

Advocacy Report on
**Understanding Interconnections
between Human Rights and
Economic Crimes in Sri Lanka**
Exploring Issues and Potential Ways Forward



Advocacy Report on

**Understanding Interconnections between Human Rights and Economic
Crimes in Sri Lanka:**

Exploring Issues and Potential Ways Forward

Centre for Policy Alternatives

March 2024



The Centre for Policy Alternatives (CPA) is an independent, nonpartisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

Address: No 6/5, Layards Road, Colombo, 00500.

Telephone: +94 11 2081384 | +94 11 2081385 | +94 11 2081386

Fax: +94 11 2081388

Web: www.cpalanka.org

Email: info@cpalanka.org

Acknowledgments

This report was compiled with the contribution of several individuals, who supported the research in various ways. The CPA team involved in the research and writing included Bhavani Fonseka, Piyumani Ranasinghe and Shabnam Mohamed with initial research assistance provided by Bhagya Samarakoon, Kushmila Ranasinghe and Samya Senaratne. CPA is grateful for the experts who participated in the study, dedicating their valuable time to key informant interviews, and the round table discussion as well as for sharing feedback, comments, and insights for the report.

Table of Contents

List of Abbreviations	5
Summary	7
1. Introduction	8
1.1 Background	8
1.2 Scope of the Study	9
1.3 Methodology	10
1.4 Understanding the Conceptual (Dis)order of Economic Crimes	11
1.5 Key Concepts	14
1.5.1. PEPs and Economic Crimes in Sri Lanka	14
1.5.2 Dimensions of Economic Crimes committed by PEPs in Sri Lanka	16
2. Findings of the Research	24
2.1 Understanding Challenges to Addressing Economic Crimes in Sri Lanka: An Entry Point to a Broader Discourse	24
2.1.1. Structural Challenges	25
2.1.2 Legal Challenges	33
2.1.3. Socio-political Challenges	45
3. System Change: Potential Interventions and Way Forward	47
3.1 Potential Interventions	47

A. Potential Structural Interventions	47
B. Potential Legal Interventions	49
C. Potential Socio-political Interventions	49
3.2 Way(s) Forward?	50
Annex 1: A Selection of Emblematic Economic Crimes Cases in Sri Lanka	52

List of Abbreviations

CIABOC	Commission to Investigate Allegations of Bribery and Corruption
CPA	Centre for Policy Alternatives
EFF	Extended Fund Facility
EIA	Environmental Impact Assessment
FIU	Financial Intelligence Unit
FATF	Financial Action Task Force
IMF GDA	International Monetary Fund Governance Diagnostic Assessment
KIIs	Key Informant Interviews
OHCHR	United Nations High Commissioner for Human Rights
PEPs	Politically Exposed Persons
TISL	Transparency International Sri Lanka
UK	United Kingdom
UN	United Nations

Glossary of Key Terms

- **Corruption** According to Transparency International, ‘corruption’ is the "abuse of entrusted power for private gain," with entrusted power relationships existing in both the public and private sectors.¹
- **Economic Crimes** In this report, we define economic crimes loosely, considering the inherent conceptual disorder underlining the very term. As such, we identify three dimensions of economic crimes. Firstly, the capture of the State institutions by PEPs and, secondly, the violation of civil, political, and socio-economic human rights due to the erosion of the state’s critical resources by corrupt PEPs. Our focus in this report is on these two dimensions. There is also another key dimension of economic crimes that is useful to reflect on, which is the use of organized crime groups to reinforce a culture of fear and impunity. We consider a broad typology of economic crimes, which ranges from corruption, money laundering mismanagement of public resources to land grabs and environmental crime.
- **Entrusted Power** Power vested in a trusted role (in public office, the private or non-profit sectors) held by an individual or institution that exercises discretionary power in relation to another person or entity, where abuse of power typically harms the public interest.²
- **Politically Exposed Persons (PEPs)** According to the Central Bank Guidelines on Identification of PEPs No. 03 of 2019,³ Politically Exposed Persons or PEPs can be individuals who are entrusted with prominent public functions either domestically or by a foreign country, or in an international organization. This includes the head of a State or a Government, politicians, senior government officers, judicial officers, military officers, senior executives of any State-Owned Corporations/Government or other autonomous bodies. There are several categories of PEPs. Notably, close associates of PEPs, either in a social or professional capacity can also be identified as PEPs.
- **System Crimes** System crimes are crimes generated by functional systems that reinforce impunity for corruption with impunity for human rights violations.⁴

¹ ‘What is Corruption’ (*Transparency International*, n.d.) <<https://www.transparency.org/en/what-is-corruption>> accessed 9 January 2024.

² Robert Barrington, Elizabeth Dávid-Barret, Rebecca Dobson Phillips and Georgia Garrod, *Dictionary on Corruption* (Agenda Publishing 2023).

³ Central Bank Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019 <<http://fiusrilanka.gov.lk/docs/Guidelines/2019/Guideline-03-2019.pdf>> accessed 15 January 2024.

⁴ The definition is inspired by Ruben Carranza’s analysis of “system crimes” in Ruben Carranza, ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’ (2008) *The International Journal of Transitional Justice* 2(3), 316 < <https://doi.org/10.1093/ijtj/ijn023>> accessed 24 September 2023.

Summary

In Sri Lanka, economic crimes perpetrated by PEPs have received critical attention at present, where there have been discussions on plausible interventions to address the culture of impunity and the human rights implications of economic crimes. This report, written primarily to understand and advocate for key issues concerning addressing economic crimes in Sri Lanka, maps out several interconnections between economic crimes perpetrated by PEPs in Sri Lanka and the human rights implications of such crimes. Since the notion of economic crimes suffers from an inherent conceptual confusion, there are a myriad of policy prescriptions and interventions to address economic crimes. With this understanding, the report examines a selection of issue areas concerning impunity for economic crimes in Sri Lanka in-breadth through empirical research. The report consists of three chapters. In Chapter 1, we outline the point of departure of the study, by laying out the conceptual framework of the research. The second chapter is dedicated to presenting the findings of the study, where the readers are provided an overview of certain challenges encountered in addressing economic crimes. This chapter analyses the empirical data collected in the research, by setting out the cross-cutting structural, legal as well as socio-political issues reinforcing a culture of impunity for economic crimes in the country. In the final chapter, we discuss potential interventions that could be utilized in advocacy efforts and strategies for various stakeholders to amplify the demands on the accountability for economic crimes in Sri Lanka at present. The annexure at the end of the report, provides a snapshot of several case studies on grand corruption in Sri Lanka, which could be considered as some of the emblematic cases of economic crimes in the country.

1. Introduction

1.1 Background

Since the onset of the economic crisis in Sri Lanka in 2022, the demands for accountability and transparency have amplified. Corruption, economic crimes, and economic loss due to governance and administrative inefficiencies are recurring topics over the past decades despite successive governments failing to achieve long-lasting and meaningful measures towards accountability. In 2015 the “good governance” or the *Yabapalana* government came into power by capitalizing on the need to address corruption in Sri Lanka. There has also been discourse both within the present governance structures and beyond to address corruption. However, the issue of addressing economic crimes remains elusive, particularly with little material success in holding perpetrators for economic crimes accountable. It also raises questions regarding the capability of the Sri Lankan socio-political, legal and governance structures to address economic crimes in Sri Lanka.

At the time of writing this paper, Sri Lanka is negotiating the restructuring of its external debt and the government is implementing economic reforms targeted at increasing government revenue and reducing inflation rates.⁵ Sri Lanka is also facing an election cycle with several major elections lined up. Although fighting corruption and demanding for accountability has gained headway in public discourse, the issue of addressing economic crimes in Sri Lanka cannot be stressed enough, particularly owing to the entrenched culture of impunity. The need to address the underlying causes of the economic crisis, including impunity for human rights violations and economic crimes was also highlighted by the United Nations High Commissioner for Human Rights (OHCHR) in October 2022.⁶ The Resolution adopted by the United Nations Human Rights Council also “calls upon the Government of Sri Lanka to address the ongoing economic crisis, including by investigating and, where warranted, prosecuting corruption, including where committed by public and former public officials, and stands ready to assist and support independent, impartial and transparent efforts in this regard.”⁷

Notably, in March 2023, the IMF approved an Extended Fund Facility (EFF) arrangement for Sri Lanka, to support implementation of reforms which were crucial to address the critical balance of payment issues in the country. The IMF program underpinned governance and anti-corruption as key pillars, which encompassed a Governance Diagnostic Assessment (hereinafter referred to as the IMF

⁵ International Monetary Fund, ‘Transcript of Press Briefing at the Conclusion of the IMF Staff Visit to Sri Lanka’ (International Monetary Fund, 19 January 2024) <<https://www.imf.org/en/News/Articles/2024/01/19/tr011924-transcript-of-sri-lanka-press-briefing>> accessed 26 February 2024.

⁶ UN OHCHR, Fifty-first Session 12 September-7 October 2022 ‘Comprehensive Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Sri Lanka’ (4 October 2022) A/HRC/51/5<<https://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-United-nations-high>> accessed 5 January 2024.

⁷ UNCHR Res 51/1 (2022) UN Doc E/A/HRC/RES/51/1 <<https://documents.un.org/doc/undoc/gen/g22/520/77/pdf/g2252077.pdf?token=hwfTAymu2tRSkVvTr0&fc=true>> accessed 5 January 2024.

GDA) that was published in September 2023.⁸ In addition to the IMF in September 2023, a group of six civil society organizations, published a Civil Society Diagnostic Report shadowing the IMF GDA on Sri Lanka.⁹ This Civil Society Diagnostic report was compiled following island-wide consultations with civil society groups and experts to develop a set of recommendations to address high-level corruption and the lack of democratic accountability in Sri Lanka. Among other things, it has stressed the need to address economic crimes considering the challenge of entrenched impunity.¹⁰

Building on the existing work on corruption and governance issues in Sri Lanka,¹¹ the present study aims to explore and understand the intersections between economic crimes and human rights in Sri Lanka. The broader objective here is to drive a critical dialogue on the challenges ahead in addressing economic crimes in Sri Lanka, by painting the vast landscape of interconnected issues underlying economic crimes in the country. The report does not provide concrete recommendations. It will, however, explore the potential ways forward in addressing structural, legal, and socio-political challenges to accountability. To begin with, we will set out the scope of the research.

1.2 Scope of the Study

As discussed in the proceeding sections, the term economic crimes itself describes a vast subject area, with multiple disciplinary nuances. An undertaking seeking to couple such a vast subject matter with an inquiry into its human rights implications runs the risk of further broadening the purview of the research. Therefore, for brevity, it is vital to outline the scope of our research at the outset. Such purposive delimitation will aid the reader in understanding what the present study addresses and what lies beyond its scope. This paper does not intend to lay down an exhaustive list of economic crimes and challenges in Sri Lanka. As stated above, a colossal body of existing research work has comprehensively commented and/or examined issues spanning corruption, public finance, governance challenges, human rights, and accountability in Sri Lanka. Therefore, the purpose of this study is to expand on such existing literature compiled by various individuals and groups over the past years/decades, to fulfill any gaps in such literature, especially in drawing interconnections between economic crimes and its human rights implications. The report will focus on economic crimes

⁸ International Monetary Fund, *Sri Lanka Technical Assistance Report – Governance Diagnostic Assessment* (International Monetary Fund 2023) <<https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>> accessed 5 January 2024. International Financial Institutions (IFIs) such as the IMF have received criticism for entrenching the coercive powers of the state and promoting anti-corruption measures to protect capital as opposed to human rights. Studies have examined how in countries like Tunisia state economic policies backed by IFIs have caused economic crimes such as socio-economic marginalization. In the present report, we consider these existing critiques, but explore the possibility of utilizing the present IMF package to promote legal reforms that address corruption and other economic crime in Sri Lanka.

⁹ Civil Society Initiative on Anti-Corruption Reform for Economic Recovery, *Civil Society Governance Diagnostic Report on Sri Lanka: As Assessment of the Anti-Corruption Landscape of Sri Lanka* (Transparency International Sri Lanka, 2023) <https://www.tisrilanka.org/wp-content/uploads/2023/09/GDA_REPORT_2023.pdf> accessed 6 January 2024.

¹⁰ See specifically p. 40 of the Civil Society Diagnostic Report on “measures towards structural changes that are necessary to significantly reduce corruption risk and impunity.”

¹¹ Various organizations (notably Transparency International Sri Lanka, Verité Research etc.) and Individuals have been working on issues spanning corruption, public finance, election campaign financing and other related issues over the past decades. These are entities representing academia, think-tanks, professional bodies, the judiciary as well as other state institutions who have continued to study, write, and advocate for anti-corruption and accountability in Sri Lanka. We recognize and acknowledge that this work has strongly influenced this research in various ways.

committed by Politically Exposed Persons (PEPs) in Sri Lanka, particularly to drive a discourse on the challenges faced in addressing economic crimes committed by elite group entrusted with power.

It should be borne in mind that the study does not recommend concrete solutions to the challenges discussed. It does, however, explore potential interventions that can be made in addressing impunity for economic crimes. A useful caveat is to note that this report is framed in a way where issues are outlined in-breadth as opposed to in-depth, with the intention of examining a range of challenges relating to economic crimes. Therefore, the report will not delve into any specific issue extensively as that would not serve the purpose of this study. Hence, the readers are encouraged to consider the analysis more as an entry point into understanding the key challenges in addressing economic crimes perpetrated by PEPs in Sri Lanka, with an expansive outlook on the intersections between economic crimes and various human rights issues. Since the report limits its scope to addressing economic crimes perpetrated by PEPs, the study only captures certain nuances of economic crimes involving powerful political elites in Sri Lanka. Another limitation of the study is that it considers a broader range of issues and therefore does not extensively discuss specific economic crimes, related challenges, or precise recommendations. Given the vast nature of the subject matter, it also does not cover all issue areas concerning economic crimes perpetrated by PEPs.

1.3 Methodology

This research is a qualitative study, encompassing both desk/library research as well as empirical research methods. The desk research included the collection of data through a comprehensive review of existing domestic and international literature on economic crimes, including primary data such as domestic and international legislation. The empirical study included conducting selective key informant interviews (KIIs) and convening a closed-door roundtable discussion with subject matter experts. The KIIs were designed as unstructured interviews to better understand the nuances within the present practices and realities of addressing economic crimes in Sri Lanka. As such, six KIIs were conducted in-person and online between January and February 2024 with domestic as well as international experts on economic crimes. These experts represented various professional fields and academic disciplines. To maintain confidentiality, the KIIs are kept undisclosed. The closed-door roundtable discussion took place in February 2024. The feedback, comments, and insights shared by subject-area experts at the roundtable discussion also informed the research. As noted above, this report is informed by and builds on the existing research work relating to economic crimes in Sri Lanka compiled by various individuals and organizations.

1.4 Understanding the Conceptual (Dis)order of Economic Crimes

Prior to discussing economic crimes in Sri Lanka, it is crucial to briefly outline the conceptual vagueness and the malleability of the term “economic crimes” in various disciplines,¹² particularly to acknowledge that this results in a myriad of policy prescriptions and behaviors for governments in addressing economic crimes.¹³ This will hold true to the present study as well. Lord and Levi refer to the conceptual “disorder” faced by researchers who study the phenomenon of economic crimes, where what economic crimes exclude and include is not self-evident due to the imprecise nature of the term. In policy discourses, economic crime is used interchangeably with financial crime.¹⁴

In criminology, economic crimes are identified as white-collar crimes, committed by a person of respectability and high social status”.¹⁵ According to the United Kingdom Economic Crime Plan 2 (2023-2026), economic crimes are defined as “a broad category of activity including money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others”.¹⁶ Such economic crimes pose critical harm to society and individuals as it inflicts systemic threats to peoples’ ways of life. In the Dictionary on Corruption, “Economic Crime” (also known as financial crime) is defined by Barrington et. al. as “illegal activity that involves money, assets, or finance.” Further, it is stated that corruption “can be a form of economic crime when the benefits or losses that result from commission are financial.”¹⁷ Saeed and Parmentier expands the definition of economic crimes from its conventional focus and goes on to coin the word “economic-state crime”, where they identify illegal and injurious acts committed by those in positions of power within the State apparatus, and/or society, that lead to violation of socio-economic as well as civil and political rights of individuals and community.¹⁸ The Kenyan Truth, Justice and Reconciliation Commission defines economic crimes under the frame of grand corruption and the exploitation of natural and public resources resulting in the violation of socio-economic rights.¹⁹ For Ruben Carranza, such economic crimes are “system crimes” where powerful actors maintain a stringent system of abuse.²⁰ In other

¹² Bengt Larsson, ‘What is ‘economic’ about ‘economic crime?’ in Sven-Åke Lindgren (ed), *White-Collar Crime Research* (The national council for crime prevention, Sweden 2001) 121-136 <<https://www.researchgate.net/publication/265296453>> accessed 17 November 2023.

¹³ Nicola Lord and Micheal Levi, ‘Economic Crime, economic criminology, and serious crimes for economic gain: On the Conceptual and disciplinary (dis)order of the object of study’ (2023) *Journal of Economic Criminology* 2 <<https://doi.org/10.1016/j.jeconc.2023.100014>> accessed 6 January 2024.

¹⁴ We use the term coined by Lord and Levi (2023) throughout this report to outline the conflated nature of economic crimes.

¹⁵ Edwin H. Sutherland, *White Collar Crime*. (Dryden Press 1949) 9

¹⁶ Government of United Kingdom, *United Kingdom Economic Crime Plan 2: 2023-2026* (2023).

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf> accessed 4 January 2024.

¹⁷ Robert Barrington, Elizabeth Dávid-Barret, Rebecca Dobson Phillips and Georgia Garrod, *Dictionary on Corruption* (Agenda Publishing 2023).

¹⁸ Huma Saeed and Stephan Parmentier, ‘When Rabbit are in charge of Carrots: Land Grabbing, Transitional Justice and Economic State Crime in Afghanistan’ (2017) *State Crime Journal* 6(1),17-18 <<https://doi.org/10.13169/statecrime.6.1.0013>> accessed 18 September 2023.

¹⁹ Lanegran discusses how the Kenyan Truth, Justice and Reconciliation Commission addressed issues such as land grabs under economic crimes. See p. 64 in Kimberly Lanegran, ‘Justice for Economic Crimes? Kenya’s Truth Commission’ (2015) *ASJP Africa and Francophonie* (4) <https://www.airuniversity.af.edu/Portals/10/ASPJ_French/journals_E/Volume-06_Issue-4/lanegran_e.pdf> accessed 18 September 2023.

²⁰ Ruben Carranza, ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’ (2008) *The International Journal of Transitional Justice* 2(3), 316 <<https://doi.org/10.1093/ijtj/ijn023>> accessed 24 September 2023.

words, system crimes are crimes generated by functional systems that reinforce impunity for corruption with impunity for human rights violations.

This multiplicity of definitions is a reminder of the conflated nature of the term economic crimes. However, despite such conflation, it is also evident that, to a certain degree there is consensus on certain features of economic crimes. Lord and Levi identify four common features of economic crimes, which are:

- “1. Crimes that are usually non-violence and generate financial gains or losses
2. Deception and dishonesty as key aspects of the modus operandi
3. The intentional abuse or misuse of otherwise lawful practices and procedures
4. A violation of trust, whether embedded within a legitimate or a contrived arrangement.”²¹

Figure 1 below illustrates the conceptual disorder of economic crimes.

