the prison headquarters. Investigators, on the other hand, say that there was insufficient evidence to suggest that there had been financial irregularities, or soliciting of bribes or favours during the recruitment process as suggested by the minister at the news conference.

Conclusions and Recommendations

According to the Investigation Committee, the prison headquarters have to now start work from the beginning. The Committee has recommended that the Commissioner General of Prisons provide all the Officers / Clerks / Management Services including all on duty at the Prisons Headquarters Administration division, clear job descriptions with a written list pertaining to the duties and responsibilities of those persons. They must also obtain written statements from the employees that they are aware of their duties and responsibilities and agree to act accordingly.

Due to the negligence of the officers, the Committee recommends the cancellation of all interviews and related recruitments due to the irregularities. The Commissioner of Prisons as the authority of the recruitment process has implemented the recommendations and suitable candidates were selected accordingly.

The Committee has advised to ensure that the age limit for recruitment is not an obstacle for the applicants due to the delays. However, the government cannot escape the responsibility for wasting the time of the youth more than a year from the most precious stage of their life. This period has been wasted away from their lives due to delays in the recruitment process. On the other hand, recruitment for 2017 was also delayed due to irregularities in 2016. The Commissioner-General of Prisons, with the approval of the Ministry, took steps to formalise the recruitment process, and formally recruit prison guards but it took a considerable period of time. The mismanagement and inefficiency of public servants are often highlighted in the education sector targeting teachers from time to time. However, this inefficiency is a common situation in many areas of the public service, and not only limited to the teachers who are constantly highlighted. This report is a good example of inefficiency. Investigators state that administrative officers, clerks, management assistants and office assistants at the Prison Headquarters operating in their positions for a long time have adversely affected the good governance of the unit. They have suggested that such persons should be released from Prison Headquarters duties in two steps. The report further

recommends appointing other suitable candidates to those posts in collaboration with the relevant institutions. Another recommendation is to implement a program (Administrative Inspection) with the approval of the Minister to look into the administration and shortcomings of the prison headquarters and other prisons.

The recommendations of the investigating committee regarding the disappearance of the files is not satisfactory. It has to be first identified as to who has been named by the Committee, as responsible for the disappearance of the files.

The Committee have concluded that the senior officers M.N.C. Dhanasinghe (Commissioner General of Prisons), M.V. Gunawardena, Prisons Commissioner (Administration) and E. R. Lamahewage the Superintendent (Administration) of the prison serving during this period are responsible for the failure of the Prisons Department to conduct the selection process in a planned, secure and organised manner because 45 files were displaced in less than two months after the interviews. The investigation committee has recommended in the report that they should be summoned before the secretary of the ministry and severely warned.

Similarly, the Committee has recommended that C.S.

Amarawickrama (Administrative Officer 1), P. W.W. U Amaraprema (Chief Clerk and Acting Administrative officer 11) and Ms. E.A.P.D. Edirisinghe (Management Assistant Grade 11) should be summoned before the Commissioner General of Prisons and warned and a warning letter to be handed over to them with a copy sent to their personal files.

Matters not covered by the investigation report

The central focus of the investigation committee report is on the missing 45 files. This is because of the allegation levelled by the appointees when the authorities were delaying the recruitment and deferring the second interview. They alleged that the file story was a ploy by the authorities to eliminate those who faced the interview process duly. Looking at the recommendations of the Committee, the allegation seems to be even more valid. This is because the loss of 45 files has been treated as a trivial matter with only a recommendation to warn those responsible and issuance of a letter. On the other hand, there has been no investigation of the political influences or implications of the recruitment process. At a press conference in November 2016, the Minister did not categorically deny the accusation that the list was politicised. The Minister

only lightened the weight with the words 'political influence' by saying that the list included the requests of the parliamentarians. At that time, the appointees had to protest in front of the Prison Headquarters against the injustice faced by them. They also complained to the Human Rights Commission about the violation of their Fundamental Right. One of the main persons accused by most of the people was a former secretary to the minister.

He commented on the article published on the 'Exploration of Truth' on July 5, 2017, stating covertly that appointments would not be provided to protesters. He made the remarks six months after the report of the committee was released. What does this mean? Is the Ministry of Prisons haunted by a reality that is not even covered by this investigative report? As far as we know, these political henchmen are still haunting the administration under the authority of the Minister and they can be cited as one of the factors that make the senior officials helpless.

Therefore, those responsible cannot wash their hands by passing the blame on the Commissioner General of Prisons or several other officials in such cases. This report on the other hand does not mention the finances and time required to conduct a fresh

investigation. This may have been because the investigative scope was limited to the administrative fiasco of the incident. We can understand that, but the people need to know. This is because the money spent on repeating the interviews was not from the prison officials' finances or wealth. It was the taxpayers' money of the common man of this country. As a result, the Ministry of Prisons has suffered a financial loss. This can only be accurately measured and verified by an audit investigation. Candidates, furthermore, had to suffer due to a mistake by the officials. In reality, the money should be recovered from those who acted irresponsibly, dragging state institutions into such a debacle. The committee has not made any mention regarding this matter. In the final analysis, according to the information that is revealed through the investigation we should not be surprised even if something more than the 45 files would disappear from prison headquarters in the future.

**By Bingun mekaka and
Tharindu jayawardhana**

Lankadeepa - 28th February 2018

Bosom buddies benefit from Budget circular on luxury vehicles

The national budget circular No. 01/2016 was issued to all state institutions signed by the Secretary to the Treasury during that time, R.S.H. Samaratunge, on March 17, 2016, including instructions on sourcing vehicles. The circular stated that it would be more effective to source vehicles in accordance with the relevant circular through an operational lease instead of purchasing outright. The Cabinet laid the foundations further for a process to benefit the 'bosom buddies' of the politicians by proving the necessary approval to the Cabinet Memorandum MF / TIP / 03 / CM / 2016/31 dated 04.03.2016 presented by the Minister of Finance in line with the

budget proposals submitted by the 'Yahapalanaya' government. Sourcing vehicles through an operational lease was definitely more effective than purchasing vehicles for state institutions since it creates a better cover-up strategy for treating your confidants. All Government Institutions, including Public Enterprises, utilising funds for expenditure from the Consolidated Fund, were strictly advised to follow the Budget Circular No. 01/2016 while a completely different approach was to be adopted concerning the vehicles mentioned in paragraph 5 since these vehicles would not be of any interest to the confidants.



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Public finances drained by 65 institutions

A request was submitted for information under the Right to Information Act since it was apparent on face value that circular 01/2016 was part of a covert operation for a massively fraudulent process. Additional Director General of the Budget department G.M.G.K. Gunawardena, responding as the Information Officer stated that approval

has been duly granted to purchase vehicles under the leasing facility for the 65 state institutions. However, all documentation related to this circular, including this circular itself, become duplicitous documents since no vehicles were purchased for the 65 state institutions, although 'purchasing vehicles' has been repeatedly mentioned in several places. At first glance, it seems that the government has leased the vehicles since it could not afford to purchase vehicles

outright. If that was the case there does not seem to be an issue considering the vehicle depreciation and the purchasing power of the rupee.

However, when the entire process is studied the mistake and the deception can be observed. The instructions in this circular state that cars, vans, and double cabs can be purchased on the basis of an operating lease, with different limits placed based on engine capacity, fuel consumption and the gear system. It also provides a guide regarding the price to be paid for each vehicle purchased. The price limits vary from Rs. 100,000 to Rs. 300,000 per month for the purchase of vehicles ranging from the daily operational vehicles to vehicles allocated for secretaries of the ministries. According to information we have obtained from various sources, about 350 vehicles have been purchased for 65 institutions.

If an average of Rs 200,000 is paid for a vehicle, the monthly cost for the 350 vehicles would be Rs 70 million while the annual cost would be Rs. 840 million. Therefore, based on the average cost a sum of Rs 4.2 billion of public funds would be utilised by the end of 5 years. While the expense indicated is an estimate based on assumptions, the actual cost may be less or more than the value mentioned

(Rs 200,000). At the end of five years, 65 state institutions will wipe their slate clean, while the common man of the country has been saddled with an unfortunate burden.

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Investigating further into the explored material reveals information regarding four vehicles purchased for Board members of state institutions and we will focus only on the vehicle purchased for its Chairperson. A Toyota Fortuner was purchased for the chairman and when compared to the current market prices, the price of a Fortuner at that time would have ranged from Rs. 6 million to 8 million. Prices in that range are based on the year of manufacture, the subcategory and the vehicle. The vehicle was obtained on a five-year lease agreement. The agreement is valid until November 2022 and during that period it had been agreed to pay Rs. 200,000 per month for 60 months totalling to 12 million. Therefore, a sum of nearly Rs. 4 million has been paid more than the purchase price of the vehicle. Maybe the learned pundits would have said that it was worth it since the maintenance of the vehicle is included in the agreement while the interest was calculated in an extraordinary manner as per the instructions given in National Budget Circular No. 01. However, the

real story is very different. Although instructions were given in this circular to lease vehicles since the government was faced with a financial crisis, the instructions given for the procurement process exposes the absurdity of this argument. The title of the circular given is 'Purchase of vehicles on lease'. However, this does not mean that the relevant state institutions will purchase a vehicle directly through a leasing company according to their needs based on the circular. The circular guidance on the procurement process, which has been approved by the Cabinet and signed by the Secretary to the Treasury, Samaratunga, directs

state institutions to procure the vehicles from third parties. The circular, which instructs to purchase vehicles on lease, have deviated from the instructions given for the procurement process by stating to procure vehicles on lease with the condition to return them to the supplier at the end of five years. This has covertly paved the way for the politicians, their allies, some high-ranking officials, the opportunity to enjoy these luxurious vehicles after five years. The cat has jumped out of the bag with this bizarre instruction.

Under this scheme, the State Board, as mentioned in the previous example,



has paid Rs. 12 million in five years at Rs 200,000 a month. In addition, Rs 45 was paid for every additional kilometre beyond 3000 km used per month. Therefore, after spending more than 40 million on the four vehicles, they have to be handed over to the supplier by November 2022.

We can safely assume that there would be a need for 350 vehicles yet again after November 2022 for the 65 state institutions that purchased vehicles on this basis. Close friends would walk away with 350 luxury vehicles without any payment.

The ploy to secure luxury vehicles for the confidants can be clearly understood when reading the fifth paragraph of the circular. The fifth paragraph states that ambulances, backhoes, dozers, gully bowers, lorries, motorcycles and other special-purpose vehicles do not need to be purchased under an operating lease facility. Obviously, no one wants to lease out a gully bowser to the government for five years and take it back to use it at home. The government that does not have the finances to purchase vehicles outright has allocations for these types of vehicles. It is clear that the qualified suppliers according to the circular are not just ordinary people but crooks with subversive political connections.

Citizen's responsibility

The Secretary to the Treasury has issued this circular as part of his routine duties. The Cabinet has also approved this process. This procurement proposal is included in the national budget proposals. It is now the responsibility of the citizen to identify this fraudulent network. It is the duty of the citizen to identify the officials involved in this sinister theft, from the Minister of Finance of the time to the officers involved in the budgeting process. While the estimated numbers can vary a little, we need to question some elementary matters. A country that is faced with an economic downturn does not change the vehicle fleet of the state institutions every five years. State institutions can surely use their vehicles for ten years in a country where the public has used reconditioned vehicles driven for at least three years in Japan and imported to Sri Lanka for 15 to 20 years without any hassle. In order to do so, these vehicles had to be leased directly through the leasing companies. The question that needs to be asked is why did they not purchase directly from the leasing companies. The result is that the need for vehicles will resurface after five years. As the Secretary to the Treasury has pointed out in his circular, this is surely a more



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cost-effective method for vehicle suppliers and not for the citizens. It would have been more honourable if the vehicles had been procured from the relevant institutions on a monthly rental basis. In this system, the driver is employed by the government and the salary and allowances are paid, but if the vehicle was rented, the driver will also be paid by the supplier. The government has mentioned that they do not have money, but still, they have opened the Consolidated fund to provide allocations for the institutions that draw from it. A separate recurrent expenditure subject has been created and it has been stated that the relevant expenditure is considered as an

operating expenditure since it does not contribute to any assets for the government. Responding to our query made using the Right to Information Act, the Department of National Budget stated that since these vehicles are not assets of government institutions, depreciation has not been considered. Although there may be depreciation of assets at the end of five years, this system has made it zero value with no assets in the hands of the government at the end of five years

By Lasantha de Silva

Anidda News paper - 2020.12.21

A consumer battle won

with the strength of the right to information

The story behind the control price of bottled water

A social activist was able to successfully protect the right of the consumer regarding bottled water using the Right to Information Act (RTI), another significant milestone in the struggle for citizens' rights. Suresh Kumar, a social activist with extensive experience in meditating for citizens' rights, achieved this significant victory over an issue related to the sale of bottled water, which is currently in high demand in the country.

The sale of bottled water across the country has increased sharply in recent years, but numerous consumer issues remain unresolved. One of the major concerns was that there was no indication of an accepted common price marked in the sale of water. Therefore, similar-sized water bottles

were sold at varying prices throughout the country. There were several consumer complaints about this in the past, but no one paid attention.

The first step taken by Suresh Kumar in this regard was to submit an RTI application to the Consumer Affairs Authority inquiring about the prevailing prices for bottled water.

The Consumer Affairs Authority replied on 12.12.2017, regarding the application received by them on 21.11.2016. The Consumer Affairs Authority replied stating that they have not set a maximum retail price for bottled water since it did not fall under the category of beverages requiring a fixed price under Article 18. Therefore, they went on further to say that no



information was available regarding the prices of bottled water used for drinking purposes.

Undeterred by the reply or the lack thereon, Suresh continued in his pursuit for action. Accordingly, his focus shifted to the Ministry of Health and during the latter part of 2016, he engaged with the ministry regarding this matter. This was because water products are registered with the Ministry of Health. However, the Ministry of Health at the time refused to provide any information.

When the Right to Information Act was enacted as the law of the land, he went back to the Ministry of Health with his inquiry. This time he received a reply stating that there were 121 water companies registered as water producers under the Ministry of Health

at the time. Two of these companies were engaged in exporting water. However, price regulations were not implemented. Nevertheless, the information obtained was extremely useful to Suresh in his journey to secure consumer's rights.

Accordingly, he contacted the Consumer Affairs Authority again with all the information in his possession at the time. The Director of Human Resources and Administration of the Consumer Authority, M.V. Rupasinghe, initially contacted him. Subsequently, Suresh was referred to an officer in charge of control prices.

There were lengthy discussions and Suresh's main rationale was that the primary responsibility for overseeing the price regulation rested with the Consumer Affairs Authority.

However, the Consumer Affairs Authority stated that they were only monitoring the issues related to the date of expiry and exposure of plastic bottles to the sun.

The Authority was of the view that it could not control prices, since a control price was not imposed. Suresh's proposals were highly appreciated and officials said they would take immediate action in this regard without further delay.

That statement was reasonably satisfactory, but Suresh did not stop there. Accordingly, he also addressed the Ministry of Urban Development and Water Supply, which was responsible for monitoring the country's water resources. They stated that while water catchment areas were under their purview price regulation for the sale of water was not within their purview and responsibility.

With a firm conviction that water is a basic human need and a natural resource, Suresh continued his journey to secure this basic right.

Gathering all the information related to the issue, Suresh's ultimate goal was to file a Fundamental Rights case. He was preparing for litigation by making use of the opportunity available under the Right to Information Act. Although he was not an expert in law and legal matters, Suresh was convinced that there was a basis for

pursuing legal action. Suresh argued that since water is a basic human need and a natural resource and if a price is set for it, it must be a fair price, and the responsibility of implementing a fair price rests with the state. Suresh continued his pursuit and the next step was to gather all relevant information. Suresh was involved in this struggle ably assisted through the provisions of the RTI that enabled him to gather vital information and on the 30th of September, a piece of good news related to Suresh's struggle was aired on local television channels.

The news stated that the sale of water in the country was placed under price control by a gazette notification issued on 28.09.2018.

Suresh cannot still confirm whether this was a direct result of his struggle or not. However, when you consider the timeline and the sequence of events, it is not difficult to identify Suresh Kumar as a decisive force behind this victory. It is also very clear that the Right to Information Act was the critical tool in the hands of Suresh in his struggle to secure and promote consumer rights.

By C. Dodawatta

Dinamaina - Pawatha - 10th October 2018

A number of crucial decisions
issued by the Right to Information
Commission

Basheer Segudawood v. Presidential Secretariat

RTI Appeal (In person)/22/2017 (*Order adopted as part of a formal meeting of the Commission on 16.10.2017*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. Basheer Segudawood

Notice issued to: Secretary to H.E. the President (Designated Officer)

Appearance/ Represented by: Mr. Basheer Segudawood

Mrs. Luckshmi Jayawickrema, Additional Secretary, (Legal)
Presidential Secretariat

| | |
|------------------------------------|-------------------------|
| RTI request filed on | 08.02.2017 |
| IO responded on | 02.03.2017 & 20.03.2017 |
| First Appeal to DO filed on | 27.03.2017 |
| DO responded on | 25.04.2017 |
| Appeal to RTIC filed on | 08.05.2017 |

Brief Factual Background

In this case, the Appellant, Mr Segudawood had filed an information request in relation to the report of a Commission of Inquiry into the death of the Founder & Former Leader of the Sri Lanka Muslim Congress, Mr. M.H.M. Ashraff who had been killed in a helicopter accident in 2000. President Chandrika Kumaratunga (the President at the time) had established a Commission to inquire into the circumstances of Mr. Ashraff's death.

The Appellant (a Member of Parliament at that time) had made a speech in Parliament in January 2001 requesting that such a Commission should be appointed to inquire into the said accident. He had requested that the State intelligence services be employed to find out the truth about what led to Mr. Ashraff's death. Following the appointment of the Commission of Inquiry by the President, the Appellant had again spoken in Parliament requesting that the

Commission report on its investigation into the death of Mr. Ashraff be made public. However there was no response to those requests.

The Appellant stated that at that time there was no Right to Information available for Sri Lankan citizens and that therefore he had no means of following up on his request with the relevant authorities. After Act, No 12 of 2016 was enacted, the Appellant had sent a RTI request dated 08.02.2017 to the Presidential Secretariat requesting the release of the Presidential Report of Inquiry into Mr. Ashraff's death. By letter dated 02.03.2017 the Information Officer at the Presidential Secretariat stated that the file related to the Report had been sent to the Department of National Archives.

