

Legislative Brief on the Election Campaign Finance Bill of Sri Lanka

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Why Campaign Finance Matters

A citizen exercising their right to vote harbours one expectation – that the power transferred to the elected in this way would be used with the citizens' interests in mind when formulating policy. There is one factor, often ignored, that can skew the full realization of this expectation – The role of money in politics. As money plays an integral role in the ability to campaign, it is vital that constituents are informed of how candidates, parties and independent groups obtain money, to enable informed decision-making by voters. However, issues such as the abuse of state resources, laundering of illegal funds, media patronage and favouritism by political party leaders towards wealthier candidates lead to an unequal playing field, resulting in a loss of focus on policy priorities. This is why transparency and monitoring around this issue can ensure that a truly representative democracy is preserved. Therefore, it is important to have systems that afford candidates, parties and independent groups an equal and fair contest. This will reduce the unseen hand of money in election campaigns, resulting in fairer and more representative electoral outcomes.

To achieve the fundamental objective of elections reflecting the will of the people, it is paramount that they are held in an inclusive manner that provides equal opportunities to all

contestants. The absence of any mechanism to ensure that balance, would affect the democratic nature of an election, since an individual representing youth, marginalized communities, or low-income/impoverished communities, and professionals will not be able to spend as much on an election campaign as the wealthier contestants do. Subsequently, there is a risk that voters' ability to choose from a diverse pool of candidates is limited. . Thus, it is of prime importance to ensure that structural changes such as policies and laws are in place to regulate campaign financing to enable a level playing field for all contestants.

When calls are made for greater transparency, the common response is that personal finances are used for such purpose, and do not merit scrutiny. This further demonstrates that the participation of candidates in elections is not a level playing field; it insinuates that only the wealthy, who can afford to finance their election campaigns, are able to run as candidates. Also, if there is no transparency, it is impossible to know whether candidates do finance their own campaigns. In addition to enabling a fair election, having campaign finance regulations further tightens the hands of the candidates to be representative of their voters, instead of acting as agents for their largest campaign funders.¹ A good campaign financing regulatory system would be guided by practice, party guidance and societal norms accompanied by a law that ensures proper limits, requires disclosure and is equally and consistently enforced.

The need for campaign finance reform is driven by 4 key objectives:

1. Deter undue influence - Candidates/parties who receive funding may be compelled to act in the interest of the donor when in public office, instead of in the interest of the public
2. Encourage equal playing field - new entrants to politics, financially poor candidates and those with less access to funding have to compete with wealthier candidates
3. Counter excessive spending – Not having spending limits can lead to excessive spending during elections, and even vote-buying
4. Deter abuse of public resources – When there is no requirement for transparency, parties and candidates in power can more easily abuse public funding, officials, vehicles, buildings etc.
5. Cultivate public trust in the electoral system: The existence of rule of law and respect to the same will be based on the trust between the authorities/ systems and People

Campaign finance reform can come in several forms. First, contributions to campaigns can be limited or banned from certain sources. Second, campaign spending can be limited. Third, laws can require that sources and amounts of campaign contributions as well as amounts and reasons that money was spent on, should be disclosed to the authorities.

It is important to ensure that policies, laws and institutions are put in place, empowered and resourced to regulate campaign financing in Sri Lanka. Transparency International Sri Lanka (TISL) welcomes the decision of the cabinet of Ministers on 29th November 2021² to advise the Legal Draftsman to draft proposed amendments (by the former Parliamentary Select Committee) to

¹ <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>

² <https://www.dgi.gov.lk/news/cabinet-decisions>

the existing ordinances that provide for the control of Election Expenses. While noting that campaign finance reform cannot be limited only to the regulation of expenses alone, TISL seeks through this brief to set out the context of election campaign finance in Sri Lanka and propose recommendations to strengthen the proposed legal framework.

Existing Regulation in Sri Lanka

1. Political parties are required to file annual financial reports to the Election Commission³. This information is not routinely made publicly available, and was only made public pursuant to a Right to Information request filed by Transparency International Sri Lanka⁴. There is no enforcement mechanism in place to validate the accuracy of the records filed.
2. Electoral candidates submit a declaration of assets and liabilities to the Election Commission⁵. These records are not made public and are only actionable by the Commission to Investigate Allegations of Bribery or Corruption (CIABOC)⁶. The existing system does not provide for a process for the verification of content, either through random or systematic review. Asset declarations are only called for by CIABOC if it needed in the course of an investigation.
3. There are no limits on the amount or source of donations to political parties, candidates or independent groups and expenditures incurred. There is an insignificant level of public funding and subsidies available to parties. During parliamentary elections, parties that have gained at least 1% of the vote in an electoral district in the preceding election are entitled to public funding of 50 cents per vote⁷. Every political party or independent group is upon application permitted to use a total period of 45 minutes on state radio and 45 minutes on state TV⁸. Free postage is available to secretaries of political parties, to disseminate election-related material⁹. However, vote-buying¹⁰ and the abuse of public resources¹¹ which are consequences of unrestricted campaign finances are not offences

