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POVERTY, TRADE & DEVELOPMENT

RIGHT TO DEVELOPMENT

THE DRAFT NATIONAL AUDIT ACT

THE DRAFT RADA ACT

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Editor's Note ... ...

This Issue emphasizes a variety of concerns that are key to good development and democratic growth.

Firstly, an analytical paper written jointly by ***Dr. Dushni Weerakoon*** and ***Ms. Jayanthi Thennakoon*** looks at the interconnections between trade, development and poverty. The writers point out that, despite rapid industrial and export diversification and an improved rate of economic growth in the post-reform period in general, Sri Lanka has not been able to successfully utilise these positive developments to address broader conditions of poverty and inequity in the country.

Their conclusions that sectoral and regional inequities in the country have widened for the most part over the years, taken together with the poverty headcount ratio remaining fairly high (notwithstanding the fact that some progress has been made in reducing overall absolute poverty levels), are not healthy indications for general economic development in Sri Lanka.

Accompanying this research is a short discussion paper by ***Rukshana Nanayakkara*** which examines a related aspect of this debate; namely the Right to Development in the context of poverty reduction efforts.

His discussion revisits some familiar points of debate, including the view that existing legal, societal and political structures perpetuate income imbalances both internally in a nation state and globally, keeping the poor in the cyclic effects of poverty.

Consequently, he argues as follows;

> *It is essential to move away from inflexible programmes that ignore the social and political differences between countries and move towards a project that takes into account social considerations and the political feasibility of structural adjustment and investment programmes. This should incorporate the realization that growth does not automatically benefit the poor unless specific measures are taken to help the weakest and most vulnerable groups.*

Both these papers were written as part of a project titled "Linkages between Trade, Development and Poverty: Sri Lanka" initiated by CUTS Centre for International trade, Economics & Environment (CUTS - CITEE) in regard to which The Institute of

Policy Studies (IPS) and the Law and Trust Society (LST) are the domestic research and advocacy partners, respectively.

The project focuses on the relevance of international trade on poverty reduction and attempts to articulate policy coherence between the international trading system and national development strategies. It also advances the view that economic growth *per se* does not lead to poverty reduction, thus highlighting the importance of articulating pro poor growth policies.

This is in line with past research and advocacy work by LST on the basis that making socio-economic rights justiciable, would, in turn, empower victims of poverty to be "right holders." Thus, there is a legal obligation on those who formulate policies relating to trade development and poverty, to consider poverty reduction as one of their main objectives. The failure of such obligations should confer upon poor segments of the society, a legal right to challenge policies that are not aimed at poverty reduction.

Along with two research papers, the Review contains a critical focus on two pieces of draft legislation currently before government bodies. These laws are the draft National Audit Act and the draft Reconstruction and Development Authority Act, both of which are accompanied by two articles discussing their content, respectively by ***JC Weliamuna*** and ***Sarath Fernando***.

It is clear that the two drafts get very different welcomes. The first draft, formulated by concerned segments of civil society and with the committed involvement of the current Auditor General, Mr S.C. Mayadunne projects a positive advancement of the law with the increased independence that it accords to the Office of the Auditor General and its plethora of increased powers in that regard.

Such reform is very necessary given the imperative need for an independent and effective legislative auditor. Reflections made in that regard indicate the extent of the problems confronted by the Auditor General in exercising his authority within the framework of the existing law. Currently, the draft is before a government committee and it is to be hoped that attempts will not be made to reduce the positive effect of its proposed provisions.

Publication of the draft Act and Reflections thereto are followed by the Lima Declaration of Guidelines on Auditing Precepts which pinpoints international best practices in that context.

The second draft, namely the RADA Act was formulated by the Government and has been severely criticised since it was brought into the public domain. The short paper that is published in that connection draws attention to some of these concerns and in particular, critiques past reconstruction efforts which have promoted private businesses and foreign and local investments rather than the actual victims.

The dangerous continuation of such a focus through a proposed publicly un-accountable authority that is fundamentally flawed in its conceptualisation is strongly warned against. The overall long-term effect of such policies pushing persons affected by manmade or natural disasters into worse conditions of poverty and distress is a valid concern.

This many themed double-Issue of the Review endeavours to make the point that poverty is not the sole result of individual failures but is rather, a multi-faceted problem which owes a great deal to discriminatory and corrupt government structures which, in turn, leads to bad government.

Unfortunately Sri Lanka appears to be increasingly providing excellent examples of this exceedingly negative reality.

Kishali Pinto-Jayawardena

LINKAGES BETWEEN TRADE, DEVELOPMENT AND POVERTY: SRI LANKA

Dushni Weerakoon[♠]
and
Jayanthi Thennekoon[♠]

1. Introduction

The linkages between trade, growth and poverty have begun to receive increased attention in recent years. This is partly a reflection of the recognition that the structural adjustment programmes of the 1980s, while they made some headway in reducing absolute poverty levels, were not entirely successful in addressing widening income inequality, be it within particular nations or between nations. Only a handful of developing countries – primarily in East Asia – have been able to indicate substantial progress, although a second-tier of developing countries particularly China and India are increasingly providing evidence of some success.

While there is little contention that economic growth is a necessary condition to alleviate poverty, empirical evidence that broadly suggest causal impacts has to be interpreted with some care. The linkage to establish the interrelationship between trade, growth and poverty generally concerns the relationship between trade and growth and the relationship between growth and poverty. While many studies have concluded that there is a positive association between trade and growth, most are unable to conclude anything about causality. Does openness lead to growth or does growth lead to openness? – for instance, the richer a country gets the more inclined it might be to open up to the outside world. An alternative explanation might also be that both are caused by a third factor such as the quality of institutions in a country that impacts positively on both the prospects for enhanced growth as well as the effectiveness of trade policy.

The problem is made more difficult because of the fact that trade openness still remains very ill defined and there is no suitable proxy that can adequately capture all the important dimensions. Even if causality from trade to growth is accepted, one has to be careful in distinguishing between trade impacts (the flow of exports and imports) and trade policy measures *per se* (relating to tariff and non-tariff barriers). While a link between de facto trade openness and growth may exist, it is more difficult to establish a nexus between trade liberalization and growth. The problem is made even more complex by the fact that countries that undergo trade reforms typically tend to do so as part of an overall growth enhancing policy package that includes many structural reforms implemented sequentially or in tandem.

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This joint paper emerged as an outcome of project research titled "Linkages between Trade, Development & Poverty Reduction." Undertaken by the CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), the project is supported by the Ministry of Foreign Affairs of The Netherlands and the Department for International Development, UK. Implemented in select countries in Africa, Asia and Europe in a partnership mode, The Institute of Policy Studies (IPS) and the Law and Society Trust (LST) are the research and advocacy partners, respectively for this project in Sri Lanka

The outcome in most instances is a general acceptance that trade liberalization is supposedly good for growth but there is less clarity on who wins and loses, or how freer trade affects poverty. Whether a particular trade reform policy is pro or anti-poor depends not only on which tariffs are being reduced, and how much of a price change is passed through to the poor but also on how the poor earn and spend their incomes.

More important than price changes may be whether markets exists at all given that trade reforms can both create and destroy markets. Extreme adverse poverty shocks are often associated with the disappearance of a market, while strong poverty alleviation can arise when markets are introduced for previously un-traded or unavailable goods.

Trade reform is also likely to have a major effect on the prices of factors of production – where wages of the unskilled are the most important from a poverty perspective. If reform boosts the demand for labour intensive products, then there is a likelihood of an increase in wages and employment. However, whether this reduces poverty depends on whether the poor are strongly represented in the type of labour for which demand has risen. If the poor are mostly in unskilled families, while trade reforms boost demand for semi-skilled labour, poverty will be unaffected – or it could even worsen as wages of unskilled workers fall.

Trade reform can also affect government revenue, but it is not inevitable that the poor suffer. It is ultimately a political decision whether new taxes are introduced to make up the shortfall, or whether government expenditures are cut instead. The impact on poverty depends on whether the new taxes or cuts in expenditure fall disproportionately on the poor.

In establishing empirical linkages of the impact of trade policy on poverty, one of the main stumbling blocks is the lack of an effective means of linking changes in trade policy to changes within individual households. Tools such as CGE models have been employed to gauge the effects of macroeconomic shocks – trade liberalization or tax reforms for instance – on the economy as a whole. But the analysis of macroeconomic shocks and the analysis of income distribution and poverty use very different techniques and sources of data. The former are based on national accounting data while the latter are generally analysed on the basis of household or individual data. Thus, CGE models have to be refined to distinguish between the poor and non-poor within categories of households to make the link between trade policy changes and poverty. In the final analysis, however, it is important to keep in mind that any model is only as good as the data available and the assumptions on which it is based; economic models, however refined, also do not replicate the exact functioning of any economy.

Economic theory suggests that international trade will lead to an increase in relative returns of the abundant factor – that is unskilled labour in the case of developing countries. Thus, unskilled labour that comprises a large proportion of the poor ought to be the major beneficiaries of trade liberalization. But in reality, this may not always be the case; if there is segmentation in the labour market, where reserves of surplus labour is de-linked from those sectors likely to benefit from trade liberalization, the poverty and income-distribution consequences of trade liberalization become even more complex.

For instance, there is increasing evidence to suggest that the 'export push' that comes from trade liberalization does not benefit the agricultural sectors as much as the industrial sectors. Agricultural

sectors are less export oriented, while industrial sectors also benefit from cheaper imported inputs that can offset a drop in domestic prices as a result of increased competition. Governments therefore need to pay close attention to how workers, especially agricultural ones, and their families adjust to changes brought on by freer trade.

It also raises questions of what the appropriate policy response should be to address such concerns: does it mean greater centralization of investment policies and/or direct targeting of grants from the Centre or offering greater economic autonomy to regions? It is a juggling act that is made more difficult by shrinking government revenues as income from tariffs drop. It can leave policymakers with two choices: cut spending or find other sources of revenue, typically through taxes but these solutions in turn will have poverty and welfare effects on any economy.

The policy implication to governments then is that trade liberalization needs to be accompanied by complementary domestic policies and institutions to ensure more equitable growth from trade liberalization. Some of these relate to macroeconomic stability, labour market flexibility, adequate physical and social infrastructure, good governance and market supporting institutions. To attain some degree of balanced regional growth for example, government policy may have to target developing infrastructure along with other policies to encourage inflows of manufacturing into underdeveloped regions. Much of trade theory assumes perfect markets and free mobility of factors – conditions that do not exist in reality, particularly in developing countries. Microeconomic constraints are particularly binding in the case of small entrepreneurs, constraining the economic position of the poor even further. Therefore, any research undertaken to establish linkages between trade, development and poverty has to look at the underlying micro and meso mechanisms that are fundamental to understanding the poverty problem: how the poor small farmers, landless labourers, factory workers or small entrepreneurs are affected by trade liberalization and through what mechanisms.

Opening up to trade means that sometimes industries in developing countries have to make adjustments to deal with greater international competition. More open economies invariably also tend to be more vulnerable to external shocks. Thus, the risks of households at the margin falling into poverty may also increase. Governments need to devise policies – through the provision of social safety nets and continuous skill retraining for example – to mitigate the downside risks. In short, where freer trade displaces workers, governments may need to devise appropriate mechanisms to help them adjust.

Sri Lanka initiated an economic liberalization programme in 1977 that laid the foundation for far reaching reforms in almost all spheres of economic activity.[1] It marked a radical departure from an inward-looking, controlled-economy approach to a liberalized, export-oriented strategy. The policy programme included many of the standards reforms of a structural adjustment programme, including liberalization of trade and payments, rationalization of public expenditure, de-control of prices and interest rates, promotion of private sector development, foreign investment promotion and financial sector reforms. Although during the following decade, the reforms transformed the Sri Lankan economy – moving it away from a predominantly agriculture base to an increasingly industrialized one – a second phase of reforms were felt to be necessary in the 1990s to rejuvenate a flagging

[1] These policy reforms have been well documented. See Lal and Rajapatirana (1989), Cuthbertson and Athukorala (1991), Athukorala and Jayasuriya (1994).

economy battered by an on-going civil conflict in the north and east (aggravated from 1983 onwards) of the country and an insurgency in the south (1987-89) of the country.

While Sri Lanka has made measured progress in GDP growth in the two decades of reforms posting an annual average GDP growth of nearly 5 per cent in the last 2 decades and per capita growth of over 3 per cent in the same period, there has been limited headway in poverty reduction. The national poverty headcount still at 22.7 per cent and is relatively high for a country with a per capita income of over US$ 1000. In more recent years, there is also increasing evidence to suggest that income inequality in the country has also been on the increase. Improved trade performance and GDP growth in Sri Lanka has therefore by no means been a sufficient condition for poverty reduction. This paper will examine in some detail, the Sri Lankan experience with trade reforms and its impact on the broader development objectives of the country.

2. The Key Elements of the Reform Process

Sri Lanka continued with the fairly 'liberal' open economic policy regime that it inherited at the time of independence, driven by a strong foreign exchange position dependent on primary export commodities (tea, rubber and coconut). Deteriorating international terms of trade from the mid-1950s, however, prompted a gradual shift towards inward-looking *dirigiste* policies in the 1960s and 1970s as in the case of many contemporary developing countries at the time.

However, unlike many other developing countries, Sri Lanka had historically placed greater emphasis on equity and welfare. It has often been cited as an interesting case of a developing country whose level of social progress has been relatively high than most other developing countries with a similar level of per capita income (Isenman, 1980; Sen 1981). Even during the late 1970s, Sri Lanka was spending on average 9.5 per cent of its GDP on welfare expenditure compared with 6.4 per cent by Thailand, 3.9 per cent by South Korea and 3.1 per cent by the Philippines.[2] Succeeding governments committed themselves to a large number of social programmes; free education, health services and a wide range of consumer subsidies have proven to be the most costly programmes that entered the government budget.

Table 1
Standards of Living in some Asian Countries (1960)

	Per Capita Income (US$)	Adult Literacy Rate (%)	Life Expectancy at Birth (yrs)	Infant Mortality (per 1000 births)
Sri Lanka	152	75	62	63
Thailand	95	68	51	n.a.
Malaysia	280	53	57	75
Korea	153	71	54	62
India	73	28	43	n.a.
Philippines	254	72	51	98

Source: Lal and Rajapathirana (1989).

[2] World Bank, *World Development Report*, 1981.

Welfare achievements however, have not been without any economic costs to the country. Budgetary costs remained high while an overwhelming dependence on primary commodity exports exposed the country to deteriorating international terms of trade effects. GDP growth averaged only 2.9 per cent per annum over the period 1970-77, while per capita income growth averaged only 1.6 per cent per annum over the same period. Unemployment was at a record high of 24 per cent of the labour force in 1975. Stringent import controls were imposed to keep the external payments situation under control, particularly in the face of the 1973 oil price shock.

By the mid-1970s, the Sri Lankan trade regime was characterized by a system of stringent exchange and import controls and the existence of a dual exchange rate. Quantitative restrictions (QRs) on trade were more prevalent than at any previous time of its economic history with an estimated 6000 consumer items under price control measures by 1977.[3] The BOP position was however untenable in the longer term. Industry was starved of much needed intermediate and capital goods imports. The external payments situation was also not helped by the lack of international assistance.

A change of government in 1977 saw a re-orientation in economic strategy with a significant shift in policy to open up the Sri Lankan economy to external trade and investment. While the government gave immediate priority to trade liberalization, the policy programme included many other standards reforms of a structural adjustment programme, including liberalization of external payments, rationalization of public expenditure, de-control of prices and interest rates, promotion of private sector development, foreign investment promotion and financial sector reforms.

2.1 Tariff Reforms

The trade reforms introduced in 1977 included specific measures aimed at promoting manufactured exports. The tariff reforms were intended to replace the existing licensing system which had been the main instrument used to restrict imports under the previous regime. Nearly all the non-tariff barriers on imports which had existed since the early 1960s were also abolished.

With the government opting to rely on tariffs as the principle restraint on imports, the new policy regime removed most of the QRs, substituting higher tariffs for them, ranging from zero per cent on the price of essential goods to a prohibitive rate of 500 per cent on goods considered to be 'luxury' consumer items (See Box 1 for details of tariff adjustments in Sri Lanka).

The virtual dismantling of QRs and the introduction of a multi-band tariff structure constituted a substantial shift from the pre-1977 period. While the tariff rates introduced were generally quite high, the removal of the scarcity premia attached to QRs (and the potential for rent-seeking) in itself was expected to hold beneficial effects in reducing the levels of nominal protection. Deficiencies in the new system – one of the most significant being the wide disparity that existed in the tariff rates, ranging as it did from zero to 500 per cent – were addressed thereafter with progressive liberalization of the tariff structure in the following years.

[3] Weerakoon, D. and H. White (1995).

Box 1
Key Tariff Reforms in Sri Lanka

1977	The tariff structure was revised and simplified into a six-band duty system for classification as follows: (i) zero per cent on the price of essential goods; (ii) 5 per cent on most raw materials, spare parts and machinery; (iii) 12.5-25 per cent on most intermediate goods; (iv) a common revenue rate of 50 per cent on goods that are neither "essential" nor "luxury"; (v) a common protective rate of 100 per cent on goods being produced domestically and; (vi) a prohibitive rate of 500 per cent on 'luxury' consumer goods.
1985	Although the tariff regime remained a six-band structure, there was in effect 17 bands in operation as follows: (i) zero per cent on essential goods; (ii) 5 per cent on raw materials; (iii) 10-15 per cent (9 rates) intermediate band; (iv) a 60 per cent revenue band; (v) 75-150 per cent (4 rates) protective band and; (vi) 250 per cent prohibitive rate.
1991	A further revision of the tariff structure was implemented with the adoption of a four-band tariff system. The rates were: (i) 10 per cent on raw materials and capital goods; (ii) 20 per cent on intermediate inputs including semi-finished item; (iii) 35 per cent on chemicals required as inputs to industry and; (iv) 50 per cent on finished goods.
1995	Introduction of further tariff cuts under a three-band duty structure of 10, 20 and 35 per cent.
1998	Three band system of 5, 10 and 30 per cent (agriculture under 35 per cent)
2000	Two band structure of 10 and 25 per cent (a few agricultural products under 35 per cent).

With the introduction of the new regulations, a large number of consumer goods were exempted from import controls, while import restrictions on a wide range of intermediate and capital goods were withdrawn. The rationale for the liberalization of consumer goods imports was that it was intended to alleviate shortages of basic consumer goods – most of which were distributed under a strict rationing system during the earlier regime.

With the exception of food, grain and petroleum products, the public sector import and distribution monopolies were also effectively terminated. Although most QRs were removed, a limited list of items continued to remain under import licensing. Some 281 items remained under the license scheme although the numbers were gradually reduced. Licensing continued to be employed for the purpose of monitoring and for the most part was issued to all applicants for any quantity sought, particularly for the import of essential consumer items such as flour and sugar.

In terms of export duties, while attempts were made to relieve the tax burden on non-traditional exports, duties on the traditional exports were however raised to take account of the higher rupee value following the devaluation of the currency. Such export taxes were, however, progressively phased out over the following years.

2.2 Payments Reforms

Other structural reforms that were adopted simultaneously also had significant implications on the trade regime. One of the most important was the reforms to the payments system. Prior to the 1977 liberalization, Sri Lanka had been operating a dual payments regime under the Foreign Exchange Entitlement Certificate (FEEC) scheme.[4] As part of the reform process, the FEEC scheme was abolished, the exchange rate unified and subject to a nominal depreciation of over 45 per cent against the US dollar and the exchange rate was officially referred to as being determined in a floating system with the US dollar used as the intervention currency.

In practice, the exchange rate policy resembled a 'managed' float rather than a 'free' float left entirely to the whims of market forces. Essentially, the reforms established a new foreign exchange market under which the Central Bank adjusted the exchange rate on a daily basis to stabilise erratic fluctuations in the rate. The reform of the exchange rate system had a number of implications for the external sector. The FEEC system had tended to discriminate against the traditional export sector while at the same time providing a premium to non-traditional exports.

