

Mega Cabinets in Sri Lanka

(Report No 1)

Perceptions and Implications



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Introduction

Transparency International defines political corruption as “the misuse of political power for private benefit, in particular the benefits of power, status and wealth”¹. According to the definition, it takes two basic forms: corrupt accumulation and extraction and corruption for power preservation and expansion and includes situations where loopholes in national laws and regulations are deliberately side-stepped, ignored and custom-made. Notably, an idea survey conducted among a sample of the Sri Lankan public uncovered some common public perceptions on “ministers” in Sri Lanka, which while being predominantly pessimistic were significantly analogous to the TI definition with the use of terms such as “looter”, “liar, parliament, power, rich”, “crooks”, “big tummy-always shouting doing nothing”, “stupid”, “corruption”, “too many”, “bribery” etc.

The Cabinet of Sri Lanka under Executive President Mahinda Rajapakse was sworn in on 23rd November 2005 with 26 Ministers. With subsequent reshuffles it has expanded to more than four times its original number within the last two years to a total of 108 Ministers at present. This involves 52 Cabinet Ministers, 36 Non-Cabinet Ministers and 20 Deputy Ministers with the Executive President himself holding 6 ministerial portfolios including that of Finance and Planning. Two issues pertaining to the present Sri Lankan Cabinet may be highlighted: firstly, the socio-economic and political *necessity* for a large Cabinet and secondly, if so the *procedure* followed for purposes of allocation and utilisation of funds by each minister. Consequently, several questions need to be addressed seriously, speedily and effectively. Does not the political and economic cost of maintaining mega Cabinets in Sri Lanka exceed the benefits to the public? What about the argument that the reduction of the size of the Cabinet through integration and coordination could facilitate the achievement of national goals with lesser cost? If in fact there is a justifiable need for a large Cabinet e.g. necessitated by the Constitution, can the large expenditure and adverse legal implications be rationalised i.e. impact on the doctrine of separation of powers,

¹ Inge Amundsen, *Political Corruption*, U4 Issue 6: 2006, U4 Anti-corruption Resource Centre, 2006, p.6

lack of accountability? What options are available to minimise expenditure under the existing system? Finally, is the present Cabinet capable of ensuring standards of good governance?

Public Perceptions on Mega Cabinets

TISL conducted a series of interviews since October 2007 to obtain views on the size and expenditure of the present Cabinet in Sri Lanka from academics, politicians, professionals, media personnel, administrators, public servants, NGO representatives etc past and present, male and female. Some of the views are summarized below under generic terms.

It was interesting to note how several ministers in the present cabinet blamed the Constitution as the root cause of the problem. According to them, under the existing Constitution a government elected to power is rendered unstable unless the support of other parties in Parliament is obtained, which in effect forces the government to attract and maintain their support by offering them ministerial portfolios. The Opposition members, while dismissing this as a 'convenient

"Ministers" in the Public Eye

- Holds executive power
- Biased towards Political Party
- Selfish and money-minded
- Governs the country
- Holds responsibilities
- Foolish
- At times a curse to the country
- In Parliament
- Power hungry
- Rogues
- Politics
- Representatives of the government / People
- Corrupt
- Brings progress as well as disaster to the country
- Liars
- Owes fair service to the People
- Destabilises the State machinery
- Should ensure the country's development
- Accountable
- Makes promises

(views of 38 CBO representatives obtained in Anuradhapura on 27.12.2007)

excuse' alleged that the problem lies with the Executive Presidency which is vested with extraordinary powers and almost no accountability. The overall allegation was that the expenditure by the present cabinet without justification and accountability is in complete disregard of the public interest and is exercise of power for power preservation and personal extravagance. Views obtained from civil society were predominantly critical of the present Cabinet. A legal scholar expressed concern over the impact on separation of powers and stated that crossing the floor should be a bar to hold Executive office while a political scientist pointed to the problem with the electoral system (Proportional Representation) as encouraging the exercise of power for power preservation. A sociologist stressed on the importance of the budgetary process - who decides on the allocation and on what basis as an important factor. He further stated that it is worth analysing the increment of the number of cabinet ministers over the years and the corresponding increment of allocations as a percentage of the GDP, to ascertain the impact on social welfare. To several members of civil society including media personnel, the inaccessibility of information relating to ministerial expenditure and the lack of transparency and accountability was a serious concern within a 'democratic' society. Several professionals expressed the view that the necessary laws and mechanisms are in place and that what is lacking is political will and public awareness to implement them effectively. In their opinion, ministerial expenditure is part of public administration and therefore the government should act with more responsibility in this regard; whereas lack of coordination among and commitment to good governance by the state machinery contributes to the current state of affairs. However, a different perspective was expressed by a former public servant who was of the view that rather than imposing limits on ministerial expenditure, the issue is to investigate whether the money is utilised productively, which could be a subjective opinion unless evaluated in an unbiased manner.

Jumbo Cabinet: Impact on Good Governance and Democracy

A jumbo cabinet can have a chilling effect on the doctrine of separation of powers and eventually on democracy through the lack of transparency and accountability of its members with regard to how they utilise public resources. This is because, the large number of ministerial portfolios is indicative of the fact that a majority of the Legislature forms part of the Executive branch. When 108 out of the 225 ministers in Parliament are members of the Executive, the separation of powers as envisaged in the Constitution is subverted. For instance, how can the legislature be expected to check the excesses and omissions of the Executive when almost half of the Legislature itself comprises the Executive? Another example of how political practice has in effect undermined or subverted the objective(s) of separation of powers is the practice of the President holding the portfolio of finance. The Executive Presidency is the strongest arm of the government under the 1978 Constitution. The practice of assigning the Finance portfolio to the Presidency on the one hand adds even more power to an already powerful position. Due to the immunity clause in Article 35 of the Constitution, such a President is personally immune during office from any legal proceedings. Furthermore, according to Article 151, the Minister of Finance can authorise the use of the contingency fund *with* the consent of the President. Clearly the drafters of the Constitution envisaged the requirement of consent by the President as an accountability mechanism. Given that the President himself is the Minister of Finance, the accountability mechanism as expressed in Article 151 is undermined and with that the objective of the separation of powers.

