

**SPECIAL AUDIT REPORT ON THE IMPLEMENTATION OF
THE GIN NILWALA DIVERSION PROJECT OF
THE MINISTRY OF IRRIGATION AND
WATER RESOURCES MANAGEMENT**

**SPECIAL AUDIT REPORT ON THE IMPLEMENTATION OF THE GIN
NILWALA DIVERSION PROJECT OF THE MINISTRY OF IRRIGATION AND
WATER RESOURCES MANAGEMENT**

CONTENTS

1. Background for the issue of the Report and Nature of the Report
2. Methodology of preparation of this Report
3. Limitation of Scope
4. Project Commencement Process
5. Implementation of the Agreement
6. Observations
7. Recommendations
8. Conclusion

Special Audit Report on the Implementation of the Gin Nilwala Diversion Project of the Ministry of Irrigation and Water Resources Management

1. Background for the issue of the above Report and Nature of the Report

This Report is issued on a request brought to my notice by the Committee on Public Accounts (Annexe I) to forward a Report on the Gin Nilwala Diversion Project commenced by the Ministry of Irrigation and Water Resources Management.

2. The following methodologies were followed in the preparation of this Report

- 2.1 Study of the Report on the South East Dry Zone Development Preliminary Project Proposal prepared by the Central Engineering Consultancy Bureau in the year 1989.
- 2.2 Use of the Treasury Estimates for the year 2015.
- 2.3 Use of the Cabinet Memorandums and Decisions
- 2.4 Use of the Memorandums of Agreement relating to the Project
- 2.5 Use of the Contract Agreement relating to the Project
- 2.6 Examination of Documents relating to the payment of Mobilisation Advances
- 2.7 Examination of the relevant files maintained by the Institutions
- 2.8 Holding Discussions with the relevant Parties
- 2.9 Study of the Other relevant Registers and Reports
- 2.10 Study of the Feasibility Report

3. Limitation of Scope

It is emphasized that in arriving at the conclusions based on the observations made in this report that my scope was subjected to the following limitations.

- 3.1 The existence of a considerable period of time between the date of commencement of the examination of the process and the dates on which important events had occurred.
- 3.2 The need for the preparation of the report based on the information supplied by the Ministry.
- 3.3 In view of the non-commencement of the Project up to date, unavailability of adequate information for carrying out a physical inspection.
- 3.4 The failure to produce to me the information (Annexe II) which I considered as essential for the preparation of the Report.

4. Project Commencement Process

4.1 Identification of the Project

According to the matters revealed during the examination of the relevant files of the Ministry, the Gin Nilwala commenced circa the year 1980 and was proposed for implementation in 3 stages. Even though two stages of the Project had been completed, the third stage could not be implemented due to the troubled times which emerged during the latter half of 1980 decade.

4.1.2 In response to a request made by the Secretary to the Ministry of Lands, Irrigation and Mahaweli on 17 July 1989 to the Central Engineering Consultancy Bureau to prepare the South East. Dry Zone Development Preliminary Project Proposal, that Report (Annexe III) had been forwarded in September 1989.

4.1.3 Thereafter, any important information of any the functions of the Project during the period up to the year 2009 was not revealed to the Audit.

4.2 Implementation of the Project

The Secretary to the Ministry of Irrigation and Water Resources Management had entered into a Memorandum of Agreement with the China CAMC Engineering Company Ltd. (CAMCE) on 31 October 2009 (Annexe IV) relating to 3 Projects, namely, Gin Nilwala Project including the Yan Oya and the Malwatu Oