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A Nation Towards Integrity : Training Programme Series for Integrity Trainers

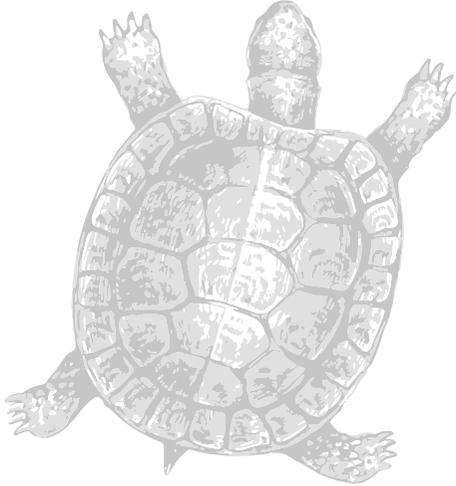


RESOURCE HANDBOOK



A NATION TOWARDS INTEGRITY: TRAINING PROGRAMME SERIES FOR INTEGRITY TRAINERS

RESOURCE HANDBOOK



CIABOC

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இலஞ்சம் அல்லது ஊழல் பற்றிய சார்த்துதல்களை புலனாய்வு செய்வதற்கான ஆணைக்குழு

COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

**A NATION TOWARDS INTEGRITY:
TRAINING PROGRAMME SERIES
FOR INTEGRITY TRAINERS**

RESOURCE HANDBOOK

First Publication – August 2020

Published by

Commission to Investigate Allegations of Bribery or Corruption

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This publication is released with the generosity of the American People through the Strengthening Democratic Governance and Accountability Project (SDGAP). The sole responsibility for the content of this handbook lies with the Commission to Investigate Allegations of Bribery and Corruption. It does not necessarily reflect the views of the United States Agency for International Development (USAID) or the United States Government.

MESSAGE FROM COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION (CIABOC)

Charles Colten, a 19th-century English writer once said: “Corruption is like a ball of snow, once it’s set a rolling it must increase” The term “corruption” dates back to the early stages of human civilization. According to the Corruption Perceptions Index, it is evident that corruption has become a widespread problem across developed and developing countries.

In the present world, some countries have managed to not only prevent ‘rolling balls of snow’ but also have successfully proven that they are capable of eliminating corruption.

In the recent past, the main focus of the Anti-Corruption pioneers was to strengthen the institutional and legal structures in order to curb corruption that destroyed the lives of the general public.

However, in the modern world, countries that have eradicated corruption has shown that strengthening of corporate and legal structures to combat corruption itself is not sufficient to overcome corruption. Thus, there arises a need to introduce an education system that caters towards a dynamic general public who are aware of and sensitive to corrupt practices. This has become a prominent factor in anti-corruption missions

With the vision of elevating Sri Lanka to greatness by creating a ‘generation endowed with pride and integrity’ CIABOC has formulated the National Action Plan (NAP) for Combatting Bribery and Corruption in Sri Lanka. In formulating the NAP, the emphasis has been given to ensure inclusivity of the greater citizenry in a coordinated effort to fight against corruption. The second strategy of the NAP which is to be implemented over a period of five years (2019-2023) is value-based education and community engagement. Prevention measures, institutional strengthening of CIABOC and other law enforcement agencies and law and policy reforms have been identified as other strategies.

Educating children and the youth on integrity, raising awareness- for the public sector, creating public demand for accountability and a few other activities have been identified under value-based education and community engagement strategy. Furthermore, as a key strategy, the NAP has intended to train 400 public officials as trainers on anti-corruption and they, in turn, hope to train more than 25 per cent of the entire public servants. It is believed

that this manual will be beneficial for the training of trainers' combat bribery and corruption.

We express our special gratitude to the United States Agency for International Development and Strengthening Democratic Governance and Accountability Project (SDGAP) for providing financial and technical support in the implementation of the National Action Plan for Combatting Bribery and Corruption in Sri Lanka Furthermore, SDGAP consultant Mr. Jagath Liyana Arachchi (Attorney-At-Law) who compiled this manual under the guidance of the senior officials of CIABOC and everyone else who contributed towards this worthy cause deserves our gratitude.

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INTEGRITY FOR SRI LANKA

A series of programs held to train personnel in implementing the National Action Plan (NAP) to combat bribery and corruption and to promote integrity in government service towards a prosperous and clean Sri Lanka

01. Sri Lanka did not have a national policy to combat bribery and corruption. Thus, Cabinet approval was granted for the formulation and implementation of the National Action Plan for Combatting Bribery and Corruption in Sri Lanka on February 5th 2019. NAP was drafted pursuant to an islandwide gathering of ideas from all stakeholders. National Action Plan will be implemented for a period of five years from 2019-2023. The circular No.PS/ACD/01/2019 dated July, 04th 2019 issued by the Secretary to the President, has directed all government institutions to implement the said National Action Plan.

The National Action Plan to combat bribery and corruption in Sri Lanka lays down the following 04 strategies:

- a. Prevention Measures
- b. Value-Based Education and Community Engagement
- c. Institutional Strengthening of CIABOC and other Law Enforcement Agencies
- d. Law and Policy Reforms.

The implementation of these strategies is not the responsibility of a single entity or an individual. Our aim for the next five years should be to fulfil and perform respective duties and roles in a collective effort to eliminate bribery and corruption from the country. No single entity or group of individuals can tackle corruption alone; it requires the collective effort and dedication of every stakeholder.

02. One of the key policies of the Ten-Fold Policy Statement of government is, 'an administration Free from Corruption'. In order to achieve a corruption-free state apparatus, it is essential to follow the proper procedure by eliminating bribery and corruption and offer the public a convenient and trusted public service. These objectives

can be easily achieved by implementing strategies specified in the National Action Plan for Combatting Bribery and Corruption.

03. It is imperative for all governmental institutions to be aware of the National Action Plan as well as its implementation. Moreover, every public officer should be armed with positive attitudes. At the same time positive and core values of the citizens that have been fading away should be reinforced. Accordingly, with a view to achieve the said objectives, it has been proposed to conduct a series of workshops to train public officers. In order to raise awareness within the public sector in terms of the first and second strategies of the National Action Plan which are prevention measures and value-based education and community engagement; a series of workshops have been proposed to be conducted in collaboration with the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government. The two main objectives of the workshops are:
 - i. Updating the government officials, institutions and heads of departments on the implementation of the National Action Plan for Combatting Bribery and Corruption in Sri Lanka 2019-2023.
 - ii. Conducting prevention programs to promote positive values and ethical attitudes to uphold the integrity of the public officer.

To achieve these objectives, it is imperative to have trainers who are knowledgeable and aware of the subject.

04. Accordingly, 400 public officers have been selected from Ministries, Provincial- and District-level Public institutions to undertake a three-day residential training program to be trained as trainers. The said trainers will conduct 20 training programs each, which will amount to 8000 programs in total. Thereby expecting to train and educate 400,000 public officers on anti-corruption.
05. Alternative strategies are used to enhance the background knowledge of these trainers in addition to the three-day residential training program. One such strategy is this Resource Handbook which

is comprised of several simple articles with respect to bribery and corruption along with a list of laws/statutes and articles which the trainers should refer. In addition, the trainers will be given 5 more publications of CIABOC which will assist them to obtain a sound understanding about their way forward, with regard to implementation of the bribery and corruption prevention plan.

Further, a pen drive containing laws/statutes, relevant articles and video programs will be given to the trainers.

It is imperative to refer to these resources before the commencement of the training programs.

CHAPTER ONE

INTEGRITY

I. PREFACE

Article 3 of the Constitution of the Democratic Socialist Republic of Sri Lanka provides that, 'sovereignty is in the people and is inalienable'. Therefore, every public representative and officer of the legislature, executive and the judiciary is responsible and accountable to the public.

Nevertheless, the public distrust and doubt towards government institutions and its officials for reasons such as failure of fulfilling responsibilities, lack of honesty, transparency, accountability as well as integrity at professional and personal levels. Furthermore, due to the deeply entrenched culture of bribery and corruption in public institutions and officers, the officers have failed to recognize who should serve whom, and the fact that public is our employer while we are their servants.

The main reason for this is the lack of values and the constant race after money. It is time to rethink our core values and when and how we lost it, and the price we pay for it, especially in a country that boasts of historical glory. It seems that the citizens in our country have forgotten our civic duty and responsibility and this trend seems global, but the extent is much larger in our country in comparison to the rest of the world.

In the past, we cared for and respected not only human beings, but also the flora and fauna, rivers and land. We paid homage to mother earth and sought her blessings before commencing any task on land. Our ancestors who understood the concept that life existed due to light of the sun and mother's milk, paid homage to the sun before ploughing. They who thought that animals have a right to live just like us earmarked a portion of the paddy field to birds. They even worshipped and sought permission from the reservoirs, lakes, ponds, streams and wells which provided us with the water essential

for daily life. Our ancestors held a selfless attitude towards nature's treasures as well as human relationships. They understood that others also had equal rights to live on this land as one.

HOSPITALITY

Our hospitality and warm-hearted responses towards each other was natural and expected nothing in return. We had a history of helping each other voluntarily and cooperatively. The “aththam” system (labour exchange pattern in ancient Sri Lanka) provides the best example for it.

Arahath Mahinda Thero in his sermon to King Devanam Piyatissa explained that the ruler of a country is not its owner but a trustee alone. The fact that the water of a single lake had an irrigation system to distribute its water through a cluster of canals reminded us that it serves the entire community fairly rather than one individual. Further, the animals consuming water from that same lake goes even further reminding the fact that these natural resources are meant for both humans as well as wildlife.

INTEGRITY

Today, all these have to be reminded over and over again as we have forgotten these values. Further, we have become so distant from these values that it is contemplated whether values had to be adopted from other countries. Our country which was highly acclaimed for integrity has lost it today. We have to learn integrity from Western countries that were far behind us in the past. The integrity that comprises of characteristics such as trust, responsibility, empathy, lawfulness, discipline and frankness, is now nowhere to be seen among us.

A well-travelled person across the world may be reminiscent of the fact that, even without a vendor at a roadside newspaper stall, a person could buy the newspaper by putting the value of the newspaper to a till in the stall. For instance, in certain countries, even a piece of jewelry left behind a restroom could remain unstolen even after days.

This portrays how honest people in such countries are even when no one is watching. This is their step towards integrity.

ABIDING BY THE LAW FOR THE FEAR OF IT?

We should ask ourselves if the above-mentioned experience is the same in our country. Do we abide by the law either because ‘we fear it’ or is it because ‘we

are law-abiding citizens? If it is the latter then we do not need any officers, institutions or courts that meticulously keep an eye out for violations of the law to punish them. But if it is the former then there should be law enforcement agencies and officers to punish -offenders.

RED LIGHT SIGNAL

For instance, whether a person who drives at night in a secluded road will stop at the red light, or run the red light as there is no policeman or any others watching him/her will depend on whether the person is lawful or just obeys the law in fear of punishment. This is why we should talk about integrity. A person with integrity will always be lawful, disciplined, responsible, trustworthy and patriotic, not because he fears the law but because he is motivated to do the right thing even when no one is watching.

CONSCIENCE

As the value of integrity is of priority, we must have a discourse today taking lessons from past ideals and values. If someone is accepting bribes to do their duty, then it is due to the lack of empathy towards others and lack of understanding of the duty entrusted to them. Hence, a group of individuals misuse resources that belong to the whole country and future generations, for their benefit. At present, public officers from top to bottom, have forgotten that, not only are they misusing public and government property belonging to the entire society but they are also misusing the borrowed resources that belong to the future generations. The resources of this country should be conserved for its citizens. Everyone is after selfish needs, to better the next person by wealth, school and car but have no values. Therefore, good values should be impregnated from top to bottom and in every person regardless of their status.

2. INTEGRITY

WESTERN DEFINITION

“Supilipan” is the Sinhala term crafted to indicate the meaning of ‘Integrity’ in the English Language which conveys the meaning “to enter upon the right path’.

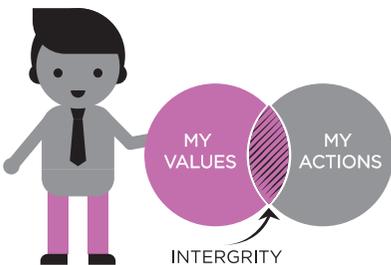
The Oxford Dictionary defines integrity as “the quality of being honest and having strong moral principles”. The Malalasekara Dictionary defines the same in Sinhala by the use of terms such as “uprightness; pride; honesty.”

Even though there is no specific definition presented for ‘what is integrity?’ it is not difficult to work out its meaning through various definitions and interpretations that have already been given in respect of the term.

- *Integrity is telling myself the truth and honesty is telling the truth to other people*
- Spencer Johnson, American Writer
- *Integrity – the Choice between what is convenient and what is right*
- Tony Dungy
- *Integrity is doing the right thing, even when no one is watching*
- C.S. Lewis, British Writer

As depicted by the above definitions and interpretations, it is clear that integrity is a blend of values and actions. Further, it is rational to say that integrity is a practice of being honest and showing a consistent and uncompromising adherence to strong moral and ethical principles and values.

A person with integrity will be honest to others in the community as well as to one’s own conscience.



Indeed, integrity is the critical connection between ethics and moral action.

- C. S. Lewis, British Writer

VALUES ASSOCIATED WITH INTEGRITY

The following characteristics can be identified as values associated with integrity.

- Righteous
- Honorable
- Truthful
- Blameless
- Graceful
- Upright
- Disciplined
- Faithful
- Holy

Integrity is the practice of being honest and showing a consistent and uncompromising adherence to strong moral and ethical principles and values. In ethics, integrity is regarded as the honesty and truthfulness or accuracy of one's actions. Integrity can stand in opposition to hypocrisy, in that judging with the standards of integrity involves regarding internal consistency as a virtue, and suggests that parties holding within themselves apparently conflicting values should account for the discrepancy or alter their beliefs. The word integrity evolved from the Latin adjective integer, meaning whole or complete.

In this context, integrity is the inner sense of "wholeness" deriving from qualities such as honesty and consistency of character. As such, one may judge that others "have integrity" to the extent that they act according to the values, beliefs and principles they claim to hold.

MAIN CHARACTERISTICS OF INTEGRITY

It is widely accepted across the world that there are six characteristics encompassing integrity. Those main characteristics and their elements can be detailed as follows:

Characteristic	Elements
1. Trustworthiness	<ul style="list-style-type: none"> • Honest and Disciplined • Not deceitful • Reliable • Will and the Courage to do the right thing • Good behavior and being content with what one has.
2. Respect	<ul style="list-style-type: none"> • Respecting others • Patience in the face of differences • Polite and appropriate speech • Refraining from physical and psychological abuse • Not ridiculing others • Do not look down on others and being flexible towards them. • Calm behavior in the event of disagreement.
3. Responsibility	<ul style="list-style-type: none"> • Doing what ought to be done. • Being courageous. • Always doing the best. • Self-Discipline • Always doing the right thing while keeping in mind of the consequences of wrongdoing. • Reliability of the choices made. • Accountable. • Keeping oneself and the environment clean • Responsible for his own acts • A person who acts true to his words • A person of principles
4. Fairness	<ul style="list-style-type: none"> • lawful • Sharing opportunities equally with others • Open-minded and attentive • Treating everyone equally • Paying attention to the differently-abled
5. Caring	<ul style="list-style-type: none"> • Compassionate • Empathetic and attentive of others • Express gratitude • Forgiving • Assisting people where necessary

<p>6. Citizenship</p>	<ul style="list-style-type: none"> • Fulfilling the duty towards the institution, society and the country. • Duty-bound & cooperative • A good neighbor/friend • Law-abiding • Respecting authority, leadership • Loving the country and the people
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SRI LANKAN PERCEPTION OF INTEGRITY

The word “*Supilipanna*” is derived from the Pali word “*Supatipanna*”. The latter is one of the attributes of the Noble Sangha and means ‘to enter upon the right path’ in Pali. It means being incorruptible. Accordingly, integrity is a trait of one’s character. A person of integrity refrains from any wrongdoing not because he fears of sanctions but because of his character of not doing any wrong.

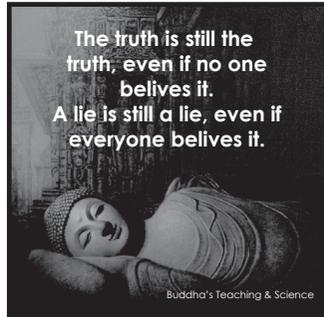
History gives examples of Sri Lankans who had such personality traits. King Dutugemunu upon building the Maha Stupa also known as Ruwanweli Seya, is said to have kept four-coin filled cauldrons (*kalderam*) at the four frontispieces (*Vahalkadas*) of the Stupa to remunerate the people who helped to build it with necessary labour. History records that only the people who assisted took their fair share out of the cauldrons, even though there was an opportunity for anyone to take money.

PRESERVING INTEGRITY IN TIMES OF DIFFICULTY

Doing what is right even at difficult times is a sign of a person who is in the right path. Although it is difficult to maintain integrity during tough times, if a person is persistent in this task then he can achieve personal fulfillment and has a long run in his respective path.

Like a turtle who withstands difficulties both in sea and land, manages to adopt and live long, likewise, a person with integrity will uphold his/her good virtues even at difficult times.





W. Clement Stone, a scholar has once said:

“Have the courage to say no. Have the courage to face the truth. Do the right thing because it is right. These are the magic keys to living your life with integrity.”

Lord Buddha has once preached that an individual must develop the virtue of ‘Yathāvādi tathākāri’ that is **“acting true to his/her words.”**

“Also, the truth is still the truth, even if no one believes it. A lie is still a lie, even if everyone believes it”

WHO SHOULD HAVE INTEGRITY?

It is not enough for just an individual to have integrity.

1. An individual must have integrity
2. The community must have integrity
3. Institutions must have integrity
4. The country must have integrity
5. The world must have integrity

It should start with an individual, and then a group and those groups should form institutions, and then those in turn forming nations full of such institutions and finally a world of integrity full of such nations. Integrity in a nation should cover all angles and institutions. Accordingly,

1. Legislature
2. Executive

3. Judiciary
 4. Public Sector
 5. Private Sector
 6. Sectors including religious, media, and civil societies.
 7. General Public
 8. Children and the young which constitute the future generation
- As above all sectors of institutions, as well as its individuals, should have integrity. Thereby a country of integrity could be achieved.

3. INTEGRITY IN THE PUBLIC SECTOR

Out of the above, the government sector should be given special attention. Integrity in the public sector can be divided into two sections.

1. Integrity within the Public Institution
2. The integrity of the Public Officer

THE INTEGRITY OF THE PUBLIC OFFICER

The public service must carry out their tasks with higher standards and the following ethics:

- Dedication to Service
- Civility
- Honesty
- Decent behavior

A public officer who upholds the above ethical values is also expected to act with integrity. In the context of integrity of the public officers, he must be an individual who is accountable for the actions taken, competent in his role and demonstrating an ethical behavior without corruption. Moreover, he must also act with honesty, transparency, trustfully, with respect and empathy towards others.

Integrity: I = a (A C E) – c

Integrity is the alignment (a) of Accountability (A) / Competence (C) / and Ethical behaviour (E), without corruption* (c)

WHAT SHOULD YOU DO AS A PUBLIC OFFICER OF INTEGRITY?

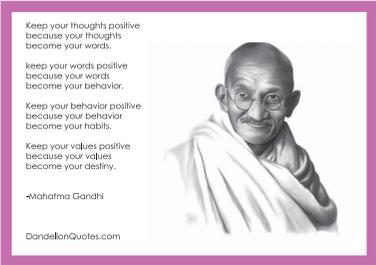
- Perform your duties and responsibilities.
- Maintain professional standards in a manner that safeguards the confidence and commitment of your colleagues.
- Ensure appropriate and efficient use of public property and funds.
- When dealing with the general public be fair, sensitive, punctual and efficient.
- Handle information transparently in accordance with the existing legal framework.

- Promote justice in terms of the law.
- What should not be done as a public officer of integrity?
- You should not misuse your position for personal benefit or interest. I.e, privileged information should not be used for your benefit.
- You should not take any gifts, gratifications or any other personal benefits from a person who may be expecting a certain advantage or influence through your official capacity, which may affect your decisions or integrity.
- You should not disclose official information without proper permission while in service and even after your tenure.
- You should not engage in any activity that leads to conflicts of interest between your personal and official capacities or anything that hinders your official duty. You should always follow the existing rules and regulations, specifically Chapter XXIX of the Establishment Code so as not to give rise to any form of conflict of interest or interference.

DOES THE PUBLIC OFFICER FULFIL THE RESPONSIBILITY OF TRUST CONFERRED ON HIM?

- A public officer enters into service upon pledging the public service oath. It is repeated on the first day of every subsequent year. If we recall the oath, one may recollect the integrity that a public officer upholds. We, who are paid by taxpayers' money, are under oath to render efficient service in realizing the public expectation, in an honest, trustworthy and a transparent manner without any bribery or corruption.
- Yet, at present, we have failed to fulfil the pledge that we made.

Don't be impressed by money, followers, degrees and titles. Be impressed by kindness, integrity, humility and generosity.



We should all ask ourselves whether we properly fulfil the tasks delegated to us by the public. It is only due to the lack of integrity that one expects some gratification to do a certain task that he/she is bound to do when the public who is also their employer comes to them.

- In order to obtain services, the public has to repeatedly visit public institutions and waste their time while beseeching for a proper service from their own employee.
- On the other hand, it has become imperative to have supervisors to inspect as to whether services are rendered to the public on time. If all public officers do their respective tasks efficiently and properly, there would be no need for such inspection.
- A person who steps into a public institution should be made to realize that there is a remedy for his grievance. They should have confidence that there are public officers who offer an honest and reasonable remedy, in public institutions. Public officers must fulfil their duty with integrity and competence. The public must be made to understand that public officers use their power in a reasonable and transparent manner in accordance with the law. When the public officers are teemed with integrity, respect comes unsolicited.
- Today we are unaware of the importance of responsibility and trust borne upon us. Hence, a group of individuals are shamelessly consuming resources that belong to the whole country and future generations, for their own benefit. At present, public officers from top to bottom should know that not only does the ownership of public property belong to the entire community but also they are consuming borrowed resources of our future generations. Our motherland is rich in resources and wealth. As trustees of the land, we bear a responsibility to protect them, nurture them and use them carefully whilst conserving it for the future generations.

4. TOOLS TO ENHANCE INTEGRITY IN THE PUBLIC SERVICE

I. INTRODUCTION

It is of utmost importance to uphold integrity in a country. This is an undisputed fact and a concept which has been accepted nationally and internationally.

Article 3 of the Constitution of the Democratic Socialist Republic of Sri Lanka provides that, 'sovereignty is in the people and is inalienable'. Therefore, every public representative and officer of the legislature, executive and the judiciary is responsible and accountable to the public.

Article 8 (1) of the United Nations Convention on Corruption (UNCAC) states that, in order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials..., In terms of article 8(5), Each State Party shall endeavor, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

As a country that has entered into a multilateral agreement on Open Government Partnership (OGP), Sri Lanka is bound to create responsible, transparent and accountable good governance in the country.

The Government of Sri Lanka anticipates achieving the Sustainable Development Goals by 2030 through working towards the provision of basic needs of the people, elimination of all forms of discrimination and inequalities, and establishing a society based on social justice and human security. The Policy aims to develop an economy that will promote the benefits of development among all. The Sustainable Development Goals envision a development that secures resources for future generations. In that regard, the integrity of the public servants is much needed.

2. EXISTING RULES AND METHODS UPHOLD PUBLIC SECTOR INTEGRITY

In this context, numerous rules and procedures have been introduced to improve the integrity of the public sector in our country.

- a. Laws governing Bribery and Corruption (a detailed discussion

- on this topic will be included in the book)
- b. National Action Plan for Combatting Bribery and Corruption in Sri Lanka
 - c. National Integrity Plan
 - d. Establishment Code and Financial Regulations

In this regard the integrity of the public sector can be divided into two;

- I. Enhancing integrity in Public Institutions
- II. The integrity of the public official

3. ENHANCING INTEGRITY IN PUBLIC INSTITUTIONS

Inadequate understanding and the lack of transparency in the delivery of government services among the citizens increases the chances of corruption within a country. All the heads of the institutions should identify potentials threats and risks of bribery and corruption within their respective institutions and update the guidelines and circulars that create leeway for such threats enabling them to provide a more productive service to the public and make their lives easier. The ensuing guidelines should empower the discretion bestowed upon public servants so as to ensure transparency within the system of administration. It must aim at increasing the confidence of the citizenry towards the state machinery and its public institutions.

In regard to the above, The National Action Plan to Combat Bribery and Corruption has introduced methods to be followed by each government institution to uphold integrity within the institution.

- a. Appoint an Integrity officer to each institution
- b. Appoint Corruption Prevention Committees
- c. Introduce an Institutional Action Plan to Combat Bribery and Corruption (IAP)
- d. Appoint a Facilitation Officer to each institution
- e. Prepare and display the Citizens' Charter
- f. Empower the right of the general public to access information

(Detailed discussions of the above points are included in the Integrity Handbook)

4. ENHANCING THE INTEGRITY OF THE PUBLIC OFFICIALS

- a. Strict prohibitions made against acceptance of gifts (refer Gift Rules)
- b. Concept of Conflict of Interest (refer Rules of Conflict of Interest)
- c. Duty to provide the declaration of Assets and liabilities (Establishment Code and Declaration of Assets and Liabilities Law No. 1 of 1975)
- d. Work ethics relating to public officials (Establishment Code)
- e. All public officers are subject to an integrity pledge
- f. Constantly update the knowledge on integrity

CHAPTER TWO IDENTIFYING CORRUPTION?

5. WHAT IS CORRUPTION

According to the Oxford dictionary, Corruption is “Dishonest or fraudulent conduct by those in power. According to the Merriam-Webster dictionary, corruption is defined as “Dishonest or illegal behavior especially by powerful people.”. However, there is no one single international definition of corruption. The reason for this is that the definition of corruption differs from country to country and cultural differences. Even the United Nations Convention on Corruption has not defined the word corruption.

SRI LANKAN LEGAL DEFINITION OF CORRUPTION

Even though there is no international definition for corruption, Sri Lanka has developed an illustration for corruption due to legal requirements. I.e Section 70 of the Bribery Act No. 11 of 1954 as amended by the Bribery (Amendment) Act No. 20 of 1994.

In terms of the aforesaid section corruption means “Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person,

- (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant;
- (b) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant;
- (c) uses any information coming to his knowledge by virtue of his office

- as a public servant;
- (d) participates in the making of any decision by virtue of his office as a public servant;
 - (e) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act,

shall be guilty of the offence of corruption and shall upon trial and conviction by a High Court or upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine. By Bribery (Amendment) Act, No. 22 of 2018, the power to hear Bribery cases were conferred to the High Court as well. Corruption is considered a cognizable offence and CIABOC is vested with the power to carry out investigations relating to corruption.

WELL KNOWN DEFINITIONS OF CORRUPTION

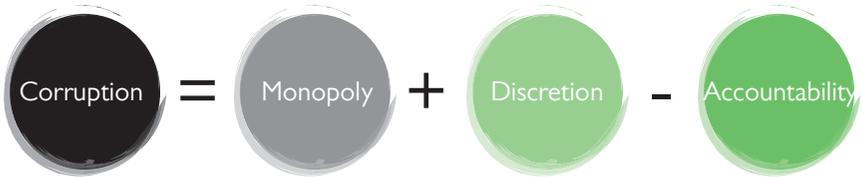
- The abuse of public office for private gains
– World Bank
- Corruption is the abuse of entrusted power for private gain.
– Transparency International
- Corruption is a transaction between the private sector and public sector persons for illegally converting public goods into private goods.
– Eden Holmes
- corruption is behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains;
– Colin Nye
- The promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.
– European Council

From the introduction, it should be noted that corruption involves all political matters, ranging from bribes by business people, politicians and government officials to petty thefts in state institutions and gratifications. Therefore, corruption comes in many forms.

CORRUPTION EQUATION

Robert Klitgaard, an economist who researched corruption has developed a formula and it deals with the facts that lead to corruption and its fluctuations. This is called Klitgaard Formula.

KLITGAARD FORMULA



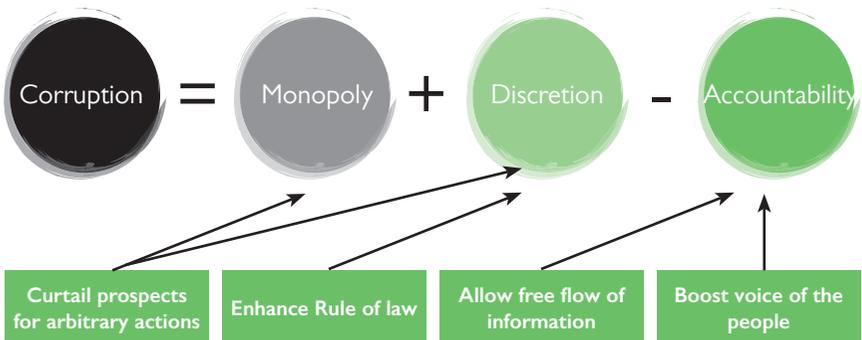
“Corruption equals monopoly plus discretion minus accountability.”

According to the equation,

- Increase of monopoly,
- Increase of discretion,
- Lack of accountability

increase corruption.

Accordingly, the Klitgaard formula can be illustrated as below.



According to the equation, one of the methods of reducing corruption is by curtailing prospects for arbitrary actions, which will reduce monopoly and discretion.

According to the equation, one of the methods of reducing corruption is blocking arbitrary actions, which will reduce monopoly and discretion. Individual decision-making power should be replaced with decision-making boards/ committees. Decisions taken within the organization should represent the ideas of all employees. Guidelines on how to arrive at effective decisions should be given to the decision-making boards/ committees. Decisions should be updated in a timely manner and the decisions made should be subjected to monitoring.

According to the Klitgaard formula, another method of curbing corruption is to strengthen the rule of law, which also will affect one's discretionary power. With fair and strong laws implemented fairly and lawfully along with the due process in place, anyone who takes decision using discretionary power can be brought before the law. Therefore everyone will abide by the law and follow due process. ..

