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► **Building A High Quality Public Service in Sri Lanka Through Workplace Reform**

Report Commissioned by the ILO for the Senior Ministers' Secretariat of the Government of Sri Lanka

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BUILDING A HIGH QUALITY PUBLIC SERVICE IN SRI LANKA THROUGH WORKPLACE REFORM

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The brief

The public service is a major employer in Sri Lanka, engaging some 1.4 m people. The productivity, affordability and reliability and of its services are critical to the health, well-being and socio-economic progress of the country. However, the delivery of those services is impaired by inadequate systems, low skills and limited competencies, and is often interrupted by strike action. Employees and their representatives persistently raise concerns over a lack of opportunities to influence the shaping of pay and conditions of service, and over anomalies and inequities in the employment regime. A contemporary approach to people management within the public service is also wanting, with employees being administered rather than led and developed.

The assignment of the consultants engaged for this Report has been to produce, in consultation with key stakeholders, an integrated set of proposals to address these problems.

Response to the brief

This Report recommends fundamental changes to the status quo: a new approach to workplace relations; a new human resource capability; new structures, processes and practices; and a new ethos.

It is proposed that employees, both directly and through their representatives, actively engage with their public service employer through processes of consultation and negotiation to improve productivity and regulate changes to pay and conditions. To do this, new engagement and dialogue forums will need to be chartered: at the workplace, at sectoral level and at national level.

New dispute resolution mechanisms are proposed to support the proposed social dialogue framework, with mediation and voluntary arbitration options being introduced at every level.

A last-resort right to strike is envisaged, except in circumstances where a withdrawal of labour would imperil the health or safety of the community or seriously damage the economy or society.

A considerable investment in the human resource function of the public service is advocated.

The changes mooted are of such a nature that new Parliamentary legislation will be required to enable it.

A markedly new system cannot be the product of new architecture and funding alone; its introduction and longevity will depend on a new compact anchored in mutual respect and cooperation being forged between the state as employer, the union movement and the public service workforce. It will also require a supporting investment in education and training in new ways of thinking and doing for the key stakeholders.

The challenge for the social parties will be to overhaul their current engagement models very substantially. The prize is an efficient, productive and equitable public service positioned to grow and sustain society.

► Part 1 Setting the scene

For many years now Sri Lanka has grappled with labour unrest and interrupted services in the public sector. Over the last decade it has commissioned studies, convened stakeholder workshops and contemplated strategies to address matters. In 2013 a delegation of unions approached the Government to urge it to act on recommendations arising out of an ILO initiative of 2007.¹ That led to an agreement to conduct a pilot study on how to improve social dialogue, dispute resolution and human resource management within the Ministry of Health. That study was completed in 2014, and a decision was then taken by the Secretariat of Senior Ministers to extend that exercise to cover the entire public service.

The ILO was asked to continue its assistance, and so three national consultants (some of whom were involved in the earlier work) and an international consultant were retained to develop a strategy to modernise human resources and employee relations in the country's public service.

This document is the first expression of that strategy. It follows a review of the relevant earlier work and documentation as well as further consultations with a range of stakeholders. The consultation process still has a way to run.

In summary, the consultants' terms of reference asked them to arrive at proposals on how best to:

- build social dialogue at every level within the public service;
- establish new dispute resolution services;
- adapt existing regulatory and judicial institutions;
- support new institutions and processes through appropriate regulatory and legislative changes;
- promote modern HR management processes within the public service;
- train senior public service personnel in effective social dialogue, dispute handling, and workplace relations;
- train trade union leaders to make them effective partners in dealing with the affairs of the organisation, and on joint consultation;
- develop a data base on strike disputes; and
- develop systems for the ongoing monitoring of workplace reform within the public service.

The consultants were also asked to produce an overall strategy and action plan for implementing recommended changes, and to assist with the validation of the plan with the key stakeholders.

Background

Sri Lanka has, in regional terms, a relatively large public service sector. By deliberate policy design of recent decades, it is an area for employment promotion and absorption. Some 1,400,000 employees are currently engaged there.

¹ See the Report on the *Workshop on Social Dialogue and Dispute Settlement in the Public Sector in Sri Lanka*, 25 September 2007. A subsequent *Concept Note for the Task Force on Social Dialogue Strengthening, Social Dialogue and Effectives Disputes Settlement in the Public Sector* [author?] of November 2007 proposed the following as the brief for the task force: (1) Agree on the social dialogue mechanisms that need to be created and strengthened, in line with the recommendations of the September workshop (2) Agree on the mechanisms that should be put in place or strengthened for effective disputes settlement in the public sector (3) Prepare a roadmap for the effective implementation of the suggested mechanisms.

For a middle-income nation, Sri Lanka has a good reputation for public sector service delivery, notable in areas such as health and education. Self-evidently, a well-functioning and ever-modernising public service is essential for the continued development and welfare of the country. Noteworthy is that the Constitution set out directive principles of state policy that oblige the state to, amongst other things, further:

- the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life; and
- the realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.²

In addition, the recently released development strategy of the government³ places a premium on providing an environment that will bolster private sector growth.

Features of the prevailing public sector labour relations system, however, give serious cause for concern and impair service delivery. Two stand out, and they are inter-related:

- Employees and their unions have limited formal opportunities to express their voice. There is only limited scope for them to engage in the shaping of pay, conditions of service and other workplace matters.
- There is a high level of strike action.

An earlier report captures the problem in a nutshell:

“One of the major drawbacks in labour- management relations in the public service in Sri Lanka is non-existence of an environment for social dialogue and appropriate mechanisms to prevent and settle disputes. There is no proper environment for the employees and the management to come together to learn and listen to each other in order to find mutually acceptable ways in dealing with common problems and issues.”⁴

Appropriate 21st century legislation, institutions and practices for the fair and effective regulation of workplace relations are conspicuous by their absence. An antiquated rule book (the Establishment Code) and other, often inconsistent, superseding government circulars govern interactions. The human resource functions across government departments and agencies are not well developed. Public sector workplace dynamics are often characterised by a raw recourse to workplace power coupled with political intervention in various guises. This is clearly not a sound basis for the regulation of labour relations and good public service outcomes in present-day Sri Lanka.

The private sector, on the other hand, is governed by dedicated labour relations legislation – principally, the Industrial Disputes Act (IDA)). Two considerations militate against the simple expedient of extending this legislation to the public sector, however:

- the history and contours of two sectors are quite different, making the IDA an unhappy fit;
- the IDA is in any event a mid-20th century vintage statute, with an emphasis on dispute management rather than social dialogue and dispute prevention.

² See Article 27(2)(b) and (c) of the 1978 Constitution

³ See *Unstoppable Sri Lanka 2020: Public Investment Strategy for 2014-2016*

⁴ Ariyaratne Hewage, Upali Athukorala, DM Somarathne Dissanayake *Final Report of the Pilot Phase of the Project held at Ministry of Health – Dispute Settlement and Social Dialogue Mechanism for the Public Service, 2013*

Objectives and challenges

This Report sets out to offer an integrated set of proposals to address the issues identified above. Its overriding objective is to promote a more productive, efficient and effective public service. To achieve this, it advocates –

- an investment in the development of a modern human resources function across public service departments and
- the development of an institutional framework that promotes greater employee and union participation in the setting of employment conditions and in the delivery of all of the services that the public deserves.

The path to change will not be easy. Old ways will die hard, vested interests from all quarters will stand in the way and funds for transformation will need to be secured. However, part of the groundwork is in place. Earlier engagements show that there is already a shared analysis amongst the key stakeholders and a shared commitment on the direction of reform.⁵ The challenge now is to agree on the specifics for change and then to convert worthy sentiments into tangible deeds.

Responding to the terms of reference, these proposals for reform focus on three areas in the quest for a more productive and effective public service:

1. Creating institutions for the promotion of social dialogue
2. Providing avenues for improved dispute prevention and dispute resolution
3. Strengthening the human resource function within the public service.

The Report's proposals are generally high level rather than specific, although there is some illustrative delving into detail in the form of model constitutions for dialogue forums. The end strategy and action plan, too, necessarily particularises things, but only provisionally so.

The key actors need to consider independently and then engage one another in searching debate over what is proposed here, and then collectively endorse, modify or reject what is on offer. Only once that is done – and dependent of course on the outcome – can targeted drafting and practical action steps commence.

⁵ See: Cabinet Decision of 22 April 2014 in Cabinet paper No 14/0414/507/006; "National Workshop on Dispute Settlement Mechanism held on 17th December 2013" in Hewage A, Athukorala U, Dissanayake D.M.S *Dispute Settlement and Social Dialogue Mechanism for the Public Service of Sri Lanka* (ILO/SMS/Colombo, 2013); "Workshop on Social Dialogue and Disputes Settlement in the Public Sector in Sri Lanka", 25 September 2007, Colombo (in *ILO Action Programme in Public Service – Enabling Public Service to contribute to Sustainable Development & Poverty Alleviation through Improved Social Dialogue and HRD*, 2006-2007).

► Part 2

A synopsis of the current legislation, institutions and practices relating to public sector employee relations

Rights and remedies

Sri Lanka has a comparatively strong legal framework for the security of employment and welfare of working people. The basic law of the country, the Constitution, establishes the fundamental right to set up and join trade unions,⁶ and special legislation support the existence and functioning of unions.⁷ Public sector employees, too, are free to join trade unions.⁸ Various other legislative instruments⁹ regulate and offer protection in relation to particular areas of the employment relationship.

Many aspects of public sector employment are governed in great detail by the Establishment Code, a now rather dated document that has grown by accretion over many decades, supplemented by quasi-legislative circulars. Included within its provisions are ones extending a number of privileges and concessions to employees, such as the recovery of subscription, duty leave, free travel, the release of an officer for trade union work, salary payable to such released officers, forming trade union federations, prevention of transfers, furnishing of information and more.¹⁰

Employees may also themselves directly invoke the fundamental rights provisions in the Constitution,¹¹ mostly in relation to individual disputes with their employer (whether in the capacity of an official, a department, an agency or a ministry).

Trade unions make their presence felt by interventions at both workplace and national level, including through strike action and the making of representations through the political process.

Constitutional rights aside, disputes relating to remuneration or conditions of service are often brought before the National Pay Commission (NPC) by employees, unions or the relevant departments, institutes or ministries. Pursuant to meetings attended by all the parties concerned where the NPC actively engages in mediation efforts, settlements are typically – but not always – reached.

Disputes concerning matters within the scope of the Public Service Commission (PSC) – appointments, promotion, transfer, disciplinary cases and dismissals – are also commonly referred to that body by either the employer or employee concerned. In the event that an employee is not satisfied with a decision of the PSC, she can appeal to the Administrative Appeal Tribunal (AAT), and from there to the Court of Appeal and ultimately the Supreme Court.

It is also quite common for disputes to be referred to the Human Rights Commission, Parliamentary Ombudsman and the Public Petitions Committee of Parliament.

Despite these multiple protections and avenues for redress, experience shows that these institutions and processes are not up to the task of preventing or settling many disputes; hence the widespread employee and trade union dissatisfaction with the status quo and the high incidence of strike action.

⁶ See Article 14(d) of the 1978 Constitution.

⁷ See the *Trade Unions Ordinance 15 of 1935*, which covers both the public and private sectors.

⁸ With some restrictions: senior employees – staff officers – are not permitted to form or join unions.

⁹ See generally the *Workmen's Compensation Ordinance 19 of 1934*; *The Maternity Benefits Ordinance 32 of 1939*; *The Wages Boards Ordinance 27 of 1941*; *The Factories Ordinance No 45 of 1942*; *the Industrial Disputes Act No 50 of 1950* and amendment no 11 of 1957; *the Shop & Office Employees Act No 19 of 1954*; *the Employment of Women, Young Persons & Children's Act 47 of 1956*; *the Employees Provident Fund Act 15 of 1958*; *the Gratuity Act*, *the Employees Trust Fund Acts*, *The Termination of Employment (Special Provisions) Act 45 of 1971*; *the Employees Trust Fund Act No 46 of 1980* and *the Payment of Gratuity Act No 12 of 1983*.

¹⁰ See Chapter XXV of the Code.

¹¹ Section 12 of the Constitution guarantees the right to equality, Article 14 (c) the right to freedom of association generally and Article 14(d) the right to form and join trade unions specifically. Under Article 17 read with Article 126, any person may petition the Supreme Court in respect of any apprehended violations of fundamental rights, including violations by administrative or executive action.

Elaboration on the role of some key institutions

National Pay Commission (NPC)

The NPC was established as a special agency by a directive of the President in an Extraordinary Gazette dated 5 November 2013. Its brief is –

“to advise and assist the Government in the formulation of a national wage policy by revisiting all remuneration structures including salaries and wages in the Public Sector in order to facilitate due fulfilment of the manpower needs in the Public Sector and the Private Sector as a whole”.

Its remit includes the making of recommendations on remuneration and –

“to act as an arbitrator in the settlement of disputes relating to Salaries and Wages or matters connected therewith as well as disputes in relation to Schemes of Recruitment, Scheme of Promotion or Service Minutes and to make recommendation to the relevant authorities with regard to the settlement of such disputes”.

While government agencies including provincial governments are not obliged to accept and implement the NPC’s recommendations, in practice they do.

The NPC has not as yet acted in any formal arbitral capacity, and is in fact reluctant to do so. Key NPC members are of the view that its primary role should be to mediate issues that come before it, and that any exercise of arbitration powers would undermine that more fundamental social service.

What is anticipated is that a dedicated and separate Mediation Panel should be established. This subject is pursued below.

Public Service Commission (PSC)

The PSC was established under Article 54 (1) of the Constitution. It consists of nine members appointed by the President on the recommendation of the Parliamentary Council. Matters regarding the appointment, promotion, transfer, disciplinary control and dismissal of all public officers except heads of departments have been entrusted to it.¹² Matters of policy relating to public officers are, however, determined by the Cabinet of Ministers, and to this degree the PSC is subservient to directions from the Cabinet.¹³

The general public at large expect the PSC to function as an independent quasi-judicial body, ensuring transparency and equality in relation to all matters that come before it.

Some of the responsibilities previously entrusted to the Ministry of Public Administration as provided for in Chapters 1 – 6 of the Establishment Code have been taken over by the PSC. So some of these Establishment Code regulations have been superseded by new guidelines introduced by the PSC styled as “Public Service Commission Rules”. Particular guidelines, notably article 38,¹⁴ are widely viewed as problematic because they provide too much decision-making licence to the Commission.

As already mentioned, the PSC is responsible for appointments, transfers, promotions, disciplinary matters including termination of employment. Most of these processes could be regarded as rights matters. In addition, though, the PSC also has roles in relation to Schemes of Recruitment (SOR) and Service Minutes (SM) that affect conditions of employment. These cover payments and other

¹² See Article 55(3), following the 18th Amendment to the Constitution. And see also the amended Article 55(2): “The appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department shall vest in the Cabinet of Ministers.”

¹³ Article 55(1).

¹⁴ Article 38 reads: “The Commission shall have the discretion to approve or approve with revisions or reject or revoke a SM [Service Minute] or SOR [Scheme of Recruitment] or the proposed amendments by a Secretary (to a Ministry). Similarly, the Commission shall have the discretion to implement any SM or SOR created by the Commission for a particular post or service in the public service or to amend by itself any existing SM or SOR where necessity arises, in consultation with the relevant authorities.”

emoluments. There is scope for any Ministry to lessen the decision-making powers of the PSC through the expedient of a memorandum addressed to the Cabinet of Ministers, which may produce a directive back to the PSC. However, in practice this is a cumbersome process and of limited worth.

The procedure adopted to date by the PSC for approval of SORs and SMs requires the proposal to be personally approved by the relevant head of the organisation, with the concurrence of the relevant Secretary to the Ministry. Observations of the Director General: Establishment on behalf of the Secretary Public Administration and Home Affairs and NPC are also required for approval by the PSC. Some criticism has been expressed over this process. In this and other areas of the workings of the PSC Trade unions have voiced their dissatisfaction over their lack of opportunities to input into PSC processes.

However, as will become apparent, this Report does not propose any changes to PSC processes, choosing instead to prioritise other areas for social dialogue innovation. And so the concerns of some noted above will not be pursued here.

Administrative Appeal Tribunal (AAT)¹⁵

The functions of the AAT are confined to the hearing and determination of appeals referred to it by employees against decisions of the PSC. It operates as a quasi-judicial body. Lawyers and others are allowed to appear before it on behalf of the appellants.

There have been instances where the PSC has shown some reluctance to comply with decisions of the AAT. However, as a rule all other government agencies have respected and implemented its decisions.

At present, AAT orders are not enforceable, but consideration is being given to making them enforceable by the Magistracy, as is the case with orders of the Commissioner of Labour. This would be very desirable, the more so as this Report recommends the expansion of the jurisdiction of the AAT.

Parliamentary Commissioner for Administration (the Ombudsman)¹⁶

Pursuant to Article 156(1) of the Constitution, the Ombudsman was established and charged with the duty of "investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions".

Only a few seek redress from this institution as it is regarded as a largely ineffective office.

Human Rights Commission (HRC)¹⁷

Aggrieved public servants regularly approach this body for assistance on rights issues. Comprehensive inquiries are conducted by retired judicial officers supported by other junior officers. The HRC often summons the respective Heads of Departments and other relevant parties to account for decisions they take. However, in the case of disciplinary action meted out by executive officers, experience has shown that such officers are reluctant to abide by the HRC's decisions, seeing such rulings as an attack on their own processes and prestige. The HRC currently has no powers to enforce its decisions.

Disputes over pay and service conditions

Currently parties aggrieved over pay, service conditions or other terms tend to make representations to the Head of the relevant department or agency, a person who is not in fact empowered to take any remedial decisions. The Head may forward his observations or recommendations to the Secretary of

¹⁵ A.A.T. Act (Act No. 4 of 2003)

¹⁶ Parliament Commission for Administration (Act No. 17 of 1981)

¹⁷ H.R.C. Act (No. 21 of 1966)

his Ministry, the Secretary of the Ministry of Public Administration, to the NPC or, in case of a public corporation, to the Department of Management Services of the General Treasury. These latter two offices typically consult the NPC when such cases arise.

In the case of government employees, the Ministry of Public Administration seeks approval from the PSC for any changes it would like to introduce.

When a matter is referred to it, the NPC attempts to mediate with all the relevant parties, including trade union representatives. The NPC normally advises the relevant Ministry to refer the case to the Cabinet of Ministers for a policy decision or to refer it to the Secretary of the General Treasury if there are budgetary implications flowing from the NPC's recommendations. This final stage of dialogue under the auspices of the NPC, involving all stakeholders from the aggrieved employees or unions through to the relevant agencies and the Ministry of Public Administration, has proved to be successful, resolving around 90% of matters.

Considerations relevant to any dispute management reform

Existing bodies such as the HRC, PSC, NPC and AAT have jurisdiction with respect to human rights, appointments, pay and appeals respectively. It is submitted that their primary roles should continue even as consideration is given to the establishment of new dispute management processes.

Currently there is no single coherent pathway towards the final resolution of public sector employee disputes. As a result, initial disputes arising out of working terms and conditions tend to persist and indeed escalate, often ballooning from minor into major issues.

As previously noted, even before dispute management comes into the picture there is a lack of basic social dialogue mechanisms such as consultative forums in place.

Also as noted, the fact that decisions of certain bodies are not enforceable needs to be addressed. So, too, the lack of specific budgetary funding for the Mediation Panel envisaged by the directive establishing the National Pay Commission.

Forums for social dialogue

National Labour Advisory Council

In the sixties Employee Councils for the public service were introduced but their record was chequered and by the early eighties they had effectively become defunct.

In 1989 The National Labour Advisory Council (NLAC) was established. A tripartite consultative body, its mandate is to facilitate consultation and co-operation between the government and the organisations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.

In terms of its Constitution, of the objectives of the NLAC are:

- I. To promote social dialogue between the government and the organisations of workers and employers on social and labour issues.
- II. To provide a forum for the government to seek the views, advice and assistance of organisations of workers and employers on matters relating to social and labour policies, labour legislation and matters concerning the ratification, application and implementation of international labour standards.
- III. To promote mutual understanding and good relations and foster closer co-operation between the government and organisations of workers and employers with a view to developing the economy, improving conditions of work and raising standards of living.

While the Constitution clearly allows the body to cover both the public and private sectors – explicit provision is made for public service ministries – in practice it has turned into a forum for private sector players. Only one of its fourteen participating unions is from the public sector. It is convened and supervised by the (private sector-focussed) Ministry for Labour and Labour Relations.

Given the very distinctive circumstances and needs of the public service, it is proposed below that an entirely new framework for public sector consultation be created.

Social Dialogue Mechanisms in the public service

In the area of public service workplace relations, informal rather than structured channels of communication are at work. One of the resulting shortcomings is that some Ministries act in an ad hoc and expedient manner, intent only on resolving immediate issues. Very often ministers appease unions with imposing power bases, failing to see the overall flow-on costs of meeting their sectional demands.¹⁸ The lack of established mechanisms for dialogue and processes through which collective issues can be discussed, mediated or otherwise resolved has been the cause of many strikes.¹⁹

During the conduct of the pilot phase of the dispute settlement and social dialogue initiative in the Ministry of Health it was noted that –

“one of the major drawbacks in labour-management relations in the public service in Sri Lanka is non-existence of an environment for social dialogue and appropriate mechanisms to prevent and settle disputes. There is no proper environment for the employees and the management to come together to learn and listen to each other in order to find mutually acceptable ways in dealing with common problems and issues. There should be an environment for the labour and the management to solve their problems on fair grounds where dialogue and participation should be the characteristics of labour relations. In the absence of a proper procedure for public sector trade unions to seek their demands they adopt different ad hoc methods to gain their demands using personal relationships with higher officers or political leaders or with their bargaining power.”²⁰

In an effort to proceduralise matters, the President issued a Circular to various ministries on 19 January 2006.²¹ The Circular obliged all Ministries, statutory bodies and processes to facilitate employee involvement in employee relations. Articulated objectives included the enhancement of productivity and efficiency, proper resource utilisation, the eradication of corruption, improvement of employer-employee relations, obtaining cooperation in management and decision making, employee development and reviewing performance. It indicated that the Minister or the head of a department or corporation, as appropriate, would head the engagement process, and there should be a representative from every trade union active in that ministry, department or corporation. These bodies are meant to be overseen by a monitoring unit in the Presidential Secretariat. However, some eight years later, there is little evidence of these processes having been in action anywhere. Some Ministries have developed some forms of consultative bodies, but they do not meet regularly.

Most ministries, it appears, struggle with meeting national goals as reflected in policy statements.²²

Financial Regulations

The President, acting under the powers vested on him by the Constitution, has assigned the Minister of Finance the power to make Financial Regulations. These Regulations are designed to allow the government to carry out of its financial transactions in an orderly manner but, according to the preamble, should not operate as an obstruction to the execution of any government programme of work.

18 See Amerasinghe EFG *The Current Status and Evolution of Industrial Relations in Sri Lanka* (ILO Sub-regional Office, New Delhi, 2009).

19 Amerasinghe E.F.G and Rannuge S *Public Service Dispute Settlement and Prevention Mechanism* (2007)

20 Hewage A, Athukorala U Dissanayake D.M.S *Dispute Settlement and Social Dialogue Mechanism for the Public Service of Sri Lanka* (ILO/ SMS/Colombo, 2013)

21 Public Administration Circular 06/2006

22 Amerasinghe EFG *The Current Status and Evolution of Industrial Relations in Sri Lanka* (ILO Sub-regional Office, New Delhi, 2009).

In respect of matters such as the procurement of supplies, tender procedure and the execution of works referred to in the Regulations, a head of a department may, in appropriate circumstances deviate from the procedure laid down if he is satisfied that such deviation is necessary in the public interest. The reasons for doing so must be recorded and the head of the department should justify his action and report to the General Treasury through her Secretary of the Ministry, who is also the Chief Accounting Officer.

In the case of very important matters involving large sums of money, the head of a department may seek approval directly from the Cabinet.

Financial Regulations do not represent an obstacle to the resolution of workplace disputes. Secretaries to the Ministries have, in concert with the Secretary to the Treasury, the authority to effect changes to conditions of service, appointments, transfers and other employment areas if this is what is needed to resolve a matter. In short, the Secretary to the Treasury has overriding powers to approve a deviation from Financial Regulations if he deems it expedient. Where a proper case has been made out by a Minister, the Cabinet of Ministers, too, has the authority to approve deviations when the need arises.

► Part 3

Proposals for workplace reform

As flagged above, three principal areas have been identified for attention and reform, with the object of boosting the performance of the public service even while meeting employee engagement expectations:

1. Social dialogue
2. Dispute resolution
3. HR development within the public service administration

Reform with respect to the first two areas requires active engagement and cooperation between the state as employer and the union movement. Reform with respect to the third can be tackled unilaterally by the state (although consultation with the unions in this area would be important as well), but with benefits for all stakeholders including the public.

Each of these key areas will be dealt with in turn after some further observations.

Overarching principles and considerations

Convention 151, the Labour Relations (Public Service) Convention of 1978, sets out key standards for the protection of the right to organise in the public service, facilities for employee organisations and the settlement of disputes. The proposals contained in this Report endeavour to promote the rights and processes espoused by the Convention.

The phenomena of labour unrest and strike action attract particular attention from governments and policy makers. Historically, they have tended to react symptomatically and so, when pressed, have introduced mechanisms for the conciliation of labour disputes.²³ Pertinent to the situation of Sri Lanka, too, is the phenomenon of the politically motivated strike.

That approach, in isolation, does not have the measure of the situation. It is far more effective – and desirable for social reasons – to pre-empt, transform and, if necessary, channel conflict through upstream engagement of the stakeholders. Consensus-seeking is the best antidote to conflict.

Social dialogue can take many forms, but consultation and negotiation based on solid information-sharing make up perhaps the best recipe. Social dialogue can then be underpinned by appropriate forms of dispute resolution to deal with those cases where agreement eludes the parties.

Consultation and negotiation, too, can be informed by different approaches. This Report advocates a cooperative style of engagement, as there is a great deal of evidence indicating that cooperation produces the best and most sustainable results for all.

Social dialogue

Structured and effective social dialogue is the major missing ingredient in regulation of public sector workplace relations in Sri Lanka. And so it is this element that is addressed first.

²³ Assuming that outright suppression of conflict is eschewed.

While there is a great deal of interaction between the state as public sector employer and unions, particularly when disputes emerge, there is no effective institutional engagement. The National Labour Advisory Council could perform part of this role, but in practice it is a body oriented towards the private sector and is not geared to the needs of public sector workplace relations.

To meet this deficit and to bring Sri Lanka into line with systems seen internationally, it is proposed that provision should be made for a comprehensive social dialogue framework that covers the field from individual workplaces to ministries, departments and other agencies and then up to a dedicated public service national forum.

The proposals represent sweeping changes to the status quo. Given their institutional, procedural, funding and enforcement implications, they can only be realised through appropriate Parliamentary legislation. Pending such enabling legislation, however, it may be possible to get early building blocks in place by the employer and unions entering into social compacts fortified by contractual arrangements or government circulars.

Participants in the new structures should be the state as employer in its various roles and employee representatives including trade unions. Given the large number of unions active in the public sector, the complex and controversial task of arriving at rules for union participation will need to be tackled.

The processes of engagement undertaken by the new body would be principally consultation, negotiation and dispute resolution, backed by appropriate information-sharing. One product of these interactions should be collective agreements, as these in themselves represent an effective method of dispute prevention quite apart from their other accomplishments.

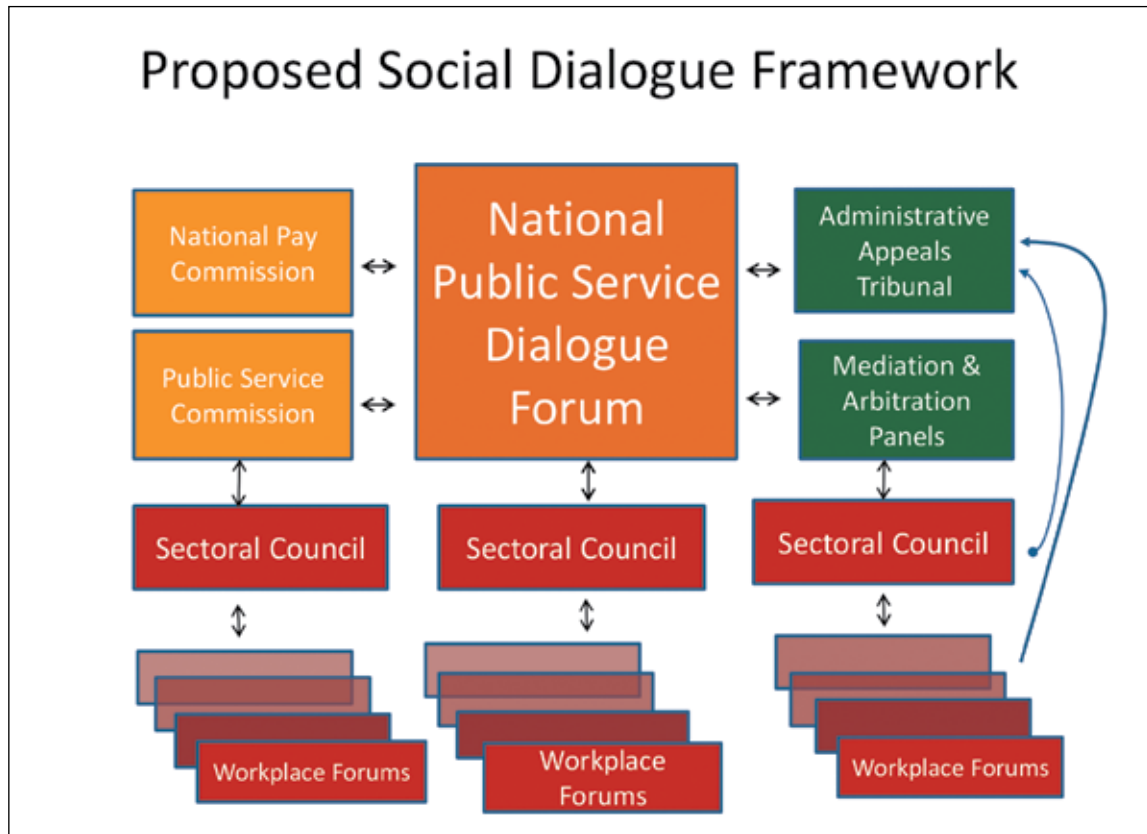
As mapped out below, it is proposed that social dialogue occur at three levels: the workplace, sectoral level and national level.

Over time, the greatest contribution that dialogue can make to improved service delivery will be at the workplace level. It is here that the employer can engage with employees over process improvement, the introduction of new technologies and the better organisation of work, amongst many other things. It is here that employees can share their intimate and sometimes expert knowledge of the way in which work is performed and could be improved with their employing organisation. The principal form of interaction here should be consultation.

As each government department and agency is performing different roles and confronting different challenges, it is proposed that separate sectoral councils be established for each such department and agency. The principal form of engagement here should be consultation backed by negotiation – conferring over pay and terms and conditions of employment with the intention of regulating terms and conditions for the future. Careful consideration will need to be given to the interplay between negotiations and the national budget-setting process. Each sector council should also have a dispute resolution role.

The apex organ of the new institution should be a national forum. This forum would consult over all employment and labour relations matters common to the entire public sector, and play an important late-stage dispute resolution role as well.

A new institution for public sector employee relations in Sri Lanka: the Public Service Dialogue Framework



The proposal is that a new set of institutions be formed to carry social dialogue in the public service of Sri Lanka, provisionally called the Public Service Dialogue Framework. As already foreshadowed, it would comprise three levels:

- 1 National
- 2 Sectoral
- 3 Workplace

Its mandate would be to deal with essentially all matter so of mutual interest between the state as employer, employees and unions. As the framework hinges on the role of sectoral councils, the elaboration commences with these proposed institutions.

Sectoral Councils

Sectoral councils would feature as the pivot of the social dialogue system, supervising Workplace Forums beneath them and reporting in to the National Public Service Dialogue Council above them.

It is proposed that each key sector within the public service, with exclusions, should have its own council in the wider Dialogue Framework. The following Councils are proposed:

1. Health Services
2. Education Services
3. Transport Services
4. Port & Aviation Services
5. Power & Energy Services
6. Water Services
7. Public Administration Services – deemed to be a sector (and a catch-all for any other employees left out)
8. Provincial Public Services
9. Local Government Services
10. Agriculture, Livestock and Fisheries

Sectors excluded from this dialogue process would be the Defence Force, Prisons, Police, Law Officers and Judicial services.

These Councils would be formed under the auspices of, and be funded and administratively supported by, the Public Administration Ministry. In time, and the same is true of the National Public Service Dialogue Council, they could become independent statutory bodies.

The primary role of a sectoral council would be to play a formative role in the regulation of pay, benefits and working conditions through the development of provisional collective agreements in consultative and negotiating processes. The process, it is suggested, would commence with the General Treasury providing councils, including the National Public Service Dialogue Council, with a “framework of considerations”. The framework would flag national budgetary objectives and constraints relevant to public sector pay movements over the relevant period, and hence provide guidelines, possibly even parameters, as the council parties went to work.

Informed by the framework of considerations, sectoral councils would then develop draft agreements through consultations and negotiations. These would then be referred to the National Public Service Dialogue Council. The Council, in turn, would confer with the National Pay Commission, the General Treasury and possibly also the Public Service Commission in deciding whether a particular draft agreement was fit for endorsement (mindful of national financial constraints and whole-of-public-service equity considerations).

If the necessary approvals were forthcoming, the draft would be referred back to the relevant sectoral council for finalisation.

If not, the National Public Service Dialogue Council in liaison with the already-mentioned bodies might identify the areas of concern and even propose variations. The relevant sectoral council would then need to consider the sticking points or proposed changes, and either meet those concerns or proposals, or request some further variations.

Consideration should be given to providing for independent facilitators to be used when key collective agreements are being developed.

Another model:

It may be reasoned that the proposals above give too much of a role to the sectoral councils (and the National Public Service Dialogue Council) and too little to the General Treasury, which ultimately has to balance the wage budget across all sectors of the public service in an affordable and equitable manner.

So an alternative approach would be to provide that sectoral councils should be essentially consultative bodies with respect to pay and conditions. On this approach, General Treasury would propose pay movements and then refer those proposals to the National Council and the sectoral councils for their feedback. The councils may request changes in their feedback, but that would ultimately be for the General Treasury to accept or reject, as it considers circumstances across the Public Service and the state of national finances.

In the absence of agreement between the state as employer and the unions as representatives of employees, the right to strike as a last resort would remain.

On either model, collective agreements regulating pay and conditions in a sector and across the Public Service could only be reached if the General Treasury and the unions (through the councils) ultimately reached agreement.

In the event of a clear deadlock at any level, a number of pathways present themselves:

- (i) Any party may call for mediation of the matter by the independent Mediation Panel.
- (ii) The parties may agree to voluntary arbitration of the matter by the new Arbitration Panel.
- (iii) The Minister of Public Administration on the advice of the Cabinet of Ministers may oblige compulsory arbitration, an option only available if there are objective grounds for believing that the unresolved matter may lead to strike action that damages the economy or society in substantial way and if it is in the public interest to make such a referral.
- (iv) If (iii) does not apply, the employee parties may attempt to advance their positions through strike action and the employer may unilaterally implement (to the extent possible) its final offer (noting that mediation is a prerequisite for any lawful economic action).

Sectoral councils would also monitor the activities of and engage with Workplace Forums with a view to promoting best practices in public service delivery across their respective sectors. Finally, they would play a role in dispute resolution in their respective sectors.

Councils would be representative bodies, comprising employer and union representatives on an equal footing.

A major – and intended – consequence of the creation of whole Dialogue Framework and in particular the sectoral councils and National Public Service Dialogue Council would be a changing of the roles of the Cabinet, the PSC and the NPC in the determination of pay and other terms and conditions of employment. On one model, the primary shaping agent for that task would be the envisaged councils, sectoral and National. That follows from a primary goal of social dialogue: to move away from the unilateral imposition of pay and employment condition regimes and towards a system of inclusive, negotiated outcomes, so removing a major source of workplace conflict. However, in appreciation of political realities, sectoral councils and even the National Public Service Dialogue Council are, at least at this stage, not offered a determinative role in the setting of pay and conditions.

All of the above consulting, negotiating and referral relationships will need to be tested for political acceptability during the planned stakeholder consultation process. Variations to the proposals sketched above should be contemplated, including the possible phasing in of elements of the model, as confidence in more autonomous arrangement grows through experience in a new but still evolving system.

In order to provide stakeholders with a more detailed sense of the scheme of this Report, a suggested framework and even features of model constitutions for Councils and Workplace Forums are set out below.

The intention is that the provision of this detail will allow stakeholders to delve into the underlying assumptions and so interrogate the whole proposal more closely. It may well be that, following stakeholder examination, not only the detail but the very underpinning design features themselves yield to change. And in any event, the outlines provided below of elements of Workplace Forum and Council constitutions will require much rework and elaboration before one arrives at serviceable legislative templates.

A framework for and features of a model sectoral council constitution

Establishment of a sectoral council

As foreshadowed, each major public service area would give rise to its own sectoral council. So there would be a Health Services Dialogue Council, an Educational Services Dialogue Council, etc. Possible elements of a governing constitution for a council follow:

1. Objectives and Functions

- 1.1. The key objectives and functions of a sectoral council are to –
 - 1.1.1. consult over and negotiate draft collective agreements regulating pay and conditions of service across a sector or in part of a sector, subject to an approval process mediated through the National Public Service Dialogue Council;
 - 1.1.2. develop and advise on policies and practices to promote efficiency and productivity in the Public Service;
 - 1.1.3. regulate the access rights of unions to workplaces, and their check-off facilities for unions dues;
 - 1.1.4. provide, on request, advice to Workplace Forums in relation to policies and practices;
 - 1.1.5. monitor approaches and practices developed and implemented by Workplace Forums, and help to diffuse good practices throughout the sector;
 - 1.1.6. refer to a Workplace Forum any matter, including matters relating to the local supplementation, variation or implementation of collective agreements;
 - 1.1.7. endeavour to settle any disputes referred to it by a Workplace Forum through consultation, negotiation, mediation and arbitration;
 - 1.1.8. determine any demarcation disputes referred to it in relation to the establishment and operation of multiple Workplace Forums.