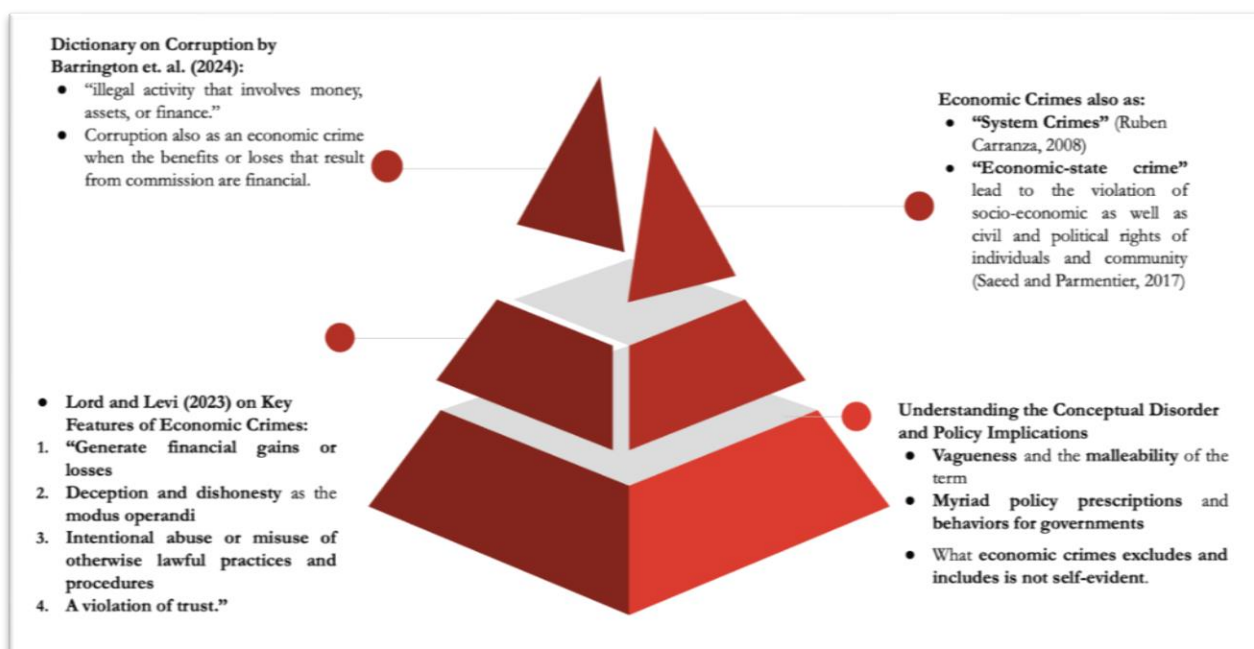


Figure 1: The Conceptual Disorder²²

In addition to these features, there is also consensus regarding the perpetrators of economic crimes, *i.e.* powerful sectors of society, which includes political elite and State actors. By stealing large sums of money and engaging in unlawful transactions in the guise of profiting their businesses or securing private gains, powerful actors commit economic crimes in a culture where legal violations are considered part of the business and/or governance system. These political elites and/or State actors hold entrusted power, which is the “power vested in a trusted role (in public office, the private or non-profit sectors) held by an individual or institution that exercises discretionary power in relation

²¹ Nicola Lord and Micheal Levi, ‘Economic Crime, economic criminology, and serious crimes for economic gain: On the Conceptual and disciplinary (dis)order of the object of study’ (2023) *Journal of Economic Criminology* 1, 3 <<https://doi.org/10.1016/j.jeconc.2023.100014>> accessed 6 January 2024.

²² Creation of the Authors based on research findings.

to another person or entity, where its abuse typically harms the public interest.”²³ According to Transparency International this notion of entrusted power is central to the understanding of economic crimes such as corruption.²⁴ This degree of organization and/or system that is required to perpetrate economic crimes also distinguishes it from any other type of crimes.

Notably, the Economic Crime Plan of the UK underpins that economic crimes are a rapidly growing and increasingly complex threat to national security and prosperity, as criminals continuously seek ways to commit and benefit from fraud, money laundering, and corruption. Whilst at the outset economic crimes may usually be non-violent, it is evident that economic crimes give rise to organized crime. The Economic Crime Plan sheds light on how economic crimes fuels serious organized crime, thereby undermining the well-being and the interests of society, legitimate businesses as well as the country’s international reputation.²⁵

As mentioned above, due to the conceptual disorder there are no specific policy prescriptions or approaches to addressing economic crimes. Thus, approaches are and should be context specific. In various countries, based on the socio-economic, political, and situational context the measures implemented to address economic crimes remain different.²⁶ In criminology, economic crime is often discussed under white collar crime with civil or administrative legal remedies.²⁷ However, scholars stress on the need to criminalize economic crimes, thereby bringing remedies under the ambit of criminal law. In understanding economic crimes as “system crimes”, human rights courts have also prosecuted economic crimes and human rights violations together.²⁸ Transitional Justice scholars have also stressed the need to address the impunity gap for economic crimes and human rights abuse in post-conflict or post-authoritarian societies.²⁹ Thus, in terms of the economic crime control

²³ Robert Barrington, Elizabeth Dávid-Barret, Rebecca Dobson Phillips and Georgia Garrod, *Dictionary on Corruption* (Agenda Publishing 2023).

²⁴ Corruption is the "abuse of entrusted power for private gain," with entrusted power relationships existing in both the public and private sectors. These relationships are based on the trust established in principal-agent theory, where an agent is given authority by a principal to act on their behalf. Power can be entrusted through assignment or delegation for a specific task, or it may involve a broader transfer of responsibility to make decisions and act in the interests of another party. In both instances, the entrusted party acts as a representative of another's interests. Abuse occurs when such a party fails to adequately represent those interests. When this failure results from a conflict of interest between parties, rather than neglect or incompetence, it is likely to be characterized as a form of corruption. See Transparency International definition available at 'What is Corruption' (*Transparency International*, n.d.) <<https://www.transparency.org/en/what-is-corruption>> accessed 9 January 2024.

²⁵ Government of United Kingdom, *United Kingdom Economic Crime Plan 2: 2023-2026* (2023), 4 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf> accessed 4 January 2024.

²⁶ Huma Saeed and Stephan Parmentier, 'When Rabbit are in charge of Carrots: Land Grabbing, Transitional Justice and Economic State Crime in Afghanistan' (2017) *State Crime Journal* 6(1), 16 <<https://doi.org/10.13169/statecrime.6.1.0013>> accessed 6 January 2024.

²⁷ J. Helmkamp, R. Ball and K. Townsend (1996) and G. Slapper and S. Tombs (1999) cited in Bengt Larsson, 'What is 'economic' about 'economic crime'?' in Sven-Åke Lindgren (ed), *White-Collar Crime Research* (The national council for crime prevention, Sweden 2001) 121-136, 122 <<https://www.researchgate.net/publication/265296453>> accessed 9 January 2024.

²⁸ Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' (2008) *The International Journal of Transitional Justice* 2(3) <<https://doi.org/10.1093/ijtj/ijn023>> accessed 16 September 2023.

²⁹ Ruben Carranza, Mohamed Azer Zouari and Ichraq Ghdiri, 'The Truth About Corruption: Reviewing the Tunisia Truth and Dignity Commission's Report on Corruption Under Dictatorship' (ICTJ 2024) <https://www.ictj.org/sites/default/files/2024-02/ictj_briefing_tunisia_corruption_en_web_0.pdf> accessed 26 February 2024.

perspectives, the socio-political realities of a given country are at the crux of any and all approaches addressing economic crimes. Figure 2 below illustrates a few crime control perspectives.

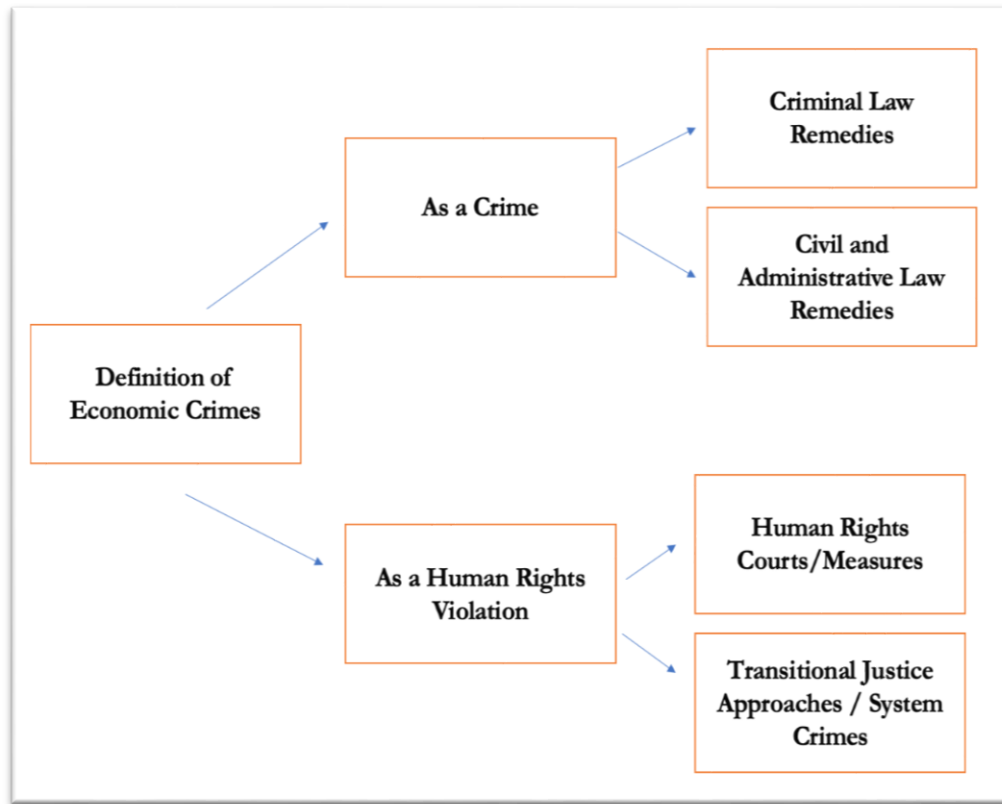


Figure 2: Prominent Crime Control Perspectives³⁰

1.5 Key Concepts

1.5.1. PEPs and Economic Crimes in Sri Lanka

Given the conflated nature of the very term “economic crimes” and its fast-evolving intricacies, for the purposes of this paper, we primarily consider economic crimes committed by Politically Exposed Persons which involve money, assets, and finance. A useful caveat here is that economic crimes are not only perpetrated by PEPs. As noted above, various influential sections in society commit economic crimes. PEPs who commit economic crimes are motivated by private gain to abuse their entrusted power, which ultimately results in undermining their responsibility to act in the public interest.

³⁰ Creation of the authors, inspired by Larson’s (2001) analysis on economic crimes at p. 130.

The Financial Action Task Force (FATF) defines PEPs as individuals who have been entrusted with prominent public functions in a country. This includes heads of State or governance entities, senior political elites of the government, senior executives of State-owned corporations, political party officials, military, and even judicial officials.³¹ In Sri Lanka, the Central Bank has issued specific Guidelines on Identification of PEPs (Guidelines on Identification of PEPs No. 03 of 2019),³² which refers to the Customer Due Diligence (CDD) Rules on PEPs.³³ Accordingly, PEPs include,

*“an individual who is entrusted with prominent public functions either domestically or by a foreign country, or in an international organization and includes a head of a State or a Government, a politician, a senior government officer, judicial officer or military officer, a senior executive of a State-Owned Corporation/Government or Autonomous body.”*³⁴

Notably, the Guidelines specify that family members of PEPs and their close associates are also considered PEPs.³⁵ Furthermore, the Guidelines set out five key categories of PEPs (illustrated in figure 2 below). These categories are useful in the context of this paper to mark the contours of the present study, particularly in identifying the type of actors engaged in economic crimes in Sri Lanka.

Experts interviewed for the study stressed that individuals classified as PEPs represented a distinctive category in the Sri Lankan context, a phenomenon likely to be observed in comparable contexts.³⁶ It was observed that the designation of PEPs in Sri Lanka extends beyond conventional political figures. As also seen in the classification of PEPs (figure 3), close associates of PEPs in professional capacities are also categorized as PEPs. Therefore, investors, business entities and corporations from the private sector also fall within this classification. This interconnection of PEPs in Sri Lanka is a notable feature, wherein these entities have strategically leveraged political advantages by manipulating the political system for personal gain. Notably, politicians have perceived these entities as opportunities, resulting in a pervasive interconnection between political figures and the private sector. Many of these PEPs are largely unrecognized by the general populace. They operate discreetly, engaging in financial transactions, orchestrating deals, and undertaking international travel to explore opportunities for unlawful financial activities while managing the proceeds of illicit activities. In certain cases, they are even consultancies and research organizations facilitating corruption and overriding regulatory authorities. This interconnectedness has facilitated a complex network of PEPs in Sri Lanka where political and private interests converge. Therefore, understanding economic crimes in this context, necessitates a nuanced understanding of the intricate relationships within these specific domains.

³¹ Financial Action Task Force, *FATF Guidance Politically Exposed Persons (Recommendations 12 and 22)* (2013) <<https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-PEP-Rec12-22.pdf.coredownload.pdf>> accessed 15 January 2024.

³² Central Bank Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019.

<<http://fiusrilanka.gov.lk/docs/Guidelines/2019/Guideline-03-2019.pdf>> accessed 15 January 2024.

³³ Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016 by Gazette Extraordinary No. 1951/13, dated January 27, 2016, and Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018 by Gazette Extraordinary No. 2053/20, dated January 10, 2018.

³⁴ See paragraph 7 of the Central Bank Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019.

³⁵ See paragraphs 8-10 of the Central Bank Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019.

³⁶ KII 4, 14th February 2024.

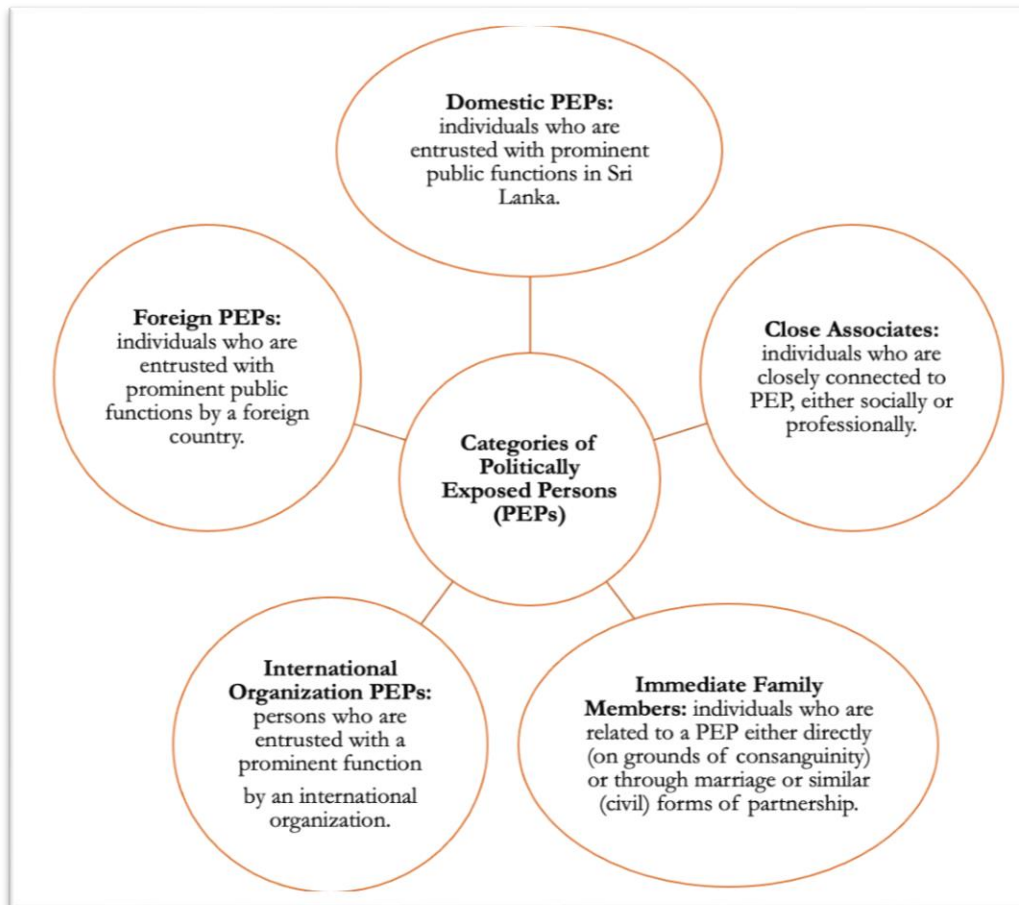


Figure 3: PEPs as categorized by Guidelines on Identification of Politically Exposed Persons, No. 03 of 2019

1.5.2 Dimensions of Economic Crimes committed by PEPs in Sri Lanka

In this study, we considered two dimensions of economic crimes: firstly, the capture of the State institutions by PEPs and, secondly, the violation of civil, political, and socio-economic human rights due to the erosion of the State's critical resources by corrupt PEPs. There is also another key dimension of economic crimes that is useful to reflect on, which is the use of organized crime groups to reinforce a culture of fear and impunity.³⁷ However, we will not consider this dimension comprehensively in this study as it is beyond the purview of the present report.

³⁷ In 2022 CPA identified two trends of economic crimes which distinguishes it from other types of financial crimes in its advocacy tools. Accordingly, the first dimension is the capture of the State institutions through corrupt practices by PEPs. The second dimension is the use of disreputable entities, including organized criminal groups, for political funding or campaign finance. Advocacy tools are available at Centre for Policy Alternatives, 'Economic Crimes' (Centre for Policy Alternatives, 21 April 2023) <<https://www.cpalanka.org/economic-crimes/>> accessed 24 September 2023.

A. Understanding State Capture in Sri Lanka

The first dimension of economic crimes is the capture of the State's institutions. Here, institutions include structures of the State, which also involve laws and policies. In the 2017 World Development Report, State capture is defined broadly as the exercise of power by private actors to influence policies/policy implementation to favor their private interests through various means. Influence is exerted through the control of resources as well as threats of violence.³⁸ According to Transparency International, State Capture is also understood as “situations where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation’s policies, legal environment, and economy to benefit their own private interests.”³⁹ Fiebelkorn stresses that interconnected networks of corrupt economic and political actors perpetrate State capture by targeting State assets and using (or abusing) institutions for private gains.⁴⁰ According to the World Bank, there are many manifestations of State capture, which range from perverted public procurement processes favoring personal contacts over high quality bids to selective enforcement of regulations and privileged access to inputs including credit, import licenses and land.⁴¹ Therefore, State capture facilitates corruption. The private gains of such corruption, particularly if they are financial gains, leads to the perpetration of certain types of economic crimes.⁴²

In Sri Lanka, Samararatne (2022) observes that State capture neutralizes the external as well as the internal checks on State systems, where public institutions are deliberately prevented from fulfilling their mandate.⁴³ To further understand State capture in countries like Sri Lanka, one must also contextualize the colonial past of the modern Sri Lankan State, particularly, the embeddedness of the colonial ideology of extraction for private gain. Therefore, there is little consonance with democratic processes due to the corrupt socio-political culture geared to facilitate political patronage. Such political patronage alongside undemocratic political parties plagued by dynasty politics, the absence of sufficient regulatory frameworks on campaign finance as well as the lack of public accountability for assets and liabilities of elected representatives, consolidates the idea of private gain undermining public institutions.⁴⁴ It is useful to bear in mind that, there is no one-size-fits-all model to analyze State capture, as it is extremely context specific. However, studies have shown that political connections, in terms of who is connected with whom, as well as the capture mechanisms, for example how politically

³⁸ World Bank Group, ‘World Development Report 2017: Governance and the Law’ (World Bank 2017) <<https://hdl.handle.net/10986/25880>> accessed 18 January 2024.