Corruption can be curtailed by; reducing monopoly, discretion and increasing accountability. The increase of accountability comes through free flow of information. If the recruitments, purchases, subsidies and other criteria and procedures of the government are public information then the official will be accountability leaving less room for corruption. For example, when the results of interviews and competitive exams conducted for recruitment are publicized and released upon request, there is no room for the authorities to recruit candidates on the basis of friendship and close family relationships. Legal recognition of right to information can also be considered as a corruption tool.

Another strategy to increase accountability is to increase public voicing. If the public reacts to any unfair practices, the accountability of the officers will increase. For this purpose, the public should be strong enough to respond to informational inquiries as well as to resist the unfair practices revealed by such information.

PARTIES TO CORRUPTION

There are two main parties in the corruption process,

1. The demanding party
2. The supplying party

The demanding party is the party who requests or accepts a bribe; to do, or forbear to do, any duty or who abuses his/her office. Corrupt officials and corrupt politicians fall under this category.

The supplying party is the party who agrees to provide the bribe or benefit requested by the demanding party as described above. The general public, contractors and representatives fall into this category.

It is also important to note that the incitation of a bribe does not always come from the demanding party, in some instances, it is the supplying party that initiates a bribe. There are instances where the technical officers offer bribes and influence contractors to submit false reports on the quality of the roads constructed.

6. VARIOUS FORMS OF CORRUPTION

Although Sri Lanka uses the terms ‘Bribery and Corruption’ together, bribery is just one form, out of the many forms of corruption. There are a few common occurrences that always take place when corruption happens,

- Abuse of power
- Legally empowered public officers (administrative/political)
- personal gain

Different Forms of Corruption according to the United Nations Convention against Corruption.

In terms of the United Nations Convention against Corruption, legislation should be enacted to impose criminal liability on the following offences,

- Bribe
- Embezzlement, misappropriation or other diversion of property by a public official
- Trading in influence
- Abuse of functions or positions
- Illicit enrichment
- Laundering of proceeds of crime
- Obstruction of justice

Bribe

A bribe is a money or a favor given or promised in order to influence the decision or conduct of a person in a position of trust. This is done on mutual understanding. Bribes are given before the action is taken. The bribe can be in monetary terms or providing a service. Bribes to law enforcement agencies have been frequent, especially for illegal activities. According to the prevailing law in Sri Lanka, requesting and accepting bribes by public officials are considered a crime. However, the provisions in the bribery act do not cover the private sector.

According to the United Nations Convention against Corruption, bribery of public officials, bribery of foreign government officials and officials of international organizations has been identified as a crime.

Embezzlement, misappropriation or other diversion of property by a public official

Any misappropriation of property, public or private money, or any other security or other property that has been entrusted to him/her in terms of the position of a public official, for the benefit of him or any other person, is a practice of corruption.

Trading in influence

To promise or propose, directly or otherwise, that the government official or any other person may use his or her influence to inflict his or her influence on the State with the intention of obtaining from the State an administrative or state court for the benefit of the person from the beginning of the act.

Requesting or accepting any direct benefit to the government official or any other person to indemnify his or her influence with the intent of profiting from any administrative or state authority is known as influence.

Abuse of functions or positions

The intentional abstention of a public official from the use of his or her office in violation of the law, or the exercise of his or her duties for the benefit of any public officer or any other person, is considered to be an abuse of functions or positions.

Illicit Enrichment

When a public official has deliberately and substantially increased one's assets that cannot be reasonably explained by him or her in relation to the lawful income of oneself, it is considered as illicit enrichment.

Laundering of proceeds of crime

Converting or transferring of property to conceal or conceal its illicit origins is called money laundering.

In addition to the above, the following types of actions are also known as corruption.

Cheating

This is the act of deceiving another person for the benefit of someone or a third party. When a government grant is given to a sick person, obtaining a

forged certificate from a government medical officer to obtain such assistance is considered cheating.

Coercion

Forcing money or some other valuable in order to do or refrain from doing an act is considered being coercive. Not doing an act can even extend to physical torture and injury. For instance, when a patient requests the nurse to call the doctor to do a check-up, if the nurse requests money, it can be considered as coercion.

Abuse of Decision-Making Power

This is a crime where one person exercises his power to favor or discriminate against a group. When the law is applied incorrectly or in the absence of formal laws or procedures to justify specific decisions, misuse of power can take place.

Unfair Profit Making / Insider Trading

This means engaging in a transaction that does not suit one's position, or receiving a status or commercial profit, with the intention of undue enrichment. For example, a government official, based on information he received, learns that the government is to implement a major development project in a particular area; he then purchases a large plot of land himself privately in the area that is due to be developed and goes on to implement the project. Although the objective of this project is to provide facilities for the general public, the government officer is enriched in the name of the project.

Illegal gratifications, Gratuities and Commissions

This means making a profit from a party who wishes to do business with the government. A government official demanding a commission to approve tenders is one such example.

Improper bias

This includes the provision of services or resources by a government official based on personal acquaintance, party affiliation, race, religion, caste or other preference. Offering job opportunities and services on political connections

fall under this category. In this scenario, the public officer's friend receives special treatment on the basis of personal preference. This results in an informal and irregular distribution of public property.

Nepotism

The nature of this type of actions is that someone would be appointed to an office or gains other advantages due to his or her kinship with the public officer. Politicians recruiting relatives into their ministries is one such example. This adversely affects the stability and solidarity of a government.

Illegal grants

This includes grants given to political or governmental parties for not interfering in certain activities. This is considered as a reward granted for a public official for neglecting his or her duties. This is also a form of bribery.

THE VOLUME OF CORRUPTION

In addition to the above forms of corruption, corruption can also be classified considering its volume and the location. Therefore, corruption can be classified as grand scale and petty scale corruption.

GRAND SCALE CORRUPTION

Grand scale corruption takes place at the top tiers and policy-making level of government. Stealing government funds, misappropriation of public property, and obtaining of commissions and gratifications from major scale government deals fall within this category. These types of activities take place among the politicians and senior officers and the transactions are made through foreign accounts. It is difficult to raid these types of corrupt activities as the funds received from such transactions are deposited in foreign accounts and also used to purchase properties overseas.

PETTY SCALE CORRUPTION

The gratifications and other benefits that are expected by the public servants to provide their day to day services in the course of public administration fall under this category. Although they are petty scale the outcomes are large.

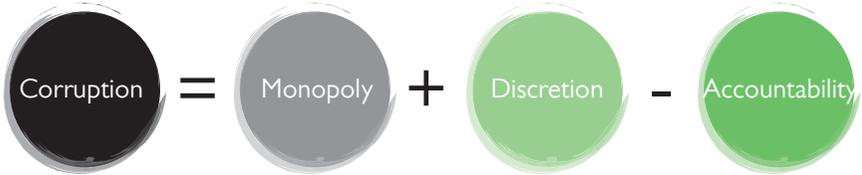
Petty scale corruption is the misuse of power that is entrusted to low and middle-grade public officials.

Whatever the form in which corruption operates, the common feature is that the public servants use his/her official position for personal gain/benefits. This negatively affects the development process as well as the economy.

7. THE CAUSES OF CORRUPTION

The response from the society on the causes of corruption would be low salary/ income and family problems. These are in fact excuses and cannot be considered as causes for corruption.

In order to identify the real causes of corruption, one has to re-examine Klitgaard's equation.



Let's look at some of the main reasons for corruption.

According to this formula, an increase of monopoly and discretionary power and decrease of accountability can be identified as causes of corruption. The following are some of the reasons:

1. UNLIMITED AUTHORITY

If a person or group of people has unlimited power in a particular field, there is no room for anyone to question as that person or group can make a good case for corruption.

2. LIMITED TRANSPARENCY

If an officer of the government acts within a system that is invisible to the public, it creates an environment for corruption.

3. LIMITED ACCOUNTABILITY

If the state institution is not responsible/accountable to society, then society cannot question the state. Such a scenario creates an ideal environment for corruption.

4. LIMITED POLITICAL COMMITMENT

The lack of commitment of politicians to eradicate corruption encourages government officials to engage in corrupt activities. Therefore, politicians need to be committed to eradicate corruption.

5. LIMITED CHECKS AND BALANCES

Executive, legislature and judiciary being the three branches of government and each branch having to check the power of the other ensures a balance between them. This is called a system of checks and balances.

A system of checks and balances strengthens the rule of law. If the system of checks and balances become dysfunctional in a state, the mutual scrutiny between these three units will be at stake. As a consequence, the corruption rate in a country will increase.

6. WEAK CIVIL SOCIETY

If civil society is not well-organized and the members of that society are not aware and sensitive to day to day problems, such a civil society is considered a weak civil society. A strong civil society will take action against the injustice caused to them as well as to society. Therefore, countries with weak civil society are more prone to corruption as they are not resistant against the corruption caused by government institutions.

7. ACTIONS AGAINST PROCEDURE

The government of a country has a system of providing services to its citizens. This method is based on the power of law. If a group deviates from the system and changes the services and priorities of the state on the basis of friendship and kinship, then there is corruption. Corruption is common in a society that endorses such practices.

8. CONSEQUENCES OF CORRUPTION

Everyone will undoubtedly agree that corruption is a cancer that should be eradicated from society. The citizens who stand for justice stand against corruption. They stand against corruption, not because it causes them a personal loss, but it causes greater harm to society.

According to the anti-corruption course conducted by the United Nations Office on Drugs and Crime (UNODC), the consequences of corruption can be summarized as follows.

1. UNDERMINING THE SUSTAINABLE DEVELOPMENT GOALS

Corruption suppresses and hinders the achievement of the United Nations Sustainable Development Goals. Consequently, a “Better and a More Sustainable Future for All” will be tailored to the needs of a few and many may suffer from various forms of corruption.

2. ECONOMIC LOSS AND INEFFICIENCY

Corruption inevitably causes economic loss. While it is difficult to figure out exact numbers on the economic costs of corruption, the International Monetary Fund in its 2016 report estimates that bribery alone costs between United States Dollars (USD) 1.5 to 2 trillion a year. This represents an overall economic loss of roughly 2% of global gross domestic product (GDP). Thus we have to contemplate of the wealth the world will lose due to corruption.

3. INCREASING POVERTY AND INEQUALITY

The weapon of corruption does not benefit the poor. A well-known bribery case in Nigeria against Shell Company which is an international oil company revealed that the company had paid corrupt officials an amount that is even larger than Country’s national budget. Nigerians lost more than USD 1.1 billion due to this bribe. (Global Witness, 2017). Accordingly, corruption makes people poorer while a small group of corrupt people become unjustly enriched, and this creates severe income disparity in society.

4. PERSONAL LOSSES, INTIMIDATION AND EMBARRASSMENT

The chance of corruption being a positive experience is rare. The public has to bribe officials in order to receive medical treatment, obtain building

permits, subsidies or even to get a telephone line. If the Judiciary is corrupt, a judge will decide the case based on the bribe rather than the facts of the case things will only happen on who you know or on your racial or ethnic background.

As a result, corruption causes personal losses to many people. The public has to live in fear and misery due to the unjust governance of the state.

5. PUBLIC AND PRIVATE SECTOR DYSFUNCTIONALITY

Dysfunctionality is the cumulative effect of individual acts of corruption. When one has to bribe to obtain a service, whether done by the state or the private sector, quality of those goods and services become less and the process of obtaining them becomes more expensive, time-consuming and unfair.

6. LACK OF INFRASTRUCTURE

When government allocations on infrastructure are misused by means of corruption, the inevitable result is that the infrastructure will not be built in the best possible condition. In August 2018, at least 39 people died when a bridge collapsed in the Italian port city of Genoa. Although the connection between the collapse and corruption were not clear, subsequent investigations have revealed that a mafia-controlled construction company has used "low-quality cement" in the building process.

7. IMPUNITY AND PARTIAL JUSTICE

When corruption is rampant throughout the judicial system, people cannot rely on prosecutors and judges to perform their duties. The powerful can escape justice. Citizens, especially people who have no money or friends who are politically and financially powerful, can be unjustly accused of crimes and imprisoned without proper trial.

8. THE RISE OF ILLIBERAL POPULISM

A report by Transparency International in 2017 and several scholarly publications pointed out that the rise of authority partly results in corruption. In brief, corruption increases inequality, reduces public accountability and political response. Thereby increases frustration and difficulties among citizens.

9. ORGANIZED CRIME AND TERRORISM

The corrupt judicial officers and politicians provide shelter for the commission of crimes by means of money laundering, wealth gathered through unknown sources and bribes. As a result, violence, illicit drugs, prostitution, sexual slavery, kidnapping and intimidation are on the rise.

10. DIMINISHED STATE CAPACITY

Although citizens strongly seek solutions to their problems, corruption undermines the power of politics. For example, as long as bribery, trading in influence, and state seizures are widespread, political systems cannot solve social problems.

11. INCREASING POLARIZATION AND UNREST

When corruption, especially the seizure of state power, becomes a norm, it can lead to polarization among the citizens. The society gets divided into two with those who support the corrupted governing party and those who don't. Among these opposing groups, there is no compromise and logical discussion. Policies are judged not on the basis of ideology or the inherent merits of a project, but rather on who the policy proponents are and what benefits the competing party receives.

12. CLIMATE CHANGE AND DAMAGE TO BIODIVERSITY

Owing to corruption, the laws on environment, conservation of wildlife and forests get neglected. This result in environmental degradation and it would defeat forest conservation and sustainable forest management programs while aggravating wildlife and fisheries crimes. This has a direct impact on climate change and loss of biodiversity globally.

13. HUMAN RIGHTS VIOLATIONS

Corrupt practices do not let justice prevail and do not allow deserving persons to hold suitable positions. Corrupt rulers consider civil liberties as a hindrance to the consolidation of power. Therefore, corrupt politicians and officials continue to engage in corrupt activities together by violating the human rights of the people.

14. ARMED CONFLICT AND ATROCITY CRIMES

As a result of corruption, capacity and development of a state will diminish

and will also lead to insecurity and armed conflicts. (see, e.g., World Bank, 2011; World Bank, 2017) Indeed, corruption has been identified as a destabilizing factor for states.

15. PUBLIC FRUSTRATION AND CYNICISM

Corruption is widespread and corrupt activists are not accountable. Thus, people lose confidence in leaders, social systems (state institutions) and sometimes even in society and ethics. When political accountability is absent, such feelings persist for a long time and the citizens' will no longer be interested in politics.

CHAPTER THREE

INTERNATIONAL COMMUNITY AGAINST CORRUPTION

9. GLOBAL ALIGNMENT AGAINST CORRUPTION

There is a saying that ‘money acquired through corruption can reach any corner of the world’, meaning, money earned through corrupt practices in one country is invested in another. Also, corruption is a problem that lies in the heart of every country of the world. Accordingly, the impact of corruption in a country can not only affect just one country but several other countries. Therefore, there is an international rally against corruption. The purpose of the following is to pen down some of the international efforts to eliminate corruption.

UNITED NATIONS ANTI-CORRUPTION ACTIVITIES

The United Nations plays a major role in combating corruption. The United Nations General Assembly has ensured to include various provisions supporting the prevention of corruption in many texts/resolutions adopted by them. In addition, a separate international convention was adopted to eliminate corruption. Furthermore, an official agency has been set up to combat corruption.

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

UNCAC was adopted by the United Nations General Assembly on 29th September 2003 and the main objective of the Convention is to prevent and combat corruption globally more efficiently and effectively. The Convention envisages that the Member States should be responsible for the enactment and implementation of legal provisions, for the prevention of corruption and for providing international cooperation in the fight against corruption.

This convention was passed by the UNCAC on the 29th September 2003, its main intention was to curb corruption around the world. Under the 55/61 resolution, United Nations assembly recognized the fact that apart from the United Nations Convention against international Organized Crime, another international legal arm should be in place to counter international corruption, therefore after seven discussion sessions from January 2002 to October 2003. It was subsequently signed by State Parties on 9th December 2003, and 9th December of every year is designated as International Anti-Corruption Day to commemorate the signing of the Convention. Accordingly, the Convention was effective on 14th December 2005. So far, 186 parties, including 181 United Nations Member States, have become parties of the treaty. However, 12 United Nations Member States have not ratified the Convention as of yet.

Sri Lanka was one of the earliest signatories to the Convention. The main purpose of UNCAC is to:

- I. promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- II. promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery, and
- III. promote integrity, accountability, and proper management of public affairs and public property.

THE CONTENT OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

The Convention consists of eight main components.

I. GENERAL PROVISIONS

This section includes a description of the role, the scope of the Convention, and the provisions relating to safeguarding the sovereignty of the States Parties. This section provides measures to be adopted by the Member States on formulating anti-corruption policies and practices, constituting anti-corruption agencies, establishing codes of conduct for public officials, regulating public procurement and public finances, providing information to the public, regulating litigation matters, preventing money laundering, obtaining the assistance of private and civil society Member States in preventing corruption, etc.

II. PREVENTIVE MEASURES

This section contains steps to be taken by a Member State to prevent corruption.

III. CRIMINALIZATION AND LAW ENFORCEMENT

This section provides for legislative and other measures as may be necessary to establish criminal offences within each domestic jurisdiction to prevent corruption in their respective States. It also contains provisions for procedures to be followed in the investigation and prosecution of such offences and another important feature is the laws covering the private sector bribes as criminal offences.

IV. INTERNATIONAL COOPERATION

This section includes provisions relating to the cooperation of Member States to prevent corruption, exchange of information for criminal investigations, joint investigations, extradition of suspects, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, and cooperation with law enforcement.

V. ASSET RECOVERY

This part of the Convention contains provisions relating measures for direct recovery of property. It also provides mechanisms for recovery or confiscation of property through international cooperation.

VI. TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE

This section contains provisions for exchange and analysis of information on corruption with each State Party, exchange of training methods and technical assistance to eliminate corruption.

VII. MECHANISMS FOR IMPLEMENTATION

A Conference of the States Parties to the Convention is established and the mechanism in which the convention is implemented is discussed in the section.

VIII. FINAL PROVISIONS

This section contains provisions on implementation of the Convention, resolving disputes between the Member States, signature, ratification,

acceptance, approval and accession to the convention and proposing amendments to the Convention.

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

United Nations Office for Drug Control and Crime Prevention which was established in 1997 was renamed as the United Nations Office on Drugs and Crime in 2002.

The UNODC is the official agency responsible for the prevention of corruption. The UNODC was established to assist the UN by coordinating interrelated issues on illicit trafficking and abuse of drugs, crime prevention and criminal justice, international terrorism, and political corruption. These goals are pursued through three primary functions; research, guidance and support to governments in the adoption and implementation of various crime, drugs, terrorism, and corruption-related conventions, treaties and protocols, as well as technical/financial assistance to said governments to face their respective situations and challenges in these fields.

The UNODC aims to better equip governments to handle drug, crime, terrorism, and corruption-related issues, to further educate governmental institutions and agencies on these issues and also to create awareness of the said matters among the general public.

The UNODC serves as the Secretariat for the Conference of the States Parties (COSP) to the UNCAC. It also conducts a course on anti-corruption.

TRANSPARENCY INTERNATIONAL (TI)

It is a leading Non-Governmental Organization working against corruption and it is also a global movement that shares the same vision. TI's vision is; a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

Transparency International was founded in May 1993. It consists of more than 100 chapters.

CORRUPTION PERCEPTION INDEX

The Corruption Perceptions Index (CPI) is an index published annually by Transparency International since 1995 which ranks countries by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys. The CPI generally defines corruption as "the misuse of public power for private benefit". The 2019 CPI, published

in January of 2020, currently ranks 180 countries on a scale from 100 (very clean) to 0 (highly corrupt). Denmark (88 marks), New Zealand (87 marks) and Finland are perceived as the least corrupt nations in the world, ranking consistently high among international financial transparency, while the most perceived corrupt country in the world is Somalia, scoring 10 out of 100.

Sri Lanka scored 38 marks and is ranked eighty-ninth (89th) out of 180 countries. Sri Lanka ranks third (03) among the South Asian countries but is behind Bhutan and India which are ranked twenty-fifth (25th) and seventy-eighth (78th) in the world respectively.

According to Transparency International, there is a correlation between the level of corruption in a country and the level of democracy. Accordingly, it is reported that fully consolidated democracies have an average score of 75 on the CPI, whereas weak democracies score an average of just 45. The hybrid States with democratic but dictatorial tendencies have an average of 35 and the lowest average is reported from totalitarian regimes. The average of those countries is 30. Thus, as suggested by this analysis, Sri Lanka ranks among the countries with weak democracies and countries with a hybrid regime that shows democratic but dictatorial tendencies.

Transparency International is appealing to all governments to eliminate corruption and ensure democracy in the following ways:

- Strengthen all institutions established for the purpose of maintaining checks and balances and ensure that they function properly without interference and pressure;
- Bridge the gap between anti-corruption laws and their implementation;
- Empower civil society organizations that monitor local oversight of political activities and public finance;
- Support the independence of media institutions and ensure an environment where journalists can report without fear and harassment.

THE GLOBAL CORRUPTION BAROMETER

The Global Corruption Barometer is the world's largest public opinion survey on views and experiences of corruption. This is conducted under the guidance of Transparency International. This takes the form of a poll. It provides an indicator as to how corruption affects individuals on a national and international level and the views of the grassroots level on the efforts

taken to curb corruption around the world.

This barometer can provide insight into the various forms and trends of corruption in a country.

OPEN GOVERNMENT PARTNERSHIP

Open Government Partnership was initiated in the United States of America in 2011. Its objective was to create an international platform that calls for national government reform that advocates to make governments more open, accountable and responsive to the public. At the outset, eight (8) States joined the partnership while at present 65 States work as partners. Further, nearly 90 world-wide national and international civil society organizations are active members of the OGP. All governments and civil societies in these States work in unison to formulate and implement open government reforms. The newest partner of the OGP is Sri Lanka.

ELIGIBILITY CRITERIA TO JOIN OGP

Eligibility metrics measure a government's performance across four key areas of open government. They are; Fiscal Transparency, Access to Information, Public Officials Asset Disclosure, and Citizen Engagement.

Sri Lanka became eligible to join OGP, having met the required criteria and scoring 14 of a total of 16 points.

RESPONSIBILITY OF GOVERNMENTS UNDER THE OGP

Any State that becomes a member of the OGP has to reach the eligibility criteria to join OGP, accept the Open Government Declaration (OGD), introduce a national action plan with strong open government reforms through public dialogue and independently report the State's Progress.

OPEN GOVERNMENT DECLARATION

The Open Government Declaration is committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption, and other applicable international instruments related to human rights and good governance. It recognizes that the countries are at different stages in their efforts to promote openness in government. The Open Government Declaration (OGD) accepts the responsibility to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make governments more effective and accountable.

Further OGD is committed to increasing the availability of information about governmental activities, support civic participation, implement the highest standards of professional integrity throughout our administrations and increase access to new technologies for openness and accountability.

PRINCIPLES OF OPEN GOVERNMENT

Four values of open government are recognized by the Open Government Partnership.

They are:

- Transparency
- Accountability
- Public participation
- Technology and innovation for openness and accountability

OPEN GOVERNMENT PARTNERSHIP AND SRI LANKA

As a step towards strengthening state accountability and enhancing transparency, on 21st October 2015, the Minister of Justice referred a request to join the Partnership to the co-chairs of the Open Government Partnership. Thereby Sri Lanka became a member of OGP. Sri Lanka is the only country in the South Asian region to join the Open Government Partnership.

THE NATIONAL ACTION PLAN

In order to implement the Open Government Partnership, Sri Lanka developed its First National Action Plan for 2016-2018 and the second National Action Plan for 2019-2021 has already been approved by the Cabinet. It consists of 15 transformative commitments, and the 1st commitment states to "Improve public engagement for prevention of bribery and corruption through the presence of Integrity Officers within public authorities" while the second commitment is to "Establish an effective asset declaration system to ease submission, verification and public access". Both these commitments are directly applicable to the prevention of corruption.

SUSTAINABLE DEVELOPMENT GOALS

In 2015, under the guidance of the United Nations, countries adopted a set of goals to end poverty, protect the planet, and ensure prosperity for all as part of a new sustainable development agenda.

‘Transforming our World: the 2030 Agenda for Sustainable Development’,

introduced 17 Goals, 169 targets and 232 indicators.

- The 16th Sustainable Development Goal is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective accountable and inclusive institutions at all levels". The 5th target of achieving this goal is "substantially reduce corruption and bribery in all their forms". The indicators set out to identify whether this goal has been met are as follows: Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months.
- Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official or were asked for a bribe by those public officials during the previous 12 months.

Accordingly, laws, conventions as well as a supportive institutional structure are lined up against corruption.

10. HONG KONG'S CRACKDOWN ON CORRUPTION

CORRUPTION ON THE RAMPAGE

Hong Kong was in a state of rapid change in the 1960s and 70s. The massive growth in population and fast expansion of the manufacturing industry accelerated the pace of social and economic development. The Government, while maintaining social order and delivering the bare essentials in housing and other services, was unable to meet the insatiable needs of the swelling population. This provided a fertile environment for the unscrupulous. Many people had to take the "backdoor route" simply to earn a living and secure other than basic services. "Tea money", "black money", "hell money" - whatever its name - became not only familiar to many Hong Kong people, but accepted with resignation as a necessary way of life.

Corruption was rampant in the public sector. Ambulance crews would demand tea money before picking up a sick person. Even hospitals asked for "tips" before giving patients a bedpan or a glass of water. Offering bribes to the right officials was also necessary when applying for public housing, schooling and other public services. Corruption was particularly serious in the Police Force. Corrupt police officers offered protection to vice, gambling and drug activities. Law and order was under threat. Many in the community had fallen victim to corruption. And yet, they swallowed their anger.

PETER GODBER INCIDENT

Peter Godber, a Chief Police Superintendent was subjected to an investigation in 1973 for the charge of owning assets over HK\$4.3 million. It was suspected that his unearned wealth had been obtained from corrupt means. However, Godber managed to slip out of the territory undetected during the week that was given to him by the Attorney General to explain the source of his assets. Godber's escape unleashed a public outcry. Students spearheaded a mass rally in Victoria Park, protesting and condemning the Government for failing to tackle the corruption problem. Demanding prompt government action, protesters with slogans like "Fight Corruption, Arrest Godber" insisted that Godber be extradited to stand trial.

SIR ALASTAIR BLAIR-KERR'S INQUIRY

In response to mounting public demand, the Government was quick to take action. Following Godber's escape on June 8, 1973, Sir Alastair Blair-Kerr,

a Senior Puisne Judge, was appointed to form a Commission of Inquiry to investigate Godber's escape. He compiled two reports. The first detailed the circumstances of Godber's escape. In his Second Report, Sir Alastair pointed out that "responsible bodies generally feel that the public will never be convinced that Government really intends to fight corruption unless the Anti-Corruption Office is separated from the Police..."

THE BIRTH OF THE ICAC

In the wake of the Blair-Kerr reports, then Governor Sir Murray MacLehose articulated the need for an independent anti-corruption organisation in a speech delivered to the Legislative Council in October 1973. Many in the community sensed the wind of change at this time. They started to see that the Government is setting the stage for the birth of an effective anti-corruption regime.

THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

The Independent Commission against Corruption (ICAC) was established in February 1974. Since its inception, the Commission has been committed to fighting corruption using a three-pronged approach of law enforcement, prevention and education. The ICAC's first important task was to bring Godber to justice. In early 1975, Godber was extradited from England to stand trial. The charges were a conspiracy offence and one of accepting bribes. Godber was found guilty on both counts and sentenced to an imprisonment of four years.

The ICAC, which is headed by a commissioner, has about 1,400 staff at present. More than half of the staff have served for more than 10 years. The ICAC comprises of 10 regional offices. It could be said that the ICAC is the world's strongest anti-corruption initiative (for more information, please visit <https://www.icac.org.hk/en/about/history/index.html>). Now, Hong Kong enjoys the status of being one of the most corruption-free countries in the world.

CHAPTER FOUR

THE SRI LANKAN ALIGNMENT TOWARDS THE ERADICATION OF CORRUPTION

II. LEGAL PROVISIONS RELATING TO THE ERADICATION OF CORRUPTION

There is a wide range of legal provisions in the Sri Lankan legal system. This note aims to provide a short introduction to the same. While there is a wide range of legal provisions related to the minimization of corruption in the Sri Lankan law, the most important legal provisions are listed below:

1. The Constitution (as amended up to 19th amendment)
2. Bribery Act, No.11 of 1954
3. Declaration of Assets and Liabilities Law, No.1 of 1975
4. Commission to Investigate Allegations of Bribery or Corruption Act, No.19 of 1994
5. Penal Code (Chapter 15)
6. Offences against Public Property Act, No.12 of 1982
7. Prevention of Money Laundering Act, No.5 of 2006
8. Right to Information Act, No.12 of 2016
9. National Audit Act, No.19 of 2018
10. Financial Transactions Reporting Act, No.6 of 2006
11. Human Rights Commission of Sri Lanka Act, No.21 of 1996
12. Elections Acts (Presidential/Parliamentary / Provincial Council Local Authorities)
13. Parliamentary Commissioner for Administration Act, No.17 of 1981
14. Commissions of Inquiry Act No.17 of 1948
15. Special Presidential Commissions of Inquiry Law, No.7 of 1978
16. Establishments Code
17. Financial Regulations
18. Procurement Guidelines

I. THE CONSTITUTION

Although the constitution was not framed with the specific aim of preventing corruption, it contains many provisions pertaining to the prevention of corruption.

I.1 FUNDAMENTAL DUTIES

Chapter VI of the Constitution contains the fundamental duties and responsibilities of Sri Lankans, and in Article 28 (d) states that “The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka... to preserve and protect public property and to combat misuse and waste of public property.”

I.2 FUNDAMENTAL RIGHTS

The room for corruption is reduced by Chapter III of the Constitution. The Fundamental rights are guaranteed through Chapter III of the Constitution. Every person shall be entitled to apply to the Supreme Court or the Human Rights Commission of Sri Lanka (HRCSL) in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter.

For example, Article 12 (1) of the Constitution states that “all persons are equal before the law and are entitled to the equal protection of the law.” Similarly, Article 14 (a) of the Constitution contains the right of access to information, which is essential in preventing corruption.

