

Policy and Legislation Evaluation and Scrutiny by Parliament of Sri Lanka: Case Study

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Abstract

Sri Lanka is a socialist democratic republic with a unicameral legislature. Sovereignty, including the powers of the government, fundamental rights, and franchise, lies in the People. The sovereignty of the People is exercised and enjoyed separately by the executive, the legislature and the judiciary, as articulated in the Constitution. In this process, timely and in-depth evaluations of policies and legislation are important to ensure stakeholders are held accountable to the People. This task is covered by the role of oversight which is one of the main roles of Parliament.

This paper discusses the mechanisms employed by Sri Lanka's Parliament in exercising the powers of the People including methodologies, policy evaluation, and legislative scrutiny, especially through the Parliamentary Committee System. The paper analyses the outcomes of these mechanisms in upholding and protecting the rights of citizens. It identifies the Parliament's achievements as well as challenges, and examines the use of new concepts and methodologies in improving the service to citizens, suggesting how any such gaps could be filled. The study focuses on the 8th Parliament, which ran from 2015 to 2020, and the 9th Parliament, which is the present Parliament.

Key Words: Evaluation, Committees, Oversight, Legislative Scrutiny

I. INTRODUCTION

Sri Lanka is a socialist democratic republic with a unicameral legislature. The present parliamentary system has evolved from three main Constitutions, namely the Soulbury Constitution of 1948,¹ the First Republican Constitution of 1972,² and the Second Republican Constitution of 1978.³ The Soulbury Constitution was initially

1 Soulbury Constitution, 1948

2 The Constitution of Sri Lanka (Ceylon), 1972

3 The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

drafted in 1946, with minor changes adopted after the independence from the British in 1948. This Constitution was based on the Westminster model, giving significance to the doctrine of separation of powers. The legislature composed of two houses: the Senate, which had limited power over legislation, and the House of Representatives. Under that Constitution, the executive power was vested in the Cabinet of Ministers headed by a Prime Minister, who were answerable to the legislature. The Constitution enabled an independent judiciary which had the authority to review legislation.

The First Republican Constitution deviated from the principles of separation of powers but gave prominence to the legislature. The Senate was abolished and an Executive Prime Minister was introduced, providing the legislature with a mixture of powers. The 1972 Constitution introduced the pre-enactment review of legislation, replacing the judicial review of legislation mandated in the 1948 Constitution. The pre-enactment review was entrusted with an entity called the Constitutional Court which advised the Speaker on the Constitutionality of a Bill before enactment.

The 1978 Constitution revived the doctrine of the separation of powers alongside the introduction of a powerful Executive Presidency. Although the Parliamentary system of Sri Lanka had changed from the Westminster Model, the 1978 Constitution preserved the principle that the Cabinet of Ministers shall be responsible to Parliament which is one of the basic principles of the Westminster Model. The Constitutional Court was abolished and the pre-enactment review of legislations was given to the Supreme Court. The Supreme Court was also provided with the jurisdiction to inquire into the issues relating to violations of fundamental rights of citizens.

The 1978 Constitution is the present Constitution of Sri Lanka, having incorporated twenty amendments since it was first enacted. Article 3 of the Constitution states that the sovereignty of the country lies with its people and the sovereignty includes powers of government, fundamental rights, and franchise. In the exercise of the sovereignty, the Article 4 of the Constitution delegates the exercise of the legislative power of the people to the Parliament who exercise the judicial power of the people through Courts, tribunals etc.

The role of the Parliament is defined by the Constitution and the Standing Orders of Parliament. The key functions of the Parliament are: representation, legislation, control of public finance, and oversight. The 19th Amendment⁴ to the 1978 Constitution of Sri Lanka was made in 2015, introducing several provisions to strengthen the powers of Parliament, reducing the powers of the Executive President and making them answerable to Parliament. However, the 20th Amendment⁵ reintroduced some of these powers.

Articles 3 and 4 signify that the Parliament, as well as the Executive and the Judiciary, should ensure that the principles of sovereignty are protected and strengthened through the exercise of their mandates. Timely evaluation of activities by each of these entities is critical to ensure that they maintain the principles of good governance and sustainable development. The checks and balances mandated by

4 19th Amendment to the Constitution

5 20th Amendment to the Constitution

Law hold the Cabinet of Ministers (the executive,) answerable to Parliament who has the power to scrutinize government policies. Most legislation are initiated by the executive and enacted by Parliament. Systematic review and scrutiny of the policies underlying proposed legislation is important. As such, the evaluation of policies and legislation strengthens evidence-based decision making processes, ensuring the protection of the rights of the people through efficient and effective governance.

II. OVERSIGHT AND SCRUTINY BY SRI LANKAN PARLIAMENT

Parliament's power of oversight and scrutiny is exercised in three main areas: (1) scrutiny over government policies, (2) oversight of public finance, and (3) scrutiny over legislations.

1. Scrutiny Over Government Policies and Public Finance

The Parliament of Sri Lanka exercises its powers of scrutiny over government policies through several methods including: Question Hour, Prime Minister's Questions,⁶ Adjournment Motions, Motions or Questions at the Adjournment time,⁷ Private Member's Motions and through the Committees.

During the Question Hour, matters of public importance can be put forward to the relevant Minister seeking for answer. The Question Hour is an important part of the Business of the Day; the first hour of each sitting day is allocated for the Questions. The Prime Minister's Question time was introduced in 2015, allowing both the Opposition and Government Members of Parliament to raise questions to the Prime Minister on matters relating to Government policies, including matters of national importance. The Prime Minister's Question time occurs once in the first sitting week of every month.⁸ Adjournment Motions, Motions or Questions at the Adjournment time allows matters of urgent public importance⁹ to be raised while the Private Member's Motions draws the government's attention to any issue of public importance¹⁰ which may require revisions to existing policies.

