



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of the Democratic Socialist Republic of Sri Lanka**

Review by China and Papua New Guinea of the implementation by Sri Lanka of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2012 - 2013

## I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## II. Process

5. The following review of the implementation by the Democratic Socialist Republic of Sri Lanka (hereinafter, Sri Lanka) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Sri Lanka, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Sri Lanka, China and Papua New Guinea, by means of telephone conferences and e-mail exchanges and involving the following participants.

### Sri Lanka:

- Ms. Luckshmi Jayawickrema, Director General, Commission to Investigate Allegations of Bribery or Corruption;
- Mrs. Kamalini de Silva, Secretary of the Ministry of Justice;
- Mr. Jayantha Jayasuriya, Additional Solicitor General, Attorney General's Department, National Consultant on the UNCAC Review.

### China:

- Mr. Haiwen Wu, Division Director, The Department of Treaty and Law, Ministry of Foreign Affairs;
- Ms. Peijie Chen, Vice Director-General, Department of Treaty and Law, Ministry of Foreign Affairs;
- Ms. Luan Jia, Director, General Office of the National Bureau of Corruption Prevention;
- Mr. Weibo Liu, Presiding Judge Second Criminal Division Supreme People's Court;
- Mr. Shu-Keung Choi, Assistant Director, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China;
- Ms. Mei Fen, Official, Department of Treaty and Law, Ministry of Foreign Affairs.

### Papua New Guinea:

- Mr. Molean Kilepak, Director, Legal Policy & Governance Branch, Department of Justice & Attorney General;
- Mr. Raphael Luman, Senior State Prosecutor (Proceeds of Crime Unit), Office of the Public Prosecutor.

Secretariat:

- Ms. Tanja Santucci, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC;
  - Mr. Vladimir Kozin, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC.
6. A country visit, agreed to by Sri Lanka, was conducted in Colombo, Sri Lanka from 3-5 July 2013. During the on-site visit, meetings were held with the Commission to Investigate Allegations of Bribery or Corruption, the Secretary of the Ministry of Justice, the Financial Intelligence Unit in the Central Bank of Sri Lanka, the Department of Police (INTERPOL and Public Security, Law and Order), the Public Service Commission, development assistance providers and donor agencies, as well as representatives from civil society, the private sector, attorneys-at-law and the Institute of Chartered Accountancy.

### III. Executive summary

**1. Introduction: Overview of the legal and institutional framework of Sri Lanka in the context of implementation of the United Nations Convention against Corruption**

*Sri Lanka signed the Convention on 15 March 2004 and ratified it on 31 March 2004. It entered into force for Sri Lanka on 14 December 2005.*

*The Roman Dutch Law remains the common law of the country, while the impact on the common law system derived from the English law has had a much greater influence on the laws of Sri Lanka than the Roman tradition. The common law has been modified, both expressly and by implication by statutory law and judicial decisions. The penal provisions are set out in the Penal Code and the law relating to criminal procedure in Sri Lanka is governed by the Criminal Procedure Code; civil procedure is set out in the Civil Procedure Code.*

*The most important legislation with regard to the implementation of the Convention includes the Bribery Act [Cap. 26], Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No. 19 of 1994, Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011, Penal Code [Cap. 25], Code of Criminal Procedure Act No. 15 of 1979 [Cap. 26], Judicature Act No. 2 of 1978, Declaration of Assets and Liabilities Law No. 1 of 1975, Financial Transactions Reporting Act No. 6 of 2006, Establishments, Code, Bail Act No. 30 of 1997, Extradition Law No. 8 of 1977, as amended by Act 48 of 1999, and Mutual Assistance in Criminal Matters Act No. 25 of 2005.*

*The hierarchy of Courts of first instance is set out in Section 2 of the Judicature Act. Primary Courts, Magistrate's Courts, District Courts and High Courts are Courts of first instance. High Courts exercise*

appellate and review jurisdiction in some matters. The Court of Appeal and the Supreme Court are the Appellate Courts.

The institutional network of agencies involved in the fight against corruption include the CIABOC, the police, the Attorney General's Office, Financial Intelligence Unit, Inland Revenue, Committee on Public Enterprises, Judicial Service Commission and the Public Service Commission.

## **2. Chapter III: Criminalization and law enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### Bribery and trading in influence (articles 15, 16, 18, 21)

Sections 14(a), 16 (a), 17 (a), 19(a), 20 (a), (b), 21(a),(b), 22(a),(b), 88, 89 and 90 of the Bribery Act criminalize active bribery.

Passive bribery is covered by sections 14(b), 15, 16(b), 17(b), 19(b), 20(b), 21(c), 22(c), 22(d), 24, 89 and 89A of the Bribery Act.

The broad definition of "gratification" in section 90 of the Bribery Act covers various forms of undue advantage. Item (e) of the section additionally clarifies that gratification includes "offer, undertaking and promise", thus covering the elements of promising and offering as required by article 15 of UNCAC. That conclusion is also supported by relevant case law examples.

The Bribery Act covers different categories of public officials including judicial officers and parliamentarians (section 14), and different types of public servants (section 16, section 19).

Sri Lanka has not criminalized the bribery of foreign public officials and officials of public international organizations; however, the possibility of the adoption of relevant measures is currently being discussed.

Sri Lankan legislation does not expressly criminalize trading of influence, although some sections of the Bribery Act (sections 17 and 19) may be regarded as covering certain elements of that offence.

Sri Lanka did not criminalize bribery in the private sector, although some provisions of the Bribery Act (section 18 on bribery among bidders for government tenders) touch upon certain aspects of bribery in the private sector. To address the issue three committees were established at the level of CIABOC to consider possible legislative amendments.

#### Money-laundering, concealment (articles 23, 24)

The main elements of the offence of money laundering are covered in the Prevention of Money Laundering Act (e.g., section 3), although no practical examples of implementation were provided.

Predicate offences include, inter alia, the offences prescribed in the Bribery Act (section 35(c) of the Prevention of Money Laundering Act) and offences subject to the death penalty or imprisonment of 5 years or more, and some offences listed in certain sections of the Penal Code, which appear to cover offences established in accordance with the Convention. Dual criminality is not required for offences committed outside Sri Lanka to be deemed predicate offences.

*Sri Lankan law does not preclude a person from being charged with both money laundering and the predicate offence.*

*Concealment is covered by section 3(1)(b) of the Prevention of Money Laundering Act.*

*Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)*

*Sections 386 (Dishonest misappropriation of property), 388 and 389 of the Penal Code (both on criminal breach of trust) criminalize the diversion of property by any person, including public officials. Section 392 (Criminal breach of trust by public servant or by banker, merchant or agent) and section 5(1) of the Offences against Public Property Act No. 12 of 1982 provide for the aggravated punishment of embezzlement by public officials or against public property. Case law applies similar principles to the prosecution of embezzlement in the public and the private sectors.*

*Abuse of functions is addressed in section 70 of the Bribery Act (Corruption), which provides a relatively comprehensive coverage of all elements of the offence stipulated in article 17 of the Convention.*

*Section 23A of the Bribery Act contains detailed provisions on illicit enrichment covering public officials and their family members. Sri Lankan courts would presume that any illicit enrichment is a product of bribery even though it may be a product of another corruption offence, including embezzlement or abuse of functions. Sri Lanka has also established a functional system of asset declarations for public officials which is conducive to the effective implementation of Section 23A.*

*Obstruction of justice (article 25)*

*Section 73 of the Bribery Act (Interference with witnesses) criminalizes interfering with a witness or impeding witnesses in bribery cases.*

*The use of physical force, threats or intimidation to interfere with the exercise of official duties by justice or law enforcement officials is criminalized in section 23 of the CIABOC Act, section 74(1),(2),(3) and section 75(1) of the Bribery Act, and sections 183-187 of the Penal Code.*

*Liability of legal persons (article 26)*

*The definition of “person” in section 8 of the Penal Code includes both legal and natural persons. However, there is no clarity whether the same concept applies to the “persons” referred to in the Bribery Act. Legal persons can be civilly and administratively liable based on applicable common law principles in which regard some court practice also exists. However, no examples of case law where legal persons were prosecuted for corruption-related offences exist.*

*Participation and attempt (article 27)*

*Attempt and participation (in the form of abetment and conspiracy) are criminalized in section 25 of the Bribery Act. Additionally, relevant provisions are contained in the Penal Code (section 100 (abetment) and section 113A (1) (conspiracy)).*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

The Bribery Act provides that relevant offences may be subject to imprisonment for up to seven years and up to ten years for corruption (section 70). Some offences are punishable with minimum mandatory sentences (e.g., section 3 of the Prevention of Money Laundering Act). Judges consider the gravity of offences when imposing penalties.

Only the President of Sri Lanka is granted immunity from criminal prosecutions. No other public officials enjoy criminal immunities.

According to sections 30A(2),(4) and 73(2) of the Bribery Act, persons suspected of accepting bribes and impeding witnesses from giving evidence may be released on bail in exceptional circumstances only.

Section 58 of the Prisons Ordinance allows for remissions of sentences and rewards for good conduct. There are no measures on early release or parole based on the gravity of the offences concerned.

The Establishments Code (section 31:1:3 & 4) provides that public officers who have been prosecuted on bribery or corruption charges may be suspended. Preliminary investigations prior to prosecution are addressed in subsection 13 of the Establishments Code. Chapter V of Regulation 40 and section 29 of the Bribery Act disqualify persons convicted by a court of a criminal offence against the State and specifically of bribery (section 29) from appointment to the public service.

The Public Service Commission of Sri Lanka can take disciplinary measures against public officials in parallel with criminal proceedings, according to sections 27 and 28 of the Establishments Code.

Sri Lanka does not have measures in the current legislation providing for the reintegration into society of persons convicted of corruption offences, although a general rehabilitation programme not specific to corruption is in place that covers all offenders.

Section 81(1) of the Bribery Act provides for a possibility of granting pardon to a participating offender who provided relevant information to facilitate a prosecution. However, the measure is limited to offences stipulated in the Bribery Act. The possibility of mitigating punishment of cooperating offenders is not provided.

Protection of witnesses and reporting persons (articles 32, 33)

Section 23 of the CIABOC Act provides for passive protection of witnesses against retaliation and intimidation. A Bill on Witness Protection was being drafted at the time of the country visit and included comprehensive protections, including active protection measures. The Bill came into operation following the country visit as the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. Some victim protection measures are envisaged in the Code of Criminal Procedure Act and section 187 of the Penal Code.

Section 9 of the CIABOC Act provides immunity from civil and criminal liability to any person who provides information to the Commission. A partial protection of reporting persons is also possible

*based on the Human Rights Commission Act No. 21 of 1996 and by the Labour Tribunal based on the Industrial Dispute Act No. 27 of 1996.*

*Freezing, seizing and confiscation; bank secrecy (articles 31, 40)*

*The confiscation of corruption proceeds is limited to the proceeds of crimes derived from money laundering and bribery (sections 26A, 28A(1), 39 of the Bribery Act, sections 3, 13 of the Prevention of Money Laundering Act). To that limited extent, the confiscation of instrumentalities of those two offences is provided for. Section 12 of the Prevention of Money Laundering Act provides for value-based confiscation of the proceeds of money laundering. Based on section 13(4) of the Act, extended confiscation is also possible. Section 39 of the Bribery Act provides for the recovery of bribes from the offender to the State.*

*The Prevention of Money Laundering Act contains provisions on the freezing and seizure of proceeds of money laundering (sections 7, 12). Certain general provisions relating to the identification and seizure of assets are contained in Chapter VI of the Code of Criminal Procedure and CIABOC Act. Additionally, the identification and tracing of corruption proceeds can be conducted based on the Financial Transaction Reporting Act.*

*Sections 11 and 15 of the Prevention of Money Laundering Act address the appointment of a receiver to administer frozen or confiscated property by the Court.*

*Section 4 of the Prevention of Money Laundering Act contains the presumption of unlawful origin of assets in money laundering cases. A similar presumption of the unlawful origin of assets in illicit enrichment cases is contained in section 23A(1) of the Bribery Act.*

*Section 13(2) of the Prevention of Money Laundering Act and section 28A(1) of the Bribery Act provide for protection of the rights of bona fide third parties in confiscation proceedings.*

*Bank secrecy is not an obstacle to domestic criminal investigations and particularly the investigation and seizure of bank, financial or commercial records, as follows from section 5(1)(d) of the CIABOC Act, section 16 and 27 of the Prevention of Money Laundering Act and section 18 and 31 of the Financial Transactions Reporting Act.*

*Statute of limitations; criminal record (articles 29, 41)*

*Based on section 456 of the Criminal Procedure Code, the statute of limitations applicable to general offences (including corruption offences) is 20 years.*

*Previous convictions in other States are not admissible in Sri Lanka.*

*Jurisdiction (article 42)*

*Jurisdiction is based on the Judicature Act, read with section 11 of the Code of Criminal Procedure Act. Section 9(f) of the Judicature Act establishes jurisdiction over offences committed by Sri Lankan citizens outside the country. The current legislation does not cover foreign participatory acts to money laundering. Sri Lanka is specifically considering the possibility of establishing its jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite him.*

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Although there is no a specific statutory provision to that effect, Sri Lankan court can consider corruption as a relevant factor to annul or rescind a contract or withdraw a concession or similar instrument or take any other remedial action based on common law principles.

Parties who have suffered damage may seek remedies based on the Civil Procedure Code against others' unjust enrichment.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

CIABOC is a specialized agency tasked with the investigation and prosecution of corruption offences (bribery, illicit enrichment, and offences under the Declaration of Assets and Liabilities Law). Three members of the Commission are appointed by the President and submit regular annual reports directly to him and thereafter to the Parliament. Members and officers of the Commission receive regular training.

Money laundering, embezzlement and other Penal Code offences are investigated by the police, who have a special unit focusing on corruption offences, and prosecuted by the Attorney General's Office. Other relevant agencies include the Financial Intelligence Unit and the Public Service Commission.

Sri Lankan authorities would cooperate with and provide necessary information to the CIABOC. Public officials have a duty to report corruption offences to the Commission under the Establishments Code.

Entities in the private sector may report corruption to the Commission based on section 4 of the CIABOC Act. Financial institutions and other entities are required to report suspicious transactions in relation to financial activities pursuant to the Prevention of Money Laundering Act.

## **2.2. Successes and good practices**

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Comprehensive coverage of subjects, elements and penalties for bribery offences in the Bribery Act.
- Section 21 of the Bribery Act criminalizing offering of any gratification to any public servant within one year before or after any dealings with that public servant's department, as a measure facilitating the prosecution of corruption offences.
- Section 24 of the Bribery Act providing for the punishment of a public servant who accepted any gratification offered in consideration of his doing or forbearing from any act, regardless of him not actually having the power, right or opportunity therefor, the lack of his intention, or that he did not in fact so act or forbear.

- *Comprehensive illicit enrichment provisions set up in section 23A of the Bribery Act, also covering family members of implicated public officials in combination with a system of asset declarations of public officials.*

### **2.3. Challenges in implementation**

*The following steps could further strengthen existing anti-corruption measures:*

- *Take necessary legislative measures to implement article 16 of UNCAC.*
- *Consider criminalizing trading of influence.*
- *Consider adopting specific legislation in accordance with article 21 of UNCAC in order to criminalize bribery in the private sector.*
- *Furnish copies of the laws that give effect to article 23 of UNCAC to the Secretary-General of the United Nations.*
- *Criminalize interfering with a witness or impeding a witness in all kinds of cases involving corruption offences.*
- *Consider directly stipulating in the Bribery Act that the definition of “person” covers both natural and legal persons.*
- *More clearly stipulate procedures applied with regard to release on bail.*
- *Consider promoting the reintegration into society of persons convicted of offences established in accordance with UNCAC.*
- *Consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of corruption offences.*
- *Adopt measures to encourage persons who participate or have participated in the commission of corruption offences, other than those stipulated in the Bribery Act, to supply information to competent authorities for investigative and evidentiary purposes.*
- *Consider adopting additional measures in the domestic legal system to ensure that persons reporting facts concerning corruption offences are protected against any unjustified treatment.*
- *Adopt such measures as may be necessary to enable freezing, seizure and confiscation of proceeds derived from all offences established in accordance with the Convention.*
- *Introduce provision in the relevant legislation providing for the administration by the competent authorities of frozen, seized or confiscated property representing proceeds of all offences under the Convention.*

- *Consider adopting legislative or other measures that would enable the consideration of previous convictions of an alleged offender, particularly during trial and sentencing.*
- *Consider adopting additional measures in the domestic legal system to ensure that entities or persons who suffered damage as a result of acts of corruption have the right to initiate legal proceeding against those responsible for the damage in order to obtain compensation.*

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

*The following forms of technical assistance could assist Sri Lanka in more fully implementing the Convention:*

- *Assistance in conducting an assessment of the effectiveness of measures adopted to criminalize active and passive bribery of national public officials.*
- *Summary of good practices, lessons learned, model legislation legislative drafting, legal advice, on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the criminalization of bribery of foreign public officials and officials of public international organizations.*
- *Summary of good practices, lessons learned, model legislation legislative drafting, legal advice, on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the criminalization of bribery in the private sector.*
- *Summary of good practices, lessons learned, model legislation legislative drafting, legal advice, on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the liability of legal persons.*
- *Legal advice, on-site assistance by an anti-corruption expert and development of an action plan for implementation with regard to the reintegration into society of persons convicted of corruption offences.*
- *Model legislation, legal advice, on-site assistance by an anti-corruption expert with regard to the protection of witnesses, experts and victims.*
- *Model legislation, legal advice, on-site assistance by an anti-corruption expert with regard to the protection of reporting persons.*
- *Summary of good practices, lessons learned, legislative drafting, legal advice with regard to cooperation with law enforcement authorities.*
- *Summary of good practices, lessons learned, model legislation, legislative drafting, legal advice with regard to taking into account criminal records from other States in domestic criminal proceedings.*

- *Summary of good practices, legal advice, on-site assistance by an anti-corruption expert, legislative drafting with regard to the implementation of article 42 of the Convention on jurisdiction.*
- *Assistance in conducting an assessment of the effectiveness of measures adopted to implement article 34 of the Convention on the consequences of acts of corruption.*
- *Summary of good practices, legal advice, on-site assistance by an anti-corruption expert, legislative drafting and development of an action plan for implementation with regard to compensation for damage resulting from acts of corruption.*

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

##### Extradition (art. 44)

*Extradition is governed by the Extradition Law and the responsible authority for extradition is the Minister of Defence. Extradition may be provided without a treaty to Commonwealth countries that have been designated by order in the Gazette. A treaty is otherwise required for all other countries. For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. As a dualist country, international treaties require enabling domestic legislation to be implemented in Sri Lanka.*

*Extradition is subject to dual criminality and is limited to the extent that not all offences established under the Convention have been criminalized. However, the broad provision in the Extradition Act referring to offences under international crime control conventions would seem to cover all UNCAC offences (see the Extradition (Amendment) Act No. 48 of 1999, Section 5).*

*Sri Lanka does not consider the Convention as the legal basis for extradition in respect to any corruption offences and has not made the requisite notification to the United Nations.*

*Sri Lanka is party to four bilateral extradition treaties, with Hong Kong (China), India, Italy and the United States of America. Simplified extradition arrangements are available under the Commonwealth Scheme on Extradition (London Scheme). Requests for extradition must be sent through diplomatic channels to the responsible authority for extradition, the Minister of Defence.*

*Under Sri Lanka's treaties, extraditable offences are those punishable according to the laws of both States by imprisonment for more than one year or a more severe penalty (extradition treaty with the USA (article 2(1)) and, additionally in the case of Hong Kong, those listed in a schedule in the treaty (Hong Kong (China) treaty, article 2(1)). This would include all UNCAC offences. For extradition to Commonwealth countries with which no treaty is in place, the offence must also be described in a list in the Extradition Law and be punishable by at least one year.*

*Nationality is not a ground for refusing extradition under the Extradition Law; however, under Sri Lanka's bilateral treaty with*

*Hong Kong (China), nationality is a discretionary ground for refusing extradition, and the obligation to promptly submit the case for prosecution where extradition of a national is refused is not addressed. The Judicature Act, which establishes the jurisdiction of the court, does not provide for an obligation to submit the case for prosecution if extradition has been refused. No requests for extradition of nationals have been received. No information was available from Sri Lankan authorities before or during the country visit as to whether fiscal offences satisfy the one-year imprisonment term to be extraditable under Sri Lanka's law and treaties.*

*The reviewing States noted that it was difficult to assess in detail Sri Lanka's practice of granting extradition in corruption cases due to the limited availability of information, the absence of data on requests made to Sri Lanka and any requests that Sri Lanka has refused, and, more generally, the absence of a specific system for collecting data. The obligation to consult with a requesting State before refusing extradition is not addressed in the Extradition Law and all bilateral treaties.*

*The issues of fair treatment, non-discrimination and the political offence exception have not been invoked to date.*

*Transfer of sentenced persons; transfer of criminal proceedings (arts. 45, 47)*

*Sri Lanka has enacted the Transfer of Offenders Act, No. 5 of 1995<sup>1</sup> and bilateral agreements on the transfer of sentenced persons with Hong Kong (China), India, Kuwait, Maldives, Pakistan and the United Kingdom. To date, no case examples of transfer of persons sentenced for corruption offences were reported.*

*There is no law or practice on the transfer of criminal proceedings.*

*Mutual legal assistance (art. 46)*

*Sri Lanka's Mutual Assistance in Criminal Matters Act (MACMA) provides the legal basis for mutual legal assistance (MLA). MLA is subject to dual criminality and, except for Commonwealth countries designated by order in the Gazette, the existence of a treaty. Such treaties are in force with Hong Kong (China), Pakistan, Thailand and India. For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. Sri Lanka also subscribes to the Commonwealth (Harare) Scheme on MLA and assistance can be provided in the absence of a treaty on a case-by-case basis on the grounds of reciprocity.*

*The central authority for MLA is the Secretary to the Minister of Justice. Through INTERPOL, the Financial Intelligence Unit of Sri Lanka and other investigative agencies have, on the basis of reciprocity, provided informal mutual legal assistance on numerous occasions outside the statutory provisions.*

*MLA is limited to the extent that not all offences established under the Convention have been criminalized. However, the dual criminality requirement may be waived for MLA for a serious offence recognized under the law of Sri Lanka or of a specified country, which would not encompass UNCAC offences not recognized in either Sri Lanka or the requesting country. There have been no cases where Sri Lanka*

---

<sup>1</sup> <http://www.lawnet.lk/process.php?st=1995Y0V0C5A&hword=%27%27&path=5>

*provided assistance in the absence of dual criminality. No information was available as to whether Sri Lanka would render non-coercive assistance if the offence was not of a serious nature.*

*There have been no corruption-related requests and no requests for MLA have been refused by Sri Lanka to date. As a matter of practice, Sri Lanka appears to consult with requesting countries before refusing or postponing MLA. There have been no cases where assistance was postponed on the grounds of an ongoing criminal matter.*

*Representatives from the Attorney General's office explained that evidence that is exculpatory to an accused would not have to be disclosed, although there have been no such cases to date.*

*Furthermore, it was explained that Sri Lanka provides grounds for refusal as a matter of practice, although there is no provision to this effect in the MACMA, and an example was provided.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)*

*Sri Lanka is a member of the Egmont Group of Financial Intelligence Units and its law enforcement agencies also cooperate through INTERPOL. Sri Lanka's Financial Intelligence Unit has entered into agreements on mutual legal assistance that provide for the exchange of information and enhance cooperation between law enforcement agencies. Sri Lanka could use UNCAC as a basis for direct law enforcement cooperation.*

*Joint investigations are provided for in agreements entered into with other States and could be undertaken on a case-by-case basis through the establishment of memoranda of understanding or other agreements or arrangements. Examples of non-corruption related joint investigations were provided.*

*Although there are no specific legal provisions to allow for special investigative techniques, there is no prohibition to permit the use of such techniques as long as the evidence collated is in an admissible form.*

### **3.2. Successes and good practices**

- Sri Lanka may provide assistance in the absence of dual criminality for requests involving serious offences, and it was explained that these would include UNCAC offences.*
- The forms for MLA requests included in the schedule to the MACMA provide certainty to requesting countries as to the required content for MLA requests.*

### **3.3. Challenges in implementation**

*The following steps could further strengthen existing anti-corruption measures:*

- Adapt information systems to allow Sri Lanka to collect data on the origin of international cooperation requests, the timeframe for their execution, and the response provided, including the offences involved and any grounds for refusal.*

- *Review the list of gazetted Commonwealth countries to ensure that all Commonwealth countries are covered (for both extradition and MLA).*
- *With respect to extradition, enhance knowledge of the extradition procedure and the role of the responsible authority for determining extradition requests among relevant authorities.*
- *Concerning extradition to Commonwealth countries with which no treaty is in place, consider whether the list-based approach to extradition affords sufficient flexibility to grant extradition to these countries for specific acts of corruption and to amend the list as needed to respond to corruption-related requests, including in future cases.*
- *Consider reviewing domestic requirements regarding the application of multilateral treaties such as the Convention as a legal basis for extradition.*
- *Provide the notifications under paragraph 6 of art. 44 and paragraphs 13 and 14 of art. 46.*
- *Amend relevant bilateral treaties to ensure that nationality is not a ground for refusing extradition and to include the obligation to promptly submit a case for prosecution where extradition of a national is refused.*
- *Include the aut dedere aut judicare obligation in its future extradition treaties.*
- *Consider adopting measures establishing that Sri Lanka will consider enforcing the remainder of a foreign sentence where extradition of nationals is refused.*
- *Ensure that requests for extradition regarding fiscal offences would not be refused.*
- *Amend the Extradition Law and relevant bilateral treaties to include a provision on the obligation to consult with a requesting State before refusing extradition.*
- *With respect to MLA, include appropriate measures to facilitate the provision of non-coercive MLA when the offence is not of a serious nature in the MACMA and MLA treaties.*
- *Take appropriate measures to render non-coercive assistance (para. 9, art. 46).*
- *Consider comprehensively reviewing the forms for MLA requests against the measures set forth in paragraphs 15 and 16 of article 46 to ensure adequate guidance to requesting countries.*
- *Consider adopting a checklist for MLA to serve as an administrative tool for authorities handling MLA requests.*
- *Consider clarifying the manner in which MLA requests are executed, particularly in the case of non-treaty partners (art. 46, para. 17).*
- *Continue to consider adopting relevant measures to allow for evidence to be taken and hearings to be conducted in criminal cases by video, including through relevant amendments to the Evidence Ordinance.*

- Review legislation and procedures with regards to the disclosure of evidence exculpatory to an accused.
- Amend the MLA law to add a limitation on use clause.
- Consider including a confidentiality provision in the MLA Act, in particular for non-treaty and non-Commonwealth countries
- Amend the MACMA to provide that grounds for refusal shall be communicated.
- Amend the MACMA to include a provision on the timely execution of MLA requests and the provision of information on the status of requests.
- Consider specifying legislation and future treaties to provide greater legal certainty with regards to postponing MLA on the ground of ongoing criminal matters.
- Amend the MACMA and relevant treaties to include a duty to consult before refusing or postponing MLA.
- Strengthen measures and efforts in international law enforcement cooperation, in particular channels of communication and cooperation in the investigation of specific cases.

#### **3.4. Technical assistance needs identified to improve implementation of the Convention**

*Sri Lanka indicated that it would require technical assistance, including legal advice and capacity-building, on extradition, MLA and the transfer of criminal proceedings. In addition, it would require legal and technical assistance to assess the effectiveness of its measures on the transfer of offenders and the use of special investigative techniques. Furthermore, Sri Lanka indicated that a summary of good practices/lessons learned and capacity building programmes would assist in enhancing law enforcement cooperation.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. Sri Lanka signed the Convention on 15 March 2004 (C.N.265.2004.TREATIES-7) and ratified it on 31 March 2004 (C.N.310.2004.TREATIES-8).
8. The implementing legislation includes:
  - Bribery Act [Cap. 26]
  - Commission to Investigate Allegation of Bribery or Corruption Act No. 19 of 1994
  - Prevention of Money Laundering Act No. 5 of 2006, as amended by Act No. 40 of 2011
  - Penal Code [Cap. 25]
  - Code of Criminal Procedure Act No 15 of 1979 [Cap. 26]
  - Judicature Act No. 2 of 1978

- Declaration of Assets and Liabilities Law, No 1 of 1975
  - Financial Transactions Reporting Act no 6 of 2006
  - Bail Act No 30 of 1997
  - Extradition Law (No. 8 of 1977, as amended by Act 48 of 1999)
  - Mutual Assistance in Criminal Matters Act (No. 25, 2005)
9. The Convention has become an integral part of Sri Lanka's domestic law following ratification of the Convention on 31 March 2004 and entry into force of the Convention for Sri Lanka.

## **B. Legal system of Sri Lanka**

### *General*

10. The Roman Dutch Law is the common law of the country. However, the impact on the common law system derived from the English law has had a much greater influence on the laws of Sri Lanka than the Roman tradition. Yet, the Roman Dutch Law remains the residuary or the common law of Sri Lanka. The common law has been modified in many directions, both expressly and by implication by statutory law and judicial decisions.
11. Criminal law and procedure in Sri Lanka is governed by the Penal Code and the Criminal Procedure Code. Civil cases are governed by the Civil Procedure Code, which shows the influence of Indian, English and American rules of procedure. The constitutional and administrative law of Sri Lanka has been derived predominantly from the Anglo-American system while the commercial law of Sri Lanka is almost wholly based on the principles of English commercial law. The influence of the Roman Dutch Law is found in the areas of the law relating to succession, persons, property and obligations. The law of delict (that is the law governing civil wrong-doing) is predominantly based on the Roman-Dutch Law.

### *Structure of the Courts*

12. The hierarchy of Courts of first instance in Sri Lanka is set out in Section 2 of the Judicature Act No. 2 of 1978. Primary Courts, Magistrate's Courts, District Courts and High Courts are Courts of first instance. High Courts exercise appellate and review jurisdiction in some matters. The Court of Appeal and the Supreme Court are the Appellate Courts.

## **C. Previous assessments of anti-corruption measures**

13. In 2007, the United States Agency for International Development (USAID) reviewed Sri Lanka's anti-corruption laws and institutions. Three reports, "Synopsis of Anti-Corruption and Related Laws" (August 2007), "Bribery and Corruption in Sri Lanka: Strengthening the Institutional Framework" (White Paper, August 2007) and "Defeating the Dragon: Weapons for Fighting Corruption" (White Paper, August 2007), are available on the website of the Commission to Investigate Allegations of Bribery or Corruption, <http://www.ciaboc.gov.lk>.

## **D. Implementation of selected articles**

## Chapter III. Criminalization and law enforcement

### **Article 15 Bribery of national public officials**

#### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

14. Sri Lanka has cited the following implementation measures: Sections 14(a), 16(a), 17(a), 19(a), 20(a), 21 (a) and (b), 22(a) and (b), 88, 89, 90 of the Bribery Act.

##### **Section 14(a)**

A person –

(a) who offers any gratification to a judicial officer, or to a Member of Parliament, as an inducement or a reward for such officer's or Member's doing or forbearing to do any act in his judicial capacity or in his capacity as such Member, or

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence under the preceding provisions of this section for any trade union or other organization to offer to a Member of Parliament, or for any such Member to accept from any trade union or other organization, any allowance or other payment solely for the purposes of his maintenance.

##### **Section 16(a)**

A person -

(a) who offers any gratification to any police officer, peace officer, or other public servant, employed in any capacity for the prosecution, detection or punishment of offenders, or to an officer of a court, as an inducement or a reward for such officer's or servant's interfering with the due administration of justice, or procuring or facilitating the commission of any offence, or protecting from detection or punishment the perpetrator of any offence, or abusing his official powers to the injury or detriment of any person, or

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees.

##### **Section 17(a)**

A person -

(a) who offers any gratification to a public servant as an inducement for a reward for such public servant's giving assistance or using influence in the promotion of the procuring of any contract with the Government for the performance of any work, the providing of any service, the doing of anything, or the supplying of any article, material or substance, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof, or

shall be guilty of an offence punishable with rigorous imprisonment for a term of not

more than seven years and a fine not exceeding five thousand rupees.

**Section 19(a)**

A person -

(a) who offers any gratification to a public servant as an inducement or a reward for that public servant's performing or abstaining from performing any official act, or expediting, delaying, hindering or preventing the performance of any official act whether by that public servant or by any other public servant, or assisting, favouring, hindering or delaying any person in the transaction of any business with the Government, or

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence for a public servant to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive;

Provided further that section 35 of the Medical Ordinance shall not entitle a medical practitioner who is a public servant to solicit or accept any gratification.

**Section 20(a)**

A person -

(a) who offers any gratification to any person as an inducement or a reward for -

(i) his procuring from the Government the payment of the whole or a part of any claim, or

(ii) his procuring or furthering the appointment of the first-mentioned person or of any other person to any office, or

(iii) his preventing the appointment of any other person to any office, or

(iv) his procuring, or furthering the securing of, any employment for the first-mentioned person or for any other person in any department, office or establishment of the Government, or

(v) his preventing the securing, of, any employment for any other person in any department, office or establishment of the Government, or

(vi) his procuring, or furthering the securing of, any grant, lease or other benefit from the Government for the first-mentioned person or for any other person, or

(vii) his preventing the securing of any such grant, lease or benefit for any other person, or

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

**Section 21(a) and (b)**

A person -

(a) who, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any gratification to any public servant employed in that department, office or establishment, or

(b) who, within one year before or after his having dealings of any kind with the Government through any department, office or establishment of the Government, offers any gratification to any public servant employed in that department, office or establishment, or

(c) who, being a public servant, solicits or accepts any gratification the offer of which is an offence under this section, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided, however, that such offer of a gratification to a public servant as is referred to in paragraph (b) of this section shall not be an offence under this section if the offeror proves that the gratification was bona fide offered for a purpose not connected with and not relating to such dealings as are referred to in that paragraph and that when he offered the gratification he had no hope or expectation of having any such dealings or he did not intend that the gratification should be an inducement or a reward for that public servant's doing or forbearing to do any act connected with or relating to any such dealings.

**Section 22(a) and (b)**

A person -

(a) who offers any gratification to any member of a local authority, or of a scheduled institution, or of the governing body of a scheduled institution, as an inducement or a reward for -

- (i) such member's voting or abstaining from voting at any meeting of such local authority, scheduled institution, or governing body or of a committee thereof in favour of or against any measure, resolution or question submitted to such local authority, scheduled institution, governing body, or committee, or
- (ii) such member's performing, or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act, or
- (iii) such member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or

(b) who offers any gratification to any officer or employee of any local authority, or of any scheduled institution, as an inducement or a reward for -

- (i) such officer's or employee's performing or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act, or
- (ii) such officer's or employee's procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person, or

(b) who offers any gratification to any officer or employee of any local authority, or of any scheduled institution, as an inducement or a reward for -

- (i) such officer's or employee's performing or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act, or
- (ii) such officer's or employee's procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees.

### **Section 88**

For the purposes of this Act a person offers a gratification if he or any other person acting with his knowledge or consent directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any gratification to or for the benefit of or in trust for any other person.

### **Section 89**

For the purposes of this Act -

- (a) a person solicits a gratification if he, or any other person acting with his knowledge or consent, directly or indirectly demands, invites, asks for, or indicates willingness to receive, any gratification, whether for the first mentioned person or for any other person, and
- (b) a person accepts a gratification if he, or any other person acting with his knowledge or consent, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any gratification, whether for the first mentioned person or for any other person.

### **Section 90**

In this Act, unless the context otherwise requires -

“appointed date” means the 1st day of March, 1954;

“bribery” means the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of this Act, or any other act in contravention of any such provision;

“Commission” means the Commission to Investigate Allegations of Bribery or Corruption established by the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994;

“Director-General” means, the Director-General for the Prevention of Bribery and Corruption appointed under the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994;

“commission of inquiry” means a commission of inquiry appointed under this Act;

“gratification” includes -

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable,
- (b) any office, employment or contract,
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part,
- (d) any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal

nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty, and

(e) any offer, undertaking or promise of any gratification within the meaning of the proceeding paragraphs (a), (b), (c) and (d);

“Local authority” means any Municipal Council, Urban Council, Pradeshiya Sabha, Board of Health, or Board of Improvement, and includes –

(a) a committee of any such Council, and

(b) a committee appointed by an Urban Council under section 29 of the Urban Councils Ordinance, or by a Pradeshiya Sabha under the Pradeshiya Sabhas Act, No. 15 of 1987;

\* “public servant” includes a Minister of the Cabinet of Ministers, a Minister appointed under Article 45 of the Constitution, Speaker, Deputy Speaker, Deputy Chairman of Committees, a Deputy Minister, the Governor of a Province, a Minister of the Board of Ministers of a Province, a Member of Parliament, every officer, servant or employee of the State or any Chairman, director, Governor, member, officer or employee, whether in receipt of remuneration or not, of a Provincial Council, local authority or of a scheduled institution, or of a company incorporated under the Companies Act, No. 17 of 1982, in which over fifty per centum of the shares are held by the Government, a member of a Provincial Public Service, every juror, every licensed surveyor and every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority:

Provided that where any local authority has been dissolved and the administration of the affairs of that authority has been vested in any person, every employee of that local authority immediately before its dissolution who continues in employment after such dissolution, shall be deemed for the purpose of this Act, to be a public servant;

“scheduled institution” means any such board, institution, corporation or other body as is for the time being specified in the Schedule to this Act, and any board, institution, corporation or other body which is deemed under the provisions of any enactment to be a scheduled institution within the meaning of this Act, and includes any company, whether public or private or other body

\* The amendment made to the principal enactment by Act No. 20 of 1994, shall -

\*(a) in so far such amendment relates to a Governor of a Province, Minister of a Board of Ministers of a Provincial Council or a member of a Provincial Public Service, be deemed, for all purposes, to have come into force on November 14, 1987;

(b) in so far as such amendment relates to any other person, be deemed, for all purposes, to have come into force on the date of commencement of the principal enactment - See section 16 (2) of Act No. 20 of 1994.

## 15. Regarding examples of implementation Sri Lanka cited the following cases.

### **1. CHANDRAPALA PERERA v. THE ATTORNEY-GENERAL**

SUPREME COURT  
G. P. S. DE SILVA, CJ.,  
PERERA, J. AND  
BANDARANAYAKE, J.  
S.C. APPEAL NO. 169/96  
C.A. NO. 157/91  
H.C. COLOMBO NO. 8243/84 27  
FEBRUARY, 1998

*Bribery Act - Sections 19 (b) and 19 (c) of the Act - Acquittal on one count Conviction on the other count on the evidence of same witness - Rejection of evidence by implication - Order required to be made at the conclusion of trial - S. 203 of the Code of Criminal Procedure Act.*

The appellant was a labour officer. He was charged that he being a public servant solicited a gratification of Rs. 3,000.00 from the complainant on 17. 1. 83 to assist the complainant to avoid payment of EPF dues and accepted Rs. 1,500.00 out of that sum on 22. 1. 83, offences punishable under sections 19 (b) and 19 (c) of the Bribery Act. On 22. 1. 83 the appellant visited the complainant's work place to collect the gratification where the complainant was present with a decoy Police Officer from the Bribery Department who posed off as the complainant's son and

gave the appellant Rs. 1,500.00 which he put into his-trouser pocket. The money was recovered from his pocket. He, however, denied the charges and said that the money might have been introduced into his pocket when he met the complainant and the police decoy. The Magistrate believed the complainant's version; but convicted the appellant only on the charge of solicitation, in view of the fact that the charges specifically alleged that the appellant accepted the gratification from the complainant. The Magistrate "discharged" the appellant on the charge of acceptance.

**Held:**

1. The evidence of solicitation was in respect of 17. 1. 83 and that solicitation of the gratification had been established beyond reasonable doubt.
2. In terms of the provisions of section 203 of the Code of Criminal Procedure Act at the conclusion of the trial the Judge has to record a verdict of conviction; hence the appellant was entitled to an acquittal instead of a "discharge" on the charge of acceptance.
3. Having regard to the fact that the Magistrate had accepted the complainant's version and in the light of all the facts and circumstances and the ground on which the Magistrate declined to convict the appellant on the charge of accepting the gratification, it cannot be said that this was a case in which the conviction on the solicitation charge was based on evidence which had by implication been rejected by the acquittal on the other count.

**Cases referred to**

1. *Nalliah v. Herat* 54 NLR 473, at 475.
2. *Sambasivam v. Public Prosecutor, Federation of Malaya* (1950) AC 479.
3. *Raphael v. The State* 78 NLR 29.

**2. 1967 Present: H. N. G. Fernando, C.J., and Alles, J.**

**L. DE S. A. GUNASEKARA**, Appellant, and **THE QUEEN**, Respondent

*S. C. 6/67-D. C. Colombo, 21/Bribery*

*Bribery Act (Cap. 26)-Sections 14 and 20-" In his capacity as a Member of Parliament "- " Procuring any grant or benefit for another person "-Meaning of words " procure ", " grant " and " benefit ".*

The accused-appellant was charged on three counts. On the first count he was charged under s. 14 of the Bribery Act with having accepted, in his capacity as a Member of Parliament, a gratification of Rs. 3,000 as an inducement or reward for doing a certain act, namely, procuring for one Dharmasena a licence for the sale of liquor. Count No. 2 charged the appellant under s. 20 of the Bribery Act with having accepted the said sum as an inducement or reward for procuring for Dharmasena a grant from the Government, namely, a grant of a licence for the sale of liquor. The third count was an alternative to count 2, that he accepted the gratification as an inducement or reward for procuring for Dharmasena a benefit from the Government, namely, a licence for the sale of liquor, in breach of s. 20 of the Bribery Act.

The evidence established the fact that the accused solicited a gratification of Rs. 3,000 from Dharmasena on a promise that he would get the licence issued to Dharmasena, and on the pretext that the money was to be given as a bribe to the Minister for Home Affairs for the issuing of the licence. The Minister, whose evidence was believed in toto by the trial Judge, testified that the accused, as a Member of Parliament of the Government Party, had direct access to him and often saw him in his office on various matters. He said also that Members of Parliament often mention to him such matters as applications for liquor licences, but that such matters would not be matters of record. He stated that the only reason urged by the accused in connection with the application of a man from Eheliyagoda for a liquor licence was that the man had been a strong supporter of the accused at his election. That reason had nothing to do with the accused's constituency or with the interests of good Government. Further, the Minister denied that he had requested or taken any money from the accused in connection with the matter of an application for a liquor licence.

Held, (i) that the evidence failed to establish one element required by s. 14 of the Bribery Act, viz., that the gratification was accepted as an inducement for the accused doing an act in his capacity as a Member of Parliament. The undertaking that the accused would get a liquor licence for Dharmasena was not an undertaking to do any act in his capacity as a Member of Parliament.

(ii) that the word " procure " in s. 20 of the Bribery Act means obtaining for another person by one's care or efforts.

(iii) that s. 20 (1) (a) (vi) of the Bribery Act does not refer only to a grant of some proprietary right or interest enjoyed by the Crown. The expression "grant or benefit" in this context must be widely construed. Further, the operative word is the word " benefit ", the ordinary wide meaning of which is not narrowed by its association with the words " grant " or " lease " which precede it.

**Filed on**

07.08.08

**Case No.**

B 1765/08

**Name of Suspect**

K.A Pemsiri Indrajith

Inspector of Police, Police Station – Panadura

**Result**

Acquitted – 19.03.2010

**Filed on**

01.06.09

**File No.**

R/72/01

MC 32142/3

**Appeal No.**

HCRA 64/2009

**Name of Suspect**

1. Wannu Arachchige Don Kingsley Perera - K.K.S.

2. Kalubowila Punya Keerthi Alwis - Citizen

**Result**

Conviction affirmed - 04.03.2010

**Filed on**

12.06.06

**Case No.**

B 1633/06

**Name of Suspect**

Herath Mudiyanseelage Gedera Yuwaratne

PC 37766

Police Station – Matale

**Result**

Acquitted – 24.02.2010

**Convictions**

**Filed on**

20.09.06

**Case No.**

B 1662/06

**Name of Suspect**

A.A.Newton Henry Fernando

Mayor-Negombo Municipal Council

**Result**

Acquitted – 02.02.2010

**Filed on**

18.08.08

**File No.**

O/34/04

MC 66833/4

**Appeal No.**

SC(SPL)LA

251/09

**Name of Suspect**

Mary Vinifreeda Perera

Land Registrar & Addl. District Registrar

**Result**

Conviction and sentence affirmed - 21.01.2010

16. No comprehensive statistics on implementation were provided.

**(b) Observations on the implementation of the article**

17. The adoption of the specialized Bribery Act, which provides a relatively comprehensive coverage of the subjects, different elements, as well as punishment of the offences of

offering and accepting of bribes, satisfies the requirements of the Convention well. The referenced cases to a certain extent illustrate the application of the Bribery Act.

18. Specific provisions on different types of bribery of public officials are conducive to the implementation of the bribery offences and increasing the effectiveness of combating bribery. They are also important for the prevention of bribery, which one of the roles of the Bribery Act.
19. Sections 88 and 89 of the Bribery Act clearly penalize the “indirect” offering to, or the “indirect” acceptance of bribes by public officials. Section 90 of the Bribery Act provides a definition of “gratification” that is broad enough to include the various forms of “undue advantage”. However, the Bribery Act only provides for “offers” of bribes in its criminalization provisions, and does not specifically distinguish promises and offers. However, based on the provisions on “offer, undertaking and promise” in item (e) of the definition of “gratification” in Section 90, it can be inferred that the legislation includes the three elements of “promise”, “offering” and “giving” specified the Convention. Case examples regarding the situation where the solicitation of undue advantages by public officials constitutes an offence also strongly indicate that the offence of the acceptance of bribes is not limited to the actual receipt of bribes.
20. Section 21 of the Bribery Act provides that, in the context of a transaction involving the government, offering any gratification to any public servant within one year before or after that transaction shall constitute a bribery offence, unless the implicated person produces evidence to the contrary. That provision has a positive effect by easing the prosecution’s burden of proof of the essential element of the subjective purpose of offering gratification and is a good practice.
21. Section 24 of the Bribery Act provides that where a public servant has accepted any gratification relevant to his official capacity, he shall be guilty of an offence notwithstanding that he did not actually have the power to obtain an undue advantage for the bribe-giver or he accepted the gratification without intending to convey the undue advantage or he did not in fact convey that advantage. This provision provides a very broad coverage of combating bribery and refines and enriches the content of the concept of “solicitation” and thus is a good practice.
22. The reviewers note that different categories of persons are covered in the various sections of the Bribery Act, for instance Sections 14 (judicial officers and Members of Parliament), 16 (police officers and public servants) and Section 90 (definition of public servant).

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

23. Sri Lanka has cited the following implementation measures.

Sections 14(b), 15, 16(b), 17(b), 19(b), 19(c), 20(b), 21 (c), 22(c), 22(d), 24, 89 and 89A of the Bribery Act.

**Section 14(b)**

A person –

(b) who, being a judicial officer or a Member of Parliament, solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his judicial capacity or in his capacity as such Member,

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence under the preceding provisions of this section for any trade union or other organization to offer to a Member of Parliament, or for any such Member to accept from any trade union or other organization, any allowance or other payment solely for the purposes of his maintenance.

**Section 15.**

A Member of Parliament who solicits or accepts any gratification as an inducement or a reward for –

(a) his interviewing a public servant on behalf of any person, or

(b) his appearing on behalf of any person before a public servant exercising judicial or quasi-judicial functions,

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence under the preceding provisions of this section for a Member of Parliament to appear as an attorney-at-law before a court or before a statutory tribunal of which a public servant is not a member.

**Section 16(b)**

A person –

(b) who, being any such officer or servant, solicits or accepts any gratification as an inducement or a reward for such interfering, procuring, facilitating, protecting, or abusing as is referred to in paragraph (a) of this section,

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees.

**Section 17(b)**

A person –

(b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his giving assistance or using influence in the promotion of the procuring of any such contract as is referred to in paragraph (a) of this section, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof,

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

**Section 19(b)(c)**

A person –

(b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his performing or abstaining from performing any official act or for such expediting, delaying, hindering, preventing, assisting or favouring as is referred to in paragraph (a) of this section, or

(c) who, being a public servant solicits or accepts any gratification,

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence for a public servant to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive;  
Provided further that section 35 of the Medical Ordinance shall not entitle a medical practitioner who is a public servant to solicit or accept any gratification.