³ Section 7(4)(c) of the Parliamentary Elections Act, No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) Act, No. 58 of 2009

⁴ Available at <http://www.rtiwatch.lk/requests/?drawer1=Election%20Commission>, accessed on 28th December, 2018

⁵ Declaration of Assets and Liabilities Law No. 1 of 1975, Section 2(dc)

⁶ Even though citizens can obtain declarations of assets and liabilities, sharing the information with anyone but law enforcement authorities attracts criminal sanctions, by operation of s. 8 of the Declaration of Assets and Liabilities Law No. 1 of 1975

⁷ Parliamentary Elections Act, No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) Act, No. 58 OF 2009, s. 12

⁸ Parliamentary Elections Act, No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) Act, No. 58 OF 2009, s. 1

⁹ Parliamentary Elections Act, No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) Act, No. 58 OF 2009, s. 125

¹⁰ Parliamentary Elections Act, No. 1 of 1981 as amended by the Parliamentary Elections (Amendment) Act, No. 58 of 2009, s. 78

¹¹ Gazette Extraordinary No. 2052/35 - Friday, January 05, 2018 - C(11)

that are sufficiently covered under the current legal framework. The historic judgement delivered against vote-buying in Sri Lanka in 2021 reiterates the importance of establishing a legal mechanism to regulate campaign financing¹².

An argument that is often made in Sri Lanka's context is that campaign finance regulation cannot be introduced until a change is made to the existing electoral system. The current proportional representation system requires candidates to campaign in a wide geographical area, leading to increased expenses. However, if the upper limit on spending can be determined to reflect this reality, campaign finance regulation can be introduced through legislation, within the existing electoral system.

Major Areas to be Addressed in Effective Campaign Finance Regulation

- **Disclosure** - The purpose of disclosure of campaign contributors, contributions and expenses is to increase transparency and build informed voting to enable the media, journalists, academia etc., and most importantly, the designated regulatory authority to be able to uncover links between politicians and private interests. Undue influence, excessive spending, abuse of public resources and other irregularities can be monitored through disclosure. Sources and quantities of funding, assets and liabilities must be disclosed to a regulatory authority and the public in a timely manner. Enforcement of disclosure provisions may be done by parties and candidates each using a single account to process all election-related transactions. A holistic approach to the disclosure of information on spending by the election candidates as well as political parties is important to ensure the transparency of an election. The disclosure to the ECSL and the public should not be limited to during the election period but also extended to before and after elections. The disclosure also needs to be made freely accessible in a manner comprehensible to a citizen, including in computer-readable, searchable formats.
- **Donation Bans or Limits** - The objective of this mechanism is to remove undue influence on campaigns through excessive contributions or contributions by vested interests. Bans may be imposed on foreign entities to prevent incursions on a country's sovereignty, on corporates to stop special interests taking hold of candidates, on entities that have government contracts to curb undue influence, and on state entities to prevent the abuse of state resources. To maintain the link between voters and their representatives, private donations are generally encouraged but limited. A donation limit must not be so low as to be unrealistic, nor so high as to be of no use. An ideal limit would be one that is sufficient to achieve its goal and would not disproportionately affect one particular party while allowing political parties and candidates to raise funding from diverse sources that support their policies.

¹² <https://anfrel.org/landmark-court-ruling-against-vote-buying-in-sri-lanka-a-victory-for-democracy-paffrel/>

In Sri Lanka, major exposés of alleged purchase of loyalties have rocked the political arena, with Members of Parliament admitting to having received large donations from corporates¹³. Adopting campaign donation limits with a robust enforcement mechanism, created with stakeholder buy-in to ascertain an appropriate limit, would address this issue.

- **Spending Limits** – Restricting excessive spending and creating equality between candidates and parties are the objectives addressed through spending limits¹⁴. Wealthier candidates and parties are often able to reach more voters and drown out the voices of new entrants and underrepresented groups such as women and youth. Imposing spending limits, if properly enforced, is also the most effective means of curbing excessive election expenditure. Reducing expenditure does not require a change in the electoral system.