³⁹ Transparency International, ‘The Anti-Corruption Plain Language Guide’ (2009), 43 <https://images.transparencycdn.org/images/2009_TIPainLanguageGuide_EN.pdf> accessed 13 January 2024.

⁴⁰ Andreas Fiebelkorn, ‘State Capture Analysis: How to Quantitatively Analyze the Regulatory Abuse by Business-State Relationships’ (2019) Governance Discussion Paper No. 2 <<https://documents1.worldbank.org/curated/en/785311576571172286/pdf/State-Capture-Analysis-How-to-Quantitatively-Analyze-the-Regulatory-Abuse-by-Business-State-Relationships.pdf>> accessed 5 March 2024.

⁴¹ World Bank, ‘State Capture Analysis: A How to Guide for Practitioners’ (2021) EFI Note Governance <<https://openknowledge.worldbank.org/server/api/core/bitstreams/d45395a7-005d-5f65-847f-ae6c70b4eebb/content>> accessed 5 March 2024.

⁴² KII 1, 11 January 2024.

⁴³ Dinesha Samararatne, ‘Constitutional Ping-Pong Sri Lanka’s Crisis and the Rediscovery of Political Agency’ (Verfassungblog on Matters Constitutional, 5 March 2022) <<https://verfassungsblog.de/constitutional-ping-pong/>> accessed 7 February 2024.

⁴⁴ Ibid.

connected actors receive policy favors, are two key components that validate the prevalence of State capture.⁴⁵ In discussing the findings of the report, we discuss some of the above manifestations as well as the impact of State capture in reinforcing a culture of impunity in Sri Lanka.

B. Drawing Links between Economic Crimes and Human Rights Violations in Sri Lanka

The second dimension of economic crimes is the violation of human rights due to the erosion of the State's critical resources by corrupt PEPs.⁴⁶ The human rights treaty bodies, in their official contribution to Agenda 2030, have "identified mismanagement of resources and corruption as obstacles to the allocation of resources to promote equal rights."⁴⁷ Even if economic crimes erode the State's critical resources, victims of economic crimes are often kept unaware of the economic crimes as well as those who commit economic crimes by various strategies, including human rights abuse. For instance, corrupt PEPs could actively undermine and politicize redress mechanisms to avoid accountability, the dismantling of these institutions then has a cascading effect across other sectors as well.⁴⁸ However, the implications of economic crimes are seen when States are unable to guarantee socio-economic needs to their citizenry due to the mass embezzlement and plunder of critical resources by authoritative elites and their domestic as well as international accomplices.⁴⁹ The implications of economic crimes result in inefficiencies in governance, massive revenue loss as well as unfair advantage for those who are profiting from unlawful activities. The consequent loss of trust in the governance structures has severe implications in social cohesion and human rights. Often the costs of these negative implications are borne by the most vulnerable individuals and groups in society. The types of economic crimes may range from corruption, mismanagement of public resources, misappropriation of public funds to bribery, embezzlement, money laundering and tax evasion. Notably, whilst corruption qualifies as an economic crime, it is not its equivalent. Corruption is the "abuse of entrusted power for private gain," with entrusted power relationships existing in both the

⁴⁵ Andreas Fiebelkorn, 'State Capture Analysis: How to Quantitatively Analyze the Regulatory Abuse by Business-State Relationships' (2019) Governance Discussion Paper No. 2, 3 <<https://documents1.worldbank.org/curated/en/785311576571172286/pdf/State-Capture-Analysis-How-to-Quantitatively-Analyze-the-Regulatory-Abuse-by-Business-State-Relationships.pdf>> accessed 5 March 2024.

⁴⁶ According to the Fact Sheet on Stolen Asset Recovery, "Corrupt money associated with bribes received by public officials from developing and transition countries is conservatively estimated at \$20 billion to \$40 billion per year—a figure equivalent to 20 to 40 percent of flows of official development assistance (ODA)." See 'Fact Sheet on Stolen Asset Recovery' (World Bank and UN Office on Drugs and Crime) <https://www.unodc.org/pdf/Star_FactSheet.pdf> accessed 18 March 2024.

⁴⁷ 'Human Rights Treaty Bodies' (Sustainable Development Goals, n.d) <<https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=201&menu=3170>> accessed 2 January 2024.

⁴⁸ Deepa Mehta, 'Economic Crime in a Globalizing Society: Its Impact on the Sound Development of the State – An Indian Perspective' (UNAFEI 126th International Senior Seminar Visiting Experts' Papers, Japan, 2005) <https://www.unafei.or.jp/publications/pdf/RS_No66/No66_10VE_Mehta1.pdf> accessed 02 January 2024.

⁴⁹ UN OHCHR, Forty-eighth Session 13 September-8 October 2021 'Conference room paper of the Commission on Human Rights in South Sudan on Human Rights violations and related economic crimes in the Republic of South Sudan' (23 September 2021) A/HRC/48/CRP.3 <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A-HRC-48-CRP.3.pdf>> accessed 6 January 2024.

public and private sectors.⁵⁰ It becomes an economic crime when the benefits or losses that result from commissions are financial.⁵¹

It is useful to observe the link between economic crimes and human rights violations particularly in the aftermath of the 2022 economic crisis. In 2022, the breakdown of the economy resulted in drastic implications on the Sri Lankan people, which included increased vulnerability and suffering due to fuel and gas shortages, critical medicine shortages and the deprivation of essential amenities. Despite the country commencing a process of recovery at present, vulnerabilities have exacerbated where certain individuals and groups continue to be more vulnerable than others due to socio-economic hardships.⁵² Therefore, to understand the human rights implications of economic crimes in Sri Lanka, it is vital to see the links between the breakdown of the economy, the resulting suffering, and the systematically perpetrated economic crimes in Sri Lanka.

In fact, the OHCHR has drawn links between the violation of human rights due to the economic crisis and called for accountability measures against economic crimes, to hold perpetrators liable and prevent future possibilities for economic crimes.⁵³ Notably, there was also an emphasis on the need to protect human rights in economic policies as well as decision-making processes, particularly to curb corruption within the governance structures that had led to the economic breakdown. Further, in October 2022, the UN Human Rights Council passed a 19-point resolution emphasizing the need to investigate economic crimes in Sri Lanka for accountability.⁵⁴ It links the economic crisis to human rights violations and calls for investigating and prosecuting corruption. This resolution increases international scrutiny of Sri Lanka.⁵⁵

⁵⁰ Transparency International, 'What is Corruption?' <<https://www.transparency.org/en/what-is-corruption>> accessed 6 January 2024.

⁵¹ Robert Barrington, Elizabeth Dávid-Barret, Rebecca Dobson Phillips and Georgia Garrod, *Dictionary on Corruption* (Agenda Publishing 2023).

⁵² According to the United Nations World Food Programme, 17% of the population are facing moderate food insecurity, with 31% of children aged under 5 are malnourished. 62% of the households are adopting livelihood eroding coping strategies due to the economic crisis. More statistics on the population vulnerable to food security is available at World Food Programme, 'WFP Sri Lanka Country Brief' (January 2024) <https://docs.wfp.org/api/documents/WFP-0000156637/download/?_ga=2.23058553.377091576.1710069637-1824828481.1710069637> accessed 9 February 2024; See

specifically pp. 17-18 in United Nations Development Programme, 'Understanding Multidimensional Vulnerabilities: Impact on People of Sri Lanka' (2023) <<https://www.undp.org/srilanka/mvi>> accessed 9 February 2024. See also, Sarah Saadoun, 'In Sri Lanka, Chaotic Social Security Reform Denies People's Rights' (*Human Rights Watch*, 7 August 2023)

<<https://www.hrw.org/news/2023/08/07/sri-lanka-chaotic-social-security-reform-denies-peoples-rights>> accessed 9 February 2024; Lakshila Wanigasinghe, 'New Year, New VAT: Can Sri Lanka's Poor Cope with the Increase?' (IPS Talking Economics, 10 January 2024) <<https://www.ips.lk/talkingeconomics/2024/01/10/new-year-new-vat-can-sri-lankas-poor-cope-with-the-increase/>> accessed

10 February 2024; Melkishiya Andrew, 'World Bank warns Sri Lanka of worsening poverty amid IMF adjustments', *Economy Next* (8 May 2023) <<https://economynext.com/world-bank-warns-sri-lanka-of-worsening-poverty-amid-imf-adjustments-120057/>> accessed

10 February 2024.

⁵³ UN OHCHR, Fifty-first Session 12 September-7 October 2022 'Comprehensive Report of the United Nations High Commissioner for Human Rights' (6 September 2022) A/HRC/51/5 <<https://reliefweb.int/report/sri-lanka/situation-human-rights-sri-lanka-comprehensive-report-united-nations-high-commissioner-human-rights-ahr515-advance-unedited-version>> accessed 9 February 2024.

⁵⁴ Zulfick Farzan, 'UNHRC : Core Group produces 19-point resolution on Sri Lanka', *News First* (5 October 2022)

<<https://www.newsfirst.lk/2022/10/05/unhrc-core-group-produces-19-point-resolution-on-sri-lanka>> accessed 5 January 2024.

⁵⁵ The issue will be discussed again at the 55th session of the Council (26 February to 5 April 2024). See 'UN Human Rights Council 51: UK welcomes resolution on Sri Lanka' (*GOV.UK*, 6 October 2022) <<https://www.gov.uk/government/news/un-human-rights-council-51-uk-welcomes-resolution-on-sri-lanka>> accessed 5 January 2024.

Notably, in June 2022, two fundamental rights petitions were also filed, alleging the responsibility of key executive officials for the economic crisis persisting during the years 2021-2022 (hereinafter referred to as the *Economic Crisis Judgement*).⁵⁶ The respondents included the then Prime Minister and finance minister (also former President) Mahinda Rajapaksa, the succeeding Finance Minister Basil Rajapaksa, the then President Gotabaya Rajapaksa, the President's Secretary P.B. Jayasundera, the Governor of the Central Bank Ajith Nivard Cabraal, and the Monetary Board of the Central Bank. The petitions, filed in the public interest, focused on policy failures, including drastic tax cuts, delayed IMF assistance, and the artificial maintenance of the exchange rate. In a landmark decision, the Supreme Court held in November 2023 that these decisions, coupled with the respondents' inaction despite warnings, constituted arbitrary and irrational actions, violating the right to equality under Article 12 of the constitution. The majority ruled that the respondents' failure to take remedial measures breached the public trust, a facet of the right to equal protection of the law.

This recognition of public trust in relation to public finance is not a novel concept. In *Re the Appropriation Bill* (SC SD 3 & 4 OF 2008), it was held that, "...in terms of Article 4 (a) of the Constitution, Parliament is the sole custodian of legislative power of the People and will exercise that power in trust for the People in whom sovereignty is reposed. Legislative power includes 'full control over public finance' as stated in Article 148."⁵⁷ Further, in *Azath Sally v. Colombo Municipal Council*, the Supreme Court emphasized the concept of public trust, acknowledging that the resources of the country belong to the people.⁵⁸ The public trust doctrine aligns with Sri Lanka's inalienable sovereignty vested in the people, as per Article 3 of the Constitution, encompassing government powers, fundamental rights, and the franchise; and the people have committed the care and preservation of their resources to the organs of the State, which are their guardians or trustees. The People's resources would necessarily include and not be limited to, financial resources, *i. e.* public finance. Courts extending the public trust doctrine to public finance also evinces the effort taken to defend a key feature of the Sri Lankan democracy, which is the parliamentary control over public finance. However, the public trust doctrine is a "unique but also rare judicial response in Sri Lanka to the anti-democratic monopoly power, democratic blind spots and democratic burdens of inertia."⁵⁹

In the *Economic Crisis Judgement*, the majority further stressed that "on assumption of public office, it was their [respondents] duty to ensure that the existing issues were addressed and resolved in the best interest of the country and take every possible measure to avoid an aggravation to the detriment of the people."⁶⁰ Thus, the Judgment, albeit limited to a declaration of the breach of fundamental rights without seeking compensation, holds significance in introducing the intersection of economic mismanagement and human rights violations. This judgment underscores the judiciary's commitment to accountability and highlights the severe implications of ineffective governance on

⁵⁶ *Samarakoon v. Wickremesinghe, and Jayaratne v The Attorney General* (SCFR 195/2022 & 212/2022, Supreme Court Minutes of 14th November 2023).

⁵⁷ In *Re the Appropriation Bill* S.C. (SD) 3 and 4/2008.

⁵⁸ [2009] 1 Sri LR 365.

⁵⁹ Dinesha Samararatne, 'Sri Lanka's Public Trust Doctrine as Responsive Judicial Review?' (2022) Hong Kong Law Journal (forthcoming), 14, 18 <<http://dx.doi.org/10.2139/ssrn.4289590>> accessed 5 March 2024.

⁶⁰ *Samarakoon v. Wickremesinghe, and Jayaratne v The Attorney General* (SCFR 195/2022 & 212/2022, Supreme Court Minutes of 14th November 2023), 116.

contributing to economic crises.⁶¹ Whilst the Judgement does not directly deal with economic crimes, the emphasis on political accountability of public officials is a paramount consideration for the broader discourse on economic crimes and impunity in Sri Lanka. The demand for accountability from individuals holding public office, specifically for economic mismanagement, sets out a precedent not just in the law, but also incentivizes the political discourse to demand for accountability from public officials for public spending. Certain individuals implicated in the Judgement were elected officials, who may also run for office in the forthcoming elections. Thus, the timing of the Judgement remains critical in the larger matrix of political accountability, especially when one factors in the demands for accountability for corruption and mismanagement of public resources amid the present economic crisis.

In this regard, if one is to stress on political accountability at present, one should actively draw links between instances where unaccountable groups of political and economic elites (and their accomplices) divert resources that are at the State's disposal to ensure human rights to its citizenry, for private gain.⁶² Such deliberate diversion and mismanagement violates various rights, including education, healthcare, housing, land, natural resources, etc. For instance, in the recent controversies surrounding medical procurement issues, former Health Minister Keheliya Rambukwella was accused of favoring unregistered Indian firms for medical procurement under the Indian credit line without proper procedures, which raised concerns about transparency, potential corruption, and the mismanagement of resources. The Cabinet's approval of procurement from unregistered companies bypassing competitive tenders despite available registered suppliers have further added to these worries.⁶³ Another example is the plunder of the State's natural environment by capturing regulatory mechanisms such as Environmental Impact Assessment processes (EIA) that are in place to ensure environmental compliance of any proposed project and the protection of various environmental rights. Corrupt PEPs have hijacked these systems for personal gain causing severe human rights and environmental implications.⁶⁴

Connectedly, the appropriation of lands under various pretexts and thereby denying access to livelihoods for certain social groups, has also been considered an economic crime violating human rights in various contexts.⁶⁵ In either one of these cases, it is the citizenry, particularly the most vulnerable groups such as women, children, poorer socio-economic classes, and other marginalized

⁶¹ Nirmala Kannangara, 'Thoughts of a lawyer in retrospect of a landmark judgement on Rajapaksa brothers', Daily Mirror (14 December 2023) <<https://www.dailymirror.lk/expose/Thoughts-of-a-lawyer-in-retrospect-of-a-landmark-judgement-on-Rajapaksa-brothers/333-27319>> accessed 5 January 2024;

⁶² UNCHR, Forty-eighth Session 13 September-8 October 2021 'Conference room paper of the Commission on Human Rights in South Sudan on Human Rights violations and related economic crimes in the Republic of South Sudan' (23 September 2021) A/HRC/48/CRP.3 <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A-HRC-48-CRP.3.pdf>> accessed 6 January 2024.

⁶³ Namini Wijedasa, 'Sick state of affairs in medical procurement under Indian credit line', The Sunday Times (25 December 2022) <<https://www.sundaytimes.lk/221225/news/sick-state-of-affairs-in-medical-procurement-under-indian-credit-line-506666.html>> accessed 5 January 2024.

⁶⁴ Hemantha Withanage, 'Generating clean energy at cost of nature', Daily News (29 November 2016) <<https://archives1.dailynews.lk/2016/11/29/features/100499>> accessed 5 January 2024.

⁶⁵ Lanegran discusses how the Kenyan Truth, Justice and Reconciliation Commission addressed issues such as land grabs under economic crimes. See p. 64 in Kimberly Lanegran, 'Justice for Economic Crimes? Kenya's Truth Commission' (2015) ASJP Africa and Francophonie (4) <https://www.airuniversity.af.edu/Portals/10/ASPJ_French/journals_E/Volume-06_Issue-4/lanegran_e.pdf> accessed 18 September 2023.

social groups that often pay the price for these economic crimes and the plunder of critical resources. It is useful to remember that it is not only socio-economic rights that are violated by those perpetrating economic crimes.

Regimes that perpetrate economic crime deploy a range of strategies to evade accountability for such crimes.⁶⁶ These include directly suppressing civil and political rights such as freedom of expression and other critical human rights of the citizenry to conceal the incidence of economic crimes through various means. For example, in the past decades Sri Lankan civilians, particularly journalists, who have demanded accountability against economic crimes have faced violations against freedom of opinion, expression and assembly, freedom from torture as well as right to life.⁶⁷ Journalists have also faced oppression under draconian terrorism prevention laws.⁶⁸ Such repression continues even at present, particularly with individuals and groups facing increasing threats or violations against the exercise of their fundamental rights.⁶⁹ In this regard, certain legal reforms at present that directly targets the dissent against corrupt elites can also be considered a strategy used to evade accountability and entrench a system of impunity which ultimately facilitates a fertile ground for economic crimes.

Therefore, impunity itself is a critical feature that links economic crimes and human rights violations in Sri Lanka. An indicator of the nexus between economic crimes and human rights violations is seen when powerful actors target freedom of expression, media freedom, and the right to dissent to suppress all forms of public disclosure of information. Impunity is reinforced by various strategies that undermine participatory democracy and safeguards that exist to demand accountability for abuse of power and economic crimes. Such strategies include delaying elections, strengthening the power of the executive, and implementing arbitrary laws that enable the vicious cycle of impunity. Such strategies are used especially to delay trials against economic crimes, to avoid extradition, and to intimidate individuals who demand accountability.

⁶⁶ Sanja Pesek, 'Combating Impunity: Transitional Justice and Anti-Corruption. Conclusions from Practitioners' Dialogues on Transitional Justice' (Freedom House 2014) <<https://freedomhouse.org/sites/default/files/Combating%20Impunity%20-%20Transitional%20Justice%20and%20Anti-Corruption.pdf>> accessed 8 January 2024.

⁶⁷ See reports on the killing of journalist Lasantha Wickrematunge in Transparency International, 'One Year On, Killing of Sri Lankan Journalist who Exposed Corruption Remains Unresolved', (8 January 2010) <<https://www.transparency.org/en/press/20100108-one-year-on-killing-of-sri-lankan-journalist-who-exposed-corruptio>> accessed 8 January 2024; See also: Sri Lanka Press Institute, 'Overview of Threats against Journalists in Sri Lanka (1990-2021)', (Sri Lanka Press Institute 2022), 18 <<https://slpi.lk/wp-content/uploads/2023/03/GMDF-Report-English-1.pdf>> accessed 9 January 2024; Centre for Justice and Accountability and the Committee to Protect Journalists, 'Sri Lanka Report on Harassment, Intimidation, Surveillance and Attacks Against Journalists in Sri Lanka' (9 February 2021), 2 <http://cja.org/wp-content/uploads/2021/02/2021.02.09-CJA_CPJ-Attacks-against-journalists-in-Sri-Lanka.pdf> accessed 9 January 2024; Human Rights Watch, 'Sri Lanka: End Persecution of Journalist Dharisha Bastians Targeted for Reports, Defense of Human Rights' (24 June 2020) <<https://www.hrw.org/news/2020/06/24/sri-lanka-end-persecution-journalist>> accessed 9 January 2024.