The Appellant was subsequently sent another letter on 20.03.2017 by the Public Authority stating that his information request was rejected as the information could not be found. The Appellant then appealed to the DO, the Secretary to H.E. the President on 27.03.2017. By response letter dated 25.04.2017 the DO had informed the Appellant that they could not find the information he requested as the contents of the information request were more than twelve years old, and therefore his request was rejected. The Appellant then appealed to the RTI Commission on 08.05.2017.

Matters Arising During the Hearing

Mrs. Jayawickrema, Additional Secretary (Legal) of the Public Authority (PA), sought permission from the RTI Commission to represent the Secretary to H.E. the President, since he was engaged elsewhere. Permission was granted.

The Appellant stated that he expects the Government to release the Report. Further, he stated that the Inquiry Commission headed by (former) Justice L.K.G. Weerasekera was said to have been appointed by Government Gazette of 1st January 2001, but having gone through all the gazettes, he could not find any statement of such appointment. Neither could he find any information related to such at the National Library and the National Archives. The Appellant stated that there were many news reports at the time the inquiry report was concluded that the report was handed over to the President and that, on the response furnished to him by the Public Authority, it appeared that the said Public Authority actually had the file pertaining to the commission in its possession until 2007.

Called upon to respond, Mrs. Jayawickrema clarified that the Information Officer (IO) had taken efforts to trace the said inquiry report. The IO had brought down the file relating to the said incident from the archives and examined it, but did not find the report in the file. There was only one 'minute' which said that the relevant file pertaining to the commission had been sent to the archives on 12.01.2007. The report itself was not available at the Presidential Secretariat. Therefore, the Public Authority had been unable to comply with the Appellant's request.

Further, the Written Submissions of the Public Authority dated 18.08.2017 and addressed to the RTI Commission stated that according to Section 7 (3) (a) of the RTI Act, No. 12 of 2016

concerning the preservation of records, in the case of those records already in existence on the date of coming into operation of the Act, the said records must be preserved for a period of not less than 10 years from the coming into operation of the Act. In this instance, the information asked for was more than 16 years old. The Public Authority was unable to provide the same.

Mrs. Jayawickrema submitted that the Appellant had not asked for the Gazette of January 1st, 2001 in his information request even though he had stated he was unable to find it. She noted that it should be in the said file now in the possession of the National Archives.

Order

On the facts as presented before us, examination of the relevant file now in the custody of the National Archives appears to be imperative. Purportedly the report is now missing in that file. Consequently, it has become necessary to add the National Archives as a party to this matter.

Section 11 of the National Archives Law No. 48 of 1973 (as amended) states that,

'It shall be the duty of the Secretary of any Commission of Inquiry appointed under the Commissions of Inquiry Act or any Committee of Inquiry appointed by a Minister to deposit all records relating to such Commission or Committee, as the case may be, at the National Archives within three months of the rendering of the final report of such Commission or Committee.'

According to Paragraph 2 of the Regulations framed under Section 16 (d) of the National Archives Law pertaining to public access to public archives and gazetted on 5th December 1978,

'Public Archives accrued to the National Archives from any public office Named in the Second Schedule to the Law or in terms of Section 10, 11, or 18 of the Law, shall be closed for public inspection until the lapse of 30 years after their creation, or until the lapse of such time that they have been closed for public inspection by the public office creating such records.'

Consequently the National Archives is noticed to be present at the next date of hearing. The National Archives is directed to bring the said file in issue to be examined before the Commission at the next hearing.

The Appeal is adjourned.

Next date of hearing is November 20th, 2017.

RTICAppeal (In person)/22/2017 (Order adopted as part of a formal meeting of the Commission on 20.11.2017)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selva Thiruchandran

Appellant: Mr. Basheer Segudawood
Notice issued to: Secretary to H.E. the President (Designated Officer)
Director General, Department of National Archives required to be present in terms of Section 15(a) of the RTI Act, No 12 of 2016

Appearance/ Represented by: Mr. Basheer Segudawood
Mrs. Luckshmi Jayawickrema, Additional Secretary, (Legal)
Presidential Secretariat
Dr. N.T. Rupesinghe, Director – General, Department of National Archives
Ms. Dilini Liyanage, Assistant Director, Department of National Archives

Matters Arising During the Hearing

The Department of National Archives was present at the hearing subsequent to being noticed by the Commission. The Director – General of the Department of National Archives, Dr. Nadeera Rupesinghe informed the Commission that she had procured the files relating to the Report of the Commission of Inquiry on Mr. M.H.M. Ashraff's death for the perusal of the Commission. The files containing the papers relating to the Commission of Inquiry had been sent to the Department of National Archives on 24. 01. 2002 by the Secretary of the Commission Mr. G.K.G. Perera, in accordance with the requirement in Section 11 of the National Archives Law No. 48 of 1973 (as amended).

Section 11 states as follows;

'It shall be the duty of the Secretary of any Commission of Inquiry appointed under the Commissions of Inquiry Act or any Committee of Inquiry appointed by a Minister to deposit all records relating to such Commission or Committee, as the case may be, at the National Archives within three months of the rendering of the final report of such Commission or Committee.'

However, the said files did not contain a copy of the relevant Commission of Inquiry report.

In addition, the Department of National Archives had received from the Presidential Secretariat, files containing official documents of former President Chandrika Bandaranaike Kumaratunga (hereafter referred to as the 2007 files) on 18.05.2007. These files include documents relating to the Report but not the actual Report itself. The Department of National

Archives had maintained an accession file where it listed the documents that was received by the Department from the Presidential Secretariat.

Representing the Public Authority (PA) cited in the Appeal, Mrs. Luckshmi Jayawickrema stated that it has been mentioned in the records of the PA that the particular file relating to the Commission of Inquiry had been sent on 12.01.2007 by the PA to the National Archives. The PA does not keep copies of the file but only records the file number.

On examination of the 2007 file consequent to this appeal being listed for hearing before the RTI Commission, the Director –General of National Archives pointed out that it had been discovered that the file only contained 3 pages of the Report (page 69, 70 and 71) which related to concluding recommendations of the Commission of Inquiry Report relating to compensation to be paid to certain individuals.

The 2007 file which formed part of the former President's papers, also contained the following documents:

1. Letter dated 13.08.2002 signed by then President to the then Commander of the Airforce which indicated that the following two Reports were annexed
(a) Report of the Presidential Commission of Inquiry into Mr. M.H.M.Ashraff's death
(b) Report of the Presidential Commission of Inquiry on the attack that took place at the Air Force Base and Bandaranaike International Airport.
2. Another letter dated 13.08.2002 signed by then President to the then Minister of Defence Mr. Thilak Marapana attaching the Commission of Inquiry Report and requesting him to initiate follow up action in pursuance of the findings

The then President had noted in the letter to the Minister of Defence that she would be taking action to publish the Report of the Commission of Inquiry as a Sessional Paper.

During the proceedings, the Director – General of the National Archives brought a substantial Minute on the Report in the 2007 file to the attention of the Commission. The Minute in the file (which had been maintained by the Presidential Secretariat) dated 12.08.2002 and made by Additional Secretary, CPA, Presidential Secretariat, noted the following:

1. The above Report was handed over to Her Excellency on 01.08.2002. The findings of the Report indicate that the crash was not a result of any wilful act. It was not due to any explosion or any explosive device. The crash was a result of act or acts of omission, lack of due diligence and duty of care amounting to negligence by the service crew. Crew identified as (names).
2. A Copy of the Report has been sent to Mrs. Manel Abeysekera to be handed over to the HP (indecipherable). (Minute made in September 2002)
3. Extract of Pages, 69, 70 and 71 and recommendation of a sum of Rupees 8 million to be provided as compensation to certain parties.

The Director- General submitted that the Department of National Archives is not empowered to provide copies of the documents in issue to the public under the National Archives Law.

The Director – General of National Archives further informed the Commission that the documents listed as handed over to the Department by the Secretary to the Commission on 24.01.2002 were deposited in the National Archives. There were 64 files some of which run into over 300 pages, of which 5 files were not described.

Order

The Director – General of the Department has submitted that the files relating to the said information request for the Commission of Inquiry report on the late SLMC leader Mr. M.H.M. Ashraff’s death are confidential records which officers of the Department themselves are not allowed to look at in terms of the law and in regard to which, ordinarily, the Department would seek formal permission from the Presidential Secretariat or the Secretary of the Commission of Inquiry to examine the said records or to make the same available to a member of the public.

Section 4 of the RTI Act, No.12 of 2016 states,

“The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.”

In this regard, it is clear that the RTI Act prevails over and above the clauses relating to confidentiality in the National Archives Law and related Regulations.

It is a pertinent factor that the absence of the Report of the Commission of Inquiry in regard to this matter is of considerable public interest. Further, this Commission is not apprised of an exception to the release of information that has been raised by the relevant Public Authority in this matter in terms of Section 5 of the RTI Act. The reason put forward by the Public Authority regarding its inability to provide the requested information to the Appellant by letter dated 20.03.2017 as well as through its Written Submissions to this Commission dated 18.08.2017 is limited to the response that the information could not be provided as it could not be found.

Accordingly and in the light of the overriding public interest in this matter pertaining to a request for information relating to a Report of a statutory inquiry body established under the Commissions of Inquiry Act, No 17 of 1948 (as amended), this Commission orders the release of the documents as detailed hereinafter;

- a) A copy of the substantial Minute dated 12.08.2002 made by the Additional Secretary, CPA, Presidential Secretariat, summarising the findings of the Commission of Inquiry in this case, as marked in the file that was sent to the Department by the Presidential Secretariat on 18.05.2007;
- b) A copy of the 3 pages of the Commission Report which is the subject of this information request, relating to recommendations in regard to the payment of compensation to certain persons that was contained in the aforesaid file.

The Department of the National Archives is the custodian of ‘all records’ of Commissions of Inquiry under the Act of 1948 (as amended) read with Section 11 of the National Archives Law No. 48 of 1973 (as amended). The Report of such a Commission would constitute a primary ‘record’ under and in terms of the said law. Hence the Department may properly call upon the depositing body or individual (effectively the Secretary of such a Commission or Committee in terms of the relevant statutory provision) to ensure that the Report of the Commission or Committee is sent to the Department in accordance with the law. If there was

non-compliance with that request, an official notation of the same by the Department would have been useful in clarifying details as to the whereabouts of a particular Report.

The observance of a similar due diligence requirement by the Public Authority, the Presidential Secretariat in forwarding the relevant files of former President Chandrika Kumaratunga to the Department of the National Archives in 2007 would have been helpful. Indeed, as has become apparent in proceedings before this Commission, the very date/s of the forwarding and receipt of the said files by the two state entities are at odds with each other. The Public Authority has stated on record before us that the file was handed over on 12.01.2007 while the Department of the National Archives has affirmed during this hearing that it was received by the said Department on 18.05.2007. There is therefore, a clearly discernible lack of clarity in regard to this matter.

In the circumstances, the Department is directed to ascertain from the Secretary of the Commission of Inquiry as to whether the Report of the said Commission was handed over to the Department by him along with the rest of the papers contained in the file on 24.01. 2002 and is also directed to check the contents of the relevant undescribed files to ascertain if the Commission of Inquiry Report is contained in those papers.

A further order is issued to release the ‘list of documents’ that were contained in the file sent by the Secretary to the said Commission of Inquiry to the Department of National Archives on 24.01.2002.

Next date of hearing: 16/01/2018.

The Appeal is adjourned.

RTI Appeal (In person)/22/2017 (Order adopted as part of a formal meeting of the Commission on 16.01.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
 Dr. Selvy Thiruchandran
 Justice Rohini Walgama

Present: Mr. Piyathissa Ranasinghe, Director – General

Appellant: Mr. Basheer Segudawood
Notice issued to: Secretary to H.E. the President (Designated Officer)
 Director General, Department of National Archives required to be present
 in terms of Section 15(a) of the RTI Act, No 12 of 2016

Appearance/ Represented by: Mr. Basheer Segudawood
 Dr. N.T. Rupesinghe, Director – General, Department of
 National Archives

Ms. Dilini Liyanage, Assistant Director, Department of National Archives

Matters Arising During the Hearing

It was recorded that Mrs. Luckshmi Jayawickrema, Additional Secretary, (Legal) Presidential Secretariat had informed the Commission of her inability to be present on this date in advance and had requested a re-fixing of the matter at the discretion of the Commission. Since the hearing on this date was to ascertain the steps taken by the Department of the National Archives in regard to locating the Commission of Inquiry report on the late SLMC leader Mr. M.H.M. Ashraff's death (2002), the said hearing was proceeded with.

The Director – General of the National Archives Department, Dr. Nadeera Rupesinghe informed the Commission that consequent to the National Archives complying with the Order of the Commission on the previous occasion, (viz on 20.11.2017), the National Archives had written to the Secretary to the Commission of Inquiry on Mr. M.H.M. Ashraff's death, Mr. G.K.G. Perera on 08.12.2017 (with copy to the RTI Commission), requesting information as to the handing over of the said Report to the National Archives. By letter dated 24.12.2017, the said Secretary to the Commission of Inquiry on Mr. M.H.M. Ashraff's death, Mr. G.K.G. Perera had responded to the Department of National Archives categorically stating that he had personally handed over the Report to the Department of National Archives on 24.01.2002. He further stated that, since he was aware of Section 11 of the National Archives Law No 48 of 1973, he had followed the said law in relation to the above mentioned report and that along with the 64 other files he had handed over the Commission Report to the Department of National Archives on 24.01.2002 and that it had been over 15 years since such handing over happened and there should be letters and/or documents showing the handing over and receipt of such documents. He also stated that he had handed over the final commission report along with copies of the session reports to the Presidential Secretariat and that he did not know the reason as to why the final three pages of the report were with the Department of National Archives but not the rest of the pages.

Dr. Rupesinghe informed the Commission that, notwithstanding the said letter, the list of accession of the documents handed over by the Secretary to the Commission at the time did not contain a reference to the said Report. A copy of the letter was handed over to the Commission and noted of record.

The Director General also informed the Commission that she had gone through the first five undescribed files handed over by the Secretary to the Commission.. She stated that those files only contained copies of affidavits signed by people who had given evidence to the Commission. The files were handed over to the RTI Commission for perusal. The Director-General of National Archives opined that as the list of documents had been handed over to the Department in January 2002 but the Report had been presented to the President in August 2002, therefore quite possibly in January, the said Report had not been in existence.

The Appellant stated that it was imperative that the original Report be found and that a copy of the Report would be lacking in credibility. He submitted that due to the existing state of affairs, it was doubtful if the Report or even a copy thereof could be located. He requested the Commission to enter into a decision that the Full Report did not exist. He noted that the three

pages that were provided to him at the previous hearing were taken from the files sent by the Presidential Secretariat and that it was practically impossible for pages 69, 70, and 71 of the Report to exist while Pages 1 to 68 were missing.

The Director General of the National Archives stated that the fact of the letter by the Secretary to the Commission of Inquiry stating that he had handed over the Report to the National Archives should be considered in tandem with the accession list of the documents received that the Archives Department maintained upon the handing over of the said documents and which did not contain a reference to the said Report. The Director- General of National Archives also mentioned that she had not gone through all sixty four (64) files but, as directed by the commission at the last hearing, had examined only the undescribed five (5) files.

The Appellant further brought to the notice of the Commission that he could not locate the Gazette Notification regarding the appointment of the Commission of Inquiry even though he had searched in the National Archives, and the Parliament Library. Upon perusal of the file provided to the National Archives by the Presidential Secretariat as part of President Kumaratunga's files the said Gazette Notification dated 22.08.2001 was found. A further letter dated 27.09.2001 was found written by the Commissioner Justice L.K.G. Weerasekera and addressed to the then President requesting an extension of time for the Commission for a period of three months from the 23rd of October 2001 due to it being necessary to obtain the evidence of 25 more important witnesses.

Order

It is of grave concern that a Presidential Commission of Inquiry Report is purportedly not in any of the files of the appropriate Public Authorities. In this instance, the Report requested concerns the sudden death of the late SLMC leader Mr. M.H.M. Ashraff (2002),

It is indisputable that, on the handing over of the relevant documents by the Secretary to the Commission on 24.01.2002, the Department of the National Archives as the final depository of Commission of Inquiry Reports under Section 11 of the National Archives Law No. 48 of 1973 (as amended) was under a statutory duty to have obtained the Report from the relevant Authorities and retained the same in the custody of the National Archives which is indeed the scope and object of the statutory duty laid upon the Public Authority. The Report itself is the primary document contemplated by that provision. In the circumstances, there arises a serious dereliction of a statutory duty especially in a context where the Department is insistent, on the submission of the Director General that the said Report was not handed over to the department.

It was noted in the previous Order by us following the hearing of this matter on 20.11.2017 as follows;

'The very date/s of the forwarding and receipt of the said files by the two state entities are at odds with each other. The Public Authority has stated on record before us that the file was handed over on 12.01.2007 while the Department of the National Archives has affirmed during this hearing that it was received by the said Department on 18.05.2007. There is therefore, a clearly discernible lack of clarity in regard to this matter.'

The Director General explained at the hearing that when considerable documents are handed over to the Archives, the date on which the documents are handed over sometimes differs from the dates that the franchise form is signed by both parties. In this instance, more than three hundred files were sent to the Archives and therefore, a few weeks are taken to check them in the presence of an official from the institution that is sending the documents. When that process has been completed, a franchise form is signed by both parties to the effect that the documents have been handed over to the Archives. Therefore the date of handover and the date on the franchise form for the deposition and acceptance of the documents may differ. The valid date of accrual is then the date on which the franchise form is signed.

Regardless of the same, it must be emphasized that the National Archives is the designated final depository of such Commissions of Inquiry Reports. In this instance the Secretary of the said Commission has personally stated that he had handed over the Commission Report to the National Archives on 24.01.2002. This Commission has been requested by the Director General of the National Archives to note that the accession list of the relevant documents received by the Archives from the Secretary to the said Commission on that occasion does not include a reference to the said Report. However, it is a matter of doubt as to where the truth lies.

In any event, this Commission has two conflicting versions of the matter before us. It is also relevant that the Director-General of the National Archives had not gone through all the 64 files in the custody of the National Archives but was only asked to go through the undescribed 5 files at the last hearing.