- **Regulation and Offences** – Enforcement is a crucial component in the success or failure of campaign finance regulation. The independent Election Commission of Sri Lanka has the closest administrative mandate to conduct free and fair elections, including the power to issue guidelines to the media (Article 104 B of the Constitution)¹⁵ and on the misuse of public property. It is recommended that regulation should be done through the Election Commission by expanding its mandate. ECSL should be empowered and well-resourced, with the independent authority to monitor, investigate and take action against those who violate the campaign finance law prior, during and after the elections at all levels.

The CIABOC – with its power to act upon declarations of assets and liabilities - must also be empowered to work with the Election Commission to achieve optimum regulatory outcomes.

Analysis and Recommendations for the Proposed Bill

This Legislative Brief compares and comments on two versions of bills that Transparency International Sri Lanka has had the opportunity of perusing – the first, and early draft of the Campaign Finance law from 2019, and the second, the version of the Bill that was Gazetted on 12/28/2022.

¹³ <http://www.sundayobserver.lk/2018/06/03/news-features/cleaning-elections-sri-lanka> ,
<http://www.dailymirror.lk/article/Will-donate-Aloysius-money-to-charity-Sujeewa--151053.html> ,
<http://www.ft.lk/front-page/Dayasiri-admits-taking-Rs--1-m-cheque-from-Perpetual-Group/44-655969>,
<http://www.sundayobserver.lk/2018/06/17/news-features/election-contributions-revelations-scandal-or-crime>

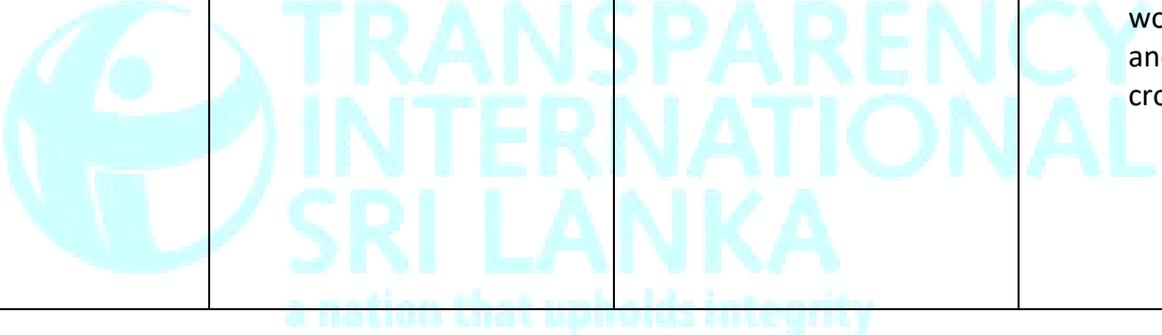
¹⁴ Office of the United Nations High Commissioner for Human Rights in its General Comment to Article 25 of the International Covenant on Civil and Political Rights recommends that a spending limit may be justified to ensure that voter choice is not undermined and that the democratic process is not distorted by excessive spending by particular parties or candidates. TI Policy Position N 1/2005. https://www.transparency.org/whatwedo/publication/policy_position_01_2005_standards_on_political_funding_and_favours

¹⁵ <https://www.parliament.lk/files/pdf/constitution.pdf>

Summary of the Key recommendations on Key Provisions of the Proposed Bills of 2019 and 2022

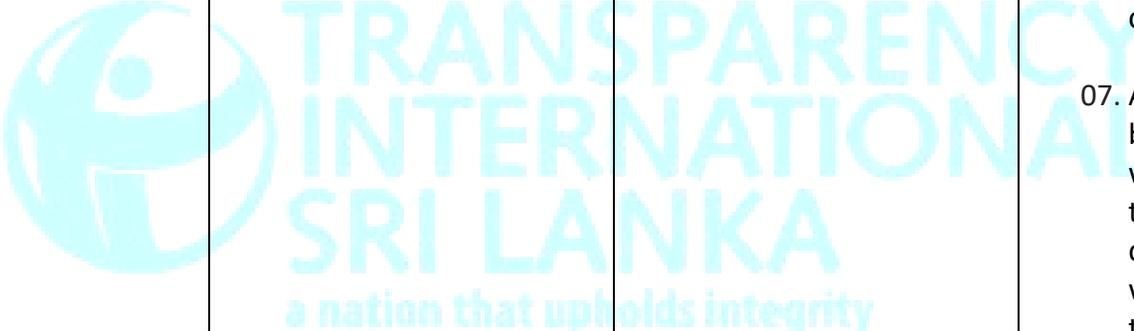
No	Major Area of discussion	Relevant sections of the bill (2019)	Relevant sections of the bill (2022)	Recommendations
	How election contributions are to be monitored	<p>Section 82 KC – Local Authorities Election Section 87 C – Provincial Councils Election Section 86 C – Parliamentary Election Section 85 C – Presidential Election</p> <p>A political party or independent group (or candidate as the case may be in a presidential election) is mandated to open a bank account within 7 days of an election being announced, for the purpose of receiving donations. They need to keep records of these accounts and notify the ECSL details of this account (account number, account name, bank name and</p>	<p>There is no mention of a bank account or any other method maintained to reveal the contributions received by political parties, independent groups, or candidates under the supervision of the ECSL after the announcement of an election.</p>	<p>01. We recommend replacing this clause with the previous 2019 draft's version with the further addition that any contributions or expenditure for the purpose of the election campaign should be disclosed, whether received through this account or otherwise, as third-party spending is a key way by which campaigns are sustained.</p> <p>02. It is also important the candidates and parties or independent groups reveal all existing accounts to the ECSL. If such provision is not made, the objectives of the law will not be met, as parties, candidates and donors could rush to make financial arrangements in the run-up to an election, in order to</p>

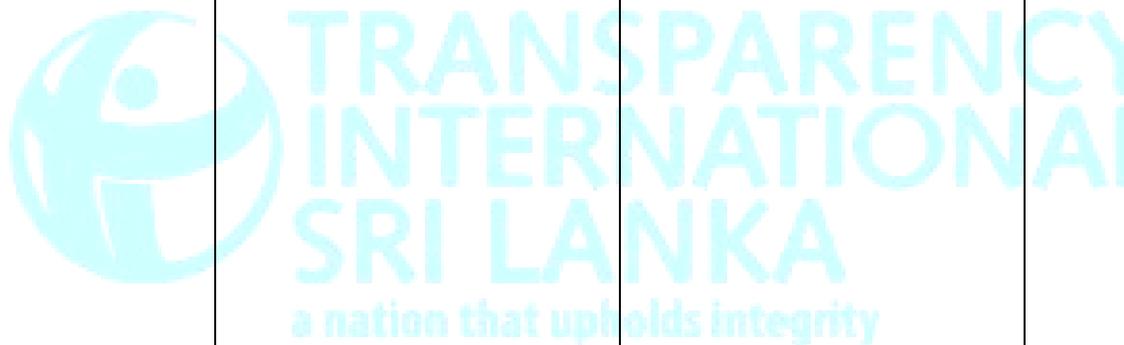
		<p>address). The secretary of the political party or the independent group (or candidate as the case may be in presidential election) should maintain records of amounts of contributions, and whether it is a donation, advance or a loan and the purpose for which the contribution was made.</p>		<p>circumvent the legal requirement.</p> <p>03. Furthermore, making accounts available for public oversight is an insufficient mechanism. The ECSL should be empowered and mandated to verify, investigate of their own volition, and upon complaints being made to them. An electronic system would help identify red flags and assist comparisons and cross-checking.</p>
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<p>Disclosure of contributions and expenses to the ECSL and to the public</p>	<p>Section 82 KD – Local authorities' elections Section 87 D – Provincial Council Election Section 86 D – Parliamentary Election Section 85 D – Presidential Election</p> <p>Within 10 weeks from the conclusion of the election the secretary of the political party or the independent group (or candidate as the case may be in presidential election) needs to send to the ECSL an audited statement of account, certified copies of the records, a statement from the bank at which the account was opened, certifying the deposits made in such account and the withdrawals from such account and a declaration that the information is true.</p>	<p>(a) the Local Authorities Elections Ordinance (Chapter 262); (b) the Provincial Councils Elections Act, No. 2 of 1988; (c) the Parliamentary Elections Act, No. 1 of 1981; (d) the Presidential Elections Act, No. 15 of 1981.</p> <p>Every candidate at an election conducted under above laws shall submit within twenty-one days of the date of publication of the result of such election to the respective authority specified in subsection (3) -</p> <p>(a) a return of all donations or contributions accepted or received by such candidate or on behalf of such candidate; and (b) a return of all expenses incurred by such candidate or on behalf of such candidate.</p>	<p>04. In as system of disclosure, it is crucial to cover all three entities (candidates, political parties, and independent groups), otherwise, the disclosure process becomes incomplete, and contributions and expenses can be made via the entity that is left unregulated.</p> <p>05. Another critical aspect that should be mandatorily disclosed, is third party spending on candidates, parties and independent groups, financially as well as in-kind. Not requiring disclosure of such spending would lead to an ineffective and unequal campaign finance regulatory system.</p> <p>06. The existing provision that states "donations or contributions accepted or received by such candidate or <i>on behalf of such candidate</i>" is insufficient to effectively curb third-party spending, as such</p>
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			<p>The 2022 draft is a slight improvement over the previous version, as it requires that candidates must submit a return (report of expenses) incurred and contributions received to the Election Commission within 21 days after the election results are released (2022)</p>	<p>spending often happens without the acknowledgment of such candidate. As such, it is recommended that ALL spending on a campaign, be it by the candidate, party or third party, should be channelled through a designated bank account that is disclosed to the ECSL, and any contribution or spending done otherwise would be constitute an offence.</p> <p>07. Additionally, disclosure must be made prior to elections as well as after, to the ECSL and to the public. Disclosure of donations prior to elections will ensure that interests of those supporting candidates and on an annual basis for non-election cycle contributions, are also disclosed to the ECSL as well as electors, i.e., the general public. This is particularly suitable because of the already established practices of annually disclosing assets and liabilities of elected</p>
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representatives. Political party and candidate financing disclosures should complement this practice. This would enable voters to make informed decisions on who controls their representatives, and make their voting decisions accordingly.