2. Parties to a sectoral council

[Note: Given the sheer number, the fragmented nature and the political dynamics of unions operating in the public service, the composition of both sectoral councils and the National Public Service Dialogue Council will need to be the subject of negotiations between all interested parties. What follows is merely suggestive of a principled approach to participation.]

2.1. Employer party representation

The relevant public service employer may have up to as many representatives on a Council as the union parties.

2.2. Union party representation

Unions will be entitled to have representation on a council as follows:

- 2.2.1. The total number of union representatives on a council shall be twenty five.
- 2.2.2. Those unions most representative of employees within a sector shall be entitled to have representatives on a council, subject to the further provisions below.
- 2.2.3. The number of representatives each union may have shall be proportionate to the relative size of their respective memberships, subject to the further provisions below.
- 2.2.4. The heads of the relevant departments and agencies that make up a sector shall meet with all unions interested in participating in a council in an endeavour to agree which unions are the most representative, and which other unions may have representation on a council by reason of their importance to employee relations within a sector or their potential contribution to a council even if they do not otherwise qualify as one of the most representative unions.
- 2.2.5. Should agreement be reached, those unions will make up the first union parties to a council.
- 2.2.6. The parties may also agree to allocate the number of representatives for each union on grounds other than representativeness alone.
- 2.2.7. If agreement cannot be reached, the matter of participation and representation may be referred to –
 - 2.2.7.1. the National Public Service Dialogue Council for consideration; or
 - 2.2.7.2. the independent Mediation Panel; and
 - 2.2.7.3. when all other agreement-reaching efforts fail, the Administrative Appeals Tribunal for a final and binding decision on an expedited basis.
- 2.2.8. In making its decision, the AAT shall give due consideration to –
 - 2.2.8.1. preferring most representative unions over others;
 - 2.2.8.2. the relative importance of the various unions to employee relations within a sector and their potential contributions to a council;
 - 2.2.8.3. how the inclusion or exclusion of any union or its number of representatives may impact on the proper and effective functioning of a council, given its objectives.

2.3. Changes to council representation

- 2.3.1. During January of each year any union not represented on a council in respect of which it has members may apply to the council for admission if it believes it has good grounds or doing so.
- 2.3.2. The council must consider the application and have regard to the applicant's relatively representativeness, its relative importance to employee relations within the sector or its potential contribution to a council, and how the inclusion or exclusion of any union may impact on the proper and effective functioning of a council, given its objectives.
- 2.3.3. Should a council decide to admit a new party, it must re-adjust the number of each union's representatives on the council.
- 2.3.4. The council must reach a decision on an application within thirty days of having received it.
- 2.3.5. At any time a council may require a party to justify its continued membership or the size of its representation on a council if the circumstances that gave rise to its

initial admission and representation size have changed. Having heard such a party, the council may decide to maintain or vary its number of representatives on a council or to terminate its membership on three months' notice.

- 2.3.6. At any time a party to a council may apply to have the size of its representation on a council reconsidered if the circumstances that gave rise to its initial admission and representation size have changed. Having heard such a party, the council may decide to maintain or vary its number of representatives on a council.
- 2.3.7. Any party with an interest in the matter may appeal to the Administrative Appeals Tribunal a council's decision on the following matters –
 - 2.3.7.1. admission of a new union as a member; or
 - 2.3.7.2. the new member's number of representatives and the resulting changes to the number of other unions' representatives; or
 - 2.3.7.3. a change the number of representatives of a party on the council; or
 - 2.3.7.4. the termination of the representation of an existing party.
- 2.3.8. When hearing any matter arising from legislation governing the National Public Service Dialogue framework, the Administrative Appeals Tribunal may of its own volition or at the request of the employer or a union with an interest in the matter be joined on the bench by one or more employee relations or employment law experts who may provide the Tribunal with advice. The decision of the Tribunal will be made by the Tribunal alone.

3. Consultation and negotiation over collective agreements

- 3.1. The parties to a sectoral council must meet to discuss, consult over and if need be negotiate new or varied terms and conditions of employment for all employees in the sector below senior managerial level.
- 3.2. Subject to confidentiality considerations as set out in clause 9 below, the employer party must disclose all information relevant to the negotiation and conclusion of collective agreements in the sector.
- 3.3. The parties engaged in discussions over a new agreement may appoint an independent facilitator to assist them in their consultations and negotiations.
- 3.4. A collective agreement –
 - 3.4.1. covers those employees specified in the particular collective agreement;
 - 3.4.2. remains in force for a period of at least two years and not more than four years from its date of approval by the council;
 - 3.4.3. remains in force after its nominal expiry date until –
 - 3.4.3.1. replaced by a new agreement, or
 - 3.4.3.2. it is terminated on three months' written notice by the employer or the unions representing the majority of employees covered by the agreement (with membership determined as at the date that notice is given);
 - 3.4.4. may be varied by agreement of the parties and the approval of the National Public Service Dialogue Council (after liaison with other bodies and authorities);
 - 3.4.5. may contain a provision that provides for mediation in the event of a dispute over the interpretation or application of any of its provisions;
 - 3.4.6. must contain a provision that provides for expedited adjudication by the Administrative Appeals Tribunal in the event of an unresolved dispute over the interpretation or application of any of its provisions.

- 3.5. Any collective agreement reached must be referred and approved of by National Public Service Dialogue Council (after liaison with the National Pay Commission, the General Treasury and any other bodies and authorities it may wish to consult) before it may take effect.
- 3.6. The terms of a collective agreement take precedence over any other legal instrument such as a contract of employment (to the extent that the latter provides an employee with less favourable terms or conditions of employment), Establishment Code, Circular provision or other legislative measure, but not over a later arbitration award.

4. Council deliberations

- 4.1. Parties to a council shall, in the first instance, consult over the agenda items including collective agreement items in an endeavour to reach consensus.
- 4.2. The council may engage an independent facilitator to assist the parties in advancing their deliberations in a constructive way.
- 4.3. A council may at any stage call on the National Public Service Dialogue Council for advice in advancing a matter.
- 4.4. Should consultations not produce an agreement, then any party may signal that the agenda items concerned should be dealt with further by negotiation, with the options of mediation, voluntary arbitration and, as a last resort, the exercise of workplace power becoming available.
- 4.5. Each employee representative of a council may exercise a single vote of equal weight.
- 4.6. Agreement on a matter is deemed to be reached when the employer representatives and the majority of the union representatives of unions who are parties to the agreement concur.

5. Dispute resolution

- 5.1. Should negotiations on a matter not produce agreement, then any party involved in those negotiations may –
 - 5.1.1. ask the National Public Service Dialogue Council to provide advice and guidance;
 - 5.1.2. direct that the parties concerned confer with the National Pay Commission on the matter if it involves pay and conditions of service;
 - 5.1.3. refer the matter to a mediator drawn from the national Mediation Panel;
 - 5.1.4. refer the matter to an arbitrator drawn from the national panel of arbitrators if all the parties concerned so agree and they also furnish the arbitrator with agreed terms of reference.

6. Strike action

- 6.1. If the parties are unable to reach an agreement on terms and conditions of employment and –
 - 6.1.1. the issues in dispute have been referred to the National Pay Commission for advice and
 - 6.1.2. the issues remain unresolved at the end of a mediation process,
then one or more unions involved in the matter may call for a strike ballot of their members affected by the matter.
- 6.2. If a majority of the members affected by a matter who participate in the ballot vote in favour of Strike action, then any such action will be lawful and protected provided further that the unions concerned give the employer at least 72 hours' notice of the impending action.
- 6.3. No employee who participates in a lawful strike may be disciplined or dismissed for such participation.

- 6.4. No union that initiates or supports a lawful strike may be sued for any losses occasioned by such action.
- 6.5. The employer is under no obligation to pay striking workers for any services interrupted by strike action.
- 6.6. If the parties are unable to reach an agreement on terms and conditions of employment and –
 - 6.6.1. the issues in dispute have been referred to the National Pay Commission for advice and
 - 6.6.2. the issues remain unresolved at the end of a mediation process,
then the employer may attempt to unilaterally implement its proposals that are in dispute.
- 6.7. During the lead up to and during any strike action, the parties concerned must remain open to further negotiation and mediation efforts.

7. Essential service employees

- 7.1. Essential service employees as defined by the Essential Service Committee may not participate in any strike action that involves the withdrawal of services.

8. Other constitutional requirements of a sectoral council

- 8.1. The constitution of every sectoral council must provide for –
 - 8.1.1. The number of employer representatives on the Council;
 - 8.1.2. who the employers representatives on the Council will be;
 - 8.1.3. the circumstances and manner in which representatives must vacate their seats and the procedure for replacing them;
 - 8.1.4. rules for the convening and conducting of meetings of representatives, including the quorum required for, and the minutes to be kept of, those meetings;
 - 8.1.5. the manner in which decisions are to be made; the appointment or election of office-bearers and officials, their functions, and the circumstances and manner in which they may be removed from office;
 - 8.1.6. the establishment and functioning of committees;
 - 8.1.7. the determination through expedited adjudication by the Administrative Appeals Tribunal of any dispute arising between the parties to the council about the interpretation or application of the council's constitution;
 - 8.1.8. the procedure to be followed if a dispute arises between the parties to the bargaining council;
 - 8.1.9. the delegation of its powers and functions;
 - 8.1.10. the admission of additional unions as parties to the council, and their number of representatives;
 - 8.1.11. the collection of statistics on any disputes that may arise within its jurisdiction, in any format prescribed by the Department of Public Administration;
 - 8.1.12. a procedure for changing its constitution.

9. Disclosure of information

- 9.1. The parties on a council must disclose to each other all relevant information that will allow for effective consultation and negotiation on a matter before it.
- 9.2. No party is required to disclose information –
 - 9.2.1. that is legally privileged;
 - 9.2.2. that it cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - 9.2.3. that is confidential and, if disclosed, may cause substantial harm to an employee, the employer or a union; or
 - 9.2.4. that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
- 9.3. A party must notify the other parties on a council in writing if of the view that any information referred to above is confidential.
- 9.4. If there is a dispute about the disclosure of information, any party to the dispute may refer the dispute in writing to the National Public Service Dialogue Council for mediation and, failing mediation, to the Administrative Appeals Tribunal for expedited adjudication.
- 9.5. In any dispute about the disclosure of information, the Tribunal must first decide whether or not the information is relevant.
- 9.6. If the Tribunal decides that the information is relevant it must balance the harm that the disclosure is likely to cause to an employee, employer or union against the harm that the failure to disclose the information is likely to cause to the ability of the council to engage effectively in consultation or negotiation.
- 9.7. If the Tribunal decides that the balance of harm favours the disclosure of the information, the Tribunal may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee, employer or union.

Dialogue at the level of the workplace: Workplace Forums

The key role of the envisaged Workplace Forums would be to promote local employer-employee engagement with a view to productivity improvement and increased employee morale. Parties would be encouraged to establish Forums at each appropriately delineated workplace: the hospital, the school, the depot, the office complex, etc.

Workplace forums are designed to intersect with sectoral councils, and hence are intended primarily for those areas of the public service in which councils are expected to be established. However consideration may also be given to introducing them in areas for which councils are not currently planned, such as judicial and police services.

Flexibility and functionality should inform the process of deciding the coverage of a particular Workplace Forum. No one size will fit all, and a process of consultation should precede the determination of the boundaries of a particular Workplace Forum. In some cases a discrete workplace such as a school with all its employees, teachers and support staff may represent the right unit; in others perhaps it may be a functional unit within a hospital such as neonatal department staff or emergency department staff.

The proposal is that a management leadership group or any group of employees within a workplace area or function that would be a possible candidate for a Workplace Forum may ask for a Forum to be formed. The relevant parties would then meet in order to agree on the scope of the planned forum and to adopt a constitution, which may either be the model constitution or an agreed variant. In the event of any disagreement over the formation of a forum or the provisions of its constitution, the matter would

be referred to the relevant sectoral council, and ultimately, the Administrative Appeals Tribunal (AAT) for a resolution. While consensus over formation is clearly the ideal, in principle Forums ought to be established whenever local employees call for this, and sectoral councils and the AAT should deal with establishment disputes accordingly.

The mode of engagement at a forum would be consultation, preferably with a firm emphasis on collaborative problem-solving. Training for the parties in effective consultation and problem-solving approaches and skills would be essential.

The general functions of Workplace Forum would be –

- to promote the interests of all employees in the workplace;
- to enhance efficiency and productivity in the workplace;
- to promote innovative thinking in the workplace;
- to provide a forum in which employees can share their ideas for process improvement and increased employee morale;
- to consult, with a view to reaching consensus, over any proposals on change including –
 - the introduction of new technology and new work methods;
 - changes in the organisation of work;
 - education and training;
 - any other restructuring of the workplace;
 - workplace reward and recognition schemes.

The goal would be decision-making by consensus. While veto rights for employee representatives are not currently being considered, in the absence of agreement on a matter provision may be made for dispute resolution mechanisms such as mediation and voluntary arbitration, perhaps under the auspices of the relevant sectoral council. Unilateral implementation of an employer's decision at the exhaustion of deliberative process would be possible – the model being proposed is not one of codetermination.

Collective and individual dispute resolution would not be a function of Workplace Forums. Their task should be focussed squarely on productivity, work arrangements, workplace change and general employee welfare matters such as work/private-life integration.

A forum would comprise representatives of the local employer and representatives of employees in the workplace with equal decision-making power (to the extent that decision-making is provided for). Employee representatives would be selected by a vote amongst eligible employees.

A framework for and features of a model Workplace Forum Constitution

10. Establishment of a Workplace Forum

- 10.1. Local management, a group of local employees or their representatives, or a sectoral council may initiate the establishment of a Workplace Forum in respect of a particular work area or function.
- 10.2. A Workplace Forum may be established in respect of an appropriate workplace unit within a public service work area or function.
- 10.3. An appropriate unit is –
 - 10.3.1. one agreed to be such after consultation between a local manager authorised by a departmental or agency head and a locally representative trade union group or

a locally representative group of employees, and approved by the relevant sectoral council;

10.3.2. absent agreement by the local management and local workplace representatives, one determined by the sectoral council within which the general work area under discussion falls.

10.4. A sectoral council may establish an umbrella Workplace Forum in respect of departments or agencies where a number of Workplace Forums have been established.

10.5. A sectoral council will determine the constitution of an umbrella Workplace Forum.

10.6. Any dispute regarding the formation or operation of a Workplace Forum, including the establishment, interpretation, application or amendment of its constitution, must be determined by the relevant sectoral council or, failing that council, the National Public Service Dialogue Council through its decision-making and dispute resolution processes, with the Administrative Appeals Tribunal as the final arbiter.

11. The objectives of a Workplace Forum

11.1. The key objectives of a Workplace Forum are to provide a setting and opportunities for employees and manager representatives to engage with one another to –

11.1.1. share information about the organisation's operation, performance, track record and goals;

11.1.2. promote innovative thinking in the workplace;

11.1.3. share and develop ideas and initiatives for ongoing process improvement and general organisational efficiency and productivity;

11.1.4. enhance the quality of services to the public generally;

11.1.5. improve the workplace experience and morale of all employees;

11.1.6. diffuse improved practices across the workplace and the organisation as a whole;

11.1.7. share learnings on improved practices through sectoral councils.

12. Workplace consultation

12.1. Consultation is the principal mode of engagement between employees and manager representatives in pursuit of the objectives identified above.

12.2. In the context of Workplace Forums, 'to consult' means that –

12.2.1. employer representatives must –

12.2.1.1. notify employee representatives as soon as is reasonably possible over proposals for change in the organisation likely to affect employees;

12.2.1.2. explain the nature of the proposed change to employee representatives;

12.2.1.3. provide employee representatives with all relevant information that is reasonably available and not of confidential nature relating to the proposal;

12.2.1.4. allow the employee representatives an opportunity to make representations on the proposal and to suggest alternative proposals;

12.2.1.5. consider and respond to the representations or alternative proposals made by employee representatives and, if not agreeing with them, state the reasons for disagreeing;

12.2.1.6. endeavour to reach consensus with the employee representatives on change;

12.2.2. employee representatives must –

12.2.2.1. endeavour to reach consensus with employer representatives over any proposals on change in the workplace, whether employer- or employee-initiated;

12.2.2.2. conform to the other norms on consultation noted above, to the extent applicable to employee representatives.

12.3. The obligation to consult does not require that agreement be reached.

12.4. If no consensus is reached, then –

12.4.1. the party making the proposal may drop it, permanently or until some later date; or

12.4.2. the parties may use any agreed procedure such as mediation or arbitration or referral of the matter to the relevant sectoral council, or may agree a procedure just for the present matter, in an endeavour to reach a resolution of the matter;

12.4.3. the employer may proceed to implement some or all of its proposal, subject to any rights employees or employee representatives, including unions, may have.

13. Manner of consultation

13.1. Consultations should be conducted in good faith and with the intention of trying to reach consensus on any change.

13.2. Consultations should be carried out in speedy and efficient manner, so that necessary or desirable changes can be made as soon as possible in the interest of the public.

14. Scope of consultation

Workplace Forum representatives are entitled to be consulted over proposals made by any party affecting the employer and employees in the workplace relating to –

14.1. the introduction of new technology and new work methods;

14.2. changes in the organisation of work;

14.3. process improvement changes;

14.4. any other restructuring of the workplace;

14.5. education and training;

14.6. work/private-life integration

14.7. workplace reward and recognition schemes;

14.8. any other matter that a sectoral council permits on request from the Forum or refers to it, including matters relating to the local supplementation, variation or implementation of collective agreements;

14.9. other proposals relating to the objectives of Workplace Forums.

15. Composition of a Workplace Forum

15.1. Workplace forums are bipartite bodies, comprising managerial and employee representatives with equal voting power.

15.2. The parties that make up the first members of each Workplace Forum may decide how many representatives will be on that Workplace Forum, and how many representatives each party will have.

- 15.3. Representatives may be selected on a constituency or some other basis as agreed.
- 15.4. Management representatives are appointed by the head of the relevant department or agency, or that person's authorised nominee.
- 15.5. Employee representatives will be selected by secret ballot, on a constituency of other basis as set out in the relevant constitution.

16. The term of office of an employee representative should not exceed two years, although such representative may be eligible for re-election.

