

Dr. Wijeyadasa Rajapakshe (PC),
Hon. Minister of Justice, Prison Affairs and Constitutional Reforms,
Ministry of Justice, No 19,
Sri Sangaraja Mawatha,
Colombo 10.

19.12.2022

Hon. Minister,

Observations on the Anti-Corruption Bill

Please find attached the observations of Transparency International Sri Lanka (TISL), The National Movement for Social Justice (NMSJ) and the People's Accountability Movement (PAM) on the latest working draft of the Anti-Corruption Bill shared with TISL (as of 9th November 2022). This effort to provide substantive feedback was done in collaboration due to the shared interest in providing the feedback to contribute to this opportunity to create an anti-corruption law that is fit-for-purpose. Thank you for the opportunity to provide our observations.

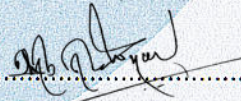
We thank you for the opportunity to meet with you as well, to set out these points more fully, and to clarify anything further. We urge the Ministry to ensure that extensive public and expert consultation is conducted on this, via the official channels of the Ministry. Given the crucial importance of this Bill at this critical time in Sri Lanka's national conversation on corruption, it would be really important to open the Bill up for public comments.

Thanking you,

Yours sincerely,



Sankhitha Gunaratne - Attorney-at-Law
Deputy Executive Director



Palitha Lihiniyakumara - Secretary
The National Movement for Social Justice

No.	Section	Concern	Recommendation
1	Preamble	Line 5	Deletion of the word 'other'.
2	Preamble	<p>Lines 6 and 10</p> <p>Offences related to assets are not recognized in the Preamble.</p>	<p>To edit the lines 6 and 10 as follow.</p> <p>Line 6: "INVESTIGATE ALLEGATIONS OF ASSETS, BRIBERY, CORRUPTION AND..."</p> <p>Line 10: "FOR OFFENCES RELATED TO ASSETS, BRIBERY, CORRUPTION AND..."</p>
3	1(3)		Add "different Parts or sections of those Parts"
4	2(e)	Offences related to assets are not recognized here.	<p>It is recommended to amend as follows.</p> <p>"mandate the Commission to conduct preliminary inquiries and investigations into, and to prosecute against offences related to assets, bribery, corruption and associated offences;</p>
5	4	<p>Section 14 empowers the Commissioners to institute action.</p> <p>S. 4(1) sets out persons of several disciplines to be considered in the appointment of the Commissioners. It is imperative that the majority of Commissioners who decide to file action have a sound understanding of law to determine whether there is a <i>prima facie</i> case when instituting action. This task cannot be performed by persons of any other discipline but law. Whilst the expertise of persons set out in paragraphs 4(1) b, c, d, e, f, g is important, their expertise can be</p>	It is recommended that a majority of Commissioners be appointed from only the legal discipline.

		used in an advisory capacity. (See recommendation number 41 below)	
6	4(2) (g)	Language. Subsection 2(g) can be misconstrued that the Commissioners are only liable to declare their declarations of assets and liabilities only after assuming their duties and not regularly thereafter.	In order to avoid gendered language in the Act, we recommend the word "his" be removed and replace with "their". Add "and thereafter in terms of this Act", at the end of paragraph (g).
7	N/A	Appointment of Commissioners.	Insertion of 4(4) as follows. "The Constitutional Council shall only recommend members to be appointed as Commissioners pursuant to a transparent selection process with predetermined marking criteria."
8	5	Disqualifications from being a commissioner	Include in S. 5(d) "holds a position in any diplomatic mission, Presidential Commission or Task Force, "
9	7(1)	Resignation being contingent upon the President's discretion and authority to appoint the substitute member in S. 7 conflicts with the independence of the appointment and resignation process. No public official should be coerced to serve in a post if they are either unwilling or unable to perform their function.	Remove 'and such resignation shall take effect upon it being accepted by the President in writing' in S. 7(1). "
10	8 (1)	This Section provides for the Commissioners to hold office for a	It is recommended to amend 164 (2) (a) as follows.