Consequently and in view of the gravity of the matter before us, we direct the following steps to be taken;

- a) The Director-General of the National Archives is instructed to meticulously examine the contents of all the documents in all the files handed over by the Secretary to the Commission on 24. 01. 2002, in order to ascertain if the Report or a copy thereof can be located.
- b) This direction is subject to the caution that if the National Archives maintains that the Report or a copy thereof is not in its possession, the Director General will be required to affirm the same under oath as provided for in Section 15 (b) of the RTI Act, No 12 of 2016
- c) On the recommendation of the Director – General, certified copies of the contents of the file sent by the Presidential Secretariat to the National Archives on 18.05.2007 will be brought before this Commission within the course of one week from the date of this hearing in order to examine its contents, given that the same may disclose information as to the whereabouts of the said Report. This will be limited to the perusal of the Commission.
- d) Based on the contents of the said file, the relevant Public Authorities will be required to ascertain from other Public Authorities to whom copies of the said Report had been sent, as recorded in the relevant files, as to whether the said Report remains in their possession;

Upon completion of all the steps taken above and if the whereabouts of the Report or a copy thereof is still unascertainable, this Commission determines that it is appropriate to authorise an inspection of all the relevant files relating to the said matter in the custody of the National Archives under Section 15 (c) of the RTI Act, No.12 of 2016. Section 15 (c) of the RTI Act states,

15. For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power:

(c) “to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act;”

In response to the submission of the Director- General of the National Archives that perusal of the files is generally only consequential to the approval of the Presidential Secretariat according to the relevant Regulations, it is strictly noted that Section 4 of the RTI Act, No.12 of 2016 categorically affirms that the RTI Act supersedes previous contrary written law. As such there is no such requirement in the RTI Act to obtain permission from any Public Authority to inspect files when the Commission determines that such inspection is required under and in terms of Section 15 (c) of the Act. It is noted that the Director General had been reminded of this fact at the previous hearing (viz; 20.11.2017).

The Appellant is furnished with a copy of the letter dated 24.12.2017 sent by Mr. G.K.G. Perera, Secretary to the Commission of Inquiry on Mr. M.H.M. Ashraff's death informing the Department of National Archives that he had handed over the report to that Department on 24.01.2002.

The Appellant is provided with a copy of the gazette dated 22.08.2001 which relates to the appointment of the said Commission of Inquiry as located in the files of former President Chandrika Bandaranaike Kumaratunga sent to the National Archives. A copy of the letter addressed to the then President requesting extension of time for the Commission of Inquiry by Commissioner Justice L.K.G. Weerasekera in order to obtain the evidence of 25 more important witnesses is also provided to the Appellant on direction of the Commission.

Next date of hearing: 27/02/2018.

The Appeal is adjourned.

RTICAppeal (In person)/22/2017 (Order adopted as part of a formal meeting of the Commission on 27.02.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Mr. S.G. Punchihewa
Ms. Kishali Pinto-Jayawardena
Dr. Selvy Thiruchandran

At the RTI Commission of Sri Lanka

Justice Rohini Walgama

Present: Mr. Piyathissa Ranasinghe, Director – General

Appellant: Mr. Basheer Segudawood

Notice issued to: Secretary to H.E. the President (Designated Officer)
Director General, Department of National Archives required to be present
in terms of Section 15(a) of the RTI Act, No 12 of 2016

Appearance/ Represented by: Mr. Basheer Segudawood
Dr. N.T. Rupesinghe, Director – General, Department of
National Archives
Mrs. Luckshmi Jayawickrema, Additional Secretary, (Legal)
Presidential Secretariat

Matters Arising During the Hearing

At the outset, Mrs. Luckshmi Jayawickrema Additional Secretary, (Legal) Presidential Secretariat informed the RTI Commission that the Presidential Secretariat had been successful in obtaining a certified copy of the Presidential Commission Report of Inquiry into the late SLMC founder Mr. MHM Ashraff's death from the Criminal Investigations Department (CID). This was consequent to Mrs. Jayawickrema having written to the Government Printer and to the CID requesting a copy of the said Report, as directed by the RTI Commission at the previous hearing.

In pursuance of Ms. Jayawickrema's written request dated 05.02.2018, the CID had sent a copy of the Report in its possession which was received by the Presidential Secretariat on 14.02.2018. The said copy of the Report was produced before the RTI Commission by Mrs. Jayawickrema. The Report has been certified as a true copy on 26.03.2003 by the then Senior Assistant Secretary to the President, W.J.S. Karunarathne.

Mrs. Jayawickrema noted of record the then President Mrs. Chandrika Bandaranaike Kumaratunga had sent the Report to the Government Printer for publication as a Sessional Paper at the time even though the Report had not been published.

The Appellant expressed his gratitude to the RTI Commission for its assistance in bringing the Report to public knowledge.

Order

A copy of the Report requested by the Appellant has now been obtained by the PA and provided to the Commission. The Appellant will be provided with a copy of the Report to be collected from the RTI Commission Office on 02.03.2018.

The Appeal is hereby concluded. We record our appreciation of the assistance provided by the Public Authorities in this matter.

At the Right to Information Commission of Sri Lanka

H.C.S. de Zoysa Siriwardena v. Sri Lanka Army

RTIC Appeal/89/2017 (*Heard as part of the meeting of the Commission on 06.11.2017*)

Acting Chairperson: Ms. Kishali Pinto-Jayawardena
Commission Members: Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer) and Brigadier
A.W.M.P.R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by: Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army (Appellant)
Major General A.W.M.P.R. Seneviratne, Information Officer, Sri Lanka Army
Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army
Captain W.H.S. Soysa

The Appellant was present at the hearing. The Public Authority was represented by Major General A.W.M.P.R. Seneviratne (Information Officer), Major R.D. Uduwilaarachchi (Legal Officer) and Captain W.H.S. Soysa.

In this case, the Appellant had requested the following information relating to an investigation conducted by the special court of the Sri Lankan Army (the Public Authority) in relation to the sexual abuse of the Appellant by Major General (AAL) R. P. Rajapathirana, RSP USP, by an information request dated 02.05.2017:

1. Certified copies of court summons for 01.08.2014 issued to conduct the initial investigation
2. Certified copies of the hand written initial investigation report of the Court.
3. Certified copies of observations and conclusions
4. Certified copies of related documents
5. Certified copies of Conclusion arrived at by the Commander of the Army
6. Since in the initial investigation court legal officers were also witnesses, the information/ qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army.

Responding to the information request by the Appellant, the Information Officer (IO), Major General A.W.M.P.R. Seneviratne, by letter dated 12.05.2017 had directed the Appellant to make a request to her immediate supervisor, and (failing which) to the Commander of the Army in order to obtain the requested information. Upon the receipt of the letter from the IO, the Appellant had forwarded her information request to her supervising officer on 14.05.2017. Having received no response from the supervising officer, the Appellant had then filed an appeal by letter dated 05.06.2017 to the Designated Officer (DO), the Commander of the Army. The

DO had not responded to the appeal. Thereafter, the Appellant had appealed to the RTI Commission by letter dated 28.08.2017.

Upon the Commission querying as to whether or not the Public Authority (PA) is refusing access to the information requested, the IO stated that the PA was not refusing access to the information requested, but was however merely asking the Appellant to follow the internal procedure established by the Sri Lanka Army Act in order to obtain the requested information since the Appellant was still an officer of the Army and in active duty. The Appellant then directed the attention of the Commission to the numerous number of internal requests that she had made in order to obtain the above mentioned items of information since the end of the investigation on 21.07.2015. Upon the perusal of documents that the Appellant had brought with her, it became evident that she had made internal requests to obtain the aforementioned items of information by letters dated 31.01.2016, 31.03.2016, 18.05.2016, 27.10.2016 and 15.02.2017 and that all such internal requests had been futile in obtaining the information.

Order

In the instant matter, the Public Authority had not provided the information requested under the RTI Act by the Appellant and has asked the Appellant to follow the internal procedures of the Public Authority established by the Sri Lanka Army Act in order to obtain the requested information. Section 25 of the RTI Act clearly states that an information officer shall make a decision either to provide the information requested or to reject the request on any one or more of the grounds referred to in section 5 of the RTI Act, and shall forthwith communicate such decision to the citizen who made the request.

The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked. It is noted that the Sri Lanka Army is a Public Authority that comes within the purview of the RTI Act and therefore has a statutory duty to abide by its provisions. The manner, in terms of which the RTI request dated 02.05.2017 made by the Appellant had been considered, adheres neither to Section 25 nor to any of the subsections of Section 5 (1) of the RTI Act.

Therefore, noting the fact that certain items of information requested by the Appellant such as court summons etc. are information requests that are justified by principles of natural justice, the PA is directed to reconsider the information request of the Appellant dated 02.05.2017 and to inform the Commission of its decision, as required by Section 25 of the RTI Act, either to provide the information requested or to reject the request on any one or more of the grounds referred to in Section 5 of the RTI Act, when the matter is taken up at the next hearing on 27.11.2017. The matter relating to copies of adverse reports against the Appellant requested by the Appellant in another information request which is also dated 02.05.2017 will also be heard at the next hearing on 27.11.2017.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Heard as part of the meeting of the Commission on 27.11.2017)

Chairperson: Mr. Mahinda Gammanpila

Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer) and Brigadier
A.W.M.P.R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by: Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army (Appellant)
Major General A.W.M.P.R. Seneviratne, Information Officer, Sri Lanka Army
Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army
Major DCDA Dissanayake, Legal Officer, Sri Lanka Army
Captain W.H.S. Soysa

The Appellant was present at the hearing.

The Public Authority (PA) was represented by Major General A.W.M.P.R. Seneviratne, Information Officer (IO), Major R.D. Uduwilaarachchi, Legal Officer, Major DCDA Dissanayake, Legal Officer and Captain W.H.S. Soysa.

Pursuant to the order given by the Commission at the first hearing, the PA had provided all items of information except Item Nos. 2 and 4 of the original information request, namely, certified copies of the hand written initial investigation report of the Court and certified copies of related documents.

With regards to Item No. 2, i.e. certified copies of the hand written initial investigation report of the Court, the PA pleaded Section 5 (1) (a) of the RTI Act on the basis that the particular investigation report contains evidence provided by a number of witnesses on sensitive matters. The Appellant objected to the PA's argument and stated that the PA could apply the doctrine of severability as is provided for under Section 6 of the Act, and provide parts of the Report that did not contain sensitive information of others. However, the PA reiterated that since even the cross examination conducted at the inquiry referred to sensitive information, severability could not be applied to the document in question.

With regard to Item No. 4, i.e. certified copies of 'related documents', the PA submitted that the information asked for, is too vague. The Appellant conceded that point.

Upon perusal of the relevant documents brought by the PA, the Commission queried further in regard to Item No. 6, i.e. the information/ qualifications of the officer/s who drafted/prepared the conclusion reached by the Commander of the Army since a document affirming the details/credentials of the individuals who had drafted the document had not been produced before the Commission. The PA stated that since the Commander had signed, it was indicative of the fact that the Commander had drafted the document. It was categorically stated on record that as the Director of the Legal Division of the Sri Lanka Army, was a witness at the Court Inquiry, he had not been involved in the drafting of the document. The Commission expressed an opinion that it seemed untenable that the Commander of the Army would, himself, draft the conclusion of the inquiry.

The PA, upon the Commission's request, had brought the information requested by the Appellant pertaining to another information request dated 02.05.2017, which was also being considered at the present appeal. The Appellant had asked for the following items of information by the abovementioned information request.

1. Adverse Reports made against the Appellant.

2. Relevant policy records on adverse reports

The PA had brought two adverse reports against the Appellant and agreed to provide policy records stating the fact that such policy records were, in any case, readily available to any Sri Lanka Army personnel. The Appellant stated that there were several other adverse reports against her other than the two produced by the PA. Since the PA categorically stated that to its knowledge these two reports were the only adverse reports made against her, the Commission asked the Appellant to list the other adverse reports of which she was aware in order to assist the PA to locate such reports. The Appellant provided the names of two such adverse reports.

Order

In the instant matter, the Appellant is satisfied with the information pertaining to Item Nos. 1, 4 and 5 of her original information request dated 02.05.2017. In relation to item 2 regarding the investigation report, the submission of the PA that this will implicate other parties in a manner that may infringe Section 5 (1)(a) is noted and upheld.

The PA is directed to provide the adverse reports listed by the Appellant at the hearing and any other adverse report against the Appellant that the PA is able to locate on the assurance of the PA that it will provide such adverse reports.

The PA is further directed to revert on Item No.6 of the original information request dated 02.05.2017, i.e. the information/ qualifications of the officer/s who drafted/prepared the conclusion reached by the Commander of the Army, since it cannot be assumed that the Commander's signature at the end of the document is an indication that he, himself, drafted such document. An official document recording the drafters of the above document may be submitted at the next hearing. The PA is also directed to revert on item No 3 of the information request.

The next hearing will be on 30.01.2018 and written submissions (if any) are to be filed by both parties before 23.01.2018.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 30.01.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M.P.R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Brigadier A. M. S. B. Atapattu Director Media Sri Lanka Army

Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Hearing:

At the start of the hearing, the Appellant clarified the documents which were provided by the PA at the previous hearing. She stated that items 1, 4 and 5 had been provided to her. However they had not been authenticated by the PA. The PA agreed to authenticate the documents.

The items in issue are

2. Certified copies of the hand written initial investigation report of the Court.

3. Certified copies of observations and conclusions

6. Since in the initial investigation court legal officers were also witnesses, the information/ qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army.

The Appellant had also requested

3. Adverse reports made against her.

4. Relevant policy records on adverse reports

Although the PA was directed to file written submissions on the previous occasion before 23.01.2018 it had failed to do so. Further, it became evident that in relation to item 2 it is the mere word of the PA that the inquiry report (which is a handwritten report including the entire proceedings) affects the privacy of third parties. On being queried, the PA submitted that there was no further inquiry thereafter.

Although at the previous hearing the impression was that item 3 i.e. certified copies of observations and conclusions were provided to the Appellant, the Appellant stated that these are those arrived at, at the conclusion of the inquiry mentioned in item 2 and separate from those of the Army Commander's conclusions mentioned in item 3.

With regard to item 6 (i.e. qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army), the PA stated that the Commander of the Army will take responsibility as he has signed the said Conclusion. The PA stated that it is unable to identify the officers who wrote this as some officers have retired. Further, due to the fact that the normal division of the PA which is in charge of drafting these documents was unable to participate as the allegations were against an officer of the said division (i.e. the legal division) officer/s of other divisions carried out this duty under the supervision of the Army Commander. The PA further submitted that the general procedure is such that if the legal officer does not draft another commanding officer in accordance with the rank and seniority will draft the decision. In this particular instance a Grade II or officer of a higher grade would draft the decision. At the Battalion level the commanding officer is a Grade I officer so accordingly the decision will be drafted by a Grade I officer.

It further became evident on the submissions made by both parties before this Commission that an inquiry was held at the HRCSL subsequent to a complaint lodged with it by a witness in the Appellant's inquiry. The Appellant herself was called to give evidence and the PA submitted that although she was released from her duties for the said purpose she failed to appear before the HRCSL.

The PA submitted the adverse reports and the policy reports before the Commission.

Order:

The PA is directed to provide the adverse reports and the policy reports to the Appellant.

The Commission is generally cautious in the release of preliminary inquiry reports since it may impact the maintenance of authority and impartiality of the judiciary in subsequent formal inquiries and court proceedings. However in this instance since no such further action is contemplated based on the conclusion reached by the Commander of the Army (item 5 of the request which has been produced before the Commission and issued to the Appellant) the PA is directed to submit a copy of the hand written initial investigation report of the Court (which will include items 2 and 3 of the information request) for the perusal of the Commission along with a summary of the said report redacting the parts which may affect the privacy of third parties. Although at the previous hearing the Commission noted and upheld the PA's objection to the provision of the preliminary inquiry report, subsequent to detailed perusal of the Army Commander's Conclusion and the Appellant's continuous insistence of the grave injustice caused to her during the course of the inquiry evident in here written and oral submissions before the Commission, the Commission sees no prejudice caused to the PA in providing a copy of the inquiry proceeding merely for the perusal of the Commission in the first instance.

In relation to item 6, i.e. the qualifications of the officers who drafted the Conclusion signed by the Army Commander, the PA is directed to file written submissions including all the submissions made before the Commission today in relation to such.

The hearing will continue on 23.02.2018. The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 23.02.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. SelvyThiruchandran

Justice Rohini Walagama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Brigadier A. M. S. B. Atapattu Director Media Sri Lanka Army

Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Course of the Hearing:

At the previous hearing the PA was directed to submit a copy of the hand written initial investigation report of the Court (which will include items 2 and 3 of the information request) for the perusal of the Commission along with a summary of the said report redacting the parts which may affect the privacy of third parties. While the PA submitted printed copy of the said inquiry report (items 2 and 3), the PA requested for an extension of the period of time to submit the handwritten document which had to be located from the relevant office. The PA submitted that the content of the printed report was identical to the handwritten report. A summary of the said report redacting the parts which may affect the privacy of third parties was also submitted for the perusal of the Commission. The PA reiterated that this particular report and the summary affects the privacy of officers who gave evidence during the proceedings.

The Appellant made submissions on the fact that previous documents issued to her were not signed and sealed to her satisfaction. The PA said that it will take steps to remedy this issue and stated that the Information Officer will sign on the documents placing his seal. The seal however indicates only his designation/ rank in the within the Army (without name) as this is the manner in which the seal is designed by the PA.

Order:

Upon brief perusal of the inquiry report, it is noted that the inquiry report is in extent more than 2000 pages which the PA has reduced to 36 pages in its summary. It is further evident that during this process a lot of redaction has taken place.

The PA is directed to locate and submit before this Commission a copy of the handwritten inquiry report on 16.03.2018.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 16.03.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. SelvyThiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M. P. R. Seneviratne (Information Officer), SLA

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Brigadier A. M. S. B. Atapattu, Director -Media, Sri Lanka Army

Major D. C. D. A. Dissanayaka, Legal Officer, Sri Lanka Army

Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army

Order:

The PA handed over the copy of the handwritten inquiry report as directed on the previous occasion.

The matter is to be considered on 03.04.2018 once the hand written inquiry report is compared with the summary provided by the PA.

The appeal is adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 03.04.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Course of the Hearing:

The Commission having perused through the inquiry report, brought to the attention of the PA that the summary provided at the hearing of 23.02.2018 is an inadequate reflection of the contents of the full inquiry report. The Commission noted in particular that certain sections of the proceedings favourable to the Appellant have been omitted entirely, specifically responses by witnesses, favourable to the Appellant.

The Commission further noted that it is inclined to the release of the entirety of the evidence by witnesses that have been in favour of the Appellant. The Commission also noted that it is not clear in regard to the identity of the specific witnesses whose privacy will be affected and the basis for contending the same, according to the submissions of the PA at the previous hearings.

The Appellant submitted that the entire handwritten report be released to her as there are markings on the report made by officers of the PA which have a significant bearing on her case.

Order:

Upon comparison of the inquiry report, with the summary handed over by the PA, it is evident that the summary is an inadequate reflection of the full inquiry report. It is directed that the observations and conclusions of the inquiry report in their entirety, as well as the summary provided by the PA be released to the Appellant today.

It is noted in particular that evidence in favour of the Appellant has not been adequately represented in the summary. The PA is directed to release the full contents of the evidence of witnesses favourable to the Appellant. This includes the evidence of the 5th, 12th, 16th, 17th and 18th witnesses. The PA is further directed to prepare a list of witnesses whose privacy will be affected (as pleaded on previous hearings by the PA itself) by the release of the information along with the basis for submitting the same.

The appeal is adjourned.

Next date of hearing: 30.05.2018

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 30.05.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant – Absent

PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Major A W K A D Amarathilake, Legal Officer, Sri Lanka Army

Matters Arising During the Course of the Hearing:

The appellant was absent.

Following up on the query regarding the release of evidence by witnesses in favour of the Appellant as contained in the report, the PA submitted a letter dated 16.04.2018 by which it had cited Section 5(1)(a) of the Act as the evidence provided by and evidence in reference to two officers of the PA was said to affect the privacy of the said officers.

The PA also drew the attention of the Commission to the fact that this was information of a sensitive nature which could affect the two officers adversely.

Order:

The Public Authority is directed to obtain official confirmation by the two female officers, namely that the said officers were not in agreement to releasing their evidence or excerpts of such ongrounds of privacy.

We see no reason as to why the remainder of the inquiry report cannot be disclosed to the Appellant excluding the evidence of/ relating to the two officers.

The appeal is adjourned.

Next date of hearing: 17.07.2018

RTIC Appeal/89/2017(*Order adopted as part of a formal meeting of the Commission on 17.07.2018*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by:

Appellant – H.C.S. de Zoysa Siriwardena
PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army
Major A W K A D Amarathilake, Legal Officer, Sri Lanka Army

Matters Arising During the Course of the Hearing:

The Public Authority submitted that it had obtained official confirmation from one of the two female officers, (name withheld due to privacy reasons) to the effect that she was not in agreement to releasing excerpts of her evidence. As the second female officer (name withheld due to privacy reasons) was on maternity leave the PA submitted that it was difficult to obtain her consent and due to the nature of the present matter it was problematic to visit the Appellant at her home for the purpose of obtaining her refusal in writing.

The Appellant submitted that the qualifications of the Commander of the Army had not been provided to date in response to as the PA submitted at previous hearings for the record that the Commander of the Army himself had prepared the conclusions of the relevant inquiry in response to the Appellant's request for, the information/ qualifications of the officer/s who

drafted/prepared the conclusion reached by the Commander of the Army in relation to the inquiry.

Order:

The PA is directed to obtain the written refusal by the second female officer to the disclosure of the excerpts of the evidence provided by her by the next date of hearing and if the position of the Public Authority persists that it is the Army Commander himself who drafted the Conclusions of the instant inquiry, to revert formally on the qualifications of the Commander of the Army.

The Appeal is adjourned.

Next Date of Hearing: 31.07.2018

RTIC Appeal/89/2017(*Order adopted as part of a formal meeting of the Commission on 17.07.2018*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by:

Appellant – H.C.S. de Zoysa Siriwardena
PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army
Major A W K A D Amarathilake, Legal Officer, Sri Lanka Army

Matters Arising During the Course of the Hearing:

The PA submitted the letter by the Second officer of the PA (name withheld due to privacy reasons) who had refused consent to the provision of the evidence submitted by her.

Order:

The printed copy of the report tendered by the PA on 23.02.2018 is handed back(to the PA with the RTI Commission retaining the original hand written inquiry report) for the purpose of

redaction of the evidence given by the two officers which would include their evidence in chief, evidence in cross examination and evidence in re-examination as well as evidence given by any of the other witnesses including the Appellant which will affect the privacy of the said two officers, subject to vetting by the Commission for conformity to the RTI Act.

The PA is directed to submit the redacted document before the Commission at the next date of Hearing.

The Appeal is adjourned.

Next date of Hearing: 14.08.2018

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 14.08.2018)
Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka
Army

Appearance/ Represented by:
Appellant – H.C.S. de Zoysa Siriwardena
PA - Major A W K A D Amarathilake, Legal Officer, Sri Lanka Army
Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Course of the Hearing:

At the hearing the Appellant handed over a written submission dated 06.08.2018 requesting that a certified copy of the hand written report in its entirety be provided to her. The PA handed over the typed/ printed report to the Commission having indicated the points at which the redaction should take place. Further the PA produced a document indicating the points at which the redaction has taken place. The report is to be examined by the Commission to assess whether all points have been appropriately identified.

Next Date of Hearing: 02.10.2018

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 02.10.2018)
Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W. M. P. R. Seneviratne (Information Officer), Sri Lanka
Army

Appearance/ Represented by:
Appellant – H.C.S. de Zoysa Siriwardena
PA - Lt. Col. T A D Arampath
Col. L N P Perera

Matters Arising During the Course of the Hearing:

The PA had identified the following pages/ sections which are to be redacted.

1. Line 6 to 11 of the 1st Paragraph on Page 2 of the Printed report
2. Line 22 to 29 of the 3rd Paragraph on Page 8 of the Printed report
3. Page 105 to 107 of the Printed report
4. Line 8 to 12 of Page 14 of the Printed report
5. Pages 108 to 118 of the Printed report

The PA had further requested that when issuing the report to the Appellant, the final part of the two officers statements be removed/ redacted in order that the PA is protected against a possible future allegation by the Appellant that an incomplete report was provided during future litigation. The Appellant insisted that the handwritten report be provided to her as there may be inconsistencies between the two reports.

Order:

The Commission notes that the following lines are also in relation to the two officers who refused consent and which may impact on the privacy of the said officers.

1. Line 1 to 3 of the 3rd Paragraph on Page 8 of the Printed report
2. Line 26 to 31 of Page 9 of the Printed report

3. Line 43-45 of Page 9 of the Printed report
4. Line 19 to 22 of Page 14 of the Printed report
5. Last line on page 37
6. Page 77 Line 7-9
7. Page 155 last 3 lines

The Appellant is directed to compare the had written report with the printed report in order to satisfy herself that the one substantially corresponds to the others and to do so under the supervision of the officers of the Commission so that no part is copied electronically or otherwise by the Appellant and to note down any points at which discrepancies may arise. In the event that there are no discrepancies, the relevant points identified by the PA are to be redacted from/blacked out on the printed version and the printed version is to be provided to the Appellant.

Additional Notes:

Having compared the printed report with the handwritten report, the conclusion has been arrived at that the two reports are identical. However the Appellant submits that the annexures mentioned in the report are not annexed to the report. The Appellant insists that these annexures be provided to her she has requested all documents in relation to the report.

Further by written submission dated 04.10.2018 the Appellant submitted, that certain parts in relation to her be provided of the redacted parts as in her contention, there will be no impact on the privacy of the third party thereof.

RTIC Appeal/89/2017(*Order adopted as part of a formal meeting of the Commission on 09.10.2018*)
Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W. M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant – H.C.S. de Zoysa Siriwardena

Order:

In view of the Appellant's request that she wishes to obtain the annexures to the report which comes within the ambit of the original information request (see items 2 - certified copies of the hand written initial investigation report of the Court and item 4 - certified copies of related documents), notice is issued to the PA to appear before the Commission on 13.11.2018 to consider the same.

RTIC Appeal/89/2017(*Order adopted as part of a formal meeting of the Commission on 30.10.2018 subsequent to proceedings of 09.10.2018, 16.10.2018, 23.10.2018 and 30.10.2018*)
Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W. M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant – H.C.S. de Zoysa Siriwardena
PA - -

Matters Arising During Consideration:

The Appellant having filed written submissions dated 23.10.2018 on the matter submitted that she was willing to obtain a copy of the report without the annexures and reserves the right to obtain the documents in relation to the court of inquiry. The urgency in obtaining the report has arisen as the HRCSL inquiry (HRC 1084/2017) is to be called on 30.10.2018 and for the preparation of the said inquiry a copy of this report is required. She further reiterated that of the redacted parts certain parts in relation to her be provided as there will be no impact on the privacy of the third party.

Order:

The issuance of a copy of the printed report to the Appellant as checked by her with the redactions as identified by Order dated 02.10.2018 is directed.
The request to allow redacted portions of the said report in as much as it impacts on the privacy of those who had given evidence at the inquiry is not allowed under Section 5 (1) (a).
The printed copy and the handwritten report are directed to be returned to the PA.
The Appeal is concluded. The decision of the Designated Officer is varied to the extent provided as aforesaid.
Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

.....
Mahinda Gammampila – Chairman

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Kishali Pinto – Jayawardena – Commission Member

.....
S. G. Punchihewa – Commission Member

.....
Selvy Thiruchandran – Commission Member

.....
R. Walgama – Commission Member

Feizal Samath v. Sri Lankan Bureau of Foreign Employment

RTICAppeal(In-Person)/201/2017 -Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)-*Heard as part of the meeting of the Commission on 06.02.2018*

Chairperson: Mr. Mahinda Gammanpila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Feizal Samath
Notice issued to: K.O.D.D. Fernando, General Manager- Sri Lanka Bureau of Foreign Employment

Appearance/ Represented by: Mr. Feizal Samath
Ms. G. N.K. Perera, Legal Officer, Sri Lanka Bureau of Foreign Employment

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|------------------------------------|--------------|
| RTI Request filed on | : 03.07.2017 |
| IO responded on | : 06.07.2017 |
| First Appeal to DO filed on | : 13.07.2017 |
| DO responded on | : 10.08.2017 |
| Appeal to RTIC filed on | : 17.10.2017 |

The Appellant was present at the hearing. The Public Authority was represented by Ms. G.N.K. Perera, Legal Officer.

Brief Factual Background

The Appellant had requested the following information by an information request dated 03.07.2017:

‘Copies of MOU’s and /or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Sri Lanka and Qatar, Sri Lanka and Kuwait.’

The Information Officer (IO) had by email dated 06.07.2017 refused the requested information citing the exemption provided for in Section 5 (b) (ii) (*sic*) of the RTI Act, No. 12 of 2016. Thereafter the Appellant submitted an appeal to the Designated Officer (DO) on 13.07.2017. The DO had responded to him by email on 10.08.2017 reiterating the decision of the IO. The Appellant then appealed to the RTI Commission on 17.10.2017.

Matters Arising During the Hearing

The PA advanced two objections to the information being provided; namely, the exemptions provided for in Section 5 (1) (b) (ii) and Section 5 (1) (c) (v) of the RTI Act.

Section 5 (1) (b) (ii) reads as follows:

"5. (1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where–

(b) disclosure of such information–

(ii) would be or is likely to be seriously prejudicial to Sri Lanka’s relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;"

Section 5 (1) (c) (v) reads as follows:

5. (1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where–

(c) the disclosure of such information would cause serious prejudice to the economy of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to-

(v) the entering into of overseas trade agreements;

The Commission inquired from the PA as to how ‘serious prejudice’ is caused as required in both the cited exemptions. The PA responded that it was prejudicial to both parties to the agreements and that the information relates to third parties.

The PA was informed in consequence that it should be specifically as to how these documents were confidential since generally, laws, rules, regulations and labour contracts are not confidential information.

The PA submitted that these were trade agreements which had been entered into between Sri Lanka and the respective countries on mutually agreed conditions. The Commission informed the PA that it was still unclear as to what part of this information would be considered confidential and that accepting the PA’s argument would mean that every agreement between Sri Lanka and another State would be confidential. This would be against the letter and spirit of the Right to Information Act.

The PA informed that some of the requested agreements were from 2012 and the latest agreements are from 2017.

Order

The PA has not been able to satisfy the Commission as to why and how the information requested by the Appellant must be considered confidential. The requested information relates to Memoranda of Understanding and/or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Qatar and Kuwait and there is considerable public interest attached to the same given public concern in regard to protecting the rights of Sri Lankan citizens who work in those countries. Further, the information request relates not to pending agreements but concluded MOUs. As such there is no serious prejudice caused to any of the parties to the agreements. Therefore the two exemptions cited by the PA namely, Section 5 (1) (b) (ii) and Section 5 (1) (c) (v) will not be applicable in this instance.

The PA is ordered to release the information requested to the Appellant. The decision of the DO is reversed. The matter will be mentioned again to ascertain whether the information has been provided as per this order.

Next date of hearing: 23/02/2018

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RTICAppeal(In-Person)/201/2017 -Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)-*Heard as part of the meeting of the Commission on 23.02.2018*

Chairperson: Mr. Mahinda Gammanpila
Commission Members: Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe
Appellant: Feizal Samath
Notice issued to: K.O.D.D. Fernando, General Manager- Sri Lanka Bureau of Foreign Employment
Appearance/ Represented by: Ms. G. N.K. Perera, Legal Officer, Sri Lanka Bureau of Foreign Employment

Matters Arising During the Hearing

The Appellant was absent. The PA at the instant hearing stated that it could only provide the copies of MOU's and /or Bilateral agreements pertaining to migrant workers between the Governments of Sri Lanka and Saudi Arabia, Sri Lanka and Qatar, Sri Lanka and Kuwait that had been signed by the PA and not those signed by the Ministry of Foreign Employment.

The Commission inquired from the PA whether it had copies of the agreements signed by the Ministry with the Governments of Saudi Arabia, Qatar, and Kuwait. The PA affirmed that it had the said copies.

Order

The PA has confirmed that the copies of MOUs signed by the Ministry of Foreign Employment are in its possession. According to Section 3 (1) of the RTI Act, No. 12 of 2016,

“Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.”

At the previous hearing the PA was clearly informed of the fact that the information requested by the Appellant related to public documents, therefore, there is no third party issue involved. In these circumstances, the Commission directs the PA to provide the requested information to the Appellant within two weeks.

The decision of the DO is reversed. The matter will be mentioned again to ascertain whether the information has been provided as per this order.

Next date of hearing: 16/03/2018.

16/03/2018 - The Appellant notifies the Commission that he has been informed by the PA via RTI Form 04 dated 14/03/2018, that in accordance with Section 25 (1) of the RTI Act, No. 12 of 2016, the relevant information requested by the Appellant will be provided to the Appellant.

The Appeal is concluded.

Dr. Mario Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage

RTIC Appeal (In person)/51 /2018 (Order adopted as part of a formal meeting of the Commission on 27.02.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walagama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Dr. Mario Gomez

Notice issued to: Shirani Weerakoon, Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage

Appearance/ Represented by:

Appellant - Dr. Mario Gomez

PA - S. D. Udawatta, Additional Secretary, Ministry of Social Empowerment, Welfare and Kandyan Heritage

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| RTI Request filed on: | 13.07.2017 (reminders on 23.08.2017 and 29.08.2017) |
| IO responded on: | 11.10.2017 |
| First Appeal to DO filed on: | 25.10.2017 |
| DO responded on: | 08.11.2017 |
| Appeal to RTIC filed on: | 05.12.2017 |

Brief Factual Background

The Appellant by request dated 13.07.2017 and subsequent reminders dated 23.08.2017 and 29.08.2017 had requested a copy of the most recent version of the draft law on the Rights of Persons with Disabilities (in Sinhala, Tamil, English, and braille if available) and the current status of the draft law. The Appellant had also inquired as to when the draft law is likely to be approved by Cabinet and tabled in Parliament. The IO responding on 11.10.2017 stated that the draft amendment of the Rights of Persons with Disabilities Act has been sent from the Legal Draftsman to the Ministry for the Ministry's observation and that steps have been taken to provide the said observations. The PA has further stated that it cannot provide the draft legislation until it is gazetted.

The Appellant then lodged an appeal with the DO on 25.10.2017 to which the DO responded on 08.11.2017 reiterating the IO's response that the draft amendment of the Rights of Persons with Disabilities Act has been sent from the Legal Draftsman's Department for the Ministry's observation. The DO further stated in his response that a report on the said amendments has been prepared and that the PA expects it to be submitted to the Governing Council of the National Institute of Social Development before 15.11.2017 to obtain the Council's approval subsequent to which the PA intended to inform the Legal Draftsman's Department before 30.11.2017.

Since the PA did not respond after 30.11.2017 the Appellant lodged an appeal with the Right to Information Commission on 05.12.2017.

Matters Arising During the Course of the Hearing

Responding to a query by the Commission as to the current status of the draft as the dates mentioned in the responses of the Designated Officer to the Public Authority as aforesaid for the completion of the process had long since lapsed, Mr. S. D. Udawatta, Additional Secretary,

Ministry of Social Empowerment, Welfare and Kandyan Heritage clarified that although the draft law on the Rights of Persons with Disabilities (which the Legal Draftsman's Department had amended, and sent to the Ministry for its observations) had been listed several times before the Governing Council at its meetings, the draft had not yet been considered. He clarified further that this was why the Public Authority had been unable to provide the Appellant with a copy of the draft. He stated however that if the Commission issued an Order to that effect, the said draft could be provided to the Appellant. Mr. Udawatta further stated that, given the uncertainty in the process, the Public Authority was regrettably not in a position to state as to when the draft legislation will be approved by the Cabinet and presented in Parliament.

The Appellant observed that the draft was of considerable public interest in Sri Lanka with disability groups in particular being interested in its contents.

Order

The fact that the draft legislation has not been considered by the relevant Governing Council is not an exceptional circumstance under Section 5 of the Right to Information Act No 12 of 2016 warranting the refusal of the requested information. It is pertinent in this regard that the definition of information in Section 43 of the Act expressly includes 'draft legislation' within its ambit. In many countries in the region as well as globally, draft laws are required to be presented before the public in advance and before the Bill is gazetted, in order to obtain public feedback on its contents which is a beneficial process leading to public consensus around the framing of legislation.

While the draft law on the Rights of Persons with Disabilities may be subject to subsequent amendments, the PA is bound to provide a copy of the draft in its current state to the Appellant and there is no requirement to wait until the draft legislation is gazetted.

The PA is directed to provide the Appellant of a copy of Sri Lanka's draft law on the Rights of Persons with Disabilities (in Sinhala, Tamil & English) as agreed upon between the Appellant and the representative of the PA by 16.03.2018.

The Appeal is concluded.

G. Dileep Amuthan v. Ministry of Defence

RTICAppeal(In-Person)/70/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – heard as part of a formal meeting of the Commission on 23.03.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. G. Dileep Amuthan
Notice Issued to: Designated Officer, Ministry of Defence

Appearance/ Represented by:
Appellant - Mr. G. Dileep Amuthan
Public Authority - Upali Weerasinghe, Legal Advisor, Ministry of Defence
Major Gunawardena, Legal Advisor, Ministry of Defence
A.M.S.B. Atapattu, Information Officer, Sri Lanka Army (SLA)

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|------------------------------------|-------------------------------------|
| RTI Request filed on | 28.09.2017 |
| IO responded on | 16.10.2017 (requesting copy of NIC) |
| First Appeal to DO filed on | 22.10.2017 |
| DO responded on | 23.11.2017 |
| Appeal to RTIC filed on | 04.12.2017 |

Brief Background Facts

The Appellant had requested the following three items of information, by an information request dated 28.09.2017.