17. Other constitutional requirements of a Workplace Forum

- 17.1. A Workplace Forum constitution must provide –
 - 17.1.1. for regular meetings of the forum;
 - 17.1.2. that on a regular basis the employer must present a report on its key performance indicators; and
 - 17.1.3. for meetings between employee representatives on forum and the workplace employees employed at regular and appropriate intervals;
 - 17.1.4. that the meetings with employees must be held during working hours unless otherwise agreed and at a time and place agreed without loss of pay on the part of the employees.
 - 17.1.5. for the circumstances under which and manner in which members of a forum may be removed from office;
 - 17.1.6. that employee representatives have reasonable time off with pay during working hours to –
 - 17.1.6.1. receive training relevant to the performance of those functions; and
 - 17.1.6.2. perform their Workplace Forum functions;
 - 17.1.7. that the employer provide facilities to enable the Workplace Forum to perform its functions;
 - 17.1.8. that the Workplace Forum may invite any expert to attend its meetings;
 - 17.1.9. that office-bearers or officials of representative trade union in relation to that workplace may attend and contribute to meetings of the Workplace Forum;
 - 17.1.10. rules on how decisions are to be made;
 - 17.1.11. for the collection of statistics on any disputes that may arise within the relevant workplace, in any format prescribed by the Ministry of Public Administration;
 - 17.1.12. Any other matters that facilitate the achievement of a forum's objectives.
- 17.2. The constitution of a Workplace Forum may –
 - 17.2.1. establish a procedure that provides for the mediation and arbitration of proposals in respect of which the employer and the Workplace Forum do not reach consensus;
 - 17.2.2. provide that unresolved dispute be referred to the relevant sectoral council for its attention.

18. Disclosure of information

- 18.1. A party to a workplace forum including the employer must disclose to the Workplace Forum all relevant information that will allow the Workplace Forum to engage effectively in consultation.

- 18.2. A party is not required to disclose information –
 - 18.2.1. that is legally privileged;
 - 18.2.2. that the party cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - 18.2.3. that is confidential and, if disclosed, may cause substantial harm to an employee, the employer or a union; or
 - 18.2.4. that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
- 18.3. A party must notify the Workplace Forum in writing if of the view that any information referred to above is confidential.
- 18.4. If there is a dispute about the disclosure of information, any party to the dispute may refer the dispute in writing to the relevant sectoral council for mediation and, failing mediation, to the Administrative Appeals Tribunal for expedited adjudication.
- 18.5. In any dispute about the disclosure of information, the Tribunal must first decide whether or not the information is relevant.
- 18.6. If the Tribunal decides that the information is relevant it must balance the harm that the disclosure is likely to cause to an employee, the employer or a union against the harm that the failure to disclose the information is likely to cause to the ability of the Workplace Forum to engage effectively in consultation.
- 18.7. If the Tribunal decides that the balance of harm favours the disclosure of the information, the Tribunal may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee, the employer or a union.

19. Full-time members of Workplace Forum

- 19.1. In a workplace in which 1000 or more employees are employed, the employee representatives of a Workplace Forum may designate one (or more by agreement) full-time representatives.
- 19.2. The employer must pay a full-time member of the Workplace Forum the same remuneration that the member would have earned in the position the member held immediately before being designated as a full-time member.
- 19.3. When a person ceases to be a full-time member of a Workplace Forum, the employer must reinstate that person to the position that person held immediately before election or appoint that person to any higher position to which, but for the election, that person would have advanced.

The National Public Service Dialogue Council

The role of this apex body would be to –

- (i) establish rules, norms and standards that apply across the public service, or to two or more sectors, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury;
- (ii) negotiate pay and reward arrangements across the public service where appropriate, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury;
- (iii) sanction draft collective agreements negotiated at sectoral councils after liaison with the National Pay Commission and the General Treasury;

- (iv) engage in high-level dispute resolution in the event of major disputes, especially those involving strike action.

The primary mode of engagement would be consultation, preferably with a firm emphasis on collaborative problem-solving, with a negotiating mode (admitting a right to use power) as the next stage in the event that agreement escapes the parties.

Training for the parties in effective consultation, negotiation and problem-solving approaches and skills would be essential. Provision should also be made for technical assistance and research.

The forum would comprise an equal number of representatives of the state as employer and trade union representatives of employees. A political accord would need to be reached on the identification for participation of the most representative unions and federations. The provisional thinking is that –

- there should be a maximum number of 25 representatives per side (the state may have less, but its representatives would still command half of the voting rights);
- the forum should be co-chaired by the Secretary of Finance and the Secretary of Public Administration;
- provision should be made for a small group executive and sub-committees;
- there should be a full-time Council secretary;
- the body would be housed within the Ministry of Public Administration & Home Affairs; in time, it could and perhaps should be reconstituted as a wholly independent statutory body;
- the Council would liaise closely with the National Pay Commission.

Decisions would need to be reached by consensus between the state and the majority of trade union representatives.

The budget for the Council would need to be supported.

It would need to operate under a Constitution similar to that of sectoral councils.

An adjusted role for the National Pay Commission

The National Pay Commission (NPC) was established as Special Agency of Government by a Presidential Directive contained in an Extraordinary Gazette of 5 November 2013. Its remit is a broad one: “to advise and assist the Government in the formulation of a national wage policy by revisiting all remuneration structures including salaries and wages in the Public Sector in order to facilitate due fulfilment of the manpower needs in the Public Sector and the Private Sector as a whole”.

The Gazette’s preamble makes clear that a primary objective with the creation of the NPC was and remains to ensure that the public sector pay rates facilitate the recruitment and retention of the right people at the right numbers into the sector. Included, then, within its explicit roles is to conduct “a continuous review of Salaries and Wages” and to advise government accordingly.

Should the proposed Public Service Dialogue Framework be established, the institutions principally responsible for the generation of new pay and conditions of service across most of the public sector would be sectoral councils and the National Public Service Dialogue Council.

It is proposed in this context that the NPC should continue to play its advisory role to the Government, but would now also confer with and advise sectoral councils and the National Public Service Dialogue Council on pay matters. The proposed scheme is that the sectoral councils would endeavour to reach provisional agreement on pay and conditions, and then refer them to the National Public Service Dialogue Council for review and endorsement or adjustment. In carrying out its review function, the National Public Service Dialogue Council would consult with and be advised by the specialist NPC and, if indicated, the General Treasury. And the NPC would perform the same role in relation to pay matters

dealt with for the first time at the level of the National Public Service Dialogue Council as well. (But see the alternative model outlined on pages 16-17)

The NPC's arbitral role as envisaged by the Presidential Directive is considered in the section under *Dispute Resolution* below.

Essential services

An essential service is one that the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The National Public Service Dialogue Council would constitute as one of its committees an Essential Service Committee.

The Committee's task would be to designate which services within the Public Services are essential services as defined, and also which, if any, are minimum services within any essential service. Any party who disagreed with a designation or the absence of a designation could appeal to the Administrative Appeals Tribunal for a final and binding decision.

Strike action within essential services or, where identified, minimum services, would not be permitted. Any interest (economic) disputes in such services, including disputes over terms and conditions of employment, would either be decided by the outcome of consultations or negotiations in the rest of the sector or, if not so decided, by arbitration by the national Mediation Panel.

Any rights (legal) disputes relating to essential services would be decided by arbitration or adjudication.

There is currently in existence the Essential Public Services Act 61 of 1979. This statute empowers the President to prohibit industrial action where services are "essential to the life of the community". It is suggested that essential services would be better regulated in the context proposed above.

Changing the character of engagement: new education and training initiatives

Currently, much of the interaction between employer and employee representatives is both unstructured and combative, very often being played out through political processes and the exercise of economic power.

The social dialogue framework proposed above is meant to tackle the structural deficit; what follows is intended to address the attitudinal and skills deficit. It relates to dispute prevention rather than dispute resolution.

Education over the mission of the Public Service

Before turning to more applied areas, it would be beneficial if employer and employee (including union) representatives were exposed to educational programmes on the role of the public service in a modern economy. Such programmes could include components on –

- the service priorities of the public in a modernising society;
- the public's needs and expectations;
- public service finances, including income and expenditure;
- labour economics;
- the increasing role of information technology in the delivery of public services;

- the relationship between the public and private sectors in the overall social and economic progress of the country.

This education would be well-complemented by another component on the makings of great workplaces: productive organisations where people enjoy coming to work. There is now a great deal of comparative learning on this subject and knowledge of the recipe would assist the social parties in approaching consultation and negotiations in fresh ways.

Training in consultative skills

Genuine, effective and efficient consultation (coupled with problem-solving) lies at the heart of how Workplace Forums and even the two tiers of councils are meant to operate.

Good consultation achieves several things: it demonstrates respect by one party for another, it allows all parties with a legitimate interest in a matter to be heard, it facilitates information-sharing, it facilitates better quality decision-making by providing for additional perspectives and inputs, and it promotes more effective implementation of plans through joint ownership of those plans.

At the same time, though, consultation processes can feature as additional theatres of struggle where relationships between the parties are adversarial. Resources and energies can be unprofitably wasted and decision-taking delayed through begrudging compliance with the prescriptions of engagement.

And so a careful balance between inclusivity in decision-making and efficiency must be achieved in ways that are functional to the particular needs of the public service of Sri Lanka.

Like anything else, proficiency in consultation is a product of good training and guided practice.

It is proposed, therefore, that all Workplace Forum and Council participants should undertake training – preferably joint training – in consultative skills, and the other skills described just below.

Training in negotiating skills

There are various models of bargaining, from traditional adversarial through to fully-fledged mutual gains (interest-based) bargaining, with many shades in between. The parties need to be well versed in the possibilities, and then select a model that works best for them. Different councils may decide to work with different admixtures, although this Report would suggest that a more mutual gains approach would promote the principal objectives underlying the proposed social dialogue framework the best.

A good training exposure for all council participants to negotiating models and skills is advocated.

Training in collaborative problem-solving skills

There is a more productive mindset that can be introduced into any consultation or negotiating process – a problem-solving one. That is true for both problems of a technical or practical nature – many of which will arise in the context of Workplace Forums – and for problems where interests may be conflicting – as will often be the case in council deliberations.

Certain negotiation subjects – those of a more integrative nature like health and safety, work/rest-of-life integration and grading systems – lend themselves more readily to joint problem-solving than, for instance, monetary subjects. They can then be separated from money matters and negotiated more readily through problem solving techniques.

An appropriate collaborative problem-solving training programme should be developed under the auspices of the National Public Service Dialogue Forum for the workplace parties and made available to them, along with the others as part of a co-ordinated suite. This training should be available for all those engaged in Workplace Forums, sectoral councils and the National Dialogue Forum.

Perhaps the largest comparative lesson is that systems and structures cannot be successfully imported or even successfully grown domestically if the supporting training and education is not in place.

In the first instance, a large challenge within Sri Lanka will be the changing of the current workplace relations culture. Relations between the state as employer and unions are often antagonistic, with low visibility of the shared national mission and goals that should serve as a source of social glue. New systems which simply embody old antagonisms will defeat the objectives of the entire reform exercise. Hence the need for the leadership of the social parties to jointly participate in educational initiatives on the mission of the public service right at the outset of any change process. If they cannot begin the process of reshaping their relationships in such a joint engagement, then the prospects of further cooperation and therefore the overall success of the plan here will be diminished.

Secondly, new skills are required to complement new insights. And so training in, especially, joint problem-solving approaches and techniques, must form an essential part of the re-orientation of the leaders and doers of the social parties.

Thirdly, training and education in the elements of workplace reform will need to be sustained and adapted as the environment changes over time.

The importance of education and training as an essential component of workplace reform cannot be over-emphasised. If the parallel investment is not made in this area, the energy expended in building new structures and processes will be largely wasted.

Dispute resolution

The design and policy underpinnings of these proposals are that –

- social dialogue processes should pre-empt issues arising and relieve the pressure on dispute resolution processes; the subject matter of many current disputes should be anticipated through collective negotiations culminating in collective agreements;
- an investment should be made in educating and training representatives in more constructive engagement techniques: consultation and negotiation informed by higher levels of information-sharing, extensive but efficient consultation, interest-based bargaining and collaborative problem-solving;
- a distinction should be drawn between disputes of right and disputes of interest;
- in principle provision should be made for the expert and independent mediation of both types of disputes at suitable points; though at this developmental stage the mediation option should be targeted towards interest disputes only;
- provision should be made for the voluntary arbitration of any kind of dispute, or element within a dispute, at any stage;
- the right to strike should be specifically provided for in relation to disputes of interest (but not disputes of right), but only as a last resort;
- strikes in essential services should be regulated through social dialogue in the Essential Services Committee;
- the sectoral councils and the National Public Service Dialogue Council should also have a role in late-stage dispute resolution;
- the Administrative Appeals Tribunal should have an expanded role in the determination of rights disputes.

Channelling various disputes according to their type

Disputes arising from the application or interpretation of agreements, laws or regulations (rights disputes)

The proposal here is that these disputes should be processed much as is currently the case. So, disputes over appointments, transfers, promotions, disciplinary and dismissal matters, if not settled internally, should be progressed to the Public Service Commission and, if need be, the Administrative Appeals Tribunal.

It is felt that at this stage, given the scale of other proposed changes, it would not be timely to attempt to introduce mediation remedies into the existing processes. Two innovations are proposed, however:

Firstly, should any interested party be aggrieved by the process or outcome in a matter (or in matters generally) that come before the Public Service Commission, they may raise their concerns with the relevant sector council and that council will be entitled in turn to liaise with the Commission over those concerns in an endeavour to address them on a mutually satisfactory basis. This proposed role of councils is seen as a modest first step towards making the processes of the PSC more responsive to the needs and concerns of affected employees.

Secondly, any disputes that arise out of the interpretation or application of collective and other agreements intended to be legally binding reached at Workplace Forums, sectoral councils or the National Public Service Dialogue Council (ie, a sub-category of rights disputes) may be referred on an expedited basis by an interested party to the Administrative Appeals Tribunal for final determination.

Interest (economic) disputes

Mediation

It is proposed that interest disputes (disputes over matters such as pay, remuneration generally and conditions of service) should be subject to mediation by a panel of independent mediators. As this subject matter will typically fall within the scope of sectoral councils and the National Public Service Dialogue Council, mediation would essentially be an option at the exhaustion of consultations and negotiations, and a prerequisite before any lawful strike action.

The proposal is that the Ministry of Public Administration, in consultation with the National Pay Commission, sectoral councils and the National Public Service Dialogue Council, should take the lead in establishing and then overseeing the work of the Mediation Panel (along with a new Arbitration Panel – see below). Their ministerial sponsor notwithstanding, both bodies would need to be demonstrably independent of government to if there are to fulfil their roles. They should be governed by charters enshrining that independence and spelling out their objectives, roles and obligations.

Voluntary arbitration would also be an option in cases where a sectoral council or the National Public Service Dialogue Council could not settle an interest dispute, whether after or in the absence of mediation (see below).

Arbitration

It is noted that the Presidential Directive setting up the National Pay Commission (NPC) extends the following roles to it in relation to arbitration:

- G. To act as an arbitrator in the settlement of disputes relating to Salaries and Wages or matters connected therewith as well as disputes in relation to Schemes of Recruitment, Scheme of Promotion or Service Minutes and to make recommendation to the relevant authorities with regard to the settlement of such disputes.

H. To make recommendations to the Government with regard to the preliminary steps to be taken in the implementation of the proposal made by the Salaries Commission appointed on July 20, 2000 for the establishment of an institution with the authority (Board of Arbitration) to put forward solutions for settlement of such disputes with a view to sorting out speedily the disputes that may arise in regard to salaries and conditions of service in the Public Sector.

The proposals here are:

- (i) The NPC should play an essentially advisory and brokering (quasi-mediatory) role in its dealings with the Government, the National Public Services Dialogue Council and sectoral councils over pay and other money matters.
- (ii) Under the supervision of the Ministry of Public Administration and in consultation with the NPC, sectoral councils and the National Public Service Dialogue Council, a specialist Arbitration Panel should be established.
- (iii) Arbitrators on the panel would arbitrate – that is, determine finally:
 - a. all interest disputes referred to it by the agreement of the parties concerned (a voluntary arbitration situation);
 - b. unresolved interest disputes in essential services (a compulsory arbitration situation);
 - c. any rights disputes which the parties involved in a dispute might chose to refer to the panel (a voluntary arbitration situation, noting that the further proposal is that the Administrative Appeals Tribunal should be the default adjudicator of all disputes arising out of the interpretation and application of collective and other agreements intended to be legally binding reached at Workplace Forums, sectoral councils and the National Public Service Dialogue Council. The AAT would also be the final arbiter of what constitutes an essential service in the event that the relevant committee of the National Public Service Dialogue Council is unable to reach consensus on the matter. And the AAT would also, failing resolution at council level, decide disputes over the formation of Workplace Forums and representation in Councils). AAT decisions should be legally enforceable.
- (iv) Should any matter be referred to arbitration, whether voluntary or compulsory, and the outcome has significant financial implications for the state (either directly or through likely flow-on effects), then it is suggested that the resulting award only become binding
 - a. 14 days after the date of the award, unless the Minister of Finance has tabled the award in Parliament within that period; or
 - b. 14 days after the date of tabling the award in Parliament (when it is in session), unless Parliament has passed a resolution that the award is not binding.
- (v) If Parliament passes a resolution that the award is not binding, the dispute must be referred back to the National Public Service Dialogue Council and the National Pay Commission for further debate and reconciliation, and if that fails, any party to the dispute may request a differently composed Mediation Panel to provide a final and binding award.

Establishing the Mediation and Arbitration Panels

Although the skill sets of an arbitrator and mediator are distinct, it is not uncommon for professional dispute resolvers to act in both roles.

As foreshadowed, it would be for the Ministry of Public Administration to establish, house and oversee both panels. Some persons may well qualify to be on both panels. It is suggested further, though, that as qualities of independence, expertise, credibility and legitimacy are vital for mediators and arbitrators and the success of the processes concerned, the Ministry should confer with and seek the support of the National Public Service Dialogue Council in proposing and then deciding on candidates for these roles.

Training for candidates should be essential, especially for those charged with carrying out interest arbitrations, where the outcomes often carry high stakes. A credible and authoritative arbitration process must operate as an effective antidote to strike action.

The final size of the initial panels can be settled later, but recourse to mediators is likely to be more frequent than arbitrators, so more of the former should be appointed. Given that mediators and arbitrators may be called on not only by the NPC or the National Public Service Dialogue Council but also by the sectoral councils and even Workplace Forums, foundation panels of around a dozen mediators and around half a dozen arbitrators might be appropriate.

Mediators and arbitrators should be subject to Codes of Conduct.

Should the framework of social dialogue and dispute resolution proposed here be accepted by the social parties, then a significant amount of further planning, preparation and implementation work will be required in relation to the launch of Arbitration and Mediation Panels. For instance, attention will need to be paid to –

1. drawing up guidelines for eligibility for mediator and arbitrator candidates;
2. establishing training programmes for mediators and arbitrators;
3. finalising the appointment process of successful trainees;
4. establishing the terms of appointment of mediators and arbitrators;
5. establishing model terms of reference for mediation and arbitration disputes;
6. specifying in the constitutions of Workplace Forums, sectoral councils and the National Public Service Dialogue Council exactly how and when dispute resolution options will be invoked.

Strike action (and employer action)

The proposition supported here is that strike action to advance the economic interests of employees is a legitimate phenomenon. Given the social and economic costs associated with such action, though, it is also legitimate to regulate such action.

The entire scheme of the Report is that effective social dialogue will best address and then harmonise the often shared and sometimes conflicting interests of employees, employers and the wider public. That should then either eliminate or significantly reduce the felt need to resort to strike action in support of workplace demands.

