Position Paper

COPE Exposure & Beyond

TISL urges public to advocate for action on 2011 COPE Report

TRANSPARENCY INTERNATIONAL SRI LANKA
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Position Paper: Sambhashana/COPE Exposure & Beyond [2012 January]

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Introduction

Transparency International Sri Lanka (TISL) lauds the release of the 2011 Committee on Public Enterprises (COPE) Report, which is a significant improvement over past Reports and an admirable effort to identify fraud and mismanagement in key Public Enterprises. On January 26th, TISL dedicated its monthly Sambhashana forum to discuss the vital function of parliamentary oversight and the next steps to be taken following the release of the Report in December 2011.

TISL presents this position paper because of the fundamental importance of public enterprise governance in Sri Lanka and the gross mismanagement and corruption amongst public enterprises that the Report identified.

The government of Sri Lanka owns wholly or in part, roughly 275 Public Enterprises on behalf of the public and these enterprises use the same pool of public funds that could go towards providing essential services.[1] Often, public enterprises are mandated with providing essential services and infrastructure development.[2] This means that the management of Public Enterprises is actually undertaken "on behalf of the ultimate owners: the public of Sri Lanka."[3] This is no small matter, in 2009, Public Enterprises accounted for roughly 15% of GDP. [4] Furthermore, the gross mismanagement of Public Enterprises may be costing Sri Lanka 2% in annual economic growth, according to a top Sri Lankan economist.[5]

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1. Credit Risk Monitor Report, available at http://www.crmz.com/Directory/CountryLK.htm; http://www.ft.lk/2011/07/22/public-enterprises-and-the-government%E2%80%99s-role/; This number has risen slightly since 2009, where government data is available at http://www.treasury.gov.lk/FPPFM/ped/pdfdocs/performanceReports/2009/english2009.pdf.
2. http://www.ft.lk/2011/07/22/public-enterprises-and-the-government%E2%80%99s-role/
3. Code of Best Practices in Corporate Governance for Public Enterprises in Sri Lanka, Sect. 2.
4. Department of Public Enterprises Performance Report 2009, available at. http://www.treasury.gov.lk/FPPFM/ped/pdfdocs/performanceReports/2009/english2009.pdf.
5. http://www.sundaytimes.lk/120205/BusinessTimes/bt19.html.

The Committee on Public Enterprises

COPE is one of the two significant oversight committees of Parliament, the other being the Committee on Public Accounts. COPE ensures the observance of financial discipline in government institutions, including semi-governmental organizations. According to Standing Order 126(2), it is the duty of the Committee to examine the accounts of public corporations and of any business undertaking vested in the government.

COPE is mandated to report to Parliament from time to time, examine accounts, budgets and annual estimates, procedures, performance and management of corporations and government business undertakings. The accounts of these organizations are audited by the Auditor-General and form the basis of the COPE investigations. COPE has the power to summon before it, any person and call for the examination of any paper, book, record or other document. They may recommend specific cases to the Bribery Commission but otherwise have few sanctioning powers.

During TISL's public Sambhashana Forum on COPE, the history, purpose and process of COPE were discussed. While there were many disagreements among the distinguished panelists and guests, all could agree, that despite the strengths of the Report, little action had been taken based on the findings of the report.

As noted during the discussion, COPE functions best as an inclusive organization, dedicated to improving the performance of Public Enterprises and safeguarding the use of public funds.[6] While COPE must and has leveled serious accusations of corruption and mismanagement at certain Public Enterprises, the purpose of COPE is not to punish or divide. While serious transgressions are referred to CIABOC or the courts, without independent sanctioning power, COPE is only responsible for identifying issues, not resolving them. While some see this as a weakness, there are others who consider it important for the parliamentary oversight function to be independent of a judicial function.