		period of three years. However, the Section 164(2)(a) of this Act contradicts with this Section since it provides for the Chairman of the Commission to hold office for five years, one member to hold office for four years and the remaining officer to hold office for three years.	"the Commission established under the Act No. 19 of 1994 and functioning as such on the date of commencement of this Act shall be deemed to be the Commission for the purposes of this Act until a new Commission is established under Part I of this Act, and the members holding office immediately prior to the date of commencement of this Act shall be deemed to have been appointed as such under this Act and continue to hold office until the new members are appointed within 03 months from the date of commencement of this Act.
11	14(1) (a)	The words "the making of an investigation into an allegation of bribery of corruption" is ambiguous.	Replace the words "the making of" with "conducting".
12	15	Code of conduct of the Commission.	It is recommended that until such code is created, the Establishment Code be applicable to the officials of the Commission <i>mutatis mutandis</i> .
13	17	Appointment of the Director-General should be transparent	It is recommended to amend S. 17(1) to add the following. "The Constitutional Council shall only recommend individuals to be appointed as the Director-General pursuant to the conduct of a transparent interview process with predetermined marking criteria."
14	17(2)	Any interest of the Director-General should be disclosed and the DG should not take part.	Delete the words "unless the Commission decides otherwise".
15	18	Powers of the Director-General is not recognized in the short title.	It is recommended to amend the short title as follows. "Powers and Functions of the Director-General."
16	19(1)	Qualifications and disqualifications to be	Include (h) holds a position in any diplomatic mission, Presidential Commission or Task Force,

		appointed as the Director General.	
17	19(2)(f)	Further disqualifications from being appointed as the Director-General	It is recommended to amend S. 19(2)(f) as follows. "is, or has been within three years prior to such person's nomination for such appointment, a Member of Parliament, a member of any local government authority or the President of the country".
18	23(1)	There should be sufficient provisions to ensure that the Director-General can function without regard to considerations of reappointment, and to political interference.	The performance of the Director-General should be subject to the scrutiny of the Constitutional Council, giving rise to the possibility of termination if the Constitutional Council finds his performance to be unsatisfactory.
19	26(1)	The independence of the Commission and its investigations would largely depend on the independence of the investigators and legal officers. Currently police investigators are taken from the Sri Lanka Police to carry out investigations for the Commission, and this can affect the independence of the Commission.	It is recommended that the investigation division only consist of investigators appointed exclusively for the Commission. The current investigators who are seconded from the Sri Lanka Police should be given the option of either joining the Commission as permanent staff (with similar promotional prospects) or they should be sent back to the Sri Lanka Police.
20	28	The Right to Information Act should prevail subject to section 5(1) thereof. This is to ensure transparency and accountability of the Commission (including any member of the Commission, the Director-General or	Include a savings clause to ensure the prevalence of the Right to Information Act. With respect to any sensitive information, any refusals to provide information can happen under section 5(1) of the Right to Information Act. Amend s. 28 to read as follows: (1) Any member of the Commission, the Director-General or any employee of the Commission or any other person

		<p>any employee of the Commission) since Sections 26 (3) and 56 of this Act could limit public access and disclosure of information to the public. A similar secrecy clause has in the past acted as a barrier to public disclosure of case progress, CIABOC's activities, etc.</p> <p>Furthermore, it is imperative that Sri Lanka's information disclosure regime should not be fractured, and should remain consistent with the scheme foreseen in the Right to Information Act No. 12 of 2016.</p>	<p>appointed under section 27 shall not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purpose of giving effect to the provisions of this Act or where provision has been made under this Act or any other Act including the Right to Information Act No. 12 of 2016, to share information.</p> <p>(2) Every member of the Commission, the Director-General, and every employee of the Commission or any other person appointed under section 27 shall, before entering upon the duties of his office, sign a declaration to the effect that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purpose of giving effect to the provisions of this Act or where provision has been made under this Act or any other Act including the Right to Information Act No. 12 of 2016, to share information.</p> <p>Subjection (3) should remain the same."</p>
21	29 (1)	<p>Having different definitions in the Penal Code, the Constitution and the Bill could cause confusions that can give rise to defenses that can frustrate prosecution efforts.</p>	<p>It is recommended to amend as follows.</p> <p>"The members of the Commission, and the Director-General and officers and employees, appointed to assist the Commission shall be deemed to be public officials within the meaning of this Act."</p>
22	31(2)	<p>Proviso is ambiguous and irrelevant.</p>	<p>Deletion of the proviso.</p>
23	31	<p>Potential conflicts of interest in funding.</p>	<p>Add a new subsection to require mandatory public disclosure of all receipts and sources of funds.</p> <p>"(6) Where any money is received by way of donations, gifts or grants under subsection</p>