But there will be occasions on which conflicting interests are not reconciled through consultations or negotiations alone. Ultimately, the right of employees to strike in support of their demands and the right of an employer to unilaterally implement its proposals after deadlock and the exhaustion of other dispute-resolution mechanisms must be respected. The exercise of power, combined with ongoing good faith negotiations, is a functional part of the resolute process. Note, however, that no provision is made in this Report for the state as employer to lock out employees in furtherance of its workplace demands.

The proposed pathway for pursuing the parties' respective interests is as follows:

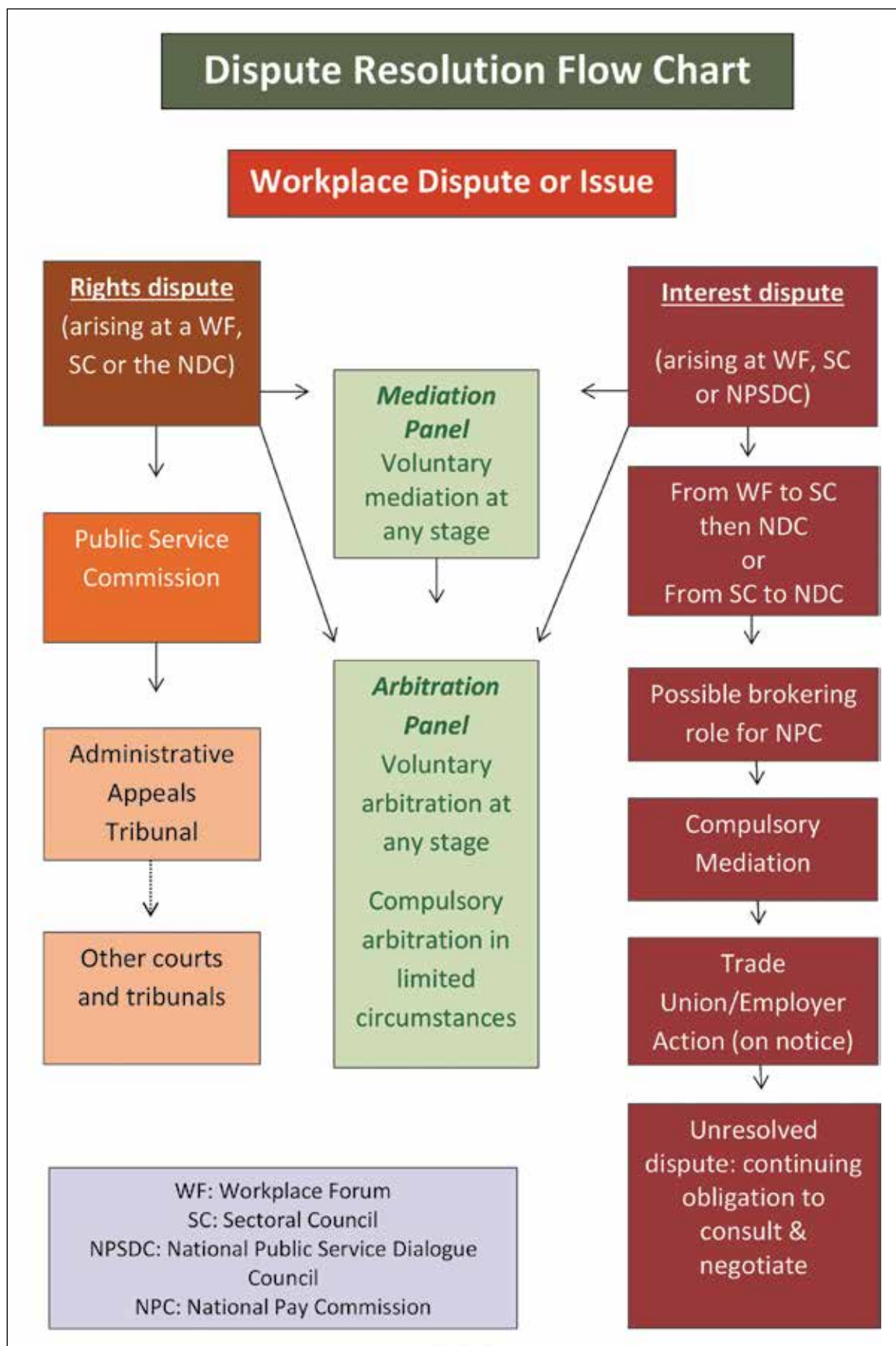
- (i) A matter may be raised by a proponent at any stage at the workplace and be satisfactorily addressed at local managerial level
- (ii) A matter may be raised for the first time at a Workplace Forum (if one exists); if it is not resolved there, it may be escalated to the relevant sectoral council to consider.
- (iii) Rules around maintaining or not maintaining the status quo while a matter remains in dispute will need to be determined.

- (iv) If the matter remains unresolved notwithstanding the attention of the relevant sectoral council, or if matter first raised at a sectoral council remains unresolved, then –
 - a. it may be escalated to the National Public Service Dialogue Council , and that body must then attempt to resolve it; or
 - b. if the matter remains unresolved despite the National Public Service Dialogue Council 's attention, and the matter is to be pursued and not abandoned, then the mediation of an interest dispute becomes an obligatory step.
- (v) Should mediation under set time limits be exhausted without the matter being resolved, the obligation to remain in dialogue remains but strike action in support of demands will become lawful on the giving of 72 hours' notice.
- (vi) The parties may at any stage agree to determine a dispute through voluntary arbitration.
- (vii) No strike action will be permitted in respect of any service essential to the health and safety of the public. An essential service should be narrowly and strictly defined in accordance with International Labour Standards. A specialist committee of the National Public Service Dialogue Council or, failing that body, the Administrative Appeals Tribunal, will determine which services are essential.
- (viii) Potentially, provision could be made empower the Minister of Public Administration or the Minister of the sector concerned, acting on the advice of the Cabinet of Ministers, to refer a dispute to compulsory arbitration if strike action, underway or anticipated, threatens to damage the economy or society in a very substantial way and it is in the public interest to make the arbitration referral.

Political and social strikes

The experience of Sri Lanka and other countries has been that the demands at the root of certain strikes have extended beyond pure workplace matters capable of being regulated by collective agreements. Some collective withdrawals of labour in pursuit of political or social demands are arguably irregular under all circumstances. Whether or not that is the case, the proposal here is that social dialogue should be allowed to operate in respect of all matters that threaten to interrupt the provision of public services.

Accordingly, no strike action in respect of any political or social demand should be permitted unless the National Public Service Dialogue Council has had the opportunity to attempt to resolve matters between the parties concerned. In other words, it is proposed that all parties in the public sector be under an obligation to refer any issue that could lead to a collective withdrawal of labour to the National Public Service Dialogue Council so that that body can consider and attempt to conciliate the issues.



Developing a data-base on strike action in the Public Service

Introductory remarks

Surprisingly, the public sector in Sri Lanka does not have a data collection system for collective workplace disputes. So while it is very apparent that strike action is a regular phenomenon in the sector, information on the size, character, duration and, critically, trends, is missing. Certain information on individual disputes, mainly rights disputes, is collected by bodies such as the Public Service Commission and the Administrative Appeals Tribunal but even this does not extend to all individual workplace grievances.

Strike action and other workplace dispute statistics are compiled in relation to the private sector by the Department of Labour and Labour Relations, so there is indeed experience in these matters within the civil service.

More significantly, the Department of Census and Statistics has wide ranging expertise and capability, and keeps a sound statistical information base covering a wide range of economic, social, cultural and political activities (including information on private sector disputes and strikes).

If fundamental reform of public sector workplace relations is to be introduced and then monitored and adjusted, it will be essential for information on key indicator statistics to be available, particularly in relation to the incidence of strike action. The prevalence of strike action was indeed a major trigger for the reform initiative of which this Report is a part.

The development of a comprehensive information system on public service dispute prevention and resolution will be a challenging exercise. It will require that relevant data be collected, collated and analysed, and then made available in useful formats for dissemination to a wide range of interested users.

Proposal

The proposal is that the Ministry of Public Administration and Home Affairs combine with the Department of Census and Statistics to create the missing service. The further suggestion is that persons with the necessary expertise be seconded from Census and Statistics to Public Administration. The latter Ministry would then be responsible for the execution of this ongoing project through a new, specialised unit. Amongst other things, this unit would need to develop and issue uniform approaches and templates for all other departments and agencies as well as the envisaged sectoral National Public Service Dialogue Framework bodies (Workplace Forums, sectoral councils and the National Public Service Dialogue Council).

It may also be valuable and cost effective to tap into the existing data collection network of the private sector. The Department of Labour and Labour Relations has had a system for harvesting industrial disputes figures in place for more than sixty years. (In terms of the Industrial Disputes Act, the legislation enacted to prevent and settle industrial disputes in the private sector, the Commissioner of Labour of the Department of Labour is the competent authority in regard to the management of industrial disputes. The Commissioner of Labour manages disputes through a network of 53 offices located in different parts of the country and coordinated by the Labour Relations Division at the head Office.)

In developing approaches, standards and formats for labour data, it would make sense to work with the system produced at the Fifteenth International Conference of Labour Statisticians (January 1993), and so for the public service to adopt the *Resolution Concerning Statistics of Strikes, Lockouts and Other Actions due to Labour Disputes*.²⁴ This would allow the public service not only to draw on a system of intrinsic merit but also to render its labour statistics internationally comparable.

²⁴ <http://www.ilo.org/public/english/bureau/stat/download/res/strikes.pdf>

As a more general monitoring of change is indicated as the wider ensemble of workplace reforms are rolled out, it is suggested that the task of collecting strike data be coordinated with broader data collection and analysis needs.²⁵

Further particulars in relation to data collection

A first priority in relation to data collection will be the need to get reliable and meaningful data in relation to strike action.

Terminology

It is suggested that the terminology of the 1993 Resolution be adopted. So:

- (a) A *labour dispute* is a state of disagreement over a particular issue or group of issues over which there is conflict between workers and employers, or about which grievance is expressed by workers or employers, or about which workers or employers support other workers or employers in their demands or grievances.
- (b) A *strike* is a temporary work stoppage effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances.
- (c) A *lockout* is a total or partial temporary closure of one or more places of employment, or the hindering of the normal work activities of employees, by one or more employers with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances.
- (d) *Other action due to labour disputes* consists of action effected by one or more groups of workers or by one or more employers, with a view to enforcing or resisting demands or expressing grievances, or supporting other workers or employers in their demands or grievances, in which there is no cessation of work.
- (e) *Workers involved in a strike*: Workers *directly involved* in a strike are those who participated directly by stopping work. Workers *indirectly involved* in a strike are those employees of the establishments involved, or self-employed workers in the group involved, who did not participate directly by stopping work but who were prevented from working because of the strike.
- (f) *Workers involved in a lockout*: Workers *directly involved* in a lockout are those employees of the establishments involved who were directly concerned by the labour dispute and who were prevented from working by the lockout. Workers *indirectly involved* in a lockout are those employees of the establishments involved who were not directly concerned by the labour dispute but who were prevented from working by the lockout.
- (g) *Workers involved in other action*: Workers *directly involved* in other action are those who participated directly in the action. Workers *indirectly involved* in other action are those employees of the establishments involved or self-employed workers in the groups involved who did not participate directly in the action but who were unable to perform their work in the usual manner or prevented from working as a result of it.
- (h) *Normal workdays* are those days on which work would usually be carried out by the groups of employees concerned or on which self-employed workers would usually expect to work. Weekly rest-days should therefore be excluded, as well as any public holidays, etc., on which work was not scheduled for the groups of employees involved or on which the self-employed workers involved would not usually have expected to work. If work is organized in shifts, one shift should be considered as one workday.
- (i) The *normal hours of work* for the groups of workers concerned should be defined in accordance with the most recent ILO standards.

²⁵ See *Monitoring, evaluating and adjusting the workplace reform process* on page 71 below.

- (j) An *establishment involved* is one in which one or more groups of employees are directly involved in action due to a labour dispute, or in which such action is effected by the employer. The definition of an establishment should be in accordance with the most recent guidelines of the United Nations.
- (k) The *secondary effects* of action due to labour disputes are the effects on other establishments where workers are prevented from working or their work is disrupted, or the effects on other groups of self-employed workers who are prevented from working or whose work is disrupted.

Note: The proposals in this Report make no reference to employer lockouts.

Basic data to be collected, compiled and published on a regular basis

Again working from the guidance offered by the 1993 Resolution, the following key statistics should be sought:

- (i) the number of strikes and lockouts;
- (ii) the number of workers involved in strikes or lockouts;
- (iii) the duration of strikes or lockouts;
- (iv) the amount of time not worked by workers involved in strikes or lockouts;
- (v) the number of establishments involved; and
- (vi) the number of other forms of action due to labour disputes.

It would also be valuable to collect information concerning the following reasons for labour disputes, classified where relevant according to whether or not the disputes arise from negotiating collective agreements:

- (a) disputes arising from collective agreements:
 - (1) problems concerning wages, bonuses and other compensation (such as increases, methods of calculation and conditions of payment);
 - (2) problems concerning working conditions (such as reduction or changes in hours of work, the organisation of work, and health and safety in the workplace);
 - (3) employment problems (such as establishment personnel policies, movement of staff, job evaluations, reclassification of staff, closure of establishment, redundancies and lay-offs);
 - (4) trade union issues;
 - (5) others;
- (b) disputes not arising from collective agreements:
 - (1) problems concerning wages, bonuses and other compensation (such as increases, methods of calculation and conditions of payment);
 - (2) problems concerning working conditions (such as reduction or changes in hours of work the organisation of work, and health and safety in the workplace);
 - (3) employment problems (such as establishment personnel policies, movement of staff, job evaluations, reclassification of staff, closure of establishment, redundancies and lay-offs);
 - (4) trade union issues;
 - (5) other problems relating to the workplace (such as discrimination, harassment, duress and unfair labour practices);
 - (6) sympathy or solidarity (such as strong support for a group of workers on the part of other workers, although these have no direct interest in the particular labour dispute);

- (7) protest (such as the expression of grievance with respect to a government policy or decision affecting conditions of work);
- (8) other.

And then, where relevant, the following information may also be useful:

- (a) the size of establishments involved, in terms of the number of employees;
- (b) the geographical location of the usual place of work of the workers involved;
- (c) the sector of groups of workers involved (such health, transport, etc);
- (d) the employees' and/or employers' organisations concerned (for example, calling the strike);
- (e) whether the employers hired replacement workers during the action;
- (f) the economic costs of the action to establishments involved and to workers involved;
- (g) whether the action taken by workers or employers was official or unofficial (for example, whether it was taken in accordance with the relevant rules established in this regard);
- (h) the collective agreement in question;
- (i) the method of settlement of the dispute (for example, by direct negotiations between the two parties, by the medium of a third party, terminated without successful negotiations);
- (j) whether the dispute arose from matters of right or from matters of interest.

The expectation is that the various bodies that make up the National Public Service Dialogue Framework (Workplace Forums, sectoral councils, the National Public Service Dialogue Council, the Mediation Panel and the Mediation Panel) would be charged under their respective constitutions or charters with compiling much of the information outlined above, which the specialist unit within the Department of Public Administration would then centralise, analyse and make available.

The Public Service Commission and the Administrative Appeals Tribunal already have systems in place to record cases and matters coming before them (along with other administrative activities), information which is published in their annual reports. Their data collection and reporting obligations would be supplemented by the further prescriptions of the new labour statistics unit within the Public Administration Ministry.

A new stream of data would assist the social parties greatly in assessing progress (and setbacks) with the developing social dialogue and dispute resolution initiatives, allowing good practices to be identified and diffused, and for lagging areas, too, to be identified and supported through extra efforts.

Data from the past

While it is the case that no proper records of collective disputes in the public service have been recorded in the past, it will none the less be very instructive for trend and evaluation of change purposes for attempts to be made to reconstruct that record from secondary sources.

Therefore it is proposed that the new data collection unit should undertake research with a view to developing a best approximation report of the strike action levels and trends on a sectoral and issues basis – guided by the information categories of the 1993 Resolution – over the last five years. Ministerial and departmental records, union records, media reports, interviews with key personnel and even anecdotal reports may be utilised in this regard.

► Part 4

Human Resource Development across the Public Service

Introducing modern practices of Human Resource Development in the Public Service

In today's world, human resources trump all others such as financial, material, and natural as the most important of all. An efficient and effective human resources capability is essential for the management all other resources to achieve goals of sustainable development. Rightfully, then, the concept of Human Resource Development (HRD) should be viewed as the major focus of development. In the context of sustainable development of any country, all development plans are ultimately aimed at improving the quality of human life. Thus, the level of development of a country is measured today not only in terms of output measurements such as Gross Domestic Product and Per Capita Income but also by using such indices as the Human Development Index and the Gross Human Happiness Index.

In an organisational context, too, the same concept applies: good human resource management is the key to achieving goals and delivering services in an efficient effective manner. Hence it is essential to introduce the principles and practices of HRD in public service institutions so that this vital resource can make its proper contribution towards the achievement of a country's development goals.

Some background to the prevailing Public Service HR culture in Sri Lanka

It is not unfair to say that the administration practices of the public service of Sri Lanka are archaic. The main institution currently responsible for introducing management practices in the public service is the Ministry of Public Administration and Home Affairs. During the period of colonial administration, the main instruments used to administer the public service were Administrative Regulations and Financial Regulations. The Administrative Regulations were modified into the Establishment Code while the Financial Regulations have remained largely the same with but sporadic and limited amendments. And so even six decades after independence, essentially the same old instruments are in use, give or take limited changes introduced from time to time.

Although, the Establishment Code was updated in 2013, that update merely incorporated key Public Administration circulars issued over the past several years. (Whenever, the government introduces a new regulation of general applicability, the Ministry of Public Administration issues instructions to the entire public service by way of Public Administration circulars.) However, those circulars are typically limited to routine functions such as requirements in respect of appointments (including schemes of recruitment), transfers, payments of annual increments, releases, reversions and terminations of employment, payments of allowances, travel on duty, training, disciplinary procedures and the like. In other words, the updates have been in the nature of administrative formalities rather than human resource management for performance improvement.

There is no system for the periodic conduct of job evaluations or the review of classifications in the public service of Sri Lanka. Current practice is for individual institutions to decide the requirement of new cadres and then obtain the necessary approval from the Department of Management Services and the Ministry of Public Administration. A standardised system of assessing the cadre needs based on the assigned functions and workload has not been developed for the public service. Although the development goals and strategies of the government change from time to time, the public service continues with the same dated HR systems and procedures, creating a disjuncture. There are separate units in all public institutions, known as "administration units", with the specific and limited brief of managing the Establishment Code and related circulars matters. These units attend to routine administrative functions including the management of the personal files of employees.

Modern HRD practices

Worldwide, HRD is and has been for some decades now the subject of much in-depth research, an endeavour that continues to generate new insights, approaches and practices. In many developed countries these approaches and practices have proved to be effective in lifting the capacity and performance of organisations. Such modern HR practices are mainly taken up by private sector institutions. However, given the contributions demanded of public sector institutions to national economic modernisation, these institutions, too, are now expected to be exponents of the very best HR practices. Tellingly, emerging economic giants such as Malaysia and South Korea have introduced modernisation programmes in their public services. Perhaps the main responsibility entrusted to these public sector institutions is to provide an enabling, investment-friendly framework of norms and services to support a vibrant and growing private sector. That means public services characterised by good governance, integrity, efficiency, exemplary people management policies and excellent service to the public.

HRD in an organisation includes the development and performance improvement of both the organisation as a whole and individual employees. HRD covers such management functions as organising (systems, procedures), training and career development with a view to improving the performance and productivity of individuals, groups and the organisation. Sound HRD practices help enhance the satisfaction of employees and, more importantly, that of the customers and also contribute towards the overall productivity of the organisation. It strengthens a desirable match between the needs of the individual and the organisation.

As pointed out by Shirley J Caruse, there are four inter-related components of HRD in an organisation:

1. Personnel Development
2. Professional Development
3. Performance Development
4. Organisational Development.

When there is effective synergy between these components, HRD can make its optimum contribution towards improving organisational productivity and employee capacity, allowing public services in turn to maximise their contribution to national development.

1. *Personnel Development* includes:

Development of knowledge, skills, attitudes of individuals, formal and informal learning, on the job training, team spirit and working as a team, relationship between leaders and followers, dedication to work, job satisfaction, balancing office and home

2. *Professional Development* includes:

Identification of individual interests, skills and attitudes for career development, use of job related techniques for better performance, maintaining norms, standards and ethical conduct, ensure contribution for the improvement of the society, research and development, share professional experience with others

3. *Performance Development* includes:

Setting achievable goals and targets (SMART), Indicators to measure organisational performance, link the performance to career development, improve efficiency and effectiveness of individuals, monitor performance and compare with set targets and follow up with corrective actions

4. *Organisation Development* includes:

Overall development of the organisation, development of policies/systems and procedures linked to the goals, identification of an organisation's weaknesses, creating and improving solutions to increase performance, improving efficiency and effectiveness of an organisation, team-building, recognising that every employee has a role, customer satisfaction with the organisation

It should be evident from the above that HRD in an organisation is a vital prerequisite for delivery of efficient and effective services. The leadership of an organisation needs to ensure that the four elements of HRD are effectively harnessed.

Professor David Ulrich has emphasised the importance of three key elements in mobilising the human resources of an organisation to improve its competitiveness and service delivery. These elements are:

- Talent of the workforce
- Leadership which recognizes the abilities of employees
- Culture of the workplace

Private sector organisations in many developed countries have adopted the above elements in a successful manner, as evidenced by the rapid progress of such organisations. It is prudent that top management of the public service institutions, too, adopt such practices in an appropriate manner to boost the improvement of their organisations' service delivery and productivity.

The pilot study in the Ministry of Health

The Colombo office of ILO commissioned a pilot study in the Ministry of Health in 2013 to study and make recommendations on the establishment of a social dialogue mechanism in the health sector. It is imperative to include HRD as an integral part of broader reform involving social dialogue. In the report submitted by the consultants to the ILO, recommendations for establishing and adopting a mechanism for social dialogue as well as new HRD practices featured prominently. Key recommendations on HRD included in the report of the pilot study were:

- Establish a dedicated HRD unit staffed by properly qualified persons
- Expose top management to the concepts and practices of HRD and gain their commitment to modern HRD approaches
- Provide for specific budgetary allocations for HRD
- Prepare an HRD plan to cover the entire sector
- Develop a comprehensive database for HRD practices
- Consult regularly with employees and trade unions
- Develop of job descriptions for all categories of employees
- Develop a comprehensive training plan (comprising both local and foreign training) for the organisation, including management and leadership development
- Prepare a policy manual on HRD practices
- Develop a performance appraisal system linked to a motivational plan and career development
- Establish a Research and Development unit for non-technical activities
- Introduce good governance practices through a proper plan of action

HRD proposals relevant to the whole public service

Part of the brief of the current Report is to consider the feasibility of extending similar measures across the entire public service of Sri Lanka. As the policy makers and public officers may not be fully familiar with modern HRD approaches, there may be initial resistance to such change. Even some senior public officers may prefer to continue with the same administrative practices familiar to them rather than embrace unknown and potentially challenging concepts.

In this context, it will be necessary to introduce modern HRD practices through a multi-pronged approach. Firstly, the key policy makers and senior public officers should be exposed to the concepts and practices of modern HRD through a series of awareness programmes and workshops. The experience of selected countries such as Malaysia and South Korea may be shared with them in these programmes, and their views gauged on how best to introduce new practices in the public service.

It may also be wise to introduce these practices across the public service institutions in a phased manner within a set timeframe. In order to secure the commitment of the top level of government, the Senior Ministers' Secretariat should obtain the approval of the Cabinet of Ministers to make it a policy of the government to implement HRD practices throughout the public service. After obtaining the approval of the Cabinet of Ministers, the Ministry of Public Administration as the apex body on public management should issue clear instructions on HRD practices to all institutions in the public service. These instructions may be issued in a form of a circular spelling out the main functions, timeframes for implementation and assigning specific responsibilities for different levels of officers in public institutions. A monitoring unit may also be established in the Ministry of Public Administration to review periodically the progress achieved by different institutions. This unit should be tasked to gather progress reports from different institutions.²⁶

Consideration should be given to setting up a national steering committee on the practice of HRD in the public service, located within the Ministry of Public Administration (and supported by members of other relevant institutions). The Senior Ministers' secretariat should perhaps facilitate the process until all institutions become fully familiarised with the practices.

All of these proposals will need to be the subject of consultation with relevant stakeholders on a continuing basis.

Review of present practices, gaps and weaknesses in terms of modern HRD

Current personnel and human resource practices in the public service are, as already noted, largely geared towards administrative matters such as recruitment, transfers, payment of annual increments, disciplinary procedures and the handling of personal files. These routine functions are assigned to administrative divisions present in all ministries and departments. The officers attached to the administrative divisions follow the provisions given in the Establishment Code and other relevant circulars, and are at pains to ensure that their actions comply with the applicable rules and procedures.

They maintain personal files for each and every officer in all categories and administrative functions until the officer retires from the service. The functions performed by the administrative division are of a routine and directive nature. Although there is a system to assess the performance of every officer according to a format designed for the purpose, this too has become blandly routinised. It is a one-way assessment of performance by the supervisory officer, who rates the performance in broad categories such as "Excellent", "Good", and "Weak".

In all public service organisations in Sri Lanka, human resources are managed in a traditional manner according to the guidelines contained in the Establishment Code and administrative and financial circulars. As noted, the management of human resources in public service is more concerned about the legal and procedural aspects of the behaviour and the work of the employees rather than motivating them for improved organisational performance.

The practices of personnel management seen in the public service are in conformity with the government rules and procedures but do not support the improvement of productivity nor the achievement of the set objectives of the organisation. The HR assessment exercise conducted among the officers of senior management of the Ministry of Health revealed that there was no proper HRD system in place in the ministry. It is highly likely that the situation is the same in all other areas of the public service of Sri Lanka as there has been no concerted drive to introduce modern HRD practices anywhere.

²⁶ See *Monitoring, evaluating and adjusting the workplace reform process* on page 68 below.

Key elements of modern HRD practices include organised training, motivational and incentive systems, performance assessment and linking it with career development, sound dialogue and open communication systems, team work, leadership development, linking performance to set results to ensure achievement of organisation vision and mission, clear job descriptions for all employees, participatory decision making, and cultivating employees prepared to make discretionary efforts.

It is very apparent that modern HRD is hardly practised in the public service; rather, the same routine administrative systems continue. It is therefore quite evident that there is a wide gap between the present administrative practices, confined as they are mainly to limited personal management functions, and modern HRD practices.

Appropriate policies and procedures to facilitate modern HRD practices

It is necessary to identify key appropriate practices of modern HRD which could be adopted in the public service of Sri Lanka. As this will be an innovation within the public service, a careful selection of those elements most appropriate should be done; any attempt to import a total HRD package may be seen as too much of a foreign intrusion, and resisted accordingly. Even in developed countries, modern HRD practices are taken up with greater ease in the private sector, where employee performance can more readily be linked to tangible outputs and competitiveness. Modern HRD practices have been modified to suit the requirements of the public service in countries such as Malaysia and South Korea.

It is suggested that the following are the key elements of HRD that could appropriately be introduced in the public service of Sri Lanka:

- A dedicated HRD unit should be established in every organisation of the public service, and this unit should report directly to the head of respective organisation. Clear terms of reference for the HRD unit should be developed. The preparation of an HRD plan for the organisation and its effective implementation should be a key feature of these terms of reference. It is essential to hire a core of qualified professionals to this unit and ensure that they continue to work in the unit for at least five years.

Each public service organisations should select around five managerial grade officers and provide them with intensive training on the concepts and practice of HRD, and they should then be entrusted with the responsibility of managing the unit under one senior officer as its head.

In addition, several persons from among the supporting grades, preferably with appropriate computer skills, should also be hired to this unit. The support staff, too, may be provided with the required training on HRD. The present administration units which handle the personnel files of the employees should be brought under this unit.

- Top management, including heads and deputy heads of institutions, should be exposed to the principles and practices of HRD, and their commitment should be obtained for the introduction of the proposed processes and practices.
- A comprehensive HRD plan should be developed for every organisation in the public service in line with country's medium-term development plan and the strategic plan of the respective public service organisation. The plan should include timeframes for implementation. The HRD plan for the organisation should be developed with a view to mobilising its human resources to achieve the set goals and targets of the strategic plan.
- A special budgetary allocation should be provided for the HRD work, and the HRD unit should be tasked with the efficient and effective management of its organisation's financial allocation, liaising with the finance division to maintain accountability.
- A comprehensive training plan should be developed as an integral part of the HRD plan.
- Availability of relevant data is a very important requirement for effective and efficient HRD activities, including long- and short-term planning, in any institution. It will therefore be necessary to develop accurate and sufficiently detailed data bases in each public service organisation. Qualified ICT staff

should be assigned to each HRD unit, along with the necessary hardware and other supporting facilities. Relevant data of all employees should be collected and inputted into this data base, and such data should be furnished to the responsible officers of the institution for use in decision-making. Data contained in all personal files should be computerized and personnel management functions such as performance appraisal, payment of increment, transfers, promotions, selecting for foreign scholarships, etc, should be performed with the support of the HRD unit.

- Detailed job descriptions for the employees of all categories should be developed as part of HRD practices. The HRD unit may coordinate this work with the cooperation of all supervisory level managers. (Refer the section on Job Descriptions below for details.)
- A comprehensive Policy Manual covering all aspects of HRD such as organisational structure, working hours, attendance, performance appraisal, payment of increments, disciplinary procedure, other benefits such as travel, etc, should be prepared. This manual should be prepared by a panel of senior officers appointed by the secretary of the relevant ministry or the head of institution in consultation with employees including trade unions. The HRD unit may coordinate the preparation of the policy manual to ensure that all HRD aspects are included in it. Copies of the approved policy manual should be made available to all divisions and units and ensure its implementation in a fair manner.
- A Research and Development cell on organisational development may be established under the HRD unit. The functions of this cell should focus on undertaking non-technical action research. Any management issue faced by the relevant sector should be studied with relevant analyses and present recommendations to the management to be used in decision making. Persons with relevant R & D background may be appointed to this cell.
- The central HR unit within the Ministry of Public Administration should support and quality control the activities of each department or organisation's HRD unit.

It is important that the HRD unit work in a participatory manner, building cordial relationships with all other functions of the institution as well as all categories of employees and then also trade unions. This unit should grow the respect and confidence of all employees in respect of HRD practices, and set to work in a transparent way.

It will be essential to obtain the formal approval of the government for an HRD policy intended for implementation across all institutions of the public service. A comprehensive Cabinet Memorandum should be prepared setting out the public service HR plan with all its key HRD elements, and submitted to the Cabinet of Ministers for its approval. Once so approved, the plan would enjoy the status of government policy and the roll-out of the elements of the policy would then be mandatory for all public institutions.

The Senior Ministers' secretariat may facilitate this process while the Ministry of Public Administration should be the central co-ordinating agency overseeing the national implementation.

Guidelines on HR Assessments

It is necessary that an assessment of current HRD-related practices be undertaken in every organisation before introducing modern HRD in the public service. The format used to assess the HRD practices in the Ministry of Health during the pilot phase was fairly detailed, and the recommendation here is that a simplified version be used as HR reform is tackled across the whole of the public service. A suggested format coupled with brief instructions for its administration is given in Annex 2.

The proposed assessment of HR practices could be carried out by an internal team of every institution using the guidelines suggested in this section. A selected group of public officers should be trained on HR assessment procedures and then used as trained trainers. These trainers could then be assigned to provide the required assessment training to selected senior officers from all institutions. The proposed HRD unit could coordinate the process of HR assessment.

Key areas of inquiry to be included in the questionnaire on HR assessment are:

- HRD planning as part of the strategic plan of the organisation
- Specific budget for HRD
- Dedicated staff for HRD
- Development of organisation vision, mission/goals
- Maintenance of employee data , computerisation of data
- Maintenance of personnel files
- Opportunities for employee groups and trade unions to participate in organisational decision-making
- Job classification system and development of job descriptions
- Compensation and benefits systems
- Recruitment/hiring, transfer and promotion procedures
- Orientation programmes, staff training , pre-service training, in-service training
- Development of a Policy Manual (organisational chart, working hours, time sheets, policy on discipline, grievances, benefits, legal and travel)
- Discipline, termination and grievance procedures
- Relationship with trade unions
- Compliance with laws, regulations, procedures and circulars
- Staff supervision
- Performance evaluation
- Motivation to work
- Management and leadership development

Development of job descriptions and an outline of recommended job competencies

Job evaluation is an overall process adopted by contemporary organisations to provide a systematic and consistent approach to define the relative worth of jobs within an organisation. This includes the descriptions of each and every job (job description) and the specific qualifications or requirements of employees (job specification) to perform the job.

In the public service of Sri Lanka different types of jobs required by the organisation as well as the qualifications for such jobs have been determined inconsistently. Any organisation should obtain the approval of the Department of Management Services for the required cadres. For each and every job included in the approved cadre, the respective institution should obtain the approval for the required qualifications by way of a scheme of recruitment from the Ministry of Public Administration.

Realistically, it will not be possible to change the present systems of preparation of cadre requirements and schemes of recruitment easily as the established way of doing thing has been entrenched over a long period of time. And so the present proposal is more modest, confining itself to developing job descriptions for existing jobs. This exercise will none the less be very useful as a large number of existing jobs in the public service do not have clear descriptions.

The development of specific job descriptions for the employees of all job categories is an essential requirement for effective operationalisation of HRD efforts in an organisation. It is apparent that proper

job descriptions have not been developed for the employees of any institution of the public service. Lists of duties have been issued to employees instead of job descriptions. These lists of duties have not been updated for several years and some lists are effectively obsolete. Generally speaking, the lists of duties include only some activities in general terms without clear identification of functions, responsibilities, tasks, norms and the reporting system.

It should be noted that the Ministry of Public Administration issued a circular to all public service institutions some 16 years ago directing that job descriptions for all employees be compiled. However, no institution in the public service seems to have complied with the circular. (See PA Circular Preparation of Job Descriptions, No.28/1998 of 23.12.1998 with its sample format. A copy of this circular appears as Annex 3.)

Developing job descriptions for around 130,000 employees in relation to about 114 job categories working in just the Ministry of Health is obviously a tedious and time consuming task. The team of ILO consultants took steps to develop sample job descriptions for 140 employees of 16 job categories using a specifically designed format during the pilot study.

A participatory method was used in the exercise of writing job descriptions for 140 employees of the Ministry of Health. A duo of employees was assigned to write each other's job description. In addition to the job description format, a set of written instructions was given to the participants and each partner in the duo was requested to ask questions given in the set of instructions and to write the job description of the other partner. By adopting this method it was possible to write draft job descriptions for all participants within a short period of time. There were about 35-45 participants in each session and a total of five sessions were completed in five days for the respective groups.

It is recommended that all institutions in the public service use this twinning method to write draft job descriptions as the first phase of the process of building a new classification system. The supervisory level officers of all institutions can be instructed to sit with respective employees and finalise the draft job descriptions developed through this exercise. The job description of an employee should be signed and certified correct by both the employee and supervisory officer, which can then be considered as a job agreement signed between the two parties.

The Ministry of Public Administration should send out fresh instructions to all institutions with a sample format and set of instructions to develop job descriptions for all employees within a given timeframe. The responsibility of writing job descriptions in an institution should be assigned to the HRD unit of every institution. The Ministry of Public Administration should monitor the progress of job description writing and instructions.

A format to be used in writing job descriptions, along with a set of instructions about job description writing, appears in Annex 4. This format could be attached to the circular on job descriptions to be sent out by the Ministry of Public Administration.

Since the writing of comprehensive job descriptions is an exercise which requires some expertise, it is recommended selected officers from the public service be trained as trainers for supervisory officers of all institutions. The Ministry of Public Administration with the support of its training arm, Sri Lanka Institute of Development Administration (SLIDA), should undertake the responsibility of providing the required training for trainers.

Guidelines on Job Competencies

Establishing essential and desirable competencies for each position in the public service is a gigantic task which involves a laborious process. This will lead to the development of job specifications for all job categories and changes to the present system of preparing schemes of recruitment.

There are very many job categories in the public service, and developing job competencies and specifications for all these categories will be a major undertaking. What is doable presently is to develop a set of guidelines for this purpose. It is recommended that government at the highest level make a policy decision to revisit the system of developing job competencies for all categories of employees. Job competencies should be developed with a view to improving organisational performance to achieve an organisation's vision, mission, objectives and the roles. In the process of developing job competencies, it is necessary to assess the workload of each organisation as well. Job-specific competencies refer to the behaviours and skills required to perform a specific job.

Key elements to be included in a guideline on job competencies are:

- Every institution should develop its strategy of implementing the government policy relevant to it. The overall sectoral policy related to the subject area assigned to the institution should also be taken into account in this exercise.
- Based on the macro policies of the government and the sectoral policies, each organisation should revisit its vision, mission, goals, objectives and functions as part of the strategic plan.
- Assess the workload of the organisation and timeframe for the completion of different tasks
- Classify broadly the types of competencies required by the organisation and also required number of employees in different categories
- Study the appropriateness of using modern technology in different areas. It may also be useful to review comparative experience of selected countries.
- Develop a matrix which includes types of required jobs and job competencies required for each and every job
- Broad classification of jobs such as technical and nontechnical should be broken down into specific jobs. This may include accounting, marketing, communication, ICT, benefit-cost analysis, operation of machines and equipment, etc.
- Since overall job evaluation may involve major changes, it is prudent to develop competencies required for each and every existing job.
- It is necessary to mobilise an interdisciplinary team of officers and experts to decide the basic competencies for broad job categories. This broad classification of competencies could be used by the respective organisations to develop the required job competencies for each and every job category of the organisation

Sample list of key competencies

General competencies required for any job in the public service are included in this list.

- Technical ability: knowledge and skills techniques and equipment, procedures and other material
- Quantity of Work: produce the appropriate quantity of work, avoid unnecessary involvement of details which leads to a waste of time and resources; ability to manage multiple projects; assigning tasks and scheduling work of others
- Effective communication: writing and speaking to suit the situation, openness and honesty, listening and feedback,
- Customer satisfaction: respond to the customers' problems effectively, respect internal and external customers,
- Problem-solving: analyse the problem based on collected information, solve problems through proper decision-making, taking informed risks
- Detail-oriented: alertness in risk environment, compliance to procedures and accuracy in documents, analyse data

- Flexible approach: open-mindedness, change decisions based on new information, adapt to varying needs, change tasks appropriately
- Organizing: ability to manage multiple tasks, actions follow the goals, prepare detailed action plans, schedule tasks and people effectively
- Staff development: improving self-performance and that of others, learning organisation, professional development, positive approach and team spirit
- Quality control: set high standards, right actions, adopt new methods, try to achieve excellence
- Responsiveness: respond to requests in a timely manner, inform the customer about the problem and solution
- Innovation: change conventional practices, improve systems, novel solutions to problems, adapt new technology

It is advisable to develop general competencies as well as job specific competencies for respective institutions. However, adopting a new set of competencies for existing jobs in public service institutions is not an easy task. It requires to change the systems existed for long period of time which may result in resistance from the job holders. It is also necessary to be mindful that developing job related competencies is a highly specialised task.

Outline of the proposed career development policy and practice including rewards and incentive systems linked to performance

In a context of organisation development which is part of HRD, career development refers to the issue as to how individuals manage careers within and between organisations and how organisations structure the career improvement facilities for their employees.

“Career development is the lifelong process of managing learning, work, leisure, and transition in order to move toward a personally determined and evolving preferred future” (Canadian Standards and Guidelines for Career Development Practitioners)

It is evident that there are no proper opportunities for career development in the public service of Sri Lanka. Introducing formal career development policies and practices may be an difficult task as many policy makers are not familiar with the concept. It should, however, be noted that there are many related practices presently available although they are performed in a haphazard manner.

Key components to be included in an outline of a career development policy are given below:

- Recognize in principle the need to introduce professionalism in the public service
- Provide opportunities for all categories of employees to enhance their careers
- Establish transparent and professional mechanisms in selection, recruitment, transfer and deployment procedures
- Provide opportunities for obtaining higher qualifications for all employees and establish transparent and systematic procedures for selection employees for such higher studies
- Discuss with local and foreign educational and training institutions to secure more opportunities for employees to acquire higher and professional qualifications
- Consider acquired qualifications in addition to performance when deciding the promotions of employees
- Grant an immediate salary increment to employees after the completion of relevant training programmes
- It is extremely essential to link performance appraisal to career development and is also necessary to introduce professional and transparent system for appraising performance.

Performance appraisal linked to career development

The present system of performance appraisal conducted in government organisations can be explained as a routine exercise and it is only linked to the payment of annual salary increment. In most cases the performance appraisal format is filled by supervisory officers by ranking the employees as average performers. Excellent or weak grading is given only in exceptional cases. As a result of this routine exercise of performance appraisal, the employees who perform above average and below average receive the same rating in the format. All employees receive the annual salary increment irrespective of their actual performance. There is no motivation for employees to perform better as their performance is not given any value. In fact, higher performers get demotivated when they see non-performers receiving same treatment.

The format used for performance appraisal is somewhat vague as it does not consist of measurable indicators of performance related to the job. The format should be streamlined to measure the employee performance in an objective manner. The proposed HRD unit should design formats for different job categories with verifiable indicators to enable objective and transparent appraisal. Performance appraisal may be done at different stages, first by the employee as a self-assessment, then by the immediate supervisor and finally by the relevant senior staff officer. A system also should be established to reward the higher performers by way of offering perks approved by the management to promote higher performance.

A motivational plan should be linked to the performance appraisal. There are many non-monetary benefits which are stronger than the monetary benefits that could be offered to the employees. Better performers may be issued with letters of commendations on a regular basis and a copy lodged on the personal file of the employees. Such commendations may be considered in promotions, foreign scholarships and selection of best performer of the year etc.

Proposed training policy to ensure continuous enhancement of employee skills and competencies

It is essential to develop a comprehensive national training policy for the public service using a set of guidelines to be developed by the Sri Lanka Institute of Development Administration, the main public service training institution. Training should not be organised for the sake of training or as a fad. It is apparent that some institutions organise training programmes merely because other institutions do it. National training policy should focus on increasing the effectiveness and productivity of the public service. The Ministry of Public Administration should issue instructions to all public service institutions to ensure the implementation of the national training policy. All institutions should be requested to develop appropriate training plans based on the national training policy.

Institutions should begin the training cycle by undertaking training needs identification-exercises. The training needs of all categories of employees should be identified through a systematic process. A suitable questionnaire may be administered among a representative sample of employees. Responses received for the questionnaire should be analysed and used for the development of training plan. The institutional training plan should include the orientation of new recruits, pre-service training, in-service long-term and short-term formal training on identified subject areas, on the job training and other forms of training to enhance knowledge, skills and attitudes of all employees. Various training programmes presently conducted by the different training institutions should be carefully studied and incorporated into the training plan with necessary modifications. The HRD unit should be made responsible for the preparation and implementation of the training plan and coordinate with relevant institutions to ensure successful implementation of the plan.

In addition to local training, it is desirable to include foreign training as part of an integrated training plan. The selection of employees for such training should be done on a transparent and systematic basis. Suitable persons should be selected for local and foreign training by matching the training needs required for the respective job and the content included in the training programmes. The award

of foreign scholarships should also be done as part of a motivational package for good performers based on systematic performance appraisal. There are various sources of funding for foreign training programmes including scholarships offered by the Department of External Resources, training programmes funded by multi- and bilateral donors, and specific training programmes funded through GOSL funding. It is necessary that all public institutions coordinate with the Department of External Resources to utilise relevant training opportunities for the selected employees of their institutions. Foreign training funded through donor and GOSL funding should also be properly utilized to enhance the capacity of the employees.

The main purpose of training provided for the employees should aim at improving their competencies and skills in order to perform the jobs in a more efficient and effective manner for achieving higher productivity and performance. Action should be taken to utilise the services of the officers who received training through deploying them in relevant jobs of the institutions as it has been observed that sometimes employees have been deployed in irrelevant jobs after training. It is important to link training with career development. A system to provide mandatory training for employees before their promotion to the next grade is adopted in many other countries as training is considered an integral part of organisational and career development. When preparing the training plan, the aspect of linking the training with organisational and career development should be taken into account.

Presently, training is considered as an optional function and so many institutions do not prepare proper training plans and training ends up being done in an ad hoc manner. There should be a specific budget for training function in all institutions. The Ministry of Public Administration should issue instructions to all public service institutions requesting them to allocate a suitable percentage of the organisation's budget for training. The HRD unit should be charged with using the training budget to achieve the objectives set out in the training plan.

Training should be organised as a continuous function and training opportunities should be distributed in a fair manner among the employees. The practice should be to publish available local and foreign training opportunities and invite applications from eligible candidates through a transparent process. Special consideration should be given to those employees who have performed well and produced tangible results. Training should be offered as a motivation package for the officers who have performed well. A simple set of criteria should be developed to use in the selection of employees for training.

The training received by employees in relevant fields should be considered in their promotions and deployment. There is a unified system of grades applicable for all employees available in South Korea. When an employee qualifies for the next grade promotion, she follows a mandatory training programme offered by the National Public Service Training Institute of Korea. If the employee does not successfully complete the required training programme, she will not be promoted to the next grade. A similar system of mandatory training should be organised as part of the training plan developed by the various institutions.

► Part 5

Monitoring, evaluating and adjusting the workplace reform process

Assuming the sweeping proposals on change contained in the Report are in time adopted and implemented, or to the extent that they are adopted or implemented, it will of course be important to monitor and evaluate what is happening.

Nearly all the proposed changes see the Public Administration Ministry playing a coordinating and supporting role, so a unit or office or person within the Ministry would be the natural candidate to perform the watching brief role.

This will require a developing a data base covering both quantitative and qualitative analyses of the performance of institutions, processes and outputs. This would span the performance and experiences of all the new social dialogue tiers, features of the first generation of collective agreements, innovations from Workplace Forums, case loads and timelines of all the dispute resolution bodies, satisfaction surveys amongst employees, managers and the customers of public services (ie, the public), pay settlement rates, strike rates, successes and setbacks with the implementation of new Human Resource Development approaches, and much more.

The integrity and transparency of the underlying data and analyses would need to be ensured. This would require, amongst other things –

- high professional standards in the Ministry's evaluation unit;
- high visibility of the unit's methodology and even input into that methodology from interested stakeholders, particularly unions;
- ready access for all to the analyses of the unit.

Elsewhere in this Report²⁷ the secondment of one or more persons from the Department of Census and Statistics to the Public Administration to develop a strike action data base is mooted. It would sense to expand this role to include the work above, or to coordinate the role with this work.

Evaluation of change should be conducted both separately and then jointly by the stakeholders, reflecting their separate but then also shared interests in the reforms. Teething problems will require prompt trouble-shooting by the responsible policy and operational people within the Ministry and various bodies, but the more deep-seated analyses and policy reviews should be conducted at least annually and then as often as needed by the National Public Service Dialogue Forum in the first instance. Independent experts may also play a role here.

²⁷ See *Developing a data-base on strike action in the Public Service* at page 49 above

► Part 6

Summary of the proposals on social dialogue, dispute resolution and Human Resource Development

Social dialogue

Against a history of low levels of structured engagement between the state as employer and unions and a high incidence of strike action, this Report advocates the introduction of a framework of social dialogue institutions.

And so provision is made for engagement at three levels through three interconnecting institutions:

- 1 **Workplace Forums.** These would be bipartite bodies (comprising employer and employee representatives, but with provision for union participation as well) established at the level of the workplace (flexible defined) at the initiative of local management and employees or unions. While their emergence would depend on local initiatives and local consensus, a local employer should not be entitled to resist their establishment.

The key role of the envisaged Workplace Forums would be to promote local employer-employee engagement aimed at productivity improvements and a better employee work experience. The mode of engagement at a forum would be consultation, with a firm emphasis on collaborative problem-solving. While consensus outcomes would be the goal, the employer's right to implement change after due consultation would not be excluded.

Training for the parties in effective consultation and problem-solving approaches and skills would be essential.

- 2 **Sectoral councils.** It is proposed that these bipartite bodies (comprising the employer and the most representative or otherwise significant unions) be set up for the major public service sectors excluding those involving law enforcement and security. The provisional plan is that such councils be established for Health Services, Education Services, Transport Services, Port & Aviation Services, Power & Energy Services, Water Services, Public Administration Services (deemed to be a sector and a catch-all for any other employees left out), Provincial Public Services and Local Government Services and Agriculture, Livestock and Fisheries.

A council's primary role would be to develop provisional collective agreements regulating terms and conditions of employment through processes of consultation and negotiation. Given obvious considerations of national budgetary constraints and the need for equity across sectors, collective agreements would require endorsement at national level (see below) before they could be finalised. And so approval for provisional agreement s would need to be gained from the National Public Service Dialogue Forum, which in turn would confer with the National Pay Commission and the General Treasury.

This Report also proposes another option in relation to pay-setting. On this alternative approach, General Treasury would essentially determine pay and conditions but would then refer the package to sectoral councils (and the National Public Service Dialogue Council) for their feedback.

These changes are intended to bring about the attenuation of unilateral employer (government) decision-making in the area of pay movements; and also the lessening of labour-political power-play and manoeuvring in the determination of pay outcomes. A primary emphasis would be on constructive consultations and negotiations, but late-stage hard bargaining and the possibility of strike action (or, on the employer's part, the unilateral implementation of the last bargaining offer) would not be excluded. Mediation would need to be exhausted before power could be exercised. The objective, clearly, is to promote agreement-reaching through rational if robust debate. The power option should feature as last resort.

Essentials service employees represent an exception: they would not be permitted to engage in strike action and their fortunes would need to be determined either by broader sectoral negotiating outcomes or arbitration.

Councils would play a role in overseeing the activities of Workplace Forums, and promoting best practices developed in Forums across the sector and even across the entire public service. They would also have a broad dispute resolution role in their respective sectors.

- 3 **National Public Service Dialogue Council.** This, too, would be a bipartite body, comprising the state as employer and the most representative unions and possibly federations. The role of this apex body would be to –
 - (i) regulate rules, norms and standards that apply across the public service, or to two or more sectors, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury;
 - (ii) negotiate pay and reward arrangements across the public service where appropriate, and to conclude collective agreement in this regard after liaison with the National Pay Commission and the General Treasury after liaison with the National Pay Commission and the General Treasury;
 - (iii) sanction draft collective agreements negotiated at sectoral councils after liaison with the National Pay Commission and the General Treasury;
 - (iv) engage in high-level dispute resolution in the event of major disputes, especially those involving strike action.

Again, the primary mode of engagement would be consultation, preferably with a firm emphasis on collaborative problem-solving, with a negotiating mode (admitting a right to use power) as the next stage in the event that agreement escapes the parties. The National Pay Commission would also be expected to play an influential advisory role in the deliberative processes.

As with the other engagement tiers, training for the parties in effective consultation, negotiation and problem-solving approaches and skills would be essential.

Dispute resolution

Rights disputes

There is already a fairly wide-ranging set of institutions in place to deal with rights (legal) disputes, from the Public Service Commission through the Administrative Appeals Tribunal to the ordinary courts and other specialist tribunals. None the less, there is room in this area for flexibility and innovation through alternative dispute resolution processes. The Report's proposals in this zone are modest: essentially to provide new resources of mediation and arbitration and then to encourage the parties to use these processes voluntarily, with their benefits of earlier intervention, lower formalities and potentially quicker and more customised resolutions.

A notable expansion of the role of the Administrative Appeals Tribunal is in the offing. It is suggested that this Tribunal deal with all disputes arising out of the interpretation or application of collective agreements, and determine which employees are engaged in (strike-free) essential services. Its decisions should be legally enforceable.

Interest disputes

It is in this area that the greatest changes are proposed, and this follows from the fact that the array of new social dialogue mechanisms requires a dispute resolution safety net. And so the constitution of every Workplace Forum, sectoral council and the National Public Service Dialogue Council would need to provide for conflict management in the event of disagreements, and at council level at least the emergence of dispute resolution committees or dispute referral mechanisms should be anticipated.

A new Mediation Panel, housed in the Ministry of Public Administration, is proposed, and while much of its work may be the product of voluntary referrals its services would be compulsory in the event of unresolved disputes where strike action is threatened.

It is also proposed that provision be made for the voluntary arbitration of interest disputes and in very limited cases the compulsory arbitration of such matters. This would see the establishment of a new Arbitration Panel, again housed in the Ministry of Public Administration.

Despite their location, both panels would need to be, and seen to be, fiercely independent of government, protected by a clear charter enshrining that independence.

Human Resource Development

HRD proposals relevant to the whole public service

The analysis here, working largely from pilot work done with the Ministry of Health but then from other sources as well, is that the human resource approach within the public service is largely geared towards personnel administration rather than human resource development in pursuit of the service's larger mission and goals.

The submission is that a range of initiatives should be undertaken by government to remedy the situation. These include:

1. Key policy makers and senior public officers should be exposed to the concepts and practices of modern HRD through a series of awareness programmes and workshops.
2. In order to secure the commitment of the top level of government, the Senior Ministers' Secretariat should consider obtaining the approval of the Cabinet of Ministers to make it a policy of the government to implement HRD practices throughout the public service. Clear instructions on HRD reform could then be cascaded down to all institutions in the public service.
3. A dedicated HRD unit should be established in every organisation of the public service, and this unit should report directly to the head of respective organisation. The preparation of an HRD plan for the organisation and its effective implementation should be a key assignment for this unit.
4. Each public service organisations should select managerial grade officers and provide them with intensive training on the concepts and practice of HRD, and they should then be entrusted with the responsibility of managing the unit under one senior officer as its head.
5. A monitoring unit should be established in the Ministry of Public Administration to review periodically the progress achieved by different institutions. This unit should be tasked to gather progress reports from different institutions.
6. A comprehensive HRD plan should be developed for every organisation in the public service in line with country's medium-term development plan and the strategic plan of the respective public service organisation. The plan should include timeframes for implementation. The HRD plan for the organisation should be developed with a view to mobilising its human resources to achieve the set goals and targets of the strategic plan.
7. A comprehensive training plan should be developed as an integral part of the HRD plan.
8. Detailed job descriptions for the employees of all categories should be developed as part of HRD practices. The HRD units may coordinate this work with the cooperation of all supervisory level managers. Over the longer term, government at the highest level should develop a new system of competencies for all categories of employees.
9. A comprehensive Policy Manual covering all aspects of HRD such as organisational structure, working hours, attendance, performance appraisal, payment of increments, disciplinary procedure, other benefits such as travel, etc, should be prepared by each HRD unit.

10. An assessment of current HRD-related practices should be undertaken in every organisation before introducing modern HRD in the public service.
11. Career development policy and practices should include rewards and incentive systems linked to performance.
12. A special budgetary allocation should be provided for the HRD work, and the HRD unit should be tasked with the efficient and effective management of its organisation's financial allocation, liaising with the finance division to maintain accountability.
13. It would be prudent to introduce new practices across the public service institutions in a phased manner within a set timeframe.

► Part 7

A suggested Strategy and Action Plan to give effect to the Report proposals

A Strategy for reform: factors and considerations

This part of the Report is not intended for general release, or at least not in its current form. It represents the thinking of the Report-writers as they engage with the ILO office in Colombo on how best to effect real change in the areas of social dialogue, dispute resolution and human resource development.

These changes are meant to serve a bigger goal: improving the delivery of public services in Sri Lanka in ways compatible with international labour standards and the notion of decent work.

Part of the strategy for winning acceptance for reform is, for the authors and no doubt the ILO, self-evident. It must turn on an informed consultative process with the key stakeholders: the government as employer, the public service workforce, the unions and then other parties such as the Public Service Commission, the Administrative Appeals Tribunal and the National Pay Commission. The objective here is consensus or at least sufficient consensus over the direction and the detail of change.

However, the proposals themselves must recognise limitations on what can be achieved. These limitations arise from history, entrenched customs and the sometimes competing aspirations and apprehensions of the different social parties. The government wants labour peace but will have concerns over a loss of control in the pay-setting process; the unions want greater participation but will be reluctant to curtail either the strike weapon or direct political access in furthering their goals; employees want better conditions but will be wary of calls for ongoing changes to work systems in the quest for higher productivity.

The changes proposed in this document are sweeping. They will impact the public service and employer-employee relations from top to bottom. This telling factor alone means that one cannot be too sanguine about the prospects of their endorsement and implementation by the stakeholders, the more so when one considers how other similar initiatives have foundered over the last dozen years.

The changes are sweeping because they need to be – and this itself is a commentary on the antiquated state of public sector workplace relations and human resource management in Sri Lanka. None the less, some of the proposals have been tempered to increase their palatability to government, an approach that will of course decrease their appeal to unions. But the proposals are also meant to be developmental in character: today's tentative and incomplete measures can blossom into the full solution once experience and confidence are gained.