Article 3 and 4 of the Constitution vests sovereignty in the People and is exercised by the Executive, Parliament and the Judiciary *on behalf of* the People. Jurisprudence emerging from the Supreme Court has interpreted these articles to mean that power is held *in trust* for the people. This public trust doctrine requires that all branches of government that exercise authority under the Constitution are transparent and accountable and that power is exercised *only* in the interest of the People. Therefore a minister is accountable to the People of Sri Lanka as to

how he/she uses the funds allocated to his/her ministry and for his/her official use.

According to Articles 42 and 43 of the Constitution, the Executive, which consists of the President and the Cabinet of Ministers, is accountable to Parliament. Two main ways that these provisions are given effect to are the Parliamentary oversight mechanisms and the process of raising questions in Parliament. However, the reality is that neither of these mechanisms has been used effectively to enforce standards of transparency and accountability on ministers. The first COPE (Committee on Public Enterprises) report (January 2007) was much welcomed by the general public as it identified persons responsible for corruption in public institutions that were investigated. However, to date no action has been taken on the findings of this report, thus exemplifying how the traditional procedures of checks built into the Parliamentary system are being undermined in Sri Lanka. As regards parliamentary debates, each Minister of Parliament (MP) gets an opportunity of raising a designated number of questions in Parliament. However once an MP has expressed the desire to raise a question, it has been pointed out that the question will generally be taken up only after about three months. While such delay takes away from the currency of the question it is manifested that the process does not yield effective results.

Moreover it has been pointed out that the budget process in Parliament which is intended to act as a check on governmental expenditure is woefully inadequate as an oversight mechanism. Irrespective of how unsatisfactory or flawed the budget may be, the budget 'debate' in Parliament is essentially predictive without any room for constructive debate. The situation has been compounded by the prevailing political culture which is predicated on party politics rather than public interest. For instance, even though the budget presented in Parliament last year allocated unspecified funds to the President and authorised the secretary to the Treasury the power to transfer unutilised funds to other headings, whether or not the parties voted with the government depended on other factors such as the government's willingness to abrogate the Ceasefire Agreement. Additionally, the

recent spate of killings and other terror tactics against MPs, irrespective of the responsibility of the ruling party, are an indication of the realities in parliamentary politics today. While some representatives of the People are not acting in the interests of the People, the right of some MPs to be independent in the performance of the duties in Parliament are being restricted by illegal means; hence jeopardising the overall efficiency of the oversight mechanisms.

Conclusion

In the light of these realities, how can standards of good governance be maintained? How can the true spirit of democracy be revived? During the interviews, the main argument made in support of a jumbo cabinet was that under the 1978 constitution, in order to maintain a majority in parliament a government must offer portfolios to MPs. Therefore it seems that portfolios in the cabinet have in fact become a form of bribe offered to MPs in return for their unquestioning loyalty to the government. They also operate as carrots on sticks in front of the proverbial horse that lure MPs from the opposition to the government. It is clear then that the primary objective in forming a jumbo cabinet is for the ruling party to remain in power. As it was pointed out Executive power should *only* be exercised in the interests of the People. Maintaining a jumbo cabinet at high cost with serious practical implications e.g. prolonging focussed deliberations, in order to stay in power would clearly fall outside this scope. Such misuse of executive power amounts to corruption and the rationale for the existence of a jumbo cabinet then is an excuse to perpetuate a corrupt practise for purposes of power preservation.

A major obstacle emerging during this study has been the inability to access information. Democracy and good governance are values that can be nurtured only in a dynamic environment where there is a free flow of information and ideas. This in turn leads to public dialogue where values such as transparency, accountability and diversity are nurtured. Where the information itself cannot be

accessed, this democratic process is nipped in the bud. How can there be an unbiased evaluation of the level of productivity of public institutions when information is withheld without lawful justification? In deed, naming and shaming could be utilised as effective measures to curb misappropriation in addition to prevention and prosecution; but how is this possible without the availability of adequate information? The importance of free flow of information is highlighted even more in the context of the failure of other democratic processes to fulfil their objectives. Be it the Parliamentary oversight mechanisms, the quality of debates in Parliament including the Budget or the accountability of the Executive to the Legislature – the reality seems to be that these processes are being undermined for short term political advantage.

A recurrent assertion during the survey, which echoes the larger public opinion, is the need for social mobility and political will to advocate change towards good governance in Sri Lanka. Interestingly, some professionals couched this necessity in the form of a duty that professionals owed to society to prevent misappropriation of public funds. Sri Lankan political history does record incidents of conviction of Ministers in the event of alleged misappropriation of public funds, which exemplify the notion that “if there is a will, there is way”. Hence, TISL strongly advocates for active public involvement to demand a system of governance that is both transparent and accountable, which should in turn be responded to by political will in that regard.

The MEM project will continue its research concerning the mega cabinet with the objective of obtaining substantive answers to some of the questions raised in this paper, with a view to creating a public debate on the need for adhering to standards of good governance by availing the necessary information in that regard.