**Section 20(b)**

A person –

(b) who solicits or accepts any gratification as an inducement or a reward for his doing any of the acts specified in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi) and (vii) of paragraph (a) of this section, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

Section 21 (c) as cited under paragraph (a) above

**Section 22(c)(d)**

A person -

(c) who, being such member as is referred to in paragraph (a) of this section, solicits or accepts any gratification as an inducement or a reward for any such act, or any such abstaining, as is referred to in sub-paragraphs (i), (ii) and (iii) of that paragraph, or

(d) who, being such officer or employee as is referred to in paragraph (b) of this section, solicits or accepts any gratification as an inducement or a reward for any such act, or any such abstaining, as is referred to in sub-paragraphs (i) and (ii) of that paragraph, shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years and a fine not exceeding five thousand rupees.

**Section 24**

Where in any proceedings against any person for any offence under any section in this Part of this Act, it is proved that he accepted any gratification, having grounds to believe or suspect that the gratification was offered in consideration of his doing or forbearing to do any act referred to in that section, he shall be guilty of an offence under that section notwithstanding that he did not actually have the power, right or opportunity so to do or forbear or that he accepted the gratification without intending so to do or forbear or that he did not in fact so do or forbear.

**Section 89 as cited under paragraph (a) above**

**Section 89A**

A public servant who solicits or accepts a gratification which is an offence under this Act shall, if such solicitation or acceptance was made outside Sri Lanka, be deemed to have committed such offence within Sri Lanka, and accordingly the High Court holden in Colombo shall have jurisdiction to try such offence notwithstanding anything in any other law to the contrary.

24. Regarding implementation examples, Sri Lanka referred to case Chandrapala Perera Vs AG [1998 - 2 SLR pg 85] provided under article 15 (a) above.

25. Regarding statistical information, Sri Lanka referred to the information provided with regard to article 15 (a) above.

**(b) Observations on the implementation of the article**

26. Please see the comments to subparagraph (a) above.

**(c) Challenges related to the article**

27. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination;
2. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
3. Specificities in its legal system;
4. Competing priorities;
5. Limited capacity (e.g. human/technological/institution/other; please specify);
6. Limited resources for implementation (e.g. human/financial/other; please specify);
7. None;
8. Other issues (please specify).

**(d) Technical assistance needs**

28. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Assistance in conducting assessment of the measures adopted to criminalize active and passive bribery of national public officials.

None of these forms of technical assistance has been provided to Sri Lanka to-date.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

29. Sri Lanka has indicated that it did not implement the article under review.

**(b) Observations on the implementation of the article**

30. No legislative or other measures are adopted to implement paragraph 1, article 16 of the Convention. It was explained during the country visit that the possibility of the adoption of relevant measures is currently being discussed at the level of the Commission to Investigate Allegations of Bribery and Corruption. There are challenges and difficulties for Sri Lanka to implement this article, including the inadequacy of existing normative measures and specificities in its legal system. Sri Lanka is recommended to take necessary legislative measures to implement the article under review.

31. A series of needs for technical assistance in such aspects as a summary of good practices, experience and lessons, model legislation, legislative drafting, legal advice, anti-corruption experts' on-site assistance, and the formulation and implementation of an action plan are put forward.

**(c) Challenges related to the article**

32. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Specificities in its legal system;

**(d) Technical assistance needs**

33. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting;
4. Legal advice;
5. On-site assistance by an anti-corruption expert;
6. Development of an action plan for implementation.

None of these forms of technical assistance has been provided to Sri Lanka to-date.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

34. Sri Lanka indicated that the said offence falls in terms of the offence of Criminal Breach of Trust, as provided by Sections 386, 388, 389 and 392 of the Penal Code and Section 5(1) of the Public Property Act No 15 of 1982. These matters are investigated by the police, not CIABOC.

**Section 386 of the Penal Code.**

Dishonest misappropriation of property.

Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 388 of the Penal Code.**

Criminal breach of trust.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust.

### **Section 389 of the Penal Code**

Punishment for criminal breach of trust.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

### **Section 392 of the Penal Code**

Criminal breach of trust by public servant or by banker, merchant, or agent.

Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### **Section 5(1) of Offences against Public Property Act No 12 of 1982**

Any person who dishonestly misappropriates or converts to his own use any movable public property or commits the offence of criminal breach of trust of any movable public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding 20 years and with a fine of Rupees one thousand or three times the value of the property in respect of which such offence was committed, whichever amount is higher.

35. Regarding examples of implementation, Sri Lanka has referred to the following cases, which relate to criminal embezzlement by private actors, but contain principles relevant to the prosecution of government officials for the named offence.

#### **1. WALGAMAGE v. THE ATTORNEY-GENERAL**

SUPREME COURT  
FERNANDO, J.  
KULATUNGA, J. AND  
GOONEWARDENE, J.  
SC APPEAL NO. 38/90  
CA NO. 126/85  
MC MATARA NO. 5/83  
3<sup>RD</sup> DECEMBER 1990, AND  
1<sup>TH</sup> JANUARY AND 3<sup>RD</sup> MARCH 1991

*Penal Code - Criminal misappropriation and Criminal breach of trust - Sections 386 and 388 of the Penal Code - Whether an innocent taking in the first instance is essential to constitute the offence - Meaning of 'entrustment' in criminal breach of trust.*

The appellant was the Manager of a Rural Bank functioning in the premises of a multi-purpose co-operative Society ("M.P.C.S"). The Bank accepted savings deposits and granted small loans, and also carried on the business of a pawn broker. According to prescribed operating procedures, its cash balance at any given time should not have exceeded Rs. 5000/-. Whenever the Bank required cash, on the request of its cashier the appellant prepared a voucher and submitted it to the Manager M.P.C.S. for approval. Upon approval, a

cheque drawn in the name of the appellant was issued. The appellant would endorse it and present it to the cashier M.P.C.S. who would pay cash. The appellant was expected to hand over the cash to the cashier of the Bank. Fourteen cheques for Rs. 5000/- each had been issued, and in respect of ten of these, the M.P.C.S. cashier had paid cash to the appellant, which he had not handed over to the Bank's cashier. The appellant was convicted of criminal breach of trust in respect of the said sum of Rs. 50,000/-.

It was argued on behalf of the appellant that the offence of criminal breach of trust had not been made out because

(a) there had been no initial taking bereft of a dishonest intention, the offender being already in possession at the time the offence was committed.

(b) there had been no entrustment (of property) on the basis of true consent.

**Held:**

(1) Ex facie section 386 of the Penal Code does not impose a requirement that the initial taking must be innocent, but only that a dishonest intention must exist at the time of misappropriation or conversion. Insistence upon an initial innocent taking amounts to adding a further ingredient, which is not a permissible principle of interpretation.

Per Fernando, J.

"Illustrations (b), (c) and (f) to explanation 2 to section 386 are against learned President's Counsel's contention that criminal misappropriation deals with cases where the offender is already in possession, for they show that a person who finds property not in the possession of any one, and immediately misappropriates it is guilty of that offence."

2. In the instant case there was an entrustment of property within the meaning of section 388.

Per Fernando, J.

"entrustment" does not contemplate the creation of a trust with all the technicalities of the law of trust; it includes the delivery of property to another to be dealt with in accordance with an arrangement made either then or previously."

**Cases referred to:**

1. *A. G. v. Menthis* (1960) 61 NLR 561
2. *Ranasinghe v. Wijendra* (1970) 74 NLR 38
3. *King v. Kabeer* (1920) 22 NLR 105
4. *Rajendra v. State of Uttar Pradesh* AIR (1960) Allahabad 387
5. *Ram Dayal* (1886) P.R. No. 24 1886
6. *Shamsoodur* (1870) 2 N.W.P. 475
7. *Raza Husain* (1905) 25 A.W.N. 9, 2 Cr. L. 394
8. *Mc Iver* (1935) 69 M.L.J. 681
9. *Stickney v. Sinnatamby* (1886) 5 Tamb 112
10. *Peries v. Anderson* (1928) 6 Times 49
11. *Georges v. Saibo* (1902) 3 BR. 88

12. *Kanavadipillai v. Koswatta (1914) 4 Bal. N.C. 74*

13. *R v. Suppaih (1901) 5 NLR 119*

14. *S.C. 61 PC. Chilaw 29737; 4.3.1910, 6 C.L. Revision 137,153*

15. *Gratiaen Perera v. The Queen (1960) 61 NLR 522*

**APPEAL** from the judgment of the Court of Appeal reported in (1990) 2 Sri LR 212

*D.S. Wijesinghe, P.C., with Ananda Malalgoda, Nihal Somasiri and M.D. Dharmadasa* for accused-appellant.

*A.R.N. Fernando, S.S.C.* for Attorney General.

*Cur. adv. vult.*

July 10, 1991.

**FERNANDO, J.**

Special leave to appeal was granted in this case in view of conflicting decisions (in *A.G. v. Menthis*,<sup>(1)</sup> and *Ranasinghe v. Wijendra*,<sup>(2)</sup> and the decisions cited therein) upon the question whether to constitute the offence of criminal misappropriation or criminal breach of trust it is essential that the initial taking be innocent.

The Appellant was convicted of criminal breach of trust, in respect of a sum of Rs. 50,000/- while being employed as Manager of a Rural Bank. The Rural Bank accepted savings deposits, and granted small loans, and also carried on the business of a pawn broker. According to prescribed operating procedures, its cash balance at any given time should not have exceeded Rs. 5,000/-. If the Bank required cash, a sum not exceeding Rs. 5,000/- at a time was obtained from the Multi-Purpose Co-operative Society ("M.P.C.S.") within whose premises it functioned. The Bank's cashier would make an oral request for cash to the Appellant, who would prepare a voucher for that purpose, and submit it to the Credit Manager of the M.P. C.S. The latter was expected to satisfy himself that cash was actually required, and would then authorise a cheque to be drawn for the stipulated amount, in the name of the Appellant. A cheque would then be prepared, and duly signed, and delivered to the Appellant, who would endorse it; his endorsement would be authenticated by the Accountant, and the cheque would then be presented to the cashier of the M.P.C.S., who would pay cash. The Appellant was expected to hand over the cash to the cashier of the Bank.

Fourteen vouchers for Rs. 5,000/- each were prepared by the Appellant, at times when the cashier had not required cash, and had made no request for cash; the Credit Manager had approved the vouchers and sanctioned payment without due care. Fourteen cheques for Rs. 5,000/- each had been issued, and in respect of ten of these, the M.P.C.S. cashier had paid cash to the Appellant, which he had not handed over to the Bank's cashier. The Appellant was found guilty by the High Court of Matara of criminal breach of trust under section 391 of the Penal Code, and was sentenced to two years R.I., and a fine of Rs. 50,000/- (in default 1 1/2 years R.I.). The Court of Appeal while upholding the conviction, suspended the prison sentence for a term of five years, and affirmed the fine and default sentence, with appropriate directions to the High Court.

If there was an "entrustment", it was not merely of the cheque but also of the cash obtained in exchange. In *King u. Kabeer*,<sup>(3)</sup> a jail guard was entrusted with a railway warrant, and instructed to accompany a prisoner who had served his sentence to the railway station, to receive a train ticket in exchange for the warrant, and to give him the ticket. Having obtained the ticket the jail guard sold it. *De Sampayo, J.*, upheld an acquittal on a charge of criminal breach of trust in respect of the warrant. The trust in respect of the railway warrant was to deliver it to the proper officer at the railway station and to receive a ticket in exchange; although it was true that he had failed to perform the further duty of handing the ticket to the prisoner, that had no immediate connection with the trust in respect of the warrant. That case is distinguishable: there was no charge of criminal breach of trust in respect of the ticket, and in any event, the ticket was not "entrusted" by the prison authorities, but handed over by a third party, the railway officer. In the present case, the Bank had an arrangement with the M.P.C.S. whereby the latter would provide cash to designated officers of the Bank. The M.P.C.S., through one or more of its officers, provided cash, and as part of its internal procedure (and it is immaterial whether this was made known to the Bank or not) first issued a cheque through one officer, and

cash upon presentation of the cheque to another officer. That transaction cannot be separated into two distinct components: the delivery of a cheque subject to a "trust", and the delivery of cash in exchange for the cheque, free of such "trust". In pursuance of an arrangement with the Bank, the M.P.C.S. through its officers caused cash to be delivered to the Appellant, and it was part of the arrangement that this sum was "entrusted" to the Appellant to be handed over to the Bank's cashier. It is true that the officers of the M.P.C.S. did not themselves, personally, "entrust" the cash; they were no more than the hands which delivered the cash, there being an entrustment by the legal person, namely the M.P.C.S., whose business organisation they served.

It is possible that the Appellant had no dishonest intention on the first occasion (and perhaps even on the second) when he obtained cash in this way; it may well be that he obtained cash in anticipation of requests by the Bank's cashier in order to expedite the Bank's business, by immediately responding to a request for cash without having to spend time in going through the process of approval, documentation, and payment. But the sum obtained on the first occasion was not actually paid to the Bank's cashier. Hence it is reasonable to conclude that at least on the subsequent occasions, he had a dishonest intention at the outset. Learned President's Counsel submitted that the Prosecution evidence thus established the offence of cheating; and that criminal breach of trust had not been made out because

(a) there had been no initial taking bereft of a dishonest intention, and

(b) there had been no entrustment: because a trust implies confidence reposed by one person in another, and it is of the essence of confidence that it must be freely given and that there must be a true consent; there is no true consent, if consent is obtained as a result of a trick.

In support of his contention that the initial taking must be innocent, and that a dishonest intention must be formed subsequently, learned President's Counsel advanced three arguments. He conceded that *ex facie* section 386 does not impose such a requirement, but only that a dishonest intention must exist at the time of misappropriation or conversion to the offender's own use. Insistence upon an initial innocent taking amounts to adding a further ingredient, namely "whoever having obtained possession of any movable property without a dishonest intention thereafter dishonestly misappropriates or converts to his own use such movable property . . ." His first submission was that in respect of offences against property there are clear lines of demarcation in the Penal Code between those where the victim is in possession at the time the offence is committed (such as theft and cheating) and those where the victim is out of possession the offender being already in possession (such as criminal misappropriation and criminal breach of trust); all these offences are intended to be self-contained without any overlapping, so that the same act could not constitute both cheating and criminal misappropriation. He urged that "it is an established principle that criminal laws must be construed narrowly or in *favorem vitae aut libertatis*", citing Maxwell (*Interpretation of Statutes*, 12<sup>th</sup> Edition, p. 245):

"Similarly, statutes dealing with jurisdiction and procedure are, if they relate to the infliction of penalties, strictly construed: compliance with procedural provisions will be stringently exacted from those proceeding against the person liable to be penalised, and if there is any ambiguity or doubt it will, as usual, be resolved in his favour. This is so even though it may enable him to escape upon a technicality."

Secondly he contended that the Indian Courts had consistently taken this view; the decision in *Rajendra v. State of Uttar Pradesh*,<sup>(4)</sup> cited in the Court of Appeal judgment was not in line with the Indian trend.

In support of these two contentions reference was made to the observations of Weeramantry, J., in *Ranasinghe v. Wijendra* (*Supra*)

"This indeed would appear to be the understanding of this offence in India as well. Thus Ratanlal & Thakore begin their comment on this section with the observation that "criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender." The authors go on to point out that in this, respect the Penal Code is at variance with the English law according to which the intention of the accused only at the time of obtaining possession is taken into account.

So also the original texts of the Penal Law of India by Sir Hari Singh Gour himself would appear to draw this distinction. It is there stated: "The question whether the act is theft or misappropriation depends upon when

the dishonesty began - was it before or after the thing came into possession. This is a point of division as much between the two offences of theft and criminal misappropriation in the Code, as between criminal misappropriation and a civil wrong under English law." This absence of wrongful initial taking is stressed again for he observes in a later passage that in theft the initial taking is wrongful but in criminal misappropriation it is indifferent and may even be innocent but becomes wrongful by a subsequent change of intention or from knowledge of some new fact with which the party was not previously acquainted. The word "indifferent" in this passage would appear to refer to a neutral state of mind - that is where the doer has not affirmatively formed a wrongful intention at the time of taking.

Later editions of this celebrated work by other editors seem to depart however from the view of the distinguished author, for the 8th edition states that it is difficult to say that misappropriation cannot be committed if the accused had a dishonest intention at the moment of taking possession of the article. I would prefer on this point to follow the view expressed by Sir Hari Singh Gour himself. "(pp 42-43)"

Thirdly he urged that the *cursus curiae* in Sri Lanka was to regard innocent initial taking as an indispensable ingredient of criminal misappropriation, except for a brief interlude of ten years between *A. G. v. Menthis* and *Ranasinghe v. Wijendra* (Supra) this was the view expressed by professor G. L. Peiris (Offences under the Penal Code, p 460).

Neither the Penal Code nor any other statute lays down a principle of interpretation that there is no offence in the Penal Code must be presumed not to overlap. It is because the Criminal Procedure Code of 1898 recognised that there may be such overlapping that section 180(2) (corresponding to section 175(2) of the present Code of Criminal Procedure Act) provided that:

"If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished the person accused of them maybe charged with and tried at one trial for each of such offences . . ."

The first illustration to that section demonstrates that the same act could constitute the offence of causing hurt as well as of using criminal force. The principle that penal statutes are to be strictly construed does not apply where a statute is clear and unambiguous. I am therefore of the view that the suggested principles of interpretation cannot be applied so as to introduce an additional ingredient into the definition of an offence. It is unnecessary to consider when and how those principles could be utilised to resolve an ambiguity, because we are here concerned not with an ambiguity but with the imposition of an additional ingredient through interpretation. It is true that at the time the Penal Code was enacted in India larceny in English law did not include cases where property was taken without a dishonest intention; probably the offence of criminal misappropriation was intended to cover such cases. However, the definition actually adopted to give effect to that intention covers not only such cases, but extends also to cases where a dishonest intention existed at the outset. Illustrations (b), (c) and (f) to explanation 2 to section 386 are against learned President's Counsel's contention that criminal misappropriation deals with cases where the offender is already in possession, for they show that a person who finds property not in the possession of any one, and immediately misappropriates it is guilty of that offence. This explanation, is not an exception to, or an extension of, the section, but namely illustrates the principle contained therein. It serves to emphasise that all that is required is dishonesty at the time of the act of misappropriation or conversion.

The position in India is by no means consistent. Gour's view has not been acted upon in many instances. Cases referred to in the Commentaries on the Indian Penal Code include the following:

"A Hindu girl having picked up a gold necklet and made it over to a sweeper girl, the accused, the brother of the finder, represented to the latter that the necklet belonged to a person of his acquaintance and thus got possession of it from her. On inquiry by a police constable a few hours later, he repeated the representations, but afterwards gave up the necklet. These representations were found to be untrue to the knowledge of the accused. It was held that he had committed this offence (criminal misappropriation)." *Ram Dayal*,<sup>(5)</sup>.

"Where money is paid to a person by mistake, and such person, either at the time of the receipt or at any time subsequently, discovers the mistake, and determines to appropriate the money, that person is guilty of criminal misappropriation." *Shamsoudur*,<sup>(6)</sup>.

"A and B were about to travel by the same train from Benares City. A had a ticket for Ajudhia. B had two tickets for Benares Cantonment. A voluntarily handed over her ticket to B in order that he might tell her if it

was right. B under the pretence of returning A's ticket, substituted therefore one of his own, and kept A's ticket. It was held that the offence committed by B was that of criminal misappropriation rather than that of cheating." Raza Husain,<sup>(7)</sup>.

"Even though the accused when they induced the complainant to part with certain properties had the intention of deceiving him, a subsequent misappropriation by them of the property to their own use would amount to criminal breach of trust. The fact that there was a complete offence of cheating when the property was received would not prevent the accused being guilty of the offence of criminal breach of trust." Mc Iver,<sup>(8)</sup>.

[Ratanlal and Thakore, Law of Crimes, 22nd ed, pp 1040, 1041, 1045, 1051, Gour, Penal Law of India, 10th ed, pp 3450, 3459, 34601

In view of such decisions it is not surprising that the present edition of Gour's work (at p. 3453) states

"The argument that criminal misappropriation cannot be committed if the accused had dishonest intention at the time of taking possession of the article, cannot be accepted."

The first of the local cases relied on as establishing a *cursus curiae* is *Stickney v. Sinnatamby*,<sup>(9)</sup>. There, upon being asked for his gun by the accused, the complainant voluntarily parted with it. The accused ran away with it. It was held that the accused was wrongly convicted of theft and that he could not be convicted of cheating as there was no dishonest or fraudulent inducement to the complainant to deliver the gun. The conviction was altered to criminal misappropriation. In *Peries v. Anderson*,<sup>(10)</sup> the Appellant gave his chauffeur an identifiable 25-cent coin, and sent him to a boutique to buy cigarettes. The chauffeur placed the coin on the table, whereupon it rolled into the drawer, but the salesman denied receipt of the money and refused to give the cigarettes. When this was told to the Appellant, he insisted on searching the drawer, and found the coin; he then took the salesman to the Police Station, using some degree of force or compulsion. The Appellant was charged for that offence, and the question was whether he could justify the arrest of the salesman on the basis that the salesman had committed a cognisable offence. It was held that the salesman had not committed theft as "there was no taking of the property from (the chauffeur); ... there was nothing dishonest in the manner in which he acquired possession of it, but the dishonesty occurred when he denied the receipt of the money. This offence therefore was dishonest misappropriation."

These decisions are not authority for the principle that if a dishonest intention exists at the time possession is acquired, there can be no conviction for criminal misappropriation.

In *Georges v. Saibo*,<sup>(11)</sup> the payee of a cheque, having endorsed it, put it into an envelope with a letter addressed to his banker requesting that the proceeds be placed to his credit. The accused having come into possession of the cheque, endorsed it in favour of a Chetty who thereupon paid him the amount of the cheque, less his commission. The accused was found guilty under section 394 of dishonestly receiving stolen property. It was held in appeal that there was no definite evidence that the cheque had been stolen, for it might have been lost in the post. Faced with an imminent acquittal, Counsel suggested that the Court should consider whether the accused could be convicted of criminal misappropriations. Middleton, J., having held that on the evidence the only inference was that the accused had come dishonestly by the cheque, observed:

"Now all the cases which have been decided by the Indian Courts point to the conclusion that in order to constitute the offence of criminal misappropriation there must be first an innocent possession . . . and then a subsequent change of intention. If I find that the man dishonestly came by the cheque, as I do, although that would put him in a worse position morally than if he had come by it in such a way as would make him amenable under section 386, yet I am bound to confess that it is impossible to meet the weight of authority that has been put before me, and to say that the original misappropriation constitutes an offence under section 386."

However, neither the names nor the references of the Indian decisions are set out in the judgement. In *Kanavadipillai v. Koswatta*,<sup>(12)</sup> the accused asked a boutique keeper for a box of matches, and having obtained it, gave a five rupee note. The boutique keeper said he had no change and gave back the note. The accused took the note and the box of matches "to the railway station, there got the note changed, and was returning when he met the constable and the complainant." Although it was observed that he should not have been convicted of criminal misappropriation, as that offence requires an initial innocent acquisition of possession, yet it was held on the facts that there was no appropriation or conversion to his own use by the accused, nor an intention to cause wrongful loss to the complainant. These two decisions do not discuss the provisions of

section 386, and state the proposition that criminal misappropriation requires an initial innocent possession almost as if it were axiomatic. *Georges v. Saibo* (Supra) referred to this proposition only in reference to the invitation to convict the accused on a different charge, and *Kanavadipillai v. Koswatta* (Supra) could have been determined, on the facts, without any reliance on this proposition.

On the other hand, in *R. v. Suppaiya*,<sup>(13)</sup> it was held that a servant who receives money on behalf of his master and enters the amount received in his master's book, but afterwards denies the receipt of the money is guilty of criminal breach of trust. Although the judgment does not consider whether the dishonest intention should have been formed after receiving the money, yet the contention for the prosecution on appeal was that "the original taking was with dishonest intention." Clearly, the Court did not consider this to negative criminal misappropriation. In the sixth volume of the Ceylon Law Review there is a note of a decision that:

"It is not enough in a case of criminal misappropriation of property to say that the accused must have known at the time he took the property that it belonged to the complainant. There must be undoubted proof of such knowledge on the part of the accused."<sup>(14)</sup>

Thus it can hardly be said that by 1960 there was a clear, definite and consistent line of authority on this point. In *Gratiaen Perera v. The Queen*,<sup>(5)</sup> Sinnetamby, J., stated that "the authorities seem to suggest that there must be an initial honest possession followed by a dishonest conversion" but it was not necessary to decide the point; when it did become necessary, a week later, he held in *A. G. v. Menthis*, (Supra) that if the initial taking of property, not in the possession of anyone, was dishonest, the offence was made out.

In *Ranasinghe v. Wijendra*<sup>(2)</sup> Weeramantry, J., distinguished *A.G. v. Menthis*<sup>(1)</sup> as applicable only to the taking of property not in the possession of anyone. Relying on *Georges v. Saibo*<sup>(11)</sup> and *Kanavadipillai v. Koswatta*,<sup>(12)</sup> and Gour's views as to the demarcation between theft and criminal misappropriation, he held that for the latter offence an initial innocent taking was essential. *R v. Suppaiya* (Supra) does not appear to have been cited.

With much respect to that distinguished Judge, I regret that I am unable to agree. The plain language of section 386 imposes no such requirement; the Penal Code does not contain any rigid demarcation between offences; the *cursus curiae* in India and Sri Lanka does not reveal an emphatic and uniform insistence on such a requirement. Section 388 is even plainer: it refers to an ingredient of "entrustment" (which is anterior to and distinct from the dishonest misappropriation, conversion, use or disposal which is another ingredient), but does not require that there be an innocent intention at the time of entrustment. The Appellant's first contention therefore fails.

The Appellant's second contention is based upon the assumption that the M.P. C. S. and its officers were induced to entrust each cheque to him by a trick. The arrangement between the Bank and the M.P.C.S. was that upon a voucher being submitted, a cheque would be issued to the Appellant; the M.P.C.S. was not required to inquire into the motives of the Appellant or whether the Bank actually needed cash; the operative cause of each cheque being entrusted to the Appellant was the submission of vouchers in due form. Thus even if it be correct that an entrustment induced by a trick will not satisfy section 388 - and I express no opinion as to whether that is an inflexible rule - that question does not arise here. "Entrustment" does not contemplate the creation of a trust with all the technicalities of the law of trust; it includes the delivery of property to another to be dealt with in accordance with an arrangement made either then or previously. That was the case here.

I therefore dismiss the appeal and affirm the order of the Court of Appeal.

**KULATUNGA, J.** - I agree.

**GOONAWARDENE, J.** - I agree.

*Appeal dismissed.*

## **2. [COURT OF CRIMINAL APPEAL]**

**1951 Present: Nagalingam J. (President), Gratiaen J. and de Silva J.**

**M. E. A. COORAY**, Appellant, and **THE KING**, Respondent

**Appeal 56 with Application 117 of 1950**

*S. C. 25-M. C. Colombo, 43,770*

*Court of Criminal Appeal-Criminal breach of trust-Conviction of accused-Verdict of jury challenged on ground of uncertainty-Should sum misappropriated have been specified ?-Several separate sums involved in charge-Joinder of offences-Power of trial Judge to put questions to jury in regard to their verdict-Meaning of word " agent" in Penal Code, s. 392-Accomplice- Always a competent witness-Effect of " quashed conviction"-Criminal Procedure Code, ss. 168 (2), 179, 247, 248-Evidence Ordinance, s. 133- Court of Criminal Appeal Ordinance, No. 23 of 1938, s. 5 (2)-Penal Code, ss. 389, 392.*

The appellant was charged under section 392 of the Penal Code with committing criminal breach of trust in the way of his business as an agent. Omitting irrelevant words the charge was " that between 1st May, 1947, and 30th April, 1948, you being entrusted with a sum of Rs. 155,557'93 to be deposited to the credit of the Union (a. Co-operative establishment) did commit criminal breach of trust in respect of the said sum ". In the course of the trial the prosecution narrowed down the sum in respect of the charge to Rs. 94,976.93, which was the aggregate of not less than twenty cheques. The Jury found the appellant guilty of criminal breach of trust in respect of " a sum of about Rs. 57,500 ". There were numerous ways of combining the twenty cheques to arrive at the figure of Rs. 57,500.

**Held**, (i) that the verdict of the Jury could not be said to be vague on the ground that it did not specify the exact amount that had been misappropriated. The Jury need not have mentioned any sum at all in their verdict.

(ii) that each of the cheques could not be said to be the subject of a separate offence. Where a charge of criminal breach of trust has been framed in terms of section 168 (2) of the Criminal Procedure Code, the gross sum specified in the charge, although it is made up of different particular sums, must be regarded as relating to one single offence in respect of the aggregate sum specified and not as constituting several charges or even one charge in respect of several offences.

(iii) that as the verdict was clear and unambiguous it was not competent for the trial Judge to have asked the Jury as to how they arrived at the figure of Rs. 57,500. Neither section 248 nor section 247 of the Criminal Procedure Code permitted such questions.

(iv) that the agent contemplated in section 392 of the Penal Code need not be a person who carries on the business of a general agent. A casual agency came within the scope of the section.

Held further, (a) that where the Court of Criminal Appeal quashes a conviction Under section 5 (2) Of the Court Of Criminal Appeal Ordinance and does not order a new trial, the order quashing the conviction does not have the effect of leaving the proceedings yet pending against the accused person. *Dharmasena v. The King* (1950) 51 N. L. R. 481 considered.

(b) that an accomplice can be called by the prosecution as a witness even while a charge is yet pending against him.

**APPEAL**, with application for leave to appeal, against a conviction in a trial before the Supreme Court.

Dingle M. Foot, with Colvin It. de Silva, M. M. Kumarakulasingham, K. C. de Silva, and M. L. de Silva, for the accused appellant.-

First ground of appeal: The verdict of the Jury at the retrial was bad on the face of it. From the verdict it was impossible to say of which offences Cooray had been convicted and of which he had been acquitted. The verdict of the Jury was that the accused was guilty of criminal breach of trust in respect of " a sum of about Rs. 57,500 ". That verdict did not constitute a proper verdict. There had never been a good trial in this case because there was no definite charge on which the accused had been convicted. The trial had not been properly concluded since the verdict was indefinite. Although the offences are aggregated under section" 168 (2) of the Criminal Procedure Code there is still an offence in respect of each separate cheque. Section 168 (2) is merely an exception to the general rule in section 179. The trial judge had not distinguished the offences. He had asked the Jury to look at the sum total and not the separate offences of which the total was made up-

see the judgment of Gratiaen J. in *The King v. M. E. A. Cooray*<sup>1</sup> [(1950) 51 N. L. R. 433 at p. 442]-. There must be a definite finding of a certain definite sum traced to the accused and clearly shown to have been, misappropriated. See *Mohan Singh v. Emperor*<sup>2</sup> [(1920) A. I. R. Allahabad 274] ; *Khirode Kumar Mookerjee v. Emperor*<sup>3</sup> [(1925) A. I. R. Calcutta 260] - A contrary view is stated in *Emperor v. Byramji Jamsetji Chaewallal*<sup>3</sup> [(1928) A. I. R. Bombay 148] and *Wazir Singh v. Emperor*<sup>5</sup> [(1942) A. I. R. Rangoon 89], but it is not clear whether these cases dealt with a number of separate and distinct charges or one charge. See also *King v. Cooper and Compton*<sup>6</sup> [(1947) 2 A. E. R. 701]. Section 168 (2) is really not ambiguous but even if it is ambiguous- in view of the conflicting Indian decisions-it is submitted that the doubt must be resolved in favour of the accused. As regards the propriety of the Judge putting questions to the Jury see *Khirode Kumar Mookerjee v. Emperor* (supra) and *The King v. Albert Disney*<sup>7</sup> [(1933) 2 K. B. 138].

Second ground: At the first trial Bandaranayake gave evidence, appellant did not. The evidence of Bandaranayake was treated as that of an accomplice. An accomplice should not be called as a witness unless he has nothing to hope or fear-see sections 283, 284 of the Criminal Procedure Code. The position in England is the same. Nothing should affect the mind of an accomplice or co-accused, when he gives evidence. See *Grant's Case*<sup>8</sup> [(1944) 30 C. A. R. 99 at p. 105]. It is clear that when a man is in jeopardy, he must not be called on to give evidence for the prosecution. In the present case Bandaranayake had been called upon to repeat evidence he had given when he was in peril. In effect the general rule was circumvented. Even at the second trial Bandaranayake was still in peril because no formal acquittal was entered against him at the first appeal. At the first trial he was charged with conspiracy to commit criminal breach of trust and with aiding and abetting Cooray to do so. He had been acquitted on the latter but not on the former, in which the conviction was only quashed. There is a distinct difference between "acquitting" a person and "quashing" a conviction. In the latter case he could still be tried on a fresh indictment-See the Privy Council decision in *King v. Dharmasena*<sup>1</sup> [(1950) 51 N. L. R. 481].

Third ground: The trial Judge misdirected the Jury regarding the evidence given in connexion with the charges relating to the Piliyandala depot. He should have asked the Jury to ignore that evidence.

Fourth ground : The trial Judge misdirected the Jury when he invited them to consider whether the Manager had power under the Rules of the Co-operative Central Bank to give credit in the way he did. It was not the sort of question to be put to the Jury. It was a question of law.

Fifth ground : The prosecution failed to show that the cheques, which are the subject-matter of the charges, represented the deficiencies of monies of debtors. The evidence of the accountant was inadmissible. Two of the jurors with special qualifications were treated in a different way from the others. The Jury was not directed as to which evidence was admissible and which was not.

Sixth ground: The accused was convicted under section 392 of the Penal Code on the basis that he was an "agent". It was not suggested that accused was a professional agent. The word "agent" in section 392 must be read *eiusdem generis* with "banker, merchant, factor"- See *The Queen v. Portugal*<sup>2</sup> [(1885) 16 Q. B. D. 487]; *Queen v. Kane Archbold*, 32nd ed., p. 685. A contrary view is stated in *Gours' Indian Penal Code*, 5th ed., p. 1388, but no authority is cited in support.

R. R. Crossette-Thambiah, K.C., Solicitor-General, with R. A. Kannangara and S. S. Wijesinha, Crown Counsel, for the Crown.-

First ground: A charge framed in accordance with section 168 (2) of the Criminal Procedure Code is deemed to be a charge of one offence, not of several offences. There is one offence throughout the trial up to verdict-*Emperor v. Prem Naraini* [(1901) 1 K. B. 472]. As regards the duty of a Judge to elucidate the verdict of a Jury the position in Ceylon is different from that in India, as the section in the Indian Criminal Procedure Code is different. The judgment of Mukerji J. in *Khirode Kumar Mookerjee v Emperor* (supra) can therefore be distinguished. In the present case the verdict was clear to the Judge-the accused was guilty of appropriating a substantial part of the money. In *R. v. Larkin*<sup>5</sup> [(1942) 29 C. A. R. 18] it was held that where the verdict is plain and unambiguous it is most undesirable that the Judge should ask the Jury any further question about it. See also *Chitale's Indian Criminal Procedure Code*, Vol. II, 1949, ed., pp. 70, 74 ; *Queen v. Hari Prasad Gangooly*<sup>6</sup> (1870) 14 Suth. W. R. 59 at p. 64] *Derajtullah Sheikh v. Emperor* [(1930) 31 Cr. L. J. 1150] ; *Regina v. Thomas Wright*<sup>8</sup> [(1931) A. I. R. Allahabad 267 " 169 E. R. 1076 ].

Second ground : As regards the admission of Bandaranayake's evidence, even if the evidence was improperly received the onus is on appellant to show a miscarriage of justice-section 5 (1) of the Court of Criminal

Appeal Ordinance, No. 23 of 1938. As regards the meaning of the expression " miscarriage of justice " see the judgment of Lord Macmillan in Abdul Rahim v. Emperor <sup>1</sup>[(1946) A. I. R. (P. C.) 82] The appellant must satisfy that there has been a failure of justice, that is that an innocent man has been convicted-R. V. Haddy <sup>2</sup> [(1944) 1 K. B. 442]; Stirland v. Director of Public Prosecutions <sup>3</sup>[(1944) A. C. 315]. There is an exception to this rule when evidence of bad character has been led. In such a case it is a fundamental wrong and beyond controversy. Further, in view of section 167 of the Evidence Ordinance the onus of proving failure of justice due to improper admission of evidence is on appellant. The English law on this point is different. It is also submitted that Bandaranayake was never in peril at the second trial. In regard to the effect of the term " quashing " one must consider section 5 (2) of the Court of Criminal Appeal Ordinance, No. 23 of 1938. The order in the judgment has no place in the Ordinance and really means in law an acquittal. As to the effect of " quashing " a conviction see King v. Emanis <sup>4</sup>[(1940) 41 N. L. R. 529]. Regarding the evidence of an accomplice see Archbold, 32nd ed., p. 463 for the English practice. In Ceylon sections 30 and 133 of the Evidence Ordinance are applicable. See further Rex v. Ukku Banda <sup>5</sup> [(1923) 24 N. L. R. 327]; Police Vidane, Kandana, v. Amaris Appu <sup>6</sup>[(1923) 25 N. L. R. 400]; Iyer v. Hendrick Appu <sup>7</sup>[(1932) 34 N. L. R. 330]; Queen Empress v. Maganlal and Motilal <sup>8</sup>[(1889) I. L. R. 14 Bombay 115]; Windsor v. Rex <sup>9</sup>[L. R. (1865) I. Q. B. 390].

Third ground : With regard to the direction of the Judge in respect of the evidence relating to the Piliyandala charges it is submitted that there is no misdirection as the Judge in effect asked the Jury to use that evidence only to test the other evidence when considering the manner and intention of the accused in acting as he did in connexion with the Moratuwa funds.

Fourth ground : With regard to the ground that the Judge misdirected when he said that it was for the Jury to say that giving of credit was necessary for the discharge of the Manager's functions, the summing-up clearly shows that the Judge directed the Jury to consider the question whether Bandaranayake carried out a certain practice and whether the accused knew that he had that power. The Judge directed the Jury that if the accused openly and in good faith complied with normal procedure then that would negative dishonesty.

Fifth ground : The Crown only relied on the cases covered by cheques for the charge in the indictment. The sole question of fact was whether the sum stated to be misappropriated can be related to the cheques. The sales-journal was produced in evidence. There was no evidence that could not be tested and therefore there was no hearsay evidence admitted.

Sixth ground : With regard to the correct construction of section 392 of the Penal Code it is submitted that the agency contemplated in this section involves not business but a course of conduct-see Gour's Indian Penal Code, 5th ed., p. 1388 ; Lolit Mohan Sarkar v. The Queen Empress 10[(1894) 22 I. L. R. Calcutta 313] ; and the case of Muttusamipillai <sup>1</sup> [(1895) 1 Weir 432 ]: The fact that the word " other ", found in the corresponding section of the repealed English Larceny Act, is omitted in our section makes all the difference. ' Our section catches up every type of agent. If on a single occasion the accused acted as agent then he is guilty even if on other occasions he did not act as agent, because section 392 of the Penal Code must be construed with section 168 (2) of the Criminal Procedure Code. There is only one offence. With regard to the application of eiusdem generis rule see the judgment of Lord Esher in Anderson v. Anderson 2[L. R. (1895) 1 Q. B. D. 749]. Where the words of a statute are clear no rule of construction is necessary. See the judgment of Viscount Simon L.C. in National Association of Local Government Officers v. Bolton Corporation 3[L. R. (1943) A. C. 166].

Dingle M. Foot, with permission of Court.-On the first ground, it is submitted that the Court of Criminal Appeal should not enter into a surmise as to the meaning of the verdict. No one can say how the Jury arrived at the figure.

On the last ground, it is submitted that the construction of section 392 of the Penal Code is concluded by authority, namely the decision in The Queen v. Portugal {supra}. An English statute and a similar Colonial statute should be interpreted in the same way-see the Privy Council decision in Nadarajan Chettiar v. Tennakoon<sup>4</sup>[(1950) 51 N. L. R. 491]. The omission of the words " or other " and the insertion of the words " in the way of business " in the Ceylon section can make no difference. The Legislature merely made it more clear that the section dealt with a class of professional men.

*Cur. adv. vult.*

July 24, 1951. **NAGALINGAM J.-**

The appellant was convicted by the unanimous verdict of the Jury of the offence of criminal breach of trust and has been sentenced to undergo a term of five years' rigorous imprisonment.

The material facts lie within a narrow compass. The prisoner was the President of a Co-operative establishment, the Salpiti Korale Union, the activities of which consisted in the main of supplying controlled consumer goods to various retail stores within the area of its operation through three wholesale depots established by it at Moratuwa, Piliyandala and Polgasowita. Each of the depots was controlled by a regional or local committee of the Union, and for the purposes of the appeal it is only necessary to note that the appellant was also President of the Moratuwa regional committee. The Salpiti Korale Union had credit facilities extended to it by the Co-operative Central Bank, of which the Union was a member and on which the Union had as its representative the appellant. The appellant held an important position in the Co-operative Central Bank ; he was a director as well as a Vice-President of it.

The course of business prescribed by the Union to be followed by the officers at its various depots in regard to the collections at the depots was for the collections to be deposited promptly at the Co-operative Central Bank. And with a view to prevent temptation being placed in the way of the officers at the depots who would of necessity have to handle large sums of cash if ordinary business practice was followed, it was expressly provided that cash in excess of Rs. 100 was not to be accepted at the depots, but that the retail stores were to make payments at the depots either by means of cheques or money orders.

At the relevant period the witness Ranatunga was the manager of the Moratuwa depot and the brother of the prisoner, Leo Cooray, of the Piliyandala depot. As the Polgasowita depot transactions have no bearing on this case, no reference is made to it.

The appellant as President of the regional committee at Moratuwa it was who gave charge of the Moratuwa depot to the Manager, Ranatunga, on appointment and Ranatunga appears to have followed strictly at first the instructions given to him with regard to the nature of payment he could accept for sales, namely, only cheques or money orders subject to the exception noticed above. It would, however, appear that after the lapse of a little time the appellant instructed Ranatunga to collect large sums of cash, the amount of which was fixed sometimes by the appellant sending to Ranatunga one of his own cheques the amount on which would be an indication as to the amount to be collected in cash and on other occasions mere oral instructions would be issued by the appellant to Ranatunga to collect cash during the day and at the end of the day the appellant would give a cheque of his own in lieu of the cash he took over from Ranatunga. Ranatunga following the usual practice would enter in the paying-in slips to the Bank the particulars of the cheques he had received including those from the appellant. The appellant more often than not took from Ranatunga the paying-in slips and the cheques including his own cheques for the purpose of depositing them at the Co-operative Central Bank, and in fact did deposit them. On one or two occasions the appellant himself wrote or caused to be written the paying-in slips that were handed at the Bank with his cheques.

The Co-operative Central Bank had an account with the Bank of Ceylon to which it sent all the cheques received by it for collection. The appellant using his official position as Vice-President of the Bank contrived to have his cheques that he deposited to the credit of the Union at the Co-operative Central Bank to be withheld by the Manager of the latter bank from presentation at the Bank of Ceylon. - In the case of some of the cheques no presentation had been made for several months. The President of the Co-operative Central Bank some time later on discovering that the Co-operative Central Bank had to pay to the Bank of Ceylon large sums by way of interest on its overdraft account started investigations and ascertained that several cheques of the appellant, in fact no less than over thirty in number, had been withheld from presentation for several months. The President reported this state of affairs to the Registrar of the Co-operative Societies and the law was thereafter set in motion and resulted in this prosecution being launched against the appellant.

In regard to the transaction at the Piliyandala depot, as the evidence of Leo Cooray, the brother of the appellant, did not sustain the charge of criminal breach of trust the Crown did not pursue the charge in respect of the sums alleged to have been misappropriated out of the funds collected at the Piliyandala depot but in regard to which too there was evidence that certain cheques of the appellant had been deposited to the credit of the Union in settlement of those collections.

There was both oral and documentary testimony placed at the trial establishing a prima facie case against the appellant, but he neither gave evidence himself nor called any witnesses on his behalf.

Several grounds of objection against the conviction and sentence were formulated in the petition of appeal but at the hearing Mr. Foot appearing for the appellant confined his submissions to five of them and abandoned the others. I shall deal with these objections in the order in which they were presented by Mr. Foot.

The first point taken was that the verdict of the Jury was void for uncertainty or bad for vagueness. This objection is based on the circumstance that while in the indictment the prisoner was charged with having committed criminal breach of trust of a sum of Rs. 155,576/93, and while the prosecution during the course of trial narrowed down the sum in respect of the charge to Rs. 94,976/93, being the amount committed criminal breach of trust of by the appellant out of the funds of the Moratuwa depot, having abandoned the sum in respect of the Piliyandala depot, the Jury found the prisoner guilty of criminal breach of trust in respect of " a sum of about Rs. 57,500 ".

In the first place it is contended that the verdict does not specify an exact amount but refers to an indeterminate amount by qualifying the figure 57,500 by applying the word of uncertainty " about " to it and for that reason the verdict is bad in the first instance. Mr. Foot however did not argue, probably because of the manner in which the objection had been formulated in the petition of appeal, that the learned trial Judge's direction to the Jury :

" If you can find after your examination of the whole of the evidence that he did commit criminal breach of trust or did dishonestly misappropriate, not the entire sum alleged by the Crown to have been misappropriated but some lesser sum, if that fact is proved to you beyond reasonable doubt, then even though you may not be able to answer with any degree of accuracy the precise sum, but having made every allowance to the accused you still are convinced that he had dishonestly misappropriated a portion of the sum alleged in the indictment, then he would be guilty "

or again :

" Once again I may say, it does not seem to me that it is very important to determine what is the precise figure which went into his hands, or if he did appropriate any money, what was appropriated by him "

constitutes a misdirection. But if his argument founded on the inexact-ness of the figure found by the Jury to have been the subject of the offence is sound, it must follow that as the Jury had brought in a verdict in accordance with the direction given by the learned trial Judge, the direction of the learned trial Judge amounted to a misdirection in law.

We think the direction of the learned trial Judge on this point was in conformity with law and the verdict of the Jury cannot be said to be vague on the ground that the verdict does not embody a precisely exact figure as the sum that has been misappropriated.

In England, the proposition was laid down as early as 1858 in Regina v. Thomas Wright 1[169 E. R. 1070] by no less than five Judges including Judges of the eminence of Lord Campbell C.J. and Coleridge J. that a verdict of the Jury that the prisoner " stole some money " but without specifying the amount was a good verdict. Mr. Foot however relied upon the Indian case of Khirode Kumar Mookerjee v. King Emperor 2[A .I. R. 1925 cal. 260] where no doubt Mukerji J. in delivering the judgment of the Court in respect of a charge of criminal breach of trust, observed :

"There must therefore be a definite finding of a certain definite sum traced to the accused in order to form a basis for his conviction."

Mr. Foot also drew our attention to a later Bombay case, Emperor v Byramji Jamsetji Chevalla 3[A .I. R. 1928 Bom. 148] where this view was not upheld, but on the contrary it was said by Fawcett J. that:

" if the evidence is sufficient as to establish that at any rate some property such as money has been misappropriated it seems to me that it is against reason and authority to say that because you cannot specify the exact amount that has been misappropriated the accused cannot be convicted. "

We find ourselves in agreement with the view expressed in the Bombay case and we hold that a verdict which is specific and definite that the offence has been committed in respect of some sum of money, though that sum may not be ascertained with exactness, is a proper and valid verdict and is not open to the objection that

it is vague and therefore bad. We are further of opinion that the Jury need not have returned a finding as to what the sum was which in their opinion had been committed criminal breach of trust of but a verdict that they found the prisoner guilty was all that was called for.

In the second place Mr. Foot argued that ignoring the presence of the word " about" the finding that the prisoner had committed criminal breach of trust of Rs. 57,500 is vague inasmuch as there were not less than twenty cheques that constituted the aggregate sum of Rs. 94,976/93 of which the sum of Rs. 57,500 formed part and that there were according to Mr. Foot not less than 1,778 ways of combining the twenty cheques to arrive at the figure of Rs. 57,500, and as each of the cheques was the subject of a separate offence the prisoner is now left in doubt as regards the particular offences in respect of which he has been found guilty and of which he has been acquitted.