While in practice the biggest challenges may well turn out to be how to get successful Workplace Forums up and running and to secure funding for human resource development, the proposals most likely to occasion political disquiet from one or more quarters are the following:

- 1. The determination of pay and conditions of service.** If social dialogue is the goal, then one would expect to see outcomes set not by governmental fiat, bent by political pressures, but by autonomous collective bargaining.

The preliminary reading is that this will prove to be a bridge too far. And so the proposals go no further than suggesting that bipartite sectoral councils and the National Public Service Dialogue Council “develop draft collective agreements” that will require the approval of the National Pay Commission, the General Treasury and, in all probability, the Cabinet. And then an option that limits

the role of councils still further is also included in the body of the Report.

Even words such as “bargaining” (not used here) and “collective agreement” (used here) are problematic in the government milieu.

2. **Provision for lawful strikes.** Collective bargaining without the right to strike is no more than collective begging. That is a well-worn phrase that enjoys truism status, but it applies in Sri Lanka. The high level of (irregular) strike action is perhaps the main political precipitator of this search for workplace reform. Space is provided in these proposals for lawful strike action over economic matters, at the exhaustion of processes of consultation, negotiation and mediation. But although the engagement framework is calculated to reduce strike action, and decisively so, the mere provision of an explicit right to strike in the public service might excite resistance.
3. **Compulsory arbitration.** International labour standards only admit compulsory arbitration in the circumstance of narrowly defined essential services. These proposals provide for that, but one other case as well:

“The Minister of Public Administration on the advice of the Cabinet of Ministers may oblige compulsory arbitration, an option only available if there are objective grounds for believing that the unresolved matter may lead to strike action that damages the economy or society in substantial way and if it is in the public interest to make such a referral.”

Inclusion of this ministerial power may be necessary to get the whole package of social dialogue and dispute resolution proposals across the line. Provided it is a remedy that is sparingly and judiciously used, its inclusion may be defensible.

It may transpire that the further consultative process in relation to this Report demonstrates that objections that were anticipated do not materialise, or that compromises built into the proposals are not needed. That remains to be seen. But what can be expected is that the consultation process will lead to changes to these proposals, and that is how it should be.

Some of the proposed changes lend themselves to staging. This is particularly true of the Human Resource part of the Report and perhaps also the discussion relating to the negotiation of collective agreements. This possibility should help with the digestibility – and the affordability – of some of the proposals.

Assuming that the proposals are indeed largely accepted by the key players, the authors are firmly of the view that success in implementation and success in sustainability will depend on whether enough investment is made in education and training for all in the collaborative ethos and tools that underpin the whole design.

From a purely practical and sequential point of view, a suggested strategy for endorsement is the following:

- (a) The developing Report as at 22 December draft should be provided to the Senior Ministers’ Secretariat and the ILO head-office by 24 December 2014 and their informal feedback obtained – by mid-January 2015.
- (b) The authors and the ILO must settle the content of a public Report for workplace reform in the public service – by 20 January 2015.
- (c) The Report must be made available to the public at large and of course also the key stakeholders for examination and comment. This should also be done by way of a website that provides for moderated comments from identified persons and parties – over the period 20 January to mid-February 2015.
- (d) The authors must be available to field queries from and provide initial responses to the public and stakeholders over the same period.

- (e) The authors in consultation with the ILO must prepare a final Report – by 20 February 2015.
- (f) The final Report must be released to the public including the key stakeholders – by 28 February 2015.
- (g) Mini-briefings from the authors should be offered to the key stakeholders and especially unions – indicatively, on 19 and 20 March 2015.
- (h) A validation Workshop for key stakeholders should be held over two days. The first morning should be a presentation and inquiry session. The first afternoon should be an occasion for separate stakeholder caucuses. The second day should be for follow-throughs, consensus-seeking and decision-taking, if possible – indicatively, on 24 and 25 March 2015.
- (i) Depending on the outcomes of the consultation process, decisions over redrafting and a plan for implementation will need to be taken, led by government.

Action Plan

A provisional Action Plan for progressing the public service workplace reform proposals

What	Who	How	When
1 Developing Report as at 22 December draft provided to the Senior Ministers' Secretariat and the ILO head-office, and their informal feedback obtained	Report authors and ILO sponsors in Colombo	Email and documentary exchanges	24 Dec 2014 and then 16 Jan 2015
2 Authors and the ILO to settle the content of a public Report for workplace reform in the public service	ILO, National Consultants	Face-to-face meetings; email and documentary exchanges; Skype and phone exchanges	Before mid-Jan 2015
3 Make the Report to the public at large and the key stakeholders for examination and comment.	ILO	Publication of the Report: despatch to key stakeholders, release to the media; website	20 Jan to mid-Feb 2015
4 Field queries from and provide initial responses to the public and stakeholders over the same period	Authors	By written exchanges (email) and informal meetings	20 Jan to mid-Feb 2015
5 Prepare the final Report	Authors	By meeting and individual and collective report re-writing	20 Feb 2015.
6 Release of final Report to the public including the key stakeholders	ILO	Publication of the Report: despatch to key stakeholders, release to the media; website	28 Feb 2015
7 Mini-briefings offered to the key stakeholders and especially unions	ILO offers, Authors supply	Small group meetings in Colombo	19 & 20 March 2015
8 Conduct validation Workshop for key stakeholders	ILO, Authors	First morning: presentation and inquiry session. First afternoon: separate stakeholder caucuses. Second day: report back, consensus-seeking and decision-taking	24 & 25 March 2015
Depending on the outcomes of the consultation process, decisions over redrafting and a plan for implementation will need to be taken, led by government.			
(a) First draft of legislation			
(b) Draft of charter of independence for the Mediation & Arbitration Panels			
(c) Draft of codes of conduct for Mediators & Arbitrators			

Annex 1

STAKEHOLDERS CONSULTED DURING THE REPORT-PREPARATION PROCESS

Date	Meeting Description	Persons present
20/10/2014	Introductory meeting with Secretary Senior Ministers' Secretariat (SMS)	Mr. Mahinda Madihahewa Mr. Clive Thompson Mr. Ariyaratne Hewage Mr. Bandula Wijerathne Mr. Upali Athukorala Ms. Shafinaz Hassendeen Ms. Shayama Salgado Mr. Chandana Karunaratne
20/10/2014	Initial briefing meeting with Hon. Senior Minister for Good Governance and infrastructure	Hon Rathnasiri Wickramanayake, Senior Minister Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Ariyaratne Hewage Mr. Bandula Wijerathne Mr. Upali Athukorala Ms. Shafinaz Hassendeen Ms. Shayama Salgado Mr. Chandana Karunaratne
20.10.2014	Meeting with Ministry of Public Management Reforms personnel	Mr.W.M. Bandusena, Secretary, Ministry of Public Management Reforms Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Upali Athukorala
20.10.2014	Meeting with Public Service Commission	Mrs. Chandrani Senaratne, Secretary PSC Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Upali Athukorala Mr. Bandula Wijerathne
21.10.2014	Meeting with Administrative Appeals Tribunal	Justice Imam, President AAT Mr. Jaysuriya, Member AAT Mr. Abeykeerthi, Member AAT Mrs S. Rathnayake, Secretary, AAT Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Upali Athukorala Mr. Bandula Wijayaratne
21.10.2014	Meeting with Secretary, Ministry of Labour and Labour Relations	Mr. Upali Wijayaweera (Sec /ML&LR) Mr. Ananda Wimalaweera (SAS/FR) Mr. Herath Yapa, (CGL) Mr Anura Mutumala, CL(IR) Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Upali Athukorala
23.10.2014	Meeting with Hon Minister of Public Administration & Home Affairs	Hon W.D.J. Senevirathne, Minister Mr. W.B.Abeykoon, Secretary Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Upali Athukorala

23.10.2014	Meeting with Secretary, Ministry of Public Administration & Home Affairs	Mr. W.B.Abeykoon, Secretary Mr. Clive Thompson Mr. Mahinda Madihahewa
23.10.2014	Meeting with trade union officials	TUS Mr. Saman Rathnapriya Ms. Devika Kodituwakku Mr. T.M.Rasheedeen Mr. D.W.Subasinghe Representatives from PSNU Mr. Clive Thompson Mr. Mahinda Madihahewa Mr. Ariyaratne Hewage Mr. Bandula Wijerathne Mr. Upali Athukorala ILO Ms. Shafinaz Hassendeen Mr. Chandana Karunaratne
30.10.2014	Meeting With Ministry of Health Secretary and Staff	MOH Mrs. Sudharma Karunaratne – Secretary V.P. Somaratne .Adl.Sec Dr. Jayasundara Bandara(DDG.P) DR. J.Bandara (DDG (P) K.V.D.C.Wimalasiri (DDG-A1) Dr (Mrs) L.S.Somatunga –DDG-M 1) Mr.M.B.Rathnaweera (DDG-Ads) Dr. E. De Alwis (DDG/BDS) Mrs. Nimesha Nanayakkara (AS/Admin)
5/11/2014	Debriefing meeting – Chaired by Hon Rathnasiri Wickramanayake, Senior Minister for Good Governance and Infrastructure	Hon Rathnasiri Wickramanayake Mr. Mahinda Madihahewa- Sec/SMS Mr. S. Liyanagama –Sec/SMS Consultants Mr. Clive Thompson Mr. Ariyaratne Hewage Mr. Bandula Wijerathne Mr. Upali Athukorala ILO Mr. Donglin Li Ms. Shafinaz Hassendeen Ms. Shayama Salgado Ms. Promo Weerasekera Mr. Chandana Karunaratne Others Mr W.M.Bandusena-Sec /MPMR Mrs. C. Senarathne –Sec/PSC Mr. B.M.M.M Basnayake-Director /Establishment Ms T.T.Upulmalee -SAS/HR PA&HA Mr. Keerthi Kotagama- Member /NPC Ms. Nimesha Nanayakkara- Asst SEC/Admin; MOH Ms. Nirosha Narayana DO/MPOH Ms. R.P.M.S.Rajapakse As/SMS Ms. P.H. Harshani Yasanthika DO/SMS

Annex 2

HRD ASSESSMENT OF THE PUBLIC SERVICE

INSTRUCTIONS

For each of the HRD components on the grid below, circle the statement that best applies to the current status of your organization. If only part of the statement applies, circle the previous statement. In the "comments" box beside each HRD component, please record the indicators (or reasons) that led you to select this box and any additional comments related to each of the component may be included in the "COMMENTS" form provided.

HRD COMPONENT		1	2	3	4	Comments
HRD Capacity						
01	HRD Budget	There is no budget allocated for HRD staff or HRD activity within the organization.	There is limited money available to conduct HRD activities (e.g.; training, systems development, performance planning and evaluation).	Budget is allocated for HRD staff and related activities. Allocation is irregular and cannot be relied on for any useful long range planning or the development of HRD systems.	Money for HRD staff and related activities is a permanent budget item, reviewed annually and adjusted if possible.	
02	HRD staff	There is no staff specifically assigned with responsibility for HRD functions.	There is HRD staff in the organization, but they have limited experience related to this field (personnel, recruitment, management) and /or have other functions in addition to HRD.	There are trained HRD staffs in the organization. But only to maintain basic procedures and record keeping functions.	There are experienced HRD staffs in the organization who maintain HRD functions. They participate in long range planning for the organization.	

Organization Strategy and HRD					
03	Organization Vision, Mission/ Goals	No formal vision, mission statement or organization goals exist.	Vision/Mission/ goals exist but are not formally linked to HRD function (e.g. staffing, job classifications.)	Vision/Mission/goals linked in a formal but limited way to HRD function (e.g. staffing plan, training).	Vision/Mission/goals linked to annual HRD function and also for forecasting long range staffing and recruitment needs.
	HRD COMPONENT	1	2	3	4
04	HRD Planning	No annual HRD plan exists.	Annual HRD plan exists, but it is not based on a formal assessment of the vision, mission, organizational goals, staffing needs, training outputs or existing employee data.	Annual HRD plan exists, based on organizational goals, staffing needs, training, and employee data, but it is not further evaluated for effectiveness.	Annual HRD plan based on organizational goals and training outputs exists. It is implemented, evaluated, and used for long - range strategic planning.
					Comments

HRD Data					
05	<u>Employee Data</u> No. of staff, Location Skill/ Education. Levels Gender/ age Year of recruitment Salary level	None of this data is collected on a systematic basis.	Most of this data is collected, but not maintained or kept up-to-date.	All of this data is available and up-to-date, but data is not formally used in HRD planning or forecasting.	All of this data is available and up-to-date. Systems are in place. Data is formally used in HRD planning and forecasting.
06	Computerization of Data	There are no computers or data systems available to the organization, externally or internally.	There are computers in place, but no resources for data management.	Computers and data management systems are available, but staff not trained and data files are incomplete.	Computers and data management systems are in place and data files up-to-date, staff receives training.
07	<u>Personal Files</u> Individual Employee Records	No individual employee records exist.	Limited employee personal files are maintained, but not regularly updated.	Personal files for all employees are maintained and kept up-to-date, but there is no policy for employee access or use of this data.	Updated personal files for all employees exist and also policies for appropriate use, e.g. confidentiality, employee access.
08	Participation opportunities for Employee groups / TUs in Management Decision Making	No system to provide opportunities for Employee groups / TUs in decision making_	There are employee committees / TUs but no regular meeting with the management	Sporadic meetings/ consultations with employee committees / TUs but not connected with management decision making	Regular consultative meetings with employee committees / TUs as part of management decision making process

HRD COMPONENT	1	2	3	4	Comments
Personnel policy and Practice					
09 Recruitment, Hiring, Transfer and Promotion Procedures	No formal process exists for recruiting, hiring, transfer and promotion according to job descriptions.	There are systems for hiring, etc. but they are not followed.	There are formal systems, based on established criteria, but they are not used consistently.	There are formal systems, monitored and used in all hiring, transfer and promotion decisions.	
10 <u>Policy Manual</u> Org. Chart Working hours Time sheets Policy Discipline Grievances Benefits Legal Travel	No policy manual exists.	Policy manual does exist, but does not include all of the relevant information.	A current policy manual exists but it is not available to employees and is not always used as a basis for personnel decisions.	An updated policy manual exists and is available to all employees. It serves as a reference guide to all questions about employment in the organization and is reviewed and updated regularly.	
11 Discipline, Termination Grievance Procedures.	No formal procedures exist.	Formal procedures exist, but they are not clearly related to performance standards.	Formal procedures based on performance standards exist, but they are not followed in any consistent manner.	Formal procedures based on performance standards are known to all employees and used consistently.	

Performance Management					
12	<u>Job Descriptions</u> Job title qualifications responsibilities supervisor	No job descriptions or lists of duties available.	Some staff members have lists of duties, but they are not always up-to-date and / or are very general and lacking job responsibilities and supervision.	All staff members have job descriptions, but they are not complete or up to date with specific functions and lines of supervision.	Complete job descriptions exist for every employee and are kept up- to-date through a regular process of review. Specific functions and lines of supervision are clearly stated.
13	Staff Supervision	There is no clear system of supervision. Lines of authority are unclear. Staff members are not recognized for their achievements.	There are established lines of authority, but the supervisor's role and function is not understood and little supervision takes place. Limited staff recognition.	Supervisors understand their roles and lines of authority and meet regularly with their employees to develop work plans, evaluate, performance but not consistent.	Supervisors undertake staff performance by assisting staff with professional development plans and encouraging them to learn new skills. Supervisors receive skills training periodically.

	HRD COMPONENT	1	2	3	4	Comments
14	Performance Evaluation A Formal Performance Planning and Review System (PP&R)	There is no formal Performance Planning and Review (PP&R) System in place.	A Performance Planning and Review System is in place, but it is informal and does not include jointly developed work plans and performance objectives with staff.	There is a formal system and supervisors are required to develop work plans and performance objectives with each employee and evaluate performance, but this is not done on a consistent basis.	Supervisors and employees develop work plans jointly and performance reviews are conducted on a regular basis. Orientation sessions and a manual are provided to all staff members. Reviews are used for personnel decisions.	
15	Motivation to Work	There is no accepted system to motivate employees to work through non-monetary benefits such as foreign scholarships, formal appreciation etc, based on performance.	Non-monetary benefits such as foreign scholarships, formal appreciation are offered on ad hoc and personal basis for some categories of employees.	Non-monetary benefits such as foreign scholarships, formal appreciation are available and offered but not according to an accepted system.	Non-monetary benefits such as foreign scholarships, formal appreciation are offered to motivate all categories of employees based on performance in a systemic manner.	

Training					
16	Staff Training <ul style="list-style-type: none"> • Orientation • In-Service • On the Job 	There is no established training programmes.	Training is offered on an ad-hoc basis but it is not based on a formal process of assessing staff needs nor is it linked to the organization's key priorities and changes.	Training is a formal component of the organization and linked to staff and organizational needs, but it is not available for all staff members, nor is it evaluated for results.	Training is a valued part of the organization and opportunities are developed for staff members based on their needs and also on those of the organization. Regular follow-up of training.
17	Management and Leadership Development <ul style="list-style-type: none"> • Training • Succession Plan 	There is no policy or philosophy regarding the importance of developing strong management capacity and future leaders for the organization.	There is an emphasis on developing management capacity but it is not done on a regular basis.	The organization makes an effort to develop managers and future leaders through training, mentoring and challenging job assignments, but participation is selective.	A programme for management and leadership development is in place and there is equal opportunity for everyone to participate based on performance and other established criteria.

Annex 3

JOB DESCRIPTION OF THE STAFF - PUBLIC SERVICE

Name of the Institution :

(1) Job Title :

(2) Division / Unit :

(3) Purpose of the Job :

(4) Responsibility :

(5) Key Job Functions :

.....

(6) Tasks performed Regularly (List of Duties) :

.....

.....

(7) Reporting to (Officer responsible for supervision) :

.....

(8) Applicable Work Norms :

.....

.....

(9) Performance Indicators Applicable to the Job :

.....

.....

(10) Prepared by : Signature -

: Name -

: Designation -

(11) Certified by : Signature -

: Name -

: Designation -

(12) Date :

Annex 4

Job Description of the Staff - Public Service**Instructions for Filling the Job Description Format for the Ministry of Health Staff**

Please read the instructions carefully before you begin to fill the format on the Job Description. You are expected to write the job description of another staff member while the other staff member will write your job description. Please select another staff member for this purpose.

- (1) Job Title :** Legally accepted designation
- (2) Division / Unit :** Recognized unit of the organization
- (3) Purpose of the Job:** What are you expected to achieve from your job? (one/two sentences)
- (4) Responsibility :**
 - What does the job expect from you?
 - In what manner are you expected to perform your job?
 - Legal/regulatory requirements and results expected/Standards/Timeframes
- (5) Key Job Functions :**
 - Broad functions to be performed to achieve the purpose of the job
 - Begin with a specific verb
 - Write numerically in order of priority (e.g. 1, 2, 3....)
- (6) Tasks Performed:** (List of Duties) Specific activities performed in relation to the key job functions.
- (7) Reporting to:** (Immediate Officer responsible for supervision)
- (8) Application Work Norms:** Recognized / accepted standards of the services to be delivered.
- (9) Performance Indicators Applicable to the Job:** Measurable indicators that could be used to measure the performance of the job

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