			(4) (b), the sources and purpose for which such donation, grant or gift was made available shall be made public within one month of such receipt."
24	32 (1)	<p>To ensure the independence of the officers who carry out the investigations and/or making of recommendations against suspects, it is imperative that the Commission does not have any influence on these officers.</p> <p>Therefore, regarding the promotion and the disciplinary control set out in S. 32(1) we recommend that the power of promotion, disciplinary control and dismissal to be carried out by the Public Service Commission.</p>	<p>It is recommended to amend 32(1) as follows.</p> <p>"The appointment, promotion and disciplinary control of the officers and other employees of the Commission shall be vested in the Public Service Commission and shall be carried out in the manner as may be determined by the Public Service Commission."</p>
25	41	<p>In order to ensure transparency of cases that are filed and/or closed, a mechanism should be included to review the justifications for the same.</p> <p>In Sri Lanka's current context where corruption is widespread, and citizens continue to express a lack of faith in law enforcement authorities and the administration of justice, extra measures need to be taken to assure the public of complete</p>	<p>It is recommended that to add a new subsection as follows.</p> <p>"Each file investigated by the investigation division be sent to the Special Advisory Committee to the Commission.</p> <p>There shall be a committee to be known as the Special Advisory Committee to the Commission which shall have the following functions:</p> <ul style="list-style-type: none"> i) Once an investigation has been completed by the investigation division, to receive, scrutinize and endorse or refute the steps taken and the decision whether or not to proceed to litigation, ii) Submit a report to the Commission, on (i) above,

		<p>transparency in the law enforcement process.</p> <p>It is recommended that to create a "Special Advisory Committee to the Commission". The members of this Committee can hold the Committee membership as a voluntary position with a nominal payment determined by the Parliament and charged to the Consolidated Fund.</p>	<ul style="list-style-type: none"> iii) Review any decision to close any investigations and make recommendations to the Commission, iv) Review any decision to withdraw a case and make recommendations to the Commission, v) Review any decision to withdraw an indictment and make recommendations to the Commission. <p>Composition of the Special Advisory Committee.</p> <p>The Special Advisory Committee to the Commission shall be appointed as follows:</p> <p>The Special Advisory Committee shall consist of three members appointed by the President on the recommendation of the Constitutional Council pursuant to the conduct of a transparent interview process, with predetermined marking criteria, from among persons who have expertise, reached eminence and have at least ten years of experience in one or more of the following fields:</p> <ul style="list-style-type: none"> (a) law (b) anti-corruption (c) forensic auditing (d) forensic accounting (e) engineering (f) international relations and diplomatic services (g) management of public affairs; or (h) public administration. <p>Every member of the Committee shall-</p> <ul style="list-style-type: none"> (a) be a citizen of Sri Lanka (b) be not more than sixty-two years of age as at the date of appointment (c) be physically and mentally fit (d) be competent, honest, of high moral integrity, and of good repute (e) disclose and keep the Constitutional Council apprised of any conflicts of interest that may arise from any external engagements".
--	--	---	--

26	42(4)	Printing error.	Amend as follows: 42(4)(f) trace, arrest, interview and record a statement of any person who has committed an offence referred to in Section 41 ;"
27	43 (1)	This Section is ambiguous. Word 'by any person' later being referred to as 'which he is alleged to have committed the act' is confusing, and could mean that the person who is accused of committing an offence is also the person complaining/giving information. And the provision of information does not connect with this section and should be moved to S. 43 (2).	Amend as follows: "Complaints or information relating to the commission of an offence referred to in section 41, by any person whether or not the accused person is holding, on the date on which the complaint is received by the Commission, the office or employment by virtue of holding which he is alleged to have committed the act constituting the offence, shall be not invalidated by the non-holding of office or employment at the time."
28	43 (2)	Connect with the latter half of previous section for clarity and better understanding,	Amend as follows: "The complaints to the commission may be provided orally, in writing or in an electronic communication and complaints given orally shall be reduced to writing in the language it was given, by any officer of the Commission as directed by the Commission as soon as possible:"
29	44	Lack of transparency about steps taken on complaints received.	Amend as follows: "Any person who has made a complaint under section 43 shall be provided with the facts of an investigation conducted under section 42, upon a request made in that behalf in a manner which does not hinder the progress of the investigation. The Commission shall communicate the basic steps taken in relation to the investigation."

30	45(5)	Printing error.	Amend as follows: “(5) A copy of the list referred to in the above subsection shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.”
31	51	The Bill does not mention “intimate samples” in any section.	
32	51(12)	The privacy of the non-intimate samples and results is not ensured.	Amend as follows: “The Commission shall make regulations on the privacy and limitations on the use of non-intimate samples and results of forensic analysis and the disposal of samples and records”.
33	53(11)	The procedure indicated is ambiguous. We feel that the discretion to decide how to deal with a property of this nature should be with the court.	Amend as follows: “Where any movable property seized is liable to speedy decay or deterioration, or which cannot be maintained without difficulty, or which is not practicable to be maintained, and which cannot be dealt with under subsection (7), an authorized officer of the Commission may sell or cause to be sold the property and shall hold the proceeds of the sale in the manner as may be prescribed by Court upon an application made in such regard by the Commission , after deducting therefrom the costs and expenses of the maintenance and sale of the property, to abide the result of any proceedings under this Act.”
34	55(4)	Commission's power to authorize the Director-General to use video recording and using listening and bugging devices could be subject to abuse. In addition to that, the window of twenty-four hours to obtain the judicial order does not	Add a new subsection as 55(5) as follows: “ Where such judicial authorization is refused by the High Court, the Court shall direct the Commission on the privacy and disposal of such information. ”