⁶⁸ Selvakumar Nilanthan, who has unveiled local government corruption in the past interrogated by the counter-terrorism investigation unit. See Civicus Monitor Tracking Civic Space, 'Despite UN Concerns Sri Lanka continues to Detain Critics, Arrest Protesters and Entrench Impunity' <<https://monitor.civicus.org/explore/despite-un-concerns-sri-lanka-continues-detain-critics-arrest-protesters-and-entrench-impunity/>> accessed 10 January 2024.

⁶⁹ Journalists have also faced threats in uncovering issues of land-grabbing in the North and Eastern regions of Sri Lanka. See Committee to Protect Journalists, 'Two Sri Lankan journalists questioned, harassed following protest coverage' (8 November 2023) <<https://cpj.org/2023/11/two-sri-lankan-journalists-questioned-harassed-following-protest-coverage/>> accessed 9 January 2024; Civicus Monitor Tracking Civic Space, 'Sri Lanka: Journalists and Activists Targeted, Protests Stifled and New Restrictive Laws Proposed' <<https://monitor.civicus.org/explore/sri-lanka-journalists-and-activists-targeted-protests-stifled-and-new-restrictive-laws-proposed/>> accessed 10 January 2024.

Figure 4 below, illustrates these intersections through the conception of the ‘vicious cycle of economic crimes.’⁷⁰ This conception of the vicious cycle is useful to frame the broader ambit of this research. Through this lens we can view and understand economic crimes as “system crimes” or in other words crimes generated by functional systems that reinforce dual levels of impunity, *i.e.* impunity for economic crimes with impunity for human rights violations.

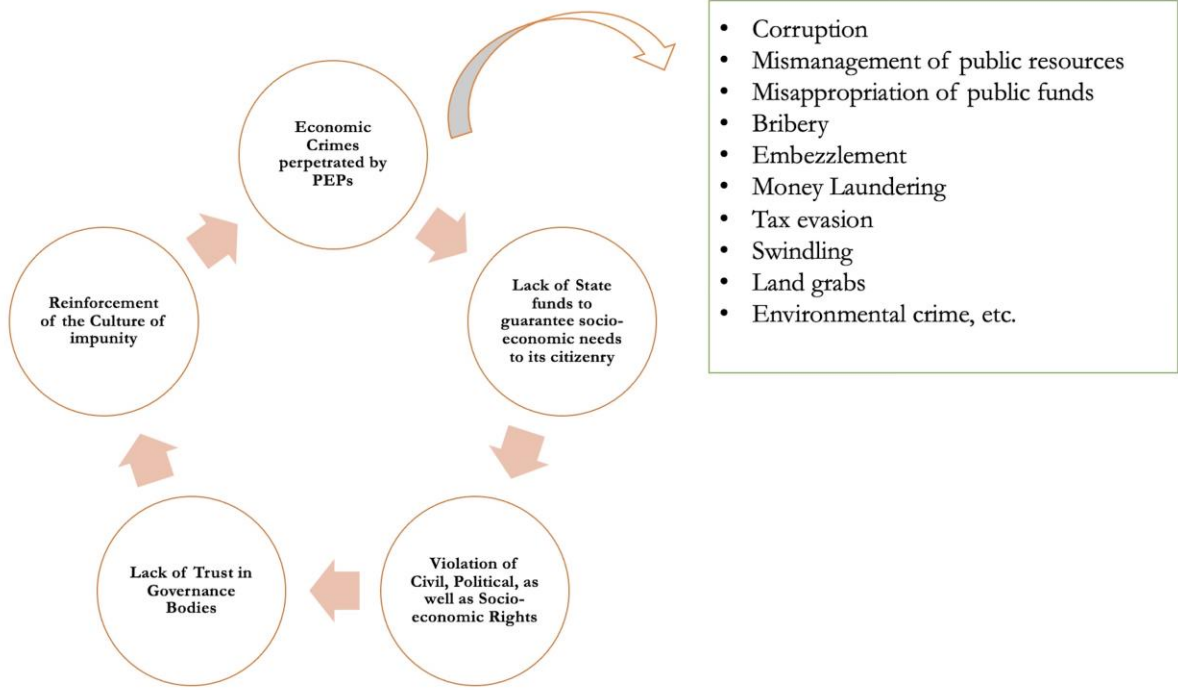


Figure 4: the Vicious Cycle of Economic Crimes

⁷⁰ Creation of the authors inspired by existing research cited in this report.

2. Findings of the Research

2.1 Understanding Challenges to Addressing Economic Crimes in Sri Lanka: An Entry Point to a Broader Discourse

Having examined some of the emblematic cases of grand corruption in Sri Lanka over the past decades (see Annex 1), it is vital to dwell on the poignant question of what empirical challenges continue to undermine efforts towards addressing economic crimes in Sri Lanka. Whilst this is a question that cannot be fully addressed in this report, it is useful to engage with this question to develop a broader discourse on the cruciality of addressing economic crimes in the present moment, interlinking it to the idea of system crimes and human rights violations in Sri Lanka. The KIIs and the round-table discussion conducted as a part of this study dwelled on some of the (past and present) challenges faced in holding perpetrators accountable for economic crimes. During these discussions, experts particularly unveiled the practical realities and the nuances underlying the existing culture of impunity.

As seen in the emblematic cases illustrated in Annex 1, the challenges are not only legal but also encompass a range of structural as well as socio-political issues. A majority of the KIIs underpinned that there has been deliberate inaction and/or obstruction to holding any alleged perpetrator accountable for economic crimes, which also includes in certain instances influential elites meddling with the legal process. For analytical purposes, the key challenges underpinned during the KIIs, and the round-table study are outlined below as:

- i. Structural challenges,**
- ii. Legal challenges, and**
- iii. Socio-political challenges** in addressing economic crimes in Sri Lanka.⁷¹

However, it is pertinent to note that these challenges are mutually interrelated. Further, the challenges discussed in this study are largely a selection of issues highlighted by experts during the KIIs and the round-table discussion. As stressed above, these challenges do not constitute an exhaustive list. Rather, they are an assortment of issues that could potentially drive further dialogue and research on the deep-rooted challenges underlying the impunity for economic crimes and human rights violations in Sri Lanka. For instance, we have not dwelled on challenges concerning State-owned enterprises in this study. Some of these unaddressed issues have been extensively discussed in the IMF

⁷¹ For the purposes of this report, we identify structural challenges as challenges affecting institutional mechanisms. Legal challenges will reflect gaps in certain laws as practical issues ahead of the enforcement of the law.

Governance Diagnostic Assessment⁷² as well as the Civil Society Governance Diagnostic Report.⁷³ The IMF GDA revealed severe systemic and governance weaknesses and corruption vulnerabilities across the State functions.⁷⁴ The report stipulated that these vulnerabilities were exacerbated by weak accountability institutions, including the CIABOC which lacked the authority or the competency to address grand corruption in Sri Lanka. The Governance Diagnostic Assessment further revealed that there were no clearly established mechanisms to deter and sanction individuals who have stolen public funds. The pervasiveness of grand corruption involving high-level officials and political-economic elites was a result of the overall lack of transparency within political, legal, and governance structures.⁷⁵ The assessment also iterated that there was limited scope for civil society entities to participate in oversight and monitoring of government action, particularly due to laws such as terrorism laws which curtail participatory and inclusive governance by suppressing dissent and thereby hindering demands for accountability. Notably, the recommendations presented in these reports, which include long-term structural, legal as well as socio-political changes, are extremely insightful to the question of addressing the broader issue of economic crimes in Sri Lanka. Thus, the challenges we discuss in the present research build on the aforementioned (and other) existing work.

2.1.1. Structural Challenges

The structural challenges discussed below consider issues at various levels, including broader concerns of institutional capacitation as well as challenges faced at investigative, prosecution, and judicial levels.

A. Lack of Commitment to Invest in Institutional Capacitation

The majority of the KIIs highlighted that the key impediment to setting up a powerful, independent investigative and prosecutorial arm to address economic crimes is a direct result of the lack of commitment to capacitate and invest in existing institutional structures. Further, it was highlighted that there are continuous and deliberate attempts to dismantle any kind of accountability structure to address economic crimes in Sri Lanka. Three key reasons were identified:

i. Vested Interests in Institutions

It was highlighted during the KIIs that the political elite who declare political commitments to addressing various types of economic crimes, often during election cycles, have vested interests in institutions that investigate and prosecute economic crimes. Therefore, once these political elites are in office, they are often reluctant to invest in building capacities as any form of institutional strengthening could lead to their private gains being investigated as well. Some KIIs recalled past experiences, particularly during the 2015-2019 period in Sri Lanka where

⁷² International Monetary Fund, *Sri Lanka Technical Assistance Report – Governance Diagnostic Assessment* (International Monetary Fund 2023) <<https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>> accessed 5 January 2024.

⁷³ Civil Society Initiative on Anti-Corruption Reform for Economic Recovery, *Civil Society Governance Diagnostic Report on Sri Lanka: As Assessment of the Anti-Corruption Landscape of Sri Lanka* (Transparency International Sri Lanka, 2023) <https://www.tisrilanka.org/wp-content/uploads/2023/09/GDA_REPORT_2023.pdf> accessed 6 January 2024.

⁷⁴ See p. 11 of the IMF GDA.

⁷⁵ See p. 18 of the IMF GDA.

certain powerful political elites have blocked efforts of institutional capacitation to ensure that investigative and prosecutorial processes remain at a standstill.

ii. Concerns regarding Independence and Integrity of Institutional Structures

Further, it was highlighted that at the practical level independence and integrity of institutional structures is a key challenge in addressing economic crimes, especially because these institutions are captured by corrupt elite groups. Fundamental concerns regarding the impartiality and transparency of investigations exist, particularly as to what extent these inquiries are conducted without external interference. This also relates to a range of other issues such as securing the resourcing for any establishment/s to carry out independent investigations and prosecutions as well as investing in obtaining specialist knowledge.

iii. Deliberate Attempts to Dismantle Systems of Accountability

The lack of capacitation is linked to the deliberate attempts of the political elite groups to dismantle systems of accountability to reinforce the culture of impunity in Sri Lanka. As this report identified, there is a significant gap in terms of skills, specialization, and technological proficiency among investigators and prosecutors, especially in addressing complex issues such as economic crimes. The findings from the KIIs suggest that such gaps persist due to the inherent hesitancy and at times deliberate resistance to capacitation and investment of institutional structures. Even though there have been efforts to enhance the capacities of investigators in the past, such efforts have also been deliberately undermined. For example, the immediate transfer of the 60 officers, who were trained to investigate financial crimes under the former Financial Crimes Investigative Division (FCID), to other unrelated tasks evinces the deliberate obstruction of the efficiency and effectiveness of investigations.⁷⁶

B. Challenges at the Investigative Level

i. Past Challenges Faced in Setting up a Specialized Investigative Division for Financial Crimes

FCID was incorporated by a special gazette notification under the Police Ordinance to establish a specialized investigative arm to address financial crimes, public funds, and property.⁷⁷ The government of the day, *i.e.* the *Yahapalana* government, came to power with a mandate of promoting good governance and curbing corruption. According to KIIs, establishing the FCID through a Gazette was done to speed up the process of investigating financial crimes.⁷⁸ However, since its inception the FCID has faced various bottlenecks, including the legality of its inception through a Gazette under the Police Ordinance.⁷⁹ In 2020, Cabinet Minister

⁷⁶ KII 3, 29 January 2024.

⁷⁷ Ranil Wijayapala, 'FCID, completes two years of operations today: The first step to wipe out corruption' (26 February 2017) <<https://archives1.sundayobserver.lk/2017/02/26/features/fcid-completes-two-years-operations-today-first-step-wipe-out-corruption>> accessed 9 February 2024.

⁷⁸ KII 3, 29 January 2024.

⁷⁹ Camelia Nathaniel, 'FCID brought under CID now', Daily News (4 December 2019) <<https://archives1.dailynews.lk/2019/12/04/local/204727/fcid-brought-under-cid-now>> accessed 12 December 2023 and Himal

Mahindananda Aluthgamage announced that the FCID would be disbanded, as it was an illegal establishment set up for political revenge.⁸⁰ On the 9th of January 2020, the Presidential Commission on Inquiry to Investigate Allegation of Political Victimization 2015-2020 (CoI) was established to investigate whether the FCID was targeting political victims.⁸¹ Whilst the FCID is no more, the challenges it faced in establishing its legality, subsequent disbandment, and allegations of political victimization are insightful examples to understand the structural challenges of setting up a specialized financial crimes investigation unit in Sri Lanka.

ii. **Lack of Technical and Technological Specialization to Investigate Economic Crimes**

KIIs highlighted that the present system does not allow for investigators to specialize particularly in economic crimes cases. KIIs stressed that economic crime cases are far more nuanced and complex than other criminal matters such as murder, fraud, or theft. Therefore, it required the technical skills and capabilities not only to understand the nuances of the offenses but also to practically engage with multiple institutions and the international monetary system. It was noted that renowned international financial crimes experts come from expertise in the fields of banking, finance, forensic accounting, etc. However, Sri Lankan investigators lack such specialized training and are often from the field of law enforcement. Therefore, certain experts during the KIIs underpinned that instead of solely relying on the creation of new laws, there is a compelling need to invest in and develop cutting-edge investigation techniques in Sri Lanka to address economic crimes.⁸² It was also noted during the KIIs that even in the Sri Lankan private sector there is a dearth in the expertise and proficiency required to address economic crimes at present.⁸³ Experts stressed that practically the systems within the public as well as the private sector are not geared to allow for such individual specializations as well.

During the KIIs, some experts stressed that there have been practical challenges in the past, especially in retaining specialized experts from the private sector to conduct investigations. The key challenge was the inability to field a binding non-disclosure agreement, even when certain specialists were retained. However, the Anti-Corruption Act No. 9 of 2023 through several provisions provides a framework to retain services under a binding non-disclosure declaration.⁸⁴ Whilst we are yet to see how these mechanisms are to be implemented, these are

Kotelawala, 'FCID illegal claims former CJ', DailyFt (10 August 2015) <<https://www.ft.lk/Front-Page/fcid-illegal-claims-former-cj/44-456217>> accessed 7 February 2024.

⁸⁰ Rukshana Rizwie, 'FCID to be disbanded', Daily News (9 January 2020) <<https://archives1.dailynews.lk/2020/01/09/local/207936/fcid-be-disbanded?page=1>> accessed 12 February 2024.

⁸¹ Centre for Policy Alternatives, 'A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization' (2021), 6 <<https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-CoI-SPCoI-on-Political-Victimization.pdf>> accessed 17 February 2024.

⁸² KII 2, 17 January 2024.

⁸³ KII 4, 14 February 2024.

⁸⁴ Particularly under section 50 of the Anti-corruption Act, CIABOC can obtain the assistance of experts. Further, under Sections 27 and 28 (1), (2) the Commission can retain services of personnel under fixed term contracts, where a non-disclosure declaration is signed before entering upon duties. Under Section 120, contravention of the duty imposed on him under subsections (1) and (2) of section 28 to maintain secrecy commits an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

progressive and salutary developments that are much welcome advancements to the current investigative regime.

iii. A Mismatch Between Existing Skills of Domestic Investigators and the International Financial Crimes Investigations Sector

Many financial crime investigations require investigators to be well-versed in English because financial crime investigations require transnational engagement and engagement with the international monetary system. Therefore, at times language barriers were a severe setback to initiating investigations. For example, in the period prior to initiating an investigation, particularly when a request for an investigation is made, it is crucial for an investigator to be able to carry out an informal conversation with foreign investigators to understand the matter at hand. In practice, many investigators in the Sri Lankan Police lacked the adequate language skills to carry out such conversations. During the KIIs, experts revealed that this led to certain international calls being directed to the Attorney General's department, to be answered by non-investigative officers who were practically unaware of how to proceed. This issue directly relates to the lack of commitment to invest and capacitate the investigative agencies to successfully address economic crimes.

Further, it was stressed that in practice, various domestic as well as international mechanisms available to address certain economic crimes are not utilized proactively due to the aforesaid mismatch of skills. It has inhibited the development of well-connected international networks at the investigative level, particularly to bolster the investigative framework in Sri Lanka to match the requirements of the fast-evolving international financial crimes investigations sector.

iv. Concerns regarding the Wastage of Time and Resources spent on Training Investigative Officers in the Past

KIIs noted that approximately 60 FCID officers were actively exposed to international training during the 2015-2019 period, where some even shadowed international asset tracing experts in various investigations abroad. However, these officers are now serving as traffic police officers or are placed in the procurement division of the CID or engaged in such completely unrelated tasks in comparison to what they were trained for during 2015-2019. Whilst this supports the previous claim of deliberately dismantling accountability structures within the present system, there are also pressing concerns regarding the actual outcome of any international training received by investigative officers on economic crimes in the past, and whether future efforts of capacity building could also face similar impediments. Experts reiterated that the training sessions received by investigative officers were expensive and were conducted largely with the support of transnational entities who were willing to build the capacities of local investigative officers.

v. **Vetting Integrity of Recruits for Investigations**

In addressing economic crimes, integrity and trust are paramount. Given the socio-political culture in Sri Lanka, some experts expressed that there was little trust in ascertaining the integrity of those who are recruited for investigative tasks. There were concerns as to whether the integrity of individuals recruited for investigations was ascertained during the selection process in practice. The recruitment of individuals carries the potential risk of their affiliation with a corrupt entity, thereby necessitating a comprehensive consideration of integrity during the selection process.⁸⁵ Therefore, according to experts, enforcing a comprehensive framework designed to ensure and guarantee integrity remains a practical challenge as economic crimes are committed in networks by a range of local and foreign individuals and institutions. In advanced jurisdictions, comprehensive systems exist and are enforced to deter corruption within organizations.⁸⁶ However, it should be noted that the Anti-corruption Act empowers CIABOC to make rules on the appointment, promotion, disciplinary control, and dismissal of the officers and employees of the Commission.⁸⁷ Whilst we are yet to see how these provisions are enforced in practice, such developments are stepping stones in the arduous terrain of addressing economic crimes.

vi. **Lack of Resources**

Whilst there are general concerns regarding the lack of resources available for investigations, experts pointed out that this is a severe setback in practically investigating certain issues such as proceeds of crime cases and cases concerning asset flight.

C. Challenges in Prosecution within the Present System

During KIIs various challenges within the prosecutorial process were highlighted. Among them, a key issue is the lack of a Specialized Independent Prosecutor exclusively handling economic crime cases. This broader concern regarding the lack of a specialized and independent prosecutorial arm to address economic crimes also intersects with many issues within the present system where prosecutors rarely train or work specifically on financial crimes. Within the present system, there is also no scope for such specialization for prosecutors. Further, the lack of investment made for tailored training and capacity-building processes impacts prosecutions negatively. Further, practical challenges include the withdrawal of prosecutions after filing indictments, where many prosecutions have been abandoned under the Attorney General's advice. Some of the case studies explored above are examples of these challenges. Experts also flagged that there is resistance within the State apparatus against setting up an Independent Prosecutor drawing specifically from past experiences.⁸⁸ Notably, the Civil Society Governance Diagnostic

⁸⁵ KII 4, 14 January 2024.