The Constitution provides for the operation of Standing Orders¹¹ to regulate its business and perform its oversight role. The oversight role of Parliament is mainly performed by the Committees of Parliament. The Committees create an arena or platform for the Members of Parliament to scrutinize and oversee government policies and activities.

Parliament's control over public finance is explained in Article 148 of the Constitution:¹²

6 Parliament Secretariat, *Standing Orders of the Parliament of Democratic Socialist Republic of Sri Lanka* (2018) at No. 38.

7 *Ibid* No 20.

8 *Ibid* No 38.

9 *Ibid* at No. 19, 20.

10 *Ibid* at No. 24.

11 Parliament Secretariat, *supra* note 6.

12 Parliament Secretariat, *The Constitution of the Democratic Socialist Republic of Sri Lanka* (Parliament of Sri Lanka, 2015) at Article 148.

“Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.”

The Committee on Public Accounts (COPA)¹³ was established in 1921 and the Committee on Public Enterprises (COPE)¹⁴ followed in 1979 given the dramatic increase in COPA’s workload after the Independence of Sri Lanka. As per the Standing Orders of Parliament, COPA is mandated with¹⁵ the examination of the accounts of public corporations, i.e. institutions funded wholly or in part by the Government or any other undertaking vested under any written law in the Government that has been laid before Parliament, with the assistance of the Auditor - General.

COPA has focused primarily on post-mortem scrutiny, advising institutions to prevent the reoccurrence of previous shortcomings rather than providing solutions to the weaknesses identified during the posterior process called auditing, since it is more fruitful to prevent inefficiencies proactively. Accordingly, a process to appraise the institutions based on selected criteria has already begun through a computerized program named the e-PAC.

The Committee on Public Finance (COPF) was introduced in 2015 as the third financial committee. It is entrusted with the recessions of appropriations contained in the Appropriations Act for the current year, the transfer of appropriation, the unexpected balance, and the implementation of the Appropriation Act for the current year. COPF thereby performs an important task in monitoring the proper utilization of the government funds allocated by the budget of the previous year.

In 2015, the scope of the Committee system was expanded with the introduction of Sectoral Oversight Committees (SOCs) which enhanced the oversight role of Parliament. Standing Orders were introduced in 2015 to strengthen the capacity and ability of committees to perform their duties and expand their powers by making the executive branch more accountable. For instance, the Standing Orders provided to the Chair of the Committee on Public Finance should always come from the Opposition¹⁶ while the Chairs of COPE, COPA, COPF, and SOCs were backbenchers.¹⁷ When Committee Reports are finalized and Tabled in Parliament, the Government or the Minister submits their observations on the Recommendations of the Committee¹⁸ within the specific period stipulated in the Standing Orders. In 2020, the role of the Ministerial Consultative Committees was strengthened of which the chair is the relevant Cabinet Minister of the respective field.¹⁹ Accordingly, the Committees provide Members of Parliament the opportunity to scrutinize government policies and activities.

13 Parliament Secretariat, *supra* note 6 at No. 119.

14 *Ibid* at No. 120.

15 Parliament Secretariat, *supra* note 6.

16 *Ibid* at No. 121(1).

17 Parliament Secretariat, *supra* note 6.

18 *Ibid* at No. 111 (9).

19 *Ibid* at No. 112.

Example 1: The Sub-Committee on Power and Renewable Energy, under the Sectoral Oversight Committee on Energy, observed the necessity of a best-fit energy plan which enables the maximum utilization of the ‘Renewable Energy Sources.’ As such, they considered and proposed revisions to the government’s Long-Term Generation Expansion Plan 2018-2037.

Example 2: In 2017 the Sectoral Oversight Committee on Legal Affairs (anti-corruption) and Media completed a report on the Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice. This included recommendations to amend existing laws and introduce new ones to keep up with the intended policy objectives and timely needs²⁰

Apart from the amendments brought to existing legislation, the Committee proposed improvements to the internal administration of the judiciary and criminal justice system which involved expanding the cadre of the Attorney General’s Department. As per the recommendation, the salaries of the judicial officers, the Attorney General’s Department, and the Legal Draftsman’s Department were increased with a view to enhance the productivity of their duties.

Example 3: In Sri Lanka, the Plantation populace amounts to around 1 million. Their health services are provided by Estate Health Units which operate as private companies. The only health facilities provided by the Ministry of Health to these Units was the supply of drugs. Therefore, with a view of improving the health of the estate population, and to ensure more equitable access to health, a policy decision was taken in 2007, followed by subsequent decisions in 2018, to integrate all of the Estate Health Units into the public sector. However, the decision was not affected. In 2019, having considered the importance of implementing said decision with the relevant implementing institutions, the SOC on Health, Human Welfare and Social Empowerment recommended the acquisition of all Estate Health Units to public sector in a 5-year action plan.

Example 4: Over the decades, overcrowding in prisons has become a serious social issue and a great challenge to the criminal justice system of the country. Statistics show that the number of non-convicted prisoners²¹ was nearly four times to this issue, the Ministerial Consultative Committee on Justice appointed a technical and sub-committee to evaluate the situation and make recommendations for an effective community-based corrections approach.

2. Scrutiny Over Legislations

Parliament’s oversight and scrutiny is not limited to policy evaluation but extends throughout the legislative. Sri Lanka’s legislative process can be introduced as a participatory process.²² As per Articles 3 and 4, legislative power is exercised by

20 *Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice*, by Sectoral Oversight committee on Legal Affairs (anti corruption) & Media (Parliament of Sri Lanka, 2017).

21 Prison Statistics of Sri Lanka 2020, Statistics Division/prisons Headquarters Colombo - 09, Sri Lanka

22 D Laksiri Mendis, *Manual of Participatory Legislative Process* (USAID, 2018).

Parliament which, in turn, is decided by the People at a Referendum. Article 85 of the Constitution provides for the provisions for such Referendum.

The Parliament is vested with legislative powers by the Constitution. Article 75 of the Constitution of Sri Lanka²³ states the following:

“Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution:

Provided that Parliament shall not make any law -

(a) suspending the operation of the Constitution or any part thereof,
or

(b) Repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it.”

a. Pre-Legislative Scrutiny

Law allows the Parliament to pass two types of legislation: Government Bills and Private Member’s Bills. Government Bills are initiated at the executive level. The draft Bill is published in the Gazette and is sent to the Parliament for enactment with the approval of the Cabinet of Ministers. The Bill is drafted by the Legal Draftsman and the Attorney General certifies that the Bill is not contrary to the Constitution before it is sent to the Parliament. The involvement of the Attorney General and the Legal Draftsman throughout the legislative process is significant and ensures that the Parliament does not pass any law that is contrary to the provisions of the Constitution.

When a Bill is presented to the Parliament, the Constitution provides an opportunity for citizens to review and challenge it before the Supreme Court.²⁴ During the 8th Parliament, the Bills presented before the House were referred to the SOCs and in 9th Parliament, until the constitution of the SOCs, Bills are being referred to the Ministerial Consultative Committees to report to Parliament. The constitutional jurisdiction of the Supreme Court limits examination of the constitutionality of the Bill and the Supreme Court does not have the power to determine the policy matters.²⁵ The Supreme Court may suggest amendments to the clauses of a Bill, to overcome any inconsistency within the provisions of the Constitution. The SOCs, unlike the Supreme Court, can evaluate whether the Bill is in accordance with the intended policy before it is debated in Parliament. SOCs have the power to scrutinize the policy and the law as well as to initiate the introduction of new laws and amendments.²⁶

With the introduction of SOCs there was an increase in the involvement of experts,²⁷ civil society, and pressure groups who were previously limited to public

23 Parliament Secretariat, *supra* note 12 at article 75.

24 *Ibid* at Article 121.

25 *Ibid*.

26 Parliament Secretariat, *supra* note 6 at No. 57, No. 58.

27 *Ibid* at No. 118 (5), No. 125(3).

officials and select witnesses who participate at the legislative process. This enabled further scrutinization of the Bill before its enactment.

However, the Twentieth Amendment to the Constitution introduced provisions for the passage of Urgent Bills on matters relating to national security or disaster management.²⁸ Such Bills are not subjected to scrutiny as referred by Article 121 of the Constitution.

When a Private Member's Bill is presented in Parliament, the Bill is referred to the relevant Minister to provide a report on the Bill.²⁹ The Minister is given a period of six months to do so. In the event an adverse report is received from the Minister, consideration of the Bill would be delayed until the report can be considered by Parliament.

b. Passage of Legislation

During the second reading of the Bill, the House debates the policy behind the intended legislation. During the Committee Stage, Members of Parliament from both the government and opposition are given the opportunity to propose amendments. Any amendment proposed by the SOCs are also moved during the Committee Stage.

c. Post Legislative Scrutiny

Post Legislative Scrutiny (PLS) focuses on the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted the law, and how legal practitioners and citizens have used the law.³⁰

In Sri Lanka, a systematic approach has not been established for PLS³¹ by any entity given the Constitution's mandate for pre legislative assessment. PLS focuses on legislation in a more systematic manner which can differ from legislation to legislation. Sri Lanka's main parliamentary mechanism relating to PLS is facilitated through the SOCs which were established in 2016. During the 8th Parliament, there were 16 SOCs³² covering a wider range of areas:

1. Agriculture and Lands
2. Business and Commerce
3. Economic Development
4. Education and Human Resources Development
5. Energy
6. Health, Human Welfare, and Social Empowerment

28 Parliament Secretariat, *supra* note 12 at Article 122.

29 Parliament Secretariat, *supra* note 6 at No. 52.

30 Franklin De Vrieze, *Post-Legislative Scrutiny: Guide for Parliaments* (London: Westminster Foundation for Democracy, 2017).

31 Asanga Welikala, *Parliamentary Committee Systems* (Legal and Constitutional Unit Centre for Policy Alternatives, 2003).

32 First Session of the Eighth Parliament "Oversight Plan of the Sectoral Oversight Committees", 24th January 2017

7. Internal Administration and Public Management
8. International Relations
9. Legal Affairs (anti-corruption) and Media
10. Manufacturing and Services
11. National Security
12. Reconciliation and North and East Reconstruction
13. Sustainable Development, Environment, and Natural Resources
14. Transport and Communication
15. Women and Gender
16. Youth, Sports, Arts, and Heritage

The SOCs oversight function covers a considerable amount of PLS aspects in their general oversight responsibilities,³³ including assisting Parliament in:

- its analysis, appraisal, and evaluation of the application, administration, execution, and effectiveness of legislation passed by Parliament and conditions and circumstances that may indicate the necessity or desirability of enacting any new or additional legislation ensuring the dimension of PLS that whether the delivery of a law can be improved and how it can be done
- its formulation, consideration, and enactment or changes in any law and of such additional legislation as may be necessary or appropriate

In order to discharge the above oversight functions, SOCs are mandatorily required to:³⁴

- review and study the application, administration, execution, and effectiveness of legislative projects and programmes, addressing subjects within its jurisdiction
- review and study the organization and operation of Departments and Institutions having responsibilities for the administration and execution of legislative projects and programmes addressing subjects within its jurisdiction
- review any conditions or circumstances that may indicate the necessity or desirability of enacting any new or additional legislation addressing subjects within its jurisdiction

³³ Parliament Secretariat, *supra* note 6 at No. 57, No. 111 (4).

³⁴ *Ibid* at No. 57, No. 111 (6).

- review any subsidiary legislation, including regulations of government ministries, to ensure that they are consistent with the legislative intent for delegated responsibilities

Upon such review and study, the relevant SOC shall determine whether the respective law should be continued, curtailed, or excluded.