		<p>safeguard the information that can be accessed within that window, if the court rejects such interception.</p> <p>The court should direct the Commission in such cases, how to deal with the intercepted information.</p>	
35	56	<p>It is imperative to take measures to ensure the protection and preservation of information received or collected, in accordance with prevailing data protection laws.</p>	<p>Amend as follows:</p> <p>“The Commission shall by way of rules prescribe the criteria for the protection and preservation of information received or collected by the Commission by way of a data message, electronic document, electronic record or other communication in electronic form.”</p>
36	60(1)	<p>Language error.</p> <p>“... does not exceed less than ten thousand rupees”</p>	<p>Should read as "exceeds ten thousand rupees"...</p>
37	60(2)	<p>The unfettered discretion of the Director-General to take over an investigation under this section could be abused.</p>	<p>Amend as follows:</p> <p>“The Director-General may provide advice, give directions or upon the direction of the Commission shall take over at any stage any investigation which has commenced under this section in respect of any offence and to conduct and direct such investigation.”</p>
38	61(1)	<p>Joint investigations between the Commission and any other investigative authority in Sri Lanka will give more effect to the purposes of this Act, especially since this section refers to offences referred to in section 41, which includes offences</p>	<p>Amend as follows:</p> <p>“If the circumstances of the case so justify, joint investigation teams shall be formed for a specific period by an agreement between the Commission and any other investigative authority in Sri Lanka as may be determined by the Commission for the purpose of conducting an investigation into an alleged offence referred to in section 41.”</p>

		under the Prevention of Money Laundering Act.	
39	65 (2)	Section 65(1) gives power to the Commission to direct the Director-General to institute criminal proceedings. Section 65(2) as it is now does not subject the Director-General to receive directions from the Commission which allows room for abuse of discretion.	Amend as follows: “, Notwithstanding anything to the contrary in any other written law, the Director-General shall, in accordance with section 65(1) of this Act , have the power to institute proceedings in the Magistrate's Court through a charge sheet signed by the Director-General and section 136 of the Code of Criminal Procedure Act, No. 15 of 1979 shall not apply for the purposes of this section.
40	65(4)(c)	Not relevant to MC proceedings.	Delete 4(c).
41	67	Withdrawal of indictments	Add a new subsection 67(6) as follows: “When withdrawing an indictment under this section, the Director-General shall make publicly available the reasons for such withdrawal, and the conditions upon which such withdrawal has been effected.”
42	71(3)		It is recommended to add 71(3)(f) as follows: “(f) to pay a sum as compensation to victims of the crime as decided by the Court.” And amend 71(3) as follows: “Where the Commission agrees in terms of subsection (1) to suspend or defer the criminal proceedings against any person alleged to have committed an offence under this Act, the Commission shall prefer an application to the High Court, to obtain the sanction of such Court for the imposition of (a) and one or more of (b), (c), (d), (e) (f) to be fulfilled within a stipulated period, on such person as consideration for the suspension and deferment of the criminal proceedings against such person –”

43	73(1)	Does not include the instances of the Commission receiving information on any offence prior to it happening and only protects informers of an offense that has happened already.	<p>It is recommended to amend 73(1) as follows.</p> <p>“Where the Commission confidentially receives information to the effect that an offence referred to in section 41 has been committed, is likely to be committed or suspected to have been committed, that information and the identity of the informer shall not be revealed and the informer and all matters relating to such information shall not be disclosed in any proceedings before any court, tribunal, or other authority.”</p> <p>This will safeguard the protection of informers who inform of an offence prior to it happening, of the likelihood of such an offence happening.</p>
44	73(4)	The fine for the offence of revealing the identity and information of the informers is insufficient.	<p>It is recommended to amend 73(4) as follows.</p> <p>“Any person who contravenes provisions of subsection (1), commits an offence and on conviction by a High Court be liable to a fine not exceeding one million rupees or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.”</p>
45	74(10)	Does not include the instances of the Commission receiving information on any offence prior to it happening and only protects informers of an offense that has happened already.	<p>It is recommended to amend 74(10) as follows:</p> <p>“(10) Where under subsection (1) or (2) information is received in confidence to the effect that an offence under this Act has been committed, is likely to be committed, or is suspected to have been committed, that information and the identity of the whistleblower or shall not be revealed except as provided for in this Act for purposes of investigation and the identity of the whistleblower and all matters relating to such information shall not be disclosed in any proceedings before any court, tribunal, or other authority.”</p>
46	75(4)	Directives issued by the Commission on the protection of witnesses and persons assisting the Commission must	<p>It is recommended to amend as follows:</p> <p>“It shall be the duty of the Inspector General of Police, or such public authority or public official, to comply with any such direction given by the Commission”.</p>

		<p>be mandatorily followed by the respective public authority or public official.</p> <p>Having an escape clause of "as far as reasonably possible" could render the witness and informer protection provisions redundant if the implementation is conditional upon the definition of "reasonably possible" of the IGP or public authority/official.</p>	
47	80(1)	<p>80(1)(m) covers only the staff officers of the Central Bank of Sri Lanka, which excludes the state bank officials.</p>	<p>It is recommended to amend 80(1) (m) as "staff officers of State banks".</p> <p>It is further recommended to add a new paragraph as 8(1) (dd) as follows.</p> <p>"any person who receives any form of remuneration from an allocation of the consolidated fund".</p>
48	81(2)	<p>This is inadequate, and we recommend the inclusion of the paragraph in the recommendation column.</p>	<p>"Assets and liabilities shall include, assets and liabilities in and outside Sri Lanka, movable and immovable property owned by the declarant in whole or in part or held by the declarant in bank accounts or in any form, any property in which the declarant has a beneficial interest and any property acquired by the declarant during the period to which the declaration relates, in the name of his spouse or child, corporate shareholder rights, NFTs (Non-Fungible Token), cryptocurrencies and all cryptographic and digital assets, directorships, beneficial ownership of companies, financial obligations, concurrent work, conflict of interest, memberships in organizations and their governing bodies."</p>

			For this chapter, a declarant means all persons set out in S. 81.
49	82(1)(e)	Since this section applies to all persons referred to in S. 81, we recommend that the amount stated be reduced to at least two million.	It is recommended to amend 82(1)(e) as follows: "where a significant change in the value of assets and liabilities amounting to two million rupees or more than two million rupees occurs, within one month from the date of such occurrence; and"
50	82(2)	Refers to paragraph (u). Paragraph (u) refers to "office- bearers of recognized political parties..."	This should refer to (w). Recommended amendment to the proviso of 82(2): "Provided that, a person to whom this Part applies as is referred to in paragraph (w) of subsection (1) of section 80 shall submit his declaration for the period up to the date of the declaration made under the relevant law declaring the date of election."
51	83(1)	Does not specify when the e-system would be created.	It is recommended amend 83(1) as follows: "The submission and verification of declarations of assets and liabilities shall be made through the centralized electronic system administered by the Commission, which shall be established by the Commission (hereinafter in this Part referred to as the "Central Authority") within 18 months of the coming into force of this Act."
52	84(2)	Subsections 2 and 3 can be merged.	Recommend the deletion of 84(3) and amend 84(2) as follows. "The Central Authority shall investigate in terms of this Act, to conduct a verification of the declaration of assets and liabilities in the following circumstances. (a) when such declarations are selected for verification according to the procedure prescribed by rules; (b) upon receipt of a complaint from any person on an illicit enrichment or conflict of interest with regard to a person to whom this Part applies; or

			(c) when the Central Authority ex mero motu detects prima facie proofs of possible violation through public sources or its own investigations."
53	84(2)		<p>Include</p> <p>"(d) Verification upon red-flags of illicit enrichment or discrepancies in assets being detected by the automated system (e) Verification upon journalistic investigations"</p> <p>Also, Specify in the provision a time period within which a verification will be conducted after submission.</p>
54	88(3)		Insert "The provisions of the Protection of Personal Data Act No. 9 of 2022 shall not apply to the implementation of this Section."
55	88	The law does not specify the time period for the asset declarations submitted to the system to be made publicly available.	<p>Add a new subsection as 88(4) as follows:</p> <p>"The redacted version of the declaration of assets and liabilities shall be made available to the public within three weeks from submission date".</p>
56	89	<p>Refers to paragraph (u).</p> <p>Paragraph (u) refers to "office- bearers of recognized political parties..."</p>	<p>The reference should be to (w).</p> <p>Recommended amendment to 89: "All the candidates of elections referred to in paragraph (w) of section 80 shall, submit a copy of the form and a summary of the declaration of assets, and liabilities, to the Commissioner of Elections together with such candidate's nomination papers."</p>
57	90(4)	Currently there are no sanctions imposed under the election laws if a candidate does not submit the asset declaration. Therefore, a specific provision should be included in this proposed draft.	<p>It is recommended to insert a deeming provision be included where all nominations submitted without asset declarations shall be deemed invalid.</p> <p>Note: This deeming provision is inserted to avoid the wastage of public resources on prosecutions of candidates who win or lose elections. Refusing nomination to a</p>