I.3 CONTROL OF PARLIAMENT OVER PUBLIC FINANCE

In terms of Chapter XVII of the Constitution, Parliament shall have full control over public finance. As such there is a Consolidated Fund, withdrawals from it are under the control of parliament. Funds for the Local Authorities are allocated in the Annual Budget, and the use of these funds is supervised by Parliament, and the Standing Committees assess as to whether these expenditures are in line with the relevant rules and regulations.

I.4 AUDITOR-GENERAL

The Auditor-General is appointed pursuant to Article 153 of the Constitution and is tasked with taking action relevant to state funds. His duties and

functions are set out in Article 154 (1) of the Constitution. The Auditor-General thereby has the power to audit all public corporations including local authorities. The Auditor-General or any person authorized by him shall in the performance and discharge of his duties and functions be entitled –

- to have access to all books, records, returns and other documents;
- to have access to stores and other property; and
- to be furnished with such information and explanations as may be necessary for the performance of such duties and functions.

The Auditor-General must report annually to Parliament on the performance and discharge of his duties and functions, and any corruption found in this manner will be investigated by the Criminal Investigations Department and litigation will follow.

In the same way, the two Standing Committees, namely Committee on Public Enterprises (COPE) and Committee on Public Accounts (COPA) also investigate into government institutions based on the Auditor-General’s report.

1.5 INDEPENDENT COMMISSIONS

Ten Independent Commissions have been established under the Constitution in order to regulate and investigate into the various fields in the public service. Eight of these are directly relevant to the eradication of corruption, namely: The Judicial Services Commission, Human Rights Commission of Sri Lanka, Public Service Commission, Election Commission, National Police Commission, National Procurement Commission, Audit Service Commission, and Commission to Investigate Allegations of Bribery or Corruption.

1.6 THE OMBUDSMAN

In terms of article 156(1) of the constitution, parliament shall by law provide for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman) charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions, in accordance with and subject

to the provisions of such law.

2. BRIBERY ACT, NO.11 OF 1954

The Bribery Act, No.11 of 1954 interprets terms of bribery and corruption and explains how these offences can take place as well as the relevant punishment. This is considered to be the primary statute in the eradication of bribery and corruption. It also makes bribery and corruption a cognizable offence, i.e. an offence where the wrongdoer can be arrested without a warrant.

2.1 BRIBERY

Section 90 of the Act defines bribery as the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of Bribery Act, or any other act in contravention of any such provision.

2.2 ILLICIT ACCUMULATION OF WEALTH

Any money or property that is accumulated by an individual in a method other than through their known source of income will be considered to have been accumulated through bribery until that individual can prove otherwise.

2.3 CORRUPTION

Bribery (Amendment) Act, No.20 of 1994, introduced the offence of corruption into the Bribery Act of Sri Lanka No.11 of 1954. It is defined as follows:

“Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person:

- a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public officer;
- b) induces any other public servant to perform, or refrain from performing, any act, which such other public officer is empowered to do by virtue of his office as a public officer;
- c) uses any information coming to his knowledge by virtue of his office as a public officer;

- d) participates in the making of any decision by virtue of his office as a public servant;
- e) induces any other person, by the use, whether directly or indirectly, of his office as such public officer to perform, or refrain from performing, any act

shall be guilty of the offence of corruption.

3. DECLARATION OF ASSETS AND LIABILITIES LAW

Law No.1 of 1975 sets out categories of people who are required to make declarations of their assets and liabilities to the government. As such, government officials, as well as public representatives, must, within three months after the appointed date, make in such form as may be prescribed, a declaration, of all

- (a) His assets and liabilities;
- (b) The assets and liabilities of his spouse; and
- (c) The assets and liabilities of each of his children (unmarried)

This is known as the ‘first declaration’, after which a declaration must be made annually from the following year onwards.

Non-declaration of assets and liabilities at the required time, submission of incorrect declaration, and failure to provide the required information are considered offences under this Law, and it is the declarant’s duty to explain the disparity between the first declaration of assets and liabilities and the one subsequent to it.

In this manner, a person whose wealth is accumulated through acts of bribery and corruption will be considered an offender under the provisions of this Law.

4. COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION ACT, NO.19 OF 1994

This act established the Commission to Investigate Allegations of Bribery or Corruption which is empowered to conduct investigations and institute legal actions against bribery and corruption. The main functions of the CIABOC are to investigate into and litigate bribery and corruption offences under the Bribery Act as well as the Declaration of Assets and Liabilities Law.

5. PENAL CODE

The first law that recognized corruption as a criminal offence is the Penal Code of 1883. Chapter IX is dedicated to ‘offences by or relating to public servants.’

According to section 158 of the Penal Code, a public servant taking gratification other than legal remuneration in respect of an official act is considered an offence and is punishable with imprisonment up to three years and/or a fine.

Section 159 deals with taking a gratification in order by corrupt or illegal means, to influence a public servant, and establishes that as an offence that is punishable with imprisonment up to three years and/or a fine.

By section 160 taking a gratification for the exercise of personal influence with a public servant is considered an offence which is punishable with imprisonment up to one year and/or a fine.

With the enactment of the Bribery Act, No.11 of 1954, the provisions of the Bribery Act were used in place of those in the Penal Code.

In addition to the provisions relating to public officials, the Penal Code contains provisions that make bribery in relation to exercising any electoral right or to influence an electoral candidate an offence and this is seen in section 169B.

6. OFFENCES AGAINST PUBLIC PROPERTY ACT, NO. 12 OF 1982

This Act identifies mischief to public property, theft of public property, robbery of public property, dishonest misappropriation, criminal breach of trust, cheating, forgery and falsification of accounts as offences. It defines public property as “the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operative-union.”

Bail will be granted only based on exceptional circumstances, in a situation where the value of the subject-matter in respect of which the offence was committed, exceeds twenty-five thousand rupees.

7. PREVENTION OF MONEY LAUNDERING ACT, NO.5 OF 2006

In order to conceal the origins of money obtained through bribery and corrupt means and to evade suspicion of the general public, such is presented to the society in various transactions. This is known as money laundering. The

prevention of money laundering is integral in order to prevent corruption.

According to this Act, money laundering is identified as a criminal offence which must be tried before the High Court and makes the offender liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years. Assets obtained through the offence of money laundering are forfeited.

The offence of money laundering is defined in section 3 of the Act as follows:

“(1) Any person, who-

- (a) engages directly or indirectly in any transaction in relation to any property which is derived or realized, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity;
- (b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realized, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering...”

8. RIGHT TO INFORMATION ACT, NO. 12 OF 2016

Transparency is a key element in the eradication of corruption. The Right to Information Act, enacted in order to develop the transparency and accountability of public authorities, enables all citizens to access information that is in the possession or control of public authorities. While this Act contains provisions that give citizens the right to request and obtain information from public officials, it also gives public authorities the duty to effectively publish and publicize information which is frequently required by citizens.

When information relating to recruitment, promotions, procurements, subsidies on contracts etc. can be freely obtained by the public, corruption can be minimized. Additionally, this Act provides for whistle-blower protection.

9. NATIONAL AUDIT ACT, NO.19 OF 2018

The National Audit Act was enacted in order to make the audit process more independent. This allows an independent staff to be recruited to provide more effective audit service. The Act further details the duties and functions of the Auditor-General referred to in the Constitution. Since the Act allows the public to notify Auditor General regarding the audits carried out, this brings the public closer to the anti-corruption process. The increase of the effectiveness and independence of the audit process further minimizes corruption that could be possible in the procurement and administration processes.

10. FINANCIAL TRANSACTIONS REPORTING ACT, NO.6 OF 2006

This Act was enacted to provide for the collection of data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of the offences of money laundering and the financing of terrorism respectively. It is also enacted to require certain institutions to undertake due diligence measures to combat money laundering and the financing of terrorism. This act also identifies the authority which will be responsible for monitoring the activities of all institutions to whom this Act applies.

In this manner, this Act prevents corruption that can be carried out via financial transactions through banks and other financial institutions.

11. HUMAN RIGHTS COMMISSION OF SRI LANKA ACT, NO.21 OF 1996

Any person can complain to the HRCSL in respect of the infringement or imminent infringement of his or her fundamental rights as a result of bribery and corruption that take place in the state sector. The Human Rights Commission provides recommendations against the corrupt public officials, and compensation and relief orders to the aggrieved party.

12. ELECTIONS ACTS

According to the Presidential Elections Act No.15 of 1981, Parliamentary Elections Act No.1 of 1981, Provincial Councils Elections Act No.2 of 1988 and the Local Authorities Elections Ordinance No.53 of 1946, bribery, treating and exertion of undue influence that prevents the free exercise of franchise of an elector are considered as offences.

These offences fall under the category of corrupt practices in the respective acts and ordinances. Every person who is convicted of a corrupt practice will

be punished with imprisonment and/or fine and becomes incapable for a period of seven years from the date of his conviction, of being registered as an elector or of voting at any election under this Ordinance or of being elected as a member of a local authority.

13. PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION ACT, NO.17 OF 1981

This Act provides for the procedure regarding the powers, duties and functions of the Parliamentary Commissioner for Administration (Ombudsman) in terms of article 156 of the constitution.

Relief can be sought through the Ombudsman by filing complaints of the infringement of a fundamental right or other injustice by a public institution.

14. COMMISSION OF INQUIRY ACT, NO. 17 OF 1948

Section 2 of the act sets out that whenever it appears to the President to be necessary that an inquiry should be held and information obtained as to an activity in a state institution, for the benefit of public welfare and safety, the President will have the power to appoint a Commission to look into and report on the matter.

The Presidents have used the provisions of this act to appoint commissions and hold investigations on corruption that has taken place.

According to the amendment brought in 2019, if the CIABOC upon consideration of the material collected in the course of an investigation, is satisfied that an offence under Bribery Act or declaration of Assets and liabilities act is committed it may direct the director-general of CIABOC to institute criminal proceedings under the said acts. Accordingly, this amendment expedites the litigation process related to the Commission's findings of corruption.

15. SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY LAW, NO. 7 OF 1978

This Law, by its section 2, empowers the President to appoint Special Presidential Commissions. This is on instances where it appears to the president that an inquiry should be held and information obtained regarding a state institution or official in the interest of public safety or welfare.

16. ESTABLISHMENT CODE

The Establishment Code contains the procedure relating to the management

of human resources in state institutions. It sets out what a public servant should and should not do, as well as what they should disclose while carrying out their official activities.

Chapter XXIX also is known as the Acquisition of Land, Investments and Mortgages deals with declaration of assets and liabilities, land acquisition and investment stocks and other rights, and thereby prohibits a public servant from accumulating property through corruption.

Chapter XLVII is significant as it sets out the boundaries within which public servants can accept gifts. The Establishments Code also makes the committing of an action that brings disgrace to the public service an offence.

17. FINANCIAL REGULATIONS

Financial Regulations set out how the physical resources in the public sector should be managed. Through this, it reduces the opportunities available for the misuse of physical resources in state institutions.

18. PROCUREMENT GUIDELINES

The 'Procurement Guidelines 2019' have been published by the Procurement Commission through Extra Gazette Extraordinary No. 2144/68 dated Saturday, 12th October 2019.

These Guidelines aim to establish achieve highest professional standards in ensuring best value for money in all government procurement processes and to provide fair, equitable, transparent, competitive and cost-effective policies, procedures and processes for the procurement of goods and services, works, consultancy services and information systems performed by the state institutions.

The overall aim is, therefore, to ensure that corruption is eradicated in the government procurements.

Other Legal Provisions

Apart from the provisions in the abovementioned statutes and guidelines, there is a range of statutes such as the Convention on the Suppression of Terrorist Financing Act, No.25 of 2005 and the Exchange Control Act which contain provisions that work towards the eradication of corruption. The Treasury and Ministry of Public Administration also issue circulars which contain provisions regarding combatting corruption.

Apart from this, officers attached to the institutions set up by statutes too

are subject to the provisions of the Bribery Act. This is an effort to provide for the eradication of corruption within these institutions.

The Assistance to and Protection of Victims of Crime and Witnesses Act, No.4 of 2015 also contains provisions which safeguard victims and witnesses during investigations into allegations of bribery or corruption. This is another statute which helps in the cause of combatting corruption.

As such, it is clear that there is a wide range of legal provisions within the Sri Lankan legal framework which are aimed at eradicating corruption.

12. COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION (CIABOC)

Introduction to CIABOC's Powers and Functions

HISTORY

Bribery was first made an offence in the Penal Code that was codified in 1883, and while the police made the necessary investigations, it was the Attorney General who instituted legal actions. Under the Penal Code, complaints against the offence of bribery cannot be made against public representatives, as they are not considered to be public officials. As such the National State Assembly representatives appointed a commission to investigate into the bribery by the Colombo Municipal Council. The M. N. De Silva Commission, Pieter Keuneman Commission and the M. W. N. De Silva Commissions are examples of the commissions that were so appointed.

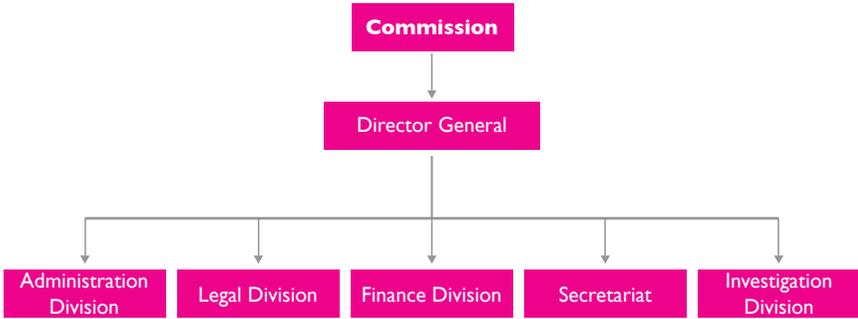
As the need for an extensive law addressing bribery became important, the National State Assembly enacted the Bribery Act in 1954, thereby creating the position of a Bribery Commissioner. Consequent to the Bribery (Amendment) Act No.40 of 1958, a Bribery Department was created. As such, the Bribery Department handled the investigations while the Attorney General instituted legal action subsequent to the enactment of Declaration of Assets and Liabilities Law No.1 of 1975 also gave the department the power of investigating offences under the said Law.

The enactment of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 established CIABOC. The offence corruption was introduced to the bribery act by its amendment in 1994 and the power to investigate and institute legal action against corruption was vested with CIABOC.

The appointment of the Commissioners was made more independent through the 17th and 19th Amendments to the Constitution. The 19th Amendment that was brought in 2015, empowered the Commission to act ex mero motu. In 2018, CIABOC was granted the power to institute prosecutions for the offence of corruption in the High Court by the Bribery (Amendment) Act No.22 of 2018.

By the Commissions of Inquiry (Amendment) Act No.3 of 2019, CIABOC was given the power to institute legal actions based on the evidence of a Presidential Commission.

COMPOSITION OF THE COMMISSION



THE COMMISSIONERS –

According to the CIABOC Act, the Commission must consist of three commissioners. Two of whom shall be retired Judges of the Supreme Court or of the Court of Appeal and one of whom shall be a person with wide experience relating to the investigation of crime and law enforcement. The President shall appoint as Chairman of the Commission, one of the members of the Commission who is a retired Judge of the Supreme Court or the Court of Appeal.

The Commissioners are appointed by the President upon the recommendation of the Constitutional Council, for a period of five years.