The new system of a unified rate of exchange to a large extent held beneficial implications for the traditional export sector. At the same time the nominal devaluation that accompanied the unification also tended to reduce the bias against the export sector as a whole.[5]

2.3 Institutional Reforms

In order to encourage the export sector and to diversify the export structure of the economy, institutional reforms included the establishment of Free Trade Zones (FTZs) to create a climate conducive to attracting foreign direct investment (FDI). FDI was seen as a key element in promoting export growth, supplementing scarce domestic capital, technology, and managerial skills, as well as a means of penetrating foreign export markets. The institutional framework associated with the strategy included the establishment of a Greater Colombo Economic Commission (GCEC) in 1978 which was formally changed to the Board of Investment (BOI) in 1992.

The GCEC was charged with the task of attracting and supporting export-oriented foreign investment in the country, through the means of an attractive incentive package to foreign investment.[6] The FTZs offered rapid processing of applications, infrastructural and support facilities, tax holidays and exemptions and other benefits, including the absence of import duty on imports of equipment, construction material and raw materials, etc. In return, these enterprises were expected to export their total output. Tax concessions for the enterprises essentially depended on such criteria as foreign

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[4] Introduced in 1968, the basic objectives that underlined the introduction of this scheme were (a) to promote non-traditional exports; (b) to restrain non-essential imports and; (c) to divert black market foreign exchange transactions into official channels. Under the FEEC system a premium exchange rate was offered for non-traditional exports. The major effect of the scheme was to provide a favourable rate of exchange for non-traditional exports and to impose additional rupee costs on imports, particularly on raw materials and capital goods.

[5] 1994, Sri Lanka attained Article VIII Status of the IMF guaranteeing full convertibility of the current account of the balance of payments (BOP).

[6] The law that set up the GCEC rescinded the operation of certain statutes within its area of authority to make the economic climate more attractive to foreign investors, including some labour laws.

exchange earned on export sales, the extent of employment creation, magnitude of capital investment, and the introduction of new technology into the industry.

To oversee the export development drive, an Export Development Board (EDB) was set up in 1979, assigned the task of assisting export ventures in product development and marketing, and providing exporters with necessary supporting export services.

Given the high degree of concentration of Sri Lanka's export structure and the strong bias towards import substitution in its industrial sector, broad macroeconomic policies such as the reform of the exchange rate and the removal of import restrictions alone were considered insufficient to generate the desired export drive. With that in mind, the EDB introduced several specific export development measures and promotional schemes.

The major incentive/support schemes introduced included tax incentives, concessionary financing and export credit insurance. It has long being argued that the specific export development and promotional schemes under the FTZs and the EDB gave an advantage to export-oriented producers over those producing for the domestic market. Many of the schemes had the effect of reducing production costs below comparable costs to those producers manufacturing for the domestic market.

2.4 Macro Policy Adjustments

The reforms in the trade and exchange regimes also aimed at bringing to an end, the public sector monopolies handling a large range of items, and to encourage private sector participation in trading. It was also intended as a means of promoting consumer welfare by encouraging the availability of a wider choice of goods and services to consumers at lower prices through increased competition in the market. In this context, the liberalization measures included the abolition of price controls on most goods and the phasing out of subsidies with the intent of allowing the market mechanism to function smoothly, and thereby facilitate an efficient allocation of resources for productive purposes.

The relaxation of price and import controls meant that much greater use had to be made of monetary policy instruments. Monetary policy under the post-1977 economic reforms focused on interest rates instead of resorting to credit rationing and administrative controls by adopting a policy of high interest rates. There were several arguments for such a policy stance: firstly, it was in keeping with the government's commitment to the free play of market forces where interest rates were to reflect the true cost of capital; and secondly, it was hoped that higher rates would also have the effect of discouraging demand for credit, particularly for 'non-essential' purposes.

Primarily however, the policy was aimed at encouraging domestic savings. The interest rate was also used as a policy instrument to provide priority sectors with finance at concessionary rates under several refinance schemes. These schemes covered primarily exports and export-oriented projects. In addition, the Government also actively encouraged the entry of foreign banks into Sri Lanka. It was considered necessary and desirable to allow foreign banks to open branches in the country to achieve the objective of attracting foreign investment, particularly in view of the government's decision to establish FTZs.

On the fiscal front, reforms were aimed at reducing government expenditure on welfare programmes – for example through the introduction of open market prices for essential commodities (as against the

earlier policy of price subsidies) and the introduction of a food stamps scheme for low income households. The emphasis in government expenditure shifted to the development of infrastructural facilities for the economy, regarded as necessary if the economy was to raise private sector participation in economic activity, and equally important if Sri Lanka was to attract much needed foreign investment.

An ambitious public investment programme therefore was undertaken, based primarily on capital intensive, capacity-expanding projects. These included a massive irrigation project (the Accelerated Mahaweli Development Scheme) which aimed at bringing large extents of irrigated land under cultivation, while at the same time substantially increasing the hydro-electric generating capacity for the economy. Other noteworthy public expenditure programmes were an ambitious programme of housing intended to provide a million housing units and a programme of urban development.[7]

2.5 The Second Wave of Reforms: 1989/90

A 'second phase' of reforms was announced in 1989 – geared to further relaxing remaining restrictions and constraints in the economy – as the country saw an end to the social and political unrest that had overwhelmed the Southern and Western Provinces of the country in the period 1987-89 (although the civil war in the North and East of the country continued to be waged). The reforms introduced in 1989 revolved around further incentives to foreign investment, relaxation of restrictions on foreign exchange, additional foreign currency banking facilities and further easing of licensing requirements with respect to trade and industry.

Further rationalization of the tariff structure in 1989 led to an overall 30 per cent reduction in nominal rates, and the removal of all non-tariff controls except those on a limited range of strategic items. In the sphere of trade and industry, most industrial licensing requirements were removed in 1989.

The remaining controls on imports of plant and machinery were removed, as well as a substantial number of controls on imports of industrial raw materials, leaving only 12 categories of such items still under license for security and health reasons. In the area of foreign investment, further reforms were carried out to rationalise and simplify investment procedures. In addition, automatic investment approval was accorded in most economic sectors with up to 100 per cent foreign equity participation.

The government also renewed efforts to rejuvenate its flagging programme of privatization of public enterprises. The focus of the privatization programme has revolved around the promotion of a wider share ownership to foster capital market development.

3. Post Reform Growth Performance

The singular most striking feature of the immediate post-liberalization economic performance was an impressive acceleration in Sri Lanka's rate of economic growth (Table 1). To a large extent, the acceleration in GDP growth was driven by a massive public investment programme (particularly, the Accelerated Mahaweli Development Programme which was largely donor funded). Gross domestic capital formation which had been no more than 15-16 per cent of GDP prior to liberalization rose

[7] Despite the expansionary consequences of vastly increased levels of government expenditure, such capital investment projects were seen as essential to revitalise a flagging agricultural sector, boost industrial activity through the private sector, and provide much needed employment opportunities.

sharply in the post-1977 period to peak at 34 per cent of GDP in 1980. Concurrently, public investment as a proportion of GDP had nearly doubled to 15 per cent by the early 1980s.

However, the economy was running into difficulties as early as 1980. The public investment programme not only ate into scarce resources, but also contributed to a build up of significant inflationary pressure. The removal of universal food subsidies and the introduction of a food stamp scheme in 1979 helped to reduce government expenditure.[8]

This improvement in the fiscal position, however, was counter balanced by the massive increase in capital expenditure as a result of the public investment programme. The resulting macroeconomic imbalance in the economy was particularly severe because the increase in public investment went unmatched by an increase in public savings. Thus, the scene was set for emerging budget deficits and soaring inflation.

As these problems became evident in the early 1980s – with budget and current account deficits running at approximately 25 per cent and 17 per cent of GDP and, inflation recording a rate of 26 per cent in 1980 – the government at the behest of the IMF was forced to adopt a more prudent macroeconomic strategy. While some improvement in macroeconomic management was achieved on the domestic and external front by 1984, with the budget deficit down to just over 10 per cent of GDP and the current account deficit down to 6.6 per cent of GDP, the government was faced with new and escalating problems on the socio-political front.

The economic problems facing the government were exacerbated by escalating civil unrest, which besides the structural damage inflicted on the economy as a result, served not only to undermined investor confidence in the country but also added to the budgetary burden via higher defence expenditure.

From 1985, Sri Lanka began to experience a rapid downturn in its growth performance. A resurgent Marxist political force (JVP) whose main aim was the destabilization and overthrow of the government, caused widespread disruptions to commercial life with the enforcement of illegal strikes. From 1986 to 1989, social and political unrest was widespread in all parts of the country and as both direct and indirect repercussions of the civil disturbances percolated through the economy, economic growth slowed considerably. A five year rolling investment and development plan for 1986-90 which envisaged a growth rate of 4.5 per cent per annum for the economy proved far too optimistic in reality. Economic performance in 1987 was the poorest in the decade with a growth rate of only 1.5 per cent.

With the end of the Marxist uprising in the South in 1989, the government undertook a second phase of reforms in 1989/90 to revive Sri Lanka's growth prospects with the assistance of an IMF ESAF programme. As a part of the reform process – and partly in response to the 1987-89 uprising – the government also adopted an ambitious rural poverty alleviation programme (*janasaviya*).

[8] During 1970-77 food subsidies accounted for 4.6 per cent of GDP per annum, but during 1978-83 this figure was down to just 1.1 per cent.

Economic growth rebounded sharply in the early 1990s to grow at an annual average of 5.6 per cent per annum during the period 1990-94. The growth momentum continued into the second half of the 1990s, where despite a change of government, a commitment to open economic policies continued marking a departure from the past where the absence of economic policy continuity has been variously blamed for the county's poor performance in the previous decades (Kelegama, 1998).

Nevertheless, economic growth proved to be sluggish and volatile during the second half of the 1990s and into the new decade, battered by both domestic and external shocks. 2001 marked the worst year of economic performance in post-independent Sri Lanka with GDP growth contracting by 1.5 per cent in the face of rising international oil prices and a worsening civil conflict in the country. Despite a gradual recovery during 2002-04, Sri Lanka has continued to be burdened by high fiscal deficits, rising public debt and heightened political instability that has continued to dampen growth prospects during this period.

4. Post-reform Trade Performance

On the external front, export performance improved dramatically with the liberalization of the economy (exports as a percentage of GDP rising to an average of 25 per cent in the 1980s from an average of 15 per cent prior to liberalization).

The mainstay of export earnings in the post-reform period was an impressive acceleration of industrial production while Sri Lanka's traditional export crops – tea, rubber, and coconut products –experienced indifferent growth for much of the post-reform period. The most striking feature of export performance was the rapid growth registered by the garments export sector which overtook tea as the highest gross export earner from 1986.

Reflecting the differing growth rates, the commodity composition of exports also underwent a transformation. The most significant change was the decline in the share of traditional tree crops in the country's total export earnings and the increasingly significant role played by industrial exports.

The share of exports of the industrial sector, which accounted for just 15 per cent of total export earnings in 1978, had come to account for more than 75 per cent of total exports by the mid 1990s. Garments exports alone had come to account for more than a half of Sri Lanka's export earnings by the mid 1990s (having accounted for a negligible share of under 4 per cent at the beginning of the liberalization episode).

Table 2
Growth and Composition of Exports

	Growth		Composition (%)			
	1978-1990	1990-2004	1978	1990	2000	2004
Agriculture	2.2	4.2	76.1	36.3	18.2	18.5
Tea	4.5	5.7	48.4	24.9	12.6	12.8
Rubber	-0.8	-0.1	15.3	3.9	0.5	0.9
Coconut	10.4	4.9	7.4	3.5	2.1	1.9
Other Agriculture	5.7	6.8	5.0	4.0	2.8	2.9
Industrial	21.3	13.1	14.3	52.2	77.5	78.2

Garment	19.6	13.0	-	31.6	54.0	48.8
Gems	10.1	6.1	4.0	3.7	1.6	1.9
Other	49.4	13.4	5.5	7.1	2.5	1.1
Total Exports	8.2	9.6	100.0	100.0	100.0	100.0

Source: Estimated from data available from the Central Bank of Sri Lanka, *Annual Report,* various issues.

Export performance was helped by a significant increase in inflows of foreign direct investment (FDI) following the setting up of FTZs. Inflows of FDI increased steadily from 1978 to 1983 but declined sharply thereafter with the outbreak of the civil conflict. FDI inflows recovered sharply in the early part of the 1990s with the implementation of the privatization programme but continued to stagnate around 1 per cent of GDP.

Initially, FDI inflows were overwhelmingly concentrated in the garments sector accounting for more than a quarter of total FDI by the mid-1980s. FDI played a significant role in manufactured sector export performance with many studies indicating that FDI was more efficient in raising manufactured export growth (Athukorala, 1986, 1995; Kelegama, 1992). For example, in terms of the share of total manufactured exports, exports by foreign firms with FDI is estimated to have increased from 24 per cent in 1977 to 46 per cent in 1982 (Athukorala, 1986). This is hardly surprising given the rapid expansion of East Asian garments exporters with already established foreign markets operating from Sri Lanka.

Despite impressive growth rates in the manufacturing sector in the post 1977 period, there were several weaknesses in the growth pattern.[9] The greater part of the growth in exports can be attributed to garments and petroleum re-exports; the total output of garments and chemical industries continued to expand because of their multilateral ownership which is not only better equipped to competition but was also capable of taking advantage of import liberalization of raw materials and capital equipment.

The adjustment process was made more complex as the country suffered the 'Dutch Disease' effect arising from a significant increase in foreign capital inflows. As a result, the country experienced a real exchange rate appreciation and resultant international loss of competitiveness in exports (Lal, 1985; White and Wignaraja, 1992). While the country's manufacturing base expanded with the rapid growth of the garment industry, non-garment industrial growth remained extremely weak. The absence of a suitable industrial strategy – in the belief that price incentives generated from trade policies would be sufficient – is argued to be a root cause of weak manufacturing sector performance (Kelegama, 1992). But perhaps most importantly, political instability in the country that saw a sharp deceleration in FDI inflows also contributed to slowing down industrial diversification.

Thus, despite the improvement in export performance, Sri Lanka continued to experience high trade deficits as export growth failed to keep up with import growth (as import tariffs were liberalized) to narrow the deficit significantly. The country's primary manufacturing export earners – garments – has remained highly import dependent with an estimated import content of 60 per cent of inputs. Sri Lanka has nevertheless been able to maintain a reasonable deficit on the current account, due mainly to a surplus in transfers from remittances of nationals working abroad.

[9] For example decelerating growth momentum, lop-sided growth and inadequate export orientation etc

4.1 Agriculture

While the initial trade policy reforms focused primarily on manufacturing, the agriculture sector has also undergone broad based tariff adjustments. Nevertheless, the agriculture sector has been protected from imports through relatively higher levels of tariffs and some quantitative restrictions. There are concerns that liberalization of agriculture by way of lower tariff barriers could generate serious impacts on the Sri Lankan economy such that costs could offset its benefits (Thenuwara, 2003).

The argument put forward is essentially that liberalization of agriculture may not result in productive gains in the sector, but that it may incur serious losses arising from political economy dimensions. First, some sub-sectors in agriculture such as tea, rubber, and coconut have difficulties in facing price competition resulting from liberalization since they are operating in a rigid labour market. Second, agriculture policies in Sri Lanka have been designed around voter consent due to the dependence of large rural masses on agriculture. Third, the WTO treats agriculture as a sector where protection is justified to a certain degree.

As in most developing countries, agriculture assumes an important place in Sri Lanka both in terms of contribution to GDP as well as employment. Liberalization of the agricultural sector, therefore, has wide ranging consequences on Sri Lanka's poverty and income distribution. Some have argued that the impact of trade liberalization on domestic agriculture has been quite severe on particular products such as rice, onions, chili, potatoes, green gram, meneri, and sweet potatoes where production has been dropping continuously (Fernando, 2003).[10]

In looking at broader structural adjustment policies on Sri Lanka's agriculture sector, there is evidence to suggest that the export agricultural sector indicated positive growth while the increase in imports held negative consequences for domestic food production, particularly after second wave of policy reforms introduced in 1989 (Yamuguchi and Sanker, 2004). In addition, the larger scale farmers are seen to have benefited by the policy reforms while small scale farmers have been adversely affected. The adverse impact on domestic agriculture has not derived primarily from tariff policy per se, but rather as a result of other factors such as the removal of various agriculture subsidy schemes (in particular the removal of fertilizer subsidies). Nevertheless, Yamaguchi and Sanker (2004) conclude that the structural adjustment policies have been favorable for overall agricultural development in the long run even though their impact on the domestic food sector has been negative (with negative impacts offset by increased revenue from the export earnings).

4.2 Industry

Tariff reforms led to considerable restructuring of the industrial sector. The textile and wearing apparel sector shows the most remarkable growth performance among the given sectors and the share of this sector in total manufacturing output increased from 7 per cent to 15 per cent during the period 1977-

[10] Another sector which was seriously affected by trade liberalization was milk. Prior to liberalization, the National Milk Board provided not only fresh milk at affordable cost, but also an incentive to the small dairy farmers. However, the country's supply of milk powder is at present dependent on imported milk. As a result, it has been argued that higher prices of these products have created a situation where 2.1 million families in Sri Lanka cannot afford daily standard milk consumption for their children (Fernando, 2003).

82. The chemical, petroleum, rubber and plastic product sectors occupied the next position in the rank of growth performance (Athukorala, 1986).

These firms have benefited from free availability of imported inputs and from significant protection provided by new tariff structure. A survey of manufacturing firms (a total of 3018 firms) carried out in 1980 to ascertain the impact of import liberalization found some adverse consequences with the average business failure rate to be around 20 per cent.[11]

Table 3
The Impact of Trade Liberalization on Manufacturing Units

Nature of Impact	Approved Industries	Unapproved Industries	All Industries
Closed down	8.6	3.1	4.3
Adversely affected	15.8	26.9	24.6
Benefited	37.6	18.5	22.5
Unaffected	38.0	22.5	48.7
Total	100.0	100.0	100.0

Source: Athukorala, (1986).

However, the relative impact of liberalization on registered and unregistered manufacturing units at the aggregate level between 1977 and 1979 differs (Table 3). The categories of 'closed down' and 'adversely affected' included 78 and 80 per cent of small scale units, respectively (Athukorala, 1986). On the other hand, the 'closed down' category contained no large scale units.

Moreover, estimates of average business failure rates for domestic industrial units for the post 1977 period show relatively lower failure rates for domestic industries of food products, non-metallic mineral products, ferrous and non ferrous metal products and chemical products and higher failure rates for machinery and equipment, electrical goods and other light-manufacturing sector. The textile and wearing apparel sector, in particular the spinning and weaving sub-sector, was among the most affected (Athukorala, 1986). The study concludes that the nature of the impact on a given producer is not necessarily co-related with the degree of protection provided by the trade regime. Instead, the nature of ownership, the scale of operation, the pattern of local demand, the protection gained through the nature of the commodity involved have determined the impact on its performance level. In particular the impact of trade liberalization has been more adverse to small scale producers irrespective of the type of products they produce.

Small scale industries were the most negatively affected, bearing the brunt of import liberalization: (i) larger firms benefited from liberalized imports of raw materials and capital equipment; (ii) small scale units could not compete with low prices of liberalized imports of finished goods; (iii) small scale firms could take advantage of incentives to export promotion through middlemen of large scale firms;

[11] Ministry of Industries and Scientific Affairs (1980), Survey to Ascertain the Impact of Liberalization of Imports on Domestic Industry, Colombo (mimeo). The survey covered all the manufacturing units serviced by the Ministry of Industries and Scientific Affairs, totalling 3016 companies in both the public and private sectors.

and (iv) small scale firms could not benefit from increased financial resource mobilization (Osmani, 1987). The worst effected in the rural informal sector from liberalization was the handloom sector. Other industries which were also affected consisted of agro-based industries such as treacle, juggery making and pottery (Osmani, 1987).