			candidate who does not submit their asset declaration.
58	90(6)	The fine is inadequate. It should be increased to serve as a stronger deterrent and preventive measure.	It is recommended to amend 90(6) (a) and (b) as follows: “(a) five hundred thousand rupees, where any person fails to submit his first appointment declaration; (b) five hundred thousand rupees, where any person fails to submit his ad-hoc declaration; or”
59	90(7)	The fine and the period of imprisonment are inadequate. The minimum should be at least one million (justification: because asset declaration is one of the foremost tools that can be used to curb corruption in the country). In addition to that, the burden of proof to establish that they did not willfully omit an asset, should be on the declarant, where there has been a willful omission of an asset in an asset declaration. Such trial hearings should conclude within a short period of time, when the suspect is an election candidate.	Amend as follows; “(7) Any person – (a) who makes any false statement in any declaration; or (b) who willfully omits any asset or liability from any declaration, commits an offence and shall on conviction after summary trial before a High Court, be liable to a fine not exceeding one million rupees or to a term of imprisonment not exceeding seven year or to both such fine and imprisonment. For the purposes of any prosecution under paragraph (b) of this subsection, it shall be deemed, until the contrary is proved by the person, that such undeclared asset or liability was willfully omitted from such declaration. Provided further the Magistrate shall conclude the hearing of the trial within one month period and such hearing shall be done on a day-to-day basis, of a candidate set out in section 80(w), who is suspected of having committed an offence under subsection 90(7). An appeal from the said MC decision should be concluded within three months to enable the cancellation of the elections.”

60	90(10)	<p>Reference to “paragraph 8(b) in subsection 10 seems to be an error and it should be corrected as subsection 7.</p> <p>Section 90(7) enumerates two offences. First, making a false declaration and second, willful omission. Whilst subsection 90(10) provides for vesting of assets with the State for willful omission, the equally serious offence of submitting a false declaration is not captured in this section.</p>	<p>We recommend that section 90(10) to include both paragraphs (a) and (b) of subsection 90(7).</p> <p>It is recommended to amend 90(10) as follows:</p> <p>“Where any person is convicted of an offence under paragraph (a) or (b) of subsection (7), the asset in respect of which the offence was committed shall by virtue of such conviction be vested in the State free of all encumbrances.”</p>
61	92	<p>The definition of “assets and liabilities” is inadequate.</p>	<p>Please refer the recommendation for section 81(2).</p>
62	93(a), (b)	<p>(i) This does not include tribunals and bodies or persons exercising quasi-judicial powers.</p> <p>(ii) We observe that only the Members of Parliament are captured in this section.</p>	<p>It is recommended,</p> <p>(i) To include tribunals and bodies or persons exercising quasi-judicial powers.</p> <p>(ii) To include tribunals and bodies or persons exercising quasi-judicial powers to (b), remove Members of Parliament from (b) and to insert 93(c) including Members of Parliament, Local Government Authority members and Provincial Council members.</p> <p>To amend as follows:</p> <p>“(a) who offers any gratification to a Judge of the Supreme Court, Court of Appeal, High Court, judicial officer, to an officer of tribunals, bodies or persons exercising quasi-judicial powers, to a Member of Parliament or to a member of a local government authority or a provincial council, as an inducement or a reward for such Judge's or officer's or Member's doing or forbearing to do any act in his judicial capacity or in his capacity as such Member, or</p>

			<p>(b) who, being a Judge of the Supreme Court, Court of Appeal, High Court, judicial officer or an officer of tribunals, bodies or persons exercising quasi-judicial powers 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,</p> <p>(c) who, being a Member of Parliament, a member of a local government authority or a provincial council, solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his capacity as such Member,"</p>
63	93	The proviso of this section can be used as a defense against any charges of bribery. There is no justification for the continuation of this provision.	It is recommended to remove this proviso.
64	94	We observe that S.94 provides for soliciting and accepting a gratification only by a Member of Parliament.	To amend as follows: "A Member of Parliament, a member of a local government authority or a provincial council who solicits or accepts any gratification as an inducement or a reward for –"
65	94	The short title needs to be amended.	It is recommended to amend the short title as follows. "Accepting of gratification for interviewing public officials".
66	96	The lengthy language that has been used will pave way for suspects/accused to take technical objections to a charge sheet.	It is recommended to insert 96(c) as follows: "(c) A person who offers any gratification to any police officer, peace officer or public official for any reason whatsoever to obtain a service from such officer"
67	99		We recommend removing the proviso as this would pave way for a public officer to accept gifts from the public and this should not be encouraged. Further this proviso could be used as a defense in a charge sheet.

68	101		We recommend that the proviso to this section be removed, as the content of this proviso are the general defenses that could be used in a case of bribery.
69	106 (2)	<p>The private sector entity should have a defense to prove that it had in place adequate procedures designed to prevent persons associated with the entity from undertaking/engaging in bribery and corruption.</p> <p>The purpose of this measure is to encourage commercial organizations to put in place due diligence procedures that are proportionate measures designed to prevent persons associated with them from bribing on their behalf.</p>	<p>Recommendation: Add a provision for a defence of having put in place adequate procedures to prevent bribery.</p> <p>This would reduce the regulatory and enforcement burden upon the Commission, and ensure that the private sector assigns its resources towards preventing bribery.</p> <p>It is recommended to add a proviso to 106(2) as follows.</p> <p>"Provided however, it will be a defence for the private sector entity to prove that the entity had in place adequate procedures designed to prevent persons associated with the entity from offering, soliciting and accepting a bribe."</p>
70	107(3)	<p>Considering that conflict of interest is a major offence, the punishment should be meted out at the High Court. Not the Magistrate.</p>	<p>To amend as follows:</p> <p>"(3) Any public official who contravenes the provisions of subsection (1) or (2) commits an offence and shall on conviction by a High Court be liable to a fine not exceeding one million rupees or to a term of rigorous imprisonment not exceeding seven years or to both such fine and imprisonment."</p>
71	108	<p>The offenses of corruption captured in Prevention of Offences relating to Sports Act of 2019 are not captured here.</p>	<p>To insert the following after 108(3) as follows.</p> <p>"(4) Any person or any person connected to a sport who, directly or indirectly, alone or in conjunction with another or others gets involved in any arrangement on an irregular alteration of the course or the result of any sport or sporting event for money or any other</p>

		<p>It is recommended to add subsections 4, 5, 6, 7, 8, 9 and 10.</p> <p>Reference https://www.parliament.gov.lk/uploads/acts/gbills/english/6153.pdf</p>	<p>reward or benefit, including any arrangement where—</p> <p>(a) any person or any person connected to a sport—</p> <p>(i) engages in betting, gambling or any other activity involving financial or any other advantage to himself or another person, or causes a financial disadvantage or loss to another person knowing that it would corrupt any sport or sporting event;</p> <p>(ii) acts in a manner that ensures the occurrence of any improper performance, act, omission or an outcome, which is the subject of an illegal bet relating to a sport or any sporting event;</p> <p>(iii) provides for financial or any other advantage, reward or benefit, any inside information relating to a sport, any sporting event or any person, to any person including a betting operator, other than in connection with bona fide media interviews and commitments;</p> <p>(iv) provides or receives any gift, payment, reward or benefit, financial or otherwise, that might reasonably be expected to bring such person or any sport or sporting event into disrepute; or</p> <p>(v) engages in any act or omission that is directly or indirectly related to any of the conduct specified in the preceding paragraphs and is prejudicial to the interests of any sport or sporting event;</p> <p>(b) any individual player or a group of players—</p> <p>(i) receives money or any other reward or benefit individually or collectively to underperform or to withdraw from such sport or sporting event for non-genuine reasons; or</p> <p>(ii) bets on such sport or sporting event in which such player or group of players plays undermining the performance;</p> <p>(c) any umpire, match adjudicator or match referee deliberately misapplies the rules of the sport or sporting event for money or any other reward or benefit;</p>
--	--	--	---

			<p>(d) any curator or any member of any venue staff, ground staff or support staff receives money or any other reward or benefit—</p> <p>(i) to prepare any turf, ground or playing surface of any sport or sporting event in a way agreeable to any person including a betting operator; or</p> <p>(ii) to disclose information of the preparation and condition of the turf, ground or playing surface of any sport or sporting event; or</p> <p>(e) any person including a retired player or any person connected to a sport is utilized by any other person to gain access to local or foreign players in order to influence their performance for money or any other reward or benefit,</p> <p>commits the offence of match fixing in sports.</p> <p>(5) Any person or any person connected to a sport who directly or indirectly, alone or in conjunction with another or others gets involved in any arrangement on an irregular alteration of the course or the result of any sporting tournament by any of the acts specified in paragraphs (a) to (e) of subsection (4) commits the offence of tournament fixing in sports.</p> <p>(6) Any person or any person connected to a sport who—</p> <p>(a) solicits or accepts or agrees to accept or offers money or any other reward or benefit;</p> <p>(b) controls any other person or thing for such person's own advantage or to the advantage of another dishonestly or fraudulently; or</p> <p>(c) solicits, entices, persuades, induces or instructs any person directly or indirectly to perform or refrain from performing an act,</p> <p>to influence the result, progress, conduct or any other aspect of any sport or sporting event commits the offence of corruption in sports.</p>
--	--	--	---