Problem Statement

The responsibility for acting on the COPE Report falls primarily on the Parliament itself, which receives Reports from COPE and bears foundational responsibility for acting on the contents of those reports. While Public Enterprises report directly to the relevant ministry, the Parliament has

6. Hon. Rajiva Wijesinha, spoken during the Sambhashana Forum, January 26, 2012.

the authority to order further investigation and compel Public Enterprises to act in accordance with Parliamentary conclusions. The Public Enterprise Department of the Ministry of Finance and Planning is also an important player in this process, and they have prepared detailed guidelines and best practices to assist Public Enterprises.[7]

However, these government bodies have not and are not taking this responsibility seriously. Parliament has yet to take action, and many of the relevant Parliamentary Committees either meet rarely or cannot reach quorum when they do.[8] The 2007 COPE Report likewise raised serious issues of corruption and mismanagement. In an unprecedented move, the House collectively endorsed the 2007 report and called for action. Yet, in the four years since that Report was tabled in Parliament, the most significant response taken was the removal of the then COPE Chairman, a strong advocate for PE reform.[9] Therefore, it is essential for Civil Society to take an active role, pressuring Parliament and the Ministries, and working directly with Public Enterprises to improve their performance.[10]

Such reforms and improvements require a careful balance exercising necessary government oversight with operation autonomy of the enterprise itself.[11] Therefore, the reforms and improvements must be carefully targeted, based on the results of the COPE Report 2011.

Transparency and Accountability: Findings of the COPE Report 2011

As the COPE Report made clear, transparency and accountability are the two crucial pillars of effective public management. Without them, corruption, mismanagement and fraud are allowed to flourish. The COPE Report 2011 casts a harsh spotlight on the way that limited transparency and accountability have in fact led directly to corruption, mismanagement and fraud in numerous Public Enterprises in Sri Lanka.

The COPE Report has focused on the fact that 48 (21%) of the Public Enterprises reviewed were running at a loss. However, the lack of profitability is merely a symptom of a profound lack of transparency and accountability in public enterprise management in Sri Lanka.

7. Available at. http://www.treasury.gov.lk/FPPFM/ped/pdfdocs/guidelines.pdf.
8. Hon. Rajiva Wijesinha, spoken during the Sambhashana Forum, January 26, 2012.
9. Hon. Wijedasa Rajapakse, UNP MP spoken during the Sambhashana Forum, January 26, 2012.
10. Hon. Rajiva Wijesinha, spoken during the Sambhashana Forum, January 26, 2012.
11. Preface to the Code of Best Practices in Corporate Governance for Public Enterprises in Sri Lanka. Available at. http://www.treasury.gov.lk/FPPFM/ped/pdfdocs/guidelines.pdf.

Transparency is crucial to the management of Public Enterprises because it allows for accurate monitoring of performance and management within enterprises. Without transparency, there is a high incentive to engage in behavior that is personally profitable and in contradiction with the public interest.

For Public Enterprises to be effective, they must be held accountable for their performance. To hold Public Enterprises accountable it is necessary to have credible sanction mechanisms that punish wrongdoers and discourage unethical behavior. The COPE Report 2011 made clear that current levels of transparency and accountability of Public Enterprises are not sufficient to combat corruption and mismanagement. And while the COPE has made a positive step in the direction of Transparency, it remains to be seen who, if anyone, will be held accountable for the rash of corruption and mismanagement among Public Enterprises.

1. Transparency

The COPE Report highlighted two areas in which failures of Transparency were widespread, failure to report properly and a willingness to engage in large unregulated loans.

Failure to report properly, including failure to table annual reports

Without proper reporting practices, it is impossible for the public to hold Public Enterprises accountable. It should therefore come as no surprise that the expanded and improved COPE Report 2011 found such widespread mismanagement and financial loss, given the lack of oversight during the past five years. Just a few examples of poor reporting habits include the Securities and Exchange Commission which had failed to submit reports needed for a necessary audit, and the Sri Lanka Institute of Local Governance which has not submitted reports since 2005. Likewise Sri Lankan Airlines and Mihin Lanka have not tabled reports at all.

Other Public Enterprises do follow reporting procedures, but their reports cannot be reconciled. Lanka Sathosa Limited has not been able to explain the variance between the daily sales returns and the registers of the monthly sales, while the Water Supply and Drainage Board (WDSB) had an unidentified balance of Rs. 1, 179,693,016 which had been shown in accounts since 1994. In addition, an unidentified amount of Rs. 19 million had been utilized by the WDSB in 2010.