THE DIRECTOR-GENERAL –

The President may in consultation with the members of the Commission, appoint a Director-general for the Prevention of Bribery and Corruption, to assist the Commission in the discharge of the functions assigned to the Commission by this Act.

THE SCOPE OF THE COMMISSION –

The main task of the Commission is to investigate and prosecute into the offences that fall within its ambit.

The scope is divisible as follows:

1. Offering or accepting bribes under the Bribery Act
2. Corruption under the Bribery Act

3. Illicit Accumulation of wealth by public officials in terms of Bribery Act

CONDUCTING INVESTIGATIONS AND INSTITUTING LEGAL ACTIONS

Apart from the powers conferred to CIABOC under its Act, the 19th Amendment to the Constitution enacted in 2015 vested CIABOC with the power to take measures to implement the United Nations Convention Against Corruption and any other international Convention relating to the prevention of corruption, to which Sri Lanka is a party.

POWERS OF THE COMMISSION

CIABOC is empowered to investigate and institute legal actions against offences under the Bribery Act and Declaration of Assets and Liabilities Law. The power has also been granted for CIABOC to initiate a preliminary inquiry on its own volition, even without a complaint being made.

It has the following powers for carrying out investigations:

- to procure and receive evidence, written or oral, and to examine all such persons as the Commission may think necessary.
- to require any person to attend before the Commission to be examined by the Commission
- to answer, orally on oath or affirmation, any question put to him by the Commission relevant, in the opinion of the Commission, to the matters under investigation.
- to summon any person to produce any documents or other thing that is in his possession or control.
- to direct the bank management to produce information regarding the bank accounts of a person accused of bribery, their family members, or that of a company where that person is a director.
- to request information regarding the affairs of the person accused of bribery or that of their family members from the Commissioner of Inland Revenue.
- to direct a state institution to give a certified copy of a certain document.

- to order the family members of the accused to furnish information as to the date when certain property was acquired.
- to order that an affidavit be given regarding the accused's family members' property.
- to direct the Controller of Immigration and Emigration to impound the passport and other travel documents of any person for a period not exceeding three months.
- to investigate offences under the Declaration of Assets and Liabilities Law.
- to conduct inspections of any premises.
- to request accounting records

LODGING A COMPLAINT BEFORE CIABOC

There are 4 types of complaints:

1. Solicitation or compelling to offer bribes;
2. corruption;
3. Illicit Accumulation of wealth;
4. non-declaration of assets and liabilities or producing false declarations.

COMPLAINTS CAN BE LODGED VIA:

1. telephone (1954 hotline)
2. Post
3. Fax
4. Email
5. Official CIABOC website
6. SMS
7. Mobile phones
8. by visiting CIABOC

CONTENT OF A COMPLAINT

When making a complaint regarding offering and accepting of bribes, the complainant must mention his/her name but if the complaint is not on bribery but any other offence then anonymous complaints can be lodged. All complaints should include the name, address and the position of the person against whom the complaint is made, incident, date, place where

the incident occurred and information of persons from whom further information can be obtained.

DUTY TO MAINTAIN SECRECY

Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act.

FALSE ALLEGATION AN OFFENCE

Making an allegation to the Commission knowing such allegation to be false or having reason to believe that such allegation is not true shall be guilty of an offence and shall be liable to imprisonment for a term of ten years or to a fine not exceeding two hundred thousand rupees or to both.

OFFENCES AGAINST THE COMMISSION

Following acts which are done with the intent of hindering the process of investigations conducted under the Bribery Act and the Declaration of Assets and Liabilities Law, have been identified as offences,

- Disobeying a summons
- Failing to appear before the Commission to give evidence
- Making false allegations before the Commission
- Making a false testimony to the Commission under oath
- Showing resistance towards the functions of the Commission
- Undue interference with the functions of the Commission
- Inducing any person to refrain from providing evidence in court

13.OFFENCES FALL WITHIN THE PURVIEW OF THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

The offences fall within the purview of the CIABOC are derived from two statutes, namely

1. The Bribery Act, No.11 of 1954
2. Declaration of Assets and Liabilities Law, No.1 of 1975

I. OFFENCES UNDER THE BRIBERY ACT

CIABOC investigates and prosecutes three offences under the Bribery Act, namely;

- 1.1 - Bribery
- 1.2 - Illicit accumulation of wealth
- 1.3 - Corruption

I.1 – BRIBERY

According to section 90 of the Bribery act, “bribery” means the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of Bribery Act, or any other act in contravention of any such provision. Below is a description of the offences according to the nature of the public official.

- It is an offence for a person who, being a judicial officer or a Member of Parliament, solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his judicial capacity or in his capacity as such Member, (section 14).
- It is an offence for a Member of Parliament to solicit or accept any gratification as an inducement or a reward for his interviewing a public officer on behalf of any person, or his appearing on behalf of any person before a public officer exercising judicial or quasi-judicial functions (section 15).
- It is an offence to offer any gratification to any police officer, peace officer, or other public officer, employed in any capacity for the prosecution, detection or punishment of offenders, or to an officer of a court, as an inducement or a reward for such officer’s interfering with the due administration of justice, or procuring or facilitating the commission of any offence, or protecting from detection or

punishment the perpetrator of any offence, or abusing his official powers to the injury or detriment of any person. It is also an offence for such an officer to solicit or accept any such gratification (section 16).

- It is an offence to offer any gratification to a public officer as an inducement for a reward for such public officer's giving assistance or using influence in the promotion of the procuring of any contract with the Government for the performance of any work, the providing of any service, the doing of anything, or the supplying of any article, material or substance, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof. It is also an offence for a public officer to solicit or accept any such gratification (section 17)
- With the intent to obtain from the Government a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for such contract, as an inducement or a reward for his withdrawing such tender is considered an offence under the act. It is also an offence to solicit or accept any gratification as an inducement or a reward for withdrawing a tender made for such contract (section 18).
- It is an offence to offer any gratification to a public officer as an inducement or a reward for that public officer's performing or abstaining from performing any official act, or expediting, delaying, hindering or preventing the performance of any official act whether by that public officer or by any other public officer, or assisting, favoring, hindering or delaying any person in the transaction of any business with the Government. It is also an offence for a public officer, to solicit or accept any gratification as mentioned above, or any gratification (section 19).
- It is an offence to offer any gratification to any person as an inducement or a reward in connection with payment of claims, appointments, employments, grants, leases, and other benefits in relation to a government office is an offence (section 20).
- Offering any gratification to a public officer by persons having

dealings with the Government and vice versa are both considered to be offences under the act (section 21).

- It is an offence to offer gratification to a member of local authority, or of a scheduled institution, or of a governing body of a scheduled institution as an inducement or a reward for such member's voting or abstaining from voting at any meeting, or performing, or abstaining from performing, or aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act, or for such member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favor of any person. Soliciting or accepting a gratification by such an officer or employee for such a purpose is also an offence (section 22).
- It is an offence to attempt by any threat, deceit, suppression of the truth or other unlawful means to influence any member of a local authority, or of a scheduled institution, or of the governing body of a scheduled institution in the exercise of his voting at meetings (section 23).

The Offence of Bribery

It is an offence to offer or accept bribes in the above situations as well as to solicit for such a bribe.

Attempting and abetting to commit any of the aforesaid is also considered an offence. A receiver of a bribe upon a promise of doing a certain action will be considered an offender upon receipt of the bribe; completion or non-completion of the task is irrelevant.

Receiving a bribe through an intermediary

A person is considered to solicit or accept a gratification if he, or any other person acting with his knowledge or consent, directly or indirectly demands, invites asks for, or indicates willingness to receive, any gratification, regardless of who it is for (section 89).

Punishment for a Bribery Offence

Bribery offences are considered to be cognizable offence (can be arrested without a warrant) and must be prosecuted before the High Court of Colombo.

Upon trial and conviction, the offender is punishable with imprisonment

for a period up to 7 years and/or a fine of up to Rs.50,000/ or both-. Additionally, the court can order to pay a fine equivalent to the value of the gratification. The offender will be ineligible to vote or contest for election for a period of 7 years and will be disqualified to be re-admitted into the public service.

Gratification

The offence of bribery is comprised of offering or accepting of gratification. Gratification is defined in section 90 of the Bribery Act as follows:

“gratification” includes –

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable,
- (b) any office, employment or contract,
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part,
- (d) any other service, favor or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty, and
- (e) any offer, undertaking or promise of any gratification within the meaning of the proceeding paragraphs (a), (b), (c) and (d)”

As such gratification can be tangible or intangible. According to recent case laws, it has been decided that sexual bribes also fall within the category of gratification.

Bribery and Gifts

There is a clear difference between a bribe and a gift. When offering or accepting a bribe there is always a wrongful intention involved but with a gift, there is no such intention.

1.2 – ILLICIT ACCUMULATION OF WEALTH

According to section 23A (I), when a person has or has acquired money or property which is not part of his known income or receipts it shall be deemed until the contrary is proved by him, that such property is or was property which he has or had acquired by bribery.

Any such earning or holding of assets will be an offence punishable with imprisonment up to 7 years and/or a fine of up to Rs. 5,000/-. Such property can also be seized by the government.

1.3 CORRUPTION

Bribery (Amendment) Act No 20 of 1994, introduced the offence of corruption into the Bribery Act of Sri Lanka No. 11 of 1954. It is defined as follows:

“Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person:

- (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public officer;
- (b) induces any other public servant to perform, or refrain from performing, any act, which such other public officer is empowered to do by virtue of his office as a public officer;
- (c) uses any information coming to his knowledge by virtue of his office as a public officer;
- (d) participates in the making of any decision by virtue of his office as a public servant;
- (e) induces any other person, by the use, whether directly or indirectly, of his office as such public officer to perform, or refrain from performing, any act

shall be guilty of the offence of corruption and shall upon trial and conviction by a High Court or upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine.

PUBLIC SERVANT

In terms of the Bribery Act, it is the public servant who will be charged on the offences of Bribery and Corruption. Section 90 of the Bribery Act provides the following definition:

“public servant” includes a Minister of the Cabinet of Ministers, a Minister appointed under Article 45 of the Constitution, Speaker, Deputy Speaker, Deputy Chairman of Committees, a Deputy Minister, the Governor of a Province, a Minister of the Board of Ministers of a Province, a Member of Parliament, every officer, or employee of the State or any Chairman, director, Governor, member, officer or employee, whether in receipt of remuneration or not, of a Provincial Council, local authority or of a scheduled institution, or of a company incorporated under the Companies Act, No. 17 of 1982, in which over fifty per centum of the shares are held by the Government, a member of a Provincial Public Service, every juror, every licensed surveyor and every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority: Provided that where any local authority has been dissolved and the administration of the affairs of that authority has been vested in any person, every employee of that local authority immediately before its dissolution who continues in employment after such dissolution, shall be deemed for the purpose of this Act, to be a public servant.”

As such, the above individuals as well as those employed in the institutions mentioned in the Schedule to the Bribery Act will be considered public servants. When state institutions are set up by subsequent statutes, such statutes contain provisions to the effect that the employees of such institutions are also considered as public servants under the Bribery Act. For example, Human Rights Commission Act of Sri Lanka, No. 21 of 1996 states by its section 27 that “The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.”

2. OFFENCES UNDER THE DECLARATION OF ASSETS AND LIABILITIES LAW

2.1 DUTY TO MAKE DECLARATION OF ASSETS AND LIABILITIES

The Duty to make a Declaration of Assets and Liabilities Law, No.1 of 1975 sets out which categories of people who are required to make declarations of their assets and liabilities to the government. As such, local government officials, as well as public representatives, must, within three months after the appointed date of their appointment to office, make a declaration in such form as may be prescribed, of all in such form as may be prescribed, a declaration, of all

1. His assets and liabilities;
2. The assets and liabilities of his spouse;
3. The assets and liabilities of each of his children (unmarried)

After this 'first declaration,' the declarant must make a declaration annually while he holds that position, by the thirtieth day of June in each year. make in the prescribed form, a declaration of his assets and liabilities as at the thirty-first day of March of such year and include in such declaration the assets and liabilities he held on the date on which he was first required to make a declaration of his assets and liabilities under this Law (according to the Declaration of Assets and Liabilities (Amendment) Law, No. 74 of 1988).

2.2 OFFENCES REGARDING THE DECLARATION OF ASSETS AND LIABILITIES

A person -

- who fails without reasonable cause to make any declaration of assets and liabilities which he is required to make under section 3; or
- who makes any false statement in any such declaration; or
- who fails without reasonable cause to give such additional information as the Bribery Commissioner may require under this Law; or
- shall be guilty of an offence and shall, unless any other penalty is otherwise provided, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

CHAPTER FIVE

NATIONAL PLANS TO COMBAT CORRUPTION IN SRI LANKA

14. NATIONAL ACTION PLAN FOR COMBATTING BRIBERY AND CORRUPTION IN SRI LANKA

Identifying the duties that are entrusted to the public authorities and the public officials to implement the National Action Plan for Combatting Bribery and Corruption in Sri Lanka 2019-2023.

I. THE BACKGROUND TO THE FORMULATION OF THE NATIONAL ACTION PLAN

- a. The formation of the National Action Plan in Sri Lanka was influenced by several national and international factors.
- b. There are certain legislations that have been enacted to prevent bribery and corruption. However, we do not have an action plan that sets out policies on the elimination of bribery and corruption. In order to eradicate bribery and corruption, an action plan which uniformly applies across all public institutions and other institutions deemed essential.
- c. Sri Lanka became a signatory to the United Nations Convention against Corruption on 15th March 2004 and ratified the same on 31st March 2004. Accordingly, Sri Lanka is bound under Article 5 of the Convention to formulate the requisite legal foundation and a national policy to fight against bribery and corruption.
- d. The fact that Sri Lanka did not have a National Action Plan was subjected to special consideration at the Second Review Mechanism of the United Nations Convention against Corruption.
- e. The Action Plan that was constituted under the Open Government

Partnership further highlighted the necessity of formulating a National Action Plan on anti-corruption.

- f. The GSP+ facility has necessitated that Sri Lanka abides with the European Union's rules and regulations governing the GSP+ concessions. When granting the concession, the requirements such as whether Sri Lanka has an effective and adequate mechanism to fight bribery and corruption and whether Sri Lanka complies with the United Nations Convention against Corruption were considered. In that regard, the need for a National Action Plan to combat bribery and corruption was also stressed.
- g. The International Monetary Fund (IMF) also considered the aforementioned requirements when granting its concessions.
- h. Goal 16 (5) of SDGs envisions building a society free of bribery and corruption by the year 2030. In order to achieve such a goal, a National Action Plan is essential.

2. OBTAINING THE APPROVAL OF THE CABINET TO FORMULATE THE NATIONAL ACTION PLAN

- a. After recognizing the aforementioned requirements, the Cabinet approved to formulate the National Action Plan through the cabinet decision number 731/2325/17 dated 11.10.2017
- b. Further, it was decided by the cabinet that the CIABOC should compose the National Action Plan under the guidance of Presidential Secretariat and in consultation with the relevant Agencies.

3. THE FORMULATION OF THE NATIONAL ACTION PLAN

- a. As per the guidance of the Presidential Secretariat, CIABOC in collaboration with the Ministry of Public Administration organized consultations covering the entire island to gather suggestions and recommendations from the public.
- b. In that regard, ideas and suggestions of a vast array of interest groups such as Parliament Ministers, other elected representatives, public sector, religious leaders, private sector, artists, civil society, media institutions, professionals and foreign representatives were gathered. In order to accumulate the ideas of the Parliament Ministers, four informative discussions were held at the parliamentary premises. As these consultations encompassed around 1.5 million participants

this program could be considered as a survey conducted targeting the entirety of the public servants.