The foundation on which this argument was raised is the judgment of this Court in this very case when it came up on the prisoner's conviction at the first trial. The passage relied upon is to be found in the report of the case 1[ (1950) 51 N. L. R. 433 at 442] and is as follows :-

" Whether or not criminal breach of trust of sums amounting to Rs. 161,576.93 was alleged to have been committed in pursuance of a single design (as the prosecution suggests) the fact remains that the charge against the accused according to the evidence involves the alleged commission not of one offence of criminal breach of trust but of a number of such offences during the period covered by the indictment. To include all these offences in a single count was of course permissible under section 168 (2) of the Criminal Procedure Code. It was essential however that the Jury's attention should have been directed to the specific evidence on which the Crown alleged that each separate offence had been committed. "

I have italicized the words on which special emphasis was laid by Mr. Foot. No doubt this passage lends itself to the comment that the prisoner was called upon to meet a charge not of one offence but of several offences. But this passage occurs in a part of the judgment which stresses the need in this particular case for a clear direction to the Jury in regard to the items that went to make up the aggregate sum of which the prisoner was alleged to have committed misappropriation. My brother Gratiaen delivered the judgment with which my brother Gunasekara, who it may be mentioned is the present trial Judge, agreed. Gunasekara J. does not appear to have understood the judgment in the way in which it has been construed by Mr. Foot. My brother Gratiaen says that he himself did not intend that the passage should be so construed.

We need only observe that where a charge has been framed in accordance with section 168 (2) of the Criminal Procedure Code in respect of either the offence of Criminal Breach of Trust or Criminal Misappropriation by specifying the gross sum misappropriated and though the prosecution may be able-though not necessarily in all cases-to establish the gross sum as having been made up of particular sums yet the charge must be regarded as relating to one single offence in respect of the aggregate sum specified and not to constitute several charges or even one charge in respect of several offences, the number of which would be determined by the fortuitous controlling factor of the adaptability of the aggregated sum to be disintegrated into smaller specific sums.

Apart from the authority relied upon the proposition would seem to be wholly untenable. It would be useful at this stage to examine the terms of the charge. Omitting words irrelevant for present purposes, the charge runs:

"That between 1st May, 1947, and 30th April, 1948, you being entrusted with a sum of Rs. 155,557 o 93 to be deposited to the credit of the Union did commit criminal breach of trust in respect of the said sum.

The ordinary rule in regard to the joinder of charges is laid down in section 179 of the Criminal Procedure Code, which permits of not more than three offences of the same kind committed within the space of twelve months to be included in one indictment, but to this there is an exception created by section 168 (2). The exception is confined in its operation to two classes of offences, (1) criminal breach of trust, (2) criminal misappropriation, and also postulates a period of time not exceeding one year. Subject to these limitations, the effect of the sub-section is that where, to take one of the offences, for the sake of simplicity, it is alleged that several sums of money had been criminally misappropriated on various dates, it would be competent to aggregate the several sums of money misappropriated within the space of one year and to charge the accused person with having committed the offence of criminal misappropriation in respect of that aggregate sum of money without specifying the particular items or the particular dates on which the amounts may have been misappropriated, and the sub-section specifically enacts that a charge so framed is to be deemed a charge of

one offence. We do not think that the words " within the meaning of section 179 " which follow the words " shall be deemed to be a charge of one offence " have any other effect than that of emphasizing that though what in reality amounts to a number of offences exceeding three have been aggregated together it shall nevertheless not be open to the objection that such an aggregation offends against the provisions of section 179 which, as stated earlier, permits of not more than three separate offences to be included in the same charge.

The charge being then of one offence, it is idle to speak of the conviction of the prisoner on some offences and of his being acquitted on others. In fact the jurors were called upon to try the prisoner upon only one charge and that was in respect of one offence alleged to have been committed by the accused person in that he committed criminal breach of trust of one sum of money between specified dates. In truth the Jury were not and could not have been required to give their verdict on the footing that they were trying a number of offences but they were quite properly invited to and did give their verdict in respect of the one offence with which the prisoner had been charged. They were therefore rightly called upon to find by their verdict whether the prisoner was guilty or not guilty of the one single offence with which the prisoner was charged. The Jury certainly were never called upon to try several offences against the accused, much less to bring verdicts in respect of several charges or several offences against the prisoner. It would therefore be incorrect in these circumstances to speak of any uncertainty in the verdict as regards the offence of which the prisoner was found guilty.

In regard to the contention that the learned trial Judge should have asked the Jury as to how they arrived at the figure of Rs. 57,500 I need only say that such a course would have been entirely outside the province of the Judge, for such a question would seek to ascertain the ground or grounds upon which the jurors came to arrive at their verdict. According to the majority of us it is conceivable, though we do not say it must be so in this case, that the Jurors themselves may each have differed widely in regard to the quantum which in their individual opinion had been misappropriated by the prisoner but they may all have agreed, arriving by different methods, that at the lowest a sum of about Rs. 57,500 had been misappropriated by the appellant. On this basis they may all therefore have agreed upon their verdict. Section 248 of the Criminal Procedure Code confers and limits the powers of a Judge to question a Jury in regard to its verdict and provides that a Judge is only empowered to ask the Jury such questions as may be necessary to ascertain what their verdict is. So that where the verdict is clear and unambiguous such as it is in this case, no occasion arises for a Judge to put any question to the Jurors in regard to the verdict, and if he did so he would run the risk of subjecting such procedure to well founded criticism of an adverse character. See the cases of Larkin 1[(1942) 29 C. A. R. 18] and Daragulla Sheik 2[Criminal Law Journal of India 1930, p. 1150].

Section 247 of the Criminal Procedure Code expressly provides the nature of the question which the Registrar of the Court should ask the Foreman of the Jury in regard to their verdict: " Do you find the accused person (naming him) guilty or not guilty of the offence (naming it) with which he is charged ? ". The verdict should therefore be one of guilty or not guilty. It need not have been qualified by the addition of the amount which in the opinion of the Jury had been the subject of criminal breach of trust by the prisoner. These added words relating to the amount may, if need be, according to the majority of us, be treated as mere surplusage and ignored, because the verdict is not rendered uncertain or vague by the addition of those words and the verdict that the prisoner is guilty is clear and precise without their addition. These observations of ours however have no reference to the undoubted right that a Judge has to question a Jury with a view to assess the appropriate sentence that he should pass on a prisoner.

We are, however, unanimously of opinion that the verdict is one to which no justifiable exception can be taken.

The next objection taken is to the admissibility of the evidence of the witness Bandaranayake who was the Manager of the Co-operative Central Bank at the relevant dates. In the petition of appeal it is categorically stated that Bandaranayake was not a competent witness. The reason for putting forward this objection is that Bandaranayake was admittedly an accomplice. He was one who stood his trial along with the appellant at the earlier trial in this case and his conviction was quashed by this Court on appeal. Under our law an accomplice is not an incompetent witness. Section 133 of the Evidence Ordinance expressly provides for the reception of the evidence of an accomplice and it goes on to provide that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Mr. Foot however adopted another line of argument based upon what he said was the English practice. He laid down the proposition rather widely when he said that an accomplice would not under English procedure

be permitted to testify against a prisoner unless the accomplice had either been acquitted formally or had been convicted or had received pardon. He then stressed that where a charge was yet pending against an accomplice he would not be permitted under the English law to be called by the prosecution as a witness as the adoption of such a course would be regarded as unfair by an accused person in as much as it would cause unjustifiable prejudice to an accused person,

Archbold in his well known work on criminal law deals with the topics raised and lays down propositions which do not entirely support the contention of Mr. Foot. The learned author says 1[1949 ed. p. 461 ] that an accomplice is always a competent witness. No words of qualification are added. This, it will be observed, is in accordance with the provision under our law. Archbold 2[Page 466] goes on to consider the circumstances in which one prisoner may give evidence for the Crown against a co-prisoner. He does not say that one accused person is not a competent witness against another but he expressly lays down that where two prisoners are jointly indicted and one prisoner is not being tried with the prisoner against whom he gives evidence, his evidence is receivable without objection and he cites Windsor v. Rex 3[L. R. 1 Q. B. 390]. The case of Grant et al. 4[30 C. A. R. 99 at 105] also adopts this view.

But in fact there is no ground for saying in this case that any proceedings are yet pending against Bandaranayake. He has been acquitted by the order of this Court but the contrary is asserted on behalf of the appellant.

Mr. Foot proceeding on the basis that the conviction against Bandaranayake at the last trial had only been quashed and that this Court had made no further order acquitting him, built up his whole argument. Bandaranayake was put on his trial along with the appellant upon two counts, (1) conspiracy, and (2) abetment of the appellant in committing the offence of criminal breach of trust. In regard to the second count this Court expressly made order acquitting the accused 5[(1950) 51 N. L. R. 433 at 441]. In regard to the first count the order of this Court was " we quash the conviction of both accused on the charge of conspiracy ". Mr. Foot says that as this Court did not in terms of section 5 (2) of the Court of Criminal Appeal Ordinance, 23 of 1938, direct a judgment of acquittal to be entered in respect of this charge it could not be said that the charge against Bandaranayake in regard to the offence of conspiracy has resulted in an acquittal and relies upon the judgment of Lord Porter in King v. Dharmasena 6[(1950) 51 N. L. R. 481] where the following observation is made :

"A quashed conviction however does not acquit the appellant of the crime charged. It merely makes the previous conviction abortive. If it is intended to direct a judgment of acquittal to be entered it must be done in terms. "

I do not think that Mr. Foot's reading of this passage is right. The argument there was that as this Court had quashed the conviction and directed a retrial and as the quashing of a conviction involved an acquittal in view of section 5 (2), the order of retrial was bad. It is in reference to this argument that it was observed that where it is intended to direct judgment of acquittal to be entered against an accused, it must be done in terms but that it did not follow that a retrial could not be ordered where a conviction had been quashed. The Ordinance although it recognises that a retrial may be ordered on appeal does not expressly provide the precise form in which that order should be made. In fact it is silent as to what operative words should be employed with regard to the previous conviction where a retrial is ordered.

Would it be proper to direct a retrial without making any specific order with regard to the previous conviction ? Such a course would hardly appear to be right, for it would be open to the objection that the previous conviction stands and that such conviction so long as it stands unreversed would be a bar to the further trial. On the other hand if the phraseology that the conviction is quashed cannot be employed for the reason that that phrase is only applicable in terms of section 5 (2) to cases where this Court directs the acquittal of an appellant, some other formula should be found to indicate that the previous conviction has been got out of the way as a preliminary to a retrial being ordered. Counsel could not suggest any better formula and I could not think of any that the court might say that the conviction is set aside, and that the Court orders a new trial. But by a quashing of a conviction is meant nothing more nor less than the setting aside of it. The only merit, therefore, in using the words " the conviction is set aside " seems to be that it avoids the use of the phrase " quash the conviction " to which Mr. Foot quite needlessly attaches the notion of the sequel of an acquittal.

K. v. Dharmasena 1[(1950) 51 N. L. R. 481] is certainly not an authority for the proposition that where this Court quashes a conviction and does not order a new trial the order quashing the conviction operates to leave

the proceedings yet pending against the accused person.

Both on the law and on the facts we are satisfied that not only were there no charges pending against Bandaranayake but that he was a competent witness though an accomplice and that his evidence was properly received at the trial.

The next ground of appeal is that the learned trial Judge failed to direct the Jury that the evidence given in regard to the Piliyandala Depot and which was favourable to the accused should be considered in arriving at a decision in regard to the guilt of the accused in regard to the transactions at the Moratuwa Depot. The passage in the summing-up that is complained of is at page 50 of the typescript but it does not appear to us that the passage admits of this comment. In fact in the next two pages (51 and 52) the learned trial Judge has made it quite clear and indicated to the Jury that in considering their verdict in regard to the Moratuwa Depot they should take into consideration the evidence particularly of Leo Cooray and the evidence of other witnesses in order to determine to what extent the evidence of these witnesses affects the evidence led in respect of the Moratuwa depot so as to create in their minds doubts as regards the alleged commission by the accused of the offence in regard to the Moratuwa funds. This ground we therefore deem to be of no substance.

Like the last, the fourth ground is also one that relates to the propriety of the charge. It is said that in regard to the question of dishonest intention the learned trial Judge was in error in directing the Jury that the question for them to consider was whether in terms of the Rules of the Co-operative Central Bank the power exercised by the Manager of giving credit, to the extent that it was given, was necessary for the performance of the Manager's functions but that the proper direction was for the Jury to have been asked to decide whether the Manager did in fact exercise the powers following the practice in the Bank in the belief that it was the proper practice. While it is true that at pages 106 to 111 of the typescript the learned Judge has invited the Jury to consider whether the Manager had power under the Rules to give credit in the way he did, at pages 112 to 113 he has also referred to the question whether the accused believed that the Manager did have such powers. It is only necessary to draw attention to the following excerpt from the summing-up (page 112 et seq.) :-

" If you find there was a breach of duty then of course so far as the amount goes it is immaterial except to this extent that when you come to consider whether the accused may have honestly believed that that power had been given to Bandaranayake, whether from what he saw going on round him, as Counsel for the defence said, he may have honestly thought Bandaranayake had been given that power under the constitution of the Bank .... That is to say you have to ask yourselves whether the Crown has explained the possibility and having regard to what the accused saw going on in the Bank even if it was unlawful in the sense that it was contrary to the contract between the Manager and the Bank, even if what the accused saw was contrary to the contract, having regard also to what he saw going on in the Bank, that the Manager was acting in accordance with the contract exercising no more power than was given to him by the terms of the contract. "

We think that the attention of the Jury had sufficiently well been drawn to the possibility of the prisoner having entertained in his mind the belief that whatever may have been the rules governing the point the Manager, Bandaranayake, had the necessary authority to grant credit as he was shown to have done. This point therefore fails.

The last ground of objection is that as there was no evidence that the prisoner was at any time engaged in business as an agent the conviction under Section 392 of the Penal Code was bad but that at best the conviction should have been under Section 389.

The latter section provides the punishment for the offence of criminal breach of trust in what may be described as its un aggravated form and prescribes a maximum penalty of 3 years' rigorous imprisonment apart, from a fine. Section 392 prescribes a maximum penalty of 10 years apart from the fine when the offender commits the offence " in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney, or agent ".

Mr. Foot contends that the term " agent" must be interpreted in accordance with the rule of eiu dem generis and that so interpreted the term " agent " must be deemed to mean a person who carries on business as an agent, i.e., one who holds himself out as being able and willing to-carry on the business of an agent inasmuch as the words that precede it, namely, banker, merchant, factor, broker, attorney, all refer to classes of persons who carry on particular avocations. I think there can be little doubt that the terms " banker " and " merchant " must necessarily refer to persons who carry on a regular calling in these special vocations. It would not be possible to regard a person who acts on one occasion for one particular client in regard to any dealings that

are commonly performed by a banker or merchant, and to treat such person as a banker or merchant but in regard to the other categories of persons falling under the designations of factor, broker or attorney, it is possible to conceive of and in fact there are many instances where a person acts for another individual in any of those capacities and that too on an only occasion.

In the case of *Lowther v. Harris* 1[(1927) K. B. 393] a question under the Factors Act arose as to whether a person acting for one principal only and who had no general occupation as agent could be said to be a factor within the meaning of the Act and Wright J. had no difficulty in answering this question in the affirmative. One transaction may be sufficient, again, to constitute a person a broker and there seems to be no justification for confining the term to a person who carries on the occupation of a broker over a long period of years and in relation to a number of persons. Similarly "attorney" need not necessarily be a term that need be applicable to the class of persons known to English Law as attorneys at law, but certainly is wide enough and is recognised as a term which refers under our law to a person who holds a power of attorney.

Mr. Foot's argument was that not only should the terms "factor" and "broker" be restricted to persons who carry on business in a general way as factors and brokers but that the term "attorney" had to be interpreted so as to give it the special meaning of attorneys at law, the term applied to the class of legal practitioners who went under that name in England prior to 1873. The cases of *Queen v. Portugal* 2[(1885) 16 Q. B. D. 487] and *Queen v. Kane* 3[(1901) 1 K. B. 472] were cited by him to reinforce his argument that the *eiusdem generis* rule of construction should be applied. It is true that under the now repealed English Larceny Act a similar collocation of words was so construed but there is a very significant variation between the provision of the Larceny Act and our section. The words grouped together in the Larceny Act are, "banker, merchant, factor, broker, attorney or other agent" while in our section, it will be noticed, the term "other" is significantly omitted. The majority of us have grave doubts that had the word "other" been omitted from the English Statute, the construction would yet have been the same.

Mr. Foot also put forward a further argument based upon emphasis being laid upon the words, "in the way of his business." Now, the term, "in the way of his business" has been construed by him as the equivalent of "in carrying on the business of" and not as the equivalent of "in the way of his function" or "in the course of acting as" or even "in the capacity of". To take a simple illustration, if a man is granted a special power of attorney to sell the land of his principal and remit the proceeds and the attorney sells the land but misappropriates the funds, would it not be correct to say that the attorney had been entrusted with the funds in the way of his business as attorney, that is to say, in the course of the performance of his business as attorney? Mr. Foot's answer is that the attorney has not received monies in the way of his business for the attorney did not carry on a business of a general attorney and a casual acting did not constitute him such within the meaning of the section. We do not think that the construction contended for by Mr. Foot is a sound one. We see no reason to hold that the phrase, "in the way of his business" was intended by the legislature to mean "in carrying on the business" which it might have used if that was the object so as to exclude from the operation of this penal section a case of a broker or attorney who may commit criminal breach of trust of very large assets entrusted to him from being subjected to the same severe penalty to which a person carrying on a regular business may be subjected.

This section has always been construed as applying to all agents excepting to those agents specifically enumerated in Sections 390, 391, and 392. In India too the same view has been taken. *Gour* 1[5th ed. p. 1388 Sec. 4870] commenting on the corresponding section expressly refers to a case such as the present one :

"If a person requests another to carry a sum of money for payment to another, he is for that purpose his agent so that should he misappropriate the amount he would be liable under this section."

It is true he cites no authority for this statement but his view is supported by the case of *Muttusamipillai* 2[1 Weir 432] That was the case where the prisoner was certainly not carrying on the business of a general agent but nevertheless he was held to have committed the offence as an agent, as it was held that he had misappropriated the articles belonging to a temple while acting as manager of the temple.

Another aspect of this question was lightly touched upon, and that was, assuming that a casual agency came within the scope of the section, whether in the particular case before us it could be said : who was the principal? It is common ground that it was the appellant who appointed Ranatunge manager of the Moratuwa Depot. It was equally common ground that it was he who gave instructions in regard to his functions and duties including those relating to the Manager's deposit of the proceeds of sale realised at the depot. It is therefore said that Ranatunge cannot be regarded as the principal of the prisoner. The majority of us think that

there is a fallacy underlying this contention. In the first place the notion of a superior or an inferior officer is entirely foreign to the question of agency. The question really is: What is the legal relationship between the parties? Not, What is their status inter se? If Ranatunge who had to bank the proceeds of sale handed the funds to the prisoner to be deposited in the bank and the prisoner undertook to carry and deposit the funds, the relationship of principal and agent was: thereby constituted, it being immaterial as to whether one was the manager of the depot and the other the President of the Union that ran the depot. Nor do the majority of us think there is any substance in the contention that it was the prisoner who volunteered to 'carry the funds for deposits. It is important to remember that the prisoner could not have compelled payment of the money to him. The money belonged to the Union and that money had to be deposited to the credit of the Union and that was the instruction to Ranatunge by the prisoner himself.

The majority of us are of opinion that the last ground too is of no avail to the appellant.

In the result, the order of the Court is that the appeal is dismissed, and the application refused.

*Appeal dismissed.  
Application refused.*

36. No detailed statistics relevant to the implementation of the provision under review were provided.

**(b) Observations on the implementation of the article**

37. The provisions of the Penal Code on criminal breach of trust and the Offences against Public Property Act 1982 stipulate clearly the crime of diversion by anyone including public officials of any property entrusted to them and corresponding criminal penalties more severe than that for the crime of accepting bribes. During the country visit it was further clarified that Section 388 of the Penal Code (Criminal breach of trust) covers the embezzlement, misappropriation or other diversion of both movable and immovable property. The element *for the benefit of another person or entity* is covered under the wording "*dishonestly uses or disposes*". Section 392 established an aggravated penalty for the crime of criminal breach of trust (*up to 10 years of imprisonment*) committed by public servants. Relevant measures are in line with the requirements of the Convention.

**Article 18 Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relevant to reviewing the implementation of the article**

38. Sri Lanka has cited the following implementation measures.

### **Section 17 of the Bribery Act.**

A person -

- (a) who offers any gratification to a public servant as an inducement for a reward for such public servant's giving assistance or using influence in the promotion of the procuring of any contract with the Government for the performance of any work, the providing of any service, the doing of anything, or the supplying of any article, material or substance, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof, or
- (b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his giving assistance or using influence in the promotion of the procuring of any such contract as is referred to in paragraph (a) of this section, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

### **Section 19 of the Bribery Act.**

A person -

- (a) who offers any gratification to a public servant as an inducement or a reward for that public servant's performing or abstaining from performing any official act, or expediting, delaying, hindering or preventing the performance of any official act whether by that public servant or by any other public servant, or assisting, favouring, hindering or delaying any person in the transaction of any business with the Government, or
- (b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his performing or abstaining from performing any official act or for such expediting, delaying, hindering, preventing, assisting or favouring as is referred to in paragraph (a) of this section, or
- (c) who, being a public servant solicits or accepts any gratification, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:

Provided, however, that it shall not be an offence for a public servant to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive;

Provided further that section 35 of the Medical Ordinance shall not entitle a medical practitioner who is a public servant to solicit or accept any gratification.

### **Section 20 of the Bribery Act.**

A person -

- (a) who offers any gratification to any person as an inducement or a reward for -
  - (i) his procuring from the Government the payment of the whole or a part of any claim, or
  - (ii) his procuring or furthering the appointment of the first-mentioned person or of any other person to any office, or
  - (iii) his preventing the appointment of any other person to any office, or
  - (iv) his procuring, or furthering the securing of, any employment for the first-mentioned person or for any other person in any department, office or establishment of the Government, or
  - (v) his preventing the securing, of, any employment for any other person in any department, office or establishment of the Government, or
  - (vi) his procuring, or furthering the securing of, any grant, lease or other benefit from the Government for the first-mentioned person or for any other person, or
  - (vii) his preventing the securing of any such grant, lease or benefit for any other person, or
- (b) who solicits or accepts any gratification as an inducement or a reward for his doing any of the acts specified in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi) and (vii) of paragraph (a) of this section, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.

39. Regarding examples of implementation Sri Lanka referred to the cases cited under subparagraph 15 (a) above.

### **(b) Observations on the implementation of the article**

40. The cited provisions of Sections 17 and 19 of the Bribery Act regarding the offering of bribes to public officials as an inducement or reward for seeking undue advantages using their influence, and those regarding public officials accepting bribes in such circumstances, meet to a certain degree the requirements of the Convention. They are identical to the bribery provisions and do not directly address the issue of trading in influence described under the Convention (abusing real or supposed influence with a view to obtaining an undue advantage from a public administration).

### **Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

41. Sri Lanka has cited the following implementation measure.

##### **Section 70 of the Bribery Act**

###### **Corruption**

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

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

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

42. Regarding examples of implementation Sri Lanka referred to case Chandrapala Perera Vs AG [1998 - 2 SLR pg 85] cited under subparagraph 15 (a) above.

#### **(b) Observations on the implementation of the article**

43. Section 70 of the Bribery Act sets forth relatively comprehensive regulations regarding the abuse of functions by public officials in favor of themselves or others, and provides penalties that appear to be sufficiently deterrent, which corresponds to the requirements of the Convention.

## Article 20 Illicit Enrichment

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### (a) Summary of information relevant to reviewing the implementation of the article

44. Sri Lanka has cited the following implementation measure.

#### Section 23A of the Bribery Act.

- (1) Where a person has or had acquired any property on or after March 1, 1954, and such property –
- (a) being money, cannot be or could not have been –
    - (i) part of his known income or receipts, or
    - (ii) money to which any part of his known receipts has or had been converted; or
  - (b) being property other than money, cannot be or could not have been –
    - (i) property acquired with any part of his known income, or
    - (ii) property which is or was part of his known receipts, or
    - (iii) property to which any part of his known receipts has or had been converted, then, for the purposes of any prosecution under this section, it shall be deemed, until the contrary is proved by him, that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.
- (2) In subsection (1) “income” does not include income from bribery, and “receipts” do not include receipts from bribery.
- (3) A person who is or had been the owner of any property which is deemed under subsection (1) to be property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:  
Provided that where such property is or was money deposited to the credit of such person’s account in any bank and he satisfies the court that such deposit has or had been made by any other person without his consent or knowledge, he shall not be guilty of an offence under the preceding provisions of this subsection.
- (4) No prosecution for an offence under this section shall be instituted against any person unless the Commission has given such person an opportunity to show cause why he should not be prosecuted for such offence and he has failed to show cause or the cause shown by him is unsatisfactory in the opinion of such Commission.
- (5) For the purposes of this section, where a spouse or unmarried child under the age of eighteen years of a person has or had acquired any property movable or immovable on or after March 1, 1954, it shall be presumed until the contrary is proved that such property was acquired by such person aforesaid and not by such spouse or unmarried child, as the case may be.
- (6) In any prosecution for an offence under this section a certificate from the Chief Valuer with regard to the value of any immovable property or the cost of construction of any building on such property shall be sufficient proof of such value and cost of construction unless and until the contrary is proved.  
In this subsection, “Chief Valuer” means the Chief Valuer of the Government, and includes any Senior Assistant Valuer, or Assistant Valuer of the Government Valuation Department.
- (7) For the purpose of this section “a person” shall mean any person whomsoever, whether or not such person can be shown to have been concerned with any act referred to in section 18 or section 20 or whether or not he is a public servant within the meaning of this Act.

45. Regarding examples of implementation Sri Lanka provided the following cases.

#### 1. DIRECTOR-GENERAL FOR THE PREVENTION OF BRIBERY AND CORRUPTION v. FERNANDO

COURT OF APPEAL.  
JAYASURIYA, J.,  
KULATILAKE, J.  
C.A. NO. 55/97.  
H.C. COLOMBO NO. B/1173/96.  
JUNE 23, 1999.

*Bribery Act - S. 23A (4) - Requirement of a legal and valid notice - Sufficient notice - The power of a High Court Judge to make an order of discharge - S. 203 Code of Criminal Procedure Act.*

**Held:**

1. The notice under s. 23A (4) of the Bribery Act must give the accused sufficient notice in regard to the entire period which is sought to be relied upon.
2. If such a notice is not given, the accused has not been afforded the legal opportunity of preferring a full explanation in regard to the charges to be preferred - and where an accused is deprived of such an opportunity there is a legal bar to the institution of charges or preferring of an indictment against him.

per Jayasuriya, J.

"A common fallacy and a misconception prevails among both the members of the official and unofficial Bar, that unlike in a Magistrate's Court or a District Court, the High Court Judge is not legally entitled to make an order of discharge under any circumstances.'

3. Although there is no express reference to an order of discharge in the Code, s. 203 postulates that after the High Court reaches a finding he has either to acquit or convict the accused giving reasons for such orders, but before he reaches such a finding the High Court Judge has inherent power to make an order discontinuing legal proceedings before him and discharging the accused in the exercise of his powers of control over the course of proceedings.

**APPEAL** from the High Court of Colombo.

**Cases referred to:**

1. *Chandrapala Perera v. A. G.* - [1998] 2 Sri. LR 85 at 87 (SC).
2. *A. G. v. Piyasena* - 63 NLR 489.
3. *Fernando v. Excise Inspector, Wennappuwa* - 60 NLR 227.
4. *Premadasa v. Assen* - 60 NLR 451.
5. *Senaratne v. Lenohamy* - (DB) 1917 20 NLR 47.
6. *De Silva v. Jayatileka* - 67 NLR 169 (DB).
7. *Sumangala v. Piyatissa Thero* - 39 NLR 265.
8. *Fernando v. Rajasuriya* - 47 NLR 399.
9. *Kiri Banda v. A. G.* - 61 NLR 227.
10. *Kiri Banda v. William* - 44 NLR 74.
11. *Vidanagamatchi v. De Silva* - 80 CLW 94.
12. *Gabriel v. Soysa* - 31 NLR 315.
13. *Wanigasekara v. Simon* - 57 NLR 377.
14. *Weerasinghe v. Wijesinghe* - 29 NLR 208.
15. *A. G. v. Gunasekera* - 60 NLR 334.
16. *Edwin Singho v. Nanayakkara* - 61 NLR 22.
17. *Peter v. Cottelingam* - 66 NLR 468.

*M. Liyanage, Deputy Director-General of the Bribery Commission for complainant appellant.*

*Tilak Marapane, PC with D. Jayanethi for accused-respondent.*

June 23, 1999.

**JAYASURIYA, J.**

Mr. Tilak Marapana, PC, senior counsel for the accused-respondent is not present in Court.

We have heard Mrs. Liyanage, learned counsel for the complainant appellant and learned junior counsel for the accused-respondent. She concedes that in the notice which the Director-General of the Bribery Commission has issued in terms of section 23A (4) of the Bribery Act the period specified for the declaration of assets is the limited period from 1990-91 and there is no reference to a need of declaring of assets or funds acquired during the year 1954. The indictment drawn up against the accused-respondent charges the accused with certain events which have taken place in 1954. When she was confronted by this Court as to whether the notice is deficient or sufficient in regard to the period specified, her meek reply was that in the notice the Director-General has referred to the legal provision, that is to section 23A (4) of the Bribery Act. That was the solitary and the meek submission advanced by her in relation to the point raised by Court and in relation to the point which is highlighted in the order of the High Court Judge. We hold that the notice given under section 23A (4) of the said Act must give the accused sufficient notice in regard to the entire period which is sought to be relied upon subsequently in drawing an indictment and in the circumstances the instant notice given to the accused-respondent is deficient and defective. The issue of a legal and valid notice setting out the correct and complete factual matters on which his explanation is called for, is of paramount importance. If such a notice has not been given, the accused has not been afforded the legal opportunity of preferring a full explanation in regard to the charges that would ultimately be preferred against him in the indictment and where an accused person is deprived of such an opportunity, there is a legal bar to the institution of charges or preferring of an indictment against him. In the circumstances, we uphold that part of the order of the learned High Court Judge discontinuing legal proceedings and discharging the accused.

But, if the trial Judge intended to acquit the accused by the use of the word "254md", we hold that it is a wrong and incorrect order in law. A common fallacy and a misconception prevails among both the members of the official and unofficial bar, that unlike in a Magistrate's Court or a District Court (which tried criminal offences earlier) the High Court Judge is not legally entitled to make an order of discharge under any circumstances. Vide Chandrapala Perera v. A. G.(1) at 87 (SC). The provisions of the Code giving rise for such a misconception relating to High Court trials before a Judge refer to orders of conviction

**2. 1978 Present : Wijesundera, J., Malcom Perera, J. and Vythialingam, J.**

**L. C. FERNANDO, Accused-Appellant and THE REPUBLIC OF SRI LANKA**

**S. C. 26/76-D. C. Colombo (Bribery), B/208**

*Bribery Act, sections, 23 A, 79-Evidence Ordinance, sections 3, 5,9,11,54, 114, 157-Administration of Justice Law, No. 44 of 1973, sections 11, 13, 40, 136, 354-Burden on the accused to prove the contrary of the presumption created by section 23A (1) of the Bribery Act-Nature thereof-Matters which the prosecution has to prove in a charge under section 23A of the Bribery Act-Relevance of evidence of specific acts of bribery-Evidence of bad character- Prejudice to accused-Effect.*

Criminal Procedure Code, section 287-Administration of Justice Law, section 136- Right of accused to be defended by an Attorney-at-Law-Denial of opportunity to prepare for cross-examination of witness-Whether conviction sustainable.

Revision-Application by a party not on record to expunge and delete remarks in judgment relating to such party-Scope and applicability of powers of Appellate Court.

The appellant was indicted on the charge of having between 31st March, 1968, and 31st October, 1971, acquired certain properties (including monies) being properties which could not have been acquired with any

part of his known income or receipts or to which any part of his known receipts had been converted which properties were deemed by section 23A (1) of the Bribery Act to have been acquired by bribery and thereby committed an offence punishable under section 23A (3) of the said Act.

The prosecution inter alia called witness T whose evidence was to the effect that he gave a bribe of Rs. 60,000 to the appellant for services rendered by the appellant in connection with the stopping of police raids on T's illegal betting business.

" T " was not on the list of witnesses on the indictment. Application was made to add his name to the list of witnesses on 8.10.74, the accused was served with notice at 5 p.m. on that day and the witness was called to give evidence on 9 10.74. Counsel's objection to T being called was overruled and after Ts examination in chief, counsel for the accused moved for a date to cross examine the witness after obtaining instructions from his client. This was refused. The accused himself stated that after he received notice at 5 p.m. on 8 10.74 he made efforts to contact his counsel but failed to do so.

It was contended in appeal that the conviction was vitiated, inter alia (a) by the admission of irrelevant and inadmissible evidence; (b) by the fact that counsel who appeared for the accused had been denied an opportunity to take proper instructions and cross- examine 2' who was sprung on the accused at such short notice; (c) by a grave misdirection in law in regard to the burden on the appellant to prove the contrary of the presumption created by section 23A (1) of the Act.

**Held** (WIJESUNDERA, J. dissenting) : (a) that the evidence of " T " was both irrelevant and inadmissible and in view of the express prohibition against the admission of such evidence in section 54 of the Evidence Ordinance and its highly prejudicial nature, such evidence should have been excluded by the trial Judge ; the improper reception of such evidence had resulted in the accused's chance of having a fair trial being prejudiced and in a failure of justice

(b) that in the circumstances the accused had also been denied the substance of the right given to him by section 136 of the Administration of Justice Law to be defended by an Attorney-a.- Law and he had thus been denied a fair trial in this respect too ,

(c) while the trial judge correctly set out the extent of the burden which lies on the appellant to prove the contrary of the resumption created by section 23A (1) of the Act, namely proof on a balance of probability, yet in applying that standard to the facts in the case, he had imposed on the appellant a very much higher standard than a mere balance of probability. For, in the course of his judgment he said that, besides proving the various sources of his wealth, there was another duty cast on the appellant and that is to prove that the sources are free from suspicion or doubt. If the appellant had proved that the money was not money acquired in, contravention of the Bribery Act then he has success fully rebutted! the presumption. There is no further burden on him to prove that. the. transaction was free from taint or that the character of the payments were above suspicion.

**Held further:** That section 79(1) of the Bribery Act which provides that the giver of a gratification shall be a competent witness against the person accused of taking a gratification does not do sway with the need to probe such evidence and examine it with due care.

Per **WIJESUNDERA, J.** dissenting : (a) that the evidence of " T " was irrelevant." . this is only one item in a mass of evidence. .This. item has no connection with any one of the transactions or deposits. It has not been taken into consideration in determining that the presumption in respect of any one of the transactions has not been rebutted Then I fail to see how the acceptance of this item of evidence vitiates the conviction " .

(b) that the trial Judge had not misdirected himself on the burden of proof that lay on the appellant to rebut the presumption created by section 23A(1) of the Act. "When the learned trial Judge said that the appellant has to prove these trans- actions are free from taint and that the character of these payments are above suspicion he meant nothing other than to say that leaving a doubt alone will not be sufficient ..... " .

In an Application by the Hatton National Bank which was not a party; to have certain remarks made in the judgment by the learned District Judge expunged and deleted in the exercise of the Court's powers by way of revision.

**Held** (by MALCOLM PERERA, J. and VYTHIALINGAM, J.) : That the court has power, acting in revision

to expunge and delete disparaging remarks in a judgment about a person who is not a party to the case, where such remarks are not relevant for the decision of the issues in the case nor are an integral part of the judgment, and are severable. But since in the present case the entire judgment was quashed there was no need for a separate order expunging the remarks.

Considerations which govern such expunging discussed.

**APPEAL** from a judgment of the District Court, Colombo.

**Cases referred to :**

*Public Prosecutor v. Yuvaraj*, (1970) A.C. 226; (1970) 2 W.L.R. 226.

*King v. James Chandrasekera*, (1942) 44 N.L.R. 97; 25 C.L.W. 1.

*Jayasena v. The Queen*, (1969) 72 N.L.R. 313.

*Wanigasekera v. Republic of Sri Lanka*, (1977) 79 (1) NLR 241.

*Attorney-General v. Karunaratne*, S.C. 16/14 ; D.C. Colombo B/75; S.C. Minutes of 17.6.75.

*R. v. Carr-Briant*, (1943) 2 All E.R. 156; (1943), K.B. 607; 169 L. T. 75 ; 59 T.L.R. 300.

*Sodeman v. R.*, (1936) 2 All E. R. 1138 (P.C.)

*Miller v. Minister of Pensions*, (1947) 2 All E.R. 372; 177 L.T. 536 ; 63 T.L.R. 474.

*Sarah Hobson's Case*, (1831) 1 Lewin's Crown Reports 261.

*Bater v. Bater*, (1950) 2 All E.R. 485; (1951) P. 35; 66 T.L.R. (Pt. 2) 589.

*Maxwell v. D. P. P.*, 24 Cr. A. R. 152; (1934) All E.R. Rep. 168 ;(1935) A.C. 309.

*Rowton R.V.*, (1865) 34 L.J.M.C. 37; 10 Cox C.C. 25; 29 J.P. 149; 11 L.T. 745.

*Roshun v. Rex*, (1880) 5 C 768; 6 C.L.R. 219.

*R. v. Kartick Chunder Das*, (1887) 14 C 721; 7 Indian Decisions (N.S) 478.

*R. v Butterwasser*, (1948) 1 K.B. 4 ; (1947) 2 All E.R. 415 ; 63 T.L.R. 463; 32 Cr. A.R. 81.

*Makin v. Attorney-General for N.S.W.* (1894) A.C. 57 ; 69 L.T.778 ;10 T.L.R. 155.

*King v. Pila*, (1912) 15 N.L.R. 453.

*Queen v. Sathasivam*, (1953) 55 N.L.R. 255.

*Pauline de Croos v. The Queen* (1968) 71 N.L.R. 169.

*King v. Peiris*, (1031) 32 N.L.R. 318.

*Regina v. Parbhudas*, (1894) 11 B.H.C.R. 90.

*Ranasinghe and Another v. State*. S.C. 4-5/75 D.C. Bribery Colombo-148/B ; S.C. Minutes of 14.8.1975.

*Rajakaruna v. Attorney-General*, -S.C. 31/75; D.C. Colombo 292/B ; S.C. Minutes 27.2.1976.

*King v. Perera*, (1941) 42 N.L.R. 526.

*Peter Singhe v. M. B. Werapitiya*, (1953) 55 N.L.R. 155.

*Coore v. James Appu*, 22 N.L.R. 206.

*Manuel v. Kanapanickan*, (1911) 14 N.L.R. 186.

*Premaratne v. Gunaratne*, (1965) 71 N.L.R. 113.

*R. v. Silva*, (1907) 1 A.C.R. 148.

*Jayasinghe v. Munasinghe*, (1959) 62 N.L.R. 527.

*Queen v. Prins*, (1962) 61 C.L.W 26.

*Queen v. Peter*, (1961) 64 N.L.R. 120; 5.9 CLW. 112.

*Llewellyn Evans, A.I.R.* (1926), 28 Bombay 551. *Rangasamy Padayachi*, (1916) 16 G.L.J. 786.

*Subramaniam v. Inspector of Police Kankesanturai*. (1968) 71 N LR. 204

*State of Uttar Pradesh v. Mohamet Naim*, (1964) A.I.R. S.C. 703.

*Narthupana Tea & Rubber Estates Ltd. v. Perera*, (1962) 66 N.L.R. 135.

*Queen v. Murugan Ramasamy*, (1964) 66 N.L.R. 265 (P.C.) \* (2965) A.C. 1 ; (1964) 3 W.L.R. 632.

*Gunawardane v. Inspector of Police Ragalla, S.C.* 758/70 MC

*Nuwara Eliya* 36 867; *S.C. Minutes* 26.1.1976.

*Mitra v. Rala Kalicharam*, (1927) 3 Lucknow 287.

*In re Bikaru*, 22 Lucknow 391.

*Narasinghe Bhadur*, (1961) A.I.R. Allahabad 447.

*Mendis v. Paramasamy*, (1958) 62 N-L-R. 302. C.D.S.

*Swami v. The State A.I.R.*, (1960) S.C. 7.

*Dhanvantari v. The State of Maharashtra, A.I.R.* (1964) S.C. 575. *Reg. v. Boardman*, (1974) 3 W.L.R. 673 (1974) 3 All E.R. 887 ; (1975) A.C. 421.

*D.P.P. v. Kilbourne*, (1973) A.C. 729; (1973) 2 W.L.R. 254 ; (1973) 1 All E.R. 440.

*Noor Mohamed v. The King*, {1949} A.C. 182; {1949} 1 All E.R. 365.

*Regina v. Waidyasekera*, (1955) 57 N.L.R. 202.

*Thompson v. R.* {1918} A.C. 221; 118 L.T. 418; 34 T.L.R. 204; 87 L.J.K.B. 478.

*Moses, v. The Queen*, (1971) 75 N.L.R. 121 (P.C.).

*Samarakoon v. Public Trustees*, (1960) 65 N.L.R. 100.

*Ariyadasa v. The Queen*, {1967} 70 N.L.R. 3. y

*Appuhamy v. Weeratunga*, {1921} 23 N.L.R. 467.

*Jairam Das v. Emperor, A.I.R.* (1945) P.C. 94.

*S. P. Duboy v. Narasinghe Bahadur, A.I.R. (1961) Allahabad 447.*

E. R. S. R. Coomaraswamy, with C. Chakradharan, M. Devanayagam, E. R. S. R. Coomaraswamy (Jr.) and R. K. S. Suresh Chandra, for the accused-appellant.

S. J. Kadirgamar, Q.C., with V. S. A. Pullenayagam and Mrs. S. Gunsekera, for the aggrieved-petitioner (Bank).

Kenneth Seneviratne, Director of Public Prosecutions, with Upawansa Yapa, Senior State Counsel, for the Attorney-General.

*Cur. adv. vult*

**3. 1977 Present: Wimalaratne, J., Weeraratne, J. and Sharvananda, J.**

D. W. WANIGASEKERA, Appellant  
and  
THE REPUBLIC OF SRI LANKA, Respondent

*S. C. 65/75-D.C. Colombo 246/B*

*Bribery Act, sections 22 and 23A-Person who can be deemed to have acquired property by bribery-Is it incumbent on the prosecution to prove that property was acquired as a result of bribery-Extent of burden of proof cast on defence of rebutting the presumption of bribery-Is section 26A retrospective ?-Imposition of penalty under section 26-When permissible ?*

Interpretation of Statutes-Bribery Act-Amending Law No. 38 of 1974 -Retrospective legislation-Applicability of section 26A brought in by Amending Law-Interpretation Ordinance (Cap. 2), section 6 (3).

In a prosecution for bribery under section 23A of the Bribery Act the question was whether the accused was in terms of section 23A(1) a person who, even if he had acquired property in excess of his known income or receipts, can be deemed to have acquired such property by bribery-

**Held:** That the accused was a person who came within the ambit of section 23A(1).

*Wimalaratne J.-* " As a Director of the Bank of Ceylon during the relevant period he was a member of the governing body of a scheduled institution. Had he accepted a gratification as an inducement or reward for any of the purposes set out in section 22 (a) (i) (ii) or (iii), he would be guilty of the offence of bribery under section 22 (c). In view of his official status, he could also be considered as coming within the ambit of section 20(b) read with section 20 (a) (vi) as being a person who had he accepted a gratification as an inducement or reward for his procuring or furthering the securing of any grant, lease or other benefit from the government, would be guilty of the offence of bribery."

In view of the provisions of section 23A(2) that "income does not include income from bribery " it was contended that the ' basic fact', upon the proof of which the presumption created by section 23A arises, must be proved by the prosecution, and that in a prosecution under section 23A the ' basic fact' to be proved was that the accused acquired property and that such property could not have been acquired with his known income or receipts. Since "income does not include income from bribery" the burden was on the prosecution to prove that the property was acquired with income or receipts from " bribery ", meaning the acceptance of any gratification in contravention of any of the provisions of Part II of the Act.

*Held:* (1) That the 'basic fact' to be proved was that the accused acquired property which could not have been acquired with any part of his sources of income or receipts known to the prosecution after investigation and that the prosecution is not required to prove that the acquisitions were made with income or receipts from bribery. An interpretation based on the appellant's contention would defeat the very purpose for which the section was included in the Bribery Act since section 23A is designed against a person in respect of whom there is no proof of the actual receipt of a gratification, but there is presumptive evidence of bribery.

(2) That the presumption created by section 23A may be rebutted by the accused by proving on a balance of probabilities, that the property was acquired otherwise than by bribery.

*Held further* : That the amending section 26A is retrospective in its operation. The penalty contemplated under section 26 however can be imposed only on persons found guilty of any offence committed by the acceptance of any gratification in contravention of the provisions of Part II of the Act, other than the provisions of section 23A.

*Sharvananda, J.*- "The language of the amending law is plain and can only mean that which it says. Section 6(3) of the Interpretation Ordinance does not apply to the present circumstances as the new Section 26A in the scheme of the Amending Law does not repeal any existing written law, but only provides for the imposition of additional penalty. The amending section 26A is clearly retrospective ".

**Cases referred to:**

*Gunasekera v. The Queen*, 70 N.L.R. 457.

*Swami v. The State*, A.I.R. (1960) S.C. 7.

*Emden v. The State of Uttar Pradesh*, A.I.R. 1960 S.C. 548.

*Dhanavantrai v. State of Maharashtra*, A.I.R. 1964 S.C. 575.

*R. v. Carr-Braint*, (1943) 2 All E.R. 156; (1943) K.B. 607; 169 L.T. 75 ; 59 T.L.R. 300.

*State of Madras v. A. Naidyanatha Iyer*, A.I.R. 1958 S.C. 61.

*Public Prosecutor v. Yuvaraj*, (1970) A.C. 913 ; (1970) 2 W.L.R. 226.

*Miller v. Minister of Pensions*, (1947) 2 All E.R. 372 ; 177 LT 536; 63 T.L.R. 474.

*In re de Mel*, 78 N.L.R. 67.

*Director of Public Prosecutions v. Lamb*, (1941) 2 All E.R. 499 ; (1941) 2 KB. 89 ; 165 L.T. 59 ; 57 T.L.R. 449.

*Buckman v. Button*, (1943) 2 All E.R. 82 ; (1943) 1 K.B. 405 ; 165 L.T. 75 ; 59 T.L.R. 261.

*R. v. Oliver*, (1943) 2 All E.R. 800; (1944) K.B. 68; 170 L.T. 110; 60 T.L.R. 82.

*R. v. Jackson*, (1775) 1 Cowp. 297.

*Attorney-General v. R. M. Karunaratne*, (S. C. 16/74 D. C. Colombo B/75-SC. Minutes of 17.6.77).

**(b) Observations on the implementation of the article**

46. Section 23A of the Bribery Act sets forth detailed provisions for illicit enrichment. In addition to public officials themselves, illicit enrichment implicating their family members will also be investigated. Relevant provisions show a sufficiently broad coverage of subjects. It was additionally clarified by Sri Lanka during the country visit that Section 23A is not limited to the offence of illicit enrichment that is based *only on bribery*. Sri Lankan courts would presume that *any* illicit enrichment is a product of bribery even though it may be a product of *any other corruption offence*, including embezzlement or abuse of functions. In order to rebuff this presumption the defendant would have to prove that enrichment originated from legitimate sources, which would be impossible as long as it is a product of any corruption offence. Therefore, regardless of the offence that resulted in illicit enrichment, e.g., embezzlement, the wrongdoer would still be prosecuted based on Section

23A. Considering that Sri Lanka has established a relatively adequate system for property declarations of public officials, provisions of the Convention may be deemed to have been relatively well implemented in its legislation.

## **Article 21 Bribery in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

47. Sri Lanka indicated that it has not implemented the article under review. Transactions exclusively between private parties do not come within the provisions of the Bribery Act. It is a situation where the legislature has so far not given thought to this aspect of law.

### **(b) Observations on the implementation of the article**

48. It seems that currently, Sri Lanka has no legislation pertaining to bribery in the private sector, but (as discussed during the country visit) this issue has raised concern among the public and business people, and was also discussed by anti-corruption agencies, the public, trade associations and the media. Their response with respect to the adoption relevant legislation is positive. It was further explained during the country visit that three committees had been established at the level of the CIABOC to consider a possible amendment of the legislation in line with the Convention.