However, liberalization was associated with gains to some industries such as certain handicrafts, coir products and beedi-making. While Osmani (1987) concludes that despite some limited progress in a few industries, the rural-informal sector had not benefited and suffered a net adverse effect.

All available information suggests that the domestic textile sector was the most adversely affected by import liberalisation. The handloom industry in particular, operating for the most part in the unorganised sector, was a weak force in terms of its ability to lobby the government and many firms went out of business. According to the Central Bank Industrial Survey of 1978, a year after the liberalization of imports, out of 1300 firms in this sector on its mailing list, 200 firms informed the closing down of business (Athukorala, 1986).

Similarly estimates prepared by the Ministry of Textiles on the unorganised handloom textile sector suggests that out of about 110,000 handlooms which existed in the country, about 30,000 had ceased to function by 1980 (Athukorala, 1986). The number of looms in the country had declined to 15,000 by 1987 (Osmani, 1987). The Ministry of Handloom and Textiles puts the figure of handlooms operational in the 1990s at 20,000 (Ministry of Handloom and Textiles, 1991).

Even though the government appeared to be looking to the handloom sector to generate employment and to support rural development with increasing export earnings, these objectives could not be realistically achieved in the context of liberalization. Furthermore, since the largest concentrations of workers employed in the handloom industry were found in rural areas in Sri Lanka, micro impacts of trade policy was negative and therefore had a negative impact on living standards of lower income segments of the population on the whole (Gunathilake, 1997).

5. Trade Reforms and Employment

The key channel through which trade liberalization affects both absolute and relative poverty is through its impacts on employment level. Most of the literature concentrates on employment as a source of change – change in welfare, change in quality of life and ultimately change in poverty. However, the effect can be either positive or negative. Positive impacts of trade liberalization include an expansion of employment opportunities created by trade reforms along with export promotion and FDI as the main source of employment generation in the manufacturing sector. The negative consequences of employment are associated with contraction of employment and sources of income as trade reforms directly contribute to the removal of state support in marketing, raw material, subsidies in inputs and preferential access to public resources for infant industries, rationalization of the public sector and structural changes in the economy on the whole.

Economic growth in the post reform period was accompanied by a consistent decline in the rate of unemployment in the country. While data on comparable rates of unemployment over time have to be

interpreted with some caution, available estimates suggest that the rate of total unemployment fell from 24 per cent in 1973 to 14.8 per cent in 1979.[12]

By 1982, the rate had fallen further to 11.2. From the mid-1980s, however, Sri Lanka began to experience rising unemployment as the growth momentum slowed down considerably so that by 1990, the unemployment rate was estimated at 15.9 per cent. With the resumption of economic growth in the 1990s, unemployment fell consistently to 7.6 per cent by 2000. While the severe economic contraction experienced in 2001 saw unemployment increase marginally, it has remained around 8.5 per cent in more recent years.

Table 4
Key Employment Statistics

	Unemployment	Sectoral Profile of Employment				
	(%)	Agriculture	Manufacturing	Mining	Construction	Services
1978/79	14.8	52.0	12.5	1.2	5.0	29.3
1981/82	11.2	50.5	12.3	1.7	5.1	30.4
1986/87	15.5	47.7	13.4	1.9	5.7	31.3
1990	15.9	46.8	13.3	1.6	3.9	34.5
1995	12.3	36.7	14.7	1.6	5.3	41.6
2000	7.6	36.0	16.6	1.1	5.5	40.3
2003	8.4	34.7	16.1	0.0	5.4	43.8
2004	8.5	34.1	16.7	0.0	4.7	44.5

Sources: Central Bank of Sri Lanka, *Annual Report*, various issues.

Taking the available statistics, the attempt to reduce unemployment may be deemed to have been successful in the initial aftermath of the reform programme. Thus, contrary to the expectations of an increase in unemployment following a significant liberalization of the economy, Sri Lanka in fact was able to claim a reduction in unemployment. However, there are many reasons – both endogenous and exogeneous – to account for this decline, which had little to do with the reform programme *per se*.

In the post-reform period there was a surge in out-migration of workers from Sri Lankan seeking employment, particularly to the Middle East. Whilst employment opportunities in the Middle East had opened up from the mid 1970s, the out-migration from Sri Lanka was constrained by stringent exchange control regulations and other restrictions. The second oil price shock of 1979 gave momentum to this trend as the demand for labour in the Middle East expanded considerably. It is estimated that approximately 350,000-400,000 Sri Lankans found employment in the Middle East over the period 1977-84 (Ministry of Plan Implementation, 1985).

A second impetus for the decline in unemployment figures came from the repatriation of Indian nationals, mostly from the estate plantation sector from Sri Lanka agreed under the Sirimavo-Shastri Agreement of 1964. An estimated 337,000 people were repatriated during the period 1977-82.

[12] Central Bank of Sri Lanka, *Consumer Finance Survey*, various issues.

A third inducement for increased employment came from the government's massive public investment programme, particularly the Accelerated Mahaweli Development Programme (AMDP). Following the escalation of the civil conflict from the mid-1980s, recruitment to the armed forces and ancillary services was also another avenue of employment generation in the country. What clearly emerges from the above analysis is that the initial spurt in the reduction in the rate of unemployment was largely on account of factors that had little to do with the liberalization programme.

Despite the general decline in the rate of unemployment, the 1977 reform package adversely affected many small scale and rural industries in the country. According to the Population Census of 1981, about 9 per cent of the labour force was employed in the rural industrial sector. The industries, which provided most of the employment were handloom, carpentry, pottery, bricks, tiles, coir products and tobacco products (Osmani, 1987).

Employment in these industries was severely affected by trade policy reforms with the domestic textile sector being the most adversely affected by import liberalization. The corresponding employment losses in this sector were quite significant. It has been estimated that handlooms employed some 150,000 people in the 1970s but that by the 1990s, total employment in this sector had fallen to less than 25,000 (Ministry of Handloom and Textiles, 1991). In fact, the loss of employment in this sector during 1977-80 is estimated at 40,000 (Waidyanatha, 1980).

It can justifiably be argued that a certain amount of re-employment of displaced labour took place in the post-reform period, particularly in the rapidly expanding export oriented garments industry. According to estimates set out in Table 5 during the period 1980-85, there was an increase of 80,000 jobs in the manufacturing sector. However, it has been argued that the manufacturing sector, targeted as the key determinant of employment creation in post-reform Sri Lanka had largely failed to generate a satisfactory level of labour absorption in the period 1977-85 (Kelegama and Wignaraja, 1992). Total employment in manufacturing as reported in different surveys indicate that in contrast to the first half of the 1980s, the manufacturing sector generated almost 200,000 jobs in the next five years.

Table 5
Employment Patterns in the Organized Sector Industries

Industry - ISIC	1977 Level	Increment 1977-80	Increment 1977-85
31 Food, beverages & tobacco	28429	3936	35453
32 Textiles, wearing apparel & leather products	33180	15793	41658
33 Wood & wood products	6476	2252	3385
34 Paper & paper products	7650	612	66
35 Petro-chemicals & others	14446	2750	7803
36 Non-metallic mineral products	9963	9960	7951
37 Basic metal products	1790	453	222
38 Fabricated metal products, machinery & transport equipment	15513	437	3937
39 Other manufactures	1129	668	870

Source: Kelegama and Tiruchelvam (1995).

In the manufacturing sector, as would be expected in keeping with the overall developments in output growth, the textile and garments sector contributed to the largest share of employment growth. Nearly 45 per cent of employment growth in manufacturing in the period 1977-85 has originated in this sector (Table 5). This phenomenon is inextricably linked to the fact that one of the major contributing factors to employment generation in manufacturing was the export promotion and foreign investment promotion strategy of the government.

The contribution of new industries with foreign capital participation (set up in the post reform period) to overall increase in industrial employment is estimated at 59.5 per cent in 1980 and 65.2 per cent by 1985 (Kelegama, 1995). In 1983, employment generated by the Greater Colombo Economic Commission (handling FDI in all designated FTZ enterprises) was estimated at 9.2 per cent of total manufacturing employment (Wanigatunga, 1987).

However, employment in FDI related enterprises was largely confined to raising the level of female labour force participation in the manufacturing sector. In FTZs, female labour accounted for approximately 70-80 per cent of the total, of whom semi-skilled female labour dominated the total employment generated. This is again a reflection of the dominance of garments sector related foreign investment that characterized post-reform FDI inflows to Sri Lanka.[13]

Thus, the generation of employment after 1977 has been biased towards women, primarily in the low paid, low skilled strata (Rodrigo, 1994). Females benefited from new opportunities created by export industries to move out of traditional economic activities. However, these are concentrated in the trade zones, which are mostly in the urban sector along with a bias towards low skilled female workers. Another sector, which has benefited from liberalized trade, is the retail and whole sale trade sector and the number of females employed in the commercial, mercantile and service sector has also been on the increase (Rodrigo, 1994). The employment opportunities generated in these sectors have the greatest impact on low income groups.

6. Trade Reforms, Growth and Poverty Reduction

While the economy did indicate an improved outcome in terms of GDP growth, most data suggest that poverty may not have changed much over the period (World Bank, 2002). In fact, perceptions of inequity in access to the benefits of market driven policies is argued to have been a contributory factor in heightening social and political tensions in the country in the latter part of the 1980s (Dunham and Jayasuriya, 2001). In response, the government adopted a considerably more populist and expansionary policy stance in what has been termed the 'second wave' of liberalization that included an ambitious poverty alleviation programme (the janasaviya programme).

[13] Thus, the private sector too has played an important role in generating employment in the post-reform period. The share of private sector paid employment increased from 1.4 million in 1981 to 2 million by 1991(Rodrigo, 1994).

Table 6
Poverty Headcounts for Sri Lanka

				Gini Coefficient of Per Capita Expenditure	
	1990-91	1995-96	2002	1990-91	2002
National	26.1	28.8	22.7	0.34	0.42
Urban	16.3	14.0	7.9	0.37	0.44
Rural	29.4	30.9	24.7	0.30	0.39
Estate	20.5	38.4*	30.0	0.24	0.33

Notes: * Comparability for estate headcount for 1995-96 with that for other years may be affected by the fact that the 1995-96 survey was sampled differently for the estate sector.
Source: World Bank (2004), Sri Lanka Development Policy Review.

Sri Lanka suffers from a lack of comparative statistics to assess change in poverty status accurately over time. Nevertheless, there is evidence to suggest that the incidence of poverty reduced by about 2 percentage points over the period 1985 to 1995 (IPS, 2002). However, population growth meant that the absolute number of poor did not decrease over time. More recent data indicate that the national poverty headcount ratio[14] showed a modest decline from 26.1 per cent in 1990-91 to 22.7 per cent in 2002 (Table 6).

However, there are significant inequities in poverty reduction across sectors and provinces of the country. During the decade 1990-91 to 2002, the poverty gap between the urban sector and the rest of the country widened, while there was also a significant increase in poverty in the estate sector (primarily the tea plantation crop export sector). [15]The decline in rural poverty from the mid-1990s was a result of the recovery of the agriculture sector from a severe drought in 1996 (which may also have affected the survey results of 1995/96) and the gradual positive trend in per capita agricultural production thereafter.

Sri Lanka is also characterized by significant regional differences in poverty with the Western Province which accounts for nearly 50 per cent of GDP in the economy registering by far the lowest rates of poverty. There is evidence to suggest that over the past decade, Sri Lanka has witnessed an increasing tendency towards wider regional disparity in the incidence of poverty (WB, 2004). Although numerous qualitative studies have been undertaken in the conflict-affected areas, there is no official estimate of the extent of poverty in the North and Eastern Provinces as they have been excluded from national consumptions surveys in the past two decades.

Increasing inequality over the decade is also reflected by the Gini coefficients (Table 6). The increased by almost 24 per cent for the country as a whole between 1990-91 and 2002, including an increase of 19 per cent for the urban sector and 30 per cent for the rural sector. Analysis of the links between poverty reduction, growth and inequality suggest that had inequality not increased during the decade, Sri Lanka would have experienced a significantly greater reduction in poverty (WB, 2004).

[14] Based on official poverty lines (SLRs 1423, 833 and 475 for 2002, 1995-96 and 1990-91) respectively.
[15] A decrease in income earners per estate household during the period is likely to explain part of the increase in poverty in this sector.

Empirical studies that have attempted to establish linkages between trade policy reforms and poverty in Sri Lanka remain fairly limited and inconclusive in terms of broad conclusions. A study by Weerahewa (2002) for example, which focuses primarily on the link between globalization and poverty attempts to assess the relative importance of technology, trade and government transfers in explaining the changes in poverty in Sri Lanka.[16]

The analysis based on poverty measures shows that from 1977 to 1994, relative poverty has increased and absolute poverty has decreased. More than 46 per cent of the increase in relative poverty is argued to be due to the trade phenomena while neither the absolute changes in poverty nor wage rates can be explained by it. The analysis further indicates that trade shocks have decreased the domestic price of agricultural goods and marginally increased the prices of goods in the rest of the economy from 1977 to 1994 and has, therefore increased the well being of capital owners and decreased that of labour owners.

However, the study argues that trade is not the most important determinant of changes in poverty in Sri Lanka in the period examined. Trade plays the second most important factor while technological change primarily explains changes in relative and absolute poverty in Sri Lanka from 1977 to 1994 and relative poverty from 1994 to 2000. Therefore, the influences of trade based liberalization and of trade in general on poverty are argued to be quite small. In addition, the results of the study shows that trade liberalization from 1977 to 1994 is pro-poor while that from 1994 to 2000 is anti-poor.

Weerahewa (2004) provides an analysis of the impacts of trade liberalization and market reforms on the paddy/rice sector in Sri Lanka. The study reveals that trade liberalization results in a drop in prices of food items and, therefore, an increase in calorie intake of the consumers. Gains are argued to accrue to all income groups with the biggest beneficiaries being the very poor consumers. However, it points out that producers may not reap the gains from rice trade liberalization since decreases in prices would reduce the income of the farmers and therefore the purchasing power of the farming community. This would offset some of the gains of rice-liberalization.

In addition, a fall in prices can lead to inefficient high cost producers leaving the industry. In Sri Lanka, this inefficient sector consists of smallholdings and such an exit has serious impacts on absolute poverty – at least in the short run. Therefore, the biggest losers are the farmers in rural areas. Overall, the results appear to support policies of rice trade liberalization – with the proviso that complementary policies to minimize oligopoly powers of middle men and to improve the bargaining power of farmers – is instituted.

Jayanetti and Tillekeratne (2005) arrive at similar conclusions in analysing the impact of trade liberalization on poverty and household welfare with a special focus on rice and potato sectors in Sri Lanka. While the study concedes that rice producing households are adversely affected by tariff reduction, the results appear to indicate that tariff reduction for rice will improve overall welfare in the country, with the extent of gains being higher for the poor compared to the rich. It is argued that since there are more net consumers of rice than net producers, trade liberalization would contribute to

[16] The paper has used a general equilibrium model incorporating two sectors (agriculture and rest of the economy), two factors (labour and capital) and two income groups (the rich and the poor), while three data sets have been used to reflect the elements of Sri Lankan economy in 1977, 1994 and 2000. The impact of trade on poverty has been incorporated into the model in terms of changes in import tariff, export tax and relative export prices.

poverty alleviation in the country. The study also highlights the necessity of compensatory and complimentary policies to reduce the adverse effects of trade liberalization on the poor.

7. Conclusion

Attempts to assess direct linkages between trade reforms, development and poverty in Sri Lanka remain fairly complex given that trade reforms were implemented as part of a broader package of structural adjustment policies. For example, fiscal consolidation efforts – such as removal of universal subsidies – had a direct impact on households; the government's massive public investment programme created employment opportunities but in turn led to spiraling inflation and loss of competitiveness of the export sector through an appreciation of the exchange rate, etc. Exogeneous factors such as political instability further undermined economic performance and the country's growth prospects.

Direct impacts of trade reforms are clearly evident in certain manufacturing sectors. One of the biggest losers of tariff policy changes was the country's textile and handloom industry as import tariffs on inputs for the country's rapidly expanding export-oriented garments sector was liberalized. While the textile and handloom industry saw significant losses in employment, the garments industry in turn created additional employment, supported by an inflow of FDI into the sector.

However, there is clear evidence to suggest that while Sri Lanka experienced rapid industrial and export diversification and an improved rate of economic growth in the post-reform period in general, it was less successful in translating this to address broader conditions of poverty and inequity in the country. The reduction in the rate of unemployment in the immediate post-reform period was also due largely to factors unrelated to the trade reform programme. The poverty headcount ratio has remained fairly high although some progress has been made in reducing overall absolute poverty levels in the country. Nevertheless, sectoral and regional inequities have widened for the most part over the years.

Selected Macroeconomic Indicators: 1978-2004

	Annual average	1970-77	1978-83	1984-89	1990-94	1995-2001	2002-04
GDP growth	%	2.9	6.0	3.5	5.5	4.2	5.1
Agriculture	% of GDP	29.2	27.8	27.0	25.5	21.3	19.1
Industry	% of GDP	25.9	27.7	26.6	25.8	26.9	26.5
Services	% of GDP	44.9	44.5	46.4	48.7	51.8	54.4
Investment	% of GDP	16.9	27.8	23.5	24.4	25.3	22.7
Domestic savings	% of GDP	13.3	13.1	13.6	14.7	17.1	15.4
Budget deficit	% of GDP	-6.8	-16.2	-11.8	-9.8	-9.3	-8.3
Inflation	%	5.7	15.3	9.9	13.1	9.7	7.8
Exports	% of GDP	16.1	25.6	21.7	25.4	30.5	28.4
Imports	% of GDP	17.3	41.9	31.5	36.6	39.5	37.8
Consumer	% of Imports	48.0	29.0	23.1	22.3	18.6	19.2
Intermediate	% of imports	35.1	46.1	54.5	52.2	54.4	59.6
Capital	% of imports	15.3	24.5	19.1	24.9	22.8	19.9
FDI	% of GDP	0.0	0.9	0.5	1.1	0.7	1.0

Source: Central Bank of Sri Lanka, *Annual Report*, various issues.

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DEVELOPMENT; DO PEOPLE HAVE A RIGHT?

Rukshana Nanayakkara[*]

According to UN sources, 40% of the Sri Lankan population live in abject poverty. Unfortunately many Sri Lankans who do not live in poverty, do not seem to care about the plight of their fellow citizens or, at the maximum, tend to help the poor as a gesture of philanthropy. Sometimes, poor people's status is attributed to their lack of initiative and courage. While it is recognizable that personal conviction and courage is necessary in constructing one's own experiences, the history of power relationships of a State and the income imbalances promoted by the legal system of a country play a key role in establishing and maintaining an inequitable societal structure.

Poverty was viewed primarily as a problem of economic insufficiency. But it necessarily includes material deprivation and human deprivation including low achievements in education and health. This inevitably results in and increases vulnerability, voicelessness, powerlessness and exposure to risk among the poor. Therefore to believe that poverty is based on individual failure ignores these results created by existing legal, societal and political structures. Rather, such systems perpetuate income imbalances both internally in a nation state and globally, keeping the poor in the cyclic effects of poverty.

For example, the prevailing legal rules in some of the personal laws in Sri Lanka maintain an economic imbalance between men and women contributing to a disadvantageous economic status for women. The lack of knowledge of English among the poor (in a system where easy access of learning the language is only limited to a significantly small sector of the society) may deprive them of advantageous economic opportunities. Thus people with more opportunities can generate higher income increasing their power of obtaining assets and investing them. This increases their ability of providing better benefits to their children (e.g. private, individualized and, frequently superior academic experiences and extracurricular lessons or opportunities) that then often lead to privileged secondary education and access to higher paying jobs.