In order to fulfill their duties, the SOCs are required to adopt an oversight plan for each session of the Parliament by reviewing specific problems with Government rules, regulations, and statutes which need further consideration or that impose severe financial burden on individuals, giving priority consideration to the review of those legislative projects. Moreover, these Committees shall ensure that all significant legislative programmes or agencies are subject to periodic review.

Parliament, Committees, or Ministers may refer matters to the relevant SOC for its consideration and report. SOCs have the power to summon persons and call for documents and evidence from the affected or interested parties and officials with regard to matters referred to them.³⁵ With respect to the referral of a matter, the Speaker of the Parliament shall designate a Committee exercising primary jurisdiction or may refer the matter to one or more additional Committees for consideration.

SOCs are composed of Members of Parliament who are not the Speaker, the Deputy Speaker, the Deputy Chairman of Committees, the Prime Minister, the Leader of the House, the Leader of Opposition, or the Ministers of the Cabinet of Ministers appointed by the President on the advice of the Prime Minister.³⁶

Even though the SOCs are a novel concept to the Parliament of Sri Lanka, its progress has transformed the operation of the Committees by reviewing legislation which inevitably protects the rights of citizens.

Example 1: The Sectoral Oversight Committee on Legal Affairs (anti-corruption) and Media in 2017 concluded a report on Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice which included recommendations to amend existing laws and introduce new laws to keep up with the intended policy objectives and timely needs.³⁷ As a result, the Government introduced two Bills for the amendment of the Judicature Act No 2 of 1978.

Amendments to the main Act provided for the establishment of Permanent High Courts at Bar and increased the number of High Court Judges,³⁸ addressing the country's need to expedite the hearing of the Cases to ensure justice and protect the rights of the citizen.

³⁵ *Ibid* at No. 57, No. 111 (27).

³⁶ *Ibid* at No. 57, No. 111 (19).

³⁷ Sectoral Oversight committee on Legal Affairs (anti-corruption) & Media, *supra* note 19.

³⁸ Amendment to the Judicature Act No 2 of 1978

Example 2: A study conducted by a subcommittee appointed by the Sectoral Oversight Committee on Sustainable Development, Environment, and Natural Resources has observed that the Environmental Councils, which shall be established through the National Environmental Act No 47 of 1980 as amended by Act No. 56 of 1988 and Act No. 53 of 2000, have not been properly established since 1980, as required by law. Said entity has been vested with considerable responsibilities and non-adherence to the provisions of the Act could lead to questions regarding the legality of that entity. The committee took immediate steps to clarify any legal issues on that matter.

Example 3: The Sectoral Oversight Committee on Legal Affairs (anti-corruption) and Media considered the Bail Act No 30 of 1997 and observed that certain provisions of the Act contradict prevailing practice in criminal courts relating to the granting of bail.

Similarly, the SOCs have successfully scrutinized legislation, resulted in the filling of lapses that occurred between the Legal Provisions and the practical implementation.

Example 4: The Sectoral Oversight Committee on Women and Gender reported on Family Law Reforms in 2020.³⁹ The Committee had extensive discussions with relevant experts about the concerns raised by several interest groups relating to the issues faced by women in processes of marriage and divorce, the negative impacts of child marriages, and discrimination against women regarding land inheritance. The Committee observed disparities and obsolete legal provisions in effect drafted four Bills:

1. to introduce the Minimum Age of Marriage in Sri Lanka
2. to amend the Marriage Registration Ordinance
3. to amend the Civil Procedure Code (Article 627)
4. to amend the Land Development Ordinance (Chapter 464)

In addition to the pre-enactment scrutiny of Both Bills and Regulations, the SOCs conduct a follow up task of the implementation of its recommendations by calling for periodic reviews to ensure effective evaluation. Thus, these Committees ensure the accountability, transparency, and scrutiny of government spending, monitoring budget allocations reflection of policy priorities. In short, they hold the Government accountable for effective implementation of the budget proposals.

Accordingly, the SOCs mandate oversees the enactment of the laws, whether the legal provisions have been brought into force, measures the nexus between the intention of the legislature and the Government, and the implementation of the laws.

³⁹ Report on Family Law Reforms, This report was tabled in Parliament on 18 Feb. 2020, by the Chair of Sectoral Oversight Committee on Women and Gender

Therefore, a comprehensive analysis of the final outcome of each Committee may deliver an indication of the impact of the legislation, including lessons learnt and best practice.

PLS, as conducted by the SOCs, is a participatory process where Government Officials from relevant Ministries, the Attorney General, the Legal Draftsman, civil society, and other stakeholders who have an interest in the relevant subject areas are involved in discussions.

The participatory legislative process has been strengthened by the Right to Information Act No 12 of 2016. For instance, after the enactment of the Local Authorities Elections (Amendment) Act No. 16 of 2017, an information request was received regarding the initial Gazette notification and the Bill of the passed law where the information requester had indicated that his requirement to check the passed legislation with the preliminary notice about the Act. Further, the public is becoming more acquainted with Parliamentary practices and procedures⁴⁰ through the facilities provided by the Right to Information Act. The highest number of requests for information received by the Right to Information Unit in 2019 was about the Parliamentary practices and procedures.

Analysis of secondary or subordinate legislation is important during the PLS. In Sri Lanka, subordinate legislation, such as regulations, are sent to Parliament for approval or to be tabled before the House. These are reviewed by the relevant SOC or Ministerial Consultative Committee (MCC) as referred by Parliament, before being considered by the House. However, they are not subjected to a review like that of the pre-enactment review as no amendment could be introduced by the Committees or the Parliament.

At present, Sri Lanka does not possess any mechanism for the post judicial review of Acts passed by Parliament. The existing Court system in the country does not possess the authority to review existing law. However, SOCs can examine how the courts have interpreted a law in relation to its intended policy. Review by a Parliamentary Committee preserves the supremacy of Parliament over legislation since judicial review can be uncertain if a court declares that law invalid, it outweighs the advantages and reduce the power of Parliament.⁴¹

40 Annual Report on Right to Information of Parliament of Sri Lanka, 2018, 2019

41 Annual Report on Right to Information of Parliament of Sri Lanka, 2018, 2019

III. CHALLENGES

As stated above, the Parliament of Sri Lanka has several mechanisms relating to policy and legislation evaluation and scrutiny, whereas it has been proven at the aforesaid evidence from Committees, the requirement of frequent evaluation of policies and legislations. However, reaping the full benefits of these mechanisms has been challenging for various reasons.

The SOCs mandate provides a greater scope for Pre-Legislative Scrutiny which is of paramount importance in the legislative process. Effective PLS can be ensured through a well-structured Pre-Legislative Scrutiny process that would identify the requirements for reviewing laws at their inception such as inclusion of review clauses. However, in Sri Lanka this avenue has not yet been fully realized. Even though every Bill is referred to the relevant SOC or MCC to report before it has been considered in the House of Parliament, the time allocated for the SOC or MCC to consider a bill or regulations in depth has been significantly limited. At the same time, the government can control the level of examination by deciding the recommended time it should take in Parliament. However, it is expected that these Committees would focus on that aspect in future with greater demand and knowledge gained through experience.

In Sri Lanka the difficulty to understand Laws is largely due to the fact that plain language is not used in drafting legislation. The language used is a significant obstacle, limiting public participation in the legislative process. Several discussions have been held within the Parliament regarding whether to introduce plain language drafting in the future. A subsequent awareness session⁴² has also been held with the participation of the Attorney General and Legal Draftsman. When the Standing Orders of Parliament were revised⁴³ in 2018, the issue of plain language had been considered, demonstrating significant progression.

Proper implementation of the roles and responsibilities of evaluation requires awareness and knowledge of the evaluation process. All stakeholders are required to have knowledge of the requirement to evaluate policies and legislation towards sustainable development. Within institutions, the role of evaluation is to provide necessary evidence for making decisions on priorities and their implementation processes. Reports on the Third EvalPartners Global Forum⁴⁴ note that even though Sri Lanka has established mechanisms of development in accordance with the SDGs, the evaluation of SDG related activities have not been institutionalized. Further, the report notes the lack of evaluation culture and understanding of its importance in the SDG context of the country. It suggested that the role of evaluation could be supported by institutional policies, norms, standards, and guidelines that establish broad stakeholder participation, including engagement of the most vulnerable, both in evaluation and in discussions on the implementation of evaluation findings and recommendations. However, at present steps are being taken to ensure that the SDGs are considered in decision making processes, for instance when budgetary allocations

42 Workshop on Plain Language Drafting, 2016, facilitated by the WFD

43 Parliament Secretariat, *supra* note 6.

44 *Report on the Third EvalPartners Global Forum.*, by EvalPartners (2017).

are deliberated. As such, it requires the development of tools necessary for evaluation. ‘The Evaluation Culture,’ is an action-oriented perspective that actively seeks solutions to problems, exploring tentative ones, weighing the results and consequence of actions, all within an endless cycle of supposition-action-evidence-revision that characterizes good science and good management.⁴⁵

Resistance and reluctance may arise from concerned parties when proper evaluations are performed due to the possible addition workload or personal defeats. This is mainly based on misconceptions and lack of knowledge which is expected to be overcome through the introduction of laws which make the process mandatory and essential. Apart from that, it is expected to proceed on a collective basis by educating stakeholders on the overall importance of proper and timely evaluations, highlighting the importance of learning from various experiences.

When the requisite legal framework is established, the institutional framework which facilitates evaluation would have to be established. Evaluators should be well versed in best practices for evaluations. In view of developing a culture of evaluation steps need to be taken to engage parliamentarians, officials, and citizens to help establish and embed evaluation standards. In order to support the evidence-based decision making, it is necessary to build strong data systems and baseline data because effective post-legislative scrutiny depends largely on effective evidence. Most importantly, the people should change the way they think about the concept of evaluation, moving beyond a technical process by considering its political implications, the needs and involvement of all stakeholders. When the driving force becomes the politicians, it is as important to build political motivation by establishing a strong political culture for evaluation.

For instance, it is not practical and possible for the Members of Parliament to study and evaluate all the Annual Progress Reports submitted by each government institution due to the pure scale of content and lack of uniformity in the format. Accordingly, the Select Committee on Evaluation recommends introducing a common format, as far as applicable, to similar institutions to submit their Reports to Parliament.

The role of the Secretariat is of paramount importance to accomplish the mandated task of the Parliament. During the discharge of their oversight role the Parliament Secretariat is required to engage with different Government stakeholders. Therefore, it is essential that the staff of the Secretariat should be afforded the required capacity and knowledge and be well equipped with strong information, data, and evidence to provide the Members of Parliament with crucial, up-to-date information.

Following the needs assessment conducted by the UNDP with the Secretariat of Parliament in 2015,⁴⁶ the key requirements have been identified and all donor agencies supporting the Parliament of Sri Lanka, including the United States Agency

45 William M K Trochim, “An Evaluation Culture”, (2006), online: *Web Center for Social Research Methods*.

46 Parliamentary Development Support Project (2016-2019), “Consolidating Sri Lankan Democracy and Sustaining Peace through Parliamentary Strengthening”, Project Document

for International Development (USAID),⁴⁷ the Westminster Foundation for Democracy (WFD),⁴⁸ and the Friedrich Naumann Foundation (FNF)⁴⁹ are collectively engaged in supporting the achievement of each of those goals, strengthening the functions of the Parliament. The entire process is guided by a Results and Resource Framework prepared by a needs assessment. Capacity building for Members of Parliament and staff is supported through workshops, seminars, etc., extending to technical assistance where necessary. To capacitate research staff for providing information for evidence-based decisions, a series of tailor-made training programmes and courses are presently being conducted, including the introduction of new computer-based tools. Further, steps are being taken for Networking Academia within the Legislature to connect all the Universities in the country who can provide innovative and trusted information, data, and expert opinions. This step is expected to be strengthened through the maintenance of an information repository of experts and resource persons who may be consulted on various subject areas.