49. Bribery in the private sector in many circumstances also involves other offences, including fraud and forgery of documents. Cases were reported in that regard that are mostly based on Section 398 (Cheating) of the Sri Lankan Penal Code. Victims are usually persons in charge of private-sector entities or other business partners. In such circumstances, victims may report offence to the police for investigation.

50. Section 18 of the Bribery Act that provides for the offering and acceptance of bribes among bidders for government tenders does not rule out that the provisions on the bribery in the private sector already exist in this particular area.

51. Moreover, the offering of bribes is an offence if committed by any person, including persons in the private sector (Section 88 of the Bribery Act).

### **Section 88**

For the purposes of this Act a person offers a gratification if he or any other person acting with his knowledge or consent directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any gratification to or for the benefit of or in trust for any other person.

52. Sri Lanka requested technical assistance in implementing the article and seemingly is willing to take advice on working out the best solution for the legislation needed.
53. Sri Lanka is encouraged to consider adopting specific legislation in accordance with provisions of the Convention in order to criminalize such acts.

**(c) Technical assistance needs**

54. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned;
  2. Model legislation;
  3. Legislative drafting;
  4. Legal advice;
  5. On-site assistance by an anti-corruption expert;
  6. Development of an action plan for implementation;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

55. Sri Lanka has cited the following implementation measures.

**Sections 386 and 388 of the Penal Code.** Referred to under article 17 above.

56. Regarding examples of implementation Sri Lanka referred to the cases cited under article 17 above.

**(b) Observations on the implementation of the article**

57. The article under review is covered in Section 388 of the Penal Code. Sections 386 and 388 of the Penal Code are not confined to acts of embezzlement in the private sector. According to Section 392 of the Penal Code, “public officials” fall under the same category as other professionals such as bankers, brokers and lawyers and are, once convicted, subject to a criminal penalty of up to ten years of imprisonment. Therefore, the coverage of these provisions is broader than that in article 22 of the Convention.

58. In case *Cooray v. King* 53 NLR 73, the Sri Lanka Court of Appeal agreed to adopt the practice of determining the amount of embezzlement on a flexible basis put forward by Judge Fawcett J. in the Bombay case *Emperor v Byramji Jamsetji Chevalla* 3 [A.I.R. 1928 Bom. 148]. This decision is very worth citing: " if the evidence is sufficient as to establish that at any rate some property such as money has been misappropriated it seems to me that it is against reason and authority to say that because you cannot specify the exact amount that has been misappropriated the accused cannot be convicted. "
59. In the case *Attorney General v. Walgamage* 2000 3SLR 01, the Supreme Court of Sri Lanka held that ""entrustment" does not contemplate the creation of a trust with all the technicalities of the law of trust; it includes the delivery of property to another to be dealt with in accordance with an arrangement made either then or previously."
60. This special definition of "entrustment" makes it possible to bring the conduct of the dishonest appropriation of property within the coverage of the offence of the breach of trust.
61. The maximum term of imprisonment prescribed in Sections 389-392 of the Penal Code empowers the judge to give a sentence according to the identity of the criminal. Generally speaking, the judge is empowered to consider all factors in sentencing to reflect the gravity of the offence, including the identity of the criminal, the crime's modus operandi, conditions of the victim and the amount involved.
62. Sri Lanka did not provide statistical information with regard to the prosecution of the offences of embezzlement, misappropriation and criminal breach of trust.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

63. Sri Lanka has cited the following implementation measures.

#### **Section 3 of the Prevention of Money Laundering Act no 5 of 2006**

3. (1) Any person, who-

- (a) engages directly or indirectly in any transaction in relation to any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity;

(b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity, knowing or having reason to believe that such property is derived or realised, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity, shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine not less than the value of the property in respect of which the offence is committed and not more than three times the value of the property in respect of which the offence is committed or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment. The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II, of this Act.

(2) Any person who attempts or conspires to commit the offence of money laundering, or aids or abets, the commission of the offence of money laundering shall be guilty of an offence under this Act and shall be liable after trial before the High Court to be punished with the same punishment as is specified for the offence of money laundering. In this subsection "abet" shall have the same meaning as in sections 100 and 101 of the Penal Code.

(3) For the avoidance of doubts, it is hereby declared that a conviction for the commission by the accused of the unlawful activity shall not be necessary for the proof of the offence under the provisions of this Act.

**Section 35 of the Prevention of Money Laundering Act no 5 of 2006**

...

“transaction” means any activity connected with finance business or designated non-finance business;

“transaction” in relation to property includes—

(a) a purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, donation, creation of a trust, settlement, deposit including any deposit of any article, withdrawal, transfer between assets, extension of credit;

(b) any agency or grant of power of attorney;

(c) any other disposition or dealing of property in whatever form, or whatsoever description or nature, howsoever described, which results in any right, title, interest or privilege, whether present or future, or whether vested or contingent, in the whole or any part of such property being conferred on any person;

...

64. Regarding examples of implementation, Sri Lanka clarified that there are currently pending cases, but relevant information is unavailable. Relevant information is collected and analyzed by the Police Department and the Attorney General's Department.

**(b) Observations on the implementation of the article**

65. The Sri Lankan legislation covering subparagraphs (i) and (ii) of paragraph (a) of article 23 is in compliance with the requirements of the Convention. It is particularly notable that Section 3 of the Prevention of Money Laundering Act (No 5 of 2006) does not require that the conviction of the predicate offence is a necessary element for the prosecution of money laundering. Section 35 of the Prevention of Money Laundering Act provides a definition of “transaction” that is broad enough to cover the “conversion” and “transfer” provided in the Convention. This understanding was confirmed by officials during the country visit in their explanation of the absence of any judicial interpretation of the term.

66. Money laundering cases are investigated by the police and prosecuted by the Attorney General’s office, although money laundering cases involving predicate offences of corruption are also handled by CIABOC.

67. No case examples or statistics relevant to the implementation of the article under review were provided, which hampers the assessment of the practical application of the cited measures.

## Article 23 Laundering of proceeds of crime

### Subparagraph 1 (b) (i)

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

### (a) Summary of information relevant to reviewing the implementation of the article

68. Sri Lanka has cited Section 3 (1)(b) of the Prevention of Money Laundering Act no 5 of 2006 referred in subparagraph (a) above as an implementation measure.

69. Regarding examples of implementation, Sri Lanka clarified that there are currently pending cases, but relevant information is unavailable.

### (b) Observations on the implementation of the article

70. Sri Lankan legislation is in line with the requirements of the Convention.

## Article 23 Laundering of proceeds of crime

### Subparagraph 1 (b) (ii)

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

### (a) Summary of information relevant to reviewing the implementation of the article

71. Sri Lanka has cited Section 3(2) of the Money Laundering Act No 5 of 2006 referred in paragraph (a) above read with Sections 113 A (1) and 100 of the Penal Code.

#### Section 113 A (1) of the Penal Code

##### Conspiracy

If two or more persons agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, whether with or without any previous concert or deliberation, each of them is guilty of the offence of conspiracy to commit or abet that offence, as the case may be.

#### Section 100 of the Penal Code

##### Abetment of the doing of a thing

A person abets the doing of a thing who -

Firstly - Instigates any person to do that thing; or  
Secondly - Engages in any conspiracy for the doing of that thing; or  
Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

72. Sri Lanka has indicated that examples of implementation are not available at present.

**(b) Observations on the implementation of the article**

73. Section 3 (2) of the Prevention of Money Laundering Act read together with Sections 113 (A) (1) and 100 of the Penal Code cover most of the requirements of subparagraph 1 (b) (ii) of the article under review.

**Article 23 Laundering of proceeds of crime**

**Paragraph 2**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

74. Sri Lanka has cited Section 3 of the Money Laundering Act No 5 of 2006 referred to in paragraph (a) above, read with the interpretation of "unlawful activity" in Section 35 of the same Act.

**Section 35 of the Prevention of Money Laundering Act No 5 of 2006 as amended by the Prevention of Money Laundering (Amendment) Act, No. 40 of 2011 (Section 19 (4))**

"Unlawful activity" means any act which constitutes an offence under-

- (a) The Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218);
- (b) Any law or regulation for the time being in force relating to the prevention and suppression of terrorism;
- (c) The Bribery Act (Chapter 26);
- (d) The Firearms Ordinance (Chapter 182), the Explosives Ordinance (Chapter 183) or the Offensive Weapons Act, No. 18 of 1966.
- (e) The Exchange Control Act (Chapter 423), and any Rules, Orders or Regulations made thereunder;
- (f) An offence under Section 83C of the Banking Act, No. 30 of 1988;
- (g) Any law for the time being in force relating to transnational organised crime;
- (h) Any law for the time being in force relating to cyber crime;
- (i) Any law for the time being in force relating to offences against children;
- (j) Any written law for the time being in force relating to offences connected with the trafficking or smuggling of persons;
- (k) the Customs Ordinance (Chapter 235) and any Regulation, Rule or Order made thereunder;

- (l) the Excise Ordinance (Chapter) 52 and any Regulation, Rule or Order made thereunder;
- (m) the Payment Device Frauds Act No 30 of 2006 and any Regulation, Rule or Order made thereunder;
- (n) the National Environmental Act No 47 of 1980 and any Regulation, Rule or Order made thereunder
- (o) an offence under any other written law for the time being in force which is punishable by death or with imprisonment for a term five years or more; provided however that, notwithstanding anything to the contrary in the preceding provision, any offence under section 386, 388, 399, and 401 of the Penal Code (Chapter 19) shall be deemed to be an unlawful activity for the purpose of this Act; and
- (p) an act committed within any jurisdiction outside Sri Lanka, which would either constitute an offence in that jurisdiction or which would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act.

75. Regarding subparagraph (c), Sri Lanka has cited Section 9 (1)(f) of the Judicature Act No. 2 of 1978 and Section 89A of the Bribery Act.

**Section 9 (1)(f) of the Judicature Act No 2 of 1978**

The High Court shall ordinarily have the power and authority and is hereby required to hear, try and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of

(f) any offence wherever committed by any person, who is a citizen of Sri Lanka, in any place outside the territory of Sri Lanka or on board or in relation to any ship or air craft of what ever category.

**Section 89A of the Bribery Act**

A public servant who solicits or accepts a gratification which is an offence under this Act shall, if such solicitation or acceptance was made outside Sri Lanka, be deemed to have committed such offence within Sri Lanka and accordingly the High Court holden in Colombo shall have jurisdiction to try such offence notwithstanding anything in any other law to the contrary.

76. Regarding examples of implementation, Sri Lanka clarified that there are currently pending cases, but relevant information is unavailable.

**(b) Observations on the implementation of the article**

77. The Law on the Prevention of Money Laundering specifies a number of types of predicate offence, which cover a broad scope. Subsection (c), Section 35 of the Law on the Prevention of Money Laundering quotes the offences prescribed in the Bribery Act as predicate offences. Subsection (o) specifies the offences that shall be subject to death penalty or imprisonment of more than five years and also covers certain other enumerated Penal Code offences. According to clarification by Sri Lanka during the on-site visit, these two standards applicable to predicate offences are enough to cover the various offences established in accordance with the Convention.

78. Regarding subparagraph (c) of the paragraph under review, it is noted that according to subsection (p) of Section 35 of the Prevention of Money Laundering (Amendment) Act of 2011 (quoted above), if an act committed within any jurisdiction outside Sri Lanka either constitutes an offence in that jurisdiction or would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act, then it constitutes a predicate offence of money laundering. Therefore, the legislation of Sri Lanka meets the requirements of the Convention.

**Article 23 Laundering of proceeds of crime**

## **Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

79. Sri Lanka indicated that it has not implemented the provision under review.

### **(b) Observations on the implementation of the article**

80. The provision under review has not been implemented, but the reviewing experts noticed that Sri Lanka was taking relevant measures. Sri Lanka is recommended to finalise the process of furnishing the copies of its relevant laws to the Secretary-General of the United Nations.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

81. Sri Lanka has indicated that the fundamental principles of its domestic law do not prohibit a person being charged with both money laundering and the predicate offence. Self-laundering may be prosecuted in Sri Lanka.

### **(b) Observations on the implementation of the article**

82. According to the clarification provided by Sri Lanka during the on-site visit, the legislation of Sri Lanka does not provide special restrictions on the subjects of money laundering, and offences set forth in paragraph 1 of this article are also applicable to persons who commit predicate offences. This understanding is reflected in Section 3(3) of the Prevention of Money Laundering (Amendment) Act of 2011, which provides a substitution for the words “for the commission by the accused of the unlawful activity” of the words “for the commission of the unlawful activity”.

83. It was explained that there have been many cases where persons were charged with both money laundering and the predicate offence, and a case involving credit card fraud was referred to.

## Article 24 Concealment

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

84. Sri Lanka has cited Section 3 (1) of the Money Laundering Act No 5 of 2006 referred to under article 23(a)(i) above.

### (b) Observations on the implementation of the article

85. Section 3 (1) (b) of the Money Laundering Act stipulates “any person who... (b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity, knowing or having reason to believe that such property is derived or realised, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity, shall be guilty of the offence of money laundering ...”, which basically meets the requirements specified in the Convention. It was further clarified during the on-site visit that the offence also covers the concealment or continued retention of property by persons who did not participate in the offence (as described in the article under review); all that is needed is the relevant conduct coupled with knowledge that the property is derived or realized from the proceeds of unlawful activity.

## Article 25 Obstruction of Justice

### Subparagraph (a)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

### (a) Summary of information relevant to reviewing the implementation of the article

86. Sri Lanka has cited Section 23 of the Commission to Investigate Allegation of Bribery or Corruption Act No 19 of 1994 and Section 73 of the Bribery Act.

#### **Section 23 of Commission to Investigate Allegation of Bribery or Corruption Act No 19 of 1994.**

Any person who -

(a) makes a false statement in an affidavit furnished by him to the Commission;

(b) willfully neglects or omits to render any assistance to the Director-General or any officer appointed to assist the Commission when requested to do so under section 7;

(c) resists or obstructs the Director-General, any officer appointed to assist the Commission or any officer authorized by the Commission under subsection (1) of section 7, in the exercise of the powers of entry or search under section 7;

(d) interferes with any person who is to be, or has been, examined by the Commission;

(e) induces any such person to refrain from giving evidence in any court;

(f) threatens any such person with injury to his body, mind or reputation in order to deter him from giving evidence in any court;

(g) injures any such person in body, mind or reputation in order to deter him from giving evidence in any court;

(h) compels any such person not to give evidence in any court,

shall be guilty of an offence and shall on conviction after summary trial before Magistrate be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand rupees or to both such imprisonment and fine.

### **Section 73 of the Bribery Act.**

Interference with witnesses, & c.

(1) A person who –

(a) interferes with any witness summoned in any proceedings for bribery in or before a court or commission of inquiry, or

(b) induces any such witness to refrain from giving evidence, or

(c) threatens any such witness with injury to his body, mind or reputation in order to deter him from giving evidence, or

(d) injures any such witness in body, mind or reputation in order to deter him from giving evidence, or

(e) compels any such witness not to give evidence,

shall be guilty of an offence and shall, upon summary trial and conviction by a Magistrate, be liable to rigorous imprisonment for a term not exceeding twelve months and to a fine.

(2) Every court before which any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected of having committed or to have been concerned in committing an offence under this section shall keep such person on remand until the conclusion of the trial except in exceptional circumstances where the court before which he surrenders himself or is produced may after recording its reasons therefor release him on bail.

### **(b) Observations on the implementation of the article**

87. Section 73 of the Bribery Act provides for the offence of interfering with a witness or impeding a witness from giving evidence by means of violence, threatening, and compulsion in criminal proceedings for bribery before a court or in an investigation before a commission of inquiry, which basically meets the requirements of the Convention. However, it is noted that the cited section is limited to bribery cases. It is recommended that Sri Lanka criminalize interfering with a witness or impeding a witness in all kinds of cases involving corruption offences.

88. A draft Bill of the “Assistance and Protection of Victims of Crime and Witnesses Act of 2012” (L.D.O 46/2007) was provided to the reviewers. The reviewers notice that there are some provisions in Parts II and III of the Draft Bill on the legitimate rights of witnesses and on criminal acts that harm witnesses, which are conducive to the implementation of this article. The Bill came into operation following the country visit as the “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015. However, it could not be assessed in detail due to its recent adoption.

### **Article 25 Obstruction of Justice**

## **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

89. Sri Lanka has cited Section 23 of the Commission to Investigate Allegation of Bribery or Corruption Act No 19 of 1994 referred in subparagraph (a) above, Section 74(1), (2) and (3) and Section 75(1) of the Bribery Act and Sections 183-187 of the Penal Code

#### **Section 74 of the Bribery Act.**

Influencing, threatening or injuring member of commission of inquiry or officer

(1) A person who directly or indirectly influences any member of a commission of inquiry, in the performance of his duty shall be guilty of an offence and shall, upon summary trial and conviction by a Magistrate, be liable to a fine of not less than two hundred rupees and not more than five hundred rupees.

(2) A person who directly or indirectly by words written or spoken or by any act threatens any member of a commission of inquiry with any injury to his body, mind or reputation in order to deter him from the performance of his duty shall be guilty of an offence and shall, upon summary trial and conviction by a Magistrate, be liable to a fine of not less than two hundred rupees and not more than five hundred rupees and, upon a second or subsequent conviction of an offence under this subsection shall, in addition to such fine, be liable to imprisonment for a term not exceeding one year.

(3) A person who causes injury to the body, mind or reputation of a member of a commission of inquiry in order to deter him from the performance of his duty shall, upon summary trial and conviction by a Magistrate, be liable to rigorous imprisonment for a term not exceeding twelve months and to a fine.

#### **Section 75 of the Bribery Act.**

75. (1) A person who refuses or willfully neglects or omits to carry out an order of a commission of inquiry or willfully obstructs such commission shall be guilty of an offence and shall, upon summary trial and conviction by a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months or to a fine of not less than one hundred rupees and not more than five hundred rupees.

(2) A prosecution for an offence under subsection (1) may be instituted in such Magistrate's Court as may be determined by the Attorney-General.

#### **Section 183 of the Penal Code**

Obstructing public servant in discharge of his public functions.

Whoever voluntarily obstructs any public servant or any person acting under the lawful orders of such public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

#### **Section 184 of the Penal Code**

Omission to assist public servant when bound by law to give assistance.

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both ; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, unlawful assembly, or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

#### **Section 185 of the Penal Code**

Disobedience to an order duly promulgated by a public servant.

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both ; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

#### **Section 186 of the Penal Code**

Threat of injury to a public servant.

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise Of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **Section 187 of the Penal Code**

Threat of injury to induce any person to refrain from applying for protection to a public servant.

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application, for protection against any injury, to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### **(b) Observations on the implementation of the article**

90. Paragraph (c), Section 23 of the Commission to Investigate Allegation of Bribery or Corruption Act mentions the punishment for resisting or impeding the “entry or search” by relevant officials of the Commission. The act of directly or indirectly influencing any member of a commission of inquiry in the performance of his or her investigation tasks by means of violence, threatening or compulsion is an offence under Section 74(1), (2) and (3) and Section 75(1) of the Bribery Act. Based on the clarification by Sri Lanka during the on-site visit, according to Sections 183-187 of the Penal Code, all offences established in accordance with the Convention are covered by those sections of the Penal Code.

## Article 26 Liability of legal persons

### Paragraphs 1 to 3

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

91. Sri Lanka indicated that it has partially implemented the provisions under review and cited the following measure.

##### **Section 8 of the Penal Code**

##### **Person**

The word “person” includes any company or association or body of persons, whether incorporated or not.

92. Under applicable common law principles, the liability of legal persons will be limited to civil and/or administrative areas.

#### (b) Observations on the implementation of the article

93. According to the clarification by provided Sri Lanka during the country visit, the interpretation of “person” provided in the Penal Code includes legal persons, but the Bribery Act does not make it clear whether or not a legal person may be held criminally liable.

94. Sri Lanka explained that a legal person may be held civilly or administratively liable under common law principles, but Sri Lanka has no precedent for holding a legal person civilly or administratively liable for the offences under the Bribery Act.

95. Section 8 of the Penal Code includes legal companies (“association or body of persons, whether incorporated or not”) in the definition of person. Therefore, legal persons can be held liable for criminal offences, including corruption offences that are covered by the Penal Code. It was also explained during the country visit that the Interpretation of Laws Act includes a definition of ‘person’ that covers legal persons for purposes of the criminal laws.

96. Additionally, legal persons can be civilly and administratively liable based on the applicable common law principles. It was explained that cases exist in the Sri Lankan court practice where sanctions were imposed on legal persons, including suspension of their operations and blacklisting. Legal persons also may be required to compensate damages caused by their unlawful conduct.

97. Although liability of legal persons is possible and some limited case practice also exists in this regard, legal persons are not directly referred to in the Bribery Act.
98. It is recommended, in the interest of greater legal certainty, that Sri Lanka may wish to directly stipulate in the Bribery Act that the definition of “person” in the Bribery Act covers both physical and legal persons similarly to the definition of “person” in the Penal Code.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

99. Sri Lanka indicated that it has partially implemented the provision under review. Under the existing legal regime, legal persons would only be subject to non-criminal liability, except as described above, and attendant sanctions.

#### **(b) Observations on the implementation of the article**

100. No information was available as to the range of penalties for legal persons or any case examples where companies were sanctioned.

#### **(c) Challenges, where applicable**

101. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:
1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
  2. Specificities in its legal system;

#### **(d) Technical assistance needs**

102. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:
1. Model legislation;
  2. Legislative drafting;
  3. Legal advice;
  4. On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## **Article 27 Participation and attempt**

## **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

103. Sri Lanka has cited Section 25 (2) & 25 (3) of the Bribery Act read with Section 100 and 113 (A) of the Penal Code.

#### **Section 25 of the Bribery Act**

##### **Attempt to commit, and abetment of, an offence under this Part.**

(2) A person who abets an offence under this Part of this Act shall be guilty of an offence and shall be tried in the same manner, and shall upon conviction be liable to the same punishment, as is prescribed by this Act for the first-mentioned offence. In this subsection the expression “abet” shall have the same meaning as in sections 100 and 101 of the Penal Code.

(3) A person who conspires with any other person to commit an offence under this Part of this Act shall be guilty of an offence and shall be tried in the same manner and shall upon conviction be liable to the same punishment as is prescribed by this Act for the first-mentioned offence. In this subsection, the expression “conspire” shall have the same meaning as in section 113A of the Penal Code.

#### **Section 100 of the Penal Code**

##### **Abetment of the doing of a thing**

A person abets the doing of a thing who -

Firstly - Instigates any person to do that thing; or

Secondly - Engages in any conspiracy for the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

#### **Section 113A(1) of the Penal Code**

##### **Conspiracy**

If two or more persons agree to commit or abet or act together with a common purpose for or in committing or abetting an offence, whether with or without any previous concert or deliberation. each of them is guilty of the offence of conspiracy to commit or abet that offence, as the case may be.

### **(b) Observations on the implementation of the article**

104. The scope of complicity provided, which covers all acts of complicity, is broad enough and in conformity with the provision of the Convention.

## **Article 27 Participation and attempt**

### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

105. Sri Lanka has cited Section 25 (1) of the Bribery Act.

**Section 25 (1) of the Bribery Act**

**Attempt to commit, and abetment of, an offence under this Part.**

(1) A person who attempts to commit or to cause the commission of an offence under this Part of this Act and in such attempt does any act towards the commission of that offence shall be guilty of an offence and shall be tried in the same manner, and shall upon conviction be liable to the same punishment, as is prescribed by this Act for the first-mentioned offence.

**(b) Observations on the implementation of the article**

106. The cited provision is broad enough and in conformity with the provision of the Convention.

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

107. Sri Lanka has indicated that it did not implement the provision under review.

**(b) Observations on the implementation of the article**

108. Sri Lanka has not taken measures to implement this paragraph, which is an optional clause.

**(c) Challenges related to the article**

109. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Specificities in its legal system.

**(d) Technical assistance needs**

110. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Legislative drafting;
3. Legal advice;
4. On-site assistance by an anti-corruption expert.

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## **Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

111. Sri Lanka referred to the presumption contained in Section 23A of the Bribery Act and Section 114 of the Evidence Ordinance.

#### **Section 23A of the Bribery Act**

- (1) Where a person has or had acquired any property on or after March 1, 1954, and such property –
- (a) being money, cannot be or could not have been –
    - (i) part of his known income or receipts, or
    - (ii) money to which any part of his known receipts has or had been converted; or
  - (b) being property other than money, cannot be or could not have been –
    - (i) property acquired with any part of his known income, or
    - (ii) property which is or was part of his known receipts, or
    - (iii) property to which any part of his known receipts has or had been converted, then, for the purposes of any prosecution under this section, it shall be deemed, until the contrary is proved by him, that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.
- (2) In subsection (1). “income” does not include income from bribery, and “receipts” do not include receipts from bribery.
- (3) A person who is or had been the owner of any property which is deemed under subsection (1) to be property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees:  
Provided that where such property is or was money deposited to the credit of such person’s account in any bank and he satisfies the court that such deposit has or had been made by any other person without his consent or knowledge, he shall not be guilty of an offence under the preceding provisions of this subsection.
- (4) No prosecution for an offence under this section shall be instituted against any person unless the Commission has given such person an opportunity to show cause why he should not be prosecuted for such offence and he has failed to show cause or the cause shown by him is unsatisfactory in the opinion of such Commission.
- (5) For the purposes of this section, where a spouse or unmarried child under the age of eighteen years of a person has or had acquired any property movable or immovable on or after March 1, 1954, it shall be presumed until the contrary is proved that such property was acquired by such person aforesaid and not by such spouse or unmarried child, as the case may be.
- (6) In any prosecution for an offence under this section a certificate from the Chief Valuer with regard to the value of any immovable property or the cost of construction of any building on such property shall be sufficient proof of such value and cost of construction unless and until the contrary is proved.  
In this subsection, “Chief Valuer” means the Chief Valuer of the Government, and includes any Senior Assistant Valuer, or Assistant Valuer of the Government Valuation Department.
- (7) For the purpose of this section “a person” shall mean any person whomsoever, whether or not such person can be shown to have been concerned with any act referred to in section 18 or section 20 or whether or not he is a public servant within the meaning of this Act.

#### **Section 114 of the Evidence Ordinance**

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, & public & private business in their relation to the facts of the particular case.

**(b) Observations on the implementation of the article**

112. The provisions of the Convention are fully complied with. It is noted that Section 23A (also quoted under illicit enrichment, UNCAC article 20 above) allows an inference to be drawn in order to prove the existence of unexplained wealth rather than to establish liability for corruption, and establishes a corresponding offence.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

113. Sri Lanka has cited Section 456 of the Code of Criminal Procedure Act No 15 of 1979.

**Section 456 of the Criminal Procedure Code.**

The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence [save and except those as to which special provision is or shall be made by law] shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed.

**(b) Observations on the implementation of the article**

114. Section 456 of the Criminal Procedure Code and Act provides that except for murder, treason and other circumstances where special provisions apply, the statute of limitations period for the prosecution of general criminal offences shall be 20 years, which shows that a long-enough statute of limitations period is provided for the offences established in accordance with the Convention. No information was available on the suspension or interruption of the statute of limitations period.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

115. Sri Lanka has indicated that all offences under the Bribery Act are punishable with imprisonment for a term not exceeding seven years and with a fine not exceeding five thousand rupees or both.

116. Article 89 (d), of the Constitution will disqualify such an offender from being an elector (for seven years immediately after the service of the sentence) and also disqualify the offender from holding elected office. Reference is also made to the additional measures on disqualification described under paragraph 7 below.

117. Sri Lanka has cited the following implementation measures.

**Article 89 of the Constitution** provides,

No person shall be qualified to be an elector at any election of the President, or of the Members of Parliament or to vote at any Referendum, if he is subject to any of the following disqualifications, namely

(d) - if he is serving or has during the period of seven years immediately preceding completed serving of a sentence of imprisonment (by what ever name called) for a term not less than six months imposed after conviction by any court for an offence punishable with imprisonment for a term not less than two years or is under sentence of death or is serving or has during the period of seven years immediately preceding completed the serving of a sentence of imprisonment for a term not less than six months awarded in lieu of execution of such sentence;

118. Additional penalties are specified in the Bribery Act, most notably:

**Section 26 of the Bribery Act**

When penalty to be imposed in addition to other punishment.

26. Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Part of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to the court's imposing on that person any other punishment, order him to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification.

**Section 26A of the Bribery Act**

Additional fine to be imposed

26A. Where the High Court convicts any person of an offence under section 23A. it shall, in addition to any other penalty that it is required to impose under this Act, impose a fine of not less than the amount which such court has found to have been acquired by bribery or by the proceeds of bribery or converted to property by bribery, or by the proceeds of bribery and not more than three times such amount

**Section 28A of the Bribery Act**

Forfeiture of property in relation to which an offence has been committed

28A. (1) Notwithstanding anything to the contrary in any other provision of this Act, where a court convicts a person of an offence under this Part of this Act, the court may in lieu of imposing a penalty or fine under section 26 or section 26A, make order that any movable or immovable property found to have been acquired by bribery or by the proceeds of bribery, be forfeited to the State free from all encumbrance

...

**(b) Observations on the implementation of the article**

119. The Bribery Act provides that relevant offences may be subject to imprisonment of up to seven years, and for corruption (Section 70 of the Bribery Act) up to ten years, which is in conformity with the intensity of punishment required by the Convention. Also, some offences carry minimum mandatory sentences, including Section 3 of the Prevention of

Money Laundering Act of 2006. According to clarification by Sri Lanka during the on-site visit, the judge will consider the gravity of offence in the measurement of penalties. For example, the identity of perpetrators and the amounts involved in offences are considered as aggravating or mitigating circumstances. During the country visit Sri Lanka also provided the table of penalties for other corruption offences (please see below). No sentencing guidelines are in place.

#### Maximum Penalties for selected offences relating to Corruption in Sri Lanka

##### Bribery Act

Section	Offence	Maximum Penalty
14	Offering to, Solicitation and acceptance by, Judicial Officers and Members of Parliament	07 years rigorous imprisonment (RI) and a fine of Rs. 5,000/-
15	Solicitation and acceptance by Members of Parliament for interviewing public servants	07 years RI and a fine of Rs. 5,000/-
16	Offer to, solicitation and acceptance by, police officers, peace officers etc.	07 years RI and a fine of Rs. 5,000/-
17	Offer to, solicitation and acceptance by, public servants to influence government contracts	07 years RI and a fine of Rs. 5,000/-
18	Offer to, solicitation and acceptance by, bidders for withdrawal of tenders	07 years RI and a fine of Rs. 5,000/-
19	Offer to, solicitation and acceptance by, public servant in respect of official acts	07 years RI and a fine of Rs. 5,000/-
20	Offer to, solicitation and acceptance by, any person in respect of government benefits	07 years RI and a fine of Rs. 5,000/-
21	Offer to public servants by a person who has dealings with the government and solicitation and acceptance as such by the public servant	07 years RI and a fine of Rs. 5,000/-
22	Offering to, solicitation and acceptance by, members of local authorities scheduled institutions in respect of institutional functions	07 years RI and a fine of Rs. 5,000/-
23	Use of threat, fraud to influence official acts of local authorities, scheduled institutions	07years RI and a fine of Rs. 5,000/-
23A	Wealth exceeding known income	07 years RI and a fine of Rs. 5,000/-
25	Attempt, abetment of offences under Bribery Act	07 years RI and a fine of Rs. 5,000/-

26	Acceptance	Sum equal to the gratification as an additional penalty
70	Corruption	10 years RI or a fine of Rs. 100,000/-
71	Failure to furnish information on notice	Rs. 500/- or 6 months imprisonment of either description
73	Interference with witnesses	12 months RI

**Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

Section	Offence	Maximum Penalty
21	False allegation	10 years imprisonment of either description or Rs. 200,000/- + compensation to the victim
22	Breach of secrecy	05 years imprisonment of either description or Rs. 100,000/-
23	False affidavits, failure to assist or resists the officers of the Commission, interference with witnesses to the Commission	07 years imprisonment of either description or Rs. 50,000/-

**Penal Code No. 02 of 1883**

Section	Offence	Maximum Penalty
158	Accept, agrees to accept, attempt to accept by public officers in respect of official acts	03 years imprisonment of either description
159	Accept, agrees to accept, attempt to accept by any person to induce public officers by corrupt or illegal means	03 years imprisonment of either description
160	Accept, agrees to accept, attempt to accept by any person to exercise personal influence with public officers	01 years imprisonment of either description
161	Abetment by public officer to commit offences under section 159,160	03 years imprisonment of either description
210	Taking a gratification to screen an offender of a capital offence	07 years imprisonment of either description
	Taking a gratification to screen an offender of an offence punishable with 10 years imprisonment	03 years imprisonment of either description
	Taking a gratification to screen an offender of an offence punishable with an imprisonment less than 10 years	1/4 <sup>th</sup> part of the longest term of imprisonment for the offence

	Taking a gratification to screen an offender of an offence punishable with fine	Fine
211	Offering gratification to screen offenders of a capital offence	07 years imprisonment of either description
	Offering gratification to screen offenders of an offence punishable with 10years imprisonment	03 years imprisonment of either description
	Offering gratification to screen offenders of an offence punishable with an imprisonment less than 10 years	1/4th part of the longest term of imprisonment for the offence
	Offering gratification to screen offenders of an offence punishable with a fine	Fine
212	Taking gratification to help to recover stolen property	02 years imprisonment of either description

**Declaration of Assets and Liabilities Law No. 01 of 1975**

Section	Offence	Maximum Penalty
7(5)	Making public statements on illicit acquisition of assets, investigation there under	01 year imprisonment of either Description or fine of Rs. 1,000/-
8(4)	Breach of secrecy	02 years imprisonment of either Description or fine of Rs. 2,000/-
9(1)	Non submission, non declaration, false declaration, omission, failure to furnish information on request	01year imprisonment of either Description or fine of Rs. 1,000/-
	Non declaration after conviction	01year imprisonment of either Description or fine of Rs. 1,000/-

**Prevention of Money Laundering Act No. 05 of 2006**

Section	Offence	Maximum Penalty
3(1)	Transactions involving unlawful activities	20 years RI or Three times the value of the property
3(2)	Conspiracy, aiding and abetting	20 years RI or Three times the value of the property
5(2)	Failure to disclose information	06 months imprisonment of either description

6	Disclosure of information	12 months imprisonment of either description or fine of Rs. 100,000/ -
7(4)	Contravention of freezing order	01 year imprisonment of either description or fine of Rs. 100,000/ -
20	Destruction of relevant material to an offence	12 months imprisonment of either description or fine of Rs. 100,000/ -

#### Financial Transactions Reporting Act No. 06 of 2006

Section	Offence	Maximum Penalty
27	Undeclared possession of money exceeding the prescribed sum when leaving or arriving in Sri Lanka	01 year imprisonment of either description or fine of Rs. 100,000/ -
28(1)	False information	01 year imprisonment of either description or fine of Rs. 100,000/ -
28(2)	Divulging information to prejudice pending investigation in contravention of section 9(1), 10(1)	02 year imprisonment of either description or fine of Rs. 500,000/ -
28(3)	Failure to co-operate investigation in contravention of section 18(1), 18(2)	02 year imprisonment of either Description or fine of Rs. 500,000/-
28(4)	Forgery, concealment, interference with authenticity of document or material to an investigation	01 year imprisonment of either Description or fine of Rs. 100,000/ -
28(5)	Destruction of such material	01 year imprisonment of either description or fine of Rs. 100,000/-
28(6)	Operation of accounts in fictitious or false names	01 year imprisonment of either description or fine of Rs. 100,000/-

### Article 30 Prosecution, adjudication and sanctions

#### Paragraph 2

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

120. Article 35 (1) of the Constitution provides total immunity only to the President from any civil or criminal prosecutions. No other public official enjoys immunity from criminal suit. Sri Lanka has also cited Section 19(1) of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994, which provides functional immunities for members of the Commission for acts within the scope of their duties.

### **Article 35 (1) of the Constitution**

While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

### **Section 19(1) of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

No proceedings civil or criminal, shall be instituted against a member of the Commission or the Director General or any officer or servant appointed to assist the Commission, or other than for contempt, against any other person assisting the Commission in any way, for any act which in good faith is done or omitted to be done, by him as such member, Director General or officer or servant or other person.

121. Reference is also made to Article 67 of the Constitution, which provides as follows.

#### **Privileges, immunities and powers of Parliament and Members.**

67. The privileges, immunities, and powers of Parliament and of its Members may be determined and regulated by Parliament by law, and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall, mutatis mutandis, apply.

### **(b) Observations on the implementation of the article**

122. The information provided is incomplete. The Constitution provides that the president enjoys immunity from criminal jurisdiction. Investigators of the Commission to Investigate Allegations of Bribery or Corruption enjoy the privilege of immunity from investigation for acts properly performed within their duties. According to the provisions, the area where public officials can enjoy immunity from judicial jurisdiction and the privileges are clearly defined and limited.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

123. Sri Lanka has cited the following measures.

## **Section 11 of Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

Where the material received by the Commission in the course of an investigation conducted by it under this Act, discloses the commission of an offence by any person under the Bribery Act or the Declaration of Assets and Liabilities Law, No 1 of 1975, the Commission shall direct the Director General to institute criminal proceedings against such person in the appropriate court & the Director General shall institute proceedings accordingly.

### **Section 393 Criminal Procedure Code**

#### **Powers of Attorney-General.**

393. (1) It shall be lawful for the Attorney-General to exhibit information, present indictments and to institute, undertake, or carry on criminal proceedings in the following cases, that is to say—

- (a) in the case of any offence where a preliminary inquiry under Chapter XV by a Magistrate is imperative or may be directed to be held by the Attorney-General;
- (b) in any case where the offence is not bailable;
- (c) in any case referred to him by a State Department in which he considers that criminal proceedings should be instituted;
- (d) in any case other than one filed under section 136 (1) (a) of this Code which appears to him to be of importance or difficulty or which for any other reason requires his intervention;
- (e) in any case where an indictment is presented or information exhibited in the High Court by him.

(2) The Attorney-General shall give advice, whether on application or on his own initiative to State Departments, public officers, officers of the police and officers in corporations in any criminal matter of importance or difficulty-

(3) The Attorney-General shall be entitled to summon any officer of the State or of a corporation or of the police to attend his office with any books or documents and there interview him for the purpose of—

- (a) initiating or prosecuting any criminal proceeding, or
- (b) giving advice in any criminal matter of importance or difficulty.

The officer concerned shall comply with such summons and attend at the office of the Attorney-General with such books and documents as he may have been summoned to bring.

(4) The Attorney-General may nominate State Counsel or employ any attorney-at-law to conduct any prosecution in any court and determine the fees to be paid to such attorney-at-law.

(5) The Superintendent or Assistant Superintendent of Police in charge of any division shall report to the Attorney-General every offence committed within his area where—

- (a) preliminary investigation under Chapter XV is imperative; or
- (b) for the institution of proceedings the consent or sanction of the Attorney-General is required; or
- (c) a request for such report has been made by the Attorney-General; or
- (d) such Superintendent or Assistant Superintendent considers the advice or assistance of the Attorney-General necessary or desirable; or
- (e) the Magistrate so directs; or
- (f) the offence was cognizable and the prosecution was withdrawn or cannot be proceeded with.

(6) When reporting in terms of subsection (5) the Superintendent or Assistant Superintendent of Police as the case may be shall supply to the Attorney-General—

- (a) a full statement of the circumstances;
- (b) copies of the witnesses, statements of all
- (c) such other information, documents or productions as may be relevant or as may be called for by the Attorney-General; and
- (d) where an inquest has been held, a copy of the inquest proceedings.

(7) Notwithstanding any other provisions contained in this Act, it shall be lawful for the Attorney-General, having regard to the nature of the offence or any other circumstances, in respect of any summary offence—

- (a) to forward an indictment directly to the High Court, or
- (b) to direct the Magistrate to hold a preliminary inquiry in accordance with the procedure set out in Chapter XV in respect of any offence specified by him where he is of opinion that the evidence recorded at a preliminary inquiry will be necessary for preparing an indictment; and thereupon such offence shall not be triable by a Magistrate's Court.

(8) The Minister may make regulations containing all such incidental or supplementary provisions as may be necessary to enable the Attorney-General to exercise and perform his powers and duties under this section.

## **(b) Observations on the implementation of the article**

124. The provided legislation prescribes that all offences established in accordance with the Commission to Investigate Allegations of Bribery or Corruption Act shall be referred for prosecution, which is in conformity with the spirit of the Convention. The powers of the Attorney General to institute, undertake, or carry on criminal proceedings under other legislation are also addressed.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

125. Sri Lanka has cited the Bail Act No 30 of 1997 read with Section 6(1) of the Bribery Act. Sections 30A (2) & (4) and 73(2) of the Bribery Act containing provisions on bail are also referred to.

#### **Bail Act No 30 of 1997**

Section 3(2) of the Bail Act provides,  
Where there is reference in any written law to a provision of the Criminal Procedure Code Act. No 15 of 1979 relating to bail, such reference shall be deemed, with effect from the date of commencement of this Act, to be a reference to the corresponding provision of this Act.

#### **Section 6(1) of the Bribery Act**

Such of the provisions of the code of Criminal Procedure Act as are not excluded by subsection (2) or are not inconsistent with the provisions of this Act shall apply to proceedings instituted in a court for offences under this Act.

#### **Section 30A of the Bribery Act**

Procedure on detection of person receiving illegal gratification.

(1) Where any officer, appointed to assist the Commission detects any person accepting, soliciting or offering an illegal gratification, such officer shall –

(a) without unnecessary delay take such person before any Magistrate; or

(b) produce such person before any Magistrate with a certificate under the hand of the Director-General that such person has been detected accepting, soliciting or offering an illegal gratification; or

(c) produce before the Magistrate any currency notes alleged to have been accepted, solicited or offered as an illegal gratification by the person referred to in paragraph (a) or (b) together with a report under the hand of the Director General that such notes were alleged to have been so accepted, solicited or offered.

(2) Where a person is produced before any Magistrate, under paragraph (b) of subsection (1), the Magistrate shall remand such person until the conclusion of the trial:

Provided however, that the Magistrate may, in exceptional circumstances and for reasons to be recorded release such person on bail at any time prior to the conclusion of the trial.

(3) Where any currency notes are produced before any Magistrate under paragraph (c) of subsection (1) the Magistrate shall issue a certificate under his hand to the effect that notes of the denominations and numbers set out in the certificate were produced before him and such certificate shall be admissible in any

proceedings instituted against the person alleged to have accepted, solicited or offered such notes in lieu of producing such notes in such proceedings.

(4) Notwithstanding the provisions of subsection (2), in any proceeding under paragraph (a) or paragraph (b) of subsection (1), where the Commission informs the Magistrate that it does not propose to institute proceedings against the person in custody such person shall be discharged forthwith.

### **Section 73 (2) of the Bribery Act**

Interference with witnesses, & c.

(2) Every court before which any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected of having committed or to have been concerned in committing an offence under this section shall keep such person on remand until the conclusion of the trial except in exceptional circumstances where the court before which he surrenders himself or is produced may after recording its reasons therefor release him on bail.

### **(b) Observations on the implementation of the article**

126. Sri Lanka partially implemented the provision under review. According to provisions in Sections 30A (2) & (4) and 73(2) of the Bribery Act, persons suspected of accepting bribes and impeding witnesses from giving evidence shall in principle be held in custody until the conclusion of the trial, and may be released on bail in exceptional circumstances only. However, Sri Lanka did not provide clear information on whether strict bail conditions are in place for persons suspected of offences prescribed by the Convention. Sri Lanka is encouraged to more clearly stipulate procedures applied with regard to release on bail.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

127. Sri Lanka has indicated that it did not implement the provision under review.

### **(b) Observations on the implementation of the article**

128. Sri Lanka indicated that it did not implement the provision. Section 58 of the Sri Lankan Prisons Ordinance allows for “remission of sentences and rewards for good conduct”, but there seem to be no measures on early release or parole based on the level of offences.

### **Section 58**

Remission of sentences and rewards for good conduct

A remission of sentence, or a gratuity or privileges, according to such scales as may be prescribed by rules under section 94, may be earned by industry and good conduct by any prisoner who is undergoing a sentence of imprisonment of either description for a term or terms in the aggregate exceeding one month:

Provided, however, that this section shall not apply to-

(a) A civil prisoner; or (b) A person committed to prison under Chapter VII of the Code of Criminal Procedure Act, No 15 of 1979 (c) a person committed to prison to serve the unexpired portion of any

sentence of imprisonment or preventive detention upon the forfeiture or revocation of a licence to be at large under the Prevention of Crimes Ordinance.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

129. Sri Lanka indicated that the interdiction of the public officer concerned is a consequence of every criminal prosecution of bribery or corruption. It was explained that preliminary investigations prior to the stage of prosecution are addressed under subsection 13. Sri Lanka has indicated the following implementation measure.

##### **Establishments Code Section 31:1:3 & 4**

Where it is disclosed, prima facie, that a public officer has committed either one or some or all of the following acts of misconduct, the relevant Disciplinary Authority, or the relevant Secretary to the Ministry or Head of Department not holding disciplinary authority, may forthwith interdict the officer concerned subject to the covering approval of the Disciplinary Authority.

(3) - Being prosecuted in a Court of Law on criminal charges.

(4) - Being prosecuted in a Court of Law on bribery or corruption charges.

#### **(b) Observations on the implementation of the article**

130. The Establishments Code provides that officials who have committed, as is proved by prima facie evidence, or are being accused of the crime of corruption may be suspended. Whether a penalty decision will be finally made against public officials depends on whether the court convicts them. The provisions of the Convention are fully complied with, and a good balance is realized between penalty and the doctrine of the presumption of innocence.

## **Article 30 Prosecution, adjudication and sanctions**

### **Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

131. Sri Lanka has indicated the following implementation measures.

The gazette of the Democratic Socialist Republic of Sri Lanka (Extraordinary) No 1589/30 dated 20 Feb 2009. **Chapter V Regulation 40.** "A person convicted by a court of law for a criminal offence committed against the Republic is disqualified to be appointed to the public service".

#### **Section 29 of the Bribery Act**

Where a person is convicted or found guilty of bribery by a court or a commission of inquiry, then by reason of such conviction of finding -

- (a) - he shall become incapable for a period of seven years from the date of such conviction or finding of being registered as an elector or of voting at any election under the Ceylon [Parliamentary Elections] Order in Council, 1946, or for a period of five years under the Local Authorities Elections Ordinance, or of being elected or appointed as a Member of Parliament or as a member of a local authority and, if at that date he has been elected or appointed as a Member of Parliament or member of a local authority, his election or appointment shall be vacated from that date;
- (b) - he shall be disqualified for all time from being employed as a public servant & from being elected or appointed to a scheduled institution or to the governing body of a scheduled institution;
- (c) - he shall, if he is a member of a scheduled institution or of the governing body of a scheduled institution, cease to be such member from the date of conviction of finding; and
- (d) - he shall, if he is a public servant, cease to be a public servant from the date of such conviction or finding & notwithstanding anything to the contrary in any other written law, be deemed to have been dismissed on that date by the authority empowered by law to dismiss him.

#### **(b) Observations on the implementation of the article**

132. Section 29 of the Bribery Act provides that public officials will, if determined as having committed the crime of offering bribes, no longer have or be deprived of the qualifications for holding relevant public offices, which basically meet the provisions of the Convention.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

- (b) Holding office in an enterprise owned in whole or in part by the State.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

133. Sri Lanka has cited the following implementation measures. Regulation 40 and Section 29 of the Bribery Act cited above in subparagraph 7 (a) read with the definition of "Public Servant" in section 90 of the Bribery Act.

In terms of section 90 of the Bribery Act, "public servant" includes a Minister of the Cabinet of Ministers, a Minister appointed under Article 45 of the Constitution, Speaker, Deputy Speaker, the Governor of a Province, a Minister of a board of Ministers of a Province, a Member of Parliament, every officer, servant or employee of the State or any Chairman, director, Governor, member, officer or employee,

whether in receipt of remuneration or not, of a Provincial council local authority or of a scheduled institution or of a company incorporated under the Companies Act, No 17 of 1982, in which over fifty per centum of the shares are held by the Government, a member of a Provincial Public Service, every juror, every licensed surveyor and every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court or any other competent public authority;

"scheduled institution" means any such board, institution, corporation or other body as is for the time being specified in the Schedule to this Act, and any board, institution, corporation or other body which is deemed under the provisions of any enactment to be a scheduled institution within the meaning of this Act, and includes any company, whether public or private or other body -

(a) - in which any such board, institution, corporation or other wholly holds, or

(b) - in which one such board, institution, or other body, in the aggregate, hold, not less than fifty - one percent of the shares.