This process of continuation of privileges creates an ongoing "entitlement", in legal, sociological and political sense only for a particular class of the society.

Another example can be found in present developments in intellectual property and patent law which contribute to maintain an income and power imbalance between developed and developing nations. Interpretations on who owns and creates a production results in profit to multi national cooperations in developed countries while indigenous populations lose the financial benefits of their knowledge.

Although there can be piecemeal efforts to rectify such existing disparities, most fluid equal opportunity schemes in employment, education, health etc, which are insensitive to any category of people who were previously discriminated against due to disability, sexual orientation, gender or race, again ignores this asset imbalance.

Therefore in an environment where existing societal, legal and political structures construct rather than combat poverty, anti-poverty initiatives should be perceived in a rights perspective. Such an approach will break open the stereotypical idea of poverty as an issue of individual failure as opposed to a cross cultural, political and social issue.

Right to Development

The right to development necessarily signifies the creating of possibilities for the improvement of living conditions. This improvement goes beyond the traditional yardstick of economic development embracing education, health, culture, democracy and respect to human rights. In other words, development cannot be perceived simply as an economic issue, and it is equally important to view it from a human standpoint.

In his report to the UN Commission on Human Rights (1997), the Special Rapporteur of the Sub-Commission on extreme poverty wrote:

> *"A person's living and working conditions had a direct effect on the quality of the work itself. It was thus essential to take every aspect of life and not merely the economic into account."*

The 1986 Vienna Declaration on Right to Development recognized and described the right to development as a human right. This means a universal and inalienable right that is inherent in all human individuals by virtue of their humanity alone, and as such should be respected, protected and promoted not only by states, but also by the entire international community. Further, this recognition links this right with both civil and political rights as well as socio economic rights, because the primary idea of the right to development is to achieve social development which covers the wider spectrum of human life.

Some recognition of the Right to Development can be found in Article 28 of the 1948 Universal Declaration of Human Rights (UDHR). The Article reads:

> *'Everyone is entitled to social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.'*

While the UDHR includes both civil and political rights and socio economic rights, the emergence of the two legally enforceable documents, the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights fed more into the debate of indivisibility of human rights.

The idea of this discussion paper is not to focus on this debate. Nevertheless, it should be noted that in the dichotomy between civil and political rights on the one hand and social, economic and social rights on the other, it is still the former which is being given priority by the most affluent nations in the world. This is important in the context of the historical responsibility of developed countries in the

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present state of poverty and backwardness in least developed countries. It is well recognized that in order to repair the past misfortunes of least developed countries the developed countries have to assist them. In this regard, it is paramount to recognize the right to development.

The 1986 Vienna Declaration recognition of the Right to Development was further justified by the fact that in 1993, the World Conference on Human Rights included the Right to Development as a basic human right. Conference discussions sustained the view that human rights, including individual or collective rights, are intrinsically linked to the full realization of the Right to Development. Any separation of these two types from the Right to Development undermines the universality, indivisibility of and interdependency of human rights.

Further, the High Commissioner of Human Rights made a similar observation in 1998 where it was recalled that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

Theoretically this recognition should have put an end to lengthy and fruitless discussion regarding the priority of one set of rights over the other. Unfortunately, in practice this sterile debate is still continuing and the industrial world seems to be determined to promote individual human rights and fundamental freedoms, while poverty is increasing. According to the statistics, one-fifth of the world's population lives in extreme poverty while the richest 20 percent receive nearly 83 percent of the worldwide income. As the world economy is growing, the rich are getting richer and the poor poorer, primarily due to an unjust, unethical and inequitable international economic order.

Right to Development and Sri Lanka

Being a less developed country Sri Lanka prominently derives the notion of development from two difference and complimentary factors. One is the above-mentioned duty of developed countries to assist Sri Lanka in her development goals. Second is the extension of the recognition of rights related to development in the legal structure of the country. The basic law of Sri Lanka recognizes no socio economic rights in its chapter. Nevertheless it is commendable that this negation has been overcome in a few instances through innovative interpretation of existing civil and political rights.

The most discussed Eppawala case[1] provides a prime example where existing constitutional articles, (including Article 12(1)- Right to equality, 14(1)g- freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise and 14(1) (h)- freedom of movement and of choosing his residence within Sri Lanka) were used by the Supreme Court to protect the livelihood, culture, environment, certain aspects of living conditions as well as the rights of yet to be born in terms of protecting their future entitlement to use earth's resources. These are all aspects included in the right to development.

In *SmithKline Beecham Biological v State Pharmaceutical Corporation of Sri Lanka*[2], the Court took steps to protect the right to health of both present and future generations in the country under Article

[1] *Bulankuluma v Secretary, Ministry of Industrial Development* [2000] (3) SLR 243
[2] [1997] (3) SLR, 220

12(1) of the Constitution. The arbitrary action of the Sate Pharmaceutical Corporation to award a supply order to a company (Unregistered Company under Cosmetic and Drugs Authority) for two million doses of rubella viral vaccine was declared unlawful by the court. Consideration of possible health risk for the future generation was the main highlight of the case.

Although these cases are significant milestones in the evolution of socio economic rights in the country, it is equally imperative to focus on specific constitutional amendments that expressly articulate protection of socio economic rights. Otherwise, the realization of socio economic rights will always require an innovative judicial intervention. In addition, the danger of past creative interpretations being judicially distinguished and narrowed down by judges of a more conservative order is equally possible.

Right to Development and Global Economic Order

While the national policies and the political system of nation states pave the way for country specific realization of right to development, such policies are naturally shaped by the globalized economic order. The current economic order is a result of carefully planned legal and institutional changes embodied in a series of agreements and mainly controlled by the international financial institutions.

This economic globalization poses great threat to the population in least developed countries affecting the human rights situation in those countries as a result of widespread poverty. Conditions imposed in international trade, the growing energy crisis in many parts of world, adversely affect the vulnerable segments in the developing countries who have no or less bargaining power in shaping economic policies. Massive cuts in healthcare, education, and social services following World Bank and IMF programmes are causing instability, racism, refugee and migrant flows, illicit drug-trafficking and religious fundamentalism, ethnic conflicts and environmental degradation.

Therefore it is important that the governments of the industrial countries and international financial institutions take into account these aspects of global order in their assistance polices towards developing countries.

In that sense, the Right to Development concept should be included in the structural adjustment policies carried out by these players. It is essential to move away from inflexible programmes that ignore the social and political differences between countries and move towards a project that takes into account social considerations and the political feasibility of structural adjustment and investment programmes. This should incorporate the realization that growth does not automatically benefit the poor unless specific measures are taken to help the weakest and most vulnerable groups.

Despite the negative ramification of globalization, it would be wrong to place the entire burden of underdevelopment and poverty on rich countries and international financial institutions. Many developing countries fail self-initiated progressive actions at national level to adopt economic reforms which suits their nations and the failure to create acceptable living conditions has resulted in a situation where malnutrition, homelessness and unemployment are on the increase.

The high level corruption, unnecessary expenditure (e.g. appointment of a large pool of ministers in Sri Lanka) and non - utilization of aid money confine these countries to the vicious circle of debt,

resulting in an increase of interest and loan installment payments. The debt payment by third world countries is a modern form of slavery and contributes largely to the expansion of poverty. In most developing countries a significantly small amount is allocated to poverty programmes and debt payments play a key role in their budgets.

Conclusion

Though Sri Lanka possesses commendable physical living quality standards, especially in the areas of health and education, the overall fulfillment of development goals is far from being realized.

The proposed privatization schemes without public participation and awareness, non existence of a legal structure to protect socio economic rights, lacklustre civil society campaigns in the protection and promotion of socio economic rights, corrupt and non-transparent political structures and lack of creative political willingness to bring peace to the country, question our ability of fulfilling the goals of right to development. These negative factors have cumulatively pushed Sri Lanka to an insignificant status in the global campaign in that regard.

According to the Committee on Economic, Social and Cultural Rights of the United Nations in its General Comments, certain intrinsic factors should be considered in any development program in the socio economic right field. These factors include availability (e.g. in the field of education, the facilities in terms of both goods and care should be available in sufficient quantities); accessibility (e.g. in the field of health care, goods and services should be accessible to everyone without any discrimination); acceptability (e.g. any service provided in a particular sector should be appropriate with in the existing socio, economic structure of the society); quality (e.g. in the field of health the service should be scientifically and medically appropriate and of quality).

The above guidelines are crucial in identifying core minimum obligations by each state in each sector in the socio economic field. And though Sri Lanka is a vulnerable player in the universal process of globalization, its status provides no excuse for not fulfilling at least these core minimum obligations to its people in the socio economic rights sector.

THE DRAFT NATIONAL AUDIT ACT

L.D.O. 51/2005

AN ACT TO PROVIDE FOR THE STRENGTHENING OF PARLIAMENTARY CONTROL OVER PUBLIC FINANCE; TO ENSURE ACCOUNTABILITY IN THE USE OF PUBLIC RESOURCES; TO ENHANCE THE POWERS AND FUNCTIONS OF THE AUDITOR-GENERAL, THE AUDIT COUNCIL AND THE NATIONAL AUDIT SERVICE COMMISSION: TO PROMOTE ECONOMY, EFFICIENCY AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES AND FOR ALL MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

WHEREAS the Parliament is possessed of full control over public finance and is vested with the duty of protecting public resources:

AND WHEREAS the supervision of revenue and expenditure of public finance and other public resources is of paramount importance for the promotion of economy, efficiency, effectiveness and environmental impact in the use of public resources by Government institutions and other authorities:

AND WHEREAS it has become necessary to introduce principles of effective accountability to Government institutions, strengthening audit of public finance by adopting comprehensive legal provisions:

AND WHEREAS the Parliament is desirous of ensuring the above by strengthening the independence of the Auditor General while recognizing his powers, duties, rights and responsibilities and to enhance the powers, duties and functions of the Constitutional Audit Council, National Audit Service Commission, National Audit Office and members belonging to the National Audit Service:

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

Short Title.

1. This Act may be cited as the National Audit Act, No. of 2005.

PART - I

DUTIES, POWERS AND FUNCTIONS OF THE AUDITOR - GENERAL

Auditor-General

2. In addition to the duties, powers and functions imposed upon the

to assist Committees of Parliament.

Auditor-General by the Constitution or any other law, the Auditor General shall assist all Committees of Parliament, including specially the Committee on Public Accounts and the Committee on Public Enterprises, in the discharge their responsibilities more efficiently and effectively.

Auditor-General may inquire into any matter brought to his notice by the public.

3. The Auditor-General may at his discretion, inquire into any matter brought to the notice of the Auditor General by any member of the public, and report thereon to Parliament, where he deems it necessary.

Auditor-General to be assisted by qualified auditors.

4.(1) For the purpose of assisting him in the audit, the Auditor General may, if he thinks it necessary to do so, employ the services of any qualified auditor or auditors, who shall act under his direction and control.

(2) For the purpose of this Article, "qualified auditor" means –

(a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka or any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute; or

(b) a firm of Accountants, each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute.

Limits of disclosure.

5. The Auditor General or any person assisting him in the discharge of his functions, shall not be compelled by any authority except Parliament, to disclose or to give evidence on any matter, prior to their being reported to Parliament.

Secrecy

6. The Auditor General and every officer or employee assisting him in the discharge of his functions, shall, before entering the duties of his office, make and subscribe a declaration that he will not disclose any information received by him in audit, except for the purpose of giving effect to the provisions of the Constitution or any other law.

SCOPE OF AUDIT DONE BY THE AUDITOR-GENERAL

Scope of audit done in relation to audited

7.(1) The scope of an audit done by the Auditor General shall include accounts, finances, financial position and financial control of public finance and properties of audited entities, and their accountability relating to the same.

entities.

(2) The Auditor General shall, at his discretion and depending on the resources available to him, carry out value for money audits or any other special audits of audited entities, programmes, projects and any other activities.

(3) The Auditor General shall have the power in carrying out an audit, to modify the International Auditing Standards determined by the International Organization of Supreme Audit Institution to suit local conditions and publish them in the Gazette, as Approved Standards of the National Audit Office.

(4) Notwithstanding anything contained in any other written law, the National Audit Office shall use such Standards in the discharge of its functions.

Functions to be discharged in carrying out an audit.

8. The Auditor General and any person who is assisting the Auditor General in carrying out an audit of an audited entity shall, as far as possible and as far as necessary, examine whether –

(a) the organisation, systems, procedures, books, records, vouchers and other documents have been properly and adequately designed from the point of view of financial control purposes and from the point of view of the presentation of information, to enable a continuous evaluation of the activities of the audited entity, and whether such systems, procedures, books, records, vouchers and other documents are in effective operation;

(b) the conduct of the audited entity has been in accordance with any laws, rules and regulations relevant to such entity and whether there has been fairness in the financial administration of the entity;

(c) moneys have been applied for the purposes and within the limits for which they were provided or authorized;

(d) there has been economy, efficiency and effectiveness with which the audited entity has used its resources and whether there has been any waste or extravagance;

(e) the procedures, including internal controls, are sufficient to ensure that there is effective control over expenditure, that all expenditure is properly charged and is supported by sufficient vouchers or proof of payment and whether arrangements are in place to subject them to an internal check;

(f) the procedures, including internal controls applied, are sufficient to

ensure that there is an effective check on the assessment, collection and proper management of revenue and other receipts, and whether all the money is accounted for;

(g) the procedures adopted are sufficient to ensure that there is proper custody and control of all property and whether books and records are maintained properly;

(h) the set of accounts presented at the end of the year for audit have been designed to present a true and fair view of the accountability of the audited entity for the current year and whether it is consistent with the preceding year, due regard being had to principles of accounting. financing and valuation;

(i) procedures are in place to study the environmental aspects in the context of sustainable development in the use of resources on current activities and in the planning and execution of new activities, programmes or projects;

(j) any recommendations that may have been made by the Auditor General during the previous years, have been complied with; and

(k) any other matters the Auditor-General deem necessary have been complied with.

Powers of the Auditor General in carrying out an audit.

9.(1) The Auditor General or any person authorized by him, shall in the discharge of his functions under section 8, have –

(a) the right of access to any books, records, vouchers, documents and other information which is directly or indirectly related to the activities of an audited entity, which he considers necessary for the purposes of audit, and the right to search and make copies of or take extracts from any such document;

(b) notwithstanding anything contained in any other law relating to secrecy of records or information, access to books and records, information and documents, in the performance of his duties and the discharge of his functions;

(c) the right to call for such information, documents, explanations, reports or other material which in his opinion is necessary for the purposes of audit;

(d) the right to summon any person for examination and require the production of any documents where such examination or

production is considered necessary for the purposes of audit;

(e) the right of access to premises, stores, inventories and other property for the purpose of audit; and

(f) the right to require the audited entities to settle their minimum internal audit programmes by agreement with the Auditor-General, and to give any directions to the audited entities with regard to the conduct of the minimum internal audit programmes and the manner of reporting by the internal audit.

(2) In the performance or discharge of his duties and functions, the Auditor General shall not be subject to interference or direction from any person or authority.

(3) No person shall make a statement relating to an audit carried out by the Auditor-General that the person knows to be false or misleading in a material particular.

Failure to assist the Auditor General to be an Offence.

10. The audited entity is legally bound to comply with any request made by the Auditor General or any person authorized by him in the performance and discharge of his duties and functions under this Article, and every person who –

(a) fails, refrains or refuses to furnish any information, documents, explanations, reports or material when required to do so by the Auditor General;

(b) fails or refuses to appear before the Auditor General, or produce any document to the Auditor General, when required to do so by the Auditor General;

(c) makes any statement to the Auditor General knowing it to be false or misleading in a material particular, or

(d) resists or obstructs the Auditor General in the exercise by the Auditor General of his powers under any law,

shall, on legal action initiated by the Attorney General at the instance of the Auditor General, be guilty of an offence punishable by the High Court and on conviction after trial without a Jury, be liable to an imprisonment of either description for a term not exceeding one year or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine and may in addition, be disqualified for a period not exceeding seven years from the date of such conviction, from being an elector and from voting at a referendum, at

any election for the election of the President of the Republic, General election, a Provincial Council election or any local authority election or from holding any public office or being employed as a public officer.

Audit Fees.

11. (1) The Auditor General shall charge a fee for auditing the accounts of any person or body including an audit entity, for the purpose of recovery of the cost of audit.

(2) The fee to be charged for auditing shall be determined by the Auditor General in consultation with the Secretary to the Ministry of the Minister in charge of the subject of Finance and the concurrence of the relevant Minister in charge of such audited entity.

(3) Fees received by the Auditor General under this section shall, after deduction of any sums paid by him to any person whose assistance was sought by him, be credited to the Consolidated Fund.

AUDITOR-GENERAL'S POWER TO SURCHARGE

Surcharge.

12.(1) Notwithstanding anything to the contrary contained in any other law, the Auditor General shall have the authority to disallow value of every transaction, financial or otherwise, where the Auditor General is of the opinion that such transaction has been made contrary to any law, regulation or rules and has caused any deficiency or loss due to fraud, negligence, corruption or misconduct of those involved in that transaction or any such transaction which ought to have been included has been omitted in the accounts, the Auditor-General may surcharge the value of such transaction against the person or persons responsible, jointly or severally.

(2) In making any surcharge under this section, the Auditor General shall follow the following procedure:

(a) before certifying the surcharge against such person or persons, the Auditor General shall issue a notice of surcharge on each such person, affording an opportunity the person or persons concerned to make representation on the proposed surcharge;

(b) such notice shall specify the amount surcharged and the main reasons for imposing the same and the date before which representations shall be required to be forwarded;

(c) the Auditor General shall consider the representations forwarded, prior to imposing the surcharge;

(d) in the event of there being no representations forwarded within

the time specified, the Auditor General may proceed to determine the surcharge to be imposed in respect of those who have not forwarded any representations;

(e) the Auditor General may, upon a consideration of the representations forwarded, make any further examination if he think necessary or remit or revise the surcharge set out in the notice or discharge any person, who, in his opinion, is not responsible for such loss.

(3) In the event of a remission of a surcharge or removal of the names of any person from the imposition of the proposed surcharge, the Auditor General may, if he thinks fit, issue notice of surcharge on any other person whom he thinks is responsible, and in that event, the provisions of subsection (2) shall apply in regard to that person.

(4) Upon a determination being made on the surcharge to be imposed, such determination shall be served on the person or persons concerned by registered post, and a copy of the same shall be sent to the Head of the Department or institution in which such person or persons concerned is or are employed.

(5) Any person, who forwarded representations and who is aggrieved by the surcharge imposed, may, within one month of the date of the imposition of such surcharge, appeal against the same, to the Audit Council.

(6) The Audit Council may delegate its power of hearing an appeal under subsection (5) to a Committee consisting of not less than three members, one of whom shall be appointed as Chairman. The Committee shall have authority to examine all documents connected with such surcharge and there it considers necessary, to call upon the person or persons being surcharged to make their representations to the Council.

Powers of the audit Council in regard to an appeal made in regard to surcharge.

13.(1) The Audit Council may in making its decision on any appeal referred to it under subsection(5) of section 12, consider the reasons given by the Auditor General for imposing such surcharge and any recommendations that may have been submitted by the Committee appointed under subsection (6) of section 12 and according to the merits of the case decide to:-

(a) confirm the surcharge;
(b) confirm a part of such surcharge; or
(c) discharge any person from such surcharge; or
(d) remit the surcharge

(2) Where the Audit Council decides to remit a surcharge under paragraph (c) of subsection (1), it may order for the recovery from the person or persons concerned, of the amount of costs and expenses that may have been incurred by the Auditor General in enforcing of such surcharge or any such amount as may be decided by the Audit Council.