IV. EMERGING METHODOLOGIES

1. e - PAC (Electronic - COPA)

E-PAC is an online system which facilitates the function of COPA. As per the mandate, there are 842 institutions scheduled to be investigated by COPA. However, due to the practical difficulty in assessing all said institutions within a limited timeframe COPA had prioritize the most critical institutions for evaluation. This led to certain entities not undergoing evaluation. There was at least one instance where the institution was unaware that they were being subjected to review by COPA. In order to overcome this issue, the e-PAC was introduced to evaluate all the institutions annually through an online system.

Through e-PAC the Committee requests all institutions under their purview to complete a questionnaire which allows the institutions themselves to evaluate their performance. The process would be monitored by the Auditor General. These questionnaires have been prepared to evaluate institutional performance of the management of human, financial, and physical resources in state institutions. The grading and evaluation of Public Institutions is performed on the basis of the submission of Financial Statements and performance. This process has been utilized by COPA to determine the priority in which to summon the Ministries and Departments before the Committee.⁵⁰

47 Sri Lanka, "USAID; from the American People, <<https://www.usaid.gov/sri-lanka>>

48 Sri Lanka, "WFD" <<https://www.wfd.org/network/sri-lanka/>>

49 Sri Lanka, "South Asia; Friedrich Naumann Foundation" <<https://southasia.fnst.org/content/sri-lanka>>

50 *First Report of the Committee on Public Accounts*, by Committee on Public Accounts, Parliamentary Series No 99 (Parliament Secretariat of Sri Lanka, 2016).

2. Select Committee of Parliament on the United Nations 2030 Agenda for Sustainable Development⁵¹

“Sustainable development has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁵²

The Inter-Parliamentary Union (IPU) and UNDP presented a Self-Assessment Toolkit on Parliaments and the SDGs. According to the Self-Assessment Toolkit,⁵³ the SDGs are an opportunity for Parliamentarians to demonstrate their commitment to improving people’s lives and the health of the planet on which all human existence depends. According to the Toolkit:

“In many countries, a National SDG working group or similar body will be established to coordinate and guide SDG implementation. Parliamentary Representatives should be included in any such high-level body, so that they can contribute their constituents’ views and provide institutional support. Parliaments should demand that the governments draw up or update a National SDG Plan (or other relevant sectorial plans). This will ensure that National Policies and plans will be developed or reviewed so that their part in achieving the SDGs becomes more effective. (IPU/UNDP, p.10, 2016)”⁵⁴

Goal 16 is defined as the Parliamentarian’s goal which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.⁵⁵

In order to localize the SDGs in facilitating a National Development Plan, a Select Committee of Parliament was established. The objective of this initiative was to facilitate the implementation of SDGs through reviewing, advising, coordinating activities with Parliament and the respective Ministries, and providing expert advice on smooth implementation processes.⁵⁶

The Select Committee was mandated to make recommendations formulating National Policies and Legislating Laws in consultation with relevant Line Ministries; allocation of adequate domestic resources and finding international funding resources; coordinating among Government implementing agencies; networking measures at National, Provincial and Local levels; encouraging public-private partnership; obtaining the support of United Nations Agencies and civil society organizations; sharing expertise and experiences among countries at regional and

51 *Interim Report of the Select Committee of Parliament on the United Nations 2030 Agenda for Sustainable Development*, by Selected Committee on SDGs, Parliamentary Series No 226 (Parliament Secretariat, 2017).

52 <https://www.un.org/sustainabledevelopment/development-agenda/>

53 Charmaine Rodriguez, Inter-parliamentary Union, & United Nations Development Programme, *Parliaments and the Sustainable Development Goals: a self-assessment toolkit* (France: IPU & UNDP, 2016).

54 *Ibid* at 10.

55 *A Parliamentary Handbook: Parliament’s Role in implementing the Sustainable Development Goals*, by Kevin Deveaux & Charmaine Rodrigues (UNDP, 2017).

56 Selected Committee on SDGs, *supra* note 50.

international levels; developing a separate database and reviewing progress periodically; and consideration of all matters which are connected with or incidental to the above issues. This mandate has assisted the Committee with reviewing the progress of government activities while providing the requisite support in achieving the goals in a more focused manner.

3. National Evaluation Policy of Sri Lanka⁵⁷

Evaluation has been identified as a better mechanism than auditing to review the progress of a process and to ensure the most appropriate target is achieved in the most suitable way. The term ‘Evaluation’ has been defined in several ways by different institutions.⁵⁸ As per the Development Assistance Committee (DAC) of the Organization for Economic Co-operation and Development (OECD) an assessment is defined as a systematic and objective of an ongoing or completed project, program, or policy, its design, implementation, and results. The UN Evaluation Group (UNEG) defines an assessment as a systematic and impartial activity, project, programme, strategy, policy, topic, theme, sector, operational area, or institutional performance.

The Declaration of Support for the Global Evaluation Agenda 2016-2020⁵⁹ has built on three interconnected pillars: (i) building individual evaluation capacity; (ii) strengthening institutional evaluation capacity; and (iii) creating an enabling environment for evaluation in achieving the SDGs.⁶⁰ Accordingly, two major programs have been agreed upon for implementation in the two upcoming years:⁶¹

- i. Strengthen National Evaluation Systems
- ii. “Evidence Matters” Campaign

The Strengthen National Evaluation Systems program aims to ensure that countries have a legal and institutional framework and guiding principles for evaluation activities and a defined, systematic approach to implementation. The “Evidence Matters” Campaign investigates and responds to the demand for evaluation with new stakeholders, simplifies language to facilitate better communication, generate key messages, and easily disseminate communication tools for use by the evaluation sector.