**(b) Observations on the implementation of the article**

134. Although there is no direct provision in the reply, for the purposes of Section 29 of the Bribery Act, public servants include those who assume offices in companies which hold more than 50% of the shares of the government or those who assume offices in specific organizations which hold not less than 51% of the shares of the government, which can, in combination with the legal provisions provided in subparagraph (a), paragraph 7 of the article under review, be deemed as in conformity with the requirements of the Convention.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

135. Sri Lanka has cited the following implementation measures.

Article 55 of the Constitution of the Republic, as amended by the 18th Amendment to the Constitution.

**Article 55 of the Constitution**

55(1) The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal.

55(2) The appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department shall vest in the Cabinet of Ministers.

55(3) Subject to the provisions of the Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.

**(b) Observations on the implementation of the article**

136. Sections 27 and 28 of the Establishments Code (attached as Annex 1) provide that a public official whose act of corruption is established by the court as an offence may, in addition to criminal penalty that shall be imposed on him or her, be disciplined by the

disciplinary department. Such disciplinary actions include ban on promotion, demotion, salary reduction, forced separation from office and failure in assessment. The disciplinary department may initiate a disciplinary investigation according to offence report by citizens, media report and information provided by other departments. According to clarification by Sri Lanka in during the country visit, the Public Service Commission of Sri Lanka may take disciplinary measures against public officials at the national level. The public service commissions of provinces may take disciplinary measures against public officials within their respective provinces. The criminal and disciplinary processes run in parallel according to Sections 27 and 28 of the Establishments Code.

**Chapter XLVIII Clause 27:1 and 27:2 of the Establishments Code (attached as Annex 1)**

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

137. Sri Lanka has indicated that it did not implement the provision under review.

#### **(b) Observations on the implementation of the article**

138. A negative reply is given by Sri Lanka on this issue. During the on-site visit it was explained that a general rehabilitation programme not specific to corruption is in place that covers all offenders, but no further details were available and the matter is not addressed in the Prisons Ordinance. Given that to promote the reintegration into society of persons convicted of offences is one of the important norms for criminal justice that have long been established in the international community, Sri Lanka is encouraged to promote implementation of the provision.

#### **(c) Challenges related to the article**

139. Sri Lanka has identified the following challenge and issues in fully implementing the provision under review:

1. Specificities in its legal system;

#### **(d) Technical assistance needs**

140. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Legal advice;
2. On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## Article 31 Freezing, seizure and confiscation

### Subparagraph 1 (a)

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### (a) Summary of information relevant to reviewing the implementation of the article

141. Sri Lanka has cited the following implementation measures.

Section 26A, 28A (1), 39 of the Bribery Act, Section 3 (1 (a,b), 1 A) and Section 13 of the Prevention of Money Laundering Act No 5 of 2006 as amended by Act No 40 of 2011.

#### **Section 26 A of the Bribery Act**

Where the High Court convicts any person of an offence under section 23A, it shall, in addition to any other penalty that it is required to impose under this Act, impose a fine of not less than the amount which such court has found to have been acquired by bribery or by proceeds of bribery or converted to property by bribery, or by the proceeds of bribery and not more than three times such amount.

#### **Section 28A (1) of the Bribery Act**

Notwithstanding anything to the contrary in any other provision of this Act, where a court convicts a person of an offence under this part of this Act, the court may in lieu of imposing a penalty or fine under section 26 or 26A, make order that any movable or immovable property found to have been acquired by bribery or by proceeds of bribery, be forfeited to the State free from all encumbrances

#### **Section 39 of the Bribery Act**

Assessment of value of gratification where commission of inquiry finds person guilty of bribery by having accepted a gratification

(1) Where a commission of inquiry finds that any person is guilty of bribery by having accepted a gratification -

(a) the commission shall, if that gratification is a sum of money, state that sum, or, if the value of that gratification can be assessed, assess and declare that value, in its report, and

(b) the Attorney-General shall in writing communicate such finding to that person and, if a sum is specified in that report as the amount or the value of that gratification, direct that person to pay that sum to the Attorney-General within such time as may be specified in the direction.

(2) If a person fails to pay the sum directed by the Attorney-General under subsection (1) to be paid, the Attorney-General may apply to the High Court for an order, and the High Court shall upon such application make an order, for the payment of that sum by that person, and, if that person fails to pay that sum within the time allowed by the order, that sum may be recovered in like manner as if the order were a decree entered by a District Court in favour of the State and against that person.

(3) If the person liable to pay the sum referred to in subsection (2) was a public servant on the date of his acceptance of the gratification, the provisions of subsection (3) of section 28 shall, for the purpose of the recovery of that sum, apply in like manner as if that sum were a penalty imposed by the High Court under section 26.

(4) In the proceedings in the High Court for the recovery of the sum referred to in subsection (2), it shall not be competent for that court or for anyone to question the sum declared by the commission of inquiry to be the amount, or the value, of the gratification.

Offence of money laundering.

(1) Any person, who—

(a) engages directly or indirectly in any transaction in relation to any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity;

(b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity knowing or having reason to believe that such property is derived or realised, directly or indirectly from any unlawful activity, or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment.

(1 A) The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II, of this Act.

**Section 13 of the Prevention of Money Laundering Act No 5 of 2006**

Forfeiture of property in relation to which offence of money laundering has been committed.

(1) Subject to the provisions of subsection (2), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any account, property or investment, owned, possessed or under the control of such person which has been derived or realized directly or indirectly from any unlawful activity, any income or profit earned on such account, property or investment and any instrumentalities used in the commission of such unlawful activity, be forfeited to the State free from all encumbrances.

(1A) Where such account, property, investment, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order him to pay to the State the equivalent value of such account, property, investment, income, profit or instrumentalities.

(1B) Where such person fails to pay such equivalent value, the Court shall, in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, order him to pay such value as a fine within such period as may be specified by Court.

(2) In determining whether an Order of forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a *bona fide* purchaser for value or any other person who has acquired, for value, a *bona fide* interest in such property or investment or any income or profit earned on such property or investment.

(3) An Order made under subsection (1) shall take effect—

(a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the Order of forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture;

(b) where no appeal has been preferred to the Court of Appeal against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred to the Court of Appeal, against such Order of Forfeiture.

(4) For the purposes of subsection (1), the Court making the Order of Forfeiture may presume that any property belonging to the person convicted of the offence of money laundering, is derived or realised, directly or indirectly from any unlawful activity if such property is not commensurate with the known sources of income of such person, and the holding of which cannot be explained on a balance of probabilities, to the satisfaction of the Court.

**(b) Observations on the implementation of the article**

142. The principal provisions are made in the Bribery Act and the Money Laundering Act with respect to the confiscation of property involved in offences or property with value

equivalent to property involved in offences. The confiscation of instruments of crime is specified in the Money Laundering Act as well.

143. While the Bribery Act covers the confiscation of the proceeds of bribery, the Prevention of Money Laundering Act provides for the confiscation of the proceeds of money laundering delivered from any unlawful activities which also includes corruption offences other than bribery. Specifically, Section 3 (1) (a), (b) states that a transaction with “any property which is derived or realised, directly or indirectly, from any unlawful activity” is considered money laundering, while Section 13 (1) of the Money Laundering Act provides for the forfeiture of the proceeds derived from money laundering. Additionally Section 13 of the Prevention of Money Laundering Act provides for value-based confiscation of the proceeds of money laundering.
144. Based on Section 13 (4) the Court may also apply extended confiscation to the assets belonging to the offender convicted of money laundering.
145. Additionally, Section 39 of the Bribery Act provides for the recovery of the amount of bribery from the offender to the State that is essentially similar to the value-based confiscation.
146. Sri Lanka has partially implemented the provision under review. Sri Lanka shall adopt such measures as may be necessary to enable confiscation of proceeds derived from offences established in accordance with this Convention, or property the value of which corresponds to that of such proceeds, and not limited only to the confiscation of the proceeds of crimes derived from money laundering and bribery. Particularly, the proceeds of corruption offences, criminalized in Section 70 of the Bribery Act, shall be subject to confiscation as well.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

147. Sri Lanka has cited the following implementation measures.

Section 28A (1) of the Bribery Act, Section 13 (1) of the Prevention of Money Laundering Act No 5 of 2006 as amended by Act No 40 of 2011 quoted in subparagraph 1(a) above .

#### **(b) Observations on the implementation of the article**

148. The principal provisions are made in the Bribery Act and the Money Laundering Act with respect to the confiscation of instrumentalities of crime.

149. The Prevention of Money Laundering Act specifically provides for the confiscation of property and any instrumentalities used in the commission of money laundering.

150. Sri Lanka has partially implemented the provision under review. The observations about the scope of confiscation under article 31(1)(a) above are referred to. Similar provisions shall be introduced to the relevant legislation with regard to the confiscation of property equipment and instrumentalities used in or destined for use in all offences under the Convention.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

151. Sri Lanka has cited the following implementation measures.

#### **Section 7 of the Prevention of Money Laundering Act No 6 of 2006 as amended by the Act No 40 of 2011.**

Section 7.

Freezing of property

(1) A Police Officer not below the rank of an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in any activity relating to the offence of money laundering and it is necessary for preventing further acts being committed in relation to such offence, issue an order (hereinafter referred to as a "Freezing Order") prohibiting any transaction in relation to any account, property or investment which may have been used or which may be intended to be used in connection with such offence.

(2) The Freezing Order obtained under subsection (1) shall be issued on-

(a) the person who is believed to be involved in the activity referred to subsection (1); and

(b) on any other person or institution who or which may be required to give effect to such Order.

(3) Subject to the provisions of section 8, a Freezing Order made under subsection (1) shall be in force for a period of seven days of the making thereof.

(4) Any person who acts in contravention of a Freezing Order issued on him, shall be guilty of an offence and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or one and a half times the value of the money in such account, property or investment which has been dealt with in contravention of the Freezing Order, whichever is higher or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

Section 12

Property tracking and monitoring

(1) Any Police Officer not below the rank of a Superintendent of Police shall take possession of, and otherwise deal with, any account, property or investment, which is subject to a Freezing Order, and the Court may on application of the said Police Officer and for the purpose of determining in whom the ownership, possession or control of any property to which the Freezing Order relates, order:—

(a) that any document relevant to—

(i) identifying, locating or quantifying such account, property or investment;

(ii) establishing the ownership, possession or control of such account, property or investment

(iii) obtaining any other information pertaining to such account property or investment,

be delivered forthwith to such police officer; and

(b) that a named institution furnish to the Receiver all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Court may direct.

(2) The Court making an Order under subsection (1) shall upon being satisfied that any person is failing to comply with, is delaying or is otherwise obstructing the execution of, an order made under subsection (1) make Order authorising the Police Officer to enter and search any premises of that person, and remove any document, material or other thing therein for the purpose of executing such Order.

(3) Upon determining who owns, possesses or is in control of any account, property or investment to which the Freezing Order relates, lies, the Police Officer shall report the same to the Court making the Freezing Order, along with all documents establishing and supporting such ownership, possession or control, as the case may be.

### **Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994**

#### **7. Power of the Commission**

(1) If the Commission is satisfied—

(a) that there is reasonable ground for suspecting that an offence under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, has been committed and that evidence of the commission of the offence is to be found at any premises or in any vessel, vehicle or aircraft or with any person; or

(b) that any books, accounts or other documents or things which ought to have been produced during an investigation conducted by it under this Act and have not been so produced are to be found at such premises or in any such vehicle, vessel or aircraft or with such person,

the Commission may by written order authorize an officer appointed to assist the Commission to enter such premises or, as the case may be, any premises upon which the vehicle, vessel or aircraft or person may be, and search such premises, or, as the case may be, such vehicle, vessel, aircraft or person.

(2) An officer authorized by the Commission under subsection (1) may seize any article, which is found in the premises or in the vehicle, vessel or aircraft or with the person and which he has reasonable grounds for believing to be evidence of the commission of any offence under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, or any books, accounts or documents or things which he has reasonable grounds for believing ought to have been produced at an investigation conducted by the Commission under this Act; and every article, book, account; document or thing seized by such officer in pursuance of the powers conferred on him by this section shall be produced by him before the Commission; Provided that no female shall, in pursuance of a search under this section, be searched except by a female.

#### **(b) Observations on the implementation of the article**

152. The Prevention of Money Laundering Act has some specific and targeted provisions on the freezing and seizure of proceeds of money laundering derived from unlawful activities. Chapter VI (of Process to Compel the Production of Documents and Other Movable Property) of the Code of Criminal Procedure further contains general provisions relating to the identification and seizure of assets, as confirmed by authorities during the country visit. Relevant provisions are also found in the Commission to Investigate Allegations of Bribery or Corruption Act.

153. Additionally, it is noted that the identification and tracing of corruption proceeds can be conducted based on the Financial Transaction Reporting Act, No 6 2006 referenced in paragraph 7 below. Administrative freezing by the financial intelligence unit for up to seven days under Section 15(2) of the Act is also possible.

154. During the country visit the financial intelligence unit provided the following statistics on recently frozen money laundering proceeds:

2012: 1800 million rupee

2011: 107.5 million rupee

2010: 181.7 million rupee

155. Sri Lanka has partially implemented the provision under review. The observations about the scope of confiscation under article 31(1)(a) above are referred to. Similar clear provisions on freezing, seizure, identification and tracing of the proceeds of all offences under the Convention shall be introduced in the relevant legislation of Sri Lanka.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

156. Sri Lanka has cited the following implementation measure.

##### **Section 11 of the Prevention of Money Laundering Act No 5 of 2006 as amended by the Act No 40 of 2011**

Appointment of a Receiver.

Upon an application made in that behalf by a police officer not below the rank of an Assistant Superintendent of Police, the High Court may appoint a Receiver to take possession of and otherwise deal with the account, property or investment which has been subjected to the Freezing Order, in accordance with such directions as may be given by Court in that behalf.

##### **Section 15 of the Prevention of Money Laundering Act No 5 of 2006 as amended by the Act No 40 of 2011**

Appointment of a Receiver upon confiscation.

"Where any account, property or investment or any income or profit earned on such account, property or investment has been forfeited to the state under section 13 of this Act, the Court making the order of Forfeiture may, appoint a Receiver in accordance with the provisions of the Civil Procedure Code [Chapter 101] to be in charge of such account, property, investment, income or profit so forfeited".

#### **(b) Observations on the implementation of the article**

157. Pursuant to the amended Prevention of Money Laundering Act, after property is frozen, seized or confiscated after trial, the court may designate a receiver responsible for managing the property, which partially meets requirements of the Convention. There is no centralized office or department for the management of frozen, seized or confiscated property.

158. The observations about the scope of confiscation under article 31(1)(a) above are referred to. Accordingly, provisions shall be introduced with regard to the administration by the competent authorities of frozen, seized or confiscated property that represent proceeds of all offences under the Convention and not only money laundering and bribery.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraphs 4, 5 and 6**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

159. Sri Lanka has cited the following implementation measures.

Section 28A(1) of the Bribery Act and Section 13 of the Prevention of Money Laundering Act No 5 of 2006 as amended by Act No 40 of 2011 as cited in subparagraph 1 (a) above.

##### **Section 28A(1) of the Bribery Act**

(1) Notwithstanding anything to the contrary in any other provision of this Act, where a court convicts a person of an offence under this Part of this Act, the court may in lieu of imposing a penalty or fine under section 26 or section 26A, make order that any movable or immovable property found to have been acquired by bribery or by the proceeds of bribery, be forfeited to the State free from all encumbrances:

#### **(b) Observations on the implementation of the article**

160. Paragraphs 4 and 5: there are broad provisions in the Bribery Act and the Prevention of Money Laundering Act, which address measures to confiscate property. Pursuant to the amended Prevention of Money Laundering Act (Section 13), where the offender whose property is confiscated refuses to pay the property equivalent in value to assets involved in offence, the court may order the offender to pay a fine in the corresponding amount within a specified time limit pursuant to the Code of Criminal Procedure Act.

161. Paragraph 6: Section 28A of the Bribery Act and Section 13 of the Prevention of Money Laundering Act include specific and explicit provisions on the proceeds from offences.

162. Sri Lanka has partially implemented the provision under review. The observations about the scope of confiscation under article 31(1)(a) above are referred to. Similar measure shall be introduced in the relevant legislation with regard to the proceeds of all offences under the Convention and not only money laundering and bribery.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

**(a) Summary of information relevant to reviewing the implementation of the article**

163. Sri Lanka has cited the following implementation measures.

Section 5(d) of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No 19 of 1994 and Section 12 (as cited in paragraph 2 above) in combination with Section 16 of the Prevention of Money Laundering Act No.5 of 2006 as amended by Act No 40 of 2011, Section 27 of the Prevention of Money Laundering Act No.5 of 2006 as amended by Act No 40 of 2011, Section 18 of the Financial Transactions Reporting Act, No. 6 of 2006.

**Section 5(d) of the CIABOC Act No 19 of 1994**

Section 5(1)(d) provides,

For the purpose of discharging the functions assigned to it by this Act, the Commission shall have power -

(d) - to direct by notice in writing the manager of any bank to produce, within such time as may be specified in the notice, any book, document or cheque of the bank containing entries relating to the account of any person in respect of whom a communication has been received under section 4 or of the spouse or a son or daughter of such person, or of a company of which such person is a director, or of a trust in which such person has a beneficial interest or of a firm of which such person is a partner, or to furnish as so specified, certified copies of such book document, cheque or of any entry therein;

**Section 16 of the Prevention of Money Laundering Act**

Secrecy obligation overridden.

The provisions of this Part of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any written law or otherwise and accordingly any disclosure of information by any person in compliance with the provisions of this Part of this Act shall be deemed not to be a contravention of such obligation or restriction.

**Section 27 of the Prevention of Money Laundering Act No.5 of 2006 as amended by Act No 40 of 2011,**

Assistance to Commonwealth countries &c.,

(1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under section 2 of this Act, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act.

(2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a No-Commonwealth country with which the Government of Sri Lanka has entered into an agreement in terms of the aforesaid Act, then it shall be the duty of the Government to afford all such assistance to, and may through the Minister request all such assistance from such country, as may be necessary for the investigation and prosecution of an offence under section 3 to the extent required for the discharge of its obligations under the United Nations Convention (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).

**Section 18 of the Financial Transactions Reporting Act, No. 6 of 2006**

Power of Unit to examine books, records &c.,

(1) Subject to the requirements of paragraph (e) of subsection (1) of section 15, the Financial Intelligence Unit or any person authorised by it in that behalf may examine the records and inquire into the business and affairs of an Institution for the purpose of ensuring compliance with the Act or any directions, orders, rules or regulations issued under the Act, and for that purpose may—

(a) at any reasonable time, enter any premises, in which the Financial Intelligence Unit or authorised person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of Parts I, II and III of this Act ;

(b) use or cause to be used any computer system or data processing system found in the premises, to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or the output for examination or copying ; and (d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for the premises referred to in subsection (1) and every person found thereon shall give the Financial Intelligence Unit or any authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of Parts, I, II and III of this Act or the regulations made under the Act.

(3) The Financial Intelligence Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities or supervisory authorities, if the Financial Intelligence Unit has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for noncompliance with this Act, or amounts to an offence constituting an unlawful activity.

**(b) Observations on the implementation of the article**

164. The relevant legislation of Sri Lanka, basically meets the requirements of the Convention.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

165. Sri Lanka has cited the following implementation measures.

**Section 23 A (1) of the Bribery Act**

23A. (1) Where a person has or had acquired any property on or after March 1, 1954, and such property

—  
(a) being money, cannot be or could not have been -

(i) part of his known income or receipts, or

(ii) money to which any part of his known receipts has or had been converted; or

(b) being property other than money, cannot be or could not have been -

(i) property acquired with any part of his known income,

or

(ii) property which is or was part of his known receipts,

or

(iii) property to which any part of his known receipts has or had been converted, then, for the purposes of any prosecution under this section, it shall be deemed, until the contrary is

proved by him, that such property is or was property which he has or had acquired by bribery or to which he has or had converted any property acquired by him by bribery.

**Section 4 of the Prevention of Money Laundering Act No.5 of 2006 as amended by Act No 40 of 2011**

**Presumption**

For the purposes of any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realized directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activity, if such property—

- (a) being money, cannot be or could not have been—
  - (i) part of the known income or receipts of such person; or
  - (ii) money to which his known income or receipts has or had been converted; or
- (b) being property other than money, cannot be or could not have been—
  - (i) property acquired with any part of his known income or receipts; and
  - (ii) property which is or was part of his known income or receipts; and
  - (iii) property to which is any part of his known income or receipts has or had been converted.

**(b) Observations on the implementation of the article**

166. The texts provided are explanations for the circumstances for the conviction of the offence of illicit enrichment, which does not directly address but is helpful for understanding the issue of the reversion of burden of proof in criminal forfeiture. The cited measure applies in money laundering cases (Section 4 of the Prevention of Money Laundering Act) and Section 23A (1) provides for the presumption of unlawful origin of assets of an offender in illicit enrichment cases. The reviewers notice that this paragraph of the Convention is not a mandatory one.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

167. Sri Lanka has cited the following implementation measures: Section 13 (2) as cited in subparagraph 1 (a) above, Section 28A (1) proviso of the Bribery Act.

**Section 28A (1) proviso of the Bribery Act**

The proviso provides,

Provided however that, in determining whether an order of forfeiture should be made, the court shall be entitled to take into consideration whether such an order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value a bona fide interest in such property.

**(b) Observations on the implementation of the article**

168. Section 13 (2) of Section 4 of the Prevention of Money Laundering Act No.5 of 2006 as amended by Act No 40 of 2011 provides that in determining whether an Order of forfeiture shall be made, the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value, a bona fide interest in such property or investment or any income or profit earned on such property or investment. Section 28A (1)

of the Bribery Act further provides that the court shall have the right to consider at the time of deciding whether to issue a confiscation order whether such order will prejudice the rights of bona fide third parties, which meets the provisions of the Convention.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

169. Sri Lanka has indicated that Section 23 of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No 19 of 1994 provides protection to witnesses and officers of the Commission in the discharge of their statutory functions. Also, as noted above, the “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015 has come into operation.

170. Sri Lanka has cited the following implementation measure.

#### **Section 23 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

23. Any person who -

- (a) makes a false statement in an affidavit furnished by him to the Commission;
  - (b) willfully neglects or omits to render any assistance to the Director-General or any officer appointed to assist the Commission when requested to do so under section 7 ;
  - (c) resists or obstructs the Director-General, any officer appointed to assist the Commission or any officer authorized by the Commission under subsection (1) of section 7, in the exercise of the powers of entry or search under section 7;
  - (d) interferes with any person who is to be, or has been, examined by the Commission ;
  - (e) induces any such person to refrain from giving evidence in any court;
  - (f) threatens any such person with injury to his body, mind or reputation in order to deter him from giving evidence in any court;
  - (g) injures any such person in body, mind or reputation in order to deter him from giving evidence in any court;
  - (h) compels any such person not to give evidence in any court,
- shall be guilty of an offence and shall on conviction after summary trial before Magistrate be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand rupees or to both such imprisonment and fine.

#### **(b) Observations on the implementation of the article**

171. It is noted that Sri Lanka has adopted the “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015 has come into operation, which will after being implemented be helpful for the full implementation of this article. However, it could not be assessed in detail due to its recent adoption. According to Section 23 of the Bribery and Corruption Charges Investigation Commission Act (No. 19 of 1994), and Section 260 of

the Criminal Procedure Act (No. 15 of 1979) (Right of accused to be defended), the following deliberations are made:

172. It is noted that Sections 23 (e), (f), (g) and (h) of the CIABOC Act provide passive protection measures for the punishment of such acts as retaliation and intimidation against witnesses, and that Sri Lanka is drafting acts on active protection.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 2**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

173. Sri Lanka has indicated that it did not implement the provisions under review. As stated earlier, the “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015 has come into operation, but could not be assessed in detail due to its recent adoption.

#### **(b) Observations on the implementation of the article**

174. Paragraph 2 is not implemented, but this paragraph is not a mandatory provision of the Convention. It is noted that Sri Lanka is drafting legislation on the protection of witnesses, that it faces such challenges as the lack of existing normative measures and the particularity of its domestic legal system, and that it has requested such technical assistance as legal advice, model legislation, and relevant experts’ on-site assistance.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

175. Sri Lanka has indicated that to date it did not implement the provision under review.

**(b) Observations on the implementation of the article**

176. Paragraph 3 is not implemented; however, this paragraph only provides that the State Parties “shall consider” to do so. It is noted that Sri Lanka faces such challenges as the lack of existing normative measures and the particularity of its domestic legal system, and that it has requested technical assistance.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

177. Sri Lanka has indicated that to date it did not implement the provision under review. As stated earlier, the “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015 has come into operation, but could not be assessed in detail due to its recent adoption.

**(b) Observations on the implementation of the article**

178. Sri Lanka has stated that it has not implemented the provision under review, but explained during the country visit that the existing legislation partially covers it. It was indicated that the Sri Lankan Code of Criminal Procedure provides that bail can be cancelled in case a defendant threatens a victim. Additionally, protection to victims in some cases can be provided based on Section 187 of the Penal Code.

The Penal Code Section 187

*Threat of injury to induce any person to refrain from applying for protection to a public servant. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application, for protection against any injury, to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*

179. The reviewing experts also take note that Sri Lanka is drafting legislation on the protection of witnesses, which officials explained during the country visit would also extend to victims. As noted above, “Assistance to and Protection of Victims of Crime and Witnesses Act” No. 4 of 2015 has come into operation, but could not be assessed in detail due to its recent adoption.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

180. Sri Lanka has cited the following implementation measure.

**Section 260 of the Code of Criminal Procedure Act No 15 of 1979** as amended.

Subject to the provisions of this Code & any written law every person accused before any criminal court may of right be defended by an attorney at law, & every aggrieved party shall have the right to be represented in court by an attorney at law.

**(b) Observations on the implementation of the article**

181. Under Sri Lankan law the victim is entitled to be represented by a lawyer in criminal proceedings. Section 260 of the Code of Criminal Procedure Act provides that a lawyer may appear in court on behalf of the victim, which basically meets the provisions of the Convention.

**(c) Challenges related to the article**

182. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Specificities in its legal system;

**(d) Technical assistance needs**

183. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Legal advice;
3. On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

184. Sri Lanka has indicated that it partially implemented the provision under review. Sri Lanka has cited Section 9 of the CIABOC Act No 19 of 1994, which provides immunity from civil and criminal liability to any person who has provided information or material to the Commission.

**Section 9 of the CIABOC Act No 19 of 1994**

Section 9

(1) No person shall, in respect of any statement made, information or answer given, or any

document or other thing produced, to or before, the Commission, be liable to any action, prosecution or other proceeding, civil or criminal, in any court.

(2) No evidence of a statement made, or answer or information given, by any person, to, or before, the Commission shall be admissible against such person in any action, prosecution or other proceeding, civil or criminal, in any court;

Provided that nothing in the proceeding provisions of this section shall -

(i) abridge or affect, or be deemed or construed to abridge or affect the liability of any person to any action, prosecution or penalty for any offence under Chapter XI of the Penal Code read with section 18 of this Act or for an offence under this Act;

(ii) prohibit or be deemed or construed to prohibit the publication or disclosure of the name, or of the statement or of any part of the statement of any person for the purposes of any such action or prosecution; or

(iii) affect the admissibility of any statement admissible under section 15.

**(b) Observations on the implementation of the article**

185. Section 9 of the the Commission to Investigate Allegations of Bribery or Corruption Act (No. 19 of 1994) is undoubtedly very significant for indemnifying reporting persons from incriminating themselves, while Article 33 of the Convention provides further guarantee for the “whistleblower”, based on which some people who are hesitant can report at ease. Without these positive guarantee measures, even though the “whistleblower” may be indemnified from criminal liabilities, he/she may still be subject to unfair dismissal.

186. Though Sri Lanka has no special legislation for protecting reporting persons from unfair treatment, such as unfair treatment by the employer or senior officer, pursuant to the Constitution and the employment act, Sri Lanka has established general protection for reporting persons, who may file a petition with the Human Rights Commission based on the Human Rights Commission Act No. 21 of 1996 or the Labour Tribunal based on the Industrial Dispute Act No. 27 of 1966. Where the reporting person is a public official and suffers from unfair treatment, the Commission to Investigate Allegations of Bribery or Corruption may take measures by notifying the Public Service Commission of Sri Lanka or provincial public service commissions on the to conduct an investigation (Section 4(2) of the CIABOC Act).

187. Sri Lanka has partially implemented the provision under review. Sri Lanka is recommended to consider adopting additional measures in the domestic legal system to ensure that the persons reporting facts concerning offences established in accordance with the Convention are protected against any unjustified treatment in accordance with the provision of Convention.

**(c) Challenges related to the article**

188. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system.

**(d) Technical assistance needs**

189. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Legal advice;

3. On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

### **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

190. Sri Lanka has indicated that in an appropriate case, the judiciary may consider corruption a relevant factor to annul or rescind a contract or withdraw a concession or similar instrument or take any other remedial action. There is no specific statutory provision, but the courts have inherent powers to act in a manner consonant with this article. There is also a common law principle where a contract based on fraud or corruption could be rescinded by court in acting under inherent powers.

#### **(b) Observations on the implementation of the article**

191. Although there is not any specific legal provision, based on Sri Lanka's common law principles, the court may exert the "inherent powers" to revoke contracts concluded based on fraud or corruption. It can be deemed as meeting the requirements of the Convention. It was also explained during the country visit that the Commission may refer matters involving corruption to the licensing authorities for them to take necessary action in order to rescind or withdraw licenses or contracts obtained through corruption.

#### **(c) Technical assistance needs**

192. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Assistance in the evaluation of the the effectiveness of the measures adopted to comply with the provision under review.

### **Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

193. Sri Lanka has indicated that an aggrieved party may seek recourse to the Civil Procedure Code to seek an appropriate remedy for unjust enrichment. The provisions of the Civil Procedure Code may be invoked in appropriate circumstances.

**(b) Observations on the implementation of the article**

194. The response demonstrates that Sri Lanka has taken some positive measures to enable the party that has suffered damage to seek remedies against others' unjust enrichment in accordance with the Civil Procedure Code. However, compared with the provisions of the Convention, the means of relief seems to be relatively limited.

195. Sri Lanka is recommended to consider adopting additional measures in the domestic legal system to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

**(c) Challenges related to the article**

196. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination;
2. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
3. Specificities in its legal system;
4. Competing priorities;
5. Limited capacity (e.g. human/technological/institution/other; please specify);
6. Limited awareness of state-of-the-art programmes and practices for witness and expert protection
7. Limited resources for implementation (e.g. human/financial/other; please specify);

**(d) Technical assistance needs**

197. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. No assistance would be required;
2. Summary of good practices/lessons learned;
3. Legal advice;
4. On-site assistance by an anti-corruption expert;
5. Development of an action plan for implementation;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

198. Sri Lanka has indicated that Section 2(5)(a) of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) Act No 19 of 1994, provides for security

of tenure for the Commissioners, and Section 19(1) provides immunity from civil and criminal liability for the Commissioner and the Director General and the officers of the Commission, in the bona fide discharge of their functions.

199. Sri Lanka has cited the following implementation measures.

**Section 2 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

Commission to investigate allegations of bribery or corruption.

**PART I**

2. (1) There shall be established, for the purposes of this Act, a Commission (hereinafter referred to as “the Commission”) to investigate allegations of bribery or corruption made to the Commission in accordance with the succeeding provisions of this Act and to direct the institution of prosecutions under the Bribery Act and the Declaration of Assets and Liabilities Law, No. 1 of 1975.

(2) (a) The Commission shall consist of three members, two of whom shall be retired Judges of the Supreme Court or of the Court of Appeal and one of whom shall be a person with wide experience relating to the investigation of crime and law enforcement.

(b) The members of the Commission shall be appointed by the President, on the recommendation of the Constitutional Council:

Provided however, that during the period commencing on the appointed date and ending on the date on which the Constitutional Council is established, members of the Commission shall be appointed by the President on the recommendation of the Prime Minister in consultation with the Speaker.

(3) The President shall appoint as Chairman of the Commission, one of the members of the Commission who is a retired Judge of the Supreme Court or of the Court of Appeal.

(4) A member of the Commission may resign his office by letter in that behalf addressed to the President.

(5) (a) A member of the Commission shall not be removed from office except by an order of the President made after an address of Parliament supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misconduct or incapacity:

Provided however that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misconduct or incapacity.

(b) The procedure for the presentation and passing of an address of Parliament for the removal of a Judge of the Supreme Court or of the Court of Appeal shall apply in all respects to the presentation and passing of an address of Parliament for the removal of a member of the Commission.

(6) Every member of the Commission, unless he earlier vacates office by death, resignation or removal, hold office for a period of five years and shall not be eligible for reappointment:

Provided however that the term of office of a member appointed in the place of a member who dies, resigns or is removed from office shall be the unexpected period of the term of office of the member whom he succeeds.

(7) The salaries of the members of the Commission shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during their terms of office.

(8) The members of the Commission may exercise the powers conferred on the Commission either sitting together or separately and where a member of the Commission exercises any such power sitting separately, his acts shall be deemed to be the act of the Commission.

**Section 19 (1) of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994**

No proceedings, civil or criminal, shall be instituted against a member of the Commission or the Director-General or any officer or servant appointed to assist the Commission, or other than for contempt, against any other person assisting the Commission in any way, for any act which in good faith is done or omitted to be done, by him as such member, Director-General or officer or servant or other person.

**(b) Observations on the implementation of the article**

200. According to the CIABOC Act No. 19 of 1994, the Commission to Investigate Allegations of Bribery or Corruption is a specialized agency tasked with the investigation and prosecution of corruption offences, specifically bribery (Part II under the Bribery Act), corruption (Section 70, Bribery Act) and accumulated wealth (Section 23, Bribery Act), as well as offences under the Declaration of Assets and Liabilities Law. Money laundering, embezzlement and other Penal Code offences are investigated by the police and prosecuted by the Attorney General's Office. The staff of the Commission is immune from civil and criminal liabilities with respect to the acts relevant to proper performance of their duties, therefore they are granted the necessary independence. Three members of the Commission are appointed by the President, on the recommendation of the Constitutional Council and the Commission reports annually to the President and thereafter reports are submitted to Parliament. The salaries of the members of the Commission are taken from the Consolidated Fund of the Treasury and cannot be diminished during their terms of office. It was explained that the Commission currently has a staff of 20 prosecutors and 117 investigators. The resources of the Commission are determined on the basis of annual budgetary submissions to Parliament. The Commission has enough resources to remain operational. Members of the Commission and officers receive necessary training, including training abroad. Specific training is a prerequisite for the officers to qualify for their employment at the Commission.
201. Other relevant institutions include the Financial Intelligence Unit in the Central Bank of Sri Lanka, the Department of Police (INTERPOL and Public Security, Law and Order) and the Public Service Commission. The police has a special investigative unit to detect corruption in the police force and a disciplinary code for the police is in place.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

202. Sri Lanka has indicated that Section 81(1) of the Bribery Act provides for the granting of a conditional pardon to an accomplice, in order to obtain his/her evidence, in order to facilitate prosecutions.
203. Sri Lanka has cited the following implementation measure.

#### **Section 81(1) of the Bribery Act**

At any time before the conclusion of the trial of a person charged with bribery, the Attorney-General in consultation with the Commission may, with the view of obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender, or by writing under his hand authorize any Magistrate named by him to tender, a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or as abettor in the commission thereof.

**(b) Observations on the implementation of the article**

204. Section 81 (1) of the Bribery Act provides that the Attorney General may grant pardon to those who provide information on relevant cases, including “any person supposed to have been directly or indirectly concerned in or privy to the offence”. The Attorney General may thus grant pardon to persons who have provided useful information to assist in depriving offenders of proceeds of offence and to recover such proceeds pursuant to Section 81(1) of the Bribery Act, even though such persons took a part in relevant offences, which meet the requirements of the Convention.

205. However, no examples of measures were provided relevant to other corruption offences that are not covered by the Bribery Act.

206. Sri Lanka has partially implemented the provision under review and is recommended to adopt appropriate measures to encourage persons who participate or have participated in the commission of corruption offences, besides those offences stipulated in the Bribery Act to supply information to component authorities for investigative and evidentiary purposes.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

207. Sri Lanka has indicated that it did not implement the provision under review.

**(b) Observations on the implementation of the article**

208. Sri Lanka stated that it did not implemented provisions of the Convention. According to clarification provided by Sri Lanka during the country visit, cooperation of an accused is not a mitigating factor at sentencing unless the person is exonerated and that the issue does not arise in practice at sentencing.

209. Sri Lanka is recommended to consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

210. Sri Lanka has indicated that Section 81(1) of the Bribery Act quoted in paragraph 1 above provides for the granting of a conditional pardon to an accomplice, in order to obtain his/her evidence in order to facilitate prosecutions.

**(b) Observations on the implementation of the article**

211. Section 81(1) of the Bribery Act provides that the Attorney General may grant pardon, or authorize any magistrate to pardon, a defendant, under the condition that the defendant must disclose truthfully all things related to the offence. It was explained that in criminal proceedings, criminal trials at the district court and the high court need be preceded by proceedings at the magistrate's court level. Therefore, immunity from prosecution applies to cases at both the district and high courts. It is expected that criminals that should be severely punished will be brought to justice if the Attorney General properly exercises such legal discretionary power. Therefore, Section 81(1) of the Bribery Act well satisfies this provision of the Convention.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 4**

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

212. Sri Lanka has cited Section 23 of the CIABOC Act of No 19 of 1994, quoted in paragraph 1 article 32 above.

**(b) Observations on the implementation of the article**

213. The laws of Sri Lanka have provided some ways to protect cooperating defendants as to the offences listed in the Commission to Investigate Allegations of Bribery or Corruption Act (No. 19 of 1994). The cited measures apply to persons who cooperate in investigations and prosecutions by the Commission to Investigate Allegations of Bribery or Corruption Act and do not cover those who cooperate with other law enforcement authorities, including the police. Please refer to the observations on the implementation of article 32 of the Convention. However, no measures are in place in the current legislation providing for physical protection, relocation, non-disclosure of identity and evidentiary rules to protect cooperating defendants.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 5**

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

**(a) Summary of information relevant to reviewing the implementation of the article**

214. Sri Lanka has cited the following implementation measure.

**Section 7 of the Mutual Assistance in Criminal Matters Act No 25 of 2002**

7. (1) Where the Central Authority receives a request from the appropriate authority of a specified country, for his assistance in locating a person who —

(a) is suspected to be involved in; or

(b) is able to provide evidence or assistance in, any criminal matter falling within the jurisdiction of a criminal court in such specified country and who is believed to be in Sri Lanka, or if the identity of such person is not known, his assistance in identifying and locating such person, the Central Authority may in his discretion, refer such request to the Secretary to the Ministry of the Minister in charge of the subject of Defence and request him to cause such inquiries to be made as may be necessary to comply with the request of the appropriate authority, and upon receipt of a report of the inquiries from such Secretary, shall cause such report to be sent to the appropriate authority of the specified country making the request.

(2) Where there are reasonable grounds to believe that a person who —

(a) is suspected to be involved in; or

(b) is able to provide evidence or assistance in, any criminal matter falling within the jurisdiction of a criminal court in Sri Lanka, is in a specified country, the Central Authority may in his discretion request the appropriate authority in such specified country to assist in locating such person and if his identity is not known, to assist in identifying and locating such person.

(3) A request under subsection (2), shall specify the purpose for which such assistance is required and shall provide any other information that may facilitate the identification or location of such person.

**(b) Observations on the implementation of the article**

215. Section 7 of the Mutual Assistance in Criminal Matters Act cited by Sri Lanka shows the possibility of providing mutual legal assistance only, and seems to be not related to this provision, the focus of which lies in considering entering into agreements or arrangements with other States Parties on the mitigated punishment or immunity of accomplices who render assistance with respect to the criminal matters. It was explained by officials in the Department of Police during the country visit that there are no such agreements in place.

**(c) Challenges, where applicable**

216. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system;

**(d) Technical assistance needs**

217. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;

2. Legislative drafting;
3. Legal advice.

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## **Article 38 Cooperation between national authorities**

### **Subparagraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

218. Sri Lanka has cited the following implementation measures.

Section 4 of the CIABOC Act No 19 of 1994. In addition, Chapter XLVIII Clause 27 of the Establishments Code provides for this eventuality.

#### **Section 4 of the CIABOC Act No 19 of 1994**

4. (1) An allegation of bribery or corruption may be made against a person (whether or not such person is holding on the date on which the communication is received by the Commission, the office or employment by virtue of holding which he is alleged to have committed the act constituting bribery or corruption) by a communication to the Commission, or a person may by a communication to the Commission, draw the attention of the Commission to any recent acquisitions of wealth or property or to any recent financial or business dealings or to any recent expenditures by a person (whether or not such person is holding any office or employment on the date on which such communication is received by the Commission) which acquisitions, dealings or expenditures are to the knowledge of the person making such communication not commensurate with the known sources of wealth or income of such person.

219. **Chapter XLVIII Clause 27:1 and 27:2 of the Establishments Code (included as Annex 1)** The Commission to Investigate Acts of Bribery or Corruption conducts seminars and awareness programmes on the reporting of corruption. Police attachés are also placed in the FIU and the Commission.

### **(b) Observations on the implementation of the article**

220. According to Clause 27 of the Establishment Code, the Public Service Disciplinary Department shall, if discovering any prima facie evidence of the offence of bribery or corruption, report such offence for investigation to the Commission to Investigate Allegations of Bribery or Corruption or other departments specified by law without delay.

221. In addition, according to clarification by the Police Department of Sri Lanka, a government circular stipulates that the police shall, if discovering any potential evidence of corruption while investigating a criminal case, refer such evidence to the Commission.

However, Sri Lanka does not provide clear information on whether other public agencies can take the initiative to provide evidence of corruption to the Commission.

## **Article 38 Cooperation between national authorities**

### **Subparagraph (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(b) Providing, upon request, to the latter authorities all necessary information.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

222. Sri Lanka has cited the following implementation measures.

Section 5 (e) and (f) (specifically) and Section 5(a), (b) and (c) (generally) of the Commission to Investigate Allegations of Bribery and Corruption Act No 19 of 1994

#### **Section 5 of the Commission to Investigate Allegations of Bribery and Corruption Act No 19 of 1994**

(1) For the purpose of discharging the functions assigned to it by this Act, the Commission shall have the power -

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as the Commission may think necessary or desirable to procure, receive or examine;

(b) to require any person to attend before the Commission for the purposes of being examined by the Commission and to answer, orally on oath or affirmation, any question put to him by the Commission relevant, in the opinion of the Commission, to the matters under investigation or require such person to state any facts relevant to the matters under investigation or require such person to state any facts relevant to the matters under investigation in the form of an affidavit;

(c) to summon any person to produce any document or other thing in his possession or control;

(d) to direct by notice in writing the manager of any bank to produce, within such time as may be specified in the notice, any book, document or cheque of the bank containing entries relating to the account of any person in respect of whom a communication has been received under section 4 or of the spouse or a son or daughter of such person, or of a company of which such person is a director, or of a trust in which such person has a beneficial interest or of a firm of which such person is a partner, or to furnish as so specified, certified copies of such book, document, cheque or of any entry therein;

(e) to direct by notice in writing the Commissioner-General of Inland Revenue to furnish, as specified in the notice, all information available to such Commissioner-General relating to the affairs of any person in respect of whom a communication has been received under section 4 or of the spouse or a son or daughter of such person and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to such person, spouse, son or daughter which is in the possession or under the control of such Commissioner General;

(f) to direct by notice in writing the person in charge of any department, office or establishment of the Government or the Mayor, Chairman, Governor or Chief Executive, howsoever designated, of a local authority, Provincial Council, scheduled institution or a company in which the Government owns more than fifty per centum of the shares, to produce or furnish, as specified in the notice, any book, register, record or document which is in his possession or under his control or certified copies thereof or of any entry therein;

(g) to direct any person in respect of whom a communication has been received under section 4 to furnish a sworn statement in writing -

(i) setting out all movable or immovable property owned or possessed at any time, or at such time as may be specified by the Commission, by such person and by the spouse, son or daughter of such person and specifying the date on which each of the properties so set out was acquired, whether by way of purchase, gift, bequest, inheritance or otherwise ;

- (ii) containing particulars of such other matters which in the opinion of the Commission are relevant to the investigation;
- (h) to direct any other person to furnish a sworn statement in writing -
- (i) setting out all movable or immovable property owned or possessed at any time or at such time as may be specified by the Commission, by such person where the Commission has reasonable grounds to believe that such information can assist an investigation conducted by the Commission;
- (ii) containing particulars of such other matters which in the opinion of the Commission are relevant to the investigation;
- (i) to prohibit, by written order, any person in respect of whom a communication has been received under section 4, the spouse, a son or daughter of such person or any other person holding any property in trust for such first-mentioned person, or a company of which he is a director or firm in which he is a partner from transferring the ownership of, or any interest in, any movable or immovable property specified in such order, until such time as such order is revoked by the Commission; and to cause a copy of such written order to be served on any such authority as the Commission may think fit, including in the case of immovable property, the Registrar of Lands, in the case of a motor vehicle, the Commissioner of Motor Traffic and in the case of shares, stocks of debentures of any company, the Registrar of Companies and the Secretary of such company;
- (j) to require, by written order, any authority on whom a copy of a written order made under paragraph (i) has been served, to cause such copy to be registered or filed in any register or record maintained by such authority;
- (k) to require by written order the Controller of Immigration and Emigration to impound the passport and other travel documents of any person in respect of whom a communication has been received under section 4, for such period not exceeding three months, as may be special in such written order; and
- (l) to require by written order, any police officer as shall be specified in that order, whether by name or by office, to take all such steps as may be necessary to prevent the departure from Sri Lanka of any person in respect of whom a communication has been received under section 4 for such period not exceeding three months, as may be specified in such order.
- (2) the Commission may exercise any power conferred on it under subsection (1) and any person to whom the Commission issues any direction in the exercise of such power shall comply with such direction, notwithstanding anything to the contrary in any law.

**(b) Observations on the implementation of the article**

223. Section 5 of the Commission to Investigate Allegations of Bribery and Corruption Act specifies the extensive functions and powers of the Commission in terms of investigations. It was explained that relevant national authorities and public officials of Sri Lanka shall, if required, provide all necessary information, and that this duty is specified in the Establishment Code for each institution, which meets the requirements of the Convention.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

224. Sri Lanka has cited Section 4 of the CIABOC Act No 19 of 1994 quoted in subparagraph (a) of article 38 above and Section 5(d) of the CIABOC Act No 19 of 1994 quoted in subparagraph (b) of article 38 above as measures implementing the provision under review. Additionally, financial institutions and other persons are required to report

to the Financial Intelligence Unit (FIU) suspicious activities in relation to financial activities in terms of the Prevention of Money Laundering Act, No. 5 of 2006 as amended by the Act No. 40 of 2011.

225. Sri Lanka has cited the following implementation measure.

**Section 5 Prevention of Money Laundering Act No. 5 of 2006**

(1) Any person who knows or has reason to believe from information or other matter obtained by him in the course of any trade, profession, business or employment carried on by such person, that any property has been derived or realised from any unlawful activity, shall disclose his knowledge or belief as soon as is practicable, to the Financial Intelligence Unit.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence under this Act, and shall on conviction after trial before the High Court be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

(3) The disclosure by a director or officer or servant of an Institution in terms of the provisions of the Financial Transactions Reporting Act, No. 6 of 2006 of his knowledge and belief that any property has been derived or realized from any unlawful activity, shall be sufficient compliance by such director, officer or servant, of the duty imposed on him by subsection (1).

(4) The provisions of subsection (1) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information, imposed by any written law or otherwise, and accordingly any disclosure by any person in compliance with the provisions of subsection (1) shall be deemed not to be a contravention of such obligation or restriction.

(5) In a prosecution for an offence under subsection (2) it shall be a defence for the accused to prove to Court, on a balance of probabilities that he had reasonable grounds for not disclosing his knowledge or belief.

226. Sri Lanka's FIU provided the following statistics on STR referrals in money laundering cases. It was explained that two STRs were transferred to CIABOC in 2012 and 2013 and were still pending at the time of the country visit.

Year	2008	2009	2010	2011	2012	2013 June 30
STRs received & Generated	95	250	534	467	470	218
Ref. to Regulatory Authorities	5	3	13	5	8	4
Ref. to Law Enforcement Authorities	13	7	14	47	44	19
No. of Prosecutions (Indictments Filed)	-	-	2	1	4	-
Funds Frozen/ suspended	LKR. 471 mn	LKR. 42 mn	LKR.181.7 mn	LKR. 107.5 mn	LKR 1800 mn	USD 9975
Assets confiscated/ forfeited	-	-	-	-	LKR 2.9 mn	-

**(b) Observations on the implementation of the article**

227. Relevant provisions are contained in Section 5 (d) of the CIABOC Act No 19 of 1994 and the Prevention of Money Laundering Act, which meet the requirements of the Convention. Additionally, Section 4 of the CIABOC Act (quoted under article 38(a)

could provide for permissive reporting of corruption by any person. Sri Lanka has the legal basis for requesting anyone to provide information on corruption and money laundering. The Commission to Investigate Allegations of Bribery and Corruption is also entitled to solicit records from financial institutions.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

228. Sri Lanka has indicated that advertisements, seminars and awareness programmes are conducted by CIABOC. A reporting hotline is active 24 hours.

#### **(b) Observations on the implementation of the article**

229. The reviewers noticed that the Commission to Investigate Allegations of Bribery and Corruption has established a 24-hour reporting hotline, and such measures as awareness raising, seminars and publicity activities are conducted, which meet the requirements of the Convention.

## **Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

230. Sri Lanka has cited the following implementation measures. Section 5(1) (d) of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994 (quoted in subparagraph (b) of article 38 above), Section 16 of the Prevention of Money Laundering Act, Section 18 of the Financial Transactions Reporting Act, No. 6 of 2006 as cited under article 31 paragraph 7 above and Section 31 of the Financial Transactions Reporting Act, No. 6 of 2006.

#### **The Financial Transactions Reporting Act, No. 6 of 2006**

##### **Section 31.**

##### **Institutions have duty to comply with the provisions of this Act.**

An Institution shall comply with the requirements of this Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

#### **(b) Observations on the implementation of the article**

231. Such laws as the CIABOC Act, the Financial Transaction Reporting Act, and the Prevention of Money Laundering Act have provided the basis for overcoming the obstacles that may arise due to the application of bank secrecy and basically meet the requirements of the Convention.

#### **Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

232. Sri Lanka has indicated that it did not implement the article under review.

##### **(b) Observations on the implementation of the article**

233. Sri Lanka has not implemented the article under review. However, Sri Lanka is encouraged to consider implementing this article through measures during trial and sentencing stages. For instance, in several jurisdictions, under the premise of abiding by the rule of exemption from self-incrimination, if the defendant's character is put into question by the prosecutor or a prosecution witness, or the defendant is asked to prove his/her good character, the prosecuting party may during the trial ask the court for permission to inquire about any previous convictions, including, if applicable, judgments from other jurisdictions. In the sentencing stage, to help the court determine a starting point for the measurement of penalties and impose a proper sentence, the court will be informed of the background information and conviction records of the defendant, including, if applicable, those from other jurisdictions.

##### **(c) Challenges, where applicable**

234. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system;

##### **(d) Technical assistance needs**

235. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Model legislation
3. Legislative drafting
4. Legal advice;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## Article 42 Jurisdiction

### Subparagraph 1 (a)

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

### (a) Summary of information relevant to reviewing the implementation of the article

236. Sri Lanka has cited the following implementation measures.

Section 89A of the Bribery Act, Section 9 of the Judicature Act No 2 of 1978 read with Section 11 of the Code of Criminal Procedure Act No 15 of 1979.

#### Section 89A of the Bribery Act

A public servant who solicits or accepts a gratification which is an offence under this Act shall, if such solicitation or acceptance was made outside Sri Lanka, be deemed to have committed such offence within Sri Lanka, and accordingly the High Court holden in Colombo shall have jurisdiction to try such offence notwithstanding anything in any other law to the contrary.

#### Section 9 of the Judicature Act No 2 of 1978

(1) The High Court shall ordinarily have the power and authority and is hereby required to hear, try and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of-

- (a) any offence wholly or partly committed in Sri Lanka ;
- (b) any offence committed by any person on or over the territorial waters of Sri Lanka;
- (c) any offence committed by any person in the air space of Sri Lanka;
- (d) any offence committed by any person on the high seas where such offence is piracy by the law of nations;
- (e) any offence wherever committed by any person on board or in relation to any ship or any aircraft of whatever category registered in Sri Lanka; or
- (f) any offence wherever committed by any person, who is a citizen of Sri Lanka, in any place outside the territory of Sri Lanka or on board or in relation to any ship or aircraft of whatever category.

(2) The jurisdiction of the High Court shall subject to the provisions of any other law-

- (a) in respect of any offence committed wholly or partly in Sri Lanka referred to in paragraph (a) of subsection (1), be ordinarily exercised by the High Court holden in a judicial zone within which such offence was wholly or partly committed;
- (b) in respect of any offence committed in any place referred to in paragraphs (b) to (f) of subsection (1) shall be exercised by the High Court holden in the judicial zone nominated by the Chief Justice by a direction in writing under his hand :

Provided that the Chief Justice may, if he deems fit, direct by writing under his hand that the High Court holden in any zone nominated by him shall hear and determine any offence referred to in paragraph (a) would ordinarily have been heard and determined by the High Court holden in any other judicial zone.

#### Section 11 of the Code of Criminal Procedure Act No 15 of 1979

Any offence under any law other than the Penal Code whether committed before or after the appointed date shall be tried save as otherwise specially provided for in any law - (Alterations necessitated by this provision have been made in other enactments reproduced in this Edition.)

(a) where a court is mentioned in that behalf in that law -

(i) by the High Court where the court mentioned is the High Court or in relation to an offence punishable with imprisonment for a term exceeding two years or with a fine exceeding one thousand five hundred rupees, the court mentioned is the District Court;

(ii) by a Magistrate's Court where the court mentioned is the Magistrate's Court or in relation to an offence punishable with imprisonment for a term not exceeding two years or with a fine not exceeding one thousand five hundred rupees, the court mentioned is the District Court;

- (b) where a court is not mentioned in that behalf in that law –  
(i) by the High Court; or  
(ii) by a Magistrate's Court where the offence is punishable with imprisonment not exceeding two years or with a fine not exceeding one thousand five hundred rupees.

**(b) Observations on the implementation of the article**

237. Section 9 (1) (a), (b) and (c) of the Judicature Act provides in detail and clearly that Sri Lanka has jurisdiction over offences that occur within its territory, territorial waters and airspace, which meets the requirements of the Convention.

**Article 42 Jurisdiction**

**Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

238. Sri Lanka has cited Section 9(1) (e) of the Judicature Act and Section 89A of the Bribery Act quoted in subparagraph 1 (a) above.

**(b) Observations on the implementation of the article**

239. Section 9 (1) (e) of the Judicature Act provides that Sri Lanka has jurisdiction over offences that occur within the vessels and aircrafts registered in Sri Lanka, which meets the requirements of the Convention

**Article 42 Jurisdiction**

**Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

240. Sri Lanka has indicated that it did not implement the provision under review.

**(b) Observations on the implementation of the article**

241. The provision under review is not implemented. The reviewers noted that the provision under review is an optional clause, and that Sri Lanka faces such challenges as the lack of existing regulatory measures and the particularity of its domestic legal system in implementing the article under review. Sri Lanka expressed that it needs such technical

assistance as a summary of good practices, experiences and lessons learned, legal advice, and relevant experts' on-site assistance.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

242. Sri Lanka has indicated that offences defined in Sections 16-23 of the Bribery Act apply to "any person". Sri Lanka also referred to Section 9 (f) of the Judicature Act as quoted in subparagraph 1 (a) above.

#### **(b) Observations on the implementation of the article**

243. The quoted Sections 16 to 23 of the Bribery Act are not provisions on jurisdiction; however, it is noted that Section 9 (f) of the Judicature Act has established the jurisdiction over offences committed by Sri Lankan citizens, which meets the requirements of the Convention. No provision is made with respect to the determination of jurisdiction over offences committed by "a stateless person who has his or her habitual residence in its territory" as provided in the Convention, but it is an optional clause.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

244. Sri Lanka has cited subsection 4 (p) of Section 19 of the Prevention of Money Laundering (Amendment) Act of No 40 of 2011 quoted in under paragraph 2 of article 23 above as measure implementing the provision under review.

#### **(b) Observations on the implementation of the article**

245. Based on the cited provision, which addresses foreign predicate offences, Sri Lanka's legislation does not appear to cover foreign participatory acts to money laundering.

## Article 42 Jurisdiction

### Subparagraph 2 (d)

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

246. Sri Lanka has indicated that it did not implement the provision under review.

#### (b) Observations on the implementation of the article

247. Sri Lanka has not implemented this optional provision under review.

## Article 42 Jurisdiction

### Paragraph 3

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

#### (a) Summary of information relevant to reviewing the implementation of the article

248. Sri Lanka has indicated that it does not refuse extradition solely on the basis that the relevant party is a Sri Lankan national, as described under paragraph 11 of article 44 below.

#### (b) Observations on the implementation of the article

249. In consideration of the fact that the laws of Sri Lanka do not prohibit the extradition of Sri Lanka's own citizens, it can be inferred that Sri Lanka will not refuse to extradite someone who is a citizen; therefore, it is not necessary for Sri Lanka to amend its laws in accordance with this provision of the Convention. Reference is made to the observations under article 44.

## Article 42 Jurisdiction

### Paragraph 4

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

#### (a) Summary of information relevant to reviewing the implementation of the article

250. Sri Lanka has indicated that it did not implement the provision under review. This specific issue is to be discussed by a committee to consider amendments to the legislation appointed by the Commission to Investigate Allegations of Bribery or Corruption.

**(b) Observations on the implementation of the article**

251. This paragraph has not been implemented. The reviewing experts noted that this provision is an optional clause, and that Sri Lanka is currently considering taking measures to implement this paragraph through amendments to its domestic laws.

**Article 42 Jurisdiction**

**Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Sri Lanka referred to the information provided under paragraphs 4 and 6 of article 46 below.

**(b) Observations on the implementation of the article**

252. Sri Lanka has adopted some implementation measures with regard to information sharing via FIU channels in Sections 15 (1)(q) and 17(3) of the Financial Transactions Reporting Act No. 6 of 2006. It was also reported during the country visit that information was shared between Sri Lankan and foreign law enforcement authorities based on Interpol requests and the principle of reciprocity. Besides, the Mutual Assistance in Criminal Matters Act will also help to solve conflicts of jurisdiction in practice through negotiation and coordination.

**Article 42 Jurisdiction**

**Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

253. Sri Lanka has indicated that the Convention does not preclude the exercise of any criminal jurisdiction recognized by Sri Lankan laws and referred to the Bribery Act and the CIABOC Act.

**(b) Observations on the implementation of the article**

254. The reply shows, by referring to the Bribery Act and the CIABOC Act, that the Convention does not exclude the criminal jurisdiction established by Sri Lanka's domestic laws, which meets the requirements of the Convention.

**(c) Challenges, where applicable**

255. Sri Lanka has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing implementing norm measures (laws, regulations etc.);
3. Specificities in our legal system;
4. Non-existence of legal provisions.

**(d) Technical assistance needs**

256. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legal advice;
3. On-site assistance by an anti-corruption expert;
4. Legislative drafting;

None of these forms of technical assistance has been provided to Sri Lanka to-date.

## Chapter IV. International cooperation

257. International cooperation in Sri Lanka is governed by the Extradition Law (No. 8 of 1977, as amended by Act 48 of 1999) and the Mutual Assistance in Criminal Matters Act (No. 25 of 2004) (MACMA). Extradition and mutual legal assistance (MLA) may be provided without a treaty to Commonwealth countries that have been designated by order in the Gazette. A treaty is otherwise required for all other countries. For requests from both Commonwealth and treaty partners, the execution of the request is subject to the domestic laws of Sri Lanka. As a dualist country, international treaties require enabling domestic legislation to be implemented in Sri Lanka.
258. In addition to the Convention, Sri Lanka is party to four bilateral extradition treaties, with Hong Kong (China), India, Italy and the United States. The treaties with India and Italy were not available to the reviewers and could not be examined. Sri Lanka also has bilateral MLA treaties in force with Hong Kong (China), Pakistan, Thailand and India, although the treaty with India was not available to the reviewers. Dual criminality is required for extradition and MLA from Sri Lanka, though the requirement may be waived for MLA if the conduct underlying the request is “of a serious nature and is a criminal matter”, as per Section 6(1) of the MACMA.
259. Sri Lanka has not criminalized the bribery of foreign public officials and illicit enrichment. As a result, the dual criminality requirement would likely impact extradition and MLA requests involving these offences. However, regarding extradition, as noted under paragraph 1 of article 44 below, the catch-all provision in the Extradition Act referring to offences under international crime control conventions would seem to cover all UNCAC offences (see the Extradition (Amendment) Act no. 48 of 1999, Section 5). For MLA, it is noted that assistance can be rendered under the MACMA in the absence of dual criminality for a serious offence recognized under the law of Sri Lanka or of a specified country, which would not encompass UNCAC offences not recognized in either Sri Lanka or the requesting country.
260. Sri Lanka subscribes to the Commonwealth Schemes on Mutual Legal Assistance (also known as the Harare Scheme) and the Commonwealth Scheme on Extradition (London Scheme), which are alternate schemes for international cooperation based on domestic legislation rather than treaties among Commonwealth countries.
261. Assistance can also be provided in the absence of a treaty on a case-by-case basis on the grounds of reciprocity, although no examples of this were available.
262. The central authority for MLA is the Secretary to the Minister of Justice, while the responsible authority for extradition is the Minister of Defence.
263. As a general matter, as noted in the introduction to UNCAC articles 44 and 46 below, Sri Lanka is encouraged to review its information gathering systems for the collection of data on the origin of MLA and extradition requests, the timeframe for executing these requests, and the response provided, including the offences involved and any grounds for refusal.

## Article 44 Extradition

264. As a general matter, the reviewing States note that it was difficult to assess in detail Sri Lanka's practice of granting extradition in corruption cases, due to the limited availability of information, the absence of data on requests made to Sri Lanka and any requests that Sri Lanka has refused, and, more generally, the absence of a specific system for collecting data. In particular, it was not possible during the country visit for the review team to meet with the Minister of Defence as the authority responsible for determining extradition requests. It is recommended that Sri Lanka adapt its information system to allow it to collect data on the origin of extradition requests, the timeframe for executing these requests, and the response provided, including the offences involved and any grounds for refusal. It is further suggested that knowledge of the extradition procedure and role of the responsible authority for determining extradition requests (Ministry of Defence) be enhanced among relevant authorities in Sri Lanka, as the executing agencies met with during the country visit were of the view that the responsible authority for extradition was either the Attorney General's Office or the Ministry of Justice. It is suggested that the Ministry of Defence could play a greater role in ensuring that both of the above recommendations (concerning its role and the collection of statistics) are addressed.
265. The reviewing States further recommend, as described in the introduction to UNCAC article 46, that Sri Lanka review the list of gazetted Commonwealth countries to ensure that all Commonwealth countries are covered.

### Paragraph 1

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

266. Sri Lanka has cited Extradition Law number 8 of 1977 as amended by Act no 48 of 1999. Dual criminality is a requirement in terms of Section 6(1) (a) and Section 7(4) (c) of the Extradition Law, whereby extradition can be granted if the offence is recognized under the law of the requesting State and it is an offence which is provided for in the extradition treaty. The section of the Extradition Law is set forth below.

#### **Extradition Law number 8 of 1977 as amended by Act no 48 of 1999** **Extraditable offences.**

6. (1) For the purposes of this Law, any offence of which a person is accused or has been convicted in any designated Commonwealth country or any treaty State shall be an extraditable offence, if-

- (a) in the case of an offence against the law of a treaty State it is an offence which is provided for in the extradition arrangement;
- (b) in the case of an offence against the law of a designated Commonwealth country, it is an offence which, however described in that law, falls within any description set out in the Schedule hereto and is punishable under that law with imprisonment for a term of not less than twelve months; and
- (c) in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Sri Lanka if it took place within Sri Lanka, or outside Sri Lanka.

267. Under Sri Lanka's treaties, extraditable offences are those punishable according to the laws of both States by imprisonment for more than one year or a more severe penalty

(extradition treaty with the USA (article 2(1)) and, additionally in the case of Hong Kong, those listed in a schedule in the treaty (Hong Kong (China) treaty, article 2(1)).

**(b) Observations on the implementation of the article**

268. Dual criminality is a requirement for extradition. For extradition to Commonwealth countries with which no treaty is in place, the offence must also be described in a list in the Extradition Law and be punishable by at least one year. The list includes bribery, theft, criminal breach of trust, dishonest misappropriation of property, any offence in respect of property involving fraud, and money laundering. According to Section 5 of the 1999 amendment to the Act, the list also includes:

**Extradition (Amendment) Act no 48 of 1999, Section 5**

“43. An offence within the scope of an international convention relating to the suppression of international crime, in respect of which Sri Lanka and the requesting state are contracting states and which obliges the contracting states to prosecute or grant extradition for such offence”.

269. It is observed that the law does not contain a provision for unlisted offences, such as acts that constitute a crime in the requesting and requested States or are subject to a certain term of imprisonment. It is recommended that Sri Lanka consider whether the list-based approach affords it sufficient flexibility to grant extradition to Commonwealth countries for specific acts of corruption and to amend the list as needed to respond to corruption-related requests, including in future cases. In this regard, the recent amendment to the schedule referring to international crime control conventions affords some certainty.

**Article 44 Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

270. Sri Lanka has not implemented the provision under review. Dual criminality is a requirement for extradition under Sri Lanka’s law and treaties, as described in the previous provision.

**(b) Observations on the implementation of the article**

271. The reviewing experts acknowledge that Sri Lanka has not implemented the provision.

**Article 44 Extradition**

**Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

272. Sri Lanka stated that, as per Section 7 of the Extradition Law of 1977, the period of imprisonment is not mentioned as an instance where extradition is prohibited.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

**7. General restrictions on extradition [Act no 48 of 1999]**

(1) A person shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, or to the Court of Appeal upon an application made to it for a mandate in the nature of a writ of habeas corpus

(a) that the offence of which that person was accused or was convicted is an offence of a political character;

(b) that the request for extradition, though purporting to be made on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, or political opinions; or

(c) that he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

(2) A person accused of an offence shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purpose of his extradition, if it appears, as provided in subsection (1) of this section, that if charged with that offence in Sri Lanka he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, unless provision is made by the law of that Commonwealth country, or, in the case of a treaty State, by the extradition arrangement with that State, for securing that he will not, unless he has first been restored, or had an opportunity of returning, to Sri Lanka, be arrested, detained, remanded or otherwise dealt with in that country or State, for or in respect of any offence committed before his extradition under this Law, other than-

(a) the offence in respect of which the extradition under this Law is requested;

(b) any lesser offence proved by the facts-established before the court of committal; or

(c) any other offence, being an extraditable offence in respect of which the Minister may consent to his being so dealt with.

(4) The reference in this section to an offence of a political character does not include-

(a) an offences against the life or person of the head of any designated Commonwealth country or treaty state;

(b) an offence which, under the terms of the extradition arrangement made by the Government of Sri Lanka with the requesting treaty state, is not regarded as a political offence;

(c) an offence within the scope of an international convention relating to the suppression of international crime to which Sri Lanka and the requesting designated commonwealth country or treaty state are contracting parties and which obliges contracting parties to prosecute or grant extradition for such offence; and

(d) any related offence described in subsection (3) of section 6.

**(b) Observations on the implementation of the article**

273. While the period of imprisonment does not appear to be a ground for refusal under the Extradition Act, the reviewing experts note that it is a condition for extradition to Commonwealth countries under Section 6(1)(b) of the Act that the offence be punishable by at least one year and fall within the list of offences.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

**6. Extraditable offences**

(1) For the purposes of this Law, any offence of which a person is accused or has been convicted in any designated Commonwealth country, or any treaty State shall be an extraditable offence, if

...

(b) in the case of an offence against the law of a designated Commonwealth country, it is an offence which, however described in that law, falls within any description set out in the Schedule hereto and is punishable under that law with imprisonment for a term of not less than twelve months; ...

274. It is further a requirement under Sri Lanka's treaties that the offence be punishable by at least one year under the laws of both States. An example is Article 2(1) of the extradition treaty with the United States of America.

**Article 2  
Extraditable Offenses**

1. An offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year or by a more severe penalty.

Article 2(5) of the treaty further addresses the requirements of the provision under review.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition are met.

Similarly, the Hong-Kong, China extradition treaty provides in relevant part as follows, although the case of mixed requests is not addressed.

**ARTICLE 2  
OFFENCES**

(1) Surrender shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty:

...

275. Sri Lanka confirmed that all UNCAC offences are subject to imprisonment by at least one year under Sri Lanka's laws and thus extraditable under Sri Lanka's law and extradition treaties.

276. Based on the available information, it appears that Sri Lanka would execute a request as per the provision under review under its treaty with the United States of America, although no examples were provided. No relevant measures to this effect are included in the Extradition Act or the other bilateral treaties reviewed.

**Article 44 Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

277. Section 7 of the Extradition Law (quoted above) lays down general restrictions on extradition. Moreover, Section 7(4)(c) specifically states that political offence restrictions

would not be applicable to offences under international crime control conventions to which both States are parties.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

**7. General restrictions on extradition [Act no 48 of 1999]**

...

(4) The reference in this section to an offence of a political character does not include ...

(c) an offence within the scope of an international convention relating to the suppression of international crime to which Sri Lanka and the requesting designated commonwealth country or treaty state are contracting parties and which obliges contracting parties to prosecute or grant extradition for such offence;

278. Sri Lanka referred to Article 6 of the Hong Kong China-Sri Lanka Extradition Treaty of 2007. It further stated that no extradition treaty is required in relation to Commonwealth countries.

**Hong Kong China-Sri Lanka Extradition Treaty**

**ARTICLE 6**

**MANDATORY REFUSAL OF SURRENDER**

(1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:

(a) that the offence of which that person is accused or was convicted is an offence of a political character;

(b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or

(c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.

(2) For the purposes of this Agreement, the following shall not be considered to be offences of a political character:

(a) offences specified in Item 1, Item 20 or Item 43 of Article 2(1);

(b) conspiracy to commit, aiding, abetting, counselling or procuring the commission of, inciting the commission of, being an accessory to, or attempting to commit any offence referred to in paragraph (a).

(3) A fugitive offender who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence.

279. Sri Lanka stated that there had not been any requests for extradition under the Convention to date.

**(b) Observations on the implementation of the article**

280. As noted under paragraph 1 above, extraditable offences under Sri Lanka's treaties are those punishable according to the laws of both States by imprisonment for more than one year and additionally, in the case of the Hong Kong (China) treaty, those listed in a schedule to the treaty. This would include all UNCAC offences.

281. It was explained during the country visit that no extradition requests had been received where the political offence exception was invoked.

282. The provision is legislatively implemented.

**Article 44 Extradition**

**Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

283. Sri Lanka reported that extradition is conditional on the existence of a treaty except in relation to Commonwealth countries.

284. Sri Lanka indicated that it does not consider the Convention as the legal basis for extradition in respect to any corruption offences and that an amendment to the Extradition Law would be needed to do so.

285. Sri Lanka cited Section 3 of the Extradition Law.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

**3. Application of the provisions of this law in respect of foreign states.**

(1) Where any extradition arrangement has been made by the Government of Sri Lanka with any foreign State, whether before or after the commencement of this Law, then, subject to the provisions of section 4, the Minister may by Order published in the Gazette declare that the provisions of this Law shall apply in respect of such foreign State, subject to such modifications, limitations or conditions, as the Minister, having due regard to the terms of such arrangement, may deem expedient to specify in the Order for the purpose, and the purpose only, of implementing such terms.

(2) Every Order made under this section shall recite or embody the terms of the extradition arrangement in consequence of which such Order was made, and shall come into force on the date of publication of such Order, or on such later date as may be specified therein, and shall remain in force for so long, and so long only, as the extradition arrangement in consequence of which such Order was made remains in force.

(3) Every Order made under this section shall as soon as convenient after its publication be brought before Parliament for approval. Any Order which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(4) An Order made under this section shall be final and conclusive, and shall not be called in question in any court.

(5) Where any Order is deemed to be rescinded by virtue of the operation of the provisions of subsection (3) of this section, the Minister shall cause notice of such rescission to be published in the Gazette.

(6) Every foreign State in relation to which an Order made under this section is for the time being in force is hereinafter referred to as a " treaty State".

286. There have been no requests for extradition on the basis of the Convention to date.

**(b) Observations on the implementation of the article**

287. It was explained during the country visit that Sri Lanka can apply its bilateral treaties once they have been gazetted and implementing legislation has been enacted. Conversely, multilateral conventions like the Convention are not gazetted and could only be applied once enabling legislation has come into force with respect to the provisions that have been implemented or offences that have been criminalized in Sri Lankan legislation. As this approach has never been tested and the officials expressed some reservations during the country visit as to the process by which incoming requests based on multilateral treaties like UNCAC could be honored, it is recommended that Sri Lanka review the domestic requirements in this regard to enable it to respond to such requests in the future.

288. Based on discussions during the country visit, the reviewers were of the view that an amendment to the Extradition Law may not be necessary, as the Law could be applied to non-Commonwealth countries with which an extradition arrangement is in place pursuant

to an order of the Minister issued under Section 3(1) of the Act. This process mirrors the application of MACMA to non-Commonwealth countries by order of the Minister under Section 2(3) of that Act, for which no specific legal amendment would be required. Regardless, as noted in the previous paragraph, the reviewers recommend that Sri Lanka review the necessary requirements in this regard.

## **Article 44 Extradition**

### **Paragraph 6**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

289. Extradition is conditional on the existence of a treaty except in relation to Commonwealth countries.

290. Sri Lanka does not consider the Convention as a legal basis for extradition. Sri Lanka has not made the requisite notification to the United Nations but indicated that steps are being taken to comply with the requirement in issue.

291. As described in the introduction to this chapter, Sri Lanka is party to four bilateral extradition treaties.

#### **(b) Observations on the implementation of the article**

292. Sri Lanka has not made the requisite notification to the United Nations at the time of ratification.

293. Sri Lanka is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

294. The reviewers recommend that Sri Lanka review its domestic requirements regarding the application of multilateral treaties like the Convention as a legal basis for extradition.

## **Article 44 Extradition**

## Paragraph 7

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

### (a) Summary of information relevant to reviewing the implementation of the article

295. Sri Lanka indicated that it has not implemented the provision under review. Save for Commonwealth countries, extradition is conditional on the existence of a treaty. It therefore considers the provision to be not applicable to Sri Lanka.

### (b) Observations on the implementation of the article

296. The reviewing experts note that the dual criminality requirement would likely impact extradition requests involving UNCAC offences not criminalized in Sri Lanka. However, as noted under paragraph 1 of article 44 above, the catch-all provision referring to offences under international crime control conventions would seem to cover all UNCAC offences (see the Extradition (Amendment) Act no. 48 of 1999, Section 5).

## Article 44 Extradition

### Paragraph 8

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

### (a) Summary of information relevant to reviewing the implementation of the article

297. Sri Lanka cited Section 7 of the Extradition Law.

#### **Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

##### **7. General restrictions on extradition [Act no 48 of 1999]**

(1) A person shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, or to the Court of Appeal upon an application made to it for a mandate in the nature of a writ of habeas corpus-

(a) that the offence of which that person was accused or was convicted is an offence of a political character;

(b) that the request for extradition, though purporting to be made on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, or political opinions; or

(c) that he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

(2) A person accused of an offence shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purpose of his extradition, if it appears, as provided in subsection (1) of this section, that if charged with that offence in Sri Lanka he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, unless provision is made by the law of that Commonwealth country, or, in the case of a treaty State, by the extradition arrangement with that State, for securing that he will not, unless he has first been restored, or had an opportunity of returning, to Sri Lanka, be arrested, detained, remanded or otherwise dealt with in that country or State, for or in respect of any offence committed before his extradition under this Law, other than-

- (a) the offence in respect of which the extradition under this Law is requested;
  - (b) any lesser offence proved by the facts-established before the court of committal; or
  - (c) any other offence, being an extraditable offence in respect of which the Minister may consent to his being so dealt with.
- (4) The reference in this section to an offence of a political character does not include
- (a) an offences against the life or person of the head of any designated Commonwealth country or treaty state;
  - (b) an offence which, under the terms of the extradition arrangement made by the Government of Sri Lanka with the requesting treaty state, is not regarded as a political offence;
  - (c) an offence within the scope of an international convention relating to the suppression of international crime to which Sri Lanka and the requesting designated commonwealth country or treaty state are contracting parties and which obliges contracting parties to prosecute or grant extradition for such offence; and
  - (d) any related offence described in subsection (3) of section 6.

298. Relevant provisions are also found in the extradition treaties.

Hong Kong, China-Sri Lanka Extradition Treaty:

**ARTICLE 4  
DEATH PENALTY**

If the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that this penalty will not be imposed or, if imposed, will not be carried out.

**ARTICLE 6  
MANDATORY REFUSAL OF SURRENDER**

(1) A fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (b) that the request for surrender (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or
- (c) that the person might, if returned, be prejudiced at that person's trial or punished, detained or restricted in his or her personal liberty by reason of race, religion, nationality or political opinions.

(2) For the purposes of this Agreement, the following shall not be considered to be offences of a political character:

- (a) offences specified in Item 1, Item 20 or Item 43 of Article 2(1);
- (b) conspiracy to commit, aiding, abetting, counselling or procuring the commission of, inciting the commission of, being an accessory to, or attempting to commit any offence referred to in paragraph (a).

(3) A fugitive offender who has been finally acquitted, convicted or pardoned or whose prosecution is barred or whose conviction has been set aside under the law of the requesting or requested Party for any offence set out in the request shall not be surrendered for that offence.

**ARTICLE 7  
DISCRETIONARY REFUSAL OF SURRENDER**

Surrender may be refused if the requested Party considers that:

- (a) the offence is, having regard to all the circumstances, not sufficiently serious to warrant the surrender;
- (b) there has been excessive delay, for reasons which cannot be imputed to the person sought, in bringing charges, in bringing the case to trial or in making the person serve his or her sentence or the remainder thereof;
- (c) the offence for which surrender is sought was committed within the jurisdiction of its courts;
- (d) the surrender might place that Party in breach of its obligations under international treaties; or
- (e) in the circumstances of the case, the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.

Extradition Treaty with the United States of America

**Article 4  
Political and Military Offences**

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.
2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:
  - (a) a murder or other violent crime against the person of a Head of State or Head of Government of one of the Contracting States, or of a member of the Head of State's or Head of Government's family;
  - (b) aircraft hijacking offenses, as described in the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970;
  - (c) acts of aviation sabotage, as described in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;
  - (d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;
  - (e) acts of violence at airports, as described in the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on February 24, 1988;
  - (f) any other offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and
  - (g) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.
3. Notwithstanding paragraph 2 of this Article, extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.
4. The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

#### **Article 5**

##### **Prior Prosecution**

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.
2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

#### **Article 7**

##### **Capital Punishment**

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless:
  - (a) the offense constitutes murder under the laws in the Requested State; or
  - (b) the Requesting State provides such assurances as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.
2. In instances in which a Requesting State provides an assurance in accordance with paragraph (1)(b) of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

299. Sri Lanka did not provide any statistics on incoming requests for extradition in the last three years. This information was requested before and during the country visit.

#### **(b) Observations on the implementation of the article**

300. Sri Lanka recognizes conditions for extradition in its law and treaties, although no examples were given where extradition was refused. The observations made in the introduction concerning the availability of statistics are reiterated.

### **Article 44 Extradition**

#### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

301. Sri Lanka cited Sections 13 and 14 of the Extradition Law.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

**13. Discharge in case of delay in extraditing.**

(1) If any person committed to await extradition is in custody in Sri Lanka under this Law after the expiration of the following period, that is to say-

(a) in any case, the period of two months commencing on the first day on which, having regard to subsection (2) of section 11, he could have been extradited ; or

(b) where a warrant for his extradition has been issued under section 12, a period of one month commencing on the day on which that warrant was issued, he may apply to the Court of Appeal for his discharge.

(2) If upon any such application being made the Court of Appeal is satisfied that reasonable notice of the proposed application has been given to the Minister, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his extradition has been issued under section 12, quash that warrant,

**14. Evidence.**

(1) In any proceedings under this Law, including proceedings on an application for a mandate in the nature of a writ of habeas corpus in respect of a person in custody thereunder-

(a) a document, duly authenticated, which purports to set out evidence given on oath in a designated Commonwealth country or treaty State shall be admissible as evidence of the matters stated therein;

(b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceedings in any such country or State shall be admissible in evidence;

(c) a document, duly authenticated, which certifies that such person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or State shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section-

(a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a Judge or other officer in or of the country or State in question to be the original document containing or recording that evidence or a true copy of such document;

(b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;

(c) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid, and in any such case the document is authenticated either by the oath of a witness, or by the official seal of a Minister, of the designated Commonwealth country or treaty State in question.

(3) In the section "oath" includes affirmation or declaration; and nothing in this section shall be deemed or construed to affect or prejudice the admission in evidence of any document which is admissible in evidence otherwise than under, this section.

302. Relevant provisions are also found in the extradition treaties.

Hong Kong, China-Sri Lanka Extradition Treaty:

**ARTICLE 9**

**THE REQUEST AND SUPPORTING DOCUMENTS**

(1) Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the other.

(2) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

(b) a statement of each offence for which surrender is sought and a statement of the acts and omissions which are alleged against the person in respect of each offence; and

(c) the text of the legal provisions, if any, creating the offence, and a statement of the punishment which can be imposed therefor and any time limit on the institution of proceedings, or on the execution of any punishment for that offence.

(3) If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify committal for trial if the offence had been committed within the jurisdiction of the requested Party.

(4) If the request relates to a person already convicted or sentenced, it shall also be accompanied by:

(a) a copy of the certificate of the conviction or sentence; and

(b) if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest; or

(c) if the person was sentenced, a statement indicating that the sentence is enforceable and how much of the sentence has still to be served.

## **ARTICLE 10**

### **AUTHENTICATION**

(1) Documents supporting a request for surrender shall be admitted in evidence as proof of the facts contained therein if duly authenticated. Documents are duly authenticated if they purport to be:

(a) signed or certified by a judge, magistrate or an official of the requesting Party, and

(b) sealed with the official seal of a competent authority of the requesting Party.

(2) Any sworn translation of documents, duly authenticated and submitted in support of a request for surrender shall be admitted for all purposes in proceedings for surrender.

### Extradition Treaty with the United States of America

#### **Article 8**

##### **Extradition Procedures and Required Documents**

1. All requests for extradition shall be submitted through the diplomatic channel.

2. All requests shall be supported by:

(a) documents, statements, or other types of information which describe the identity, and probable location of the person sought;

(b) information describing the facts of the offense and the procedural history of the case;

(c) a statement of the laws describing the essential elements of the offense for which extradition is requested;

(d) a statement of the provisions of law prescribing punishment for the offense; and

(e) documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:

(a) a copy of the warrant or order of arrest, if any, issued by a judge or other competent authority of the Requesting State;

(b) a copy of the charging document, if any; and

(c) such information as would provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest.

4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also be supported by:

(a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;

(b) information establishing that the person sought is the person to whom the finding of guilt refers;

(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

(d) in the case of a person who has been found guilty in absentia, the documents required by paragraph 3.

#### **Article 9**

##### **Admissibility of Documents**

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

(a) in the case of a request from the United States, they are signed or certified by a judge, magistrate, or an official of the United States, and sealed with the official seal of a competent authority of the United States;

(b) in the case of a request from Sri Lanka, they are certified by the principal diplomatic or principal consular officer of the United States resident in Sri Lanka, as provided by the extradition laws of the United States; or

(c) they are certified or authenticated in any other manner accepted by the law of the Requested State.

**(b) Observations on the implementation of the article**

303. It was explained during the country visit that the requests for extradition must be sent through diplomatic channels to the responsible authority for extradition, the Minister of Defence.

304. There are relevant provisions in Sri Lanka's Extradition Law and treaties. However, no examples of implementation were provided.

**Article 44 Extradition**

**Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

305. Sri Lanka cited Section 9 of the Extradition Law, which provides for the arrest of a person for the purposes of committal.

**Extradition Law number 8 of 1977**

**9. Arrest for the purposes of committal [No 48 of 1999]**

(1) A warrant for the arrest of a person accused of an extraditable offence, or alleged to be unlawfully at large after conviction, of such an offence, may be issued-

(a) on receipt, by any High Court Judge, of an authority to proceed; or

(b) without such an authority, by any High Court judge, upon information that such person

(i) is in, or

(ii) is believed to be on his way to, Sri Lanka.

Any warrant issued by virtue of paragraph (b) of this subsection is in this Law referred to as a "provisional warrant".

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the Judge, authorize the issue of a warrant, for the arrest of a person accused of committing a corresponding offence or of a person alleged to be unlawfully at large after conviction of an offence, as the case may be, within the jurisdiction of the court.

(3) Where a provisional warrant is issued under this section, the Judge by whom it is issued shall forthwith give notice of its issue to the Minister, and transmit to him the information and evidence, if any, or certified copy of the information and evidence, upon which it was issued ; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(4) Notwithstanding anything in the Code of Criminal Procedure Act a warrant of arrest issued under this section may, without an endorsement to that effect, be executed in any part of Sri Lanka, whether such part is within or outside the jurisdiction of the court by which it is so issued, and may be so executed by any person to whom it is directed, or by any police officer.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property, or any other offence in respect of property, the Judge shall have the like power to issue a warrant to search for the property as if the offence has been committed within the jurisdiction of his court.

306. The following treaty provisions are also considered to be relevant.

Extradition Treaty with the United States of America

**Article 11**

**Provisional Arrest**

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel. In exceptional cases of unusual urgency, a request may be transmitted directly between the United States Department of Justice and the Sri Lankan Ministry of Justice. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request.

...

Hong Kong, China-Sri Lanka Extradition Treaty:

**ARTICLE 12**

**PROVISIONAL ARREST**

(1) In urgent cases the person sought may, at the discretion of the requested Party and in accordance with its law, be provisionally arrested on the application of the requesting Party.

(2) The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought, a statement of the existence of a warrant of arrest or a judgment of conviction against that person, information concerning identity, nationality and probable location, a description of the person, a brief description of the offence and the facts of the case and a statement of the sentence that can be or has been imposed for the offence and, where applicable, how much of that sentence remains to be served.

(3) An application for provisional arrest may be transmitted by any means affording a record in writing through the channel notified under paragraph (1) of Article 9 or through the International Criminal Police Organisation (Interpol).

(4) The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of arrest if the request for surrender and supporting documents have not been received. The release of a person pursuant to this paragraph shall not prevent the institution or continuation of surrender proceedings if the request and the supporting documents are received subsequently.

**(b) Observations on the implementation of the article**

307. Based on the information available, the provision is legislatively implemented, although no examples of implementation were provided.

**Article 44 Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

308. Sri Lanka cited Section 9(f) of the Judicature Act of No. 2 of 1978, which defines the criminal jurisdiction of the High Court of the Republic.

**Judicature Act of No. 2 of 1978**

**Section 9**

The high Court shall ordinarily have the power and authority and is hereby required to hear, try, and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of - ...

(f) any offence wherever committed by any person, who is a citizen of Sri Lanka, in any place outside the territory of Sri Lanka or on board or in relation to any ship or aircraft of whatever category.

309. As described below under paragraph 12 of UNCAC article 44, Sri Lanka does not refuse extradition based on the fact that the requested person is a Sri Lankan national.

310. The right to refuse extradition of nationals is also provided for in Sri Lanka's treaty with Hong Kong (China).

Hong Kong, China-Sri Lanka Extradition Treaty:

**ARTICLE 3**

**SURRENDER OF NATIONALS**

The Government of Sri Lanka reserves the right to refuse the surrender of its citizens. The Government of the Hong Kong Special Administrative Region reserves the right to refuse the surrender of nationals of the People's Republic of China.

Extradition Treaty with the United States of America

**Article 3**

**Nationality**

Extradition shall not be refused on the ground that the person sought is a national of the Requested State.

**(b) Observations on the implementation of the article**

311. Nationality is not a ground for refusing extradition under the Extradition Law. However, under Sri Lanka's bilateral treaty with Hong Kong (China), nationality is a discretionary ground for refusing extradition, and the obligation to promptly submit the case for prosecution where extradition of a national is refused is not addressed. It is recommended that Sri Lanka amend its treaty in this regard and include the *aut dedere aut judicare* obligation in its future extradition treaties.

312. In this regard, the reviewers note that the cited provision of the Judicature Act, which establishes the jurisdiction of the court, does not provide for an obligation to submit the case for prosecution where extradition has been refused.

313. Sri Lankan officials explained during the country visit that Sri Lanka has never received a request to extradite a national.

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

314. Sri Lanka does not refuse extradition based on the fact that the requested person is a Sri Lankan national. Section 7 of the Extradition Law of 1977 (quoted above), which deals with the general restrictions on extradition, does not place any restrictions on extraditing a person purely for the reason that such person is a national of Sri Lanka.

**(b) Observations on the implementation of the article**

315. Based on the information available, the conditional surrender of nationals does not appear to be a requirement for Sri Lanka to extradite its nationals.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

316. The Transfer of Offenders Act No. 5 of 1995 provides for the transfer of convicted persons to the specified countries with which agreements are entered into. Section 5 of the said Act specifically states that the fact that the person sought is a national of the requested State is not a ground to refuse extradition.

**Transfer of Offenders Act No. 5 of 1995**

**5. Condition of transfer.**

The transfer of any offender on an application made under this Act shall be subject to the following conditions:-

- (a) that the offender is a citizen of Sri Lanka or of the specified country, notwithstanding he may also be a citizen of any other country ;
- (b) that the order, decision or judgment, as the case may be, by which the sentence of imprisonment was imposed upon the offender, is a final order decision or judgement ;
- (c) that at the time the application for the transfer is made the offender concerned has more than six months left to serve of the term of imprisonment imposed was for an unspecified period ;
- (d) that the offender consents to the transfer or where, in view of the age or physical or mental status of the offender he is unable to give his consent, the consent is given by any other person who is designated either by the Minister or the appropriate authority of a specified country as being competent to give consent on behalf of the offender;
- (e) that both the Minister and the appropriate authority of the specified country, consent to the transfer.

**(b) Observations on the implementation of the article**

317. Sri Lanka may wish to consider adopting relevant measures in the treaties where Sri Lanka has ability to refuse extradition of nationals that it will consider enforcing the remainder of a foreign sentence where extradition of nationals is refused. The reviewers noted that the cited provision of the Transfer of Offenders Act does not address this aspect.

**Article 44 Extradition**

## Paragraph 14

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

### (a) Summary of information relevant to reviewing the implementation of the article

318. The Extradition Law provides for judicial guarantees of fair treatment at all stages of proceedings under the said Act. Sections 11, 12, and 18 specifically address these issues. Constitutional guarantees are provided under Article 13 of the Constitution. These Constitutional guarantees can be enforced through the Supreme Court.

#### Constitution of Sri Lanka

#### **13. Freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation.**

(1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

(2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.

(3) Any person charged with an offence shall be entitled to be heard, in person or by an attorney-at-law, at a fair trial by a competent court.

(4) No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment.

(5) Every person shall be presumed innocent until he is proved guilty :

(6) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.

(7) The arrest, holding in custody, detention or other deprivation of personal liberty of a person, by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act or the Indo-Ceylon Agreement (Implementation) Act, No. 14 of 1967, or such other law as may be enacted in substitution therefor, shall not be a contravention of this Article.

#### **Extradition Law number 8 of 1977 as amended by Act no 48 of 1999**

#### **11. Application for habeas corpus.**

(1) Where a person is committed to custody under section 10, the court shall inform him in ordinary language of his right to make an application to the Court of Appeal for a mandate in the nature of a writ of habeas corpus, and shall forthwith give notice of the committal to the Minister.

(2) No person committed to custody under section 10, shall be extradited under this Law-

(a) in any case, until the expiration of a period of fifteen days commencing on the day on which the order for his committal is made;

(b) if an application for habeas corpus is made to the Court of Appeal, so long as proceedings on that application are pending.

(3) On any such application the Court of Appeal may, without prejudice to any other jurisdiction of the court, order the person committed to be discharged from custody if it appears to the court that-

(a) by reason of the trivial nature of the offence of which he is accused or was convicted; or

(b) by reason of the passage of time since he is alleged to have committed it, or to have become unlawfully at large, as the case may be; or

(c) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to extradite him.

(4) On any such application the Court of Appeal may receive additional evidence relevant to the exercise of its jurisdiction under section 7 or under subsection (3) of this section.

#### **12. Order for extradition.**

(1) Where a person is committed to await his extradition and is not discharged by order of the Court of Appeal, the Minister may by warrant order him to be extradited to the country or State by which the request for his extradition was made unless the extradition of that person is prohibited, or prohibited for the time being, by section 7, or the Minister decides under this section to make no such order in his case.

(2) The Minister shall not make an order under this section in the case of a person who is serving a sentence of imprisonment, or is charged with an offence, in Sri Lanka until after the expiration of the following period, that is to say,-

(a) in the case of a person serving such a sentence, until the sentence has been served; and

(b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment not being a suspended sentence, until the sentence has been served.

(3) The Minister may make no order under this section in the case of any person if it appears to the Minister, on any ground set out in paragraph (a) or paragraph (b) or paragraph (c) of subsection (3) of section 11, that it would be unjust or oppressive to extradite that person.

(4) The Minister may make no order under this section in respect of a person who is accused or convicted of an extraditable offence which is not punishable with death in Sri Lanka, if that person could be, or has been, sentenced to death for that offence in the country or State by which the request for his extradition is made.

(5) The Minister may make no order under this section for the extradition of a person committed in consequence of a request made by or on behalf of a designated Commonwealth country or treaty State if another request for his extradition under this Law has been made by or on behalf of another designated Commonwealth country or treaty State and it appears to the Minister, having regard to all the circumstances of the case, and in particular-

(a) the relative seriousness of the offences in question;

(b) the date on which each such request was made; and

(c) the nationality or citizenship of the person concerned and his ordinary residence, that preference be given to such other request.

(6) Notice of the issue of a warrant under this section shall forthwith be given to the person to be extradited thereunder.

#### **18. Restoration of persons not tried or acquitted.**

(1) Where a person accused of an offence is extradited to Sri Lanka and-

(a) proceedings against him for the offence for which he was extradited are not begun within the period of six months commencing on the day of his arrival in Sri Lanka on being extradited ; or

(b) on his trial for that offence, he is acquitted or discharged by any court in Sri Lanka, the Minister may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the designated Commonwealth country or treaty State from which he was extradited.

319. Extradition is denied if an offence is punishable by death in the requesting State but not in Sri Lanka (Section 12(4) of the Act).

320. Relevant provisions are also found in the extradition treaties (cited under paragraph 8 above).

#### **(b) Observations on the implementation of the article**

321. During the country visit, it was confirmed that the criminal justice protections available in criminal proceedings, including Constitutional safeguards, would also be applicable in extradition proceedings.

322. To the knowledge of the officials the reviewers met with during the country visit, the issue of fair treatment has never been invoked in any extradition cases.

## **Article 44 Extradition**

### **Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

323. Sri Lanka indicated that the restrictions on extradition laid down in Section 7 of the Extradition Law (quoted in full under paragraph 8) address this issue. In addition, Article 12(1) of the Constitution guarantees equality.

**Extradition Law number 8 of 1977 as amended by Act no 48 of 1999  
Section 7. General restrictions on extradition.**

(1) A person shall not be extradited under this Law to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, or to the Court of Appeal upon an application made to it for a mandate in the nature of a writ of habeas corpus-

- (a) that the offence of which that person was accused or was convicted is an offence of a political character;
- (b) that the request for extradition, though purporting to be made on account of the extraditable offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, or political opinions ; or
- (c) that he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

**Constitution of Sri Lanka  
Article 12. Right to equality.**

12 (1) All persons are equal before the law and are entitled to the equal protection of the law.