(3) The Auditor General shall credit to the Consolidated Fund

(a) all sums of money recovered as surcharge; and
(b) amounts recovered under subsection (2) as costs and expenses:

Provided that where the surcharge is related to a transaction made in respect of a Provincial Council or a local authority, the sum recovered as surcharge shall be credited to the Provincial Fund of such Provincial Council or the Fund of the relevant local authority, as the case may be.

(4)Where any sum required to be paid as a surcharge is not paid, it shall be the duty of the Chief Accounting Officer of the audit entity concerned to make an application in the Magistrate's Court in accordance with the provisions of section 14:

Provided that where the Auditor-General is of the view that the recovery of the surcharge may be expedited by initiating enforcement proceedings himself or by any officer authorized by him, he or such officer may institute recovery proceedings in the Magistrate's Court of Colombo and the provisions of section 14 shall, *mutatis mutandis* apply in regard to such proceedings.

Procedure to be followed by a Chief Accounting Officer.

14.(1) The Chief Accounting Officer shall make an application to an appropriate Magistrate's Court having jurisdiction, for the recovery of the amount due as 'surcharge and the amount of costs and expenses under subsection (2) of sec 13. by seizure and sale of any immovable property of the person or persons concerned.

(2) Where the Chief Accounting Officer is of the opinion that such action is impracticable, he may issue a certificate containing particulars of the amount due from the person or persons concerned, to a Magistrate having jurisdiction to enable such Magistrate to make an appropriate order to recover the same. The Magistrate shall thereupon summon the person or persons concerned before him, to show cause why further proceedings for the recovery of the sum due should not be taken against him or them, and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such person or persons for an offence

punishable with imprisonment, and the provisions of section 291 (except paragraphs (a), (f) and (i) of subsection (1) thereof) of the Code of Criminal Procedure Act, No. 15 of 1979 relating to the default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any directions which by the provisions of that section he could have made at the time of imposing such a sentence.

(3) The correctness of any statement in a certificate issued by the Chief Accounting Officer for the purpose of this section shall not be called in question or examined by the court in any proceedings under this section, and accordingly nothing in this section shall authorize court to consider or decide the correctness of any statement in such certificate, and the certificate issued by the Chief Accounting Officer shall be sufficient evidence that the amount due from the person or persons concerned has been duly calculated and that such amount is in default.

(4) The provisions of section 15 of the Prescriptions Ordinance (Cap. 81) shall apply in aspect of an application made under this section.

SUBMISSION OF REPORTS BY THE AUDITOR GENERAL

Auditor-General to submit annual reports to Parliament.

15. The Auditor General shall annually submit a report to Parliament and as and when he deems it necessary, on the results of the audits carried out by him during the year. Reporting in respect of a particular year shall be completed within prescribed time limits.

Detailed Audit Report to be submitted to the management to each audited entity.

16. The Auditor General shall present an annual detailed management audit report to the management of each audited entity within six months after the end of each financial year. Copies of such report shall also be forwarded by him.

(a) where the appropriate Minister is the Minister in charge of the subject of Finance, to such Minister or

(b) where the appropriate Minister is not the Minister in charge of the subject of Finance, to both the appropriate Minister and the Minister in charge of the subject of Finance.

Publication of Reports.

17. The Auditor General shall, within one month of the receipt by him of the approved annual financial statements of an audited entity which is a public corporation or a company in which the Government holds not less than fifty per centum of the share capital, present a report to the Chairman of the governing body of such entity for publication in its annual report, which shall state:-

(a) whether he has obtained all information and explanations which in his opinion were necessary for the purposes of the audit;

(b) whether the balance sheet and the income statement or profit and loss account of the entity dealt with in the report, are in conformity with the books of accounts and returns;

(c) whether the financial statements have been prepared in accordance with the Sri Lanka Accounting Standards and the generally accepted accounting principles;

(d) whether in his opinion, and to the best of the information made available and the explanations given to him, such financial statements give a true and fair view:-

(i) in the case of the balance sheet, of the state of affairs of the enterprise as at the close of the financial year, and

(ii) in the case of the income statement or the profit and loss account, of the surplus or deficit or profit or loss of the enterprise for that financial year;

(e) whether in the case of the submission of a consolidated accounts, such accounts have been prepared in accordance 'with the Sri Lanka Accounting Standards and the generally accepted accounting principles so as to give a true and fair view of the state of affairs, and of the surplus or deficit or the profit or joss, of such entity and of its subsidiaries;

(f) whether the accounts of such entity have been prepared on a going concern basis;

(g) whether any member of the governing body of such entity is, directly or indirectly interested in any contract entered into by such entity, and if so, the nature of such member's interest, and his own views and comments thereon; and

(h) the reasons for not expressing a clear opinion on any matter examined by him.

Summary of Reports.

18. The Auditor General shall, in respect of any audited entity other than an entity referred to in section 17, within four months after the end of each financial year, issue summary reports for publication in their respective annual reports.

Special Reports.

19. The Auditor General shall report to Parliament as and when necessary on the outcome of Value for Money audits and any other special audits carried out by him during the year.

Triennial Reports.

20. The Auditor General shall submit to Parliament once in every three years a Status Report covering the major deficiencies pointed out and recommendations made by him and preventive measures taken by the audited entity and the present position thereon.

PART II

FUNCTIONS OF THE COMMISSION

Meetings of the Commission.

21. (1) The Commission shall meet at least once in every month.

(2) In the event a written request is made by at least three members to summon an urgent meeting of the Commission, the Auditor General shall summon such meeting as soon as possible but in any case not later than ten days after the receipt of such request.

Commission to advise the Auditor-General.

22. (1) The Commission may advise the Auditor General on –

(a) all policy matters relating to the National Audit Office;

(b) all matters relating to audit, including the improvement of the quality of audit reports, audit coverage, timely issue of reports, improvement of quality and adequacy of such reports, institutional development, improvement and strengthening of capacity of the National Audit Office;

(c) any other matter connected with or relating to the National Audit Office.

(2) The Auditor General shall have the discretion of accepting or rejecting any advice given by the Commission under subsection (1) provided that where the Auditor General decides not to accept such advice, he shall submit a report to the Audit Council incorporating his reasons for the same.

(3) The Audit Council may where it considers necessary, submit its own report to Parliament on any advice rejected by the Auditor General under subsection (2).

Commission to introduce

23. (1) the Commission may introduce schemes with a view to enhancing the quality of performance of the officers of the National Audit Office, the

schemes for enhancing quality of performance.

terms and conditions of which shall be determined with the concurrence of the Audit Council.

(2) in the exercise of its powers under subsection (1), the Commission shall have regard to the desirability of keeping the remuneration and other terms and conditions of the officers of the National Audit Office broadly in line with those plying to persons employed by Parliament.

PART III

NATIONAL AUDIT OFFICE

Government rules and regulations to apply to National Audit Office.

24. All Government rules arid regulations shall apply to and in respect of the National Audit Office, unless specifically amended, revised or excluded by the Commission with the concurrence of the Audit Council, in the furtherance of the objectives of this Act.

Audit Council to examine estimates prepared by the Commission.

25. (1) The Audit Council shall examine estimates prepared by the Commission relating to the National Audit Office and transmit them for incorporation in the national budget, after making any modifications as the Audit Council may consider necessary.

(2) In discharging its functions under subsection (1), the Audit Council may have regard to any advice given by the Committee on Public Accounts, the Committee on Public Enterprises and the Minister in charge of the subject of Finance.

Audit of the National Audit Office and power to appoint an independent auditor.

26. (1) The provisions of Article 154 of the Constitution shall apply to and in relation to the audit of the National Audit Office.

(2) Notwithstanding the provisions of subsection (1), the Audit Council may at its discretion, appoint a qualified independent auditor to audit the National Audit Office or a part of it.

(3) The appointment of an independent auditor under subsection (1), shall be subject to such terms and conditions as the Audit Council may determine, including the remuneration to be paid to such auditor, which shall be defrayed as part of the expenses of the National Audit Office.

(4) An independent auditor appointed under subsection (1) shall have similar powers as those vested in the Auditor General under section 9 of this Act, in carrying out the audit of the National Audit Office.

(5) On completion of the audit, an independent auditor shall be required to submit his report thereon to the Audit Council, and the Audit Council may, if it considers it necessary, present its observations on that report, to Parliament.

PART IV
GENERAL

Submission of consolidated financial statements to the Auditor General.

27. The Secretary to the Treasury shall, not later than three months after the close of each financial year of the Government, submit to the Auditor General consolidated financial statements of the Government showing the income and the expenditure during the financial year and a balance sheet showing the assets and liabilities of the Government as at the close of the financial year, together with a performance report for such year, including, any documents which the Auditor General may require.

Annual accounts of audited entities.

28. (1) Every audited entity shall maintain proper books and records of all its income, expenditure, assets and liabilities, to enable annual and periodical financial statements to be prepared, in respect of such entity.

(2) Annual financial statements including the annual appropriation account, the revenue account and the accounts relating to advance account activities in respect of each Government office and the annual financial statements in respect of every other audited entity, shall be submitted to the Auditor General along with their annual performance reports, within such period as may be prescribed for such submission.

(3) Every audited entity shall submit all documents, records, returns, information and explanations which, in the opinion of the Auditor General, are necessary for the discharge-and performance of his duties and functions and for the expression of an opinion by him on the balance sheet, other financial statements and the management of the audited entities.

Stationing of Audit Officers.

29. (1) The Auditor General may deploy any of his officers or others lawfully engaged by him, to any part of Sri Lanka and to any audited entity.

(2) Audited entities shall cooperate with the Auditor General and any officers deployed by him under subsection (1) and provide a safe and secure working environment to facilitate the carrying out of an effective audit.

Responsibilities of the Chief Accounting Officer.

30. (1) The Chief Accounting Officer of every audited entity shall –

(a) be responsible for financial planning, internal controls, maintenance of proper books and accounts, financial management and for providing management information;

(b) prepare and maintain an effective internal control system for the financial control of each such institution and carry out periodic review of the effectiveness of such systems and advice the administration; and

(c) be responsible for the preparation of the annual and other financial statements pertaining to the audited entity, of which he is the Chief Accounting Officer.

(2) The review to be carried out by a Chief Accounting Officer referred to in paragraph (b) of subsection (1) shall be in writing and copies of the same shall be made available to the Auditor General.

Chief Accounting etc., officer to consider audit report submitted by the Auditor General.

31. On receipt of the detailed audit reports of the Auditor General referred to in section 16 of this Act, it shall be the duty of the Chief Accounting Officer, the Accounting Officer, the governing body or the Head of the audited entity to consider such reports and inform the Auditor General, the Secretary to the Treasury and the appropriate Minister of the Ministry, of the steps that they have taken or propose to take with regard to the matters pointed out in such reports within the time limits determined by the Auditor General, which shall be not later than three months after the, submission of the reports to the audited entities, giving reasons for the inability, if any, to take action on any of the matters pointed out.

Internal audit.

32. (1) The Chief Accounting Officer of a Ministry shall appoint an internal auditor to such Ministry and to each Department coming under such Ministry, and every other audited entity shall have its own internal auditor, duly appointed by the Head of such audited entity.

(2) Where an internal auditor is not appointed, the internal audit functions of such entity shall be carried out by the internal auditor of the appropriate Ministry or any other internal auditor nominated by the Chief Accounting Officer of such Ministry.

(3) The scope and functions to he carried out by the internal audit shall broadly include the same scope and functions of audit applicable to audited entities.

(4) The minimum internal audit programme of each year within the scope of audit, shall be determined in concurrence with the Auditor General.

(5) An internal auditor shall comply with any directions given by the Auditor General, specially with regard to the manner of reporting and the conduct of the minimum internal audits by the internal audit.

(6) Copies of all reports submitted by internal auditors to the appropriate Ministries and other officials, shall be forwarded to the Auditor General.

Audit and Management Committees.

33. There shall be an Audit and Management Committee for every audited entity appointed by the Secretary to the Ministry of the Minister, governing body or other Authority, as the case may be, to undertake the review of operations on a continuing basis, and in particular:-

(a) to review audit and management aspects of the audited entity to ensure that its resources, including human resources, are used economically and efficiently for the purpose of achieving the predetermined objectives or goals of such entity as a whole, or in respect of any specific project or programme undertaken by the entity; and

(b) to ascertain whether such objectives or goals have actually been achieved without any extravagance or waste of resources, and whether any completed project or programme is in actual operation as envisaged in the plans.

Immunity from Legal Action Against Auditor General and his Staff.

34. No proceedings, civil or criminal, shall be instituted against the Auditor General or any officer of the National Audit Office or any other person assisting him in the discharge of his duties and functions, for any lawful act which is done in good faith or omitted to be done in the normal course of exercising his duties and functions.

Against persons giving information to Audit.

35. (1) Notwithstanding anything contrary to any other law, a person shall not be guilty of any offence by reason of anything done by him to assist the Auditor General in the performance of his functions.

(2) Notwithstanding any legal or other obligation to which a person may be subject to by virtue of being an employee of any public authority, no employee of a public authority shall be subjected to any punishment, disciplinary or otherwise, for releasing or disclosing any information in order to assist the Auditor-General in the performance of his duties, so long and so long only as such employee acted in good faith and in the reasonable belief that the information was substantially true and such information would be of a use to the Auditor-General in the performance of his duties under this Act.

Annual report of audited entities.

36. Every audited entity shall include in its annual report :-

(a) the report presented for publication under section 17 to the Chairman of the governing body of such entity;

(b) the summary report issued for publication by the Auditor-General under section 18;

(c) the performance report for the relevant year; and

(d) a summary of the annual account of the entity for the relevant year.

This Act to prevail over other Laws.

37. The provisions of this Act shall have effect notwithstanding anything contrary thereto contained in any other written law and accordingly, in the event of any conflict or inconsistency between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

Interpretation.

38. In this Act, unless the context otherwise requires –

"Audit Council" means the Constitutional Audit Council established by Article 153A of the Constitution;

"audited entity" means the authorities and organizations whose audit is required to be carried out by the Auditor-General under paragraph (1) of Article 154 of the Constitution;

"Auditor-General" means the Auditor-General appointed under Article 153 of the Constitution;

"Commission" means the National Audit Service Commission established by Article 153B of the Constitution;

"National Audit Office" means the National Audit Office created by Article 153C of the Constitution;

"public resources" include public finance, public property, public human resources and public debt; and

"Sri Lanka Accounting Standards" means the Sri Lanka Accounting Standards adopted under the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995.

Sinhala text to prevail in case of inconsistency.

39. In the event of any inconsistency between the Sinhala and Tamil text of this Act, the Sinhala text shall prevail.

Transitional Provisions.

40. (1) The Commission shall, within one month of the coming into operation of this Act, offer all the audit officers and other officers employed in the Auditor General's Department on the date immediately prior to the date of the coming into operation of this Act, employment in the National Audit Office on such terms and conditions of employment which are as a whole not less favourable to the person to whom the offer is made, than the terms on

which he is employed on the date on which the offer is made.

(2) The offer made by the Commission under sub-section (1), shall be open until the expiry of a period of three months from the date on which the offer was made, and any officer who opt to join the National Audit Office shall become a member of the National Audit Service.

(3) Where any officer employed in the Auditor-General's Department on the date immediately prior to the date of the coming into operation of this Act, becomes an employee of the National Audit Office, his period of employment in the public strike as an employee of the Auditor-General's Department shall be counted as a period of employment as a member of the National Audit Service and the change in his status of employment, shall not break the continuity of his period of employment.

(4) Any officer of the Auditor General's Department who does not opt to join the National Audit Office and thereby become a member of the National Audit Service, shall continue in office as a public officer and shall be entitled to be employed in any other Government Ministry or Department. However, where any such officer expresses a willingness to retire from public service, he shall be permitted to do so, and the provisions of Minutes on Pensions shall *mutatis mutandis* apply to and in respect of such officer who retires.

SOME REFLECTIONS ON THE DRAFT NATIONAL AUDIT ACT

J C Weliamuna[♠]

1. Rationale for the draft Law

The draft Audit Act is intended and designed to transform the Office of the Auditor General to an independent legislative auditor and confer it with substantive powers in order to make the exercise of the state audit far more effective.

Presently, the Office of the Auditor General (AG) is a constitutional office within the executive branch of government and is possessed of a certain degree of independence and security of tenure.

However, several peer review examinations of the department and external studies reveal that it does not have financial or administrative independence. Practically, the department is an institution with the least extent of resources and facilities. For example, as at 2003, the department, (which has island wide jurisdiction), had only eight vehicles. Consequently, the audit staff is compelled to depend on the audited institute for its facilities for the purpose of conducting audits which is not a satisfactory arrangement.

Moreover, the department has been faced with major capacity deficiencies in terms of audit staff and other main resources. It has been unable to attract professional staff or to retain the qualified staff. This can be attributed to the lack of financial independence of the AG. Unlike the other advanced Commonwealth traditions, there are no legislative safeguards (such as a specific parliamentary committee) to ensure financial independence without interference by the Executive.

The AG and the AG's Department have hitherto been subject to the administrative control of the executive. The AG's reports were not available in the public domain for years and became open for public scrutiny only very recently. The lack of clarity on the scope of the AG stems from the lack of composite legislation defining and expanding its powers. There is also a question as to whether the level of coverage of the AG's audit is sufficient. In fact, the limited scope under the present law excludes the AG from auditing institutions such as public companies run on public finance, even if the entity is totally funded by the Treasury.

In this background, a composite Bill following global good practices on auditing was drafted by concerned civil society organisations with the input of the present Auditor General. Presently the Draft is before a committee appointed by the government to look into its finalisation. This paper is based on the last draft available as at May 2006.

Some of these changes cannot be introduced without amending the Constitution and therefore a draft constitutional amendment was also prepared for that purpose.

2. Main Changes Contemplated

2.1 Auditor General to be an officer of Parliament

The draft Act proposes to make the AG an officer of Parliament, thereby rescuing him from the clutches of the executive. The national audit office is placed under the AG who is also empowered to employ qualified auditors to assist him.[1] Every member of the staff of the National Audit Office will be subject to any directions only from the Attorney General and interference with AG's functions is made a punishable offence.[2] The appointment, transfer, promotion, dismissal and disciplinary control of the members of the National Audit Service is vested with the National Audit Service Commission and the orders made by the Commission in respect of appeals made by the members of this service may be appealed from to the Administrative Appeals Tribunal.[3]

2.2. Provisions to Secure the Independence of the Office.

The AG will be appointed by the President upon the ratification of the nomination by the Constitutional Council. This is similar to other appointment processes in relation to positions such as the Secretary General of Parliament. The AG is protected against arbitrary removal and unfair interference. Draft constitutional provisions have been formulated to ensure that the AG will not be removed by Parliament except upon proved misbehavior or incapacity.[4] The AG ceases to hold office on his attaining age of 65 or when his term reaches 10 years which ever comes earlier.

2.3 Provisions to ensure financial independence of AG and policy on National Audit Office

The draft proposes to establish a Constitutional Audit Council (CAC) in the form of a Committee of Parliament with a view to strengthening, *inter alia*, the financial independence of the office of the Auditor General. The CAC comprises of the Speaker (Chairperson, Leader of the House, Leader of the Opposition, Chairperson and three other members of the Committee on Public Accounts and similar representation from the Committee on Public Enterprises.[5]

The National Audit Service Commission is a committee nominated by the AG and appointed by the Audit Council which is chaired by the Auditor General. All policy matters relating to National Audit Office will be examined by this Commission. It has power to review the National Audit Office and is the final appellate authority on surcharges. The powers regarding limited surcharges that are in existence at present is vested with the political authority which is problematic. The proposed changes will be more objective and will be consistent with the purposes of surcharge.[6] The estimates of the National Audit Office would be directly prepared by the Commission in consultation with the AG and Treasury and thereafter mandatorily examined by the CAC.

▲ Executive Director, Transparency International (Sri Lanka); attorney-at-law

[1] Clause 4.

[2] Proposed Art. 153(2) & (3) of the Constitution.

[3] Proposed Articles 153(4) & (10).

[4] Proposed Article 153(1).