57 National Evaluation Policy, Sri Lanka <http://www.pmm.gov.lk/resources/Draft%20National%20Evaluation%20Policy_English.pdf>

58 The National Evaluation Policy Framework: Engendering an Evaluation Culture in the Philippines, ppt by Deputy Director-General Rolando G. Tungpalan National Economic and Development Authority (NEDA) at 3rd M&E Network Forum, 06-08 November 2013, Asian Development Bank, Mandaluyong City.

59 EvalPartners, *supra* note 43.

60 EvalPartners, *supra* note 43.

61 *Global Evaluation Agenda 2016-2020: A global, multi-stakeholder consultative process*, by Eval Agenda 2020 (EvalPartners, 2016).

Over the past few years, the establishment of an evaluation culture in the country has been discussed with the leadership of the Sri Lanka Evaluation Association and the Sri Lanka Parliamentarians Forum for Evaluation (SLPFE).⁶²

The Global Parliamentarians Forum for Evaluation organized their first ever forum in Colombo, Sri Lanka in 2018 on the theme “Responsible Parliaments-Embracing Evaluation for Agenda 2030.” The Colombo Declaration was signed by participants on 18th September 2018 to create an enabling environment to provide guidance and facilitate the establishment of National Evaluation Policies and Mechanisms.⁶³

Even though Sri Lanka has mechanisms to design, develop, and monitor the implementation of projects, the requisite evaluation process has not yet been properly institutionalized. As such, the Cabinet of Ministers endorsed the National Evaluation Policy of Sri Lanka (NEP-SL) with effect from 26 June 2018 to improve the performance of the Government and enhance the quality of public services. Moreover, the NEP-SL has recognized evaluation as the most appropriate learning and feedback mechanism for decision making. The policy will ensure sustainable implementation of policies, programmes, and projects; efficient utilization of resources; and evidence-based decision making by incorporating lessons learnt.

With the principles, the NEP-SL is willing to institutionalize the practices of good governance, evidence informed governance for results, and a culture of evaluation at all levels of Government through the following goals:

- a) Enhance evidence-based decision-making and planning
- b) Ensure relevance, efficiency, and effectiveness in resource utilization and sustainability of development results
- c) Ensure transparency and accountability at all levels of results-delivery
- d) Promote best practice and lessons learnt while minimizing failures and negative impacts of policies, programmes, and projects
- e) Create an evaluation culture in the country

The NEP-SL contains all policies and all national, provincial, and local authority level programmes and projects that are implemented in Sri Lanka. With respect to donor-funded projects, evaluation guidelines, as specified by the donor, can be applied for in line with national guidelines on evaluation.

62 Parliamentarians Evaluation Forum, *Embracing Evaluation for Agenda 2030 Concept paper* (Colombo, Sri Lanka, 2018).

63 *Ibid.*

4. Evaluation in the Parliament of Sri Lanka

Parallel to the national evaluation initiatives of the Government, the Parliament of Sri Lanka plays a leading role in the Global Forum of Parliamentarians on Development Evaluation and has established a Sri Lanka Parliamentary Forum on Evaluation as a Caucus in Parliament of Members of Parliaments interested in the use of evaluation to strengthen their oversight role.⁶⁴

Since Sri Lanka has expressed commitment to support good governance, accountability, and informed decision making at various levels, and the practice of high quality evaluation is a globally accepted requirement for strong evidence-based decision making at legislature, the Sri Lanka Parliamentarians Forum for Evaluation (SLPFE) was established on 11 November 2016 (Forum). On the initiative of the SLPEF as Parliamentary Caucus, the following key activities and tasks were undertaken:

- EvalColombo2018, an International Conference of Parliamentarians and evaluation experts to explore the potential of evaluation to improve development outcomes which was convened by the Global Parliamentarians Forum in collaboration with the Parliament of Sri Lanka
- The Colombo Declaration was signed by the representatives of 70 countries to create an enabling environment to provide guidance to facilitate the establishment of National Evaluation Policies and Mechanisms
- Continuous dialogues and programs to encourage and implement evaluation in parliament
 - a. Select Committee of Parliament to study and report to Parliament its recommendations to ensure National Evaluation Capacity in Sri Lanka

Under these circumstances, evaluation has become important in the context of the SDGs, adopted by the United Nations and all the global partners, and donor agents have confined all their projects and programmes on the rules and measures of the evaluation. SLPFE also recognized the relevance and necessity of establishing a monitoring and evaluation mechanism for evidence-based law making, budgeting, and oversight functions. As per Article 148 of the Constitution, the Parliament is vested with power over public finance and budgeting on national development initiatives of the country through parliamentary procedures. Therefore, Parliamentarians should be well informed with up-to-date information about effective initiatives and development programmes through the evaluation process.