324. Relevant provisions are also found in the extradition treaties (cited under paragraph 8 above).

**(b) Observations on the implementation of the article**

325. The provision is legislatively implemented, although no case examples were provided where the issue of non-discrimination has been invoked in extradition cases.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

326. The general restrictions on extradition are provided for in Section 7 of the Extradition Law No. 8 of 1977 (quoted above). The fact that an offence is also considered to involve fiscal matters is not a ground recognized under that section to refuse extradition.

**(b) Observations on the implementation of the article**

327. No information was available from Sri Lankan authorities before or during the country visit as to whether fiscal offences satisfy the one-year imprisonment term to be

extraditable under Sri Lanka's law and treaties. While noting that fiscal offences are not included among the grounds for refusing extradition under the Extradition Law or treaties, it is recommended that Sri Lanka ensure that it would not deny a request on this basis.

328. To the knowledge of the authorities the reviewers met with during the country visit, there have been no requests for extradition involving fiscal offences.

## **Article 44 Extradition**

### **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

329. There is no statutory provision to satisfy this requirement. However, it has been the practice of Sri Lanka to have a clause incorporated in the extradition agreements whereby additional information could be called upon from the requested State.

330. Sri Lanka referred to Article 11 of the Extradition Agreement between Sri Lanka and Hong Kong, China.

#### **Sri Lanka-Hong Kong, China Extradition Treaty**

##### **Article 11. Additional Information**

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party shall request the necessary supplementary information and may fix a time-limit for receipt thereof.

(2) If the person whose surrender is sought is under arrest and the additional information furnished is not sufficient in accordance with this Agreement or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the requesting Party from making a fresh request for the surrender of the person.

#### **(b) Observations on the implementation of the article**

331. The obligation to consult with a requesting State before refusing extradition is not addressed in the Extradition Law or the bilateral treaty with the United States of America. It is recommended that Sri Lanka amend its law and treaty in this regard and also include the relevant provision in its future extradition treaties.

332. No examples of relevant exchanges between Sri Lanka and requesting States were available.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

333. Sri Lanka is party to four bilateral extradition treaties, with Hong Kong (China), India, Italy and the United States

**(b) Observations on the implementation of the article**

334. Sri Lanka has enacted bilateral extradition treaties in accordance with the provision under review.

**(c) Challenges related to article 44**

335. Sri Lanka has identified the following challenges and issues in fully implementing the article under review:

1. Specificities in its legal system: it is believed that an amendment to the Extradition Law is required to ensure full compliance with paragraph 2 of article 44. Specificities in the legal system were also cited with regard to paragraph 5 of article 44 (using the Convention as a legal basis for extradition) and paragraph 17 (consultation with a requesting State before refusing extradition), although it was noted in regard to the latter that, as a matter of practice, clauses are incorporated into extradition agreements whereby additional information can be requested.

**(d) Technical assistance needs related to article 44**

336. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice: using the Convention as the legal basis for extradition.
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters

None of these forms of technical assistance has been provided to date.

**Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relevant to reviewing the implementation of the article**

337. Sri Lanka cited the Transfer of Offenders Act, No.5 of 1995<sup>2</sup>.

338. Sri Lanka reported that it has entered into the following bilateral prisoner transfer agreements with other States.

State party	Date of signature	Title
Hong Kong	16 March 1999	Agreement between the Government of Sri Lanka and the

<sup>2</sup> <http://www.lawnet.lk/process.php?st=1995Y0V0C5A&hword=%27%27&path=5>

(China)		Government of Hong Kong SAR of the People's Republic of China Concerning the Transfer of Sentenced Persons
India	09 June 2010	Agreement between Sri Lanka and the Republic of India on the Transfer of Sentenced Persons
Kuwait	21 May 2007	Agreement between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the State of Kuwait Concerning Transfer of Sentenced Persons
Maldives	12 February 2008	Agreement between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Republic of Maldives on the Transfer of Prisoners
Pakistan	01 December 2004	Agreement on Transfer of Offenders between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Islamic Republic of Pakistan
United Kingdom	06 February 2003	Agreement between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the United Kingdom of Great Britain and Northern Ireland on the Transfer of Prisoners

**(b) Observations on the implementation of the article**

339. Sri Lanka has entered into prisoner transfer treaties as provided in this article.

340. No case examples of prisoner transfers involving corruption were reported.

**(c) Technical assistance needs related to article 45**

341. Sri Lanka indicated that it has never assessed the effectiveness of its measures on the transfer offenders and would require legal and technical assistance to do so.

**Article 46 Mutual legal assistance**

342. As a general matter, as noted in the introduction to chapter IV, Sri Lanka is encouraged to review its information gathering system to allow it to collect data on the origin of MLA requests, the timeframe for executing these requests, and the response provided, including the offences involved and any grounds for refusal. It is suggested that the Ministry of Justice should play a greater role in this regard.

343. Moreover, the reviewing States recommend that Sri Lanka review the list of gazetted Commonwealth countries to ensure that all Commonwealth countries are covered. The list of countries gazetted under Section 2 of MACMA that was provided to the reviewers (Gazette No. 1297/1 of 14 July 2003) contained only a partial list of 54 countries.

**Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

344. Sri Lanka cited the following measures.

- Mutual Assistance In Criminal Matters Act No. 25 of 2004<sup>3</sup>
- Prevention of Money Laundering Act No 5 of 2006<sup>4</sup>
- Enforcement of Foreign Judgments Ordinance No. 4 of 1937<sup>5</sup>

345. As noted in the introduction to chapter IV, MLA may be provided without a treaty to Commonwealth countries that have been designated by order in the Gazette. A treaty is otherwise required for all other countries. Assistance can also be provided in the absence of a treaty on a case-by-case basis on the grounds of reciprocity, although no examples of this were available.

346. Sri Lanka has bilateral MLA treaties (“MLATs”) in force with Hong Kong (China), Pakistan, Thailand and India.

347. Sri Lanka’s Ministry of Justice provided the following statistics on MLA.

	2006	2007	2008	2009	2010	2011
<b>Total MLA requests:</b>	<b>0</b>	<b>0</b>	<b>01</b>	<b>03</b>	<b>03</b>	<b>02</b>
MLA on terrorist financing	No MLA requests	No MLA requests	01	02	02	01
MLA on money laundering	No MLA requests	No MLA requests	00	01	01	01
Number of requests rejected by Sri Lanka	---	---	---	---	---	---

348. Sri Lanka reported that there have been no corruption-related requests for mutual legal assistance. No information was available as to the number of outgoing MLA requests made by Sri Lanka.

**(b) Observations on the implementation of the article**

349. As noted in the introduction to chapter IV, the dual criminality requirement may be waived for MLA if the conduct underlying the request is “of a serious nature and is a criminal matter”, as per Section 6(1) of the MACMA. It was explained that there have been no cases where Sri Lanka has provided assistance in the absence of dual criminality.

350. As also noted the introduction, since Sri Lanka has not criminalized all UNCAC offences, for assistance to be rendered in the absence of dual criminality, the offence must be recognized as a serious offence under the law of the specified country.

351. Based on the laws, treaties and the limited statistics provided, as well as Sri Lanka’s ability under the MACMA to provide assistance in the absence of dual criminality, it appears that Sri Lanka is able to provide a wide range of assistance when requested.

<sup>3</sup> <http://www.lawnet.lk/process.php?st=2002Y0V0C25A&hword=%27%27&path=5>

<sup>4</sup> <http://www.lawnet.lk/process.php?st=2006Y0V0C5A&hword=%27%27&path=5>

<sup>5</sup> <http://www.lawnet.lk/process.php?st=2001Y4V93C&hword=%27%27&path=5>.

## Article 46 Mutual legal assistance

### Paragraph 2

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

352. Sri Lanka reported that, with regard to affording legal assistance no distinction would be made between natural and legal persons. As such, all provisions related to affording legal assistance would also be applicable to legal persons.

#### (b) Observations on the implementation of the article

353. The information reported under article 26 of UNCAC on the liability of legal persons is referred to.

354. Based on the information available, there appear to be no obstacles in principle to Sri Lanka executing a request involving an offence allegedly committed by a legal person, although this has not been tested in practice and no examples of implementation were provided.

## Article 46 Mutual legal assistance

### Subparagraphs 3 (a) to (i)

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) **Summary of information relevant to reviewing the implementation of the article**

355. Sri Lanka cited Sections 3, 10, 8, 15, 3(d), 10(3) and 12 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, as well as Sections 17-19 (for subparagraph 3(g) of UNCAC article 46). It was explained that “examining objects and sites” would fall within the scope of Section 3(d) of the Mutual Assistance in Criminal Matters Act, which provides for “obtaining of evidence (other than examining of witnesses), documents or other articles. It was further explained that Section 10(3) covers the taking of evidence, production of documents and other relevant articles, while Sections 45 to 51 of the Evidence Ordinance also provide for the production of expert evidence.

356. Regarding the execution of searches, seizures and freezing of assets, Sri Lanka reported that the Financial Transactions Reporting Act No. 6 of 2006 (Section 15 (1) (q)) further authorizes the FIU to transmit information to its counterparts in other States. Under Section 17 of the said Act, the FIU is empowered to enter in to agreements with institutions and agencies of foreign States regarding the exchange of information.

357. Sri Lanka indicated that it has adopted a policy of providing “informal” mutual legal assistance on the basis of reciprocity, if the assistance sought is not contrary to any provision of law. Through INTERPOL, the Financial Intelligence Unit of Sri Lanka and other investigative agencies, informal mutual legal assistance has been provided on numerous occasions outside the statutory provisions, on the basis of reciprocity.

358. The cited measures are as follows.

**Mutual Assistance in Criminal Matters Act No. 25 of 2002**

**Section 3. Object of the Act.**

The object of this Act is to facilitate the provision and obtaining, by Sri Lanka of assistance in criminal matters, including —

- (a) the location and identification of witnesses or suspects ;
- (b) the service of documents;
- (c) the examination of witnesses;
- (d) the obtaining of evidence, documents or other articles;
- (e) the execution of requests for search and seizure;
- (f) the effecting of a temporary transfer of a person in custody to appear as a witness;
- (g) the facilitation of the personal appearance of witnesses;
- (h) the provision of documents and other record ;
- (i) the location, of the proceeds of any criminal activity;
- (j) the enforcement of orders for the payment of fines or for the forfeiture of freezing of property.

**Section 10. Request by a specified country for evidence to be taken and documents and to be produced in Sri Lanka.**

(1) where the appropriate authority of a specified country makes a request to the Central Authority that-

- (a) evidence be taken in Sri Lanka ; or
- (b) documents or other articles in Sri Lanka produced.

for the purposes of a proceeding in relation to a criminal matter in the specified country, the Central Authority may in his discretion refer such request to a magistrate, authorized by a general or special order made by the President of the Court of Appeal to take such evidence or to receive such documents or articles, and shall, upon receipt of such evidence, documents or articles from such Magistrate, transmit the same to the appropriate authority of the specified country.

(2) Every request made under subsection (1) by the appropriate authority of a specified country shall, so far as circumstances of the case permit, specify-

- (a) the names and addresses or the official designations of the witnesses to be examined :

- (b) the questions to be put to the witnesses or the subject matter about which they are to be examined ;
  - (c) Whether it is desired that the witnesses be examined orally or in writing ;
  - (d) any provision of the law of the specified country as in privileges or exemptions from giving evidence which appear relevant to the request : and
  - (e) any special requirements of the law of the specified country as to the manner of taking evidence relevant to its admissibility in that country ;
  - (f) whether it is desired that the original of a document be produced or whether a certified copy of the document would be sufficient.
- (3) Where the taking of evidence or the production of documents or other articles under subsection (1) has been authorized-
- (a) the Magistrate specified in the authorization may take the evidence on oath of each witness appearing before such Magistrate to give evidence in relation to such matter, and such Magistrate shall
    - (i) cause the evidence to be taken in writing and certify that the evidence was taken by such Magistrate ; and
    - (ii) cause the evidence so certified to be sent to the Central Authority ;
  - (b) a Magistrate may, require the production before him of the documents or other articles and, where the documents or other articles are so produced the Magistrate shall send the documents, or where it is impracticable to send such documents to the Central Authority or where the request relates only to copies of such documents, copies of such documents certified to be true copies by the Magistrate, or the other articles, as the case may be, to the Central Authority.
- (4) The evidence of any witness may be taken in the presence or absence of the person to whom the proceeding in the specified country relates or his legal representative, if any
- (5) The Magistrate conducting a proceeding under subsection (3) shall permit.
- (a) the person to whom the proceeding in the specified country relates ;
  - (b) the appropriate authority of the specified country.
- to have legal representation at the proceeding before the Magistrate.
- (6) The certificate of the Magistrate under subsection (3) shall state whether legal representation was permitted at the proceedings conducted under that subsection and whether any of the following persons were present at the time the evidence was taken or the documents or other articles were produced :-
- (a) the person to whom the proceeding in the specified country relates or his legal representative, if any ;
  - (b) any other person giving evidence or producing documents or other articles or his legal representative, if any.
- (7) The provisions of the Code of Criminal Procedure Act. No. 15 of 1979 relating to the compelling of attendance of witnesses and the production of documents by witnesses shall apply in relation to a Magistrate's Court which is authorized to take such evidence.
- (8) The Central Authority shall cause the certificate of the Magistrate sent to him under subsection (3) to be transmitted to the appropriate authority of the specified country.
- (9) A person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in a specified country shall not be compelled to answer a question, or produce a document or article, that the person is not compelled to answer or produce, as the case may be, in such proceeding in the specified country.
- (10) A duty authenticated foreign law immunity certificate shall be admissible in proceedings under this section as prima facie evidence of the matters stated in such certificate but shall not, without the consent of the appropriate authority, be used for any purpose other than for the purposes of the Criminal matter specified in the request.

**Section 8. Request by a specified country for service of any process or document in Sri Lanka.**

- 1) Where the Central Authority receives from the appropriate authority of a specified country-
- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country ;
  - (b) a document issued by a court exercising criminal jurisdiction in that country and recording a decision of the court made in the exercise of that jurisdiction.
- together with a request that it be served on a person in Sri Lanka, the Central Authority may in his discretion, send such process or document to the Magistrate's Court within whose jurisdiction such person is residing.
- (2) Where the appropriate authority has, in his request to the Central Authority, specified the mode of service, the Magistrate of the Magistrate's Court to which such process or document has been sent under subsection (1), shall cause such process or document to be served, wherever practicable in accordance with such request unless such mode is inconsistent with the laws of Sri Lanka. Where the mode of

service specified in the request is inconsistent with the laws of Sri Lanka, the Magistrate shall cause such process or document to be served in accordance with the laws of Sri Lanka.

(3) Where such process or document is served on the person to whom the request relates the Magistrate shall transmit to the Central Authority, a certificate setting out when and how it was served, and shall, where available, attach thereto, an acknowledgement signed by the person on whom it was served.

(4) If such process or document cannot be duly served on the person to whom the request relates, the Magistrate's Court to which such process or document was sent under subsection (1) shall subject to subsection (5), return such process or document to the Central Authority with a statement giving such information as the Court possesses as to the whereabouts of such person and unless the Central Authority is satisfied that such person is not residing in Sri Lanka, he shall deal with such process or document under subsection (1), where the Central Authority is satisfied that such person is not residing in Sri Lanka, he shall return such process or document to the appropriate authority in the specified country making the request.

(5) If the Magistrate of the Magistrate's Court to whom the process or document is sent under subsection (1), is satisfied that such person is residing within the jurisdiction of another Magistrate's Court in Sri Lanka, he shall send such process or document to the Magistrate of that other court and shall inform the Central Authority that he has done so.

(6) The Magistrate of the Magistrate's Court to which the process or document is sent under subsection (5), shall proceed as if it had been sent to such court under subsection (1). The Magistrate shall after it has been served on the person to whom the request relates, transmit to the Central Authority a certificate setting out when and how it was served and shall, where available attach thereto an acknowledgement signed by the person on whom it was served.

(7) The Central Authority shall on receipt of a certificate under subsection (3) or subsection (6), transmit the same to the appropriate authority of the specified country making the request.

(8) The Service of any such process referred to in paragraph (a) of subsection (1), on any person shall not impose any obligation on such person under the law of Sri Lanka to comply with it.

#### **Section 15. Request by a specified country for search and seizure.**

(1) Where-

(a) a proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a specified country :

(b) there are reasonable grounds to believe that a thing relevant to the proceeding or investigation is located in Sri Lanka; and

(c) the appropriate authority of such specified country requests the Central Authority to arrange for the issue of a search warrant in relation to that thing,

the Central Authority may, in his discretion, authorise a police officer in writing, to make an application to the Magistrate within whose jurisdiction that thing is believed to be located, for the search warrant requested by the appropriate authority of such specified country.

(2) Where a police officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or shall, at a specified time , be-

(a) in the clothing that is worn by a person : or

(b) otherwise in a person's immediate control ;

the police officer may-

(i) lay before such Magistrate such information on oath setting out the grounds for such belief ; and

(ii) apply for the issue of a warrant under this section to search the person for that thing.

(3) Where an application is made under subsection (2), the Magistrate may subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable-

(a) to search the person for such thing ; and

(b) to seize anything authorised to be seized by the warrant and found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(4) Where a police officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or shall, at a specified time, be, upon any land, or upon or in any premises, the police officer may-

(a) lay before such Magistrate such information on oath setting out the grounds for such belief : and

(b) apply for the issue of a warrant under this section to search the land or premises for that thing.

(5) Where an application is made under subsection (1) the Magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable-

(a) to enter upon the land, or upon or into the premises :

- (b) to search the land or premises for such thing : and
- (c) to seize anything authorized to be seized by the warrant and found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.
- (6) A Magistrate shall not issue a warrant under this section unless-
  - (a) the informant or some other person has given to the Magistrate either orally or by affidavit, such further information if any, as the Magistrate requires concerning the grounds on which the issue of the warrant is sought : and
  - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (7) There shall be stated in a warrant issued under this section-
  - (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorised :
  - (b) Whether the search is authorised at any time of the day or night or during specified hours of the day or night :
  - (c) a description of the kind of things authorised to be seized : and
  - (d) the date (not being later than one month after the issue of the warrant) on which the warrant ceases to have effect.
- (8) If, during a search under a warrant issued under this section, for anything of the kind specified in the warrant the police officer finds any other thing that such police officer believes on reasonable grounds-
  - (a) to be relevant to the proceeding or investigation in the specified country or to afford evidence as to the commission of an offence in Sri Lanka: and
  - (b) is likely to be concealed, lost or destroyed if it is not seized.
 the warrant shall be deemed to authorise such police officer to seize such other thing.
- (9) Where a police officer finds as a result of a search in accordance with a warrant issued under this section any other thing which such police officer believes on reasonable grounds, to be relevant to the proceeding or investigation in the specified country, such police officer shall deliver such other thing into the custody and control of the Inspector General of police in Sri Lanka.
- (10) Where a thing is delivered into the custody and control of the inspector-General of police under subsection (9), the Inspector-General of police shall arrange for such thing to be kept for a period not exceeding one month from the day on which the thing was seized. pending a direction in writing from the Central Authority as to the manner in which the thing is to be dealt with, which may include a direction that the thing be sent to an authority of a specified country.
- (11) The provisions of the Criminal Procedure code Act, No. 15 of 1979 relating to the execution of search warrants issued under that Act shall, in so far as they are not inconsistent with the preceding provisions of this section, apply to the execution of warrants issued under this section.
- (12) The Magistrate issuing a warrant under this section shall, subject to the provisions of subsection (9), cause any thing seized in the course of a search in accordance with such warrant together with a certificate setting out the place and circumstances of the seizure and the custody of such things after its seizure, to be forwarded to the Central Authority for transmission to the appropriate authority of the specified country making the request for such search warrant.

**Section 12. Request by a specified country for prisoner in Sri Lanka to give evidence or assist investigation.**

- (1) Where a proceeding or an investigation relating to a criminal matter has commenced in a specified country, and the appropriate authority of that specified country requests the removal of a prisoner who is in Sri Lanka, for the purposes of giving evidence at a hearing in connection with such proceeding or of giving assistance in relation to such investigation as the case may be being of the opinion that such prisoner is capable of giving evidence relevant to such proceeding, or of giving assistance in relation to such investigation, as the case may be, the Central Authority may, if he is satisfied that-
  - (a) such person has consented to giving evidence in such proceeding or to being removed to such specified country for the purposes of giving assistance in relation to such investigation, as the case may be; and
  - (b) the specified country has given any undertakings required by the Central Authority, in respect of such prisoner, including undertakings as to meeting the costs of travel of the prisoner to the specified country and as to the period for which such prisoner shall be held in custody in the specified country.
 direct in writing the release of such prisoner from prison for the purposes of removal to the specified country and make arrangements for the travel of such prisoner to the specified country.
- (2) A direction by the Central Authority under subsection (1) with respect to a prisoner shall be deemed to authorize-

(a) the release of such prisoner from the prison in which he is held in custody and the delivery of such prisoner, in the custody of a prison officer, in or outside Sri Lanka, in to the custody of a person representing the appropriate authority of the specified country requesting the removal of such prisoner;

(b) the bringing of the prisoner back to Sri Lanka and his delivery, in the custody of a prison officer in to the custody of the prison from which he was released for the purposes of removal to the specified country.

(3) Where a prisoner who is serving a term of imprisonment in Sri Lanka is released from prison pursuant to a request made by a specified country under subsection (1), any period during which such prisoner is held in custody in such specified country in connection with such request, shall be deemed to be a period spent in serving the term of imprisonment which he was serving prior to his release for removal to the specified country.

(4) Where-

(a) a proceeding or an investigation relating to a criminal matter has commenced in a specified country;

(b) the appropriate authority in the specified country requests the attendance, of a person (not being a prisoner) who is in Sri Lanka, at a hearing in connection with that proceeding or for the purposes of giving assistance in relation to such investigation as the case may be;

(c) there are reasonable grounds to believe that the person, is capable of giving evidence relevant to such proceeding, or of giving assistance in relation to such investigation, as the case may be ; and

(d) the Central Authority is satisfied that-

(i) such person has consented to travel to such specified country, to give evidence in such proceeding or to give assistance in relation to such investigation as the case may be; and

(ii) the appropriate authority in the specified country has given any undertaking required by the Central Authority with respect to such person, including undertakings as to meeting the costs of travel of such person to the specified country.

the Central Authority may, in his discretion, make arrangements for the travel of that person to the specified country.

#### **Section 17. Request by a specified country for tracing proceeds of crime.**

Where-

(a) a person has been charged with, or convicted of or is suspected on reasonable grounds of having committed a serious offence in a specified country;

(b) there are reasonable grounds to believe that any property derived or obtained, directly or indirectly, from the commission of that offence is in Sri Lanka;

(c) the appropriate authority in such specified country requests the Central Authority for assistance in identifying, locating or assessing the value of such property.

the Central Authority may in his discretion give the assistance requested wherever it is practicable to do so.

#### **Section 18. Request by Sri Lanka for tracing proceeds of crime.**

Where-

(a) a person has been charged with or convicted of, or is suspected on reasonable grounds of having committed, a serious offence in Sri Lanka :

(b) there are reasonable grounds to believe that any property derived or obtained directly or indirectly, from the commission of that offence is in specified country,

the Central Authority may, in his discretion, require the appropriate authority in such specified country for assistance in identifying, locating, or assessing the value, of such property.

#### **Section 19. Request by a specified country for enforcement of orders of court.**

(1) Where-

(a) a court in a specified country has, in a proceeding relating to a criminal matter, made an order-

(i) forfeiting any property or having the effect of forfeiting or confiscating any property;

(ii) imposing a fine or order pecuniary penalty on any person or requiring that person to pay compensation to any other person;

(iii) restraining any person or all persons from dealing with any property; and

(b) there are reasonable grounds to believe that the property with respect to which such order is made is located in Sri Lanka is available for the satisfaction of that order;

(c) the appropriate authority of such specified country has requested the Central Authority for assistance in enforcing such order in Sri Lanka; and

(d) the Central Authority is satisfied that such order is in force and not subject to any further appeal in the specified country.

the Central Authority may, in his discretion, require the Attorney-General to apply for the registration of the order in the High Court established under Article 154P of the Constitution for the province in which such property is located.

(2) Where the Attorney-General applies to the High court for the registration of an order in pursuance of an authorization under subsection (1), the court shall register such order.

(3) Where an order is registered in the High Court in pursuance of an application under subsection (2), a copy of the amendments to the order (whether made before or after the registration) shall be registered in the same manner as the order and the amendments shall have effect only upon such registration.

(4) An order or an amendment of an order shall be registered in the High Court, by the registrar in accordance with any rules of court made in that behalf, with a copy of that order or amendment duly authenticated in accordance with the provisions of section 21.

(5) An order and any amendments thereto registered in the High Court under subsection (4) shall have effect, and may be enforced in all respects, as if it were an order made by that court.

(6) Where the High Court is satisfied that any order registered under subsection (2) has ceased to have effect in the specified country in which it was made, it shall cancel such registration.

(7) Any property forfeited or confiscated or any fine or pecuniary penalty or compensation recovered, by reason of the enforcement of an order registered under this section shall notwithstanding anything in any other law, be default with in such manner as the Central Authority may specify for the purposes of giving effect to the request.

359. Article 3(3) of the MLAT with Pakistan, article 1(2) of the MLAT with Hong Kong, China and article 1(3) of the MLAT with Thailand are also relevant.

Pakistan MLAT:

**Article 3**

The mutual legal assistance may include:

- a. Identifying and locating persons;
- b. Service of documents;
- c. Recording statements of and obtaining evidence from persons;
- d. Executing requests for search and seizure;
- e. Facilitating the personal appearance of persons to provide assistance;
- f. Providing information, documents, articles and records (including judicial and official records);
- g. Tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
- h. Delivery of property, including the restitution of property and lending of exhibits; and
- i. Other assistance consistent with the provisions of this Agreement.

Hong Kong, China MLAT:

**Article 1**

(2) Assistance shall include:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) the obtaining of statements and evidence from persons;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of persons to provide assistance;
- (f) effecting the temporary transfer of persons in custody to provide assistance;
- (g) providing information, documents, articles and records (including judicial and official records);
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
- (i) delivery of property, including the restitution of property and lending of exhibits; and
- (j) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

Thailand MLAT:

**Article 1 Obligation to provide mutual legal assistance.**

...

(3) Assistance shall include:

- (a) identifying and locating persons or objects;
- (b) serving of documents;
- (c) the obtaining of statements and evidence from persons;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of persons to give evidence or to assist in investigations;

- (f) effecting the temporary transfer of persons in custody for testimonial purposes;
- (g) providing information, documents, articles and records (including judicial and official records);
- (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities.

**(b) Observations on the implementation of the article**

360. MLA may be requested for a range of purposes, in accordance with Section 3 and the other cited provisions of the Mutual Assistance in Criminal Matters Act, as well as the bilateral treaty provisions.

361. The legal framework is in place although no examples of implementation were provided.

**Article 46 Mutual legal assistance**

**Subparagraphs 3 (j) and (k)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

362. Sri Lanka cited Sections 17, 18 and 19 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 (quoted above). In addition, Sri Lanka reported that Section 27 of the Prevention of Money Laundering Act No. 5 of 2006, read together with Section 30 of the said Act, provide for affording mutual legal assistance in relation to identifying, freezing and tracing proceeds of crime.

363. Sri Lanka further cited Part VII (Sections 17 to 20) of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 with respect to the recovery of assets in accordance with chapter V of the Convention.

**(b) Observations on the implementation of the article**

364. It is noted that for more intrusive forms of MLA (e.g., search and seizure under Section 15 of the Mutual Assistance in Criminal Matters Act, and tracing criminal proceeds under Sections 17 and 18), the offence must also be punishable by death or one year's imprisonment, as per the definition of "serious offence" under Section 24 of the Act.

365. No examples of implementation were available.

**Article 46 Mutual legal assistance**

**Paragraphs 4 and 5**

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

**(a) Summary of information relevant to reviewing the implementation of the article**

366. Sri Lanka cited Section 15(1) (q) of the Financial Transactions Reporting Act No. 6 of 2006. It was explained that, in terms of the provisions of the said Act, transmitting information is possible relating to an “unlawful activity”, which encompasses bribery and corruption offences. However, such a step can only be taken in situations where there exists a prior agreement or arrangement between the two States (i.e., an institution or agency of a foreign State or an international organization established by the governments of foreign States).

**Financial Transactions Reporting Act No. 6 of 2006**

**15. Functions of the Financial Intelligence Unit**

(1) The Financial Intelligence Unit- ...

(q) may disclose as set out in section 16 and 17, any report, any information derived from such report or any other information it receives, to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit, if on the basis of its analysis or assessment the Financial Intelligence Unit has reasonable grounds to suspect that the information would be relevant to the investigation or pro-secution of any act constituting an unlawful activity, a money laundering offence or an offence of financing of terrorism ;

367. Sri Lanka further cited Section 17(3) of the Financial Transactions Reporting Act No. 6 of 2006 concerning restrictions on the use of such information.

**Financial Transactions Reporting Act No. 6 of 2006**

17(3) Agreements or arrangements entered into under subsection (1) shall include the following :-

- (a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and
- (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

**(b) Observations on the implementation of the article**

368. It was explained during the country visit that apart from the cited measure no legal basis exists for other administrative authorities than the FIU to spontaneously share information. However, as noted under the previous provision, INTERPOL and other investigative agencies have provided informal mutual legal assistance on the basis of reciprocity previously.

369. Sri Lanka has taken measures to implement the provision, although no concrete examples of spontaneous information sharing were available.

## **Article 46 Mutual legal assistance**

### **Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

370. Sri Lanka cited Section 2 of the Financial Transaction Reporting Act No. 6 of 2006, which specifically prohibits the operation and maintenance of accounts that are identified by number only or anonymous accounts. Section 11 of the said Act provides for disclosure of any information relating to bank transactions in proceedings before a court where the disclosure of information is necessary in the interests of justice.

#### **Financial Transaction Reporting Act No. 6 2006**

##### **Section 2. Identification essential to conduct of business of Institution**

(1) No Institution shall open, operate or maintain an account, where the holder of such account cannot be identified, including any anonymous account or any account identified by number only, or any account which to the knowledge of the Institution is being operated in a fictitious or false name.

(2) An Institution shall, subject to any rules issued by the Financial Intelligence Unit under subsection (3), identify each customer and verify their customer identification data or information relating to a customer as is reasonably capable of identifying a customer on the basis of any official document or other reliable and independent source document verifying the identity of the customer, in cases where the Institution-

(a) enters into a continuing business relationship, or in the absence of such a relationship, conducts any transaction, with any customer ;

(b) detects the carrying out of an electronic funds transfer by a customer, other than any prescribed transactions ;

(c) entertains a suspicion relating to the commission of an unlawful activity ; or

(d) entertains doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(3) The Financial Intelligence Unit may issue rules prescribing-

(a) the official or identifying document or documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers ;

(b) the timing of the identification and verification requirements under this section ; and

(c) the threshold for, or the circumstances in which, the provisions of this section shall apply to transactions carried on by the customers of an Institution.

(4) The terms and conditions imposed by rules issued under subsection (3) may vary in respect of different categories of Institutions, different categories of transactions or different categories of customers.

(5) The provisions of subsection (2) shall not apply-

(a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identify unless the Institution has reason to suspect that the transaction is suspicious or unusual;

(b) if the transaction is an occasional transaction not exceeding a prescribed sum unless the Institution has reason to suspect that the transaction is suspicious or unusual;

(c) if any person has been a customer of the Institution prior to the enactment of this Act, subject to a phase-in period which shall not exceed three years: Provided that by the end of such period each Institution shall apply the provisions of subsection (2) hereof to such persons subject to such regulations as may be prescribed in that behalf; and

(d) in such other circumstances as may be prescribed by regulations made in that behalf.

(6) For the purpose of subsection (5), "occasional transactions" means any transaction, in relation to cash and electronic fund transfer, that is conducted by any person other than through an account in respect of which the person is the customer.

**Section 11. Disclosure not to be prevented**

Subject to the provisions of this Act and any other written law for the time being in force prohibiting such disclosure, nothing contained in section 9 or 10 shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a Court and no person shall be required to disclose any information to which this section applies in any judicial proceeding unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

**(b) Observations on the implementation of the article**

371. The reviewers observed that the cited provisions deal with domestic measures, not Sri Lanka's ability to provide bank and commercial records to foreign countries upon request. They note, however, that bank secrecy is not a ground for refusing assistance under the MACMA or MLA treaties.

372. During the country visit, Sri Lanka referred to a case example where a request for bank records was made and the relevant records were provided.

373. The provision appears to be implemented.

**Article 46 Mutual legal assistance**

**Paragraph 9**

*(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

374. Sri Lanka cited the proviso to Sections 6(1) and 6(2) of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, which vests discretion with the Central Authority to afford mutual legal assistance in instances where the element of dual criminality is absent. It was explained that in exercising its discretion, the Central Authority is not curtailed in any way in rendering mutual assistance permitted under the Act, even in instances where the element of dual criminality is absent.

6.(1)

provided that it shall be lawful for the Central Authority to entertain a request relating to an act or omission which would not have constituted an offence under the law of Sri Lanka, if, in the opinion of the Central Authority, such act or omission is of a serious nature and is a criminal matter within the meaning of this Act.

(2) For the purposes of subsection (1) an offence shall be deemed not to be an offence of a political character if it is an offence within the scope of an international Convention to which both Sri Lanka and the specified country making the request are parties and which imposes on the parties thereto an obligation to extradite or prosecute a person accused of the commission of that offence.

**(b) Observations on the implementation of the article**

375. It is noted that for more intrusive forms of MLA (e.g., search and seizure under Section 15 of the Mutual Assistance in Criminal Matters Act, and tracing criminal proceeds under Sections 17 and 18), the offence must also be punishable by death or one year's imprisonment, as per the definition of "serious offence" under Section 24 of the Act.

376. The reviewers positively noted that Sri Lanka may provide assistance in the absence of dual criminality for requests involving serious offences, and it was explained that these would include UNCAC offences. However, the reviewers note that no information was available as to whether Sri Lanka would render non-coercive assistance where the offence is not of a serious nature. Accordingly, it is recommended that Sri Lanka take appropriate measures to render non-coercive assistance in accordance with the provision under review, in the MACMA and treaties. In this context, the reviewers take note of the explanation by Sri Lankan officials that there have been no instances where assistance was rendered in the absence of dual criminality, because serious offences are criminalized in Sri Lanka.

**Article 46 Mutual legal assistance**

**Paragraphs 10 and 11**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

377. Sri Lanka cited Section 12 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 (quoted above). Section 12(1)(b) stipulates that the transfer of a detained person to the requesting State may be authorized upon the giving of such undertakings by the requesting State as required by the Central Authority, including “undertakings as to meeting the costs of travel of the prisoner to the specified country and as to the period for which such prisoner shall be held in custody in the specified country”. Section 12(1)(a) addresses the consent requirement.

378. Sri Lanka further cited Sections 12(2) and 12(3) of the Mutual Assistance in Criminal Matters Act No. 25 of 2002. Section 12(2) provides that the person so transferred must be “held in custody” in the requesting State during the pendency of the matter for which the person is required by the requesting State. Section 12(2)(b) of the said Act provides that the prisoner shall be brought back to Sri Lanka “in the custody of a prison officer in to the custody of the prison from which he was released”. Section 12(3) of the said Act specifically addresses the issue of credit for time spent in serving the term of imprisonment while the prisoner was removed to the specified country.

379. Relevant provisions are also found in the MLATs.

Pakistan MLAT:

**Article 10**

**Making Detained Persons Available to Give Evidence or Assist in Investigation**

1. A person in custody in the Requested Party may, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or proceedings, provided that the person consents to that transfer or the Requested Party considers that there are no overriding grounds against transferring the person.
2. Where the person transferred is required to be kept in custody under the laws of the Requested Party, the Requesting Party shall hold him in custody and shall immediately return when his presence is not required.
3. Where the sentence imposed expires or where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, he shall be set at liberty and be treated as a person present in the Requesting Party as per paragraph 2 of Article 9 of this Agreement.

Hong Kong, China MLAT:

**Article 15**

**TRANSFER OF PERSONS IN CUSTODY**

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall if the Requested Party consents be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
- (2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party the Requested Party shall so advise the Requesting Party which shall ensure the person’s release from custody.

Thailand MLAT:

**Article 15**

**Transferring Persons in Custody for Testimonial Purposes**

- (1) A person in custody in the Requested State whose presence is requested in the Requesting State for the purposes of giving testimony as a witness pursuant to this Treaty shall if the Requested State consents be transferred from the Requested State to the Requesting State for that purpose, provided the person consents and the Requesting State has guaranteed the maintenance in custody of the person and his subsequent return to the Requested State.
- (2) For the purposes of this article:
  - (a) the Requesting State shall have the authority and obligation to keep the person transferred in custody;

- (b) the Requesting State shall return the person transferred to the custody of the Requested State as soon as the request has been executed;
- (c) where the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is not longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

**(b) Observations on the implementation of the article**

380. According to the records of the central authority (the Secretary to the Minister of Justice), there have been no cases of prisoner transfer to provide evidence or testimony to or from Sri Lanka.

381. The provision is legislatively implemented.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

382. Sri Lanka cited Section 14 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002.

**Mutual Assistance in Criminal Matters Act No. 25 of 2002**

**Section 14. Immunity from prosecution &c. of persons brought to Sri Lanka.**

Where-

(a) a person is in Sri Lanka pursuant to a request made by the Central Authority to the appropriate authority of a specified country under subsection (6) of section 13; or

(b) a person, being a prisoner, has been removed to Sri Lanka pursuant to a request made by the Central Authority to the appropriate authority of a specified country, under subsection (1) of section 13, to give evidence in a proceeding relating to a criminal matter or to give assistance in an investigation relating to a criminal matter. Such person shall not be defined prosecuted or punished in Sri Lanka for any offence that is alleged to have been committed or was committed or was committed, prior to that person's departure from such specified country pursuant to such request-

(i) in the case of a person who, not being a prisoner, is in Sri Lanka for the purposes of giving evidence in a proceeding relating to a criminal matter or of assisting in an investigation relating to a criminal matter, unless such person has remained in Sri Lanka for a period of at least fifteen days after he had been notified by the Central Authority that his presence was no longer necessary for such proceeding or investigation and had an opportunity of leaving Sri Lanka ; and

(ii) in the case of a person who being a prisoner, in Sri Lanka for the purposes of giving evidence in a proceeding relating to criminal matter or of assisting in an investigation relating to a criminal matter, until after he has returned to the specified country from which he was removed to Sri Lanka.

**(b) Observations on the implementation of the article**

383. It was reported that there have been no cases of prisoner transfer to or from Sri Lanka. The provision is legislatively implemented.

## Article 46 Mutual legal assistance

### Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

#### (a) Summary of information relevant to reviewing the implementation of the article

384. Sri Lanka cited Section 4 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, which establishes the Central Authority under the Act. Sri Lanka indicated that it allows that requests for mutual legal assistance and any related communications be transmitted to the Central Authority.

385. Sri Lanka does not require that requests to the Central Authority be made through diplomatic channels and would, in urgent circumstances, accept a request made through INTERPOL.

#### **Mutual Assistance in Criminal Matters Act No. 25 of 2002**

##### **4. Central Authority.**

The Secretary to the Ministry of the Minister in charge of the subject of justice shall be the Central Authority for the purposes of this Act (hereinafter referred to as "the Central Authority").

386. The following treaty provisions are also referred to:

##### Pakistan MLAT:

##### **Article 2**

##### **Central Authorities**

1. The Central Authorities, as indicated below of each party shall make and receive requests pursuant to this Agreement:

a) For the Islamic Republic of Pakistan the Central Authority shall be the Secretary of the Minister of Interior;

b) For the Democratic Socialist Republic of Sri Lanka, the Central Authority shall be the Secretary to the Ministry of the Minister in charge of the subject of justice.

2. The Central Authorities may communicate directly or through diplomatic channels with each other for the implementation of the provisions of this Agreement.

3. The requests made by the Requesting Party in accordance with this Agreement shall be in writing. However, in urgent cases or where otherwise permitted by the Requested Party, requests may be made orally, but shall be confirmed in writing immediately thereafter.

Hong Kong, China MLAT:

**ARTICLE 2**

**CENTRAL AUTHORITY**

(1) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the

provisions of this Agreement.

(2) The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his or her duly authorised officer. The Central Authority for Sri Lanka is the Secretary to the Ministry of the Minister in charge of the subject of Justice or his or her duly authorised officer. Either Party may change its Central Authority in which case it shall notify the other of the change.

(3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

**(b) Observations on the implementation of the article**

387. It was explained during the country visit that Sri Lanka's central authority for MLA, the Secretary to the Minister of Justice, exercises a substantive role in reviewing and transmitting requests for execution to the relevant authorities. Incoming requests are reviewed to consider whether the request is in line with the domestic law and treaties and to determine if the offence is recognized in Sri Lanka. Once consent is issued to grant assistance, the request is transmitted for execution to the relevant authorities.

388. Sri Lanka has not made the requisite notification of its central authority to the United Nations. Sri Lanka is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

389. It was explained during the country visit that the timeframe for executing MLA requests depends on the nature and complexity of the request. For example, requests for service of a summons and documents could be executed in one month, while the recording of evidence takes longer. Regarding the central authority's function to ensure the proper execution of requests, reference is made to the information under paragraph 17 of the UNCAC article below.

390. Reference is also made to the observations on the availability of statistics and the role of the central authority in the data collection process, as stated in the introduction to chapter IV and to UNCAC article 46.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

391. Sri Lanka reported that requests must be made in English.

**(b) Observations on the implementation of the article**

392. It was explained during the country visit that Sri Lanka would, in urgent circumstances and where agreed, accept a request made by telephone or orally if it was confirmed forthwith in writing.

393. Sri Lanka has not made the requisite notification to the United Nations. Sri Lanka is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

**Article 46 Mutual legal assistance**

**Paragraphs 15 and 16**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

394. Sri Lanka referred to the schedules to the Mutual Assistance in Criminal Matters Act No. 25 of 2002 (attached as Annex 2 to this report).

395. Sri Lanka reported that the preamble of the Act expresses the intention of the legislature that the Mutual Assistance in Criminal Matters Act is “An Act to provide for rendering of assistance in criminal matters by Sri Lanka and specified countries and for matters connected therewith or incidental thereto.” Thus, it was explained that the spirit of the Act is to provide assistance wherever possible and the exception would be to refuse such assistance.

396. There is nothing to prevent the central authority from requesting additional information it may deem necessary in order to execute a request. It was further explained

that the requirement of additional information may only arise in situations where the requesting State has not provided the information specified in the schedules of the Act.

**(b) Observations on the implementation of the article**

397. The reviewers positively noted the forms for MLA requests included in the schedule to the MACMA (attached as Annex 2 to this report), which provide certainty to requesting countries as to the required content for MLA requests. The reviewing experts observe that the forms are largely in line with the provision under review, but suggest that Sri Lanka may wish to comprehensively review the forms against the measures in this provision to ensure there is adequate guidance to requesting countries.

398. While outside the scope of the provision, Sri Lanka is encouraged to consider also adopting a checklist for MLA, which could serve as an administrative tool for authorities handling MLA requests and could be provided to requesting countries for further guidance. Examples of such checklists could be provided to Sri Lanka.

399. No information was available on any requests refused by Sri Lanka on the grounds of the content of the request.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

400. Sri Lanka cited Section 6(1)(e) of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, which states that execution of a request shall be refused if in the opinion of the central authority compliance with the request would be contrary to the Constitution of Sri Lanka or prejudicial to national security, international relations or public policy.

**Mutual Assistance in Criminal Matters Act No. 25 of 2002**

**Section 6**

(1) A request by the appropriate authority of a specified country for assistance under this Act shall be refused, in whole or in part, if, in the opinion of the Central Authority-

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission which, if it had occurred in Sri Lanka would not have constituted an offence under the law of Sri Lanka ;

(b) the request relates to the prosecution or punishment of a person for an offence of a political character ;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission which if it had occurred in Sri Lanka, would have constituted an offence only under the military law of Sri Lanka ;

(d) the request relates to the prosecution of a person for an offence where, such person has been acquitted or convicted in accordance with the law of Sri Lanka in respect of that offence or another offence constituted by the same act or omission as that constituting the offence ;

(e) compliance with the request would be contrary to the Constitution of Sri Lanka or prejudicial to national security, international relations or public policy ;

(f) based on substantial grounds, compliance with the request would facilitate the prosecution or punishment of or cause prejudice to any person on account of his race, religion, language, caste, sex, political opinions or place of birth:

provided that it shall be lawful for the Central Authority to entertain a request relating to an act or omission which would not have constituted an offence under the law of Sri Lanka, if, in the opinion of the Central Authority, such act or omission is of a serious nature and is a criminal matter within the meaning of this Act. (2) For the purposes of subsection (1) an offence shall be deemed not to be an offence of a political character if it is an offence within the scope of an international Convention to which both Sri Lanka and the specified country making the request are parties and which imposes on the parties thereto an obligation to extradite or prosecute a person accused of the commission of that offence.

401. Additional provisions in the MACMA relate to specific types of assistance that may be provided in accordance with the requested procedures (e.g. Article 8(2) on service of process).

**Mutual Assistance in Criminal Matters Act No. 25 of 2002**

**Article 8**

**Request by a specified country for service of any process or document in Sri Lanka**

(2) Where the appropriate authority has, in his request to the Central Authority, specified the mode of service, the Magistrate of the Magistrate's Court to which such process or document has been sent under subsection (1), shall cause such process or document to be served, wherever practicable, in accordance with such request unless such mode is inconsistent with the laws of Sri Lanka. Where the mode of service specified in the request is inconsistent with the laws of Sri Lanka, the Magistrate shall cause such process or document to be served in accordance with the laws of Sri Lanka.

402. Relevant provisions are also found in the treaties.

Hong Kong, China MLAT:

**ARTICLE 6**

**EXECUTION OF REQUESTS**

...

(2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.

Pakistan MLAT:

**ARTICLE 5**

**EXECUTION OF REQUESTS**

2. The Requests for assistance shall be executed in accordance with the law and rules of the Requested Party and may be executed in the manner specified in the request, if not incompatible with the law and rules of the Requested Party.

Thailand MLAT:

**Article 6**

**Execution of Requests**

...

(2) A request shall be executed in accordance with the law of the Requested State and, to the extent not prohibited by the law of the Requested State, in accordance with the directions stated in the request so far as practicable.

**(b) Observations on the implementation of the article**

403. During the country visit, an example was given of an incoming request to record evidence in Sri Lanka. As specified in the request, the executing authorities posed specific questions to the witness in order to obtain a judge's certification, as requested by the requesting country.

404. The reviewers were of the view that the cited measures of the MACMA are relevant, but that Sri Lanka should consider whether a more specific provision in the Act would

provide for greater legal certainty regarding the manner in which requests are executed by Sri Lanka, particularly in the case of non-treaty partners.

## **Article 46 Mutual legal assistance**

### **Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

405. Sri Lanka does not permit hearings to take place by video conference as described in the provision under review. To have hearings to take place by video conferencing is permissible in civil matters but no such provision is available in criminal matters. No steps have been taken to introduce such measures in Sri Lanka. Sri Lanka cited the inadequacy of existing laws as a challenge to the implementation of the provision under review.

#### **(b) Observations on the implementation of the article**

406. The provision does not appear to be implemented.

407. It was explained during the country visit that the police may take video testimony in child abduction cases under Section 163A of the Evidence Ordinance of Sri Lanka. However, these measures are limited to child abduction cases and address the taking of evidence by video testimony, rather than hearings conducted by video conference. It was explained that there are no measures in place in this regard, and that the central authority has refused MLA requests on that basis, but that the issue is under consideration.

408. The reviewers welcome indications by Sri Lanka to consider adopting relevant measures to allow for evidence to be taken and hearings to be conducted in criminal cases by video, including through relevant amendments to the Evidence Ordinance.

## **Article 46 Mutual legal assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

(a) **Summary of information relevant to reviewing the implementation of the article**

409. Sri Lanka cited Section 17 of the Financial Transactions Reporting Act, No. 6 of 2006.

**Financial Transactions Reporting Act, No. 6 of 2006**

**Section 17. Agreements and arrangements by the Financial Intelligence Unit**

(1) The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with-

(a) an institution or agency of a foreign State or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit; and

(b) a foreign law enforcement agency or a foreign supervisory authority, regarding the exchange of information between the Financial Intelligence Unit and the institution, authority or agency.