[5] Proposed Art. 153A.

[6] Proposed Article 153B.

The above provisions are designed to ensure the smooth functioning of the National Audit Office both functionally and financially.

2.4 Clarity on the Scope of the Powers of the AG

The draft Act proposes to specify the scope of the AG covering all public finance irrespective of whether the public finance (or any assets) is generated or spent by a public institution or not.

Thus, the audited institutions are not specified but the Draft authorises the AG to audit "accounts, finances, financial position and financial control of public finance and properties of audited entities and their accountability relating to the same.

Necessary constitutional changes will be effected to replace the present Article 154 so that all types of public institutions and bodies with over 50% shares being held by the treasury will also be covered under the scope of that provision. If an institution or a business is vested in the government or which runs on public resources, those institutions or businesses will also be subject to AG's auditing.[7]

The scope of auditing has been extended beyond examining accounts and now extends to the imposition of standards relating to accountability. The scope of an audit examination has been defined to include all possible categories of audits including regulatory audit to Value for Money Audits.[8]

Another feature is that the draft authorizes the AG to inquire into any matter brought to his notice by any member of the public.

2.5 Duties of the Audited Entities

The lack of clarity in relation to the duties of the audited entities contributed to the existence of a weak public audit system in Sri Lanka under the present legal scheme.

This lacunae is addressed in the draft. Duties of the audited entities are incorporated requiring the entities to submit the accounts to the Auditor General within a stipulated time and to inform the Auditor General with the follow up actions. There will be criminal liability for non-compliance of some of the powers by the audited entities to make the auditing process effective. A legal duty has been imposed on the Chief Accounting Officers of public entities to advise such entities to maintain proper financial management. Arrangements for internal auditing have been provided for, under the advice and directions of the Auditor General.

2.6 Transparency

Presently, the AG (being a public servant within the Constitution) is under the existing framework of the establishment preventing him from interacting with the public and holding media briefings etc. Earlier proposals were that the draft Act should guarantee the authority of the Auditor General to

[7] Clause 7 read with proposed Article 154(1).
[8] Clause 7.

interact with the public and media directly without any inhibition. However, the latest version of the draft does not appear to contain this provision. This is a change that is regrettable.

2.7 Accountability of the AG

The AG is also subject to external audit. The National Audit Office will be audited by a qualified independent auditor appointed by the Audit Council.

2.8 Surcharge

At present, the AG's surcharge provisions are applicable only to local authorities and universities. It will now be extended to all public institutions. There is a general provision for surcharges, to be imposed by the Auditor General subject to an appeal to the Commission. One criticism on the surcharge may be that the AG is exercising an executive function rather than a legislative audit function. However, a reasonable answer to this criticism is that the climate of the Sri Lankan accountability system lacks deterrence without effective surcharge provisions.

2.9 Reporting

The AG is required to submit annual reports and any other reports as may be necessary, to Parliament. Therefore he is free to conduct any number of audits as may be required. It is also important to note that the AG is required to submit a detailed management audit report to the management of each audited entity. This arrangement will certainly help public institutions to streamline their management process in an accountable manner.

The AG is also required to prepare a full audit report with his Opinion. The Bill contemplates summary reports and triennial reports of the AG to be submitted to Parliament with his recommendations to make the public institutions more accountable.

3. Primary Rationale for effecting Changes Through a Constitutional Amendment

The main rationale for formulating a constitutional amendment is to shift the office of the AG from the shadow of the Executive Branch to the reach of the Legislative Branch, while ensuring the independence of the office.. The AG will cease to be a public officer within the meaning of Article 170 of the Constitution.

Since the office of the AG and the functions of the AG are set out in the Constitution, it is necessary to amend the relevant provisions to strengthen the scope and powers of the AG.

4. Conclusion

The present AG has been a key actor in the move to effect the above named changes. His committed involvement has been welcomed internally from within the Department as well as externally, from a strong stake holder base comprising concerned Sri Lankans as well as donor agencies.

The proposed drafts, both statutorily and constitutionally, aims to initiate a stronger and more satisfactory audit culture in Sri Lanka. It is hoped that the government will not unnecessarily interfere with the structure and the text of the proposed drafts in a manner that would result in their dilution.

For example, if it is proposed that the Audit Commission should be headed by a retired judge, (instead of the current Auditor General), this change will not only affect the smooth functioning of the commission, (because a person possessing a judicial training or background is not what is required here), but will also also discredit the institutional framework of a legislative audit function.

Undoubtedly, the government and the policy makers should be sensitive to any changes they propose to the proposed drafts, keeping in mind the highest international standards of supreme audit functions.

THE LIMA DECLARATION OF GUIDELINES ON AUDITING PRECEPTS

Dr Franz Fiedler [♠]

Introduction

When the Lima Declaration of Guidelines on Auditing Precepts was adopted by acclamation of the delegates more than two decades ago in October 1977 at the IX meeting of International Organisation of Supreme Audit Institutions (INCOSAI) in Lima (Peru) there were great hopes, but no certainty, that it would achieve world-wide success.

The experiences made with the Lima Declaration since that time have exceeded even the highest expectations and proven how decisively they influence the development of government auditing in the given context of each individual country. The Lima Declaration is equally significant for all Supreme Audit Institutions grouped in INTOSAI, no matter to what region they belong, what development they have undergone, how they are integrated into the system of government or how they are organized.

The success of the declaration is above all due to the fact that it contains a comprehensive list of all goals and issues relating to government auditing, while simultaneously remaining remarkably significant and concise, making it easy to use, with its clear language ensuring that focus does not wander away from the main elements,.

The chief aim of the Lima Declaration is to call for independent government auditing. A Supreme Audit Institution (SAI) which cannot live up to this demand does not come up to standard. It is not surprising, therefore, that the issue of the independence of Supreme Audit Institutions continues to be a theme repeatedly discussed within the INTOSAI community. However, the demands of the Lima Declaration are not satisfied by a SAI just achieving independence; this independence is also required to be anchored in the legislation. For this, however, well-functioning institutions of legal security must exist, and these are only to be found in a democracy based on the rule of law.

Rule of law and democracy are, therefore, essential premises for really independent government auditing and are the pillars on which the Declaration of Lima is founded. The precepts contained in the Declaration are timeless and essential values which have maintained their topicality since the years they were first adopted. The fact that it has been decided to re-publish the Declaration more than 20 years later indeed witnesses the quality and farsighted spirit of their authors.

Living up to the high ideals of the Lima Declaration remains an ongoing task for us all.

Preamble

The IXth Congress of the International Organisation of Supreme Audit Institutions (INTOSAI), meeting in Lima stated as follows:

[♠] Secretary General of International Organisation of Supreme Audit Institutions (INTOSAI)

- Whereas the orderly and efficient use of public funds constitutes one of the essential prerequisites for the proper handling of public finances and the effectiveness of the decisions of the responsible authorities;

- whereas, to achieve this objective, it is indispensable that each country have a Supreme Audit Institution whose independence is guaranteed by law;

- whereas such institutions become even more necessary because the state has expanded its activities into the social and economic sectors and thus operates beyond the limits of the traditional financial framework;

- whereas the specific objectives of auditing, namely, the proper and effective use of public funds; the development of sound financial management; the proper execution of administrative activities; and the communication of information to public authorities and the general public through the publication of objective reports, are necessary for the stability and the development of states in keeping with the goals of the United Nations;

- whereas at previous INTOSAI congresses, plenary assemblies adopted resolutions whose distribution was approved by all member countries;

RESOLVES:

- To publish and distribute the document entitled "The Lima Declaration of Guidelines on Auditing Precepts."

2. General

Section 1 - Purpose of audit

The concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. Audit is not an end in itself but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable accept responsibility, to obtain compensation, or to take steps to prevent--or at least render more difficult--such breaches.

Section 2 - Pre-audit and post-audit

1. Pre-audit represents a before the fact type of review of administrative or financial activities; post-audit is audit after the fact.
2. Effective pre-audit is indispensable for the sound management of public funds entrusted to the state. It may be carried out by a Supreme Audit Institution or by other audit institutions.
3. Pre-audit by a Supreme Audit Institution has the advantage of being able to prevent damage before it occurs, but has the disadvantage of creating an excessive amount of work and of blurring responsibilities under public law. Post-audit by a Supreme Audit Institution

highlights the responsibility of those accountable; it may lead to compensation for the damage caused and may prevent breaches from recurring.

4. The legal situation and the conditions and requirements of each country determine whether a Supreme Audit Institution carries out pre-audit. Post-audit is an indispensable task of every Supreme Audit Institution regardless of whether or not it also carries out pre-audits.

Section 3 - Internal audit and external audit

1. Internal audit services are established within government departments and institutions, whereas external audit services are not part of the organisational structure of the institutions to be audited. Supreme Audit Institutions are external audit services.
2. Internal audit services necessarily are subordinate to the head of the department within which they have been established. Nevertheless, they shall be functionally and organisationally independent as far as possible within their respective constitutional framework.
3. As the external auditor, the Supreme Audit Institution has the task of examining the effectiveness of internal audit. If internal audit is judged to be effective, efforts shall be made, without prejudice to the right of the Supreme Audit Institution to carry out an overall audit, to achieve the most appropriate division or assignment of tasks and cooperation between the Supreme Audit Institution and internal audit.

Section 4 - Legality audit, regularity audit and performance audit

1. The traditional task of Supreme Audit Institutions is to audit the legality and regularity of financial management and of accounting.
2. In addition to this type of audit, which retains its significance, there is another equally important type of audit--performance audit--which is oriented towards examining the performance, economy, efficiency and effectiveness of public administration. Performance audit covers not only specific financial operations, but the full range of government activity including both organisational and administrative systems.
3. The Supreme Audit Institution's audit objectives--legality, regularity, economy, efficiency and effectiveness of financial management--basically are of equal importance. However, it is for each Supreme Audit Institution to determine its priorities on a case-by-case basis.

3. Provision Relating to Independence

Section 5 - Independence of Supreme Audit Institutions

1. Supreme Audit Institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence.
2. Although state institutions cannot be absolutely independent because they are part of the state as a whole, Supreme Audit Institutions shall have the functional and organisational independence required to accomplish their tasks.
3. The establishment of Supreme Audit Institutions and the necessary degree of their independence shall be laid down in the Constitution; details may be set out in legislation. In particular, adequate legal protection by a supreme court against any interference with a Supreme Audit Institution's independence and audit mandate shall be guaranteed.

Section 6 - Independence of the members and officials of Supreme Audit Institutions

1. The independence of Supreme Audit Institutions is inseparably linked to the independence of its members. Members are defined as those persons who have to make the decisions for the Supreme Audit Institution and are answerable for these decisions to third parties, that is, the members of a decision-making collegiate body or the head of a monocratically organised Supreme Audit Institution.
2. The independence of the members, shall be guaranteed by the Constitution. In particular, the procedures for removal from office also shall be embodied in the Constitution and may not impair the independence of the members. The method of appointment and removal of members depends on the constitutional structure of each country.
3. In their professional careers, audit staff of Supreme Audit Institutions must not be influenced by the audited organisations and must not be dependent on such organisations.

Section 7 - Financial independence of Supreme Audit Institutions

1. Supreme Audit Institutions shall be provided with the financial means to enable them to accomplish their tasks.
2. If required, Supreme Audit Institutions shall be entitled to apply directly for the necessary financial means to the public body deciding on the national budget.
3. Supreme Audit Institutions shall be entitled to use the funds allotted to them under a separate budget heading as they see fit.

4. Relationship to Parliament, government and the administration

Section 8 - Relationship to Parliament

The independence of Supreme Audit Institutions provided under the Constitution and law also guarantees a very high degree of initiative and autonomy, even when they act as an agent of Parliament and perform audits on its instructions. The relationship between the Supreme Audit Institution and Parliament shall be laid down in the Constitution according to the conditions and requirements of each country.

Section 9 - Relationship to government and the administration

Supreme Audit Institutions audit the activities of the government, its administrative authorities and other subordinate institutions. This does not mean, however, that the government is subordinate to the Supreme Audit Institution. In particular, the government is fully and solely responsible for its acts and omissions and cannot absolve itself by referring to the audit findings--unless such findings were delivered as legally valid and enforceable judgments--and on expert opinions of the Supreme Audit Institution.

5. Powers of Supreme Audit Institutions

Section 10 - Powers of Investigation

1. Supreme Audit Institutions shall have access to all records and documents relating to financial management and shall be empowered to request, orally or in writing, any information deemed necessary by the SAI.
2. For each audit, the Supreme Audit Institution shall decide whether it is more expedient to carry out the audit at the institution to be audited, or at the Supreme Audit Institution itself.
3. Either the law or the Supreme Audit Institution (for individual cases) shall set time limits for furnishing information or submitting documents and other records including the financial statements to the Supreme Audit Institution.

Section 11 - Enforcement of Supreme Audit Institution findings

1. The audited organisations shall comment on the findings of the Supreme Audit Institution within a period of time established generally by law, or specifically by the Supreme Audit Institution, and shall indicate the measures taken as a result of the audit findings.
2. To the extent the findings of the Supreme Audit Institution's findings are not delivered as legally valid and enforceable judgments, the Supreme Audit Institution shall be empowered to approach the authority which is responsible for taking the necessary measures and require the accountable party to accept responsibility.

Section 12 - Expert opinions and rights of consultation

1. When necessary, Supreme Audit Institutions may provide Parliament and the administration with their professional knowledge in the form of expert opinions, including comments on draft laws and other financial regulations. The administrative authorities shall bear the sole responsibility for accepting or rejecting such expert opinions; moreover, this additional task must not anticipate the future audit findings of the Supreme Audit Institution and must not interfere with the effectiveness of its audit.
2. Regulations for appropriate and as uniform as possible accounting procedures shall be adopted only after agreement with the Supreme Audit Institution.

6. Audit methods, audit staff, international exchange of experiences

Section 13 - Audit methods and procedures

1. Supreme Audit Institutions shall audit in accordance with a self-determined programme. The rights of certain public bodies to request a specific audit shall remain unaffected.
2. Since an audit can rarely be all-inclusive, Supreme Audit Institutions as a rule will find it necessary to use a sampling approach. The samples, however, shall be selected on the basis of a given model and shall be sufficiently numerous to make it possible to judge the quality and regularity of financial management.
3. Audit methods shall always be adapted to the progress of the sciences and techniques relating to financial management.

4. It is appropriate for the Supreme Audit Institution to prepare audit manuals as an aid for its auditors.

Section 14 - Audit staff

1. The members and the audit staff of Supreme Audit Institutions shall have the qualifications and moral integrity required to completely carry out their tasks.
2. In recruiting staff for Supreme Audit Institutions, appropriate recognition shall be given to above-average knowledge and skills and adequate professional experience.
3. Special attention shall be given to improving the theoretical and practical professional development of all members and audit staff of SAIs, through internal, university and international programmes. Such development shall be encouraged by all possible financial and organisational means. Professional development shall go beyond the traditional framework of legal, economic and accounting knowledge, and include other business management techniques, such as electronic data processing.
4. To ensure auditing staff of excellent quality, salaries shall be commensurate with the special requirements of such employment.
5. If special skills are not available among the audit staff, the Supreme Audit Institution may call on external experts as necessary.

Section 15 - International exchange of experiences

1. The international exchange of ideas and experiences within the International Organisation of Supreme Audit Institutions is an effective means of helping Supreme Audit Institutions accomplish their tasks.
2. This purpose has so far been served by congresses, training seminars jointly organised with the United Nations and other institutions, by regional working groups and by the publication of a professional journal.
3. It is desirable to expand and intensify these efforts and activities. The development of a uniform terminology of government audit based on comparative law is of prime importance.

7. Reporting

Section 16 - Reporting to Parliament and to the general public

1. The Supreme Audit Institution shall be empowered and required by the Constitution to report its findings annually and independently to Parliament or any other responsible public body; this report shall be published. This will ensure extensive distribution and discussion, and enhance opportunities for enforcing the findings of the Supreme Audit Institution.
2. The Supreme Audit Institution shall also be empowered to report on particularly important and significant findings during the year.
3. Generally, the annual report shall cover all activities of the Supreme Audit Institution; only when interests worthy of protection or protected by law are involved shall the Supreme Audit Institution carefully weigh such interests against the benefits of disclosure.

Section 17 - Method of reporting

1. The reports shall present the facts and their assessment in an objective, clear manner and be limited to essentials. The wording of the reports shall be precise and easy to understand.
2. The Supreme Audit Institution shall give due consideration to the points of view of the audited organisations on its findings.

8. Audit powers of Supreme Audit Institutions

Section 18 - Constitutional basis of audit powers; audit of public financial management

1. The basic audit powers of Supreme Audit Institutions shall be embodied in the Constitution; details may be laid down in legislation.
2. The actual terms of the Supreme Audit Institution's audit powers will depend on the conditions and requirements of each country.
3. All public financial operations, regardless of whether and how they are reflected in the national budget, shall be subject to audit by Supreme Audit Institutions. Excluding parts of financial management from the national budget shall not result in these parts being exempted from audit by the Supreme Audit Institution.
4. Supreme Audit Institutions should promote through their audits a clearly defined budget classification and accounting systems which are as simple and clear as possible.

Section 19 - Audit of public authorities and other institutions abroad

As a general principle, public authorities and other institutions established abroad shall also be audited by the Supreme Audit Institution. When auditing these institutions, due consideration shall be given to the constraints laid down by international law; where justified these limitations shall be overcome as international law develops.

Section 20 - Tax audits

1. Supreme Audit Institutions shall be empowered to audit the collection of taxes as extensively as possible and, in doing so, to examine individual tax files.
2. Tax audits are primarily legality and regularity audits; however, when auditing the application of tax laws, Supreme Audit Institutions shall also examine the system and efficiency of tax collection, the achievement of revenue targets and, if appropriate, shall propose improvements to the legislative body.

Section 21 - Public contracts and public works

1. The considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of the funds used.
2. Public tendering is the most suitable procedure for obtaining the most favourable offer in terms of price and quality. Whenever public tenders are not invited, the Supreme Audit Institution shall determine the reasons.

3. When auditing public works, the Supreme Audit Institution shall promote the development of suitable standards for regulating the administration of such works.
4. Audits of public works shall cover not only the regularity of payments, but also the efficiency of construction management and the quality of construction work.

Section 22 - Audit of electronic data processing facilities

The considerable funds spent on electronic data processing facilities also calls for appropriate auditing. Such audits shall be systems-based and cover aspects such as planning for requirements; economical use of data processing equipment; use of staff with appropriate expertise, preferably from within the administration of the audited organisation; prevention of misuse; and the usefulness of the information produced.

Section 23 - Commercial enterprises with public participation

1. The expansion of the economic activities of government frequently results in the establishment of enterprises under private law. These enterprises shall also be subject to audit by the Supreme Audit Institution if the government has a substantial participation in them--particularly where this is majority participation--or exercises a dominating influence.
2. It is appropriate for such audits to be carried out as post-audits; they shall address issues of economy, efficiency and effectiveness.
3. Reports to Parliament and the general public on such enterprises shall observe the restrictions required for the protection of industrial and trade secrets.

Section 24 - Audit of subsidised institutions

1. Supreme Audit Institutions shall be empowered to audit the use of subsidies granted from public funds.
2. When the subsidy is particularly high, either by itself or in relation to the revenues and capital of the subsidised organisation, the audit can, if required, be extended to include the entire financial management of the subsidised institution.
3. Misuse of subsidies shall lead to a requirement for repayment.