08. In the language of S. 4(1) as it currently stands, expenses incurred by a political party or third party on behalf of a candidate will not subject to the expense limit. It is recommended that the authorised amount in the Bill be applicable to the total expenses incurred by on behalf of a candidate.

09. Taxpayers who are donors can be encouraged though tax incentives to disclose their donations, so that disclosures by parties and candidates can be cross-checked.

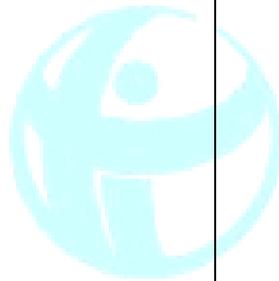
10. Further, it is recommended that reporting obligations require candidates and parties to reveal the source and purpose of donations and expenses. The disclosure of such information should cover all the elements necessary with sufficient details to allow effective public oversight to enhance transparency.



<p>Whose accounts should be disclosed and the manner in which to do so</p>	<p>Section 82 KE – Local Authorities Elections Section 87 E – Provincial Council Election Section 86 E – Parliamentary Election Section 85E – Presidential Election</p> <p>Publication of accounts and records by the ECSL is mandated on receipt of the documents submitted by a political party or independent group. the ECSL is expected to publish them on their website and in newspapers (English, Sinhala and Tamil) stating that they have received the statement of accounts and the place and times that these records can be examined by any person. Any person can examine them and take copies (subject to fees). Receipts need to be maintained wherever possible. Payments from the accounts also require the following information</p>	<p>Local Authorities Elections Ordinance (Chapter 262) Provincial Councils Elections Act, No.2 of 1988 Parliamentary Elections Act, No. 1 of 1981. Presidential Elections Act, No.15 of 1981</p> <p>(1) shall cause a notice to be published in at least one newspaper in the Sinhala, Tamil, and English languages stating that the returning officer or the Election Commission, as the case may be, has received the returns and declarations submitted by the candidates named in the notice and indicating the place and time at which such returns and declarations may be inspected by any person.</p> <p>(2) The returning officer and the Election Commission shall permit a person to inspect the returns and declaration made by a candidate at the place and time mentioned in the notice</p>	<p>11. Even though the 2019 draft made it compulsory to publicise the accounts and records, the 2022 provision seems vague as it does not make it compulsory to publish accounts, but requires the ECSL to only name the candidate who has submitted the returns. It is recommended to replace the 2022 draft with the 2019 provisions, imposing the liability of publication in relation to both candidates and parties. Not to do so, would lead to an incomplete and ineffective system that cannot be enforced. Therefore, it is recommended that parties, candidates and independent groups should be liable under this law. The Publication of accounts should also include all in-kind support in addition to the financial contribution such as providing meals for any meetings or gifts, etc.</p> <p>The disclosed information should be made available in a digital platform</p>
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		<p>records – the amount, the purpose and the name and address of the person to whom the payment was made.</p> <p>Disclosure to the ECSL does not cover candidates, only parties (2019)</p>	<p>published under subsection (1) and shall allow such person to take copies of such returns or declaration on payment of a fee of such amount as may be determined by the Election Commission.</p> <p>(3) The returning officer and the Election Commission shall preserve all returns and declarations received under subsection (1) of section 6, for a period of six months after such receipt and may destroy such returns and declarations at the end of that period.</p> <p>Disclosure to the ECSL not required by political parties and independent groups.</p>	<p>where it could enable easy access and possible comparison, and contrast.</p> <p>12. The fees involved in obtaining the copies of expenses report/ accounts should be removed</p>
2. Donation bans or limits		2019	2022	
	<p>Donation bans are covered by the draft law, but no donation limits are mentioned in terms of amounts/ value (2019)</p>	<p>Section 82 KB – Local Authorities Elections Section 87 B – Provincial Councils Election</p>	<p>(a) the Local Authorities Elections Ordinance (Chapter 262); (b) the Provincial Councils Elections Act, No. 2 of</p>	<p>13. The 2022 Bill does not impose any limits on campaign donations. Introducing spending limits without introducing donation limits</p>

		<p>Section 86 B – Parliamentary Election Section 85 B – Presidential Election</p> <p>Certain donations are prohibited – from a government department, a public corporation or a company incorporated in which the government or a public corporation owns any shares, a foreign government, an international organization or a body corporate incorporated or registered outside Sri Lanka, a company with foreign shareholders, and any person whose identity is not disclosed.</p>	<p>1988; (c) the Parliamentary Elections Act, No. 1 of 1981; (d) the Presidential Elections Act, No. 15 of 1981.</p> <p>Section 5(1) - A candidate at an election conducted under any law specified in the above laws, shall not accept or receive a donation or contribution whether such donation or contribution is in cash or kind from - (a) a government department, a public corporation, or a company incorporated under the Companies Act, No.7 of 2007 or under any former written law relating to companies in which the government or a public corporation owns any shares; (b) a foreign government, an international organization or a body corporate incorporated or registered outside Sri Lanka</p> <p>Donation bans are only applicable to the candidates.</p>	<p>only solves half the problems that necessitate campaign finance regulation. It would completely fail to address the need to control undue influence on national policy by donors contributing money to political parties and candidates. Regulation of political campaign donations is essential, to level the playing field between electoral candidates, to promote political pluralism, and to avoid undue reliance on wealthy/ regular donors making way for undue influence. When used, direct public campaign financing of political parties and, in some cases, candidates should be provided equitably and based on objective criteria.</p> <p>14. Establishing limits on campaign donations including private sector contributions to political parties and candidates is recommended, in order to promote fair competition during elections</p>
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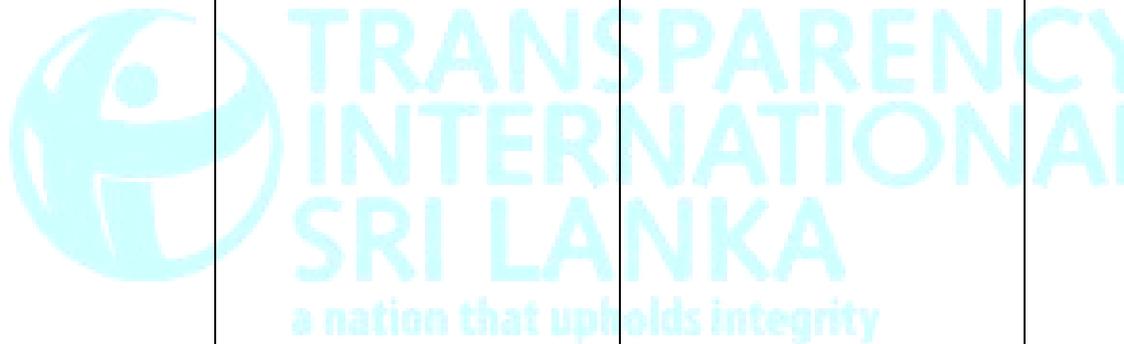
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The Bill proposes bans on campaign donations from certain sources, but fails to introduce a donation limit.

and lessen incentives for corruption and undue influence in exercising political power. Such limitations may take the form of a threshold on the amount a donor may contribute to a candidate or political party, or a limit on the aggregate or political party, or party may accept.

15. Care should be taken for limits to be imposed on contributions to parties and to individual candidates as well.

16. The legislation should also regulate in-kind contributions, such as subsidized advertising, social media campaigns and printing, office and equipment rental, etc. It is recommended that the legislation should define how in-kind contributions are valued, for example based on market prices. Additionally, if an individual or legal entity forgives an outstanding debt for goods or services, this should be considered an in-



kind contribution, subject to the limitations that apply to contributions and, where applicable, counting towards expenditure limits. The maximum total donation amount should be limited to the “authorized amount” described in the proposed bill.

17. There should be a provision that no donations should be made directly to individuals; all donations should be directed through a party or independent group, and the party and the independent group should allocate the donations to individuals within the maximum expenditure expected from an individual candidate calculated on the basis of “authorized amount” on an individual basis.

18. Campaign donations should be directed to candidates through parties up to a maximum amount prescribed by the Election Commission of Sri Lanka (ECSL) for each party

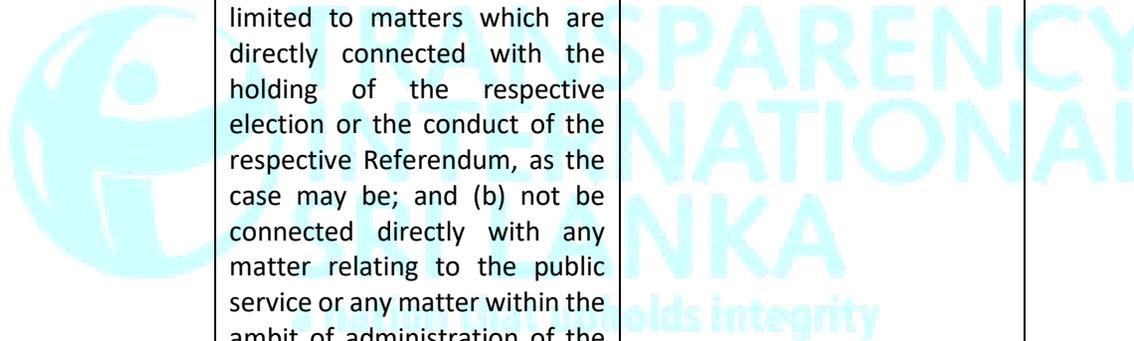
				based on a fair rationale, and the party should allocate funds to the members as prescribed by the ECSL. In the event of this policy being breached the ECSL should have the authority to hold the party and the individuals liable for such breach.
Spending Limits				
		2019	2022	
	<p>Stationery, postage and communication are not to be counted as part of spending which can be hugely costly in an election campaign. Individual candidates are not covered and the focus is on donations and expenditure of party/independent groups.</p> <p>This would mean there still could be major expenses on the election that fall outside of the regulatory purview. Leaving the provision as it is would therefore defeat the purpose of the law. (2019)</p>	<p>Section 82 KA (2)a – Local Authorities Election Section 87 A (2)a – Provincial Council Election Section 86 A (2)a – Parliamentary election Section 85 A (2)a – Presidential election</p> <p>The basis of the authorized amounts for expenditure are to be developed by the EC in consultation with political parties and independent groups (and candidates, as the case may be in Presidential Elections)</p>	<p>(a) the Local Authorities Elections Ordinance (Chapter 262); (b) the Provincial Councils Elections Act, No. 2 of 1988; (c) the Parliamentary Elections Act, No. 1 of 1981; (d) the Presidential Elections Act, No. 15 of 1981.</p> <p>The basis of the authorized amounts for expenditure are to be developed by the EC in consultation with political parties and independent groups (and candidates, as the case may be in Presidential Elections)</p>	<p>19. Spending limits should be clearly defined in the law and, ideally, be indexed for inflation to ensure that they stay relevant for subsequent elections. Limitations should also apply to all electoral contestants and parties, including third parties, to prevent them being used as way to circumvent spending limits.</p> <p>20. Imposing spending limits should be backed up by a strong enforcement infrastructure in order to be effective. If not, Sri Lanka runs the risk of having nominal</p>

		<p>contesting in the said election. Calculation of the authorized amount – the number of registered voters in multifaction of the basis amount.</p> <p>Spending beyond this amount is an illegal act unless the person/group proves that it was done without his/her sanction/connivance.</p>	<p>contesting in the said election. Calculation of the authorized amount – the number of registered voters in multifaction of the basis amount.</p> <p>Spending beyond this amount is an illegal act unless the person/group proves that it was done without his/her sanction/connivance.</p> <p>Candidates are not required to report expenses for stationery, postage, and communication, transport of the candidate in the new draft law of 2022. Also, election expenses and restrictions are limited to candidates only.</p>	<p>regulation that only adds to the cost borne by the state, with little impact on the results sought to be achieved.</p> <p>21. All parties should be required to report expenses for stationery, postage, and communication, transport of the candidate.</p>
	Imposing of sanctions	<p>Article 104 B (1) of the constitution of Sri Lanka – ECSL is the main regulatory body¹⁶.</p> <p>104B. (1) The Commission shall exercise, perform and discharge</p>	<p>(a) the Local Authorities Elections Ordinance (Chapter 262);</p> <p>(b) the Provincial Councils Elections Act, No. 2 of</p>	<p>22. In both the 2019 and 2022 draft laws, there are identifiable weakness in the process of imposing punishments for breaking the</p>

¹⁶ <https://www.parliament.lk/files/pdf/constitution.pdf>

		<p>all such powers, duties and functions conferred or imposed on or assigned to – (a) the Commission; or (b) the Commissioner-General of Elections, by the Constitution, and by the law for the time being relating to the election of the President, the election of Members of Parliament, the election of members of Provincial Councils, the election of members of Local Authorities and the conduct of Referenda, including but not limited to all the powers, duties and functions relating to the preparation and revision of registers of electors for the purposes of such elections and Referenda and the conduct of such elections and Referenda.</p> <p>(2) It shall be the duty of the Commission to secure the enforcement of all laws relating to the holding of any such election or the conduct of Referenda and it shall be the duty of all authorities of the State charged with the enforcement of such laws, to co-operate with the Commission to secure such enforcement.</p>	<p>1988;</p> <p>(c) the Parliamentary Elections Act, No. 1 of 1981;</p> <p>(d) the Presidential Elections Act, No. 15 of 1981.</p> <p>Every candidate at an election conducted under any law specified above, who –</p> <p>(a) fails, without reasonable cause, to comply with the provisions of subsection (1) of section 6; or</p> <p>(b) makes any statement in any such return submitted under subsection (1) of section 6 or in a declaration made under subsection (6) of section 6, being a statement which such person knows, or ought reasonably to have known, to be false, commits an offence of an illegal practice within the meaning the law specified in above under which such election was conducted, and shall be liable to penalties specified</p>	<p>law. In the 2019 draft, the offences are not adequate to deter the illegal acts – for example the fines that are recognized under the bills are woefully low whereas in the 2022 draft, there is no fine indicated. In some instances, it only says that it is an illegal act but no penalty is quoted. The existing penalties for illegal practices (the category described under the proposed law to cover the offences) under the current legal framework are not adequate. (Eg. Only a fine of three hundred rupees is provided for the offence of an illegal practice by a person, and shall by conviction become incapable for a period of three years from the date of his conviction of being registered as an elector or of voting at an election under the Act or being elected as a Member of Parliament (if it is a general election), and if at that date he has been elected as a Member of Parliament, his election</p>
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		<p>(3) The Commission shall be responsible and answerable to Parliament in accordance with the provisions of the Standing Orders of Parliament for the exercise, performance and discharge of its powers, duties and functions and shall forward to Parliament for each calendar year a report of its activities for such year.</p> <p>(4) (a) The Commission shall have the power during the period of an election, to prohibit the use of any movable or immovable property belonging to the State or any public corporation - (i) for the purpose of promoting or preventing the [election of any candidate or any political party] or independent group contesting at such election; (ii) by any candidate or any political party or any independent group contesting at such election, by a direction in writing by the Chairman of the Commission or of the Commissioner General of Elections on the instructions of the Commission. (b) It shall be the duty of every person or officer in whose custody or under whose control such</p>	<p>by such law for the commission of an illegal practice.</p>	<p>shall be vacated from the date of such conviction , A prosecution for an illegal practice shall not be instituted without the sanction of the Attorney-General. Therefore, a strong punishment needs to be added to ensure that the proposed legal provisions are complied with.</p> <p>23. There is no mention of inter-linkages with other authorities like the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) that holds important information like the assets and liabilities of public representatives, and has the authority to take action on non-filing or misdeclarations.</p> <p>24. The mandate of the Election commission of Sri Lanka should include:</p> <ul style="list-style-type: none"> - High level of independence of the commission should be maintained
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		<p>may consider appropriate, to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper, as the case may be, as the Commission may consider necessary to ensure a free and fair election. 81[(b) It shall be the duty of any broadcasting or telecasting operator or any proprietor or publisher of a newspaper, as the case may be, to take all necessary steps to ensure compliance with any guidelines as are issued to them under paragraph (a).]</p> <p>(c) (i) The Commission shall cause the directions and guidelines referred to in paragraph 4(a) and paragraph 5(a) to be published in at least one newspaper widely circulated, in the Sinhala, Tamil and English languages. (ii) Every direction and guideline shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in such direction and guideline. (iii) Every such direction and guideline shall, within three months from the</p>		<p>25. The Election Commission of Sri Lanka is set up by the provisions of the constitution, and has wide powers to ensure that free and fair elections are held to prevent the misuse of public property and guidelines to any broadcasting or telecasting operator or any proprietor or publisher of a newspaper. It has a mandate to exercise all powers stipulated under the laws governing elections and referenda.</p> <p>26. Political parties in Sri Lanka are required by law to disclose annual accounts to the election Commission. In practice, this has not translated into any sanctions for political parties that do not file such accounts – except intermittently – resulting in ineffective regulation. Furthermore, there does not seem to be any diligent scrutiny of the accounts that are filed for discrepancies or illegal activities. While the</p>
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		<p>date of publication in the Gazette, be brought before Parliament for approval. Any direction or guideline which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.]</p>		<p>mechanism that is already in place may be used to effectuate better oversight of political parties via disclosure, there needs to be a provision for monitoring specifically related to election campaigns.</p> <p>27. The stipulated offences have very low fines prescribed, and these should be revised to be significantly higher, and to include the possibility of imprisonment.</p>
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