Still other Public Enterprises appear to use non-reporting as a cover for poor performance. The Independent Television Network (IITN) and Lakhanda Radio have not submitted annual reports since 2009, during which time the radio channel had incurred significant losses not reflected in the accounts submitted. Likewise, the University of Sri Jayawardenapura has failed to table annual reports in 2008 and 2009 and 2009 and 2010, the institution has conducted only two audit and management committee meetings. Yet, Rs. 3 million had been spent on initial plans of a wastewater refining center without verifying land ownership during this period.

Failure to prepare and implement corporate plans and procurement policies

The committee found that many Public Enterprises have not complied with formal requirements to prepare and implement corporate plans and procurement policies. As a result, management is not transparent and Public Enterprises are less likely to be run as efficient businesses. The report noted that Lanka Sathosa, Ceylon Shipping Corporation, The Buddhist and Pali University, the State Printing Company, and National Aquatic Resources Agency have all failed in this regard.

Ineffective procurement policies also remain a major concern as the Government of Sri Lanka continues to pour large sums into infrastructure development. For example, the Report questioned the variance between the initial estimate of Rs. 3.3 billion for the construction of the three playgrounds in Hambantota, Kettarama and Pallekele and the actual expenditure of Rs. 7.10 billion. The corporate plans themselves may also be grounds for mismanagement, as was demonstrated by the Telecom Regulatory Commission (TRC). The TRC was found to have invested Rs. 22.2 million in a sub-standard Corporate Plan, and the matter is currently being investigated by the CID and has been referred to the Bribery Commission.

Unregulated and outstanding loans

One specific area in which the lack of transparency has led to mismanagement and loss is in regards to unregulated loans. Such loans occur both between Public Enterprises and from Public Enterprises to others. Loans between Government institutions included Rs. 10 million owed by Mihin Lanka to Sri Lanka Rupavhini Corporation (SLRC) and Rs. 50 million owed by Sri Lanka Ports Authority to Ceylon Shipping Corporation. Mihin Lanka has failed to provide payments to the Airport and Aviation Services on a Rs. 500 million loan, while the Rubber Manufacturing and Export Corporation owing Rs. 115 million to People's Bank and another Rs. 1.4 million to the Treasury.

2. Accountability

Despite clear abuses of reporting requirements, corporate responsibilities and lax use of capital, the COPE Report highlighted a troubling trend of limited accountability for wrongdoing. In particular, there are two areas in which gross errors have not led to credible sanctions. First is the commonplace failure to recover payments due to Public Enterprise's, while the second is clear accusations of corruption mismanagement and fraud.

Failure to recover payments due

In one particularly troubling finding, the report detailed significant numbers of Public Enterprises that have failed to recover outstanding loans, advances, improper payments, and other due payments. Public Enterprises enjoy the public trust and manage public funds. When they fail to recover monies owed, the burden of this failure falls to the taxpayers. The Report found however that such failure was widespread and at times deliberate. Instead of holding individuals accountable for the failure to collect outstanding debts, there are numerous cases where Public Enterprises let statutes of limitations expire or otherwise failed to collect public assets, while facing no sanctions themselves.

For example, the SLRC, owner of the premier national television station, has taken no action to recover Rs. 42 million for the use of airtime by various political parties. Moreover, Sri Lanka Telecom has failed to pay the Telecom Regulatory Commission telecommunications a staggering total of Rs. 3,54 106, 357 in taxes. Similar patterns of mismanagement reach across a broad spectrum of Public Enterprises. The University of Jaffna incurred a colossal loss of Rs. 117,530,741 due to 133 lecturers who defaulted on payments to the institution. Likewise University of Sri Jayewardenepura incurred a loss of Rs. 69 million due to failure in the recovery of lecture fees and breach of agreements.

Mismanagement and Fraud

Unfortunately, the authors of the Report were compelled to level very serious charges of mismanagement and even fraud against a number of Public Enterprises. These examples of unaccountable individuals and organizations abusing public funds should have led to immediate action. Management personnel should have been terminated and investigations initiated.