Section 25 - Audit of international and supranational organisations

1. International and supranational organisations whose expenditures are covered by contributions from member countries shall be subject to external, independent audit like individual countries.
2. Although such audits shall take account of the level of resources used and the tasks of these organisations, they shall follow principles similar to those governing the audits carried out by Supreme Audit Institutions in member countries.
3. To ensure the independence of such audits, the members of the external audit body shall be appointed mainly from Supreme Audit Institutions

THE DRAFT RECONSTRUCTION AND DEVELOPMENT AUTHORITY ACT

L.D.O 10/2006

AN ACT TO ESTABLISH AN AUTHORITY TO BE CALLED THE RECONSTRUCTION AND DEVELOPMENT AUTHORITY; TO VEST THE AUTHORITY WITH THE POWER TO PLAN, IMPLEMENT, MONITOR AND CO-ORDINATE THE RECONSTRUCTION AND DEVELOPMENT IN DESIGNATED AREAS AFFECTED BY MANMADE OR NATURAL DISASTERS; TO PROVIDE ESSENTIAL INFRASTUCTURE AND OTHER FACILITIES TO OVERCOME THE EFFECTS OF THE DISASTERS AND ENSURE AN ACCELARATED RECOVERY AND ECONOMIC DEVELOPMENT; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble

WHEREAS the acceleration and co-ordination of the reconstruction and development activities in areas affected by manmade and natural disasters is essential in order to ensure the speedy and effective recovery from such disasters and the restoration of property, livelihood and other necessary infrastructure and accelerate the economic development of such areas:

AND WHEREAS it appears to be necessary to establish a single Authority charged with the administration and implementation of the reconstruction and development activities within any designated area, and to transfer all assets presently in the possession and control of other entities engaged in reconstruction and rehabilitation activities within the country, to the new Authority:

NOW THEREFORE, BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title

1. This Act may be cited as the Reconstruction and Development Act, No. ..... of 2006.

PART I

ESTABLISHMENT OF THE RECONSTRUCTION AND DEVELOPMENT AUTHORITY

Establishment of the Reconstruction and Development Authority.

2. (1) There shall be established in accordance with the provisions of this Act, an Authority that shall be called the Reconstruction and Development Authority (hereinafter referred to as "the Authority").

(2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name, and may perform such acts as bodies corporate may by law perform.

Designation of affected areas.

3. (1) The Authority shall, subject to the other provisions of this Act, within any area designated as an area affected by any manmade or natural disaster, (hereinafter referred to as a "designated area"), plan, implement, monitor and co-ordinate all activities connected to the reconstruction and development of any affected area with a view to providing the necessary infrastructure and other facilities to such areas.

(2) The President may for the purpose of this section by Order published in the Gazette, designate any area affected by any mandate or natural disaster as a designated area. Every such Order shall as far as practicable identify such area with reference to the Administrative District, Divisional Secretary's Division on Grama Niladhari Division or part of any such District or Division, within which such designated area is situated.

(3) Nothing in the preceding subsection shall be construed as restricting the Authority from engaging in any activity within its powers or functions outside any affected area, if the same is necessary or essential for the implementation of the reconstruction and development activities within a designated area.

Objectives of the Authority.

4. The Authority shall for the efficient discharge of its functions within a designated area, have the following objectives:-

(a) to plan, implement, monitor and co-ordinate the structured reconstruction and development policies and programmes necessary for the reconstruction, development and rehabilitation of any designated area;

(b) to carry out ongoing studies of the policies and programmes formulated for any designated area;

(c) to prioritize areas within any policies or programmes in order to accelerate the reconstruction, development and rehabilitation of any designated area;

(d) to plan and implement strategies to foster economic growth and investment and to generate income and employment within a designated area through the establishment of industrial zones;

(e) to secure the co-operation of government departments, local authorities, institutions and statutory bodies within the designated area, for the effective implementation of the policies, strategies and programmes for such area;

(f) to secure the participation of private sector and non-governmental organizations in the discharge of its objectives within a designated area;

(g) to secure the participation of foreign organizations in the ongoing reconstruction and development process being followed by the Authority according the Action Plan and specifying the manner in which the activities of such organizations under this Act shall be monitored;

(h) to secure foreign funding for the reconstruction and development process being followed by the Authority by carrying out studies of the needs, planning out strategies in relation thereto and preparing reports containing all financial and administrative information necessary for their implementations;

(i) to assist the persons within the designated area, by providing them with financial and material assistance in order to start any trade or business as a means of livelihood;

(j) to assist in the rehabilitation of any industrial or business premises within any designated area; and

(k) to do all such other acts as are conducive to the attainment of the above objectives.

Establishment of branch offices & c,.

5. For the purpose of implementing the powers and functions assigned to it by this Act, the Authority may establish and maintain where necessary, branch offices, or departments or agencies of the Authority within or outside any designated area.

Directors of the Authority.

6. The Authority shall have a Board of Directors consisting of – not less than seven and not more than nine Directors. The Secretary to the Treasury or his nominee shall be the *ex-officio* member of Board. The President shall appoint the other Directors from amongst persons who have gained eminence and who have proven expertise in the field of engineering, architecture, planning, social sciences, law environmental science, economics and infrastructure development (hereinafter referred to as "appointed Directors")

Chairman of the Authority.

7. (1) The President shall appoint one of the appointed Directors of the Board of Directors to be the Chairman of the Authority.

(2) The Chairman shall preside at all meetings of the Authority and in his absence a Director elected by the Directors present shall preside at any such meeting.

(3) Where the Chairman is temporarily unable to perform the duties of his office on account of ill health, absence from Sri Lanka or any other cause, the President may appoint a Director to act in place of such Chairman.

(4) The Chairman shall be the Chief Executive Officer of the Authority:

Provided however, if the Chairman indicates his or her inability to function as the Chief Executive Officer of the Authority, the Board may on the advice of the Chairman appoint a Director of the Board or such other suitably qualified person to be the Chief Executive Officer of the Authority.

(5) The Chief Executive Officer shall be responsible for the general administration and co-ordination of the affairs of the Authority and for the implementation of the decisions of the Board.

Terms of office of appointed Directors & c,..

8. (1) Every appointed Director shall hold office for a period of five years from the appointed date of this Act, unless he earlier vacates office by death, resignation or removal.

(2) An appointed Director may resign from his office by a written communication addressed to the President in that regard.

(3) The President may by written communication addressed to any appointed Director, remove such Director from office for reasons assigned.

(4) A Director who is removed by the President under subsection (3), shall cease to hold office with effect from the date on which such communication was received by him or on such date as may be specified therein.

(5) A Director who is removed from office shall not be eligible for re-appointment as a Director of the Authority or to serve the Authority in any other capacity.

(6) Upon any appointed Director ceasing to hold office, the President may appoint any other person to fill such vacancy and such person shall hold office for the unexpired period of the term of office of the Director whom he succeeds.

(7) Where any appointed Director is temporarily unable to perform the duties of his office on account of ill health, absence from Sri Lanka or any other cause, the President may appoint any person to act in place of such Director.

(8) The *ex officio* Director shall hold office only for so long as he holds the post by virtue of which he was appointed to the Authority.

Disqualification for being appointed as Directors.

9. A person shall be disqualified from being appointed or from continuing as a Director if he –

(a) is a Member of Parliament. A member of a Provincial Council or a member of a local Authority; or

(b) is under any law in force in Sri Lanka or in any other country found or declared to be of unsound mind; or

(c) is a person who, having been declared an insolvent or a bankrupt under any law in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt, or

(d) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or abroad.

Vacancy among directors not to invalidate acts and proceedings.

10. No act or proceeding of the Authority shall be invalid by reason only of any vacancy among its Directors or any defect in the appointment of any of its Directors.

Remuneration and terms and conditions of service of Directors.

11. (1) The appointed Directors of the Authority may be remunerated in such manner and shall carry out their functions subject to such terms and conditions as may from time to time be determined by the President.

(2) The *ex-officio* Director shall be paid an *ex gratia* payment out of the funds of the Authority in such amount as may be determined by the Authority.

Meeting and quorum at meetings of the Authority.

12. (1) Subject to the other provisions of this Act, the Authority may make rules for the regulation of its procedure in regard to the holding of meetings of the Authority and the transaction of business at such meetings.

(2) The quorum for a meeting of the Authority shall be four Directors, inclusive of the *ex officio* Director or his nominee as the case may be.

Seal of the Authority.

13. (1) The seal of the Authority shall be in the custody of such person as the Authority may decide from time to time.

(2) The seal of the Authority may be altered in such manner as may be determined by the Authority.

(3) The seal of the Authority shall not be affixed to any instrument or document except in the presence of the Chairman of the Authority, and one other Director, both of whom shall sign the instrument or document in token of their presence.

Provided that where the Chairman is unable to be present at the time when the seal of the Authority is affixed to any instrument or document, any other Director authorized in writing by the Chairman in that behalf, shall be competent to sign such instrument or document in accordance with the preceding provisions

of this subsection.

(4) The Authority shall maintain a register of the instruments or documents to which the seal of the Authority is affixed.

PART II

POWERS AND FUNCTIONS OF THE AUTHORITY

Preparation of an Action Plan.

14. The functions of the Authority in, or in relation to a designated area shall be to ensure the implementation of an Action Plan prepared under the direction of the Board and to facilitate an assist the Government ministers, departments, institutions, authorities and agencies, Provincial Councils and District Secretaries and such other Government bodies in the construction and rehabilitation of required infrastructure and other facilities essential for the recovery of the persons and property within the designated area, for the accelerated economic development in such areas.

Special powers of the Authority in relation to the action plan.

15. (1) The Authority shall prepare an Action Plan comprising details of the manner in which the Authority intends to exercise its powers and discharge its duties within a designated area. The Authority may for this purpose where the need to do so arises, consult the relevant Government ministries, departments institutions, authorities and agencies, Provincial Councils and District Secretaries and such other Government bodies and where necessary, with members of the donor communities and other foreign funding agencies.

(2) The Authority shall recommend to the Ministry of the Minister in charge of the subject of Finance the allocations that are required to be provided to each Government ministry, department, institution, authority and agency, Provincial Councils and District Secretaries and such other Government bodies for the implementation of the Action Plan.

(3) The Minister to whom the subject of Finance is assigned shall take into consideration the recommendations made by the Authority when making allocations for the carrying out of work connected with the implementation of the Action Plan.

(4) All Government ministries, departments, institutions, authorities and agencies, Provincial Councils and District Secretaries and such other Government bodies shall ensure effective and timely implementation of the relevant components of the Action Plan and carry out or cause to be carried out all related work and meet related expenditure under the supervision of the Authority and based on any general or special directions which may be issued where necessary by the Authority, ensure the due utilization of such funds.

Powers of the Authority.

16. Without prejudice to the generality of the powers conferred on the Authority by this Act, the Authority shall in or in relation to any designated area have the power –

(a) to initiate without delay, construction and rehabilitation programmes in relation to infrastructure and other essential facilities, in accordance with the Action Plan;

(b) to assist the government in the resettlement of persons and re-establishment of businesses within the designated area through the establishment of new townships along with such transport systems and other capital and social infrastructure as is required within the designated area;

(c) to purchase, establish or otherwise acquire and maintain any offices, workshops, plant, machinery and such other things for the effective implementation of the Action Plan;

(d) to acquire, sell or lease land as is necessary for the implementation of the provisions of this Act and for the achievement of the objectives of the Authority;

(e) to establish companies to facilitate the achievement of its objectives;

(f) to facilitate borrowing, raising money or securing obligations from sources, either within Sri Lanka or abroad with the concurrence of the Secretary to the Ministry of the Minister in charge of the subject of Finance;

(g) to assist the Government in formulating and implementing schemes for the payment of compensation to persons within the designated area for loss or damage suffered by them;

(h) to follow a more flexible and expeditious procedure when procuring any goods or services urgently required for the timely implementation of the Action Plan;

(i) to invest the monies of the Authority in such manner as may from time to time be determined by the Authority;

(j) to undertake promotional and advertising activities connected with the objectives of the Authority;

(k) to establish schemes for the relief of poverty and distress, in so far as is

necessary for the immediate and continuing economic well being and welfare of the people affected by the disaster within the designated area;

(l) to provide for the relief of poverty, suffering and distress among persons in a designated area;

(m) to appoint such employees and agents, as are necessary for carrying out the functions of the Authority;

(n) to monitor and control the activities of any foreign or local non-governmental organization or local private sector organization engaged in reconstruction or development activity within any designated area by issuing licenses for carrying out the activities intended to be carried out by them, and such other regulatory measures as may be prescribed in that behalf; and

(o) to do all such other acts and things as are incidental to or consequential upon or connected with the exercise, performance and discharge of the powers, duties and functions of the Authority.

Functions of the Authority.

17. The Authority shall be charged with the responsibility of discharging the following functions within, or in relation to, any designate are:-

(a) to facilitate, co-ordinate and secure the co-operation of, and assist the Government and all relevant authorities and agencies in the construction and rehabilitation of required infrastructure and other facilities for a rapid recovery from the effects of the disaster and promote accelerated economic development in the designated area in order to ensure the implementation of the Action Plan in an effective and timely manner;

(b) to assist the Government in the co-ordination of donor assistance, fund raising and other financing arrangements required to achieve the goals setout in the Action Plan, with the concurrence of Minister in charge of the subject of Finance and in consultation with the Minister in charge of the subject of Foreign Affairs and their respective Ministries;

(c) to facilitate and assist the Government, the private sector and the civil society to improve the general welfare and cultural progress of the community within a designated area;

(d) to facilitate relevant Government agencies in securing the participation of private capital for economic development within any designated area.

Empowering of persons to act for the Authority outside Sri Lanka.

18. The Authority may in writing under its seal empower any person, either generally or in respect of any specific matter, to act for and on behalf of the Authority in any place outside Sri Lanka.

Delegation of powers, & c, of Authority.

19. (1) The Authority may, subject to such conditions as may be powers, may be specified in writing, delegate to the Chairman, any Director of the Board or to any other person any power, duty or function conferred or imposed on or assigned to the Authority.

(2) Notwithstanding any such delegation, the Authority may continue to exercise, perform or discharge any such power, duty or function.

Staff of the Authority.

20. The Authority may appoint such officers, servants and Authority consultants as may be necessary for the administration and management of the affairs of the Authority and shall determine the amount of remuneration payable to, and the conditions of service including disciplinary control of, such officers, servants and consultants.

Appointment of public officers to the Authority.

21. (1) At the request of the Authority any officer in the public services may, with the request of that officer and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration, be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority with like concent or be permanently appointed to such staff.

(2) Where any officer of the public service is temporarily appointed to the staff of the Authority the provisions of subsection (2) of section 14 of the National Transport Commission Act No 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

(3) Where any officer of the public service is permanently appointed to the staff of the Authority the provisions of subsection (3) of section 14 of the National Transport Commission Act No 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

(4) Where the Authority employs any person who has agreed to serve the government for a specified period of service to the authority by that person, shall be regarded as service to the Government for the purpose of discharging that obligation for such agreement.

Appointment of officers and servants of

22. (1) At the request of the Authority, any officer or servant of servants any public corporation may, with consent of such officer or servant and the governing board of such officer or servant be temporarily appointed to the staff of the

public corporations to the staff of the Authority.

Authority for such period as may be determined by the Authority, on such terms and conditions as may be agreed upon by the Authority and the governing Board of such corporation or with like consent be permanently appointed to the staff of the Authority, on such terms and conditions including those relating to pension and provident fund rights, as may be agreed upon by the Authority and the governing board of such corporation.

(2) Where any person is appointed under subsection (1) to the staff of the Authority he shall be subject to the same disciplinary control as any other member of the staff.

Establishment of Project Offices in the designated areas.

23. The Authority may establish and maintain in the designated areas such number of Project Offices, as it may consider necessary for the effective and efficient discharge of any activity set out in the Action Plan. Any person employed by the Authority may be attached to such Project Offices to ensure the implementation of any work arising out of the Action Plan.

PART III

FINANCE

Fund of the Authority and payments to be credited to Found.

24. There shall be established a Fund of the Authority into which shall be paid –

(a) all such sums of money as may be voted from time to time by Parliament for the use of the Authority;

(b) all such sums of money as may be voted from time to time by the Parliament for the use of any specific purpose set out in the Action Plan;

(c) all such sums of money as may be received by the Authority for and in the exercise, performance, and discharge of its powers, duties and functions under this Act

(d) all such sums of money derived by the Authority as revenue from any property vested in or administered by the Authority;

(e) all such sums of money as may be borrowed by the Authority.

Payments out of the Fund.

25. (1) There shall be paid out of the Fund of the Authority all Fund such sums of money as may be required to defray any expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions.

Provided however in relation to all such sums of money as may be voted in

terms of paragraph (b) of section 24, the Authority shall place all such sums of money in a separate account opened for such purpose and shall pay out of such account on the instructions of -the Secretary to the Ministry of the Minister in charge of the subject of Finance or an officer authorized by him in that behalf only such sums as are required for any specific purpose set out in the Action Plan.

(2) The Authority shall make rules for the withdrawal of any moneys from the Fund in keeping with Part III of this Act and no sum shall be withdrawn from the Fund except in accordance with such rules.

Financial year of the Authority.

26. The financial year of the Authority shall be the calendar year.

Accounts of the Authority and Audit of Accounts.

27. (1) The Authority shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Authority.

(2) The Authority shall with the concurrence of the Minister in charge of the subject of Finance, in consultation with the Auditor - General, appoint a qualified auditor or auditors or a firm of auditors to audit the accounts of the Authority.

(3) The accounts of the Authority shall be audited in accordance with the provisions of Article 154 of the Constitution.

Exemption from taxes.

28. The Authority shall be exempt from the payment of all taxes under the respective revenue statutes for the time being in force, to the extent provided therein, unless otherwise expressly provided for.

PART IV

MISCELLANEOUS

Directions of the President.

29. (1) The President may, from time to time issue such general or special directions in writing to the Authority , as are necessary for the exercise, performance and discharge of the powers, duties and functions of the Authority. It shall be the duty of the Authority to comply with such directions.

(2) The President may, from time to time, require the Authority in writing to furnish in such form appears to be necessary to the President such returns, accounts and other information with respect to the affairs of the Authority. It shall be the duty of the Authority to comply with every such requirement.

Authority to advise the President on need of land for

30. (1) The Authority may, where it is apparent that any particular land or lands within any designated area is in the national interest, required –

(a) for the resettlement of any persons,

the purposes of the Authority.

(b) for the re-location or re-establishment of any business, or

(c) for the construction of any required infrastructure or such other facility,

advise the President of such fact and since it is in keeping with the objectives of the Authority and the need to grant relief to the affected people in a designated area request him to take steps for the acquisition of such land.

(2) The President may, if he is of opinion that any particular land or lands within a designated area are urgently required for the purpose of carrying out reconstruction, development and rehabilitation work within such area, by Order published in the *Gazette* declare that any particular and or lands as the case may be, set out in the Order, are required for such purpose.

(3) No person aggrieved by an Order under this section or is affected by or who apprehends that he would be affected by any act or any step taken, proposed to be taken or purporting to be taken, under this section, shall be entitled:

(a) to any remedy, redress or relief in any court other than by way of compensation or damages;

(b) to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining or impeding any person, body or the Authority from taking any action in respect of -

(i) the acquisition of any particular land or lands;
(ii) the carrying out of any work on any land or lands so acquired; or
(iii) the implementation of any projector work of the Authority in any manner whatsoever.

(4) The Supreme Court shall, in relation to any particular land or lands in respect of which an order has been made or is purported to be made under this Act, exercise the jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution instead of the Court of Appeal.

(5) Every application invoking the jurisdiction referred to in subsection (10) above shall be made within one month from the date of taking possession of such land for and on behalf of the State, in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the date of filing of such application.

(6) The powers of the Supreme Court in relation to an application made under Article 126 of the Constitution or in respect of the exercise of jurisdiction specified in subsection (10) shall in no way be affected by anything contained in subsection (11).

(7) For the purpose of determining the compensation to be paid in respect of any land acquired under this Act, the market value of such land as on as at such date as the President may by Order published in the *Gazette* determine, which shall be deemed to be the market value of such land.