- I.
 1. A comprehensive list of the shops, canteens, outlets and/or restaurants catering *inter alia* to members of the public maintained by and/ or under which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and / or Sri Lanka Air Force;
 2. A comprehensive list of all business enterprises other than those in point 1 above catering *inter alia* to members of the public maintained by and/ or under or which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and/ or Sri Lanka Air Force;
- II.
 1. Relevant rules, procedures, guidelines and /or policies pertaining to the Army Directorate of Welfare;
 2. Annual Statements of accounts reflecting total income, total expenditure and other details for the Army Welfare Society Fund of the Sri Lanka Army for the last ten years, i.e. 2006 to 2016;
 3. Audit procedures pertaining to the Army Welfare Society Fund and all relevant audit documents for the last ten years, i.e. 2006 to 2016;
 4. A comprehensive list of the shops, canteens, outlets and / or restaurants catering *inter alia* to members of the public maintained by and / or under or which are responsible to the Directorate of Welfare;
 5. A comprehensive list of all business enterprises other than those in point 4 above catering *inter alia* to members of the public maintained by and/or under or which are responsible to the Army;
 6. Total number of army personnel working at and/ or assigned to and/ or posted to the establishments listed in question 4 and 5 above;
 7. Annual audited statement of accounts for each hotel under the Laya chain of hotels i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016;
 8. Annual statements of accounts of ThalSevana hotel for the years 2010 to date;
 9. A comprehensive list of beneficiaries benefiting from the Legal Aid Fund maintained under the Directorate of Welfare and a comprehensive list of payments made thereunder;
- III. Concerning the allegations of Sri Lankan peacekeepers deployed to Haiti being perpetrators of sexual abuse of Haitian citizens in 2007.
 1. Names of peacekeeping officers, including names of senior and high ranking officers who were repatriated from Haiti following the allegations of involvement in a sex ring while engaging in UN peacekeeping activities in Haiti in 2007;
 2. Findings of the Court of Inquiry in the form of reports or investigative notations on activities concerning Sri Lankan peacekeepers deployed to Haiti and the events concerning the sex ring which unfolded in Haiti while the Sri Lankan peacekeepers were engaged in peacekeeping operations;

3. A list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes and/ or any other relevant information regarding the allegations made against the peacekeepers deployed from Sri Lanka;
4. Details of disciplinary action taken against the 11 soldiers, one Lieutenant Colonel and two Majors including the following:
 - Whether or not these persons were brought before a General Court Martial or submitted to any form of Court Martial process;
 - Findings of the General Court Martial and/ or any other Court Martial process;
 - Names and ranks of the officers who presided at the General Court Martial and/ or other Court Martial process;
 - List of the allegations and/ or crimes tried by the General Court Martial and / or other Court Martial process;
 - Disciplinary measures (including *inter alia* reprimanding, suspension, dismissal) taken against persons accused of committing/ being involved in the alleged crimes in Haiti;
 - Disciplinary and/ or penal action taken against the commander of the contingent;
 - Information on institution of prosecution of persons found to be guilty of committing the alleged crimes in Haiti including case numbers of such criminal action filed before the Courts in Sri Lanka;

He received a response on 16.10. 2017 requesting a copy of his National Identity Card (NIC) attested by the Grama Sevaka and Divisional Secretary. He was informed that this request was made on behalf of Sri Lanka Army. The Appellant stated that he had already mentioned his NIC number in his information request and that requesting a copy of said NIC seemed to be a delaying tactic or form of intimidation and appealed to the Designated Officer (DO) on 22. 10.2017. The DO responded stating that a copy of the NIC was needed to assess citizenship of the Appellant. The response was sent by the Additional Secretary (Parliamentary Affairs and Policies) on the letterhead of the Ministry of Defence. Dissatisfied with this response, the Appellant appealed to the Commission on 04.12.2017.

Matters Arising During the Hearing

Mr Weerasinghe, Legal Officer of the Ministry of Defence confirmed that the Public Authority (PA) had requested a copy of the Appellant's NIC upon receipt of the instant information request. The PA was informed that when an Appellant fills in the RTI Form 01 (information request form), he/she is only requested to state whether he/she is a citizen. The PA may question further only if there are objective grounds to doubt the citizenship of the Appellant. The Commission

queried as to what doubt the PA had regarding the Appellant’s citizenship especially when the Appellant had already noted down his NIC number in his original information request. This question was answered by the Public Authority to the effect that the said query had been posed by the earlier Information Officer and assured that the practice of routinely asking Appellants to produce identity cards will not be repeated in the future.

With regard to the merits of the information request in Item I and II, the PA was notified by the Commission that as the details should be available in the annual reports of the concerned parties in response to which, the PA submitted that it had informed the Sri Lankan Army (SLA) regarding the same and that it was in a position to provide whatever documents were in its custody.. With regard to the information requested in Item III, the Information Officer (IO) of the SLA stated that this relates to internal disciplinary procedures of the SLA in regard to charges leveled against peacekeepers deployed from Sri Lanka and submitted that there were many allegations made against the SLA in international fora by interested parties and therefore it was hesitant to provide the information.

When queried by the Commission as to what specific exemption in Section 5(1) of the RTI Act was being cited by the SLA to decline the requested information with regard to item III, the IO reiterated that the incidents relating to the allegations had taken place in 2007, and that it was 2018 now, and therefore republishing details about this issue would tarnish the name of the SLA in the international fora and could be used for propaganda purposes by interested parties. He further submitted that roughly about 100 peacekeepers amounting to the whole contingent had been sent back but only 3 had been involved and that one officer was called back due to the rules of command responsibility being breached and therefore, the number of those who were recalled did not necessarily correspond to those who had allegations against them. He further submitted that the actions taken by the SLA with regard to these allegations were already in the public domain..

The IO also submitted that the Court of Inquiry had all details of the incidents but that revealing details about the court of inquiry would involve privacy concerns infringing Section 5(1)(a) of the Act and also that it would impact on the image of the country. Upon further questioning by the Commission about the propriety of the claim that the findings of a court of inquiry should not be made publicly available, he submitted that the SLA could accede to the direction of the Commission and provide a summary of the same.

Order

It must be reiterated that the Appellant is only required to note whether he/she is a citizen or not in the form RTI 01 as provided in the Regulations published in Gazette No.2004/66 dated 03.02.2017. The PA cannot keep questioning further without a substantial reason for belief that the Appellant is not a citizen. Further, requesting for proof of citizenship can only be on

objective grounds, for example when a request is made from abroad then there might be a reason to doubt the citizenship of the requestor.

As observed by this Commission in *TISL v. Prime Minister’s Office/Presidential Secretariat* (RTICAppeal/05/2017 & RTICAppeal/06/201, RTIC Minutes of 23.02.2018), requesters should be asked for proof of citizenship only in the ‘rarest of cases’ (*Shri K. Balakrishna Pillai v. National Human Rights Commission* (No; CIC/OK/C/2008/00016, Minutes of the Central Information Commission of India, 26th May 2008), and only where there is a *bona fide* doubt on the part of the PA as to whether the information requester is a citizen.

In the instant matter, the Appellant has already mentioned his NIC number in his information request; therefore it is not appropriate for the PA to further request copies of his NIC and /or Passport. The RTI Act No.12 of 2016 is very clear, that an information request can only be declined by citing one of the exemptions in Section 5(1) of the Act; it cannot be blocked through circuitous means. The Commission will therefore note as of record that this was a previous procedural policy at the PA which is now obsolete.

With regard to the substantive information request, it is difficult to uphold the argument by the Public Authority (SLA) that where there have been allegations against the Sri Lankan peacekeepers and there had been an inquiry on the said issue which has been concluded, that the SLA cannot provide the details of the inquiry to the public. To do so, is for the Public Authority (SLA) to claim a privilege especially for itself. Such privileges are not provided for in the RTI Act.

Further, in assessing the public interest in such matters, it is a relevant consideration that if there has been a process of inquiry, it is in the Public Authority (SLA)’s benefit to establish what concrete action it has taken regarding allegations made thereto. The Public Authority (SLA) is directed to prepare a thorough summary of the findings of the court of inquiry for submission to this Commission. Upon perusal thereof and if assessed as being required for the purpose, this Commission may call upon the Public Authority (SLA) to furnish the report of the court of inquiry for the Commission’s examination in order to ascertain if the summary correctly reflects the contents of the substantive report.

Further, the PA is directed to call for the information requested in Item I of the information request from the Sri Lankan Airforce and Sri Lankan Navy.

The Appeal is adjourned.

Next date of hearing: 15/05/2018

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RTICAppeal(In-Person)/70/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of

2017 (*Fees and Appeal Procedure*) – heard as part of a formal meeting of the Commission on 15.05.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe
Appellant: Mr. G. Dileep Amuthan
Notice Issued to: Designated Officer, Ministry of Defence

Appearance/ Represented by:

Appellant - Mr. G. Dileep Amuthan
Public Authority - Upali Weerasinghe, Legal Advisor, Ministry of Defence
A.M.S.B. Atapattu, Information Officer, Sri Lanka Army (SLA)
Captain W.H.S. Soysa, Subject Officer, Sri Lanka Army (SLA)

Matters Arising During the Hearing

Upon the items of information requested being considered in detail, in terms of Item II (1), the Public Authority (SLA) was informed by the Commission that policy guidelines were documents that should be proactively posted online in terms of the RTI Act. The SLA clarified that certain policy statements were up on their website; <http://www.army.lk/welfare>.

With regard to Item II (2), the SLA was informed by the Commission that these were public documents that should be freely available to the public. Stating of record that the apprehension was that providing the details in the information request could be used for negative purposes by certain interested parties overseas, the SLA agreed to submit the documents for the Commission's perusal after which the Commission could decide on whether the said documents should be provided to the Appellant.

With regard to Item II (8), the SLA submitted that ThalSevana had not been maintained as a business venture till 2011 so the expenses had not been audited before, but from 2011, SLA had been running it as a hotel. The SLA submitted that they would provide the audit reports relating to the period from 2011 onwards to the Commission. It agreed to do the same with regard to Item II (7). With regard to Item II (4) the SLA submitted that it had restaurants/canteens by the roadside in almost each camp which members of the public are also permitted to use and that this would therefore involve a substantial amount of information. The SLA agreed to provide the said details to the Commission, bifurcated if necessary by those canteens being maintained internally by the Army which the public is also permitted to use and those canteens explicitly run as a

public undertaking. It agreed to do the same with regard to Item II (5) and (6). The SLA further agreed to provide the details requested in Item II (9) for the Commission's perusal and subsequent decision.

In respect of Item I, where information had been requested about the enterprises run by the Sri Lankan Navy and the Sri Lankan Airforce, the PA explained that it had requested the said details from the Navy and the Air Force and that both had agreed to provide the information but had requested for more time to collect the information.

With regard to Item III, the SLA submitted the advice it had received from the AG's Department which stated that the exemption provided for in Section 5 (1) (b) (ii) would apply to the requested information.

The SLA further submitted that it had already prepared a summary of the findings of the Court of Inquiry as directed by the Commission at the last hearing but due to the advice received from the AG's Department, it is compelled to refrain from submitting the same at the present hearing.

Order

As agreed before us, the Public Authority (SLA) is directed to provide to the Commission the information in Items I and II which are public documents and not subject to any exemptions. Where it is so relevant, the requested information in regard to the relevant hospitality ventures under the management of the Army may be provided from the date that the same were converted as public/business ventures.

In respect of the information requested in Item II (4) the Public Authority (SLA) may provide the information bifurcated if necessary by those canteens being maintained internally by the Army which the public is also permitted to use and those canteens explicitly run as a public undertaking. In respect of the information requested in item II (9), this is directed to be submitted for our perusal consequent to which a decision will be made regarding public release of the same.

With regard to Item III and the exemption in Section 5 (1) (b) (ii) pleaded by the Public Authority (SLA) (as per the advice of the Department of the Attorney General), the attention of the Public Authority is drawn to the said Section which states that information can be declined where it;

“would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;” (emphasis ours)

It is important to note that the reliance on an international agreement to deny information pertains strictly to instances where the requested information was given or obtained in confidence and further, where provision of the same is assessed as being ‘seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations

under international law.' As such it is manifest that this exemption cannot be applied in a vague or generalized manner as to include all information relating to any international agreement.

The Public Authority is directed to clarify as to first, what international agreement or obligation under international law is at issue here; secondly, the precise terms of the serious prejudice that can be caused thereby; and thirdly, what information was given or obtained in confidence. This is in order for the Commission to assess the legitimacy of the applicability of the exemption that is cited in the first instance, as well as the relevance of the public interest override contained in Section 5(4) of the Act which states that;

(4) Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

It is of further note that such an assessment is called for in accordance with the powers accorded to this Commission in the exercise of its statutory duties and functions in terms of Section 15 of the RTI Act, and that failure to abide by the same may constitute a breach of the statutory duties and functions given the scope and content of the preamble to the Act which emphasizes 'a need to foster a culture of transparency and accountability in Public Authorities by giving effect to the right of access to information.'

If it so desires, the SLA may submit written submissions addressing the above specific issues (with copy to the Appellant) on or before June 26th, 2018:

The PA (Ministry of Defence) is directed to provide the information agreed upon as aforesaid in respect of Items I and II at the next date of hearing.

The Appeal is adjourned.

Next date of hearing: 03/07/2018.

RTIC Appeal (In – person)/70/2018 (Order adopted as part of a formal meeting of the Commission on 03.07.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. G. Dileep Amuthan

Notice issued to: Designated Officer, Ministry of Defence

Appearance/ Represented by:

Appellant - Mr. G. Dileep Amuthan

PA - A.Jayasekara, Legal Officer, Ministry of Defence

Brigadier, E.S. Jayasinghe, D.Legal, Sri Lanka Army (SLA)

Col, W.A.C.N. Warakagoda, Col. Media (SLA)

A.M.S.B. Atapattu, Information Officer, Sri Lanka Army (SLA)

Matters Arising During the Hearing

Upon being queried as to the status of provision of information in regard to what was agreed to be given by the Public Authority (Sri Lanka Army, SLA) at the last hearing of this appeal (Order dated 15.05.2018) in items (I) and (II), including the list of hotels, shops, canteens, outlets and or restaurants maintained by the Public Authority (SLA) in the Northern Province and the annual audited statement of accounts for each hotel under the Laya chain of hotels i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016, to the Appellant, the Public Authority (SLA) responded stating it was hesitant to provide the information due to concerns that it could be used to create friction among communities in Sri Lanka and be used to negative advantage by diaspora groups.

The Public Authority (SLA) further submitted that the hospitality ventures, including hotels, shops, canteens, outlets and or restaurants regarding which information has been requested, are funded by the welfare funds of the SLA and not by Government/public funds. It was stated that the hotels/hospitality ventures maintained by the welfare fund of the SLA are subject to a general audit conducted by the SLA.

The Commission noted that the said hospitality ventures are run by members of the Public Authority (SLA) who are maintained by government funds and that the claim made otherwise cannot be made in the abstract.

The Public Authority (SLA) submitted that it was in possession of a Military Intelligence Report concerning the Appellant and was hesitant to release the information as a result.

Responding, the Appellant stated that the PA (SLA) has engaged in a background check on him merely because he filed information requests under and in terms of the RTI Act, thus defeating the purpose of the RTI Act. The Public Authority (SLA) counter responded that the Military Intelligence report that it had in its possession was prior to the Appellant commencing to use the RTI Act.

The Commission drew the attention of the SLA to the fact that the background of an Appellant or the purpose of an information request is not a ground of refusal under the Act. The SLA submitted that it relied on Section 5 (b) (i), namely, “disclosure of such information would undermine the defence of the State, or its territorial integrity or national security” as the concern was that the Appellant being a journalist, will use this information to perpetuate a negative image of the SLA by showing that it is conducting such business ventures. The SLA submitted that this could eventually lead to an unnecessary conflict between the SLA and the Business Communities of the Northern and Eastern Provinces which may in fact affect the ‘defence of the State’, and/or ‘national security.’ as contemplated by the RTI Act.

In reference to the above submission by the SLA, the Commission then questioned the PA (Ministry of Defence) as to their position with regard to the same. The PA (Ministry of Defence) submitted that in respect of item I, namely the comprehensive list of hospitality enterprises/ventures run by the Sri Lanka Army Navy and Air force, both the Sri Lanka Navy and Sri Lanka Air Force had released the said information by letters dated 05.06.2018 and 14.06.2018 respectively.

In the wake of the Sri Lanka Army Navy and Air Force releasing the list of hospitality enterprises/ventures run by them, the Sri Lanka Army (SLA) also agreed to release the same.

In respect of Item III, the SLA produced written submissions dated 03.07.2018 to substantiate the exemption of Section 5 (1) (b) (ii) (as per the advice of the Department of the Attorney General dated 02.04.2018) pleaded at the last hearing on 15.05.2018 and the Investigation Report on Alleged Sexual Exploitation and Abuse of Minor Girls at the United Nations Stabilization Mission in Haiti’.

Reiterating the contents of the written submissions dated 03.07.2018 the SLA submitted as follows,

1. The Appellant has requested information with regard to allegations of sexual abuse of Haitian citizens perpetrated by Sri Lanka Army persons while being deployed in UN peacekeeping missions in 2007. Information requested include Court of inquiry proceedings, allegations made against the Army persons by civilian’s, names of victims, details of Courts Martial held against them, allegations, punishments awarded and other military disciplinary procedures.
2. All the allegations made against the personnel of the Army were duly investigated as provided for by the Army Disciplinary Regulation and awarded punishments through military procedure under the provisions of the Army Act.
3. The information with regard to sexual abuse case perpetrated by Sri Lanka Army personnel under the title of ‘Investigation Report on Alleged Sexual Exploitation and Abuse of Minor Girls at the United Nations Stabilization Mission in Haiti’ have been submitted to the Sri Lanka Army by the UN under the security clarification of ‘Strictly

Confidential’ and the Sri Lanka Army is under the obligation to refrain from disclosing such information to a third party.

4. As provided by Section 5 (1) (b) (ii) of the RTI Act, such information ‘that would be or is likely to be seriously prejudicial to Sri Lanka’s relations with any State, or in relation to international agreements or obligations under International Law, where such information was given by or obtained in confidence’ shall be refused by the relevant public authorities.
5. If this information is disclosed to a third party, there would be a possibility of giving wider publicity over print and electronic media which would tarnish the image of the Army and finally cause to seriously affect the relations of Sri Lanka with friendly States.
6. Taking into account of the circumstances, the Hon. Attorney General is of the opinion that the information requested is coming under the description of Section 5 (1) (b) (ii) of the RTI Act and may be refused. Therefore, releasing such information to a third party is refused by the Army.