The Report found that the Southern Development Authority had been spent Rs. 10 million on a land acquisition deal but the planned project had not been initiated and no dividends had been received despite making a massive investment of over Rs. 43 million.

In 2006, the SLRC has made a profit of Rs. 137 million, which dwindled to Rs. 4.7million by 2009. SLRC has created a post of CEO irrespective of the fact that there is no provision for the creation of such a post under the SLRC Act. In the Samurdhi Authority, ten members of the staff of the Samurdhi Bank, NuwaraEliya, had defrauded a sum of Rs 4,005,000 by recording it as payment made to beneficiaries.

COPE had queried the irregular payment of Rs 650,000 to some officers, to which Sri Lanka Cricket officials who appeared before the committee, replied that this amount was paid for some officers for "doing a good job on the Australian tour," on a proposal of the interim committee. COPE has asked for a list of names of people who were paid, but so far no significant follow-up has occurred.

Effects of Weak Transparency and Accountability

The lack of transparency and accountability has combined to create the most visible finding of the COPE Report: that a significant number of Public Enterprises are performing at a loss. A full list of these companies is available online.[12] What is important to note is not just that some 21% of Public Enterprises reviewed are losing money, but also the high profile and size of many of these leading loss makers. For example in the airline sector, Sri Lankan Airlines posted a loss of Rs. 9 billion while MihinLanka incurred a series of losses ranging from Rs. 3,356million (2007/2008), to Rs. 4,657 million (2008/2009) and Rs. 5,722 million(2009/2010).

12. http://www.parliament.lk/committees/ListCommReport.do?comID=COMM1045.

Such high profile Public Enterprises as the Sri Lanka Tea Board, Ceylon Petroleum Company, and the Lanka Ports Authority were also not immune from poor performance. The Samurdhi Authority, Sri Lanka Transport Board, and the National Enterprise Development Authority were also underperforming. Even the education sector underperformed, with Peradeniya University posting a loss of Rs. 105 million with Open University, Moratuwa University, and Sri Jayawardenapura University posting significant losses as well.

It must be remembered that such losses are in fact the losses of public money that could have been invested in infrastructure, health, education, or any other valued public goods. When Public Enterprises waste public funds, it is a serious breach of good governance. When such funds are wasted without transparent monitoring or accountability to the public, it is a willful abuse of the public trust. In the context of 2011's Underperforming Assets Bill, the critical reader is forced to question whether nationalizing corporations is an effective strategy in light of the performance of existing Public Enterprises.

By bringing many of these allegations to light, the COPE Report made promising steps in the direction of Transparency. However, the weak official response to the Report demonstrates that accountability remains an illusion.

Transparency International Sri Lanka's Position on the COPE Report

In consideration of the COPE Report 2011, having learned from the Sambhashana Discussion Forum on the same, and having reviewed the existing knowledge on Public Enterprises in Sri Lanka, TISL accepts and affirms the following:

- That the COPE Report 2011 is a positive step forward in improving the management of Public Enterprises,

- That transparent and accountable management of Public Enterprises is essential to improving performance and combating corruption in these enterprises,

- That Civil Society must play a central role in monitoring and supporting reforms to the Public Enterprise System, and

- That inclusive, constructive engagement of civil society is the most effective strategy to achieve meaningful reforms;

TISL takes the position that the public at large and Civil Society organizations in particular must engage with the Parliament, relevant Ministries and the Public Enterprises themselves to improve the performance of these enterprises through increased transparency and accountability.

Furthermore, as an advocacy organization, TISL urgently recommends that:

- The Committee on Public Enterprises should actively encourage transparency in its operations, meetings should be opened to the media, and civil society should be consulted in the process of reviewing Public Enterprises.

- The public at large should contact their Member of Parliament and request that the contents of the COPE report be followed up with further investigation and meaningful sanctions.

- Civil Society Organizations should endeavor to work directly with COPE to raise public awareness on the importance of parliamentary oversight generally and the need to hold specific Public Enterprises accountable specifically.

- The Media should take the initiative to report on issues of extreme mismanagement and corruption amongst Public Enterprises and continue to do so until meaningful action is taken to hold these enterprises accountable.

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