- c. Hence, the National Action Plan that was drafted to build a nation free of bribery and corruption, conveys the suggestions and comments of all the stakeholders that were gathered from the consultation held island-wide.
- d. The final draft of the National Action Plan that was built on suggestions and the recommendations of all stakeholders was reviewed by a Working Committee comprising the senior officers of government institutions and by an Executive committee.

4. OBTAINING THE CABINET APPROVAL FOR THE NATIONAL ACTION PLAN

The National Action Plan that was constituted with the ideas gathered island-wide was approved by the cabinet on 5th February 2019. This Action Plan is functional from 2019 – 2023 covering a time span of 5 years.

5. THE STRATEGIES RECOGNIZED BY THE NATIONAL ACTION PLAN TO ERADICATE BRIBERY AND CORRUPTION.

The National Action Plan has recognized 4 strategies to eradicate bribery and corruption from our country. The 4 strategies are as follows:

- Prevention
- Value-Based Education and Community Engagement
- Institutional Strengthening of CIABOC and Other Law Enforcement Agencies.
- Law and Policy Reform

In addition to the Nation Action Plan, four Handbooks which are focused on decisive factors in eliminating bribery and corruption were published. The four Handbooks are as follows:

- I. Draft proposal on Gift Rules
- II. Draft proposal on Conflict of Interest Rules
- III. Integrity Handbook for State Officials
- IV. Proposed amendments to laws relating to bribery, declaration of assets and liabilities, CIABOC, election campaign financing, and whistle-blower protection.

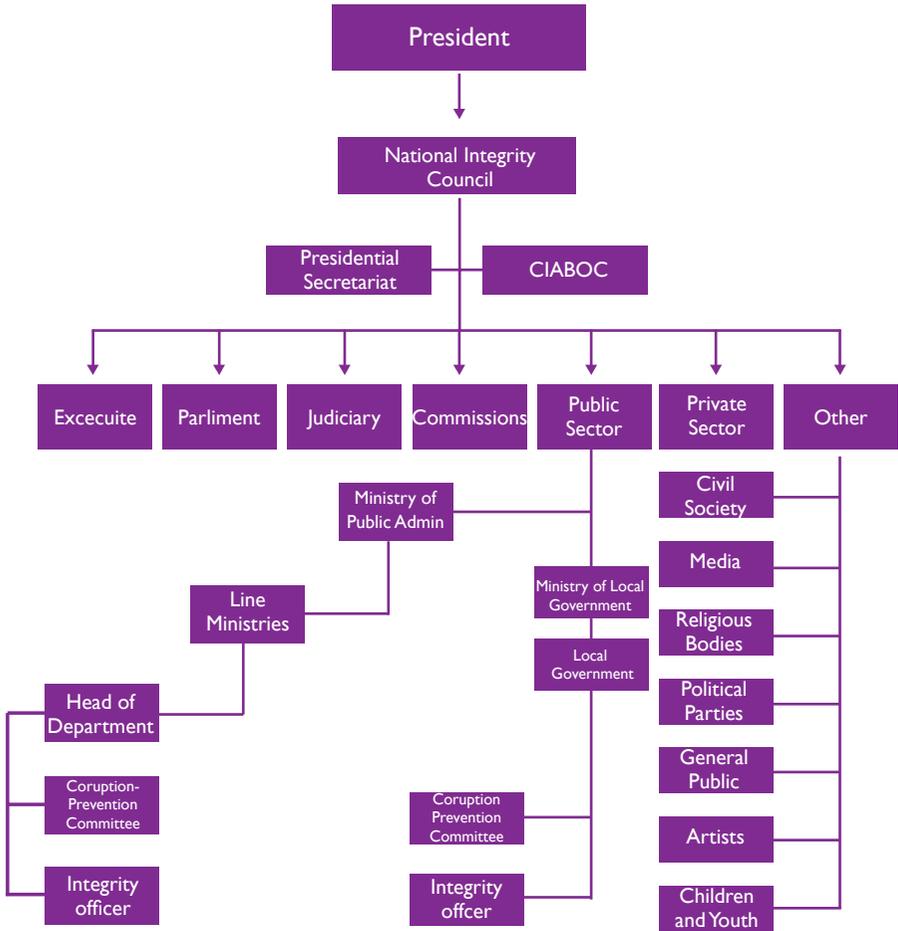
All these publications are available in Sinhala, English and Tamil, and 15 books related to bribery and corruption have been launched.

These publications could be accessed and downloaded from the official CIABOC website at www.ciaboc.gov.lk

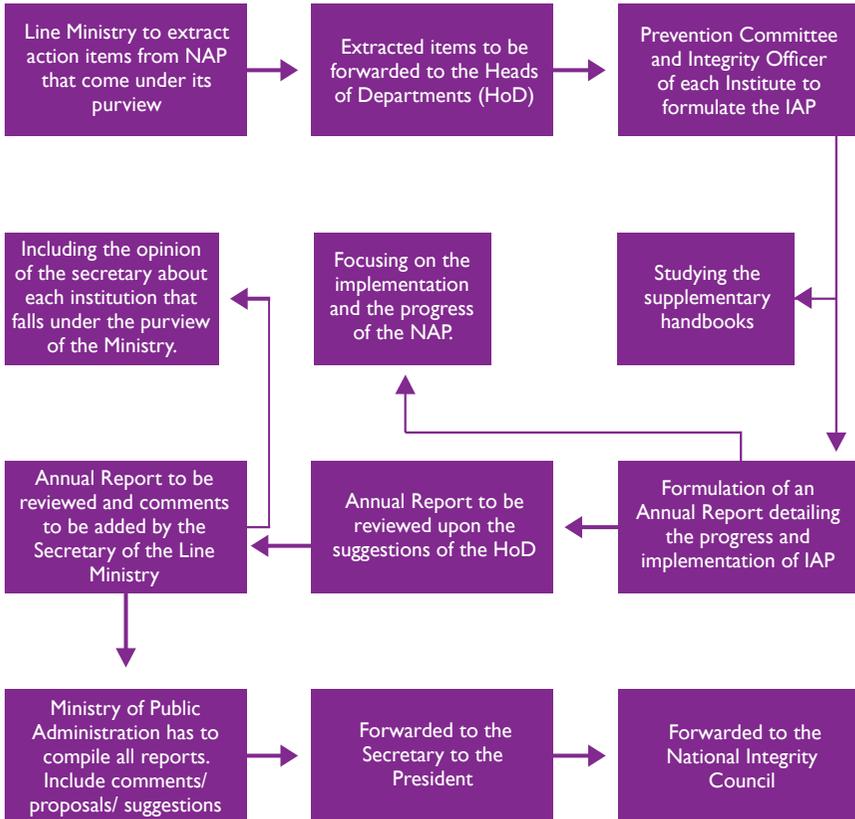
6. THE IMPLEMENTATION OF THE NATIONAL ACTION PLAN.

- a. The collective responsibility to implement the National Action Plan
- a. The effective implementation of the National Action Plan is imperative for the complete eradication of bribery and corruption from Sri Lanka. In achieving this goal, the dedicated service of all government institutions and other parties is needed.
- b. The eradication of bribery and corruption cannot be perceived as a duty that is entrusted to one particular institution. It is a goal to be achieved through a collective effort of the entire nation. The goal of building a nation free of bribery and corruption in the course of the next five years could be achieved only through fulfilling the duties that are entrusted upon oneself.
- c. The National Integrity Council which comprises of a panel of independent experts was appointed by the President to supervise the implementation of the National Action Plan.

A ROUGH OVERVIEW ON THE IMPLEMENTATION OF THE NATIONAL ACTION PLAN



THE LINE OF AUTHORITY IN IMPLEMENTING, MONITORING, EVALUATING AND REPORTING THE NATIONAL ACTION PLAN AND THE INSTITUTIONAL ACTION PLAN



The responsibilities that are entrusted upon the Public Officers to implement the National Action Plan in their respective Government Institutions:

- I. The Presidential Secretariat through circular No. PS/ACD/01/2019 dated 04/07/2019 directed all government institutions, boards and corporations to implement the National Action Plan to eliminate bribery and corruption.
- II. A special responsibility is vested on the government institutions through strategies one and two (prevention measures and value-based education and community engagement respectively) identified by the National Action Plan.
- III. Under strategy one on prevention measures, various modes of prevention that could be practiced within the public sector have been introduced. It is a duty of the heads of the public institutions to practice the same.
- IV. The aforementioned circular has recognized certain mandatory steps to be followed by Public Institutions.

- Appoint an integrity officer in every public institution
- Establish corruption prevention committees
- Develop an institutional action plan for the prevention of bribery and corruption
- Appoint a Facilitating officer
- Formulate and display the citizens' charter

An in-depth understanding of the aforementioned tasks could be gained through the Integrity Handbook that was issued along with the National Action Plan.

Further, the Heads of the Public Institutions and the appointed Integrity Officers are expected to perform the following duties.

- Promote digitization of institutional services
- Subject all public servants to an integrity pledge
- Educate the public servants on the rules on Conflicts of Interest

- Educate the public servants on gift rules
 - Educate the public servants on the Code of Ethics including the establishment code
 - Take steps to develop the integrity and good values of the public servants
- d. Conduct Training Programs to train Trainers to implement the National Action Plan along with its preventive mechanisms.
- i). The implementation of the National Action Plan is indispensable to eliminate bribery and corruption from Sri Lanka. In order to reach the target, all fifteen hundred thousand public servants and all public institutions of Sri Lanka should work with dedication and commitment. In that regard, the public servants should be educated about the National Action Plan, the relevant circulars and the preventive mechanisms that could be followed to prevent bribery and corruption. The need to conduct such Awareness Programs has been recognized through the National Action Plan. However, such Awareness Programs could not solely be conducted by a few officials of the Presidential Secretariat or of CIABOC or of any another institution.
 - ii) Accordingly, there must be trainers to train public officials. Hence, it is intended to select a certain number of public officials as trainers and train them. Such trained public officials could subsequently conduct training to the rest of the public servants.
 - iii) As the first step of the program, nine workshops targeting each province of Sri Lanka and a workshop targeting the line ministries and the independent commissions are scheduled to be conducted. These workshops are intended to be conducted as a three-day residential training.

15. THE PROPOSED NATIONAL INTEGRITY PLAN AND PROPOSED ACTIVITIES TO ENHANCE INTEGRITY

I. ENHANCING THE INTEGRITY OF THE ELECTED REPRESENTATIVES

A) Integrity Pact/ Pledge

- i. The Ministers along with the Prime Minister and the Governors enter into an Integrity Pact and Pledge with the President
- ii. The Members of Parliament enter into an Integrity Pact and Pledge with the Speaker of the Parliament
- iii. The Provincial Council Members enter into an Integrity Pact and Pledge with the Governor of the Province
- iv. The Heads of the Local Authorities enter into an Integrity Pact and Pledge with the Chief Minister of the Province
- v. The Members of the Local Authorities enter into an Integrity Pact and Pledge with the Head of their Local Authority
- vi. The Ministers enter into an Integrity Pact and Pledge with the Secretaries to the Ministries
- vii. The Secretaries to the Ministries enter into an Integrity Pact and Pledge with the Heads of the Departments and Public Institutions
- viii. The rest of the public officers enter into an Integrity Pact and Pledge with the Heads of their Departments and Public Institutions

It is appropriate to take steps to include the following in the pact/pledge

- What are the targets that are expected to be achieved?
- Preliminary concepts of integrity
- Values related to the Conflict of Interest
- Concepts governing gift policies
- Duty to declare all assets, income and liabilities pertaining to an individual

B) Formulating a Code of Ethics for the Elected Representatives

A Code of Ethics for the elected representatives that aligns with the international standards has to be formulated. It has to be updated and implemented.

In the Code of Ethics, the focus should be given on the following elected representatives.

1. Members of Parliament
2. Members of Provincial Councils
3. Representatives of Local Authorities

2. THE INTEGRITY PROGRAM FOR PUBLIC SERVANTS

A circular/ gazette needs to be issued by the Presidential Secretariat for the implementation of the following tasks.

A) Appointing an Integrity Officer for each Government Institution

APPOINTMENT

- i. The integrity officer should be appointed from staff grade officers.
- ii. It is the responsibility of the Head of the Institution to appoint the Integrity Officer.

TASKS

- i. Observe the day to day functions of the respective institution and report any potential situations of bribery or corruption to the Head of the institution.
- ii. Examine procedures/ circulars in operation within the institution and where such documents lack clarity or are complex, take necessary steps to make them simple and clear.
- iii. Take action to appraise all employees regarding procedures and circulars of the institution.
- iv. Where required, under the guidance of the head of the institution, appoint a 'Facilitating Officer' to guide and facilitate the public.
- v. Enable the facilitating officer to provide information, advice and facilitate the public who visit the institution to obtain a service.
- vi. Play a lead role in creating a 'Citizens' Charter' on the services provided by the institution.
- vii. Display the Citizens' Charters so created, clearly to the public who come to the institution.
- viii. Take necessary action to align the institution with the objectives of the citizen charter.
- ix. Take steps to maintain the highest ethical standards in the institution.

- x. Take necessary action to ensure that all employees comply with the gift rules specified in the National Action Plan.
- xi. Take necessary action to ensure that all employees comply with rules on conflict of interests specified in the National Action Plan.
- xii. Take necessary action to ensure that all employees in the institution comply with the Declaration of Assets and Liabilities Law.

B) Establishing Institutional Corruption Prevention Committees

- i. These committees must be constantly supervised by the Ministry of Public Administration. Other ministries should create supervision mechanisms.
- ii. The members of the Corruption Prevention Committee should be appointed by the Institutional Heads in a manner that represents all the sections of the institution.

The tasks of the Committee

- i. Mitigation of potential bribery and corruption in your institution.
- ii. Prevention of potential bribery and corruption in your institution.
- iii. Formulate an institutional specific IAP for the prevention of bribery and corruption.
- iv. Take steps to implement the Institutional Action Plan.
- v. Conduct various awareness programs to eradicate bribery and corruption.
- vi. Providing requisite support to the Integrity Officer where needed.

C) Constitute an Institutional Action Plan to prevent Bribery and Corruption

All government institutions should constitute a unique and distinctive plan to prevent bribery and corruption at institutional levels.

- i. The Prevention Unit of CIABOC should provide necessary guidance to formulate the Institutional Action Plan where necessary.
- ii. The Ministries must frequently supervise the implementation of the National Action Plan in the institutions that come under its purview. A supervision mechanism should be formulated.
- iii. The Ministry of Public Administration and the Ministry of Local Government and Provincial Councils will conduct the overall supervision on the implementation of the institutional action plans

- to prevent bribery and corruption.
- iv. The Corruption Prevention Committees of the public institutions must take steps to ensure that the institutional action plan is properly implemented.

D) Citizens' Charter

Citizens' lack of awareness and clarity regarding the services delivered by public institutions tends to result in increased incidents of irregularities and inconvenience to the public. All heads of institutions should take steps to identify particular units which are more vulnerable to incidents of bribery and corruption and update weak Circulars and Guidelines in order to provide effective and efficient service to the public.