⁸⁶ It was mentioned during the KIIs that in countries like Australia there are standardized systems to effectively assess and verify the integrity of individuals in the recruitment process.

⁸⁷ See Section 32 (1) and (2) of the Anti-Corruption Act, No. 9 of 2023.

⁸⁸ During KIIs, an expert mentioned that there were discussions regarding the need for a specialized independent prosecutorial arm for corruption in 2013, which was met with resistance from the Attorney General's Department due to various reasons. Certain

has recommended establishing a specialized independent corruption prosecution office as a key mechanism to deter corruption.⁸⁹ The IMF GDA has also explored the viability of establishing a new independent prosecutor office.⁹⁰

D. Challenges relating to the Administration of Justice by the Judiciary

i. Lack of Specialized Judicial Training

At the judicial level, a key concern highlighted by the judicial expert during the KIIs was the lack of specialized training provided for Judges in addressing economic crimes in Sri Lanka. Certain economic crimes demand an advanced level of technical expertise to comprehend the issues underlying intricate financial transactions backed by emerging technologies such as cryptocurrency, blockchain technologies, and artificial intelligence. Lack of investment to continuously educate and train Judges on matters such as economic crimes was considered an impediment to advancing successful judicial processes in addressing economic crimes. Judges are also unable to specialize exclusively on economic crime cases in the present system, and this is seen as a practical impediment to developing a specialized system in the long term.

ii. Challenges in Implementing New Systems to Address Economic Crimes

Further, some experts highlighted that Judges are often recruited from the Attorney-General's Department, which has resulted in practical challenges in addressing economic crimes during certain instances due to their "one-track" mindset. For example, in practice where there have been discussions regarding shifting the burden in anti-corruption cases, there has been resistance to change despite international jurisdictions adopting such practices at present.⁹¹ It was also highlighted in KIIs that significant levels of investment should be made to create a system with competitive salaries to attract specialized as well as young talent into judicial bodies, especially to handle complex cases such as economic crimes. Lack of competitive salaries and incentives to attract young and specialized talent was seen as a key impediment even at the levels of investigations and prosecutions.

iii. Practical Challenges in Trying Economic Crimes Cases in Courts

Another concern was the lack of a dedicated court, that exclusively tackles economic crime cases and is adequately resourced to handle such cases, including the availability of judges who have specialized in economic crimes issues.⁹² It is useful to recall that the Judicature (Amendment) Act No. 9 of 2018 establishes a permanent High Court consisting of three

recommendations were discussed during these dialogues which included changing the name of the Solicitor General to Independent Prosecutor and have them appointed by the Constitutional Council.

⁸⁹ See Civil Society Diagnostic Report pp.41-42 on establishing a specialized independent corruption prosecution office with IMF technical guidance based on advising offices established in other countries. See also, Centre for Policy Alternatives, 'Rethinking the Attorney General's Department in Sri Lanka: Ideas for Reform' (2020), 26 < <https://www.cpalanka.org/wp-content/uploads/2020/11/AGs-Dept-Final.pdf> > accessed 17 February 2024.

⁹⁰ See specifically pp. 38-39 of the IMF GDA.

⁹¹ KII4, 14 February 2024.

⁹² KII5, 16 February 2024.

Judges sitting together to hear and determine cases relating to financial and economic offenses.⁹³ There have been success stories where economic crimes have been successfully addressed by the permanent High Court⁹⁴ where judicial experts have raised concerns on practical challenges. These include the expensive nature of economic crime trials and their time-consuming nature. With the existing delays in investigative and prosecutorial processes, the expenses in courts are also exacerbated. Further, since economic crimes cases have distinct features and nuances in comparison to murder cases, fraud, or petty theft where you also engage with eyewitnesses, Judges who are already inundated with cases may naturally be reluctant to take up cases dealing with economic crimes as these cases are time-consuming.⁹⁵

E. Practical Measures to Strengthen Public Visibility on Investigations of Economic Crimes

The lack of accessible tools to follow up on investigations was seen as a structural impediment in ensuring the transparency of these investigations, especially in the public eye. For instance, KIIs highlighted that the CID (or the former FCID) does not provide a daily report within the current practice, due to the lack of resources to maintain such databases on public platforms.⁹⁶ Ideally the purpose of such a report is to record the progress of investigations, in a publicly accessible manner. Whilst this does not warrant revealing confidential information, such reports should outline the tangible steps that are being taken in addressing the specific issues. It was also stipulated that CIABOC does not maintain an updated and easily accessible database regarding ongoing investigations, which hinders public awareness of the economic crimes in Sri Lanka. Notably, however, under Section 159 (1) of the new Anti-corruption Act, CIABOC can prepare reports of its activities as often as it may consider necessary, with at least one report in each calendar year. The Commission should also make these reports publicly available with due regard to privacy and personal data.⁹⁷ Whilst we are yet to see how these provisions are practically implemented, the requirement of such publicly accessible tools by the law is a welcome development.

It should be noted that, across the board, limited access to information for the public, through centralized and accessible databases is a serious concern.⁹⁸ Inadequate resourcing is also a key

⁹³ See the Brief Guide to the Judicature (Amendment) Act No. 9 of 2018 published by the Centre Policy Alternatives, which also discusses risks associated with establishing a Permanent High Court in Centre for Policy Alternatives, 'A Brief Guide to the Judicature (Amendment) Act No. 9 of 2018' (2018) <<https://www.cpalanka.org/wp-content/uploads/2018/07/FAQ-on-Judicature-amdnment-act-Final-1.pdf>> accessed 17 February 2024.

⁹⁴ Namini Wijedasa's reporting on the Supreme Court of Sri Lanka upholding the conviction of former chief of staff of President Maithreepala Sirisena by the Permanent High Court in January 2023. The accused were found guilty by the Permanent High Court in December 2019. See Namini Wijedasa, 'Mega bribery case: SC says country's revival hindered by officials like Sirisena's ex-chief of Staff', *The Sunday Times* (15 January 2023) <<https://www.sundaytimes.lk/230115/news/mega-bribery-case-sc-says-country-s-revival-hindered-by-officials-like-sirisenas-ex-chief-of-staff-508638.html>> accessed 16 February 2024.

⁹⁵ KII5, 16 February 2024.

⁹⁶ KII3, 29 January 2024.

⁹⁷ Section 159 (4) of the Anti-Corruption Act No. 9 of 2023.

⁹⁸ In environmental governance and development projects limited access to information has been a key issue area that hampers meaningful public participation. Disclosure of vital information is fundamental for transparency, accountability and combat corruption. See Verité Research, 'W(h)ither Environmental Governance? Limited access to information undermines meaningful

challenge in setting up such tools, especially because building centralized databases requires institutional coordination.

F. Concerns regarding the Disclosure of Beneficial Ownership of Companies

In Sri Lanka, the lines between business corporations and political elites are blurred. PEPs utilize corporate structures to conveniently hide their ownership and identity and conduct illegal financial activities. These structures are known as shell and shelf companies, as they facilitate business transactions without possessing any significant assets or operations.⁹⁹ The Central Bank of Sri Lanka has linked the increased incidence of money laundering and financing of terrorism in Sri Lanka to the lack of timely, accurate, and adequate information about beneficial ownership.¹⁰⁰ TISL has extensively raised concerns regarding the disclosure of beneficial ownership in Sri Lanka in its annual transparency in corporate reporting (also known as the TRAC Assessment) over the past years. In its 2022 report, TISL defined beneficial ownership “as a natural person who ultimately has controlling ownership or effective control of the company.”¹⁰¹ In 2022, the TRAC Assessment included a new question regarding the disclosure of the ultimate beneficial ownership of companies. 91% of companies that were assessed scored a ‘no’ for the question on beneficial ownership.¹⁰² In 2023, 92% scored a ‘no’ for the question on beneficial ownership.¹⁰³ However, a publicly accessible beneficial ownership register to ascertain the ultimate human owner of a company is currently underway through the IMF recommendations.¹⁰⁴ Experts highlighted that, among other things, this is crucial for the successful implementation of election financing laws, especially in the context of donations made by companies to political parties and/or election candidates. Notably, the new Anti-corruption Act also recognizes private sector corruption and considers private sector bribery as a punishable offence for the first time in Sri Lanka. During the KIIs, experts highlighted that public awareness of tools that promote transparency, such as the beneficial ownership register, should be increased.

G. Concerns regarding Institutional Culture and Institutional Coordination

There were concerns regarding the overall institutional culture of Sri Lanka which poses challenges in terms of efficiently handling economic crime cases. Apart from issues such as politicization, experts also highlighted that, in practice, frictions and gaps encountered in institutional

public participation in development projects’ (Verité Research 2021) <https://www.veriteresearch.org/wp-content/uploads/2021/07/VR_Eng_RB_Jun2021_Whither-Environmental-Governance-1.pdf> accessed 2 March 2024.

⁹⁹ ‘About aged Companies’ (*Corporations Today*) <<https://corporationstoday.com/how-it-works/about-aged-%20companies/>> accessed 15 January 2024.

¹⁰⁰ Central Bank Guidelines for Designated Non-Finance Businesses on Identification of Beneficial Ownership, No. 02 of 2019 <<http://fiusrilanka.gov.lk/docs/Guidelines/2019/Guideline-02-2019.pdf>> accessed 15 January 2024.

¹⁰¹ Michelle Handy, ‘Transparency in Corporate Reporting 2022: Assessing the Top 100 Public Limited Companies in Sri Lanka’ (Transparency International Sri Lanka 2022) 31 <<https://www.tisrilanka.org/wp-content/uploads/2023/02/TRAC-2022-1.pdf>> accessed 20 January 2024.

¹⁰² *Ibid*, 35.

¹⁰³ Michelle Handy, ‘Transparency in Corporate Reporting 2023: Assessing the Top 125 Public Limited Companies in Sri Lanka’ (Transparency International Sri Lanka 2023) 41 <<https://www.tisrilanka.org/wp-content/uploads/2024/02/TRAC-2023.pdf>> accessed 20 January 2024.

¹⁰⁴ See p. 52 of the IMF GDA.

coordination have also led to challenges in handling cases at the investigative level. The implications of such frictions and weak coordination between institutions could even risk the dismissal of cases. An example cited by an expert was the challenges faced if there are gaps in statements recorded from an accused party, especially if multiple State agencies are involved in the process.¹⁰⁵ It was also stressed that institutional culture should also be conducive to collaboration and coordination to ensure efficiency. For example, to effectively enforce election campaign financing laws, institutional coordination is paramount as a host of State institutions such as the Inland Revenue Department, the FIU, CIABOC, the Auditor General’s Department as well the Attorney General must work together with the Election commission to monitor and enforce the laws on campaign spending. Therefore, strengthening mechanisms for coordinated efforts and strong inter-agency relations requires investment in capacity building. Weak institutional coordination could also lead to various implications, including challenges in building harmonious platforms that house updated data on economic crimes-related issues.

2.1.2 Legal Challenges

A. Issues concerning the Mutual Legal Assistance (MLA) Framework

Mutual Legal Assistance (MLA) is a form of cooperative framework between States to investigate and prosecute crime and is often utilized to obtain transnational evidence beyond the reach of one State.¹⁰⁶ It requires the State where evidence is held to exercise coercive powers. Extradition and the freezing and repatriation of assets are examples of MLA.¹⁰⁷ During the KIIs, experts referred to MLA as the “cornerstone of international support on economic crimes”. However, experts stressed that the current legal framework facilitating MLA has gaps in addressing crimes as sophisticated and transnational as economic crimes. In 2018, the former Chairman of the Presidential Commission of Asset Recovery, J.C. Weliamuna, pointed out that one key issue regarding existing MLA provisions is that they do not empower law enforcement to properly use information available from other countries due to gaps in enabling domestic legislation to make use of the international conventions the country is signatory to.¹⁰⁸

Past experiences concerning the proposals to amend the MLA laws in Sri Lanka, particularly in 2018,¹⁰⁹ was met with resistance by powerful political elites and former heads of State who claimed that the proposed MLA amendments were a witch hunt against war crimes.¹¹⁰ These experiences

¹⁰⁵ KII 4, 14 February 2024.

¹⁰⁶ Robert Barrington, Elizabeth Dávid-Barret, Rebecca Dobson Phillips and Georgia Garrod, *Dictionary on Corruption* (Agenda Publishing 2023).

¹⁰⁷ At present, the key statutes concerning extradition in Sri Lanka is the Extradition Law No. 8 of 1977 as amended by Act 48 of 1999, and the Mutual Assistance in Criminal Matters Act No. 25 of 2002.

¹⁰⁸ Anuragi Singh, ‘Amendments to Mutual Legal Assistance targets corruption’, Sunday Observer (24 June 2018) <[¹⁰⁹ Ibid. In June 2018 it was reported that the amendment to the MLA was listed in the order paper to be taken up in parliament. However, it had to be taken out as there were petitions filed against the amendments to the Bill. There was opposition to the amendment based on the belief that evidence on alleged war crimes would come into the country.](https://archives1.sundayobserver.lk/2018/06/24/news/%E2%80%98amendment-mutual-legal-assistance-targets-corruption%E2%80%99”>https://archives1.sundayobserver.lk/2018/06/24/news/%E2%80%98amendment-mutual-legal-assistance-targets-corruption%E2%80%99”>https://archives1.sundayobserver.lk/2018/06/24/news/%E2%80%98amendment-mutual-legal-assistance-targets-corruption%E2%80%99”> accessed 18 February 2024.</p></div><div data-bbox=)

¹¹⁰ See reporting of former president Mahinda Rajapaksa claiming that the legislation is merely a witch hunt against the military forces based on grave human rights violations. According to his statements, “though the original Act applied only to states, the proposed

are insightful to understand the intersections between Sri Lanka’s post-conflict socio-political realities and the practical challenges in addressing economic crimes through progressive reforms. During the KIIs, several practical issues regarding the current MLA framework were also outlined. These include:

- i. Potential future reservations by certain foreign jurisdictions due to breaches of trust in handling MLA requests after 2019. In practice trust and integrity are foundational to the MLA processes. Reservations of these jurisdictions could be backed by legitimate concerns as to whether the information in aforesaid MLA requests were divulged to accused persons.
- ii. There were also concerns regarding the practical drafting processes of MLA applications. This is related to the lack of capacity and mismatch of skills within present investigative frameworks, which could hinder the practical application of MLA processes.
- iii. Weak institutional coordination and capacity to handle MLA requests was another concern. The existing Central Authority for MLA requests is the Secretary to the Minister of Justice, which is a key challenge for investigative purposes as the Secretary has nothing to do with investigations. It should be noted that the IMF Technical Assistance Governance Diagnostic Assessment has also underpinned certain gaps in the MLA framework and has made several recommendations to strengthen the MLA framework.

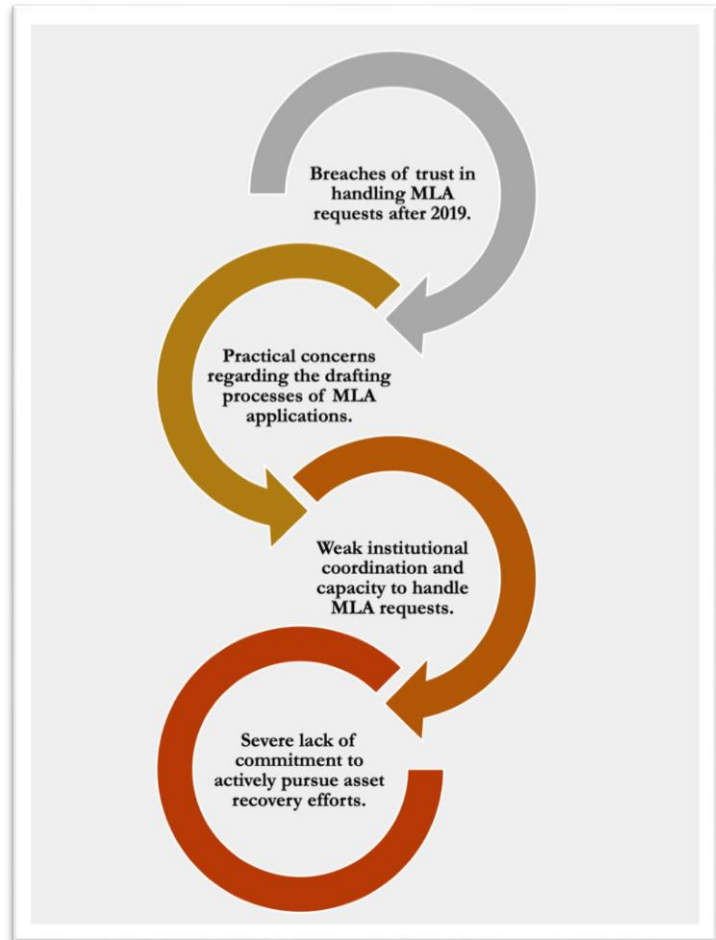


Figure 5: A Snapshot of Issues Concerning the MLA Framework

amendment will make it applicable to international organizations such as the International Criminal Court as well. It will also make documentary evidence and evidence obtained through video conferencing from persons resident in foreign countries admissible in judicial proceedings. The administrative machinery to respond expeditiously to requests from overseas is also to be expanded.” Anuragi Singh, ‘Amendments to Mutual Legal Assistance targets corruption’, Sunday Observer (24 June 2018) <[34](https://archives1.sundayobserver.lk/2018/06/24/news/%E2%80%98amendment-mutual-legal-assistance-targets-corruption%E2%80%99”>https://archives1.sundayobserver.lk/2018/06/24/news/%E2%80%98amendment-mutual-legal-assistance-targets-corruption%E2%80%99”> accessed 18 February 2024.</p>
</div>
<div data-bbox=)

The report particularly highlights practical concerns regarding MLA requests.¹¹¹ With the enactment of the Anti-corruption Act, Section 34(3) of the Act now makes the CIABOC the central authority for Mutual Legal Assistance matters relating to offenses under CIABOC's mandate. However, as noted, the existing Central Authority is contained within the Ministry of Justice. There is a practical concern regarding MLA requests made to CIABOC and how they will be dealt with now, i.e: how these specific requests will be dealt with distinctively from other requests.

- iv. It was also iterated that there is a severe lack of commitment to actively pursue asset recovery efforts, which results in delays. Given the nature of these issues, asset dissipation is a key challenge if prompt action is not taken. (See Figure 5).¹¹²

B. Issues regarding Asset Flight and Asset Tracing Legal Frameworks

Economic crimes typically involve complex schemes for siphoning funds, often with funds being moved through tax havens or offshore accounts. Tracing such transactions requires specialized investigative skills and resources that are often lacking. Moreover, the Pandora Papers revelation involving Nirupama Rajapaksa and Thirukumar Nadesan accentuated the prevalence of asset flight, asset tracing, and money laundering.¹¹³ It should be noted that the revelations in the Pandora Papers are only one example elucidating the issue of asset flight in Sri Lanka. In 2016, the Panama Papers also revealed other asset flight cases of entities linked to the Rajapaksa regime.¹¹⁴ Hence, asset flight often occurs clandestinely, evading detection by banking institutions and regulatory bodies. Experts stressed during the KIIs that despite the potential magnitude of such transactions, they frequently slip under the radar, facilitated by a network of financial advisors, lawyers, and tax consultants operating globally. The complexity of asset tracing becomes apparent when attempting to unravel the origins of assets held offshore. In Sri Lanka TISL has sought answers by scrutinizing asset declarations and submitting inquiries to the FIU.¹¹⁵ However, the process is hindered by various practical issues, including the lack of cooperation from destination countries and the absence of effective responsive mechanisms for tracking suspicious transactions.¹¹⁶ It was stressed

¹¹¹ See specifically pp. 40-41 of the IMF GDA.