Order

In principle, it must be strongly emphasized that if any Public Authority commences to obtain Military Intelligence reports in regard to citizens purely on the basis that they are filing Right to Information requests which is a legitimate and legal procedure under the Right to Information (RTI) Act passed by the Sri Lanka Parliament, then the fundamental objectives of the Act would be negated.

While the Commission is not in a position to assess at this stage as to whether this has actually happened in this case or not on the facts before us, it must also be stated that in principle, this would be a matter of grave concern befitting the specific intervention of the Commission if RTI applicants are sought to be intimidated in any way whatsoever.

We note particularly that the background of an Appellant or the purpose of an information request is not a relevant consideration under and in terms of the RTI Act to deny information. Section 24 (5) (d) of the Act states that;

‘A citizen making a request for information shall... not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.’

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, provided that the said information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI

Act and further, the public override in Section 5 (4) is not found to apply. With regard to Item I of the information request before us, the Public Authority (SLA) is directed to handover to the Appellant the information requested akin to what has been provided by the Sri Lanka Navy and the Sri Lanka Air Force at this appeal hearing, with a copy to the Commission on or before 07.08.2018.

In relation to item II (7) of the information request by which ‘the annual audited statement of accounts for each hotel under the Laya chain of hotels i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016’ are requested, the consideration arises as to whether the hospitality ventures run by SLA are funded by public or private funds (Welfare society funds of SLA). It is a relevant factor that the said hospitality ventures are controlled, operated and maintained by members of the Public Authority who are being paid out of Government funds. Upholding the claim of the Public Authority without substantiating the same would in effect amount to allowing the Public Authority, a privilege that is not provided for under and in terms of the RTI Act which would be acting contrary to the RTI Act where the statutory function of this Commission is concerned.

The SLA is directed to more fully substantiate its position with respect to this item of information (item II (7) comprehensively on the next date of hearing. The Public Authority is further directed to more fully substantiate its position regarding in relation to each of the other items of information requested under item II in terms of the provisions of the RTI Act by the next date of hearing.

With regard to Item III, namely ‘the Investigation Report on Alleged Sexual Exploitation and Abuse of Minor Girls at the United Nations Stabilization Mission in Haiti’ a direction will be made by us subsequent to the examination of the report which was produced before us for our perusal at this hearing.

The Appeal is hereby adjourned.

The next date of hearing: 07.08.2018

.....
RTIC Appeal (In – person)/70/2018 (Order adopted as part of a formal meeting of the Commission on 07.08.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena

S.G. PUNCHIHEWA
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. G. Dileep Amuthan

Notice issued to: Designated Officer, Ministry of Defence

Appearance/ Represented by:

Appellant - Mr. G. Dileep Amuthan
PA - Major, P. Perera, Staff Officer, Sri Lanka Army (SLA) (illegible)
Brigadier, E. S. Jayasinghe, D.Legal, Sri Lanka Army (SLA)
Major, A. Amarathilake, Legal Officer, Sri Lanka Army (SLA)

Matters Arising During the Hearing

The Commission drew the attention of the SLA to the following contents of the written submission by the Appellant dated 31.07.2018,

1. ‘Even though it may be irrelevant to this case, the Appellant state that he is a journalist working in Jaffna, and the many RTI requests the Appellant has filed are in pursuance of that professional work’,
2. ‘Subsequent to the last date, the Appellant has become aware through social media that certain groups outside the country **have opportunistically seized on the proceedings of the Commission** in relation to his case and are intending to write to the Commission regarding the Appellant’s case’,
3. **The Appellant wish to state categorically that the Appellant does not welcome the intervention of third parties in his case.** The Appellant wishes to argue his case on his own’,
4. ‘In summary, have requested the information concerning the allegations of Sri Lankan peacekeepers deployed to Haiti being perpetrators of sexual abuse of Haitian citizens in 2007’,
5. ‘The Appellant denies the PA’s claim that the information requested raises privacy concerns. The relevant exception in the RTI Act reads,
“the information relates to personnel information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individuals unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure”

6. 'Clearly. The information requested relates to a 'public activity', namely peacekeeping activities undertaken by officers of the Sri Lankan military forces in that capacity. These undertakings were clearly not of a private nature',
7. 'Further, the information clearly is of public interest. The behavior of State Officers while on official duties is manifestly a matter of public interest, as is the question of whether disciplinary action was taken for serious breaches committed by State Officers while they were acting under the colour of their office',
8. 'Moreover, reform initiatives concerning the military are relevant to reconciliation initiatives as well. As such, there is a clear public interest',
9. 'The information requested does not pertain to the private lives of any individuals. Instead it concerns purely the question of conduct committee by officers whilst in office and the official response of State agencies to that conduct'
10. 'As an analogy, the records of criminal cases are public documents. An accused person or convicted person has no legitimate expectation of privacy concerning criminal court proceedings relating to him',
11. 'With respect to the claim that the release of the information requested would fall within the exception in Section 5 (1) (b) (ii), the Appellant states that this provisions is plainly in applicable',
12. '...It is the failure of the PA to be forthcoming with respect to the allegations made and response thereto that may damage relations with other States. Further, the impunity that would be perpetuated by the continued cover up details concerning misconduct and any remedial action (or lack thereof) is in fact what damages Sri Lanka's diplomatic image' and
13. 'In any event the Act requires "serious prejudice" which has not been made out. Further none of the information requested was given or obtained in confidence'.

Upon being queried as to the status of the information requested by item I, namely the comprehensive list of hospitality enterprises/ventures run by the Sri Lanka Army Navy and Air force as agreed on 03.07.2018, the SLA produced letter dated 09.07.2018 addressed to the Commission containing the information requested in terms of item II (4) of the information request.

Order

With regard to Item III of the said information request, it is evident that the 'Investigation Report on Alleged Sexual Exploitation and Abuse of Minor Girls at the United Nations Stabilization Mission in Haiti' submitted to the Public Authority (the Sri Lanka Army) by the United Nations under the security classification of 'Strictly Confidential' does not approximate to the information requested by the Appellant in Item III of his request dated 28.09.2017.

On the contrary, the Appellant had requested information pertaining to the investigation conducted by the SLA in relation to the said allegations against specific soldiers. Consequently, pleading the 'Strictly Confidential' status of the said report handed over by the United Nations to the Public Authority and citation of the exemption under Section 5(1)(b) (ii) of the Act is not applicable in the circumstances of the case, where the information requested by items III (1), III (2) and III (4) is concerned.

Moreover, statistics as to the numbers of soldiers against whom disciplinary action is taken in this regard is already in the domain as the said information is of record as having been submitted by the Government of Sri Lanka on successive occasions before bodies of the United Nations

The Public Authority is directed to prepare a thorough statistical summary of soldiers against whom action had been taken pursuant to these allegation been made and the disciplinary action taken against the soldiers. This statistical summary will satisfy the information requested by items III (1), III (2) and III (4).

Information requested by item III (3) pertains to the following;

3. A list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes and/or any other relevant information regarding the allegations made against the peacekeepers deployed from Sri Lanka

It is our considered view that the information requested, in so far as the portion 'a list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes' is concerned, attracts Section 5 (1)(a) of the RTI Act in that it concerns information pertaining to the victims in the said cases, This further impacts the 'Strictly Confidential' status of the said report handed over by the United Nations to the Public Authority given that the contents of that report which have been perused by this Commission contains references to the said personal details.

Considering all these relevant factors, we deny disclosure of that information requested in item III (3) under Section 5 (1)(a) in the context of information disclosure of items III (1), III (2) and III (4) being deemed as sufficient for the purpose in that the public interest is consequently satisfied by the said disclosure to all intents and purposes where Section 5(4) is concerned.

Where the information requested in item I is concerned, the Sri Lanka Navy had, by letter dated 05.06.2018 provided the following information to the Appellant,

1. "Malima Hospitality Services (MHS) is primarily a welfare service for members of the Sri Lanka Navy which is operating with non-public funds since year 2011. At present, there are 3 hospitality ventures functioning under MHS as indicated Hotel/Resorts

- a) Sober Island Resort, Trincomalee
 - b) Gold Link Hotel, Trincomalee
 - c) Weligambay Villas, Mirissa
 - d) Lagoon Cabanas, Panama
 - e) Fort Hammenhiel Resort, Jaffna
 - f) Lake Fron Resort, Kanthale
 - g) Dambakolapatuna Pilgrims Rest-Jaffna
2. Restaurants
- a) Light House Galley, Colombo Fort
 - b) Club House, Uswatakeiyawa
3. Reception Hall
- a) Reception Hall, Poonewa
 - b) Reception Hall, Ranmihithenna
 - c) Reception Hall, Tangalle
4. Diving center, Kirinda

b. The Objectives for establishing these ventures are as follows,

(1). Avail comfortable accommodations for serving SLN officers, and their relatives to spend holidays, during leisure trips and for other necessities at minimal & concessional rates.

(2). Enjoy variety of foods, cuisines of different tastes and uncommon foods for Naval officers, sailors, their families and relatives at minimal & concessional prices.

(3). To hold wedding ceremonies, family functions, get together, seminars, meetings and all types of group functions of official or personal nature at a reasonable prices as a welfare measure for the members of SLN.

(4). Providing of all facilities mentioned in above paragraph a, b,& c for the retired naval personnel.

(5). Entities of Malima Hospitality Services are used to gain on the job practical experience at non-travel & different environment for Mess Assistant (Stewards) and Catering Assistant (Cooks) after their basic training.

(6). Assist Naval personnel to gain variety of skills related to the hotel industry which may become useful when they are retired from the service.

(7). The funds generated by the Sri Lanka Navy Malima Hospitality Services are used for purely welfare activities of naval personnel and especially for whom killed in action (KIA), missed in action (MIA) and disabled discharged (DD) naval personnel and maintenance and renovations of the existing ventures. Thus, there is no final account or financial report is prepared.

(8). Further, this service is continuing with the aim of motivating and encouraging serving naval personnel and caring retired personnel as well.

(9). However, such facilities will only be available to serving & retired naval personnel, their families, close relatives and access to general public is restricted.”

The Sri Lanka Air Force by letter dated 16.06.2018, had provided the following information to the Appellant,

- a) “.....The list of the shops, canteens, outlets and restaurants conducted by the Sri Lanka Air Force,

| Name of Project | Location | Establishment tasked to run the ventures |
|--|-----------------------|---|
| Eagles' Lakeside Banquet & Convention Hall | Aththidiya-Ratmalana | SLAF Base Rma |
| Eagles' Lagoon View Banquet Hall | Katunayake | SLAF Base Kat |
| Marble Beach Air Force Resort | Wellamanal-China-Bay | SLAF Academy Cby |
| Eagles' Golf Links | Claphanburg-China-Bay | SLAF Academy Cby |
| Eagles' Heritage Golf Club | Anuradhapura | SLAF Bas Anu |
| Eagles' café | Weerawila | SLAFStnWla |
| Catalina Grill Restaurant | Koggala | SLAFStnKgl |
| Eagles' Catalina Golf Club | Koggala | SLAFStnKgl |

b) List of Business Enterprises,

| Name of Project | Location | Establishment tasked to run the venture |
|------------------------------|-------------------|---|
| Helitours | Colombo/Ratmalana | SLAF Base Rma |
| Sky Pet Animal Hospital | Borella | SLAFStnCbo |
| Cippers' Hair & Beauty Salon | Borella | SLAFStnCbo |

At the instant hearing, the Public Authority (Sri Lanka Army) handed over to the Commission letter dated 09.07.2018 containing information conforming to what has been requested by item No. II (4) of the Appellant's information request, namely;

4. A comprehensive list of the shops, canteens, outlets and / or restaurants catering *inter alia* to members of the public maintained by and / or under or which are responsible to the Directorate of Welfare;

This list is as follows (vide letter to the Commission, dated 09.07.2018);

"The Welfare Board of the SLA controls 08 welfare shops and the names and locations of these shops are listed below,"

| No: | Shop | Address | Telephone Number |
|-----|------------------------|---|------------------|
| 01. | Welfare shop- Colombo | Welfare shop, Butani Capital Building, No.149, Polhengoda, Colombo 05 | 011 2514983 |
| 02. | Welfare shop- Panagoda | Welfare shop, Army Colony, Panagoda, | 011 2892212 |

| | | Homagama | |
|-----|----------------------------|--|-------------|
| 03. | Welfare shop- Diyathalawa | Welfare shop, Aasemu (Central)Army Camp, Diyathalawa | 057 2227100 |
| 04. | Welfare shop- Pallakale | Welfare shop, Diganapara, Pallakale, Kundasale | 081 2424151 |
| 05. | Welfare shop- Bussa | Welfare shop, 58 th Battalion Headquarters, Army Camp, Bussa | 091 2267786 |
| 06. | Welfare shop- Anuradhapura | Welfare shop, 21 st Battalion Headquarters, Army Camp, Ranasewapura, Anuradhapura | 025 2226203 |
| 07. | Welfare shop- Minneriya | Welfare shop, Minape (නැ) Headquarters, Army Camp, Minneriya | 027 2245411 |
| 08. | Welfare shop- Ampara | Welfare shop, Combat training School, Army Camp, Ampara | 063 2224148 |

The said letter dated 09.07.2018 containing the above information is handed over to the Appellant.

Where the information requested in item No. I is concerned, it is noted that both the Sri Lanka Navy and Sri Lanka Air Force had released the said information by letters dated 05.06.2018 and 14.06.2018 respectively as follows, Of consent the Public Authority (Sri Lanka Army) agrees to

provide the information requested by item I in the similar breakdown as produced by the Sri Lanka Army Navy and Air Force in releasing the list of hospitality enterprises/ventures run by the Public Authority to the Appellant.

The Appeal is hereby adjourned for further hearing on 09.10.2018

.....
RTIC Appeal (In – person)/70/2018 (Order adopted as part of a formal meeting of the Commission on 09.10.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. G. Dileep Amuthan
Notice issued to: Designated Officer, Ministry of Defence
Appearance/ Represented by:
Appellant - Absent (notified by letter)
PA - Absent

Minute of the Record

The Appellant notified the Commission by letter dated 08.10.2018 that he had already made his stance clear during previous hearings, but the Public Authority concerned has been making unacceptable excuses and willfully delaying the fulfilment of his information request. He further stated that he has to incur personal costs to travel to and from Colombo to attend Commission hearings, but as it was often to no avail, he is unable to attend the hearing on 09.10.2018. The Appellant requested for the decision of the Commission to be communicated to him in due course.

The Public Authority was absent.

Owing to the absence of the Public Authority on this date despite the said Public Authority being directed to revert to the Commission on the provision of information under Item 11 of the

information request, the matter will be taken up on 02.11.2018, which is the final and concluding date in this Appeal. The determination of the Commission will be made thereafter on a date to be determined. The Appellant will be informed of the same.

RTIC Appeal (In – person)/70/2018 (Order adopted as part of a formal meeting of the Commission on 02.11.2018)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. G. Dileep Amuthan
Notice issued to: Designated Officer, Ministry of Defence
Appearance/ Represented by:
Appellant - Absent
PA - Absent

Order

Based on documents placed by the Public Authority before this Commission, we find that there has been substantial compliance with Item II of the information request.

In the aforesaid circumstances, the appeal is concluded.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

Thilak Ranjith Silva v. Sri Lanka Police-Headquarters

RTICAppeal(In-Person)/142/2018 - Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – heard as part of a formal meeting of the Commission on 09.05.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. Thilak Ranjith Silva
Notice Issued to: Designated Officer, Sri Lanka Police, Headquarters

Appearance/ Represented by:

Appellant - Mr. Thilak Ranjith Silva
Public Authority - N/A

| | |
|------------------------------------|---------------------------------|
| RTI Request filed on | 21.11.2017 (sent on 27.11.2017) |
| IO responded on | N/A |
| First Appeal to DO filed on | 30.12.2017 |
| DO responded on | N/A |
| Appeal to RTIC filed on | 09.01.2018 |

Brief Background Facts

The Appellant had requested the following information in relation to an accident that had occurred on 13.02.2017 at Ruhunuketha Junction in Batticaloa- Polonnaruwa Road by an information request dated 21.11.2017

1. Certified copies of the rough notes (දළ සටහන) and investigation report which recorded the place and the way in which the accident occurred

2. Certified copies of the extracts recording the date and the time on which the lorry driver and/or his assistant was arrested
3. Certified copies of the extracts recording the time when the lorry driver had been produced to the District Medical Officer to obtain the Medical Report
4. Certified copies of the G.H.T. copy (ඒ. එච්.ටී. පිටපතක්) inclusive of the Medical Report of the Lorry driver
5. Certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the court
6. Certified copies of the extracts of the post mortem report conducted on 14.02.2017 at the Polonnaruwa Hospital
7. Certified copies of entries made in the Productions Book concerning the Motorcycle and the Lorry
8. Investigation Report made by the vehicle inspector (මෝටර්ට්ට පරීක්ෂකතුමා) pertaining to the investigation
9. Certified copies of the notes made by the police officers who conducted the investigation on that day on their pocket information books
10. The times when the police officers who conducted the investigation went off-duty on the same day after conducting the investigation
11. A certified copy of the Temporary license issued to the driver inclusive of the number of the same and the date issued
12. Copies of the photos obtained by the police officers regarding the accident

Upon receiving no response from the Information Officer (IO), the Appellant had made an appeal to the Designated Officer (DO) on 30.12.2017. Upon receiving no response from the DO, the Appellant made an appeal to the Commission by letter dated 09.01.2018.

Matters Arising During the Hearing

The Public Authority (PA) was absent although it had been noticed under Rule 20 of the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66) to be present at the appeal hearing.

The Appellant informed the Commission that subsequent to his appeal to the Commission, the IO of the PA had provided him with a response to his information request dated 21.11.2017 on 17.01.2018. Therein, the Appellant submitted that he was satisfied with the information received pertaining to items 1, 2, 4, 6, 7, 8 and 11. With regards to items 3, 5 and 11 of the information request, the Appellant claimed that the information provided by the PA was incomplete and misleading and that the PA had failed to provide the information requested under items 9 and 12 of the information request.

The PA by letter dated 08.05.2018 sent via fax addressed to the Commission, copied to the Appellant, had informed the Commission that the information requested by the Appellant was refused under Section 5(1)(j) of the Right to Information Act, No.12 of 2016. Furthermore, the PA had submitted that action had been instituted in the Magistrate's Court of Manampitiya against the accused driver in the investigation regarding which the information had been sought and on 23.04.2018 the Magistrate had ordered all 3 files maintained on the investigation by the PA to be forwarded to the Attorney General's Department to decide on further action to be taken. Therefore, the PA has opined that granting the information requested by the Appellant would cause prejudice and affect adversely on the impartiality of the court proceedings.

Subsequently, the Appellant brought to the cognizance of the Commission the fact that the 3 information requests made by the Appellant dated 29.12.2017, 05.03.2018 and 16.04.2018 to the Public Authority pertaining to the same investigation had also gone unanswered similar to the present appeal before the Commission.

Order

In the instant matter, failure to adhere to the proper procedure mandated by the RTI Act, No 12 of 2016 (the Act) and RTI Regulations gazetted on February 3rd 2017 (Gazette No 2004/66) is evidenced on the part of the Public Authority.

In the first instance, the DO has failed to appear before this Commission or send a representative on his behalf, despite being noticed to do so under the RTI Act and the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66). The Public Authority has provided no explanation as to the failure thereof. This constitutes an offence under and in terms of Section 39 (1) (c) of the Act, incurring specific legal consequences in terms of that Section.

In such an eventuality, the Commission is empowered under Section 39(4) to initiate a prosecution in the relevant court. Section 39 further specifies that the conviction of such an offence carries with it the penalty of a fine and/or imprisonment for a term not exceeding two years.

The PA has refused the information requested by the Appellant under Section 5(1)(j) of the RTI Act, which reads as follows;

the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary

In *Ceylon Bank Employees Union v People's Bank* (RTIC Minutes 30.01.2018), this Commission noted that information may only be refused strictly within the four corners of Section 5(1), which refusal is finally subject to the public interest override in Section 5 (4) in

terms of which, information cannot be declined 'where the public interest in disclosing the information outweighs the harm that would result from such disclosure.'

If the exception in Section 5(10)(j) is invoked to justify refusal, there must be a real risk (emphasis ours), as opposed to a remote possibility, that interference or prejudice would result in 'contempt of court' or be 'prejudicial to the maintenance of the authority and impartiality of the judiciary.'

We are mindful that in assessing the relevance of the exemption set out in Section 5(1)(j) of the Act and in the light of the principle of maximum public disclosure that the Act is premised on, this Commission is called upon to apply the primary principle of the Right to Information against the exceptions set out in Section 5(1) of the Act which must be narrowly interpreted.

The Public Authority's submissions in this regard conspicuously lack the establishing of a connection between this requested information and the manner in which 'a real risk' may therein be posed to the 'authority and impartiality of the judiciary' so that 'prejudice' is caused thereby.

In the foregoing circumstances, the Public Authority is directed to more fully substantiate its refusal to provide the information requested and is strictly required to present itself before the Commission along with the required documents for the Commission's perusal on the next date of hearing.

The Appeal is hereby adjourned.
Next date of hearing: 30.05.2018

.....
RTIC Appeal (In – person) 142/2018 (*Order adopted as part of a formal meeting of the Commission on 30.05.2018*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. Thilak Ranjith Silva
Notice issued to: Designated Officer, Sri Lanka Police, Headquarters
Appearance/ Represented by:
Appellant - Mr. Thilak Ranjith Silva

PA - K.A.S.W. Kumarajeewa (OIC-Legal)

Matters Arising During the Hearing

Upon being queried, the OIC, Legal of the PA confirmed that the information requested by the Appellant was already made available to the Appellant as per the Order dated 09.05.2018.

However, the Appellant stated that the information requested by No.5, 9, 10 and 12 in the RTI Request was not made available to him. The PA responded, clarifying that the requested information that is available in the records of the PA could be supplied to the Appellant and that the PA envisaged no difficulty in that regard.

The PA is directed to provide responses to the information requested by the Appellant which includes certified copies of the extracts of notes recording the production of the accused lorry driver to the court and other appearances made by the driver before the Court, certified copies of the notes made by the police officers who conducted the investigation on that day on their pocket information books, the times when the police officers who conducted the investigation went off duty on the same day after conducting the investigation and copies of the photos obtained by the police officers regarding the accident.

Order

The PA is directed to provide the aforesaid information to the Appellant with a copy of the covering letter to the Commission within two weeks of this date.

The matter is to be mentioned on 17.07.2018 to ascertain status of provision of information as directed.

The Appeal is hereby concluded. Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**RIGHT TO INFORMATION
ACT, No. 12 OF 2016**

[Certified on 04th August, 2016]

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L.D.—O. 4/2015

AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. (1) This Act may be cited as the Right to Information Act, No. 12 of 2016.

(2) The provisions of this section, Part IV, sections 23, 36, 40, 41, 42, 43 and 44 shall come into operation on the date on which the certificate is endorsed in respect of this Act in terms of Article 79 of the Constitution.

(3) The provisions of all other sections of this Act, shall come into operation in respect of such public authorities or categories of public authorities and on such dates as may be prescribed by the Minister by Order published in the *Gazette*:

Provided however, that the dates so prescribed shall be at least six months after the certification referred to in subsection (2) above, and that all provisions of this Act shall be applicable to all public authorities no later than one year of such certification.

2—PL 009845—3,161 (03/2016)

Preamble.

Short title and date of operation.

Responsibility to ensure effective implementation.

2. It shall be the responsibility of the Minister assigned the subject of mass media to ensure the effective implementation of the provisions of this Act.

PART I

APPLICATION OF THE PROVISIONS OF THE ACT

Right of access to information.

3. (1) Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.

(2) The provisions of this Act, shall not be in derogation of the powers, privileges and practices of Parliament.

Provisions of this Act to prevail over other written law.

4. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

PART II

DENIAL OF ACCESS TO INFORMATION

When right of access may be denied.

5. (1) Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where—

- (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

- (b) disclosure of such information—
 - (i) would undermine the defence of the State or its territorial integrity or national security;
 - (ii) would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence;
- (c) the disclosure of such information would cause serious prejudice to the economy of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to-
 - (i) exchange rates or the control of overseas exchange transactions;
 - (ii) the regulation of banking or credit;
 - (iii) taxation;
 - (iv) the stability, control and adjustment of prices of goods and services, rents and other costs and rates of wages, salaries and other income; or
 - (v) the entering into of overseas trade agreements;
- (d) information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party, unless the public authority is satisfied that larger public interest warrants the disclosure of such information;

- (e) the information could lead to the disclosure of any medical records relating to any person, unless such person has consented in writing to such disclosure;
- (f) the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority;
- (g) the information is required to be kept confidential by reason of the existence of a fiduciary relationship;
- (h) the disclosure of such information would-
 - (i) cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or
 - (ii) expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained;
- (i) subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;
- (j) the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary;
- (k) the disclosure of such information would infringe the privileges of Parliament or of a Provincial Council as provided by Law;

- (l) disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution;
- (m) the information is of a cabinet memorandum in relation to which a decision has not been taken; or
- (n) the information relates to an election conducted by the Commissioner of Elections which is required by the relevant election laws to be kept confidential.

(2) Notwithstanding the provisions of subsection (1), a request for information shall not be refused on any of the grounds referred to therein, other than the grounds referred to in paragraphs (a), (b), (d), (e), (f), (g), (h) and (j) of that subsection, if the information requested for is over ten years old.

(3) Any information relating to any overseas trade agreement referred to in subsection (1) (c) (v) of this section, where the negotiations have not concluded even after a lapse of ten years shall not be disclosed.

(4) Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

(5) An information officer may seek the advice of the Commission, with regard to an issue connected with the grant of access to any information which is exempted from being disclosed under subsection (1), and the commission may as expeditiously as possible and in any event give its advice within fourteen days.

Severability under certain circumstances.

6. Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.

PART III

DUTIES OF MINISTERS AND PUBLIC AUTHORITIES

Public authorities to maintain and preserve its records.

7. (1) It shall be the duty of every public authority to maintain all its records duly catalogued and indexed in such form as is consistent with its operational requirements which would facilitate the right of access to information as provided for in this Act.

(2) In discharging its obligations under subsection (1), every public authority shall comply with any direction given by the Commission under section 14(h).

(3) All records being maintained by every public authority, shall be preserved—

- (a) in the case of those records already in existence on the date of coming into operation of this Act, for a period of not less than ten years from the date of coming into operation of this Act; and
- (b) in the case of new records which are created after the date of coming into operation of this Act, for a period of not less than twelve years from the date on which such record is created.

(4) No record or information which is the subject matter of a request made under this Act, shall be destroyed during the pendency of such request or any appeal or judicial proceeding relating to such request.

(5) Notwithstanding the provisions of subsection (2), every public authority shall endeavor to preserve all its records in electronic format within a reasonable time, subject to the availability of resources.

8. (1) It shall be the duty of every Minister to whom any subject has been assigned to publish biannually before the thirtieth of June and thirty first of December respectively of each year, a report in such form as shall be determined by the Commission as would enable a citizen to exercise the right of access to information granted under section 3 of this Act.

Ministers duty to publish a report.

(2) The report referred to in subsection (1) shall contain-

- (a) the particulars relating to the organisation, functions, activities and duties of the Ministry of such Minister and of all the public authorities falling within the functions so assigned;
- (b) the following particulars pertaining to the Ministry and the public authorities referred to in paragraph (a):-
 - (i) the powers, duties and functions of officers and employees and the respective procedures followed by them in their decision making process;
 - (ii) the norms set for the discharge of their functions, performance of their duties and exercise of their powers;
 - (iii) rules, regulations, instructions, manuals and any other categories of records, which are used by its officers and employees in the discharge of their functions, performance of their duties and exercise of their powers;

- (iv) the details of facilities available to citizens for obtaining information;
- (v) the budget allocated, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (vi) the name, designation and other particulars of the information officer or officers appointed.

(3) Notwithstanding the provisions of subsection (1), it shall be the duty of every Minister, within six months of the date of coming into operation of this Act, to publish in such form as may be determined by such Minister, a report containing the information referred to in paragraphs (a) and (b) of subsection (2).

(4) The reports referred to in subsections (1), (2) and (3) shall be-

- (a) published in the official languages and be made available in electronic form; and
- (b) made available for public inspection and copies of the same may be issued to a citizen, on the payment of such fee as shall be determined by the Commission.

For the avoidance of doubt it is hereby declared that any reference to the Minister shall also include a reference to a Minister of a Provincial Council established under Chapter XVIIIA of the Constitution.

9. (1) (a) It shall be the duty of the Minister, to whom the subject pertaining to any project has been assigned, to communicate, three months prior to the commencement of such project, to the public generally, and to any particular persons who are likely to be affected by such project all information relating to the project that is available with the Minister, as on the date of such communication:

Duty of the Minister to inform public about the initiation of projects.

Provided however, in the event of an urgent project, information shall be provided one week prior to the commencement of such project and reasons for such urgency shall be communicated to the Commission.

(b)The Commission shall issue guidelines specifying the manner in which the communication referred to in paragraph (a) shall be made.

(2) (a)The Minister shall, on a written request made in that behalf by a citizen, make available updated information about a project referred to in subsection (1), throughout the period of its development and implementation.

(b)The information shall be made available on the payment of such fee, as shall be prescribed by the Commission for that purpose.

(3) For the purposes of this section, “project” means any project the value of which exceeds-

- (a) in the case of foreign funded projects, one hundred thousand United States dollars; and
- (b) in the case of locally funded projects, five hundred thousand rupees.

For the avoidance of doubt it is hereby declared that any reference to the Minister shall also include a reference to a Minister of a Provincial Council established under Chapter XVIIIA of the Constitution.

Duty of public authorities to submit reports etc.

10. Every public authority shall submit annual reports to the Commission before the thirty first day of December immediately succeeding the year to which the report relates which shall be made available to the public in its office and on its official website, furnishing information such as-

- (a) the total number of requests received during the year and information provided and rejected;
- (b) the amount of fees collected during the year;
- (c) the number of requests rejected under section 5;
- (d) the number of times information was provided at the direction of the Commission;
- (e) any suggestions for improving the effectiveness of the regime of transparency;
- (f) the number of appeals from refusal to communicate information;
- (g) practices relating to the maintenance, management and destruction of records; and
- (h) its activities under section 8.

PART 1V

ESTABLISHMENT OF THE RIGHT TO INFORMATION COMMISSION

Establishment of the right to Information Commission.

11. (1) There shall be established for the purposes of this Act, a body called the Right to Information Commission (in this Act referred to as the “Commission”).

(2) The Commission shall by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

12. (1) The Commission shall consist of five persons appointed by the President upon the recommendation of the Constitutional Council. In making such recommendations, the Constitutional Council shall recommend one person nominated by each of the following organisations or categories of organisations:-

Constitution of
the Commission.

- (a) Bar Association of Sri Lanka which shall nominate an Attorney-at-Law of eminence or a Legal Academic in consultation with Attorneys -at-Law and Legal Academia;
- (b) organizations of publishers, editors and media persons;
- (c) other civil society organizations.

(2) (a) In making recommendations under subsection (1), the Constitutional Council shall ensure that the persons who are being recommended are persons who-

- (i) have distinguished themselves in public life with proven knowledge, experience and eminence in the fields of law, governance, public administration, social services, journalism, science and technology or management;
- (ii) are not Members of Parliament, any Provincial Council or a local authority;
- (iii) do not hold any public or judicial office or any other office of profit;
- (iv) are not connected with any political party; or
- (v) are not carrying on any business or pursuing any profession.

(b) In nominating persons for the consideration of the Constitutional Council the organizations referred to in subsection (1) shall ensure that the persons nominated meet

the criteria specified herein. In the event the Constitutional Council is of the opinion that the nominees do not meet the criteria set out herein fresh nominations shall be called for.

(3) The Constitutional Council shall make its recommendations under subsection (1), within one month of the date of coming into operation of this Act or the date of a vacancy arising in the Commission. In the event, any or all of the organisations concerned fail to make nominations within such period, the Constitutional Council shall make its own recommendations after the expiry of the said period. In the event any nominations are rejected the Constitutional Council shall make its own nominations if no acceptable nominations are resubmitted within two weeks from the rejection.

(4) Where a member of the Commission while holding such office becomes a Member of Parliament, any Provincial Council or a local authority or appointed to any public or judicial office or an office bearer of any political party such member shall cease to be a member of the Commission on such appointment.

(5) The President shall nominate one of the members appointed to the Commission to be its Chairperson.

(6) The members of the Commission shall hold office for a period of five years.

(7) A member of the Commission shall not disclose any information that cannot be disclosed under the provisions of this Act.

(8) The provisions of the Schedule to this Act shall apply to and in respect of the members of the Commission and the conduct of its meetings.

- 13.** (1) The Commission shall appoint-
- (a) a Director-General who shall be the Chief Executive Officer of the Commission;
 - (b) such officers and other employees as it considers necessary.

Appointment of officers and employees of the Commission.

(2) The Director-General shall be responsible for the general supervision, direction and management of the affairs of the Commission and exercise disciplinary control over the officers and employees of the Commission.

(3) The Director-General and other officers and employees appointed under subsection (1), shall be subject to such terms and conditions of service as shall be determined by the Commission and be paid such remuneration as determined by the Commission in consultation with the Minister assigned the subject of Finance.

14. The duties and functions of the Commission shall be, to –

Duties and functions of the Commission.

- (a) monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act;
- (b) make recommendations for reform both of a general nature and those in regard to any specific public authority;
- (c) issue guidelines based on reasonableness, for determining fees to be levied by public authorities for the release of any information under this Act;
- (d) prescribe the circumstances in which information may be provided by an information officer, without the payment of a fee;
- (e) prescribe the fee Schedule based on the principle of proactive disclosure, in regard to providing information;

- (f) co-operate with or undertake training activities for public officials on the effective implementation of the provisions of this Act;
- (g) publicise the requirements of this Act and the rights of individuals under the Act;
- (h) issue guidelines for the proper record management for public authorities.

Powers of the Commission.

15. For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-

- (a) to hold inquiries and require any person to appear before it;
- (b) to examine such person under oath or affirmation and require such person where necessary to produce any information which is in that person's possession, provided that the information which is exempted from disclosure under section 5 shall be examined in confidence;
- (c) to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act;
- (d) to direct a public authority to provide information, in a particular form;
- (e) to direct a public authority to publish any information withheld by a public authority from the public, subject to the provisions of section 5;
- (f) to hear and determine any appeals made to it by any aggrieved person under section 32; and
- (g) to direct a public authority or any relevant information officer of the authority to reimburse fees charged from a citizen due to any information requested for not been provided in time.

16. (1) The Commission shall have its own Fund into which shall be credited-

Fund of the Commission.

(a) all such sums of money as may be voted upon from time to time by Parliament for the use of the Commission; and

(b) donations, gifts or grants from any source whatsoever, whether in or outside Sri Lanka.

(2) Where any money is received by way of donations, gifts or grants under subsection (1)(b), the sources and purpose for which such donation, grant or gift was made available shall be made public.

(3) There shall be paid out of the Fund all such sums of money required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its powers, duties and functions.

17. (1) The financial year of the Commission shall be the calendar year.

Financial year and audit of accounts.

(2) The Commission shall cause proper books of accounts to be maintained of the income and expenditure and all other transactions of the Commission.

(3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

18. The provisions of Part II of the Finance Act, No. 38 of 1971 shall, *mutatis mutandis* apply to the financial control and accounts of the Commission.

Part II of the Finance Act, No. 38 of 1971 to apply.

19. The members and officers and all other employees of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19) and every inquiry held by the Commission under this Act shall be deemed to be a judicial proceeding within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979.

Members etc, of the Commission deemed to be public servants.

Application of the Bribery Act.

20. The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act (Chapter 26) and the provisions of that Act shall be construed accordingly.

Expenses incurred in any suit or prosecution.

21. Any expenses incurred by any member, officer or employee of the Commission in any suit or prosecution brought by or against such person before any court in respect of any act or omission which is done or purported to be done by such person in good faith for the purpose of carrying out the provisions of this Act shall, if the court holds that such act or omission was done in good faith, be paid out of the fund of the Commission unless such expenses are recovered by him in such suit or prosecution.

Procedural requirements to be published.

22. The Commission shall within six months of its establishment, formulate and give adequate publicity to the procedural requirements for the submission of appeals to the Commission under section 32.

PART V

APPOINTMENT OF INFORMATION OFFICERS AND PROCEDURE FOR GAINING ACCESS TO INFORMATION

Appointment of Information officers and designated officers.

23. (1) (a) Every public authority shall for the purpose of giving effect to the provisions of this Act, appoint, within three months of the date of coming into operation of this Act, one or more officers as information officers of such public authority and a designated officer to hear appeals.