In view of the above, and based on the principles of the UN General Assembly Resolution No: A/RES/69/237 'Building capacity for the evaluation of development activities at the country level' and the National Evaluation Policy (NEP) which was adopted by the Cabinet of Ministers of the Government of Sri Lanka in 2018, the approval of the Parliament of Sri Lanka has been granted to appoint a Select

64 I Goldman, Options for Utilizing Evaluation in Sri Lankan Parliament (Colombo: SDGAP, 2018).

Committee to ensure National Evaluation Capacity in Sri Lanka⁶⁵ in 2019. The Select Committee was mandated with examining:

- a) the formulation of national policies and legislating laws in consultation with relevant line Ministries and agencies
- b) guiding and coordinating the implementing institutions and agencies at national, provincial, and local levels
- c) encouraging public-private partnership in promoting a culture of evaluation
- d) promoting the values of good governance and informed decision making through evaluations, while preventing corruption, mismanagement, and wastage
- e) allocation of adequate domestic resources and finding international funding resources
- f) sharing expertise and experience among countries at regional and global levels
- g) examining outputs and outcomes of the existing oversight mechanism of the Parliament, mainly the functions the COPA and COPE, through the lenses of evaluation
- h) setting up a Legislative Standing Committee for evaluation
- i) extending the functions of the Parliament Research Unit to 'Parliament Research and Evaluation Unit' to facilitate the legislative and oversight functions of the Parliament
- j) instituting a national entity to regulate and coordinate the National Evaluation Capacity
- k) establishment of a Panel of Experts and networks comprising of academics, intellectuals, and development and evaluation practitioners
- l) consideration of all matters that are connected with, or incidental to, the above subjects

The Select Committee was a milestone in institutionalizing evaluation in both the legislative practices and the national administrative setup of the country. It is expected that the prevailing oversight role of the SOCs would be strengthened through a well institutionalized evaluation mechanism which will also ensure Post-Legislative Scrutiny.

V. CONCLUSION

The Constitution mandates the Parliament with the powers for representation, legislation, and oversight over governmental activities including financial control. The Parliament, the executive, and the judiciary are required to ensure the protection of the sovereignty of People when discharging their duties as mandated by the Constitution. Scrutinizing policies and legislation is of paramount importance for the protection of the rights of the people and to guarantee the delivery of sustainable solutions.

The Parliament of Sri Lanka utilizes several mechanisms for the evaluation of government policies and the scrutinization of legislation. Evaluation of government polices extends through the oversight on the financial aspects by the government

65 Order Paper of Parliament of Sri Lanka, 29th March 2019

institutions. The oversight over government funding by the financial committees is more focused on the report of the Auditor General whereas the lacuna for policy matters could be addressed by the SOCs with a clear mandate, or the MCC which has a broader mandate that could be adapted to succeed the purpose. Legislation is scrutinized by Parliament at three stages: pre-enactment, during the enactment, and post-enactment. However, Sri Lanka does not possess a well-established mechanism for these processes which are not fully institutionalized and lack a systematic approach.

Given the availability of resources and time spent since the introduction of most of these mechanisms, the role played by the Parliament of Sri Lanka is appreciative. However, time and resource restrictions as well as knowledge of the importance of evaluation are of the main challenges in acquiring optimum results of the mechanisms adopted by Parliament at present.

In order to address these challenges, several initiatives have been enacted, including the use of technology and introduction of new concepts. The introduction of the concept of evaluation would be an advantage to reach its goals. In a governance system where the executive is also accountable and answerable to the Parliament, an institutionalized evaluation process would benefit the proper implementation of policies. The Parliament of Sri Lanka has already taken steps to equip decision makers with evidence-based-decision-making skills and to strengthen the capacity of the Parliament Secretariat. The Right to Information Act and the discussions held on plain language drafting would strengthen public participation in the legislative process and support better evaluation. Thereby, the Parliament could be the entity to steer the country towards a better future through the effective implementation and enforcement of the concept of evaluation.

BIBLIOGRAPHY

- Committee on Public Accounts, First Report of the Committee on Public Accounts, by Committee on Public Accounts, Parliamentary Series No 99 (Parliament Secretariat of Sri Lanka, 2016).
- Cooray, Anton, "Three Models of Constitutional Litigation: Lessons from Sri Lanka" (1992) 21 *Anglo-American Law Review* 430-448.
- Deveaux, Kevin & Charmaine Rodrigues, *A Parliamentary Handbook: Parliament's Role in implementing the Sustainable Development Goals*, by Kevin Deveaux & Charmaine Rodrigues (UNDP, 2017).
- Eval Agenda 2020, *Global Evaluation Agenda 2016-2020: A global, multi-stakeholder consultative process*, by Eval Agenda 2020 (EvalPartners, 2016).
- EvalPartners, *Report on the Third EvalPartners Global Forum.*, by EvalPartners (2017).
- Goldman, I, *Options for Utilizing Evaluation in Sri Lankan Parliament* (Colombo: SDGAP, 2018).

- Mendis, D Laksiri, *Manual of Participatory Legislative Process* (USAID, 2018).
- Parliament Secretariat, *Standing Orders of the Parliament of Democratic Socialist Republic of Sri Lanka* (2018).
- , *The Constitution of the Democratic Socialist Republic of Sri Lanka* (Parliament of Sri Lanka, 2015).
- Parliamentarians Evaluation Forum, *Embracing Evaluation for Agenda 2030 Concept paper* (Colombo, Sri Lanka, 2018).
- Rodriguez, Charmaine, Inter-parliamentary Union, & United Nations Development Programme, *Parliaments and the Sustainable Development Goals: a self-assessment toolkit* (France: IPU & UNDP, 2016).
- Sectoral Oversight committee on Legal Affairs (anti corruption) & Media, *Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice*, by Sectoral Oversight committee on Legal Affairs (anti corruption) & Media (Parliament of Sri Lanka, 2017).
- Selected Committee on SDGs, *Interim Report of the Select Committee of Parliament on the United Nations 2030 Agenda for Sustainable Development*, by Selected Committee on SDGs, Parliamentary Series No 226 (Parliament Secretariat, 2017).
- Trochim, William M K, “An Evaluation Culture”, (2006), online: Web Center for Social Research Methods.
- Vrieze, Franklin De, *Post-Legislative Scrutiny: Guide for Parliaments* (London: Westminster Foundation for Democracy, 2017).
- Welikala, Asanga, *Parliamentary Committee Systems* (Legal and Constitutional Unit Centre for Policy Alternatives, 2003).

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