¹¹² Creation of the authors based on findings of the research.

¹¹³ The Pandora papers revealed how Nirupama Rajapaksa, linked to the ruling Rajapaksa family, and her husband, Thirukumar Nadesan, had used secretive shell companies and trusts to accumulate more than \$18 million in tax havens, and own artworks and luxury properties in London and Sydney (as well as an art collection, stored in the Geneva free port, estimated at more than US\$4 million). According to the International Consortium of Investigative Journalists (ICIJ) report, Nadesan set up other shell companies and trusts in secrecy jurisdictions, and he used them to obtain lucrative consulting contracts from foreign companies doing business with the Sri Lankan government and to buy artwork. See Scilla Alecci, 'As Sri Lanka's ruling Rajapaksas flee, Pandora Papers reveal ties to UAE properties', (ICIJ, 2022) <<https://www.icij.org/investigations/pandora-papers/as-sri-lankas-ruling-rajapaksas-flee-pandora-papers-reveal-ties-to-uae-properties/#:~:text=The%20documents%20revealed%20how%20Nirupama,properties%20in%20London%20and%20Sydney>> accessed 5 February 2024.

¹¹⁴ Ajith Siriwardana, 'ICIJ reveals 65 Sri Lankans in Panama Papers', Daily Mirror (5 March 2024)

<<https://www.dailymirror.lk/109266/ICIJ-reveals-Sri-Lankans-in-Panama-Papers>> accessed 9 February 2024. Useful to also see the 'Offshore leaks database' (ICIJ) <<https://offshoreleaks.icij.org/search?c=LKA&cat=1&e=&j=&q=&utf8=%E2%9C%93>> accessed 5 February 2024.

¹¹⁵ See particularly pp. 63-69 in the IMF GDA and pp. 32-35 in the Civil Society Governance Diagnostic Report.

¹¹⁶ October 2021, the then President, who was also related to the accused parties Nirupama Rajapakse and Thirukumar Nadesan, ordered an investigation into the Pandora Papers and for a report to be submitted in a month's time. An interim report was handed

during the KIIs that, despite international entities like Airbus identifying individuals involved in bribery, local prosecution often remains elusive. Efforts to recover assets are hindered by asset dissipation, where illicit gains are swiftly dispersed or converted into assets that are challenging to trace or retrieve. This highlights the urgent need for swift action by law enforcement agencies to freeze assets at the earliest sign of criminal activity. Achieving effective asset freezing necessitates agile law enforcement, robust legal instruments, and prompt judicial intervention. However, attaining this level of responsiveness remains a significant challenge.

C. Procurement Violation and Requirement of Open Procurement Platforms

Procurement violations are rampant and characterized by a multitude of infractions such as cartels, sole-source bidding, and non-competitive bids. These violations not only undermine the integrity of the procurement process but also serve as a conduit for the misappropriation of public funds. Notably, the IMF GDA as well as the Civil Society Governance Diagnostic Report has extensively discussed various issues concerning procurement violations, existing gaps as well as the need to strengthen the use of open procurement platforms to promote transparency of public procurement processes. The IMF programme includes a commitment to disclose public procurement contracts through an online fiscal transparency platform and enact a procurement law reflecting international good practices.¹¹⁷

However, preceding the IMF GDA, several extensive studies have also highlighted issues in public procurement in Sri Lanka. Specifically, in a study conducted by Verité Research, it was highlighted that Sri Lankan public procurement suffers from three main weaknesses: (1) difficulty in accessing information related to procurement (such as tender opportunities and contract awards); (2) high transaction costs incurred in bidding; (3) the anti-competitive nature of the procurement marketplace that leads to corruption.¹¹⁸ It was also highlighted that the weak nature of independent oversight over procurement coupled with the limited ability to challenge unfair and corrupt practices in public procurement has resulted in rampant corruption. Another study by Verité revealed in 2023, that Sri Lanka's procurement framework enables corruption due to gaps in the law as well as in compliance, especially in blacklisting contractors/suppliers for engaging in fraud and corruption.¹¹⁹ According to the said study, the existing procurement guidelines do not provide for the blacklisting of contractors or suppliers for engaging in fraud and corruption. Whilst the said guidelines provide for blacklisting where contractors default or fail to meet contractual

over by the CIABOC in November 2021, but a final report was delayed inconclusively. However, a former Secretary to the CIABOC Apsara Caldera said in March 2022 that one of the reasons for the delay in presenting the report was that crucial information required to complete the Pandora Papers investigation had not been provided by some local institutions, including banks. See Shenal Fernando, 'Pandora Papers report delayed without cause', *The Morning* (25 June 2022) <<https://www.themorning.lk/articles/208263>> accessed 18 February 2024.

¹¹⁷ 'IMF Tracker' (Manthri.lk, 31 January 2024) <https://manthri.lk/imf_tracker> accessed 11 March 2024.

¹¹⁸ Verité Research, 'E-Government: Procurement Enabling Business through Efficient Systems' (Verité Research 2017) 5-10 <<https://www.veriteresearch.org/wp-content/uploads/2018/05/Verite-Research-E-procurement-enabling-business-through-efficient-systems.pdf>> accessed 12 January 2024.

¹¹⁹ Verité Research, 'Backwards in Blacklisting: Gaps in Sri Lanka's Procurement Framework enable Corruption' (Verité Research, 2023) 2, 3-5 <https://www.veriteresearch.org/wp-content/uploads/2024/01/BackwardsinBlacklisting_ResearchBrief_Nov2023.pdf> accessed 5 February 2024.

obligations, in practice the existing framework fails to even blacklist those who default. Sri Lanka was also outlined as a “backward outlier” in comparison to its South Asian regional counterparts, who have also implemented functional databases to track blacklisted firms.¹²⁰

Additionally, research studies have raised concerns regarding Sri Lanka’s sustainable recovery especially in terms of transparency in procurement processes. For instance, there are concerns regarding the implementation of Regulation 20 and Section 9(1) (b) of the Right to Information Act No. 12 of 2016, which since 2017 require the government to proactively disclose procurement and contract information. However, data revealed that disclosure of procurement and contracts continues to be “alarmingly low”.¹²¹

During the KIIs, experts also noted several key challenges within the present public procurement framework. One is the Cabinet’s unfettered discretion over procurement (See Figure 6).¹²² It was highlighted that government-to-government procurement does not require calling for competitive bids and this has resulted in several implications. Experts stressed that in recent years, bilateral relations with China and India have served as breeding grounds for economic crimes. Especially, in the case of China, mega development projects such as those in Hambantota were suspected to have been initiated primarily to facilitate corrupt practices.¹²³ In fact, loans tied to Chinese State entities have resulted in inflated prices for goods and services, exacerbating the country's debt burden. According to Verité Research, in projects funded via bilateral foreign loans, Sri Lanka has frequently deviated from competitive bidding, where during 2005-2018 most unsolicited proposals were of Chinese origin.¹²⁴ Similarly, during the economic crisis, India's involvement, such as through the Indian Credit Line, has raised concerns over unsolicited bids and bloated procurement prices, contributing to financial losses under the guise of emergency procurement.¹²⁵ Further, at the time of writing this report, experts have also raised concerns regarding the financial irregularities of the Adani energy procurement, which allegedly exceeds market rates incurring a substantial loss for the State.¹²⁶ In a way, these examples also exemplify the effects of State capture where individuals manipulate regulatory processes and circumvent due diligence for private gain.¹²⁷

¹²⁰ Ibid, 6

¹²¹ ‘The Problem with Procurement’ (PublicFinance.lk, 10 October 2023) <<https://publicfinance.lk/en/topics/the-problem-with-procurement-1696424647>> accessed 11 March 2024.

¹²² Creation of the authors based on findings of the research.

¹²³ KII1, 11 January 2024.

¹²⁴ Verité Research, ‘Opportunities to Protect Public Interest in Public Infrastructure: Review of Regulatory Frameworks in Sri Lanka’ (Verité Research 2021) 30-33 <https://www.veriteresearch.org/wp-content/uploads/2021/07/VR_Eng_RR_Feb2021_Opportunities-to-Protect-Public-Interest-in-Public-Infrastructure-1.pdf> accessed 5 February 2024; Verité Research, ‘Development Projects: Better Regulations for Better Outcomes. A Look into Public Procurement’ (Verité Research, 2021) <https://www.veriteresearch.org/wp-content/uploads/2021/08/VR_PPT_Eng_Jul2020_Public-Procurement.pdf> accessed 6 February 2024.

¹²⁵ ‘Transparency International sets out needed safeguards for drug procurement’, The Island (23 July 2023) <<https://island.lk/transparency-international-sets-out-needed-safeguards-for-drug-procurement/>> accessed 20 February 2024.

¹²⁶ Rohan Pethiyagoda, ‘Mannar Wind Power Scam’ (10 March 2024) <<https://www.youtube.com/watch?v=Nm5w2vMXgjI>> accessed 11 March 2024.

¹²⁷ The need for transparent loan acquisition, especially for large amounts and foreign loans, is crucial to safeguarding the interests of citizens and future generations. Given the substantial impact of loans on public finances, especially foreign loans, legal commentators have recommended obtaining parliamentary authorization for loan terms, including interest rates and repayment periods. See Suren

It should be noted that non-competitive bids have become the norm in the case of public procurement for many ministries. The Civil Society Governance Diagnostic report flags ten ministries with the lowest proportion (in value) of competitive bidding.¹²⁸ Whilst the “Procurement Management Information System” (PROMISE.lk), an open procurement platform that tracks, records, and publishes significant public procurement contracts now exists, it was highlighted that there should be more awareness of utilizing these tools amongst public officials, and suppliers as well as the general public. The lack of capacity to sustain a harmonious e-government procurement system is a key challenge.¹²⁹

Lastly, in relation to Procurement, it is vital to recall the challenging task of setting up an independent Procurement Commission in Sri Lanka in the past due to structural, legal as well as socio-political reasons. The Procurement Commission which was initially set up under the 19th Amendment to the Constitution, to formulate fair, equitable, transparent, and competitive procedures for procurements in public institutions was subsequently abolished under the 20th Amendment in 2020.¹³⁰ Whilst the Commission was reintroduced by the 21st Amendment,¹³¹ the politics underlying the entire process of dismantling the independent procurement commission is another example of State Capture, where powerful groups have influenced state policies and their implementation to favor private interests undermining the need to set up an essential monitoring mechanism on public funding.

Fernando, ‘Protecting Public Finance Through Public Interest Litigation’, in Bhavani Fonseka and Luwie Ganeshathasan (eds), *Salient Aspects of Public Interest Litigation Jurisprudence in Sri Lanka* (Centre for Policy Alternatives 2023), 220-255 <<https://www.cpalanka.org/wp-content/uploads/2023/04/Salient-Aspects-of-Public-Interest-Litigation-Jurisprudence-in-Sri-Lanka-Book-Online-Version.pdf>> accessed 20 February 2024.

¹²⁸ See p. 34 of the Civil Society Governance Diagnostic Report.

¹²⁹ The IMF GDA also highlights the need to improve competencies of officials and private users to engage with open procurement platforms. See specifically pp. 67-68. There are also concerns regarding the transitioning from manual procurement processes to e-government procurement systems. See Gihini Weerasinghe et. al, ‘Effectiveness of Implementing E-Government Procurement in Sri Lanka’ (International Conference on Industrial Engineering and Operations Management, Istanbul, 7-10 March 2022) <<https://ieomsociety.org/proceedings/2022istanbul/907.pdf>> accessed 19 February 2024.

¹³⁰ ‘Procurement Commission key to stop large-scale tender irregularities: Karu’, DailyFt (21 November 2020) <<https://www.ft.lk/Front-Page/Procurement-Commission-key-to-stop-large-scale-tender-irregularities-Karu/44-709221>> accessed 20 February 2024.

¹³¹ National Procurement Commission Circular No. 01/2023 <<https://www.treasury.gov.lk/api/file/001ab78a-234c-4738-ab5b-268bcece8f4>> accessed 18 February 2024.

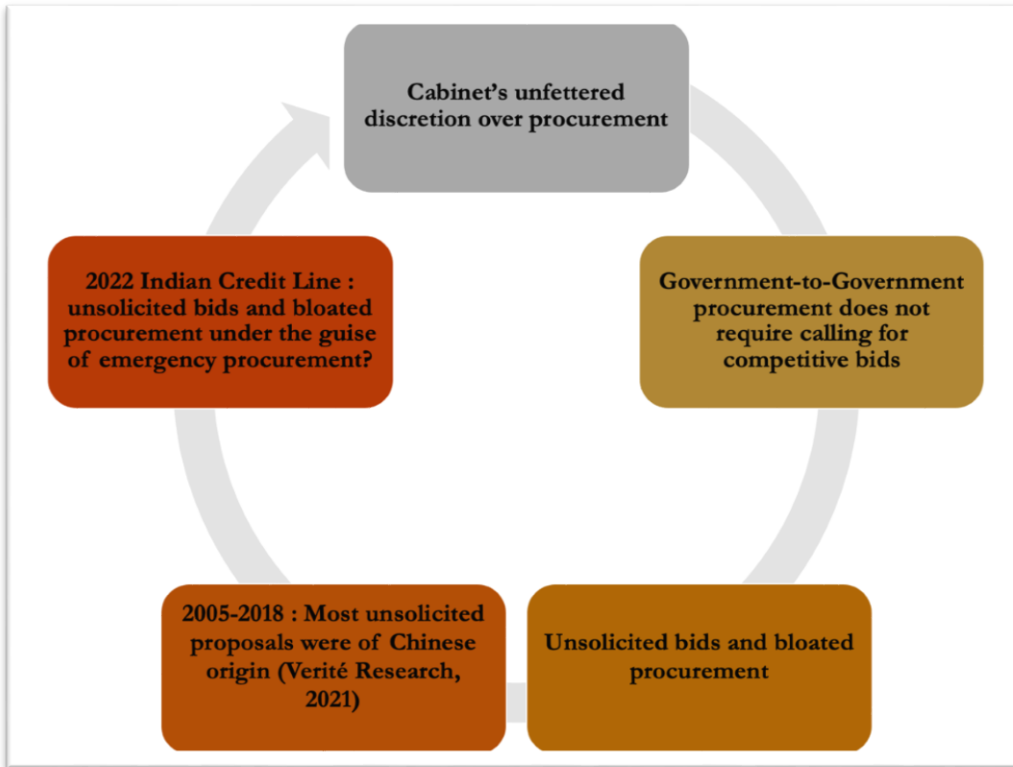


Figure 6: An illustration depicting certain implications of the Cabinet's unfettered discretion over procurement.

D. Manipulation of Tender Procedures

Linked to procurement violations, a common irregularity highlighted during KIIs involves the manipulation of tender specifications to favor specific companies or individuals, effectively excluding other potential bidders from the process. An example cited is a tender notice issued by the Ministry of Agriculture in January 2021, soliciting offers for the supply of hermetic storage systems for paddy storage.¹³² Open tenders are designed to ensure fairness to all bidders by inviting competitive bids. However, investigations revealed concerns regarding the fairness of the tender in the aforementioned case. Despite claims from a senior ministry official that the tender was still under evaluation, articles in several newspapers prior to the tender's closing date suggested that the government was planning to import mobile Israeli containers for paddy storage, indicating a potential bias towards a specific supplier. Furthermore, business sources noted that the tender specifications closely matched the products of a single Israeli American conglomerate, leading to speculation that the tender requirements had been tailored to suit this particular company.

¹³² Dinesha Matthias, 'Govt. firms comes under scrutiny', The Sunday Times (n.d.) <<https://www.sundaytimes.lk/030223/ft/1.html>> accessed 20 February 2024.

The complexities underlying the tender procedures are so nuanced and insidious that it is often missed at the outset. During the roundtable discussion, experts stressed the need to further explore the “parasitic relationship” between political elites, government officials, and private suppliers in Sri Lanka, and the vitality to consider future interventions against this backdrop.

E. Practical Concerns regarding Whistleblower Protection

In practice, individuals possessing information about significant financial improprieties may hesitate to come forward due to legitimate fears for their personal safety. During KIIs, experts established that this dilemma is particularly poignant in a hypothetical scenario where an individual is privy to information suggesting the embezzlement of a substantial amount by PEPs. In such a context, the central question arises: Would this informant feel safe to make a complaint, and could they trust that their complaint would be acted upon? This hesitancy to report malfeasance is a consequence of a broader legal as well as a socio-political challenge—the prevalent fear of reprisals stemming from a lack of trust in the effectiveness of complaint mechanisms and whistleblower protection in the past. However, the Anti-corruption Act espouses a comprehensive whistleblower protection framework and provides for the protection of the identity of informers, whistle-blowers, and witnesses as well as others assisting the Commission.¹³³ However, experts continued to be wary of the practicability of such protective frameworks in complex economic crimes cases involving prominent and powerful PEPs, given the socio-political realities of Sri Lanka with lingering effects of State capture at play. Therefore, the interplay between the lack of trust in the complaint mechanisms and whistleblower protection could create practical challenges in reporting malfeasance subsequently obstructing the initiation of investigative processes. Public awareness of the existing legal framework providing safeguards to whistleblowers is key.

The IMF GDA also iterates the importance of signaling the need for whistle-blowers to come forward with information for wrongdoings. The IMF also highlights several recommendations to practically strengthen the whistle-blower protection framework in Sri Lanka. It is vital to consider past experiences of the CIABOC, which has prevented individuals from disclosing wrongdoings.¹³⁴ Accordingly, the following practical issues have been identified:

¹³³ According to Chapter V of the Anti-corruption Act No. 9 of 2023, whistleblowers are entitled to protection. A whistleblower is a natural person reporting information that comes to his/her knowledge about a corruption offence that was committed, is being committed or may be reasonably expected to be committed in a public body, public or private sector organisation, in the activities of a person entitled to undertake their activities without forming a legal entity. This right is also granted to individuals who provided certain assistance to the whistleblower in reporting an offence; individuals associated with the whistleblower who can also be subject to retaliation such as family members and the whistleblower’s dependants. Protection of whistleblowers and their associates implies exemption from disciplinary, civil or criminal liability if the whistleblower who discloses information in line with the established procedure and has reasonable grounds to believe that this information is truthful and requires investigation commits an offence or a crime by disclosing this information; exemption from liability for infringing restrictions on information disclosure established by the law or the employment contract and invalidation of any provisions of contracts to the extent that they deprive the whistleblower of the right to protection; protection of the whistleblower from retaliation such as deterioration in working conditions, coercion, intimidation, infliction of damage, threats etc. (See particularly Sec. 74 of the Act.)

¹³⁴ CIABOC, *Policy Suggestions for Proposed Legislative Amendments* (2019) <<https://www.ciaboc.gov.lk/media/attachments/2019/03/16/4-legal-eng.pdf>> accessed 15 February 2024.

- i. Allowing individual biases regarding the whistleblower to impact the evaluation of a disclosure.
- ii. Failure to adequately consider the high possibility of retaliation by competent authorities.
- iii. Overlooking potential irreconcilable situations when selecting who should evaluate the disclosure.
- iv. Allowing political considerations to impact the appraisal of a revelation or the findings of an investigation.
- v. Delaying the investigation for prolonged periods, enabling any evidence of wrongdoing to be adjusted or destroyed.