Regulations

31. (1) The Minister may, in consultation with the Authority, make regulations in respect of any matter required or authorized by this Act to be made, or for the purpose of carrying out or giving effect to the objectives of this Act, as specified in sub-section (2).

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for and in respect of all or any of the following matters:-

(a) specifying the criteria applicable in identifying persons within the designated areas as being entitled to financial and material assistance under the Act;

(b) to specify the criteria applicable for determining the industrial or business premises within any designated area which require rehabilitation;

(c) to specify the matters which foreign or local non governmental organization and other private sector organizations need to report to the Authority and the manner in which such reporting is to be effected and identify such measures which may be necessary for the effective implementation of their activities.

(3) Every regulation made by the Minister shall be published in the *Gazette* and as soon as convenient after its publication in the *Gazette* be brought before Parliament for approval.

(4) Every regulation, which is not so approved, shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(5) The date on which such regulations shall be deemed to be so rescinded shall be published in the *Gazette*.

Rules

32. (1) The Authority may make rules in respect of all matters for which rules are required and authorized to be made.

(2) Every Rule made under this section shall be published in the *Gazette* and shall come into operation from the date of publication thereof.

Protection for

33. (1) No suit or prosecution shall lie –

actions & c,.

(a) against the Authority for any lawful act, which in good faith is done or purported to be done by the Authority under this Act; or

(b) against any member, officer, servant or agent of the Authority for any lawful act, which in good faith is done or is purported to be done by him under this Act or on the direction of the Authority.

(2) Any expense incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the funds of the Authority, and any costs paid to, or recovered by, the Authority in any such suit or prosecution shall be credited to the funds of the Authority.

(3) Any expense incurred by any such person as is referred to in paragraph (b) of subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or is purported to be done by him under this Act or on the direction of the Authority shall, be paid out of the funds of the Authority, and shall be recovered if the Court holds that it has been done in bad faith or unless such expense is recovered by him in such suitor prosecution.

Members and staff of Authority deemed to be public officers.

34. All members of the Authority and the staff of the Authority shall be deemed to be public officers within the meaning of, and for the purposes of, the Penal Code (Chapter 19).

Authority to be deemed to be a scheduled institution.

35. The Authority shall be deemed to be a scheduled institution within the meaning of, and for the purposes of, the Bribery Act (Chapter 26) and the provisions of such Act shall be construed accordingly.

Validation of actions.

36. All acts done –

(a) by the members of the Reconstruction and Development Agency (RADA) appointed by the President on November 28, 2005 during the period commencing November 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Agency so appointed; and

(b) by the members of the Task Force to Rebuild the Nation (TAFREN) appointed by the President on January 3, 2005 during the period commencing January 3, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed,

shall be deemed to have been validly done and executed by the respective Agency

or Task Force even though such Agency or Task Force was not at the time vested with legal authority to do any such act or thing.

Repeal and Transitional provisions.

37. (1) The Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987, is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Act, from and after the date of the coming into operation of this Act, -

(a) all officers and other employees in the employment of the Rehabilitation of Persons, Properties and Industries Authority (established under Act No. 29 of 1987) and the Reconstruction and Development Agency (appointed by the President on November 28, 2005 during the period commencing 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed), on the day immediately preceding the appointed date shall be deemed to be employees in the service of the Authority herein established, subject to such terms and conditions as may be agreed as between the Authority and such employees;

(b) all the movable and immovable property of the Rehabilitation of Persons, Properties and Industries Authority (established under Act No. 29 of 1987) and the Reconstruction and Development Agency (appointed by the President on November 28, 2005 during the period commencing 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed), on the day immediately prior to the appointed date (including any money in the funds of the respective institutions) shall vest in, and be the property of, the Authority;

(c) all the contracts and agreements of the Rehabilitation of Persons, Properties and Industries Authority (established under Act No. 29 of 1987) and the Reconstruction and Development Agency (appointed by the President on November 28, 2005 during the period commencing 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed), on the day immediately prior to the appointed date shall be deemed to be the contracts and agreements of the Authority, and all subsisting rights, liabilities and obligations of the Authority under such contracts and agreements shall be deemed to be the rights, liabilities and obligations of the Authority;

(d) any action, application or appeal instituted or made by or against any of the Rehabilitation of Persons, Properties and Industries Authority

(established under Act No. 29 of 1987) and the Reconstruction and Development Agency (appointed by the President on November 28, 2005 during the period commencing 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed), in any court or tribunal and pending on the day immediately prior to the appointed date shall be deemed to be an action, application or appeal instituted or made by or against the Authority;

(e) any decree or award entered or made by a court or tribunal in any action, application or appeal instituted or made by or against the Rehabilitation of Persons, Properties and Industries Authority (established under Act No. 29 of 1987) and the Reconstruction and Development Agency (appointed by the President on November 28, 2005 during the period commencing 28, 2005 and ending on the date of commencement of this Act, in furtherance of the Terms of Reference of the Task Force so appointed) and remaining unsatisfied in whole or in part on the day immediately prior to the appointed date shall be deemed to be a decree or award in favour of or against the Authority, as the case may be, and may, subject to the provisions of the Civil Procedure Code, or any other enactment, in relation to the execution of a decree or award, be enforced by or against the Authority.

Sinhala Text to prevail in case of inconsistency.

38. In the event of any inconsistency between the Sinhala and or Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

39. In this Act, unless the context otherwise requires –

"person" includes a person or a body or persons;

"public corporation" means any corporation board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise; and

"Reconstruction and Development Agency (RADA)" means the Agency appointed by the President on November 28, 2005 by a directive under paragraph (4) of Article 33(f) of the Constitution;

"Task Force to Rebuild the Nation (TAFREN)" means the Task Force appointed by the President on January 3, 2005 by a directive under paragraph (4) of Article 33 (f) of the Constitution;

SOME REFLECTIONS ON THE DRAFT RADA ACT

Sarath Fernando[♠]

1. Why a new RADA (Reconstruction and Development Authority)?

The proposed Reconstruction and Development Authority (RADA sets up a single authority with power to plan, implement, monitor and coordinate reconstruction and development in any disaster affected area. The declared intention is to accelerate and coordinate reconstruction and development activities for speedy and effective recovery consequent to manmade and natural disasters.

The preamble of the draft law declares a need to establish a "single authority" charged with the administration and implementation of the reconstruction and development activities within any designated area and to transfer all assets presently in the possession and control of other entities engaged in reconstruction and rehabilitation activities within the country

Considering the very long delay that has taken place in the recovery and rebuilding after the tsunami taken together with the recovery and rebuilding of the lives, livelihoods and resettlement of the people displaced by the war (with people displaced, living in refugee camps for periods as long as fifteen years), a compelling argument could be advanced as to why effective arrangements are urgently needed regarding the recovery and rebuilding processes consequent to any natural or man made disaster.

However, it is extremely important to look at the lessons learned as a result of past efforts and initiatives aimed at reconstruction, in deciding on the type of legislation, delegation of authority and establishment of structures for this purpose. These experiences should be carefully analyzed in order to ensure that the same mistakes or even worst mistakes would not be made in setting up new structures. It is necessary to highlight some of the key principles that should guide any process of recovery and rebuilding after any man made or natural disaster.

2. Recommendations of the People's Planning Commission for Recovery after Tsunami

In this regard, the People's Planning Commission for Recovery after Tsunami (PPC) comprising a group of eminent persons was appointed in August 2005 after its setting up was endorsed by about 150 civil society organizations. Its recommendations were made after an extensive process of consultation with affected people and after studying the reports made by several people's organizations that represented the affected people. The PPC also based its recommendations on the study that it made of the first set of plans formulated by the Government and the Task Force to Rebuild the Nation (TAFREN).

Recovery after a disaster is necessary because people are affected and recovery should be primarily of the lives and livelihoods of such affected people. Therefore, they must be the "rightful owners" of any process of recovery and rebuilding. It is absolutely necessary that their interests and well being should

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♠ Moderator, Movement for National Land and Agricultural Reform (MONLAR)

be the main concern in such a process. Whatever legal authority or structure set up for the purpose should be such that it ensures theses basic principles.

The experience with TAFREN was that the plans prepared and the process of implementation as designed by TAFREN was a gross violation of the above principle. The tremendous possibilities that the tsunami disaster provided for mobilizing resources were to be utilized, as per the TAFREN plans, for;

1. Converting much of the Tsunami affected coastal belt into Tourism Development Zones (15 tourism zones), for building modernized townships (12 large, 20 medium sized and 30 small townships making up a total of 62 townships) and also for introducing large scale fishing harbors with the objective of inviting large scale industrial fishing;

2. When one studied the allocation of resources for the process of building such modernized infrastructure and compared them with the allocations made for relief and recovery of the small scale fisher people and other people who were living in the affected coastal areas, it was obvious that the share of resources allocated for such purposes for what was defined as "Rebuilding the Nation" or for "acceleration of economic development", or "foster economic growth and investment" etc. was much more than the resources allocated for recovery and reconstruction of the urgently needed housing and infrastructure for recovery of the affected people;

3. The declaration of the buffer zone almost immediately after the disaster, was seen as a measure taken to get the affected people out of the coastal belt to make room for the expansion of tourism rather than to protect people from another disaster of the same type. This was fairly obvious since there was much more urgency evidenced on the part of the government in promoting tourism and accelerating the recovery and rebuilding of tourism using the same coastal belt that was declared out of bounds to the beach based fisher people.

When one studies the present draft RADA legislation, it becomes clear that the direction of reconstruction and rebuilding of infrastructure remains very much the same. The draft RADA Act refers to "accelerating the economic development" of the disaster affected areas[1] It refers to "planning and implementation of strategies to foster economic growth and investment, through the establishment of industrial zones"[2] It also refers to securing the participation of the private sector [3]

Very important issues arise consequently about who should plan and the role of the affected people in planning and also about the whole decision making process. It may be argued that people affected by disasters are generally not able to participate in planning and decision making. Therefore, the kind of assistance that is needed in that regard has to be carefully planned. There are two important aspects to be looked at in this context.

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[1] see the preamble.
[2] see Objectives of the Authority, clause 4 (d).
[3] see Objectives of the Authority, clause 4 (f)

TAFREN's experience shows that there is a possibility of people who have interests other than those of the affected people being appointed to supervisory bodies of reconstruction and development. These can include persons interested in utilizing the resources for recovery consequent to natural or man made disasters, to promote "modernization and economic growth" that benefits private businesses such as tourism and creating infrastructure to "attract foreign investment" rather than the people actually affected by such disasters. This can be a very serious issue if and when these interests go against the recovery of the affected people and are pushed by donors and lending institutions such as the World Bank (WB), International Monetary Fund (IMF) and the Asian Development Bank (ADB).

The second issue that arises is in relation to the assumption that affected people are "totally" and permanently incapable of decision making and in planning. As seen in the case of the Asian Tsunami as well as in the case of the war affected and displaced refugees, the affected people are not only capable of participation in the planning, but it is essential that they are given their rightful place in the planning processes, particularly in the rebuilding and recovery phase.

In the present RADA draft legislation there is no mention in regard to the manner in which these affected people could be involved in the recovery planning process. When we talk of people participating in the process of planning, it is important to recognize that their participation should not be limited to the manner in which relief and welfare deliveries are disbursed. Therefore it is important to devise strategies to ensure their organized participation in the planning and decision making processes.

3. Government Intentions behind the draft RADA Act

What is the actual intention of bringing in legislation to make RADA an authority with such concentrated powers at this stage? As stated above, when TAFREN was established, it was intended to be made into a permanent authority, under the President, as it is proposed now for RADA.

Let us now look at what transpired thereafter in some detail. After the tsunami struck, the Government moved quickly to announce they were launching into a grand plan not just to rehabilitate the affected areas but to rebuild the whole nation. Since then, it gathered commitments of over $3 billion from the international financial institutions and foreign governments to transform this grand action plan into reality. In the meantime, non-governmental agencies were carrying out almost all of the work in cleaning up the destroyed areas, building temporary shelters, regenerating livelihoods and so on.

Within days of the disaster, the Government had announced that people should not rebuild their houses on the coast. Within weeks, an exclusion zone of one or two hundred metres had been announced. Shortly afterwards, exceptions were announced for tourist businesses. All throughout, the Government had been talking about the need to promote tourism.

The Sri Lanka Tourist Board said,

> *'In a cruel twist of fate, nature has presented Sri Lanka with a unique opportunity, and out of this great tragedy will come a world class tourism destination."*[4]

[4] Sri Lanka Tourist Board Bounce Back website at http://www.srilankatourism.org/bb_slrebuilds.htm

The Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity'

The '*Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity*'[5] covers a stretch of land 17km by 5km between Komari and Panama, including Pottuvil Town. It envisages the total reorientation of the area away from the current fishing and agricultural communities, supplemented by seasonal guesthouses, into a large development of hotels ('*low cost budget windsurfer to 5-star tourist*'[6]), a commercial centre ('*shoppers' paradise*'[7]), a yachting marina, floating plane pier and helipad.

According to the plan, while only 9 out of 25,000 hectares are currently being used for tourism, this figure is set to increase exponentially through the redevelopment.

Consultants contracted by those responsible for the plan admit,

> '*consultants have drawn heavily upon past plans (esp. the Tourism Master Plan)...which was widely recognised as being 'grandiose' and 'inappropriate'*'[8]

The reference there is to a report of the Asian Development Bank.[9]

The disconnect between the planned development and the interests of the people is illustrated in the following quote,

> *'the location of the helicopter pad near the new pedestrianised road will bring a new vibrant life in to Arugam Bay town centre'.*[10]

The Sri Lanka Tourist Board was ready to acquire not only all the land within the buffer zone declared by TAFREN[11] of 200m from the high tide line, but also a stretch of up to 1km wide running along 3km of the coast beyond the buffer zone, and a belt of in places over 600m around the edge of the lagoon. Added to that was an area of sea next to the lagoon entrance for the yachting marina and a strip across the middle of the lagoon for the floating plane landing pier.

The plan explains that new housing for the estimated 5,000 displaced families[12] will be provided in 5 separate inland locations, in all cases behind areas zoned off for tourism, at an average of well over 1km from both the sea and the lagoon, obstructed from accessing the same by the new infrastructure. It then proposes to allocate houses by drawing lots. It is reported in the same set of notes mentioned above that '*these houses will be given to people who support our program*'. Further;

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[5] Arugam Bay Resource Development Plan: Reconstruction Towards Prosperity, 25th April 2005
[6] ABRDP, 25th April 2005
[7] ABRDP, 25th April 2005
[8] Arcadis in Environmental Assessment for Post-Tsunami Rehabilitation: Assisting the Planning Process at Arugam Bay, Sri Lanka, 16th March 2005
[9] Eastern Coastal Community Development Project – PPTA No. 3479-SRI, Asian Development Bank
[10] ABRDP, 25th April 2005
[11] Taskforce for Rebuilding the Nation www.tafren.gov.lk
[12] Estimate by Sewalanka Foundation, as reported in the Washington Post, 4th June 2005

'if you built any illegal structures in Arugam Bay, the army and the police will have to come and remove them'.

The document also says that the estimated over 70 existing guesthouses and numerous other small enterprises that will have to be relocated would, if they were already registered businesses, be given the option of leasing land within the zones for a period of up to 30 years, while unregistered businesses would have no such rights. Nobody would receive compensation.

The initial investment in the planned development is estimated at $80 million. Of that, $50 million is earmarked for a bridge over Arugam Lagoon, which according to the document;

'will stand as an inspirational symbol that shows progress towards the achievement of prosperity for Arugam Bay' as 'the gateway to a tourist paradise'.

Another $5 million is allocated for a new road around Arugam Lagoon. Then $20 million is proposed for the construction of the new inland townships of 2,500 houses. The remaining $5 million is given for water supply schemes and sanitation systems in the new townships and the tourist zone. The cost of the other proposed infrastructure and amenities, such as the floating plane landing pier and helipad, is not yet included in the overall plan, although it is stated in the document that this will have to be funded either from investment by Government or from NGOs. The plan was finalised by 25th April 2005 and at the time of writing the President had already given approval, and further was;

'keen to see the action projects proposed in the report are implemented without delay.'[13]

Disregarding Concerns of Affected People in the Planning Process

The first time that the residents of Arugam Bay heard of the plan was at a meeting organised by the Sri Lanka Tourist Board and Sewalanka Foundation in Colombo on 17th May 2005. An assessment of the plan carried out by Arcadis said;

'the most important shortcoming is that it has largely been produced in isolation in Colombo, with little or no stakeholder involvement. It is evident that the team spent only two days in Pottuvil - Arugam Bay, and apart from the GA officer in Ampara and the DS in Pottuvil, they met only with INGO staff.'[14]

The picture that had become clear at the point of formulation of the Arugam Bay Development Plan showed that the direction being taken in the post-tsunami rebuilding was completely contrary to the interests of those people who had suffered in the disaster. They were being driven off their land and out of their livelihoods in the name of a grand plan for the 'modernisation' of the country.

This process started long before the tsunami, but was now being pushed with the weight of the $3 billion that the Government gathered in the name of the tsunami victims. If all of the 15 tourist townships require an investment of $80 million, the cost will be $1.2 billion, or a massive 40% of the total amount raised. If all of the 15 tourist township plans follow the model of Arugam Bay, the number of families pushed out of the way of hotels, yachting marinas, helipads and floating plane landing strips could be well over 75,000.

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[13] Arugam Bay Resource Development Plan, 25th April 2005

[14] Environmental Assessment for Post-Tsunami Rehabilitation: Assisting the Planning Process at Arugam Bay, 16th March 2005

In this context, it could well be that the resumption of active hostilities between the Government and the Liberation Tigers of Tamil Eelam (LTTE) might result in these plans being pushed backwards. However, we need to clarify whether these intentions of using the tsunami as an opportunity to make Sri Lanka one of the world class tourist destinations are still in the agenda before such tremendous powers are given to a single authority that is answerable only to the President and to no other elected representative of the people.

What is stated under "Powers of the Authority" in clause 16 of the draft RADA Act gives substance to these fears. We need to clarify the priorities for which these powers would be utilized. The clause states that the Authority is empowered to engage in construction and rehabilitation in relation to infrastructure and other essential facilities, in accordance with the Action Plan. Remaining powers include the following;

- *Establishment of "new townships" along with such transport systems and other capital and social infrastructure.* Are these primarily for resettlement of displaced people or for re-establishment of businesses? If the latter, what kind of businesses and for whom?
- *To acquire, sell or lease land as is necessary for implementation of the provisions of this act and for the achievement of the objectives off the authority.* What are the priority objectives? Is it recovery of affected people, largely small scale fisher and coastal people or expansion of facilities for big businesses, by pushing out the poor and small scale producers?
- *To establish companies to facilitate the achievement of its objectives.* Ditto as above

Conclusion

The proposed RADA is not subject to systems of accountability in regard to its financial expenditure and there is no provision for its activities to be made available to public scrutiny. It is not accountable to Parliament and direct presidential appointment of all but its *ex officio* members is very troubling.

In addition, it can monitor and control the activities of any non governmental organizations or local private sector organizations engaged in reconstruction or development activity within any designated area by issuing licences for carrying out the activities intended to be carried out by them and such other regulatory measures as may be prescribed.[15] This is an equally worrying aspect of its powers given the consequent ability of the government to use this as a weapon against non-governmental organisations critical of state policy.

Generally, its emphasis in regard to the powers and functions of the authority to promote private businesses foreign and local investments has an alarming similarity to the overall strategy that has been promoted and pushed by the international financial institutions in respect of the whole country during the last twenty eight years.

Should we allow such powers to an authority, not answerable to the people, and court the possibility of such powers being used in order to carry forward an economic agenda that has proved to benefit only a small group of rich elite while leaving the larger majority of the people in worsened conditions of poverty and distress?

Disasters generate a lot of generous assistance from people of good will. Should such resources be utilised by the government in a manner that results in the lot of the poor and the marginalised being made worse? This is the essential question.

[15] see clause 16(n)

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