In order to prevent bribery and corruption:

- i. Public institutions providing services directly to the public should, in clear and simple language, inform the public by way of notices displayed or printed material/websites/digital screens, of the procedures to be followed, documents required, eligibility, time taken and the fee payable for each service.
- ii. If a service provision is delayed by more than the stipulated time, the public officer should send a letter within three days stating the reason for the delay.
- iii. An aggrieved party of such decision is entitled to appeal to a Council of Appeals or to a Designated Officer.
- iv. If the Council of Appeals decides that the aforementioned public officer has decided the case wrongly or has not followed the basic principles of natural justice, then it should be reported to the Head of the respective institution.

E) Develop a Code of Ethics for the Public Servants

When preparing a code of ethics for public employees and updating the Establishments Code the following areas should be considered;

- i. Preliminary concepts of integrity
- ii. Values related to the conflict of interest
- iii. Concepts governing gift policies
- iv. Duty to declare all assets, income and liabilities pertaining to an individual

F) Introduce a Logo containing Integrity Affirmation

- i. A logo containing a pledge that an officer is against bribery and corruption and does not condone bribery and corruption by others should be created.
- ii. Directions should be issued to all public officials and to public representatives to wear the logo.

G) Institutions to be named as bribery and corruption free zone

- i. Notices citing “bribery and corruption free zone” should be displayed in public places
- ii. These notices should be displayed in all ports of Sri Lanka (Eg. Airports)
- iii. All public officers should display it in the front area of their homes

H) Formulating a mechanism to complain about offences of bribery and corruption

Creating a mechanism to complain about offences of bribery or corruption within a public institutions to the higher authorities or to the appropriate institutions.

- i. Formulating an Integrity Pact: All public servants are bound to abide the integrity pact/pledge.

3. ENHANCING THE INTEGRITY OF JUDGES AND JUDICIAL OFFICERS

- i. Introduce a Code of Ethics
- ii. Introduce rules on Conflict of Interests.
- iii. Conduct Awareness Programs
- iv. Encourage adherence to the International Conventions, International Declarations and the best practices followed by the countries worldwide.

4. ENHANCING THE INTEGRITY OF THE GENERAL PUBLIC, YOUTH AND THE CHILDREN

The most essential force against bribery and corruption is the society. It is necessary to implant the values of honesty and integrity within the mind-sets of children and the youth to build a future society that is free of bribery and corruption. Thus, programs targeting various age groups of children and

the youth should be organized. Further, steps should be taken to advocate integrity related concepts through the curriculum of schools and the universities.

5. ENHANCING THE INTEGRITY OF THE PRIVATE SECTOR

- i. Introduce a Code of Ethics to the private sector.
- ii. Conduct awareness programs
- iii. The government is bound to enact legislations on bribery and corruption in the private sector.

6. ORGANIZING WORKSHOPS TO CREATE AWARENESS AND TO GATHER SUGGESTIONS

It is important that workshops are organized to educate the public about the existing law and the best practices that need to be followed. Further, suggestions and the recommendations could be gathered from the public on how to amend the law in order to align it with the needs of the time and the society through these workshops. Examples of workshops that can be conducted for:

- i. the members of Parliament and Governors
- ii. the members of the Local Authorities
- iii. the public servants
- iv. the Judges and the officers of the Judiciary
- v. the general public
- vi. the private sector
- vii. the youth and the children
- viii. the school and university students
- ix. the media institutions and the civil society

7. APPOINTING AN EXPERT COMMITTEE TO EVALUATE THE PROGRESS

The President will appoint a committee comprising of experts to analyze the progress and the effective enactment of the National Integrity Plan.

16. THE CIRCULAR ISSUED BY THE PRESIDENTIAL SECRETARIAT TO IMPLEMENT THE NATIONAL ACTION PLAN

Presidential Secretariat

Circular Number: PS/ACD/01/2019

4th of July 2019

To all Secretaries of Ministries,

Implementation of the National Action Plan for combatting Bribery and Corruption from Sri Lanka 2019-2023, Creating a National Integrity Joint Framework and Executing the decisions of the Cabinet of Ministers to enhance the integrity of the nation.

1. The National Action Plan

- 1.1 The Cabinet Proposal, “ Enhancement of Good Governance through approving the National Action Plan for combatting Bribery and Corruption from Sri Lanka 2019-2023”, proposed by His Excellency the President on 22/01/2019 was approved by the Cabinet of Ministers under the Cabinet Paper No 19/0323/101/015 on 5th February 2019. Thus, it has been decided to follow the National Action Plan for the consequent 5 years in Sri Lanka.

2. Launching the National Action Plan

- 2.1 The National Action Plan that was ceremonially launched on 18th March 2019, as per the aforementioned decision of the Cabinet, should be implemented in all government institutions, boards and corporations of Sri Lanka.
- 2.2 The National Action Plan has recognized 4 strategic pillars to eradicate bribery and corruption from Sri Lanka. Those are Prevention, Value-based education and community engagement, Institutional strengthening of law enforcement authorities and Law and policy Reforms. Under the pillar of Prevention, one of the main action strategies that have being recognized is to formulate integrity strategies.

3. National Integrity Plan

- 3.1 The Cabinet Proposal, “Creating a National Integrity Joint Framework and enhancing the Integrity of the Government Service”, proposed by His Excellency the President on 18.02.2019 was approved by the Cabinet of Ministers under the Cabinet Paper No 19/0667/101/033 on 6th March 2019. It has directed special attention towards enhancing the integrity.
- 3.2 Accordingly, the National Integrity Strategy, which has been enforced through the decision of the Cabinet of Ministers, recognizes the need of the collective effort of the government institutions, private institutions, civil society organizations and community organizations to combat corruption. Hence, the government institutions must also take steps to combat corruption.
- 3.3 A Handbook on Integrity has been released in regard of the preventive measures that could be employed in government institutions and of the role of the Integrity officer.

4. Accordingly, it is instructed to conduct the following action strategies immediately.

- i. Every institution must implement the action strategies that are assigned to them
 - ii. Institutional Corruption Preventive Committees should be established
 - iii. Institutional Corruption Preventive Officers should be appointed
 - iv. Facilitating officers should be appointed.
 - v. Formulate a Citizen’s Charter and publicly display it.
- 4.1 The additional details could be gained through the National Action Plan to combat Bribery and Corruption from Sri Lanka and through the four handbooks that were issued along with it. Those documents can be downloaded through the website of the Commission to Investigate Allegations of Bribery and Corruption at <www.ciaboc.gov.lk>

- 5. All Heads of the institutions are hereby advised to enhance awareness of the Handbook on Gifts and of the Handbook on Conflict of Interests that were issued along with the National Action Plan through directing the attention of the officers towards them. A circular to implement those handbooks will also be issued subsequently.**
- 6. Further, an evaluation mechanism has been created to assess the steps taken by the institutions to implement the National Action Plan from time to time and accordingly, it is informed that the institutions will be evaluated.**
- 7. All the measures taken in respect of the aforementioned should be informed by the Head of the institution to the “Office of implementing the National Action Plan to combat Bribery and Corruption from Sri Lanka” located at the Presidential Secretariat within 3 months from the current date.**

Udaya R. Seneviratne

Secretary to the President

Copies:

- | | |
|--|--------------------------------------|
| 1. Secretary to the Prime Minister | For information and necessary action |
| 2. Secretary to the Cabinet of Ministers | For information and necessary action |
| 3. Auditor General | For information and necessary action |
| 4. Secretary to the Ministry of Public Administration, Disaster Management and Livestock Development | For information and necessary action |
| 5. Secretary to the Ministry of Finance | For information and necessary action |
| 6. Secretary to the Ministry Home Affairs, Provincial Councils and Local Government | For information and necessary action |
| 7. Director General of the Commission to Investigate Allegations of Bribery and Corruption | For information and necessary action |

CHAPTER SIX

TO FURTHER YOUR KNOWLEDGE

17. FREQUENTLY ASKED QUESTIONS IN RESPECT OF BRIBERY AND CORRUPTION

WHAT IS A BRIBE?

Bribery means the offer / solicitation or acceptance of any gratification to/by a Public Officer in performing his official duty.

WHAT IS A GRATIFICATION?

Gratification includes movable or immovable property, mental satisfaction, any office, employment, contract, any payment, service, or sexual benefit.

WHO IS A PUBLIC OFFICER?

A person who holds a governmental position and who exercises governmental functions whether in receipt of a remuneration or not.

IS AN ATTEMPT TO ACCEPT A BRIBE AN OFFENCE?

Yes.

IS SOLICITATION OR ACCEPTANCE OF A GRATIFICATION THROUGH AN INTERMEDIATE AN OFFENCE?

Yes, it is an offence for a person acting with knowledge or consent, to directly or indirectly ask or solicit for a gratification through an intermediate. It will be considered as an offence committed by the first-mentioned person.

WHAT IS THE OFFENCE OF ACCUMULATING ASSETS?

If a person acquired money or property which could not have been part of his known income or receipt, then such money or property is considered as acquired by bribery until the contrary is proved by him.

WHAT IS CORRUPTION?

Intentionally or knowingly causing wrongful and unlawful loss to the government or to any person and/or conferring wrongful or unlawful benefit on himself or any person while being a public servant

WHAT ARE THE PUNISHMENTS?

For Bribery

- Rigorous imprisonment for not more than 7 years
- Fine not exceeding Rs.5000/-
- Value of the gratification when it comes to assets
- In addition to the above punishment a fine not less than amount acquired by bribery and not more than three times of such amount
- Forfeiting acquired property

For Corruption

- Imprisonment not exceeding 10 years and/or fine not exceeding Rs. 100,000/-

Is there any other disability?

- Dismissal from the Public Service
- Disqualification for employment in the Public Sector
- Ineligible to vote and be elected at a Parliament Election for 7 years
- Ineligible to vote and be elected at a Local Government Election for 5 years

ARE PUBLIC OFFICERS REQUIRED BY LAW TO DISCLOSE THEIR ASSETS?

Yes. Certain specified categories of public officers are compelled to submit a

declaration of assets and liabilities as at 31st of March each year by 30th of June of such year.

WHAT ARE THE OFFENCES UNDER THE DECLARATION OF ASSETS AND LIABILITIES LAW, NO I OF 1975?

A person,

- who fails to make a declaration;
- who makes false statements;
- who makes a willful omission in the declaration; or
- who fails to give additional information to CIABOC

shall be guilty of an offence after a trial before a Magistrate Court and be liable to a fine of not exceeding Rs.1000/- or imprisonment for a term not exceeding one year or BOTH.

(An extract from the website of Commission to Investigate Allegations of Bribery and corruption <https://www.ciaboc.gov.lk/contact/faqs>)

18. RESOURCE LIST FOR THE REFERENCE OF TRAINERS

LEGISLATION

1. The Constitution of the Democratic Republic of Sri Lanka
2. Bribery Act, No.11 of 1954
3. Commission to Investigate Allegations of. Bribery or Corruption Act, No.19 of 1994
4. The Penal Code (Chapter 15)
5. The Declaration of Assets and Liabilities Law, No.1 of 1975
6. The Offences against Public Property Act, No.12 of 1982
7. The Prevention of Money Laundering Act, No.5 of 2006.
8. Financial Transactions Reporting Act, No.6 of 2006
9. Right to Information Act, No.12 of 2016
10. The National Audit Act, No.19 of 2018
11. Human Rights Commission of Sri Lanka Act, No.21 of 1996
12. Parliamentary Commissioner for Administration, Act No.17 of 1981.
13. The Commissions of Inquiry Act, No.17 of 1948
14. Special Presidential Commissions of Inquiry Law, No.7 of 1978
15. Establishments Code
16. Financial Regulations
17. National Procurement Guidelines

CIRCULARS

1. The circular issued by the Presidential Secretariat regarding the National Action Plan.

THE PUBLICATIONS OF CIABOC

1. National Action Plan for combatting bribery and corruption in Sri Lanka
2. Integrity Handbook
3. Handbook on Gift Rules
4. Handbook on Conflict of Interest Rules
5. Handbook on Policy Suggestions for Proposed Legislative Amendments
6. Prosperous Sri Lanka free of Bribery and corruption

REPORTS

1. CIABOC Annual Report -2018
2. Corruption Perceptions Index 2019
3. Global Corruption Barometer 2019-Sri Lanka

INTERNATIONAL CONVENTIONS

1. United Nations Convention against Corruption.
2. Jakarta Statement on Principles for Anti-Corruption Agencies.

LOCAL DOCUMENTS

1. The second National Action Plan of 2019-2021 under the Open Government Partnership
2. National Integrity Plan

VIDEOS

1. Taking a bribe is an to insult yourself
2. The Bribery Song ('Let's go home with a heart of integrity')
3. The Song "Ha Ha hodai hodai"
4. The Public Servant who is not influenced by bribes.
5. Be the one who does not offer bribes.
6. The hand that accepts bribes will be destroyed.
7. If it is rotten then it's the breeding ground of maggots.
8. Those who take bribes are miscreants, who will bring disrepute to their own and their generations as well
9. Let's break the Chain of corruption
10. Towards a Nation with Integrity

ADDITIONAL INFORMATION

1. Commission to Investigate Allegations of Bribery or Corruption
<https://www.ciaboc.gov.lk/>
2. United Nations Office on Drugs and Crime
<https://www.unodc.org/>
3. Department of Government Printing
<http://www.documents.gov.lk/>
4. In order to access Acts/Cases/ International Conventions
<https://www.lawnet.gov.lk/>
5. Transparency International - www.transparency.org

6. Government Accountability Project
www.whistleblower.org
7. Hong Kong Independent Commission against Corruption -
<https://www.icac.org.hk/en>
8. Anti-Corruption Resource centre - www.u4.no

“.....Work shall not be done here without wage. At every gate he commanded to place sixteen hundred thousand kahapanas, very many garments, different ornaments, solid and liquid foods and drink withal, fragrant flowers, sugar and so forth, as well as the five perfumes for the mouth. 'Let them take of these as they will when they have laboured as they will.' Observing this command, the king's work-people allotted the wages...”
– Mahavamsa Chapter XXX

The above paragraph describes how King Dutugemunu allocated the wages due to the workers who toiled over the Swarnamali Seya. In this manner, the workers themselves decided the wage that was due to them. They themselves collected the money and other items that the King had placed in various places in the temple grounds. Until the construction of the sthupa was completed, this voluntary labour and payment method continued.

The fact that this process could be continually used makes it clear that the Sri Lankans of that time were people of integrity.

It is inspired by these ancient people that the Commission to Investigate Allegations of Bribery or Corruption has engaged in extensive public consultations and created the National Action Plan for Combatting Bribery and Corruption in Sri Lanka

“**Value-based education and community engagement**” is a main part of the National Action Plan. Three publications relating to a Training Programme Series for Integrity Trainers have been published under this, namely:

- 1. Three-Day Workshop Manual** – a guide for the Trainers, Resource Persons and Facilitators who will be involved in the Three-Day Workshop series for Integrity Trainers
- 2. Resource Handbook** – Material that will enable the Integrity Trainers to improve their knowledge on the subject matter.
- 3. One-Day Workshop Manual** – Guidance, handouts and training exercises required when conducting the One-Day Training Programmes.