(b) Until such time that an information officer is appointed under paragraph (a) the Head or Chief Executive Officer of the public authority shall be deemed to be the information officer of such public authority, for the purposes of this Act.

(2) Every information officer shall deal with requests for information made to the public authority of which he or she has been appointed its information officer, and render all necessary assistance to any citizen making such request to obtain the information.

(3) The Information Officer may seek the assistance of any other officer as he or she may consider necessary, for the

proper discharge of the duty imposed on him under this Act, and where assistance is sought from any such officer, it shall be the duty of such officer to provide the required assistance.

24. (1) Any citizen who is desirous of obtaining any information under this Act shall make a request in writing to the appropriate information officer, specifying the particulars of the information requested for:

Procedure for obtaining information.

Provided that where any citizen making a request under this subsection is unable due to any reason to make such request in writing, such citizen shall be entitled to make the request orally and it shall be the duty of the appropriate information officer to reduce such request to writing on behalf of the citizen.

(2) Where a citizen –

- (a) wishes to make a request to a public authority; or
- (b) has made a request to a public authority which does not comply with the requirements of this Act,

the information officer concerned shall take all necessary steps to assist the citizen, free of charge, to make the request in a manner that complies with this Act.

(3) On receipt of a request, an information officer shall immediately provide a written acknowledgement of the request to the citizen.

(4) Where an information officer is able to provide an immediate response to a citizen making a request and such response is to the satisfaction of the requester, the information officer shall make and retain a record of the request and the response thereto.

(5) A citizen making a request for information shall:–

- (a) provide such details concerning the information requested as is reasonably necessary to enable

the information officer to identify the information;

- (b) identify the nature of the form and language in which the citizen prefers access;
- (c) where the citizen making the request believes that the information is necessary to safeguard the life or liberty of a person, include a statement to that effect, including the basis for that belief; and
- (d) not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him or her.

(6) For the purpose of this section –

“writing” includes writing done through electronic means; and

“appropriate information officer” means the Information Officer appointed to the public authority from which the information is being requested for.

Decision on requests submitted under section 24.

25. (1) An information officer shall, as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 24, make a decision either to provide the information requested for on the payment of a fee determined in accordance with the fee schedule referred to in section 14(e) or to reject the request on any one or more of the grounds referred to in section 5 of this Act, and shall forthwith communicate such decision to the citizen who made the request.

(2) Where a decision is made to provide the information requested for, access to such information shall be granted within fourteen days of arriving at such decision.

(3) Where the request for information concerns the life and personal liberty of the citizen, the response to it shall be made within forty-eight hours of the receipt of the request.

(4) Notwithstanding the requirement made for the payment of a fee under subsection (1), the Commission may specify the circumstances in which information may be provided by an information officer, without the payment of a fee.

(5) The period of fourteen days referred to in subsection (2) for providing access to information may be extended for a further period of not more than twenty one days where-

- (a) the request is for a large number of records and providing the information within fourteen days would unreasonably interfere with the activities of the public authority concerned; or
- (b) the request requires a search for records in, or collection of records from, an office of the public authority not situated in the same city, town or location as the office of the information officer that cannot reasonably be completed within the fourteen days.

(6) Where a period for providing information is to be extended for any of the circumstances referred to in subsection (5), the information officer shall, as soon as reasonably possible, but in any case within fourteen days, notify the citizen concerned of such fact giving the following reasons:-

- (a) the period of the extension; and
- (b) reasons for the extension.

(7) A citizen who is dissatisfied with the reasons given under subsection (6) may lodge an appeal with the designated officer.

26. (1) Every public authority shall display in a conspicuous place within the official premises and on a website of such public Authority if any, a notice specifying-

- (a) contact details of the Commission and the members of the Commission;

Public authority to display details of information officers and fees to be charged.

- (b) contact details of the information officer;
- (c) contact details of the designated officer;
- (d) fees to be charged for obtaining any information from such public Authority.

(2) The fee referred to in subsection (1)(d), shall be determined in accordance with the fee scheduled formulated by the Commission under section 14(e).

Manner in which information is to be provided.

27. (1) Where decision has been made to grant a request for information, such information shall be provided in the form in which it is requested for, unless the information officer is of the view that providing the information in the form requested for would not be detrimental to the safety or preservation of the relevant document or record in respect of which the request was made.

(2) Where an information officer is unable to provide the information in the manner requested for, it shall be the duty of such officer to consult the citizen and render all possible assistance to the citizen to determine an appropriate alternative means of providing access to the information and to facilitate compliance with such request.

(3) Subject to the provisions of subsection (1), a citizen, whose request for information has been granted, is entitled to:-

- (a) inspect relevant work, documents, records;
- (b) take notes, extracts or certified copies of documents or records;
- (c) take certified samples of material;
- (d) obtain information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device.

28. Where a request for information is refused by an information officer, such officer shall specify the following information in the communication to be sent under section 25(1), to the citizen who made the request—

Refusal of a request to be communicated.

- (a) the grounds on which such request is refused; and
- (b) the period within which and the person to whom an appeal against such refusal may be preferred under section 32 of this Act.

29. (1) Where a request made to an information officer by any citizen to disclose information which relates to, or has been supplied by a third party and such information has been treated as confidential at the time the information was supplied, the information officer shall, within one week of the receipt of such request, invite such third party by notice issued in writing, to make representation for or against such disclosure, within seven days of the receipt of the notice.

Where information requested for was supplied by a third party.

(2) An information officer shall be required in making his decision on any request made for the disclosure of information which relates to or has been supplied by a third party, to take into consideration the representations made by such third party under subsection (1), and shall, where the third party-

- (a) does not respond to the notice, disclose information requested for;
- (b) responds to the notice and agrees to the disclosure of the information requested for, disclose such information;
- (c) responds to the notice and refuses to the disclosure of the information requested for, deny access to the information requested for:

Provided however, the Commission may on the application made in that behalf by the citizen making the request, direct the disclosure of the information in question notwithstanding any objections raised by such third party against its disclosure, where the release of the information concerned demonstrably outweighs the private interest in non disclosure.

Exemption from suit or prosecution.

30. No liability, whether civil or criminal, shall attach to any public authority or any information officer or any other officer of such public authority, for anything which in good faith is done by such officer in the performance or exercise of any function or power imposed or assigned to such officer under this Act.

PART VI

APPEALS AGAINST REJECTIONS

Appeals against a rejection of a request.

31. (1) Any citizen who is aggrieved as a result of—
- (a) refusing a request made for information;
 - (b) refusing access to the information on the ground that such information is exempted from being granted under section 5;
 - (c) non-compliance with time frames specified by this Act;
 - (d) granting of incomplete, misleading or false information;
 - (e) charging an excessive fees;
 - (f) the refusal of the information officer to provide information in the form requested; or
 - (g) the citizen requesting having reasonable grounds to believe that information has been

deformed, destroyed or misplaced to prevent such citizen from having access to the information,

may, prefer an appeal to the designated officer within fourteen days of the refusal, act or date of becoming aware of the grounds on which the appeal is sought to be made, as the case may be:

Provided however, that the designated officer may admit the appeal after the expiry of the period of fourteen days if he or she is satisfied that the appellant was prevented by a reason beyond his or her control from filing the appeal in time.

(2) The designated officer shall issue a receipt on the acceptance of the appeal, to the citizen making the appeal, and in any case within three working days.

(3) The decision on any appeal preferred under subsection (1), shall be made by the designated officer within three weeks of the receipt of the appeal and shall include the reasons for the said decision including specific grounds for the same.

(4) The right of a citizen to prefer an appeal under subsection (1) shall be without prejudice to his or her right to make an application to the Commission.

(5) The designated officer may where reasonable cause is given for failure to submit an appeal within a period specified by subsection (1) by the citizen making such an appeal may at his discretion hear the appeal notwithstanding such delay.

32. (1) Any citizen aggrieved by:-

- (a) the decision made in respect of an appeal under section 31(1), may within two months of the communication of such decision; or

Appeals to the Commission.

- (b) the failure to obtain a decision on any appeal made within the time specified for giving the same under section 31(3), may within two months of the expiry of the period so specified,

may appeal against that decision or the failure, to the Commission and the Commission may within thirty days of the receipt of such appeal affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action.

(2) The Commission may admit the appeal after the expiry of the period of two months if the commission is satisfied that the appellant was prevented by a reason beyond his or her control from filing the appeal in time.

(3) The Commission shall give reasons for its decisions in writing, to the appellant, the information officer and the public authority concerned.

(4) On appeal, the burden of proof shall be on the public authority to show that it acted in compliance with this Act in processing a request.

Appeal may be made on behalf of an aggrieved party.

33. Where the aggrieved party is unable due to any reason to make an appeal under section 31 or section 32, as the case may be, such appeal may be made by a person duly authorized in writing by the aggrieved party to prefer the same.

Appeals to the Court of Appeal.

34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority.

(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section.

PART VII

GENERAL

35. Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision.

Duty to disclose reasons for a decision.

36. Nothing in this Act is intended to prevent or discourage information holders from publishing or giving access to information or prevent any person from seeking and obtaining information, which may be provided in due compliance with the law.

Nothing in this Act to prevent or discourage information from being published.

37. (1) The Commission shall cause to be prepared a report of its activities as often as it may consider necessary, so however, that it shall prepare at least one report in each calendar year. The Commission shall transmit a copy of every such report to be tabled before Parliament and a copy of same shall also be sent to the President.

Commission to prepare a report of its activities.

(2) A copy of the report prepared under subsection (1) shall, within two weeks of it being tabled before Parliament, be made available for public inspection at the office of the Commission and wherever possible, a copy of the same may be made available on its website.

38. (1) Where—

(a) any information officer willfully -

- (i) refuses to receive an application for information from any citizen;
- (ii) refuses a request made for information, without giving reasons for such refusal;
- (iii) stipulates excessive fees in breach of the fee Schedule referred to in section 14 (e);

Commission to inform the appropriate disciplinary authority.

(iv) otherwise fails to process a request in accordance with the provisions of this Act; or

(b) any designated officer willfully –

- (i) under section 31 refuses an appeal, made on any ground other than a ground specified in section 5 of this Act;
- (ii) failed without any reasonable cause to make a decision on an appeal, within the time specified under section 31(3) for making such decision,

the Commission shall, bring the matter to the notice of the appropriate disciplinary authority.

(2) The relevant disciplinary authority shall inform the Commission of the steps taken in respect of any matter brought to the notice of such disciplinary authority within a period of one month.

Offences.

39. (1) Every person who—

- (a) deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information;
- (b) destroys, invalidates, alters or totally or partially conceal information under his or her custody, or to which he or she has access to or knowledge of due to the exercise of his or her employment in such public authority;
- (c) fails or refuses to appear before the Commission when requested to do so by the Commission;

- (d) appears before the Commission, and fails or refuses to be examined by the Commission or to produce any information which is in that persons possession or power or deliberately provides false information under oath or affirmation;
- (e) fails or refuses to comply with or give effect to a decision of the Commission;
- (f) resists or obstructs the Commission or any officer or other employee of the Commission, in the exercise of any power conferred on the Commission or such officer or employee, by this Act;
- (g) discloses any information in contravention of the provisions of section 12(7) of this Act,

commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any officer whose assistance was sought for by an information officer under section 23(3) and who fails without reasonable cause to provide such assistance, shall commit an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding ten thousand rupees.

(3) A fine imposed for the commission of an offence referred to in subsection (1) or (2) of this section, shall be in addition to and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so.

(4) A prosecution under this Act shall be instituted by the Commission.

Release or disclosure of information by an employee of a public authority.

Regulations.

40. Notwithstanding any legal or other obligation to which a person may be subject to by virtue of being an officer or employee of any public authority, no officer or employee of a public authority shall be subjected to any punishment, disciplinary or otherwise, for releasing or disclosing any information which is permitted to be released or disclosed under this Act.

41. (1) The Minister may in consultation with the Commission make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are necessary to be made in order to give effect to the principles and provisions of this Act.

(2) Every regulation made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, forthwith after its publication in the *Gazette* be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Rules.

42. (1) The Commission may make rules concerning any of the following matters:-

- (a) the form and manner in which appeals may be made to the Commission;
- (b) the procedure for holding inquiries;
- (c) fee schedule in respect of providing information;

(d) the format of the reports to be prepared under section 10.

(2) No rule made under this section shall have effect until it is approved by the Minister and notification of such approval is published in the *Gazette*.

43. In this Act, unless the context otherwise requires— Interpretation.

“citizen” includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens;

“designated officer” means a designated officer appointed under section 23 of this Act;

“Higher Educational Institution” means a University, Campus or University College established or deemed to be established or made by the Universities Act, No. 16 of 1978 or acknowledged by the University Grants Commission or established under the provisions of any other Act;

“information” includes any material which is recorded in, in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, correspondence, memorandum, draft legislation, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;

“information officer” means an information officer appointed under section 23 of this Act;

“local authority” means a Municipal Council, Urban Council or a Pradeshiya Sabha and includes any authority created or established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

“non governmental organisation” means any organization formed by a group of persons on a voluntary basis and receiving funds directly or indirectly from the Government or international organisations and is of a non governmental nature;

“public authority” means –

(a) a Ministry of the Government;

(b) any body or office created or established by or under the Constitution, any written law, other than the Companies Act No. 7 of 2007, except to the extent specified in paragraph (e), or a statute of a Provincial Council;

(c) a Government Department;

(d) a public corporation;

(e) a company incorporated under the Companies Act, No. 7 of 2007, in which the State, or a public corporation or the State and a public corporation together hold twenty five *per centum* or more of the shares or otherwise has a controlling interest;

- (f) a local authority;
- (g) a private entity or organisation which is carrying out a statutory or public function or service, under a contract, a partnership, an agreement or a license from the government or its agencies or from a local body, but only to the extent of activities covered by that statutory or public function or service;
- (h) any department or other authority or institution established or created by a Provincial Council;
- (i) non-governmental organisations that are substantially funded by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organisation, rendering a service to the public in so far as the information sought relates to the service that is rendered to the public;
- (j) higher educational institutions including private universities and professional institutions which are established, recognised or licensed under any written law or funded, wholly or partly, by the State or a public corporation or any statutory body established or created by a statute of a Provincial Council;
- (k) private educational institutions including institutions offering vocational or technical education which are established, recognised or

licensed under any written law or funded, wholly or partly, by the State or a public corporation or any statutory body established or created by a statute of a Provincial Council;

- (l) all courts, tribunals and institutions created and established for the administration of justice;

Sinhala text to prevail in case of inconsistency.

44. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SCHEDULE [Section 12(8)]

PROVISIONS RELATING TO MEMBERS OF THE COMMISSION

(1) A member of the Commission shall cease to be a member, where such member:-

- (a) resigns his or her office earlier by writing addressed to the President;
- (b) is removed from office by the President;
- (c) is convicted by a court of law;
- (d) is deemed to have vacated office by absenting himself or herself from three consecutive meetings of the Commission, without obtaining prior leave of the Commission; or
- (e) engages in any employment outside the duties of his office, during the term of office.

(2) The President may on the recommendation of the Constitutional Council remove from office a member of the Commission, where:-

- (a) such member has become permanently incapable of performing his or her duties owing to any physical disability or unsoundness of mind ;

- (b) such member is unfit to perform his or her duties on the basis of moral turpitude; or
- (c) such member is convicted of an offence by a competent court of law.

(3) The Chairperson or any other member of the Commission may resign from such office by letter in that behalf addressed to the President and the resignation shall become effective from the date of its acceptance by the President in writing.

(4) In the event of the vacation of the office of any member of the Commission, the President shall follow the same procedure as set out in section 12(1) and appoint another person to hold such office for the unexpired term of office of the member whom he succeeds.

(5) (a) Where a member of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President may on the recommendation of the Constitutional Council, appoint another person to act in place of such member during his or her absence.

(b) Where the Chairperson of the Commission, is temporarily unable to discharge his or her duty due to ill health, absence from Sri Lanka or for any other cause, the President shall appoint another member of the Commission, to act in place of such Chairperson during his or her absence.

(6) The members of the Commission, shall be paid such remuneration as shall be determined by the Minister in charge of the subject of Finance.

(7) (a) The Commission shall meet at least once in every month or as often as may be necessary.

(b) The quorum for any meeting of the Commission shall be three members.

(c) The Chairperson of the Commission shall preside at all meetings of the Commission, and in the absence of the Chairperson at any such meeting, the members present shall elect from amongst them, a member to preside at such meeting.

(d) The Chairperson or the person presiding at any meeting of the Commission, shall in addition to his vote, have a casting vote.

(e) The Commission shall regulate the procedure in regard to its meetings and the transaction of business at such meetings.

(8) The seal of the Commission:—

- (a) shall be as determined from time to time by the Commission;
- (b) shall be in the custody of such person as the Commission shall determine;
- (c) may be altered in such manner as may be determined by the Commission; and
- (d) shall not be affixed to any document or instrument, except with the sanction of the Commission, and in the presence of the Chairperson and one other member of such Commission both of whom shall sign such document or the instrument in token of their presence.

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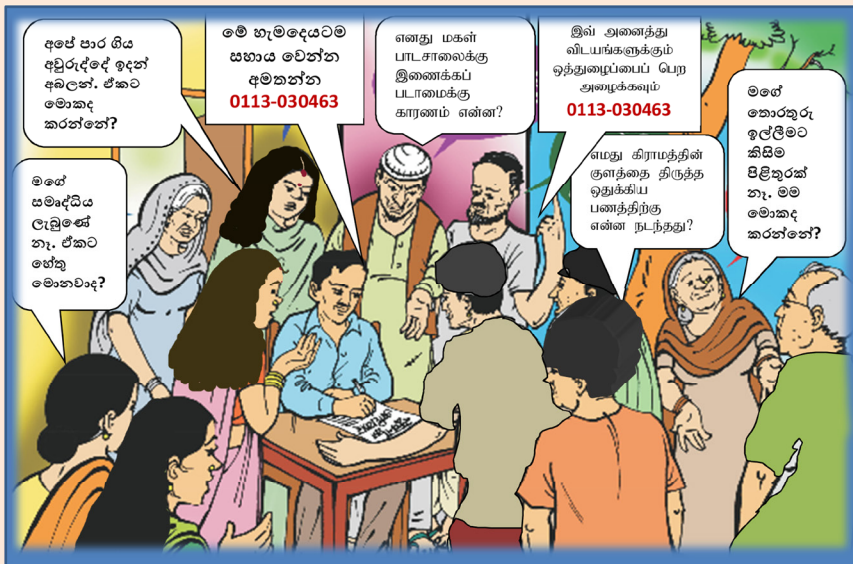
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