During the KIIs, experts highlighted the need to also consider the implications of whistleblowers themselves being perpetrators of economic crimes in certain cases and the resulting broader challenges in addressing the issues of impunity for economic crimes and human rights violations, especially in the longer-term for such cases.¹³⁵

F. Concerns regarding the Implementation of the Election Campaign Financing Law

Election campaign financing is linked to the laundering of illegal funds, the abuse of State resources, and securing insidious political-business relationships resulting in economic crimes.¹³⁶ Issues concerning election campaign financing laws in Sri Lanka and broadly the challenges encountered in political financing is a vast area that has been discussed and researched by various entities over the years.¹³⁷ Thus, given the scope of our study, we will not delve deeply into the subject matter here. However, we will outline several concerns raised by experts during our research on the new Regulation of Election Expenditure Act No. 3 of 2023, which was legislated in January 2023. The Act was legislated to regulate the expenditure incurred by recognized political parties, independent groups, and candidates. The Election Commission announced in January 2024 that the campaign finance laws will be implemented ahead of the upcoming presidential and parliamentary elections.¹³⁸

¹³⁵ KII 6, 26 February 2024.

¹³⁶ Sankhitha Gunaratne, *A Brief of Election Campaign Finance in Sri Lanka* (1st edn, Transparency International Sri Lanka 2017) 7 <<https://www.tisirilanka.org/wp-content/uploads/2019/05/CampaignFinance.pdf>> accessed 11 January 2024; Benjamin Edwards, 'The Implications of Corporate Political Donations' (2022) 48(1) ABA Human Rights Magazine <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economics-of-voting/the-implications-of-corporate-political-donations/> accessed 13 January 2024.

¹³⁷ See individual and joint work of Transparency International Sri Lanka (TISL) and Centre for Monitoring Election Violence (CMEV), especially in Gunaratne (n 135) and Manjula Gajanayake (ed), 'The Regulation of Campaign Finance and the Electoral Process in Sri Lanka' (2017) <https://cmev.org/wp-content/uploads/2017/07/cf_english-version.pdf> accessed 13 January 2024. See also Ruwan L. Jayakody and Faizer Shaheid, 'A White Paper for a Draft Campaign Finance Regulation Bill/Act' (*Colombo Telegraph*, 1 August 2022) <<https://www.colombotelegraph.com/index.php/a-white-paper-for-a-draft-campaign-finance-regulation-bill-act/>> accessed 13 January 2024; Thiloka Yapa and Aneetha Warusavitarana, 'Where is the money behind our politicians from?' *The Morning* (12 October 2019) <<https://www.themorning.lk/articles/52859>> accessed 13 January 2024; CMEV, 'Introduction of Campaign Finance' (13 September 2019) <https://www.youtube.com/watch?v=Smyvq8X_IJc&t=62s> accessed 15 January 2024.

¹³⁸ The Election Commission announced that briefings will be conducted with party secretaries as well as relevant state agencies including the Police Department, CIABOC, the Inland Revenue Department, the Auditor General's Department and the Attorney General's Department. See Damith Wickremasekara, 'Election Commission to begin implementing campaign finance laws' *The*

During KIIs and the roundtable discussion, several experts raised concerns about the gaps in the legal framework as well as the implementation challenges of the law due to the existing political culture which could lead to non-compliance and abuse. Various stakeholders have expressed reservations about the new election financing law, particularly the misuse of the legal framework, which can create an uneven playing field for certain political parties and candidates. An effective campaign financing law is a non-negotiable to sustain democratic, free, and fair elections, and the present framework legally provides for the regulation of election spending. The Act has provided mechanisms to report returns, disclose income in the form of cash and cash equivalent, as well as to regulate donations. It also stipulates certain offenses for illegal practices. However, KIIs pinpointed that the law is not comprehensive enough and cannot effectively monitor election campaign finances in Sri Lanka. For instance, if false information is reported, the Election Commission does not have the technical capacity to hold individuals accountable.¹³⁹ Further, it was iterated that the offenses under the Act only relate to individual candidates and not to political parties, which does not reflect the language of the Supreme Court determination of the law.¹⁴⁰

Concerning the practical issues in enforcing the law and the role of the election commission, experts reiterated the gaps within the present law. Here, the issue of technical capacity was seen as a major hurdle, as institutions such as the Election Commission lack the resources to monitor reports and effectively track campaign expenditures. For example, even political parties have raised concerns regarding the challenges in tracking all expenses incurred for campaigns, particularly in long election cycles. Some experts were of the view that the current practice leaves the enforcement process in the hands of citizens, whereas what is required is a top-down approach. Notably, the public and civil society entities do not have the standing in Courts to challenge statements made in reporting returns. Since it is only individual candidates who have such legal standing (in the case of election Petitions), there were concerns regarding the actual implementation of the law.

Concerns were also raised regarding the practical challenges encountered in disclosing income, especially given Sri Lanka's corrupt political culture. Another key issue was the donations made by business entities and corporations to political parties or candidates. As seen in this report, the lines between business entities and PEPs in Sri Lanka are often blurring. In such a context, direct or indirect donations by businesses could be incentivized in ways to facilitate favoritism, corruption, procurement violations and tender manipulations in the long-term. There have also been incidents in the past where prominent business figures have financed election campaigns for

Sunday Times (21 January 2024) <<https://www.sundaytimes.lk/240121/news/election-commission-to-begin-implementing-campaign-finance-laws-546018.html>> accessed 11 February 2024.

¹³⁹ A critique of the Act is recorded in Yohan Perera and Kurulu K. Kariyakarawana, 'Regulation of Election Expenditure Act; A weak legislation needing empowerment by all stakeholders', Daily Mirror (24 November 2023) <<https://www.dailymirror.lk/print/front-page/Regulation-of-Election-Expenditure-Act-A-weak-legislation-needing-empowerment-by-All-stakeholders-Mahinda-Deshapriya/238-271946>> accessed 9 February 2024.

¹⁴⁰ Determination on the Regulation of Election Expenditure Bill, S.D.S.C. No. 72/2022 <<https://sinhala.srilankabrief.org/wp-content/uploads/2023/01/SC-Determination-Regulation-of-Election-Expenditure.pdf>> accessed 19 January 2024.

their private gain.¹⁴¹ However, a related concern recognized by experts is whether disclosure could be used as a political tool to target opposing candidates and their supporters, which also includes business entities. If the law is manipulated to serve as a political tool to target opposing candidates, then there are also implications regarding punishments under the law. Figure 7 illustrates a few key issue areas discussed above.

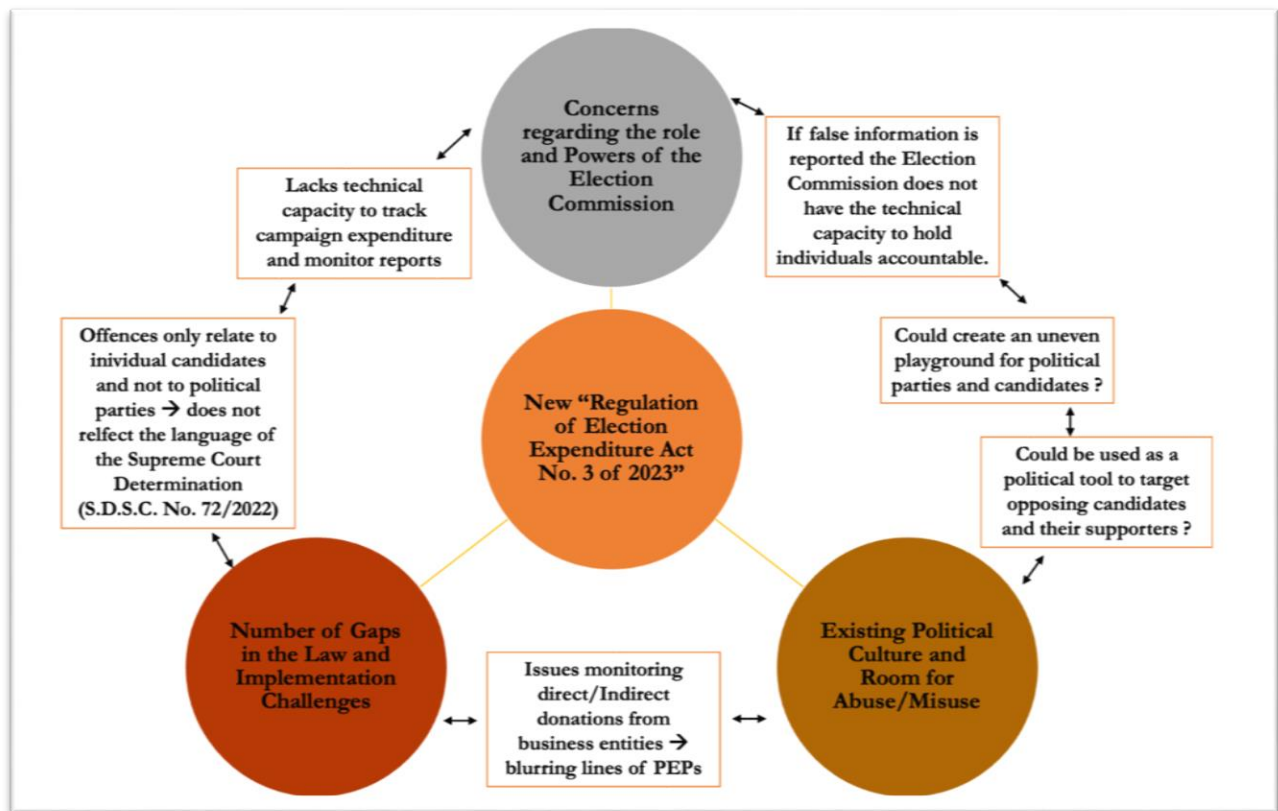


Figure 7: A Selection of Cross-cutting Issues Related to the Implementation of Election Campaign Finance Laws¹⁴²

G. Other Concerns on Present and Proposed Legal Frameworks

One notable issue is the reliance on traditional criminal laws, such as Criminal Breach of Trust and offenses under the Money Laundering Act, which may not adequately encompass the complexities of economic crimes. This reliance on outdated legislation highlights the need for more comprehensive and nuanced legal frameworks specifically tailored to address modern

¹⁴¹ Kishali Pinto-Jayawardene, 'Curbing political crooks, will a campaign finance bill work?' The Sunday Times (22 January 2023) <<https://www.sundaytimes.lk/230122/columns/curbing-political-crooks-will-a-campaign-finance-bill-work-509079.html>> accessed 9 February 2024.

Ajith Siriwardana, 'ICIJ reveals 65 Sri Lankans in Panama Papers', Daily Mirror (5 March 2024) <<https://www.dailymirror.lk/109266/ICIJ-reveals-Sri-Lankans-in-Panama-Papers>> accessed 9 February 2024.

¹⁴² Creation of authors based on findings of the research.

economic crimes. Moreover, it was highlighted that there are practical gaps in addressing crucial aspects such as the recovery of stolen assets and the management of frozen assets within the present framework. The absence of legislation in this area significantly hampers efforts to effectively deter and prosecute economic crimes. At the time of writing this report, the proposed Proceeds of Crime law is underway, and per IMF's recommendations the legislation will be enacted in April 2023.¹⁴³ A key challenge once the law is in place is its implementation, which relates to the broader structural as well as socio-political challenges in enforcing the existing laws in Sri Lanka. The IMF recommendations require the Ministry of Justice and CIABOC to operationalize the provisions of a new Proceeds of Crime legislation and issue the first annual report on a government website on progress and performance by December 2024.¹⁴⁴ Experts also raised similar concerns on the implementation of newly available legal concepts such as civil forfeiture and plea arrangement mechanisms in Sri Lanka, especially with these concepts now being legally recognized through the Anti-corruption Act.¹⁴⁵ These are useful aspects to monitor in the future, especially since experts reiterated the need to monitor the legal reforms channeled through the IMF package.

In addition to the economic and anti-corruption legal reforms, if one is to step back and look at the “bigger picture” of governance reforms, especially in the aftermath of a period of socio-economic and political turmoil, it is apparent that the economic reforms have been coupled with a much darker, draconian legal reform agenda spanning proposed laws such as the new Anti-Terrorism Bill, the Broadcasting Regulatory Commission Bill, the Non-Governmental Organizations (Registration and Supervision) Bill and the recently enacted Online Safety Act, No. 9 of 2024. These new laws directly target dissent against unaccountable groups of elites, particularly political elites in key positions of government, reinforcing a system susceptible to abuse of power, economic crimes, and serious human rights violations. A key legal challenge underpinned by experts is the law-making process. Many of the aforesaid proposed (and/or now enacted) laws have been channeled through with little to no public-stakeholder consultation. The entire law-making process raises grave concerns, especially where the passage of recent legislations such as the Online Safety Act depicted the secretive yet accelerated attempts to enact the law that has blatant implications on civil, political as well as socio-economic human rights.¹⁴⁶ There has been criticism against the sequencing of the laws with the ulterior objective of overloading those who are most affected, as well as to misdirect attention of the public.¹⁴⁷ During the round table

¹⁴³ p. 52 of the IMF GDA. There have been past efforts to legislate a Proceeds of Crime law. TISL compiled an extensive study on the proceeds of crime legislative framework in 2019. See Maheshi Herat, ‘Analysis of the Proposed Proceeds of Crime Legislative and Policy Framework Sri Lanka’ (Transparency International Sri Lanka 2019) <https://www.tisrilanka.org/wp-content/uploads/2019/12/POCA-Report_Eng.pdf> accessed 1 March 2024.

¹⁴⁴ Ibid.

¹⁴⁵ Under the Anti-corruption Act No. 9 of 2023, Section 115 provides a comprehensive framework for non-conviction based civil forfeiture. Further, under Section 67 (1), if at any time before the judgement is given by the High Court against a person who has been indicted for having committed one or more offenses under the Anti-corruption Act, the Director-General may with the sanction of the Commission, having due regard to the facts specified in subsection 67(2) and subject to one or more conditions referred to in subsection 67(3), with the permission of the High Court, withdraw the indictment against such accused.

¹⁴⁶ Centre for Policy Alternatives, ‘Statement on the Online Safety Act No. 09 of 2024’ (2024) <<https://www.cpalanka.org/statement-on-the-online-safety-act-no-09-of-2024/>> accessed 1 March 2024.

¹⁴⁷ Harindra B. Dassanayake and Rajni Gamage, ‘Reforms in Sri Lanka

discussion, experts raised concerns regarding these parallel legal reforms that are currently taking place and also stressed that these trends exemplify the capture of State institutions by corrupt PEPs and the abuse of entrusted power for direct and indirect private gains.

2.1.3. Socio-political Challenges

A. The Capture of State Institutions

Experts have highlighted that there are clear socio-political challenges in holding perpetrators of economic crimes accountable, due to the political culture that exists in Sri Lanka, particularly the capture of State institutions. It was highlighted during the KIIs that the regulatory authorities and processes in the private sector were and continue to be captured by corrupt and powerful political-economic elites which has facilitated rampant financial crimes.

The effects of State capture are seen in the lack of political will to adequately capacitate law enforcement agencies as well as the deliberate attempts by the political-economic elite groups to destabilize structures that are set up to uphold accountability and a culture of transparency in Sri Lanka. In the preceding sections, we have explored a few examples, including the transfer of former FCID officials with the turn of the regime in 2019.¹⁴⁸ During the KIIs, experts also pinpointed at the deliberate inaction or hold back as well as delays in taking prompt actions to investigate or prosecute reported crimes in Sri Lanka. Such challenges stem from the politicization of many of these institutions and the continued influence within the public sector. The delays in prosecuting accused offenders in the Airbus SE case, despite the Airbus Company itself publicly releasing information of accused persons is an example in this regard.¹⁴⁹

Further, during the KIIs, some experts stressed that the lingering effects of State capture, particularly in the aftermath of the Rajapaksa regime, continues to exert practical challenges in addressing economic crimes in Sri Lanka. Recalling the challenges within the Sri Lankan socio-political and cultural contexts, these experts referred to incidents of information breaches during investigations, where supporters of the previous regime manipulated or destroyed information due to socio-political allegiances that obstructed investigative as well as prosecutorial procedures. At times, investigations were halted due to information gaps, where investigators had to resort to third parties (who are often influenced) to obtain information. These challenges impede the ability to bring on water-tight cases ahead of the judiciary and thus, continues to be a severe practical concern in addressing economic crimes in Sri Lanka.

Emerging Trends in Elite Politics' (2023) *Economic & Political Weekly* 58(49), 32
<<https://www.epw.in/journal/2023/49/commentary/reforms-sri-lanka.html>> accessed 15 January 2024.

¹⁴⁸ See section 2.1.1. of this report on Structural Challenges.

¹⁴⁹ 'TISL welcomes Sri Lanka's decision to sue Airbus and calls for further domestic action' (*Transparency International Sri Lanka*, 20 March 2021) <<https://www.tisrilanka.org/tisl-welcomes-srilankans-decision-to-sue-airbus-and-calls-for-further-domestic-action/>> accessed 19 January 2024.

B. Lack of Demands on Political Accountability from Elected Officials

The lack of political accountability, particularly accountability demanded from elected officials, is a critical barrier in advancing efforts that hold perpetrators of economic crimes accountable.¹⁵⁰ However, some experts remarked that even when demands are made, it should consider practical aspects and existing challenges in addressing economic crimes, to manage the public expectations.¹⁵¹ Reflecting on past experiences, it is vital to understand that there will be opposing factions, with vested interests, alleging that investigations and prosecutions of economic crimes cases are tools of political victimization. There is also room for powerful and corrupt political-economic elites to make populist statements such as “if we stole money, then show it”, as these statements appeal to wider sections of the public, if they are unaware of the complexities in addressing economic crimes in Sri Lanka. There are gaps in civic knowledge and understanding on economic crimes, how they are committed,¹⁵² its impact on human rights as well as the existing culture of impunity in Sri Lanka.

C. Geo-political Issues

During the KIIs it was highlighted that the governance standards imposed by Western donor governments have resulted in successive Sri Lankan governments to pursue unconditional loans from governments such as the Republic of China. Further, it was highlighted that with the outbreak of the aggressions in Gaza from October 2023, has posited newer issues in advocating for accountability in countries such as Sri Lanka due to various reasons. These issues will result in nuanced implications on the Sri Lankan socio-political landscape, particularly in 2024 (and beyond) as Sri Lanka prepares for a national election as well as to be discussed at the United Nations Human Rights Council in September 2024.

D. Compartmentalized Approach to Human Rights and Accountability

Distinctions between civil and political rights and socio-economic rights is an inherent critique within the human rights discourse even in the Bill of Rights. Whilst human rights are considered inherently indivisible, the compartmentalized approach to rights in practice has resulted in dividing approaches and divided attention in terms of securing funding and capacity building. This has also impacted efforts to address economic crimes, despite the clear linkages between the looting of the State’s critical resources by economic crimes committed by PEPs and the resulting human rights implications. Therefore, the point of departure of this study stems from the need to view the broader issues of economic crimes, accountability, and human rights more holistically, particularly in drawing links between these broader issue areas, and conceptualizing the notion of economic crimes in ways where human rights implications of such crimes are factored into legal, political and policy discourses.

¹⁵⁰ KII 2, 17 January 2024.

¹⁵¹ KII 4, 14 February 2024.

¹⁵² KII6, 26 February 2024. According to experts, in countries like Gambia, the Commission of Inquiry in its report comprehensively recorded and created an inventory of how economic crimes were carried out in addition to what was stolen. Further, experts highlighted that this information is not only useful for investigative work but is also a useful tool to inform advocacy work.

3. System Change: Potential Interventions and Way Forward

3.1 Potential Interventions

The findings of the research are hopefully utilised by stakeholders to understand economic crimes as “system crimes” that require systematic interventions to break the vicious cycle of impunity. With the echoes of *Aragalaya* in 2022 calling for “system change” the present moment proves to be ever so critical to drive a systematic reform agenda in Sri Lanka that can address economic crimes, particularly to break down systems that facilitate, maintain, and reinforce a fertile ground for impunity.¹⁵³ Against the backdrop of the aforementioned challenges which specifically draw on past experiences and struggles in addressing forms of economic crimes in Sri Lanka, we explore the possibility of a three-pronged advocacy approach. The three prongs encompass:

- i. **Accountability**, which takes into consideration criminal accountability for past economic crimes as well as accountability for the violation of human rights due to economic crimes.
- ii. **Multi-stakeholder Engagement** at multitudinal levels, consisting of efforts to include different political parties, international institutions (international financial institutions as well as other multilateral Bodies), religious, trade unions, bureaucrats as well civil society groups, and the public.¹⁵⁴
- iii. **Critical interventions at socio-political, legal, and structural dimensions** to eliminate the environment viable for economic crimes considering existing realities and practical challenges.

A. Potential Structural Interventions

At the Investigative Level

- i. Establishing a powerful and independent investigative arm with the capacity to investigate economic crimes.
- ii. Continued efforts to build technical, technological, and other capacities of investigators.

At the Prosecution Level

- i. Establishing a specialized and independent prosecutor’s office addressing economic crimes.
- ii. Providing the opportunities to specialize in economic crimes cases for current prosecutors.

At Adjudication Level

- i. Investing in continuous efforts to capacitate Judges.

¹⁵³ CPA has published a report analyzing the demands of the public during the *Aragalaya*. See the discussion on System change in Centre for Policy Alternatives, ‘A Brief Analysis of the *Aragalaya*’ (2023), 15 <https://www.cpalanka.org/wp-content/uploads/2023/05/A-Brief-Analysis-of-the-Aragalaya_Final-Report.pdf> accessed 11 February 2024.

¹⁵⁴ Dassanayake and Gamage explores the influential elite groups in Sri Lanka which includes political parties, international (including international financial institutions and multilateral bodies), religious, trade union elite groups to bureaucrats as well civil society groups. See Harindra B. Dassanayake and Rajni Gamage, ‘Reforms in Sri Lanka Emerging Trends in Elite Politics’ (2023) *Economic & Political Weekly* 58(49), 30 <<https://www.epw.in/journal/2023/49/commentary/reforms-sri-lanka.html>> accessed 15 January 2024.

Public Sector Reforms

- ii. Providing the opportunity to specialize in economic crimes cases.
- iii. Assigning economic crimes cases to Judges who have acquired specialization to address economic crimes using dedicated courts.
- iv. Enforcing novel concepts available to mitigate the time, avoid delays and expenses in adjudication.

- i. Continuous institutional capacity building to bridge the mismatch between skills required to address complex, sophisticated, and fast evolving economic crimes.
- ii. Adequate resourcing to address issues such as asset tracing, proceeds of crime cases.
- iii. Reforms within the public sector to overcome challenges of State capture.
- iv. Enhancing institutional coordination in addressing economic crimes cases. This includes facilitating effective, accountable and confidentiality guaranteed processes for Police to Police and Police to Financial Intelligence Units networking.

Increasing Visibility on Investigations and other Useful Tools

- i. Ensuring that updated records of investigations are publicly available on a designated website in an accessible manner.
- ii. Accessible beneficial ownership register, to ascertain the ultimate human owner of a company is underway through the IMF recommendations. It is vital to raise public awareness of such tools.

Private-public Partnerships to enhance Open and Transparent Government

- i. Out of the box thinking to attract financial, banking, and other experts as well as young talent to investigations and prosecutions, which includes competitive salaries and incentives.
- ii. Harnessing new technologies to facilitate e-governance for transparency.¹⁵⁵

¹⁵⁵ For example, strengthening the framework for e-government procurement, where the existing electronic systems to enhance the public procurement places are harnessed in ways to combat corrupt practices. See the comprehensive report compiled by Verité Research on strengthening e-government procurement in Sri Lanka at Verité Research, Verité Research, 'E-Government: Procurement Enabling Business through Efficient Systems' (Verité Research 2017) 5-10 <<https://www.veriteresearch.org/wp->

B. Potential Legal Interventions

Mutual Legal Assistance (MLA)

- i. Establishing a strong MLA framework.
- ii. Addressing the pending MLA requests from 2019-2022.
- iii. Ensure effective, accountable and confidentiality guaranteed processing systems, including improved communications systems with third party jurisdictions.

Other Legal Mechanisms

- i. Utilising plea arrangements to reduce sentences and address economic crimes cases.
- ii. Implementing new concepts such as Civil Forfeiture.
- iii. Implementing the upcoming Asset Recovery Mechanism once legislation is enacted and continued monitoring of its enforcement.
- iv. Ensuring inclusive and transparent law-making procedures that provides adequate time for meaningful public consultation and comprehensive review.
- v. Ensuring that all international conventions and treaties relating to economic crimes are made effective in law, leveraged by adequately capacitated law enforcement authorities.

C. Potential Socio-political Interventions

Key Demands from Political Parties and Election Candidates

- i. Key demands to party leaders, contesting candidates and other political elite to declare their stance/commitment to accountability for economic crimes.
- ii. Accountability for the economic crimes in the election manifesto and general election discourse.
- iii. Declaration on commitment to prevent PEPs from being protected against prosecution.
- iv. Declaration on commitment of financing and institutional strengthening.
- v. Normalizing the terms "bi-partisan support" or "multi-party" support to collaborate across political boundaries on addressing economic crimes issues.

Raising Voter Awareness of the Economic Crisis Determination and Strengthening the Public Call for Accountability

- i. Post-judgement advocacy measures to promote political accountability amongst political parties and election candidates.
- ii. Advocacy around realistic expectations on addressing economic crimes.

The Role of International Institutions and Foreign Governments

- i. Continued monitoring of the effectiveness of legal reform proposed by the IMF package.
- ii. Support efforts at structural and legal initiatives to address accountability in Sri Lanka.

3.2 Way(s) Forward?

As a country in the global South, transitioning from a prolonged period of conflict, authoritarianism, and a chronic economic crisis, the challenge of addressing economic crimes is much more than a conventional matter of addressing ‘white collar crimes’ in Sri Lanka. From the discussions above, this is ever so apparent, with the blurring lines of corrupt groups of elites, and the amorphous group of PEPs. Thus, there are broader issue areas in the realm of economic crimes which include human rights implications caused by unlawful activities perpetrated by PEPs who can also take the forms of private businesses, international corporations, and professional bodies. Thus, economic crimes perpetrated by these entities do not necessarily take a conventional form. It could include other forms of economic crimes such as land grabbing, socio-economic marginalization as well as the violation of rights to access to natural resources and the human right to a clean and healthy environment.

The point of departure in the present study was the need to broadly examine the intersections of economic crimes and human rights violations by unveiling different systems of impunity. It was only an entry point into a much larger debate on economic crimes as system crimes requiring multi-stakeholder interventions at broader structural, legal, and socio-political levels. The present moment in Sri Lanka calls for critical action at all these levels to meaningfully address economic crimes in the country.

Whilst there are multiple reports extensively discussing the much-needed reforms in the path to recovery, successful efforts towards addressing economic crimes should now also delve into the broader issue areas of economic crimes in Sri Lanka considering new debates and conceptions. In doing so, it is vital to not only consider the human rights implications of economic crimes but also the direct human rights abuse caused by perpetrators of economic crimes who also deliberately entrench systems of impunity against accountability. In any case, there is a need to ensure that the conception of economic crimes surpasses financial and legal discourses into public debates and is

normalized in popularly understood terms and concepts, especially vis-à-vis the link between economic crimes, impunity, and human rights implications.

Annex 1: A Selection of Emblematic Economic Crimes Cases in Sri Lanka

The case studies outlined below serve as examples in understanding how challenging it is to achieve accountability for economic crimes committed by PEPs. As seen in the analysis above, efforts toward accountability are actively undermined in Sri Lanka through various structural, legal, and socio-political weaknesses which have in return reinforced a culture of impunity in the country. The cases outlined below involve PEPs who have been released or acquitted of charges. In our research, we unveiled that in some cases, charges have not been filed, or have been later withdrawn before substantive proceedings could take place. It is crucial to recall that these case studies are simply the tip of a colossal iceberg. Each case indicates the systemic barriers to upholding corrupt PEPs accountable for economic crimes and is emblematic of the culture of impunity. We consider these cases as some of the ‘emblematic cases’ of economic crimes in Sri Lanka.

Case	Indictment Filed	Discharged/ Acquitted/ Withdrawal of Charges	Years in court without a conviction and Other Comments
HelloCorp Deal: Money Laundering Allegations amounting to 30 million against Namal Rajapaksa	08 April 2017 - Indictment filed by the Attorney General in the Colombo High Court. ¹⁵⁶	11 May 2023 - Evidence for the prosecution concluded. Counsel for the defence hopes to make a request to release the accused without calling for the evidence of the defence, as there is not enough evidence. ¹⁵⁷ 2 November 2023 – Namal Rajapakse and five others are acquitted from the Gowers Corporation money laundering case. ¹⁵⁸	Exceeded 6 years in court.

¹⁵⁶ ‘Namal’s Theatrics and the inside story of HelloCorp’, Sunday Observer (15 October 2017) <<https://archives1.sundayobserver.lk/2017/10/15/features/namal's-theatrics-and-inside-story-hellocorp>> accessed 12 December 2023.

¹⁵⁷ Lakmal Sooriyagoda, ‘NR Consultation case CID still waiting for AG’s advice on Namal and others’, Daily Mirror (12 May 2023) <https://www.dailymirror.lk/print/front_page/NR-Consultation-case-CID-still-waiting-for-AGs-advice-on-Namal-and-others/238-259070> accessed 12 December 2023.

¹⁵⁸ ‘Namal Rajapaksa acquitted from corruption case’, Newswire (2 November 2023) <<https://www.newswire.lk/2023/11/02/namal-rajapaksa-acquitted-from-corruption-case/>> accessed 11 January 2024.

Alleged Misappropriation of public funds by Rohitha Bogollagama	26 February 2020 - Indictment filed by the CIABOC in Colombo High Court. ¹⁵⁹	2021 - The Commission of Inquiry to Investigate Allegations of Political Victimization recommended that charges be withdrawn. No media reports about progress of the case. ¹⁶⁰	Rohitha Bogollagama is appointed as Sri Lanka's High Commissioner to the UK with effect from 01 August 2023. He assumed office on 19 November 2023. ¹⁶¹
Divineguma case: Alleged Misappropriation of Funds	December 2015 - Indictment filed by the Attorney General in the Colombo High Court. ¹⁶²	February 2022 - Acquitted of all charges. ¹⁶³	Exceeded 6 years in court.
The Bond Scam: Allegations of Corruption	29 June 2019 - Indictment filed by the Attorney General in the First Permanent High Court Trial-at-Bar against former Central Bank Governor Arjuna	06 Dec 2021 - The Colombo High Court Trial at Bar cleared former Sri Lanka Finance Minister Ravi Karunanayake, former Central Bank Governor Arjuna Mahendran and eight others of 11 out of 22 charges. ¹⁶⁵	Exceeded 3 years in court

¹⁵⁹ Lakmal Sooriyagoda, 'Bogollagama indicted for excessive spending in 2006', Daily News (26 February 2020) <<https://archives1.dailynews.lk/2020/02/26/law-order/212615/bogollagama-indicted-excessive-spending-2006>> accessed 11 January 2024.

¹⁶⁰ Centre for Policy Alternatives, 'Resolution Seeking Parliamentary Approval to Implement the Recommendations of the Commission of Inquiry on Political Vitiimization' (2021), 4 <<https://www.cpalanka.org/wp-content/uploads/2021/04/Resolution-seeking-parliamentary-approval-to-implement-the-recommendations-of-the-CoI-on-Political-Victimization.pdf>> accessed 14 January 2024.

¹⁶¹ 'Rohitha Bogollagama appointed Sri Lanka's High Commissioner to UK', Ada Derana (19 June 2023) <<https://www.adaderana.lk/news.php?nid=91357>> accessed 11 January 2024.

¹⁶² 'Basil, former Divineguma DG indicted on criminal charges', The Sunday Times (13 December 2015) <<https://www.sundaytimes.lk/151213/news/basil-former-divineguma-dg-indicted-on-criminal-charges-175062.html>> accessed 13 January 2024.

¹⁶³ 'Basil Rajapaksa acquitted from almanac case', Newswire (1 February 2022) <<https://www.newswire.lk/2022/02/01/basil-rajapaksa-acquitted-from-almanac-case/>> accessed 13 January 2024; Piyadasa Ranasinghe, 'Basil, three others acquitted in Divineguma misappropriation case', The Island (1 March 2022) <<https://island.lk/basil-three-others-acquitted-in-divineguma-misappropriation-case/>> accessed 13 January 2024.

¹⁶⁵ 'Sri Lanka bond scam: Former finance minister, others cleared of 11 out of 22 charges', Economynext (6 December 2021) <<https://economynext.com/sri-lanka-bond-scam-former-finance-minister-others-cleared-of-11-out-of-22-charges-88539/>> accessed 13 January 2024.

	Mahendran and nine others. ¹⁶⁴	<p>March 2022 - Former Finance Minister Ravi Karunanayake and 10 other accused were ordered to be released by the Colombo High Court Trial-at-Bar from the charges related to the Public Property Act.¹⁶⁶</p> <p>11 October 2022 - Colombo High Court Trial-at-Bar has ruled that charges cannot be maintained under the Public Properties Act.¹⁶⁷</p>	
Alleged Misappropriation of Tsunami Funds	2016 - Indictments filed by the Attorney General against 4 persons including Saliya Wickremasuriya and Tiran Alles. ¹⁶⁸	10 July 2020 - Acquitted by the Colombo High Court of all charges. ¹⁶⁹	4 years in court.
Lanka Sathosa Case: Allegations of Bribery against Johnston Fernando	10 Oct 2022 - Indictment served following case filed by CIABOC. ¹⁷⁰	<p>19 May 2023 - The 3 accused released on the basis of a preliminary objection.¹⁷¹</p> <p>27 February 2024 - The bribery case filed against three accused including former Minister Johnston Fernando for allegedly excluding Sathosa employees from</p>	Exceeds one year in court.

¹⁶⁴ 'CB Bond scam indictments Record 1 million pages evidence', news.lk (29 June 2019) <<https://www.news.lk/news/political-current-affairs/item/26220-cb-bond-scam-indictments-record-1-million-pages-evidence>> accessed 13 January 2024.

¹⁶⁶ 'Ravi, ten accused released from second Bond Scam case', Daily News (5 March 2022) <<https://archives1.dailynews.lk/2022/03/05/law-order/274119/ravi-ten-accused-released-second-bond-scam-case>> accessed 13 January 2024.

¹⁶⁷ 'Bond scam: Charges against Mahendran, Aloysius & other accused dropped', Ada Derana (11 October 2022) <<https://www.adaderana.lk/news/85481/bond-scam-charges-against-mahendran-alloysius-other-accused-dropped>> accessed 15 January 2024.

¹⁶⁸ 'Mawbima owner Tiran Alles and two others remanded over RADA case', Ada Derana (2 November 2016) <<https://www.adaderana.lk/news/37663/tiran-alles-and-two-others-remanded-over-rada-case>> accessed 13 January 2024.

¹⁶⁹ 'Tiran Alles and three others acquitted from RADA case', The Morning (10 July 2020) <<https://www.themorning.lk/articles/91611>> accessed 15 January 2024.

¹⁷⁰ 'Indictments served on Johnston over Lanka Sathosa case', Newswire (10 October 2022) <<https://www.newswire.lk/2022/10/10/indictments-served-on-johnston-over-lanka-sathosa-case/>> accessed 13 January 2024.

¹⁷¹ 'Johnston and two other accused released from Sathosa case', Ada Derana (19 May 2023) <<https://www.adaderana.lk/news.php?nid=90654>> accessed 19 January 2024.

		their duties and engaging them in political activities, is fixed for trial on the 26 June 2024 by the Colombo High Court. ¹⁷²	
Rohitha Abeygunawardena : Allegations of Unlawful Acquisition of Assets	7 January 2016 - Indictment filed by CIABOC in the Colombo High Court against Rohitha Abeygunawardena for the unlawful acquisition of assets estimated at Rs.41.2 million in cash and property, between 2014 - 2016. ¹⁷³	19 March 2021 - CIABOC informs the court that it does not intend to proceed with charges. ¹⁷⁴	4 years in court.
LECO Case: Alleged Malpractice during the purchase of a land by the Ceylon Electricity Board (CEB)	18 January 2018 - CIABOC filed a criminal case in the Magistrate's Court of Colombo. ¹⁷⁵	16 March 2021 - CIABOC withdraws case. ¹⁷⁶	3 years in court.
Malwana Land Case: Alleged Misuse of Public Funds by Basil Rajapaksa and	9 March 2017 - Indictment filed by the Attorney General in Gampaha High Court against Basil Rajapaksa	3 June 2022 – Acquitted from all charges. ¹⁷⁸	Exceeded 5 years in court.

¹⁷² 'Bribery case against MP Johnston, two others fixed for June 26', Daily News (28 February 2024) <<https://www.dailynews.lk/2024/02/28/local/419625/bribery-case-against-mp-johnston-two-others-fixed-for-june-26/>> accessed 5 March 2024.

¹⁷³ 'Rohitha Abeygunawardena indicted on assets case', Ada Derana (7 January 2016) <<https://www.adaderana.lk/news.php?nid=33706>> accessed 15 January 2024.

¹⁷⁴ Zulfick Farzan, 'Rohitha Abeygunawardena released from bribery case', News First (19 March 2021) <<https://www.newsfirst.lk/2021/03/19/rohitha-abeygunawardena-released-from-bribery-case>> accessed 15 January 2024.

¹⁷⁵ 'Review Petition against Judges Order', Daily Mirror (10 April 2018) <<https://www.dailymirror.lk/News-Features/REVIEW-PETITION-AGAINST-JUDGES-ORDER/131-148506>> accessed 16 January 2024.

¹⁷⁶ 'Bribery case against former CJ Mohan Peiris withdrawn', News Wire (16 March 2021) <<https://www.newswire.lk/2021/03/16/bribery-case-against-former-cj-mohan-peiris-withdrawn/>> accessed 18 January 2024.

¹⁷⁸ Zulfick Farzan, 'Malwana Mansion Case: Basil Rajapaksa & Thirukumar Nadesan acquitted & released', News First (3 June 2022) <<https://www.newsfirst.lk/2022/06/03/malwana-mansion-case-basil-rajapaksa-thirukumar-nadesan-acquitted-released>> accessed 18 January 2024.

Thirukumar Nadesan	and Thirukumar Nadesan for misappropriation of Rs. 250 million by purchasing and developing a 16-acre plot of land in Malwana. ¹⁷⁷		
--------------------	---	--	--

¹⁷⁷ Kamani Alwis, 'Alleged misappropriation of Rs.250 million: AG's Dept. files indictments against Basil, Nadeshan', Daily News (9 March 2017) <<https://archives1.dailynews.lk/2017/03/09/local/109887/alleged-misappropriation-rs250-million-ag's-dept-files-indictments-against?page=4>> accessed 19 January 2024.