			<p>(7) Any person or any person connected to a sport who influences improperly, unfairly or dishonestly the result, progress, conduct or any other aspect of any sport or sporting event commits the offence of illegal manipulation in sports.</p> <p>(8) Any person or any person connected to a sport who possesses information in connection with any sport or sporting event knowing such information to be inside information or information on illegal, corrupt conduct and—</p> <p>(a) bets on that sport or sporting event;</p> <p>(b) encourages another person to bet on that sport or sporting event in a particular way; or</p> <p>(c) communicates such information to another person who the first person knows, or ought reasonably to know, would or would be likely to bet on that sport or sporting event,</p> <p>commits the offence of illegal betting in sports.</p> <p>(9) Any person who—</p> <p>(a) aids, abets, attempts or conspires in the commission of any offence specified in section 4, 5, 6, 7 or 8; or</p> <p>(b) approaches, induces, influences, encourages, enables or facilitates any person connected to a sport to commit any offence specified in section 4, 5, 6, 7 or 8,</p> <p>commits an offence.</p> <p>(10) Any person who commits an offence specified in section 4, 5, 6, 7, 8 or 9 shall on conviction be liable to a fine not exceeding rupees one hundred million or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment."</p>
72	110	Section 110 which explains the term gratification should be	It is also recommended that a general catch-all offence be included as follows, as the new section 110.

		inserted in Part IV of the law, under the heading "General" in order to avoid any confusion that may arise from listing it among other offences.	"Any person who solicits or accepts any gratification whatsoever to perform any service whatsoever commits the offence of bribery under this Act, and shall be liable to a fine not exceeding one million rupees and to a term of rigorous imprisonment not exceeding seven years."
73	111	The prosecution should be able to establish the offence of corruption where there is either intent or knowledge. Requiring both to be established even currently frustrates the securing of successful conviction.	It is recommended to amend S. 111 as follows. "Any public official who, with intent or knowledge to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any other person, or with intent or 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-..."
74	112	Add reference to investigations in s. 112 (2)	The provisions of the Prevention of Money Laundering Act No. 5 of 2006 shall, <i>mutatis mutandis</i> , apply for the proceedings and investigations on this offence of money laundering and any reference to the Assistant Superintendent of Police or any other police officer shall be read and construed as a reference to an officer authorised by the Commission.
75	111, 119, 120	Considering that these are major offences, the punishment should be meted out at the High Court. Not the Magistrate.	Amend sections 111, 119 and 120 by replacing the term "Magistrate" by "a High Court".
76	120, 125, 129	Fines proposed in these Sections are limited to not exceeding a fifty or hundred thousand rupees.	Increase the fine to " not exceeding one million rupees ", if these provisions are to serve as deterrents and preventive measures since the Court has the discretion to fine a lesser sum considering circumstances. A sum of a hundred thousand is not a significant amount to deter commission of an offence nor will it be even a considerable amount in a few years. Since laws are not

			often amended, it is recommended to have higher fines.
77	114	There should be additional consequences flowing from the offence of corruption under section 111.	<p>It is recommended to add new subsections as follows.</p> <p>“114 (8) Notwithstanding anything to the contrary in any other provisions of this Act, where a court convicts a public official for any offence under section 111 of this Act, the court may order that any grant, appointment, or any other benefit afforded to such public official be illegal and null and void.</p> <p>114 (9) Where a public official is convicted for any offence under section 111, the court may order such public official to pay the damages caused to the government.</p> <p>114(10) any person - (a) who offers any gratification to a public official as an inducement or reward; or (b) who, being a public official solicits or accept any gratification as an inducement or reward, to enroll a child to a government school, commits an offence of bribery under this Act and on conviction before a Magistrate be liable to a fine not exceeding one million rupees and to a term of rigorous imprisonment not exceeding seven years.”</p>
78	150		<p>Include in subsection (1) (e) coercion or duress under which the offence had been committed;</p> <p>In general, for Section 150, there should be a provision to the effect that where it has been proven on a balance of probabilities that someone has been forced or coerced to pay a bribe, including sexual bribes, there need not be a penalty imposed on the victim of such coercion.</p>
79	159(1)	Commission should be directed to prepare reports bi-annually.	<p>It is recommended to amend this as follows:</p> <p>“The Commission shall prepare at least two reports in one calendar year of its activities,</p>

			and shall prepare at least one report in each calendar year.”
80	164(2)(d)	"Investigations" missed in latter part of the section.	It is recommended to amend S. 164(2)(d) as follows. “all suits, actions, investigations and other legal proceedings instituted by or against the Commission to Investigate Allegations of Bribery or Corruption established under the Act, No. 19 of 1994 and pending on the day, immediately prior to the date of commencement of this Act, shall be deemed to be suits, actions, investigations and other legal proceedings instituted by or against the Commission under this Act; and may be continued after the appointed date as if they were suits, actions, investigations and other legal proceedings instituted and continued under this Act;”
81	General	Chapter numbers have been erroneously set out. E.G., chapter II come after chapter IV.	