(2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the Institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of an offence constituting an unlawful activity or an offence that is substantially similar to such an offence.

(3) Agreements or arrangements entered into under subsection (1) shall include the following :-

(a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and

(b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

(b) **Observations on the implementation of the article**

410. The cited measures do not address restrictions on the sharing of information received through MLA. The MACMA does not limit the use of information obtained through MLA to the investigation or prosecution referred to in the request, except with regard to outgoing requests under article 11(2).

411. The following treaty provisions are also relevant.

Hong Kong, China MLAT:

**ARTICLE 8(2)**

**LIMITATIONS ON USE**

...

(2) The Requesting Party shall not disclose or use information or evidence furnished, including documents, articles or records, for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

Pakistan MLAT:

**Article 13(3)**

**CONFIDENTIALITY AND LIMITATION ON USE**

3. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested Party.

Thailand MLAT:

**Article 8(1)**

**Limitations on Use and Confidentiality**

(1) Information and evidence furnished under this Treaty, including documents, articles or records shall not be disclosed or used for purposes other than those stated in the request without the prior consent of the Requested State.

412. The provision does not appear to be fully implemented.

413. During the country visit, representatives from the Attorney General's office explained that evidence that is exculpatory to an accused would not have to be disclosed, although there have been no such cases to date. The reviewers expressed some reservations in this regard and recommend that Sri Lanka review its law and procedures in this regard.
414. It is further recommended that Sri Lanka amend its MLA law to add a limitation on use clause.

## **Article 46 Mutual legal assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

415. Although the Mutual Assistance in Criminal Matters Act No. 25 of 2002 does not specifically provide for confidentiality, as a matter of practice Sri Lanka provides for confidentiality clauses in the mutual legal assistance agreements it enters into pursuant to the said Act.
416. Sri Lanka referred to the following sample agreements.

Hong Kong, China MLAT:

**ARTICLE 8**

**LIMITATIONS ON USE**

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished, including documents, articles or records, be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

Pakistan MLAT:

**Article 13**

**CONFIDENTIALITY AND LIMITATION ON USE**

1. The Requested Party may require after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
2. The Requested Party shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request, except to the extent necessary to execute it.

Thailand MLAT:

**Article 8**

**Limitations on Use and Confidentiality**

...

- (2) The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.
- (3) The Requested State may require that information or evidence furnished and the source of such information or evidence be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that the information or evidence is needed in a public trial which is the consequence of the investigation, prosecution, or proceeding described in the request.

**(b) Observations on the implementation of the article**

417. It was explained during the country visit that issues of confidentiality have not come up in incoming or outgoing requests.

418. Although not a mandatory provision, Sri Lanka may wish to consider including a relevant provision in its MLA Act, in order to afford requesting countries greater assurance that Sri Lanka would honor a confidentiality request in the absence of a treaty, in particular for Commonwealth countries.

**Article 46 Mutual legal assistance**

**Paragraph 21**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

419. Sri Lanka cited Section 6 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 (quoted above). Section 6(1) (d) of the said Act applies to requests related to the prosecution of a person who has been acquitted or convicted of the same or a related offence. Section 6(1)(e) of the said Act covers requests that would be contrary to the Constitution or prejudicial to national security, international relations or public policy of Sri Lanka.

**(b) Observations on the implementation of the article**

420. The following treaty provisions appear to be relevant.

Hong Kong, China MLAT:

**ARTICLE 4**

**LIMITATIONS ON COMPLIANCE**

(1) The Requested Party may, and shall if required by its law, refuse assistance if:

(a) the granting of the request would, in the case of the Hong Kong Special Administrative Region, impair the sovereignty of the People's Republic of China or the security or public order of the People's Republic of China or any part thereof, or, in the case of Sri Lanka, impair the sovereignty, security or public order of Sri Lanka;

(b) the request for assistance relates to an offence of a political character;

(c) the request for assistance relates to an offence only under military law;

(d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;

- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or Requesting Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party or Requesting Party;
  - (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
  - (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence.
- (2) Paragraph (1)(b) of this Article does not apply to an offence which the Requested Party considers excluded from being a political offence by any international Agreement that applies to the Parties.
- (3) For the purpose of paragraph (1)(f) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.
- (4) The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.
- (5) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.
- (6) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (7) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority—
- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
  - (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (8) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (7)(b), it shall comply with those terms and conditions.

Pakistan MLAT:

**Article 6**

**Refusal of Assistance**

1. The Requested Party may refuse the grant of assistance if:
- a. The execution of the request is likely to impair its sovereignty, security, public order or other essential interests;
  - b. The request seeking restraint, freezing or forfeiture of proceeds or instruments of crime, which, if occurred within the jurisdiction of the country of the Requested Party, will not have constituted a crime in respect of which freeze or forfeiture order could have been made;
  - c. The request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or Requesting Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the country of the Requested Party or Requesting Party;
2. Before refusing to grant assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to such conditions, it shall comply with them.

Thailand MLAT:

**Article 4**

**Grounds for Refusal or postponement**

- (1) The Requested State may, and shall if required by its law, refuse assistance if:
- (a) the granting of the request would be contrary to the respective Constitutions of the Contracting States or impair the sovereignty, security or public order of the Contracting States;
  - (b) the request for assistance relates to an offence of a political character except where it is an offence which the Requested State considers as excluded from being a political offence by any international agreement to which the Contracting States are parties;
  - (c) there are substantial reasons for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
  - (d) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted or acquitted in the Requested State or the Requesting State;

(e) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence, except where the Central Authority of the Requested State is of the opinion that such act or omission is of a serious nature and is a criminal matter within the meaning of this Treaty.

421. Sri Lanka recognizes grounds for refusal in line with the provision under review. Sri Lanka reported that there have been no cases where Sri Lanka has refused assistance.

## **Article 46 Mutual legal assistance**

### **Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

422. The grounds on which mutual assistance can be refused are provided in Section 6 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 (quoted above). The involvement of fiscal matters in an offence is not a ground on which mutual assistance can be refused under the said section.

423. Reference is also made to the definition of “criminal matter” in Section 24 of MACMA.

#### **Mutual Assistance in Criminal Matters Act No. 25 of 2002**

##### **Article 24**

##### **Interpretation**

“criminal matter” means violations of any law, whether of Sri Lanka or of a specified country, and includes violations of the law of Sri Lanka or a specified country relating to taxation, exchange control or customs or securities or money laundering;

424. The following treaty provisions are also relevant.

##### Hong Kong (China) MLAT:

##### **Article 1**

##### **Scope of Assistance**

...

(3) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties or other revenue matters but not in connection with non-criminal proceedings relating thereto.

##### Thailand MLAT:

##### **Article 1**

##### **Obligation to Grant Mutual Legal Assistance**

...

(4) Assistance under this Treaty may be granted in connection with offences against a law related to taxation, customs duties or other revenue matters but not in connection with non-criminal proceedings relating thereto.

#### **(b) Observations on the implementation of the article**

425. During the country visit, Sri Lanka reported that it has never received a request for an offence involving tax or fiscal matters.

426. Based on the available information, it appears that Sri Lanka would render assistance in a criminal matter where the request involves fiscal or tax offences.

## **Article 46 Mutual legal assistance**

### **Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

427. Sri Lanka indicated that it has partially implemented the provision under review. The Mutual Assistance in Criminal Matters Act No. 25 of 2002 does not contain a specific provision which casts a duty on the Central Authority to give reasons for refusing mutual legal assistance. However, Sri Lanka indicated that as matter of policy such a requirement is incorporated in Sri Lanka's mutual legal assistance agreements in criminal matters, which cast a duty on the parties to the agreement to inform the requesting State of the reasons for denying or postponing assistance sought.

428. Sri Lanka indicated that it may not need to amend its Mutual Legal Assistance Law in view of the policy adopted, by which this requirement is incorporated in the agreements entered in to between Sri Lanka and other States.

429. Sri Lanka referred to the mutual legal assistance agreement signed between Sri Lanka and Hong Kong, China (article 4(7)).

#### **Agreement Between the Government of the Hong Kong Special Administrative Region of The People's Republic of China and the Government of the Democratic Socialist Republic of Sri Lanka Concerning Mutual Legal Assistance In Criminal Matters**

##### **Article 4. Limitations on Compliance**

...

(7) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority—

(a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

##### Pakistan MLAT:

##### **Article 5**

##### **Execution of Requests**

...

4. Subject to the provisions of Article 6, the Requested Party shall promptly inform the Requesting Party of its decision not to comply, in whole or in part with a request for assistance or to postpone execution and shall give reasons for that decision.

##### Thailand MLAT:

##### **Article 6**

##### **Execution of Requests**

...

(4) The Requested State shall promptly inform the Requesting State of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

#### **(b) Observations on the implementation of the article**

430. During the country visit, it was explained that Sri Lanka provides grounds for refusal as a matter of practice, although there is no provision to this effect in the MACMA. A case example was given involving a request from Australia for evidence to be taken in Sri Lanka by video testimony, and the reasons for the refusal were communicated.

431. Although relevant provisions are found in Sri Lanka's treaties, it is recommended that Sri Lanka amend the MACMA in this regard.

## **Article 46 Mutual legal assistance**

### **Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

432. Sri Lanka indicated that it has not implemented the provision under review and that no steps have been taken to do so. There are measures for handling urgent requests for extradition but the MACMA does not contain any provisions regarding the timeframes for responding to MLA requests.

433. Sri Lanka reported that steps would have to be taken to amend the Mutual Assistance in Criminal Matters Act.

434. The following treaty provisions are also referred to.

#### Hong Kong, China MLAT:

##### **ARTICLE 6**

##### **EXECUTION OF REQUESTS**

(1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.

...

(3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

#### Pakistan MLAT:

##### **Article 5**

##### **Execution of Requests**

1. The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.

...

3. The Requested Party shall inform the Requesting Party of circumstances, which are likely to cause a significant delay in the execution of the request.

#### Thailand MLAT:

##### **Article 6**

### **Execution of Requests**

(1) The Central Authority of the Requested State shall promptly execute the request or arrange for its execution through its competent authorities.

...

(3) The Requested State shall promptly inform the Requesting State of any circumstances which are likely to cause a significant delay in responding to the request

### **(b) Observations on the implementation of the article**

435. The matter does not appear to be addressed in the MACMA. The reviewers agree that it would be useful to amend the MACMA to include a provision on the timely execution of MLA requests and the provision of information on the status of requests.

436. It was explained during the country visit that Sri Lanka as a matter of practice responds to requests on the status of its progress in handling requests, although no examples were provided.

## **Article 46 Mutual legal assistance**

### **Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

437. Sri Lanka referred to the mutual legal assistance agreement signed between Sri Lanka and Hong Kong, China (article 4(6)).

438. In view of the policy adopted by Sri Lanka in entering into mutual legal assistance agreements in criminal matters, Sri Lanka considers that no further action need be taken in this regard.

#### **Agreement Between the Government of the Hong Kong Special Administrative Region of The People's Republic of China and the Government of the Democratic Socialist Republic of Sri Lanka Concerning Mutual Legal Assistance In Criminal Matters**

##### **Article 4. Limitations on Compliance**

...

(6) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.

#### **Thailand MLAT:**

##### **Article 4**

##### **Grounds for Refusal or Postponement**

...

(2) The Requested State may postpone assistance if execution of the request would interfere with an ongoing investigation, prosecution or proceeding in the Requested State.

### **(b) Observations on the implementation of the article**

439. The matter does not appear to be addressed in the MACMA or the MLAT with Pakistan.

440. It was explained during the country visit that there have been no cases where Sri Lanka has postponed a request on these grounds.

441. Sri Lanka may wish to consider specifying its legislation and future treaties to provide greater legal certainty in this regard.

## **Article 46 Mutual legal assistance**

### **Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

442. Sri Lanka indicated that it has partially implemented the provision under review at policy level by incorporating this requirement into its mutual legal assistance agreements. The Mutual Assistance in Criminal Matters Act No. 25 of 2002 does not contain a specific provision which casts a duty on the Central Authority to consult with the requesting State before postponing the execution of requests. However, as matter of policy, such a requirement is incorporated in Sri Lanka's mutual legal assistance agreements in criminal matters, which cast a duty on the parties' central authorities to consult with the requesting party to determine whether assistance may be given subject to such terms and conditions as the requested party deems necessary. It considers no further steps necessary to implement the provision.

443. Sri Lanka referred to the mutual legal assistance agreement between Sri Lanka and Hong Kong, China (article 4, subparagraphs 7 and 8).

#### **Agreement Between the Government of the Hong Kong Special Administrative Region of The People's Republic of China and the Government of the Democratic Socialist Republic of Sri Lanka Concerning Mutual Legal Assistance In Criminal Matters**

##### **Article 4. Limitations on Compliance**

...

(7) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority—

(a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(8) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (7)(b), it shall comply with those terms and conditions.

##### Pakistan MLAT:

###### **Article 6**

###### **Refusal of Assistance**

...

2. Before refusing to grant assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to such conditions, it shall comply with them.

##### Thailand MLAT:

#### **Article 4**

##### **Grounds for Refusal or Postponement**

Before denying or postponing assistance pursuant to this Article, the Requested State, through its Central Authority,

- (a) shall promptly inform the Requesting State of the reason for considering denial or postponement; and
- (b) shall consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.

#### **(b) Observations on the implementation of the article**

- 444. It is noted that the Pakistan MLAT only addresses the duty to consult before refusing assistance, and not where assistance is postponed. Sri Lanka may wish to address this in the treaty.
- 445. A case example was given involving a terrorism case, where Sri Lanka asked a requesting country to amend the questions it wanted the authorities to pose to a witness, in order to execute the request.
- 446. While it appears that Sri Lanka consults with requesting countries as a matter of practice before refusing or postponing assistance, Sri Lanka is encouraged to include a relevant provision in the MACMA in this regard.

#### **Article 46 Mutual legal assistance**

##### **Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

- 447. Sri Lanka cited Section 14 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002.

##### **Mutual Assistance in Criminal Matters Act No. 25 of 2002.**

##### **Section 14. Immunity from prosecution &c. of persons brought to Sri Lanka.**

14. Where-

- (a) a person is in Sri Lanka pursuant to a request made by the Central Authority to the appropriate authority of a specified country under subsection (6) of section 13 ; or
- (b) a person, being a prisoner, has been removed to Sri Lanka pursuant to a request made by the Central Authority to the appropriate authority of a specified country, under subsection (1) of section 13, to give evidence in a proceeding relating to a criminal matter or to give assistance in an investigation relating to a criminal matter. Such person shall not be defined prosecuted or punished in Sri Lanka for any offence that is alleged to have been committed or was committed or was committed, prior to that person's departure from such specified country pursuant to such request-

- (i) in the case of a person who, not being a prisoner, is in Sri Lanka for the purposes of giving evidence in a proceeding relating to a criminal matter or of assisting in a investigation relating to a criminal matter, unless such person has remained in Sri Lanka for a period of at least fifteen days after he had been notified by the Central Authority that his presence was no longer necessary for such proceeding or investigation and had an opportunity of leaving Sri Lanka ; and
- (ii) in the case of a person who being a prisoner, in Sri Lanka for the purposes of giving evidence in a proceeding relating to criminal matter or of assisting in a investigation relating to a criminal matter, until after he has returned to the specified country from which he was removed to Sri Lanka.

448. The following treaty provisions are also referred to.

Hong Kong, China MLAT:

**ARTICLE 16**

**TRANSFER OF OTHER PERSONS**

(1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the Requesting Party to provide assistance pursuant to this Agreement.

(2) Upon receipt of such a request the Requested Party shall invite the person to travel to the Requesting Party and inform the Requesting Party of the person's response.

**ARTICLE 17**

**SAFE CONDUCT**

(1) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 15.

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 15, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Articles 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to provide assistance pursuant to Articles 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

Pakistan MLAT:

**Article 11**

**Rule of Specialty**

1. A person present in the Requesting Party, in response to a request seeking that person's attendance, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty in the territory of the country of that Party for an act or omission which preceded that person's departure from the Requested Party, nor shall that person be obliged to give evidence in any proceedings other than the proceeding to which the request relates.

2. A person who fails to appear in the Requesting Party for the purposes stated above, may not be subjected to any sanction or compulsory measure by the Requested Party.

Thailand MLAT:

**Article 17**

**Safe Conduct**

(1) No person present in the territory of the Requesting State to testify, provide a statement or assist in investigations in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subjected to any other restriction of personal liberty by reason of any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence or assist in investigations in any proceeding other than the proceeding to which the request relates.

(2) The safe conduct provided for by this article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after notification that the person's presence is no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

(3) A person who consents to give evidence or assist in investigations under Articles 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.

(4) A person who does not consent to give evidence or assist in investigations pursuant to Articles 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting State or Requested State.

**(b) Observations on the implementation of the article**

449. The provision is legislatively implemented, although no case examples were provided.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

450. Section 12 (4)(d)(ii) of the Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002 specifically refers to the requirement of a requesting State's undertaking to meet the costs of travel of a witness who has consented to travel to such requesting State to give evidence, or to give assistance in relation to an investigation or case. In addition, as a matter of policy, Sri Lanka ensures the incorporation of this requirement as a clause in its mutual assistance agreements in criminal matters.

451. Sri Lanka indicated that no recorded instances were available of recent cases in which costs were not covered only by the requested State.

452. Sri Lanka referred to article 7(2) of the mutual legal assistance agreement between Sri Lanka and Hong Kong, China.

**Agreement Between the Government of the Hong Kong Special Administrative Region of The People's Republic of China and the Government of the Democratic Socialist Republic of Sri Lanka Concerning Mutual Legal Assistance In Criminal Matters**

**Article 7. Representation and Expenses**

(2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;
- (c) expenses of translation; and
- (d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties.

453. The following treaty provisions are also referred to.

Hong Kong (China) MLAT:

**ARTICLE 7**

**REPRESENTATION AND EXPENSES**

(1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

(2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

(a) fees of counsel retained at the request of the Requesting Party;

(b) fees of experts;

(c) expenses of translation; and

(d) travel expenses and allowances of persons who travel between the Requesting and Requested Parties.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

Pakistan MLAT:

#### **ARTICLE 15**

##### **REPRESENTATION AND COSTS**

1. The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall meet the costs of executing a request for assistance, except that the Requesting Party shall bear:

a. the expenses associated with transferring any person to or from territory of the country of the Requested Party at the request of the Requesting Party, and any allowance or expenses payable to that person while in the Requesting Party pursuant to a request under Article 9 or 10 of this Agreement;

b. the expenses and fees of experts either in the Requested Party or the Requesting Party.

3. If it appears that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Thailand MLAT:

#### **ARTICLE 7**

##### **REPRESENTATION AND EXPENSES**

(1) The Requested State shall, in so far as its law permits, make all necessary arrangements for the representation of the Requesting State in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting State.

(2) The Requested State shall assume all ordinary expenses of executing a request within its boundaries, except:

(a) fees of counsel retained at the request of the Requesting State;

(b) fees of experts;

(c) expenses of translation or interpretation; and

(d) travel expenses, accommodation and allowances of persons who travel between the Requesting and Requested States.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Contracting States shall consult to determine the terms and conditions under which the execution of the request may continue.

#### **(b) Observations on the implementation of the article**

454. Sri Lanka has addresses the issue of costs in line with the UNCAC provision under review. No case examples were provided.

#### **Article 46 Mutual legal assistance**

##### **Paragraph 29**

29. *The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

455. Sri Lanka cited Section 3 of the Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002, which recognizes facilitating the provision of documents and other records as an object of the Act. In addition Section 10(3) (b) (quoted above) spells out the procedure in securing such documents that are to be transmitted to the requesting State through the Central Authority.

456. Sri Lanka reported that there are no restrictions with regard to the provision of government documents or records that are not available to the general public. However, the provision of such documents is subject to the general restrictions stated in Section 6(1) (e) of the said Act (quoted above), whereby a request must be refused if its execution would be contrary to the Constitution of Sri Lanka or prejudicial to national security, international relations or public policy.

**Mutual Legal Assistance in Criminal Matters Act No. 25 of 2002**

**Section 3. Object of the Act.**

The object of this Act is to facilitate the provision and obtaining, by Sri Lanka of assistance in criminal matters including-

- (a) the location and identification of witnesses or suspects ;
- (b) the service of documents ;
- (c) the examination of witnesses ;
- (d) the obtaining of evidence, documents or other articles ;
- (e) the execution of requests for search and seizure ;
- (f) the effecting of a temporary transfer of a person in custody to appear as a witness ;
- (g) the facilitation of the personal appearance of witnesses ;
- (h) the provision of documents and other records ;
- (i) the location, of the proceeds of any criminal activity ;
- (j) the enforcement of orders for the payment of fines or for the forfeiture of freezing of property.

457. The following treaty provisions are referred to.

Hong Kong, China MLAT:

**ARTICLE 13**

**PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS**

- (1) Subject to its law the Requested Party shall provide copies of publicly available documents.
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

Thailand MLAT:

**ARTICLE 13**

**PROVIDING DOCUMENTS, RECORDS OR INFORMATION OF GOVERNMENT OFFICES OR AGENCIES**

- (1) Subject to its law, the Requested State shall provide copies of publicly available documents, records or information of a government office or agency.

(2) The Requested State may provide copies of any document, record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

**(b) Observations on the implementation of the article**

458. It was explained during the country visit that Sri Lanka has provided non-public police investigation records to a requesting country and would provide non-public government documents where national interests are not involved. The provision is implemented.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

459. Sri Lanka has bilateral MLA treaties in force with Hong Kong (China), Pakistan, Thailand and India.

**(b) Observations on the implementation of the article**

460. Sri Lanka has entered into treaties as provided in this provision.

**(c) Challenges related to article 46**

461. Sri Lanka has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.) in relation to paragraph 18 of article 46 on the use of video conferencing and related measures. To have hearings to take place by video conferencing is permissible in civil matters but no such provision is available in criminal matters.
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.) in relation to paragraph 23 of article 46 on providing reasons for refusing mutual legal assistance.
3. Inadequacy of existing normative measures (constitution, laws, regulations, etc.) in relation to paragraph 24 of article 46 on expediting the execution of mutual legal assistance requests and related measures.
4. Inadequacy of existing normative measures (constitution, laws, regulations, etc.) in relation to paragraph 25 of article 46 on postponing the execution of mutual legal assistance requests and related measures.
5. Inadequacy of existing normative measures (constitution, laws, regulations, etc.) in relation to paragraph 26 of article 46 on consultations before refusing a request and related measures.

**(d) Technical assistance needs related to article 46**

462. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters.

It was explained that this assistance is requested because of Sri Lanka's limited experience in providing MLA, due to the small number of requests received.

None of these forms of technical assistance has been provided to date.

#### **Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

463. Sri Lanka indicated that it has not implemented the provision under review and that no steps have been taken to do so.

##### **(b) Observations on the implementation of the article**

464. The provision does not appear to be implemented. It was explained that Sri Lanka has not considered the possibility of transferring proceedings to or from another State.

##### **(c) Challenges related to article 47**

465. Sri Lanka has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.).

##### **(d) Technical assistance needs related to article 47**

466. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters.

None of these forms of technical assistance has been provided to date.

#### **Article 48 Law enforcement cooperation**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

467. Sri Lanka cited Sections 15(1)(q), 16 and 17 of the Financial Transactions Reporting Act No. 6 of 2006 as well as Section 3 of the Mutual Assistance in Criminal Matters Act No. 25 of 2002, in particular subsection 3(i) on the location of criminal proceeds and subsection 3(d), which provides for the obtaining of evidence, documents or other articles. Further, Section 10 (3) (b) of the said Act lays down the procedure for obtaining such “articles”.

468. Sri Lanka reported that any offence under the Bribery Act, including the offence of corruption, is considered as an “unlawful activity” and thus a predicate offence for purposes of the Prevention of Money Laundering Act and the Financial Transactions Reporting Act, No. 6 of 2006.

469. The Sri Lanka Police Service may provide assistance at the law-enforcement level outside of the MACMA. In 2005, the Service's Interpol Unit received and responded to 209 and 207 requests for information respectively. It sent 138 requests abroad in the same year.
470. With regard to establishing channels of communication, the Financial Intelligence Unit has entered into agreements on mutual legal assistance that provide for the exchange of information. It is also a member of the EGMONT Group of Financial Intelligence Units. The exchange of information is also facilitated through INTERPOL.
471. Regarding the exchange of personnel and other experts among competent authorities, agencies and services (UNCAC article 48(1)(e)), Sri Lanka indicated that it has not implemented the provision due to specificities in its legal system and has not taken any steps to do so.
472. Regarding direct cooperation among law enforcement authorities, Sri Lanka reported that it is a member of INTERPOL. Furthermore, the Financial Investigation Unit has signed several MoUs with countries such as Bangladesh, Cambodia, Malaysia, Afghanistan, South Korea, Indonesia, Nepal and the Philippines in order to enhance cooperation between law enforcement agencies. At the time of the country visit, Sri Lanka's FIU had entered into MoUs with 27 other FIUs (as detailed below). The FIU is also a member of the EGMONT Group.
473. Sri Lanka indicated that it has not had any experience in using the Convention as the basis for mutual law enforcement cooperation in respect of offences covered by the Convention.
474. Regarding the use of modern technology for law enforcement cooperation, Sri Lanka reported that the mode of assistance that can be provided under the Mutual Assistance in Criminal Matters Act is not restricted and can be provided in relation to offences committed through the use of modern technology. Sri Lanka cited Sections 35 and 36 of the Computer Crimes Act No. 24 of 2007 in regard to mutual legal assistance and extradition.

#### **Financial Transactions Reporting Act No. 6 of 2006**

##### **15. Functions of the Financial Intelligence Unit**

(1) The Financial Intelligence Unit- ...

(q) may disclose as set out in section 16 and 17, any report, any information derived from such report or any other information it receives, to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit, if on the basis of its analysis or assessment the Financial Intelligence Unit has reasonable grounds to suspect that the information would be relevant to the investigation or pro-secution of any act constituting an unlawful activity, a money laundering offence or a offence of financing of terrorism ;

##### **16. Disclosure to foreign institutions and agencies**

The Financial Intelligence Unit may disclose any report or information to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the Government of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as are set out in the agreement or arrangement between Financial Intelligence Unit and an institution, agency or organization or authority regarding the exchange of such information under section 17.

##### **17. Agreements and arrangements by the Financial Intelligence Unit**

- (1) The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with-
- (a) an institution or agency of a foreign State or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit; and
  - (b) a foreign law enforcement agency or a foreign supervisory authority,
- (2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the Institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of an offence constituting an unlawful activity or an offence that is substantially similar to such an offence.
- (3) Agreements or arrangements entered into under subsection (1) shall include the following :-
- (a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and
  - (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

**Mutual Assistance in Criminal Matters Act No. 25 of 2002.**

**3. Object of the Act.**

The object of this Act is to facilitate the provision and obtaining, by Sri Lanka of assistance in criminal matters including-

- (a) the location and identification of witnesses or suspects ;
- (b) the service of documents ;
- (c) the examination of witnesses ;
- (d) the obtaining of evidence, documents or other articles ;
- (e) the execution of requests for search and seizure ;
- (f) the effecting of a temporary transfer of a person in custody to appear as a witness ;
- (g) the facilitation of the personal appearance of witnesses ;
- (h) the provision of documents and other records ;
- (i) the location, of the proceeds of any criminal activity ;
- (j) the enforcement of orders for the payment of fines or for the forfeiture of freezing of property.

**10. Request by a specified country for evidence to be taken and documents and to be produced in Sri Lanka.**

...

- (3) Where the taking of evidence or the production of documents or other articles under subsection (1) has been authorized-
- (a) the Magistrate specified in the authorization may take the evidence on oath of each witness appearing before such Magistrate to give evidence in relation to such matter, and such Magistrate shall
    - (i) cause the evidence to be taken in writing and certify that the evidence was taken by such Magistrate ; and
    - (ii) cause the evidence so certified to be sent to the Central Authority ;
  - (b) a Magistrate may, require the production before him of the documents or other articles and, where the documents or other articles are so produced the Magistrate shall send the documents, or where it is impracticable to send such documents to the Central Authority or where the request relates only to copies of such documents, copies of such documents certified to be true copies by the Magistrate, or the other articles, as the case may be, to the Central Authority.

**Computer Crimes Act No. 24 of 2007**

**Section 35. Assistance to Convention States &c.**

- (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under this Act, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act.
- (2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a Non-Commonwealth country with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act, then it shall be the duty of the Government to afford all such assistance to, and may through the Minister request all such assistance from, a convention country, as may be necessary for the investigation and prosecution of an offence under this Act (including

assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).

(3) The grant of assistance in terms of this section may be made subject to such terms and conditions as the Minister thinks fit.

**Section 36. Offences under this Act, not to be political offences &c., for the purposes of the Extradition Law.**

Notwithstanding anything in the Extradition Law, No. 8 of 1977, an offence specified in the Schedule to that Law and in this Act, shall for the purposes of that law be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purposes only of the extradition of any person accused or convicted of any such offence, as between the Government of Sri Lanka and any requesting State, or of affording assistance to a requesting State under section 35.

**(b) Observations on the implementation of the article**

475. The reviewers were of the view that the cited measures of the MACMA and Computer Crimes Act were more directly relevant to the implementation of article 46 of UNCAC and the provision of official MLA than for direct law enforcement cooperation.

476. During the country visit, it was explained that the police cooperate with foreign counterparts only on the basis of INTERPOL. The police have one MoU in place with Australia, which is not corruption-related. Moreover, the FIU has signed 27 MoUs with its counterparts (as shown in the list below) and is also a member of the EGMONT Group. It was reported that the FIU received 25 requests through EGMONT in 2011 and 11 requests in 2012 (none of which related to corruption), and that the FIU has not refused any requests received through EGMONT to date. [Statistics on Egmont group communications is given below.](#)

**Sharing information with foreign counterparts through Egmont Group (FIU to FIU)**

Year	2008	2009	2010	2011	2012	2013	2014
Requests received *	4	6	9	25	11	18	10
Requests made	5	47	13	4	12	2	8

\* All information requests received from the counterpart FIUs, have been responded to.

	Counterpart	Date of signing
1	Financial Intelligence Unit of Bank Negara Malaysia	18.01.2008
2	Financial Intelligence Unit of the Da Afghanistan Bank	29.02.2008
3	Korean Financial Intelligence Unit	18.12.2008
4	Indonesian Financial Transaction Reports and Analysis Centre	27.05.2009
5	Financial Information Unit of Nepal Rastra Bank	09.07.2009
6	The Anti Money Laundering Council of Philippines	09.07.2009
7	Cambodian Financial Intelligence Unit of National Bank of	26.10.2009

	Cambodia	
8	Financial Intelligence Unit of India	30.03.2010
9	Australian Financial Transactions and Analysis Centre	07.05.2010
10	Financial Intelligence Unit of Belgium	18.06.2010
11	Financial Intelligence Unit of Solomon Island	15.07.2010
12	Financial Intelligence Unit of Bangladesh	28.10.2010
13	Financial Intelligence Centre of South Africa	02.12.2010
14	Fiji Financial Intelligence Unit	21.07.2011
15	Financial Intelligence Unit of Slovenia	09.08.2011
16	Transaction Reports and Reports Analysis Centre of Canada	02.08.2011
17	Financial Crime Enforcement Network (FinCEN) – USA	10.07.2012
18	The Financial Information Unit of the Bank of Mongolia	11.07.2012
19	Federal Financial Monitoring Service (Russian Federation)	11.07.2012
20	Saudi Arabian Financial Investigation Unit (SAFIU)	11.07.2012
21	Japan Financial Intelligence Centre (JAFIC)	11.03.2013
22	Lebanon Special Investigations Commission (SIC)	03.07.2013
23	Costa Rica FIU	08.07.2013
24	Denmark FIU	30.09.2013
25	Albania FIU	05.06.2014
26	Peru FIU	05.06.2014
27	Myanmar FIU	17.07.2014

477. There appears to have been little experience in the exchange of law enforcement personnel. While the police has received one liaison officer from Australia, it has not posted any officers abroad. No information on staff exchanges for training or investigative capacity building, including with respect to ongoing investigations or cases, was available. Also, no information was provided on exchanges among law enforcement for investigative purposes. No specific examples of law enforcement cooperation were provided during the country visit.
478. No further information was available as to relevant cooperation efforts by the Commission to Investigate Allegation of Bribery or Corruption.
479. According to representatives from the Criminal Investigation Division (CID) in the police, Sri Lanka relies on INTERPOL's 1/24-7 database.
480. Representatives from CID further explained during the country visit that the Convention could in principle be used as a basis for direct law enforcement cooperation in the same way as any other international treaty, although there has been no experience in this regard.
481. Sri Lanka is encouraged to strengthen its existing measures and efforts in the area of international law enforcement cooperation, in particular to strengthen channels of communication and cooperation in the investigation of specific cases. While it is noted that the mandate of the police regarding the investigation of UNCAC offences is limited

to offences of embezzlement and money laundering, such steps should be taken by all investigative institutions, including the Commission to Investigate Allegation of Bribery or Corruption and the police. The extent to which the FIU cooperates with its counterparts is noted.

**(c) Challenges related to article 48**

482. Sri Lanka has identified the following challenge and issue in fully implementing the article under review:

1. Specificities in its legal system: cited for UNCAC article 48(1)(e).

**(d) Technical assistance needs related to article 48**

483. Sri Lanka has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned.
2. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation.

None of these forms of technical assistance has been provided to date.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

484. Joint investigations are provided for in agreements entered into with other States. With the entering into of a bilateral agreement with a State, the assistance that can be provided encompasses all assistance contemplated in the Mutual Assistance in Criminal Matters Act. While the Mutual Assistance in Criminal Matters Act does not specifically provide for the establishment of joint investigation bodies, there is no bar to such mechanisms being resorted to in appropriate circumstances.

**(b) Observations on the implementation of the article**

485. During the country visit, it was explained that joint investigations could be taken on a case-by-case basis on the basis of MoUs or other agreements or arrangements. In some cases, such arrangements could be established through the Ministry of External Affairs.

486. Some examples of joint investigations in non-corruption related cases were given during the country visit with law enforcement authorities in India, China, the Netherlands and Switzerland.

## **Article 50 Special investigative techniques**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

487. Although there are no specific legal provisions to allow for special investigative techniques, there is no prohibition to permit investigations using the technique of controlled delivery or other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, as long as the evidence collated is in an admissible form of evidence.

488. With regard to the use of controlled delivery (paragraph 4 of article 50), Sri Lanka indicated that it has not implemented the provision under review. Regarding controlled delivery in drugs cases, Sri Lanka explained that the Poisons, Opium and Dangerous Drugs Ordinance is to be amended shortly and the amendment is available in draft form. A specific provision to facilitate controlled delivery is to be introduced under the said amendment.

489. Sri Lanka indicated that it has not assessed the effectiveness of its measures adopted to comply with the article under review and would require legal and technical assistance to do so.

### **(b) Observations on the implementation of the article**

490. No specific legal provisions exist regarding special investigative techniques.

491. During the country visit representatives of CID in the police explained that surveillance is routinely conducted though there have been no examples of special investigative techniques in corruption cases. Surveillance can be done in accordance with the general provisions of the Police Ordinance (these do not specifically address the use of

special investigative techniques). There has been no experience conducting undercover operations in criminal cases.

492. It was explained that evidence derived from special investigative techniques is admissible in a court of law in accordance with the Code of Criminal Procedure and Evidence Ordinance if the technique was lawfully conducted. There appear to be no particular difficulties in admitting such evidence.

UNODC



**ESTABLISHMENTS CODE  
OF THE  
GOVERNMENT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

**Volume II**

Issued by the Secretary to the Ministry in charge of the subject  
of Public Administration  
under the Authority of the Cabinet of Ministers

1999

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING SRI LANKA

TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO.

**Price** : Rs. 56.00

**Postage** : Rs. 7.00

**27. Procedure to be followed when Court of Law or a Statutory Authority proceeds against of Public Officer**

27:1 When a criminal offence punishable under the Law of Sri Lanka by a Court of Law is disclosed, prima facie against an officer on facts or evidence led in the course of a preliminary investigation or in some other manner, such matter should, without delay, be reported by the Disciplinary Authority or Head of Institution of such officer to the Police or appropriate Statutory Authority for suitable action to be taken against the officer under the Law of Sri Lanka.

27:2 When an offence of bribery or corruption is disclosed, prima facie, against an officer on facts or evidence led in the course of a preliminary investigation or in some other manner, such matter should, without delay, be reported by the Disciplinary Authority or Head of Institution of such officer to the Commission to Investigate Allegations of Bribery or Corruption or to such other statutory authority empowered by law to investigate such allegations for suitable action to be taken against the officer under the appropriate law.

27:3 When an offence punishable through a duly authorized statutory authority or institution (e.g. Director General of Customs, Commissioner General of Income Tax) for violating any provision in an Act passed by the Legislature of Sri Lanka is disclosed, prima facie, against an officer on facts or evidence in the course of a preliminary investigation or

UNNOL

in some other manner, such matter should, without delay, be reported by the Disciplinary Authority or Head of the Institution of such officer to the appropriate statutory authority or Institution for suitable action to be taken against the officer under the appropriate law.

27:4 Even though transmission of information as referred to in sub-sections 27:1, 27:2 and 27:3 above to the respective authorities has been done, a preliminary investigation in progress or work with regard to holding a preliminary investigation where sufficient matters are disclosed should not be suspended or postponed unless there are compelling reasons or unavoidable circumstances. If the preliminary investigation is suspended owing to a compelling reason or an impediment it should be re-commenced and concluded as soon as possible.

27:5 Where respective authorities have been informed to take legal action in terms of sub-sections 27:1, 27:2 and 27:3 above and such authorities ask for documents, any relevant article or anything else that are relevant for purposes of their investigations and legal proceedings, the relevant Head of Institution or Disciplinary Authority should make available such items to the respective authorities.

27:6 Where documents as are necessary for preliminary investigations or legal proceedings are handed over to the respective authorities, the Head of Department or a Staff Officer should retain photocopies of such documents certified by them that may be necessary for any disciplinary proceedings likely to be taken against the accused officer by the Department. Certified copies of the documents thus retained should be totally admissible in a formal disciplinary inquiry against the officer.

27:7 Where a public officer is taken into custody by the Police or some other statutory authority pending legal proceedings against him or where he is remanded before the commencement of legal proceedings in a Court of Law the officer should be granted compulsory leave to cover such period.

27:8 When a public officer taken into custody by the Police or any other statutory authority is released from custody he should be reinstated. However, if such reinstatement would obstruct a formal disciplinary inquiry scheduled to be held by the Disciplinary Authority, the accused officer should not be reinstated but interdicted.

27:9 When an officer remanded pending legal proceedings against him is released on bail, he should be reinstated in service if the Disciplinary Authority determines that his reinstatement will not adversely affect the interests of the public service. If the Disciplinary Authority is satisfied that his reinstatement in service will adversely affect the interests of the public service he should be further kept on compulsory leave. Similarly, where the Disciplinary Authority contemplates disciplinary action against the officer and his reinstatement is an impediment to the contemplated disciplinary proceedings the officer should be interdicted as appropriate.

27:10 Where legal proceedings are taken against a public officer for a criminal offence of bribery or corruption the relevant officer should be forthwith interdicted by the appropriate authority.

27:11 Even when Court proceedings are in progress against a public officer for an offence which falls under this Code, the relevant Disciplinary Authority should hold a disciplinary inquiry against the officer independent of Court proceedings. The suspension or postponement of the departmental disciplinary inquiry should be done only when there is a compelling reason or unavoidable obstacle.

27:12 The fact that Court proceedings against the officer are still in progress will in no way affect the making of a disciplinary order at the conclusion of the disciplinary inquiry against him in terms of sub-section 27:11 above.

27:13 Where at the time of making the order in the Court proceedings against an officer in terms of sub-section 27:11 above, the departmental disciplinary inquiry against him is still in progress, it should be continued to its conclusion, irrespective of the Court order, and the disciplinary order made unless there is a compelling reason or an unavoidable obstacle for the continuance of the inquiry.

27:14 Where an officer acquitted by a departmental inquiry of a charge or a series of charges is found guilty by a Court of Law of the same charges, the fact that he has been acquitted by the departmental inquiry should not stand in the way of taking action against him in terms of Section 28 of this Code.

27:15 Where Court proceedings and a departmental inquiry have been held with regard to a charge or a series of charges, and where the departmental inquiry finds the officer guilty, the fact that the officer is acquitted in the Court proceedings should in no way affect the implementing of the disciplinary order made on matters revealed in the departmental disciplinary inquiry.

#### **28. Disciplinary Action against a Public Officer in view of Orders issued against him by a Court of Law or a Statutory Authority**

28:1 If an officer is convicted by a Court of Law in any criminal proceeding, or is summarily convicted by a Court of Law under section 449 of the Code of Criminal Procedure Act, or is found guilty of any offence or is subjected to any penalty by any Statutory Authority empowered by law to do so, that Court or Statutory Authority will report the facts to the disciplinary authority with a certified copy of the proceedings.

28:2 Conviction for the purpose of these rules includes warning and discharge or conditional discharge under section 306 of the Code of Criminal Procedure Act No. 15 of 1979.

28:3 On receiving a report from a Court or Statutory Authority in terms of sub-section 28:1 above, the Disciplinary Authority may, where the department has not held a formal disciplinary inquiry or where disciplinary proceedings are not contemplated against the officer regarding the incident concerned, make a disciplinary order against the relevant officer without holding a formal disciplinary inquiry taking into consideration the findings of the Court or the Statutory Authority as the case may be.

28:4 In making a disciplinary order in terms of sub-section 28:3 above, the Disciplinary Authority should base such order on the fact that the officer has been convicted and the seriousness of the offence or offences. It will not be necessary to take note of the punishment imposed by the Court or the Statutory Authority.

28:5 If the officer furnishes to the Disciplinary Authority proof of the fact that he has appealed against the conviction, order or findings of the Court or Statutory Authority, the Disciplinary Authority will await the outcome of such appeal before ordering punishment. If the officer has been interdicted in this connection, he should remain interdicted.

28:6 The fact that an officer has been acquitted or discharged or found not guilty by a Court of Law or Statutory Authority is no reason at all why he should not be dealt with under this Code, if there is sufficient material on which disciplinary proceedings can be taken against him.

28:7 An officer who has been punished under this Code for any offence, other than a punishment in terms of sub-section 28:3 above, may not claim remission of such punishment on the grounds that he has subsequently been acquitted or discharged by a Court of Law in respect of that same offence, or that the order of a Court has been set aside in appeal.

UNNOI

## Annex 2

### *Mutual Assistance in Criminal Matters Act, No. 25 of 2002*

#### **SCHEDULE (section 5)**

##### **FORM A [section 7(1)]**

TO THE CENTRAL AUTHORITY OF SRI LANKA.

Whereas..... (state name of suspect/witness/other person\* if known) : is suspected to be involved in/is able to provide evidence/assistance\* in..... (state criminal matter falling within jurisdiction of criminal court in Specified Country):

And whereas there are reasonable grounds to believe that the aforesaid..... (State name of suspect witness/other person\* if known) is in Sri Lanka:

This is to request your assistance in locating the aforesaid ..... (State name of Suspects/witness/other person\* if known).

Appropriate Authority of Specified Country.

##### **FORM B [Section 7(1)]**

TO THE CENTRAL AUTHORITY OF SRI LANKA.

Whereas a person whose identity is not known and the available information about whom is specified hereunder, is suspected to be involved in/is able to provide evidence/assistance\* in..... (state criminal matter falling within jurisdiction of criminal court in Specified Country) :

And whereas there are reasonable grounds to believe that the aforesaid person is in Sri Lanka :  
This is to request your assistance in identifying and locating such person.  
Appropriate Authority of Specified Country.

##### **FORM C [section 8(1)]**

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas proceedings have been instituted in..... (state name of court in specified country) in respect of ..... (state criminal matter falling within jurisdiction of criminal court in Specified Country) :

And whereas summons/process/document\* has been issued in such proceedings for service on..... (state name of defendant/witness/other person)\*:

And Whereas there are reasonable grounds to believe that the aforesaid .....(state name of defendant/witness/other person\*) is in Sri Lanka :

This is to request your assistance to serve that summons/process/ document\* (a copy of which is attached hereto) on the aforesaid ..... (state name of defendant/witness/other person\*). Where mode service is specified in the manner specified hereunder.

Appropriate Authority of Specified Country.

FORM D  
[section 10(1)]

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas proceedings have been instituted in the court of ..... (state name of court in specified country) in respect of..... (state criminal matter falling within jurisdiction of criminal court in Specified Country) :

And Whereas there are reasonable grounds to believe that ..... (state name of witness) who is capable of giving evidence relevant to such proceedings/producing ..... (state name of document or other thing) relevant to such proceedings\* is in Sri Lanka :

This is to request you to arrange for :—

- (a) the taking of the evidence of the aforesaid ..... (state name of witness required to be examined) : or
- (b) the production of the aforesaid..... (describe the document or other thing required to be produced),

in Sri Lanka for the purposes of the aforesaid proceedings and for the transmission of such evidence, document or other thing to me.

Appropriate Authority of Specified Country.

FORM E  
[section 12(1)]

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas proceedings have been instituted in the Court of.....(state name of court) in specified country)/investigations have been commenced in..... (state name of specified country)\* in respect of ..... (state the criminal matter falling within jurisdiction of criminal court in Specified Country) :

And whereas there are reasonable grounds to believe that ..... (state name of prisoner) who is currently serving a sentence of imprisonment in ..... (state place of imprisonment in Sri Lanka) is capable of giving evidence relevant to such proceedings/giving assistance in relation to such investigation\* :

This is to request you to arrange for the removal of the aforesaid..... (state name of prisoner) to..... (state name of specified country) for the purposes of giving evidence relevant to such proceedings/giving assistance in relation to such investigation\*.

Appropriate Authority of Specified Country.

FORM F  
[section 12(4)]

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas proceedings have been instituted in the court of ..... (state name of court in specified country)/investigations have been commenced in ..... (state name of specified country)\* in respect of ..... (state the criminal matter falling within jurisdiction of criminal court in Specified Country) :

And whereas there are reasonable grounds to believe that ..... (state name of witness) who is presently in Sri Lanka is capable of giving evidence relevant to such proceedings/giving assistance in relation to such investigation\*:

This is to request you to arrange for the removal of the aforesaid ..... (state name of witness) to..... (state name of specified country) for the purposes of giving evidence relevant to such proceedings/ giving assistance in relation to such investigation\*.

Appropriate Authority of Specified Country.

FORM G  
[section 15(1)]

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas proceedings have been instituted in the court of..... (state name of court in specified country)/investigations have been commenced in ..... (state name of specified country)\* in respect of..... (state the nature of the serious offence) :

And whereas there are reasonable grounds to believe that..... (state the description of article or thing) which is relevant to such proceedings/ investigation\* is located in Sri Lanka :

This is to request you to arrange for the issue of a search warrant for the search and seizure of..... (state the description of article or thing) and the transmission of the same to me.

Appropriate Authority of Specified Country.

FORM H  
[Section 17]

TO THE CENTRAL AUTHORITY OF SRI LANKA

Whereas ..... (state name of suspect/offender)\* has been charged with/convicted of/suspected of having committed\*..... (state nature of serious offence) in ..... (state name of specified country) :

And whereas there are reasonable grounds to believe that ..... (describe property, if known) derived or obtained, directly or indirectly, from the commission of that offence, is in Sri Lanka :

This is to request you for your assistance in locating/identifying/assessing the value of\* ..... (describe property if known).

Appropriate Authority of Specified Country.

FORM I  
[Section 19(1)]

TO THE CENTRAL AUTHORITY OF SRI LANKA.

Whereas ..... (state name of court in specified country) has in proceedings instituted in respect of (state criminal matter) made order forfeiting/confiscating ..... (describe property)/imposing a fine or other pecuniary penalty on any person or requiring that person to pay compensation to any other person/restraining any person from dealing with..... (describe property):

And whereas there are reasonable grounds to believe that ..... (describe property) with respect of which that order is made is located in Sri Lanka/ that property located in Sri Lanka is available for satisfaction of that order\* :

This is to request your assistance in enforcing that order (a copy of which is attached hereto).

Appropriate Authority of Specified Country.

\*Delete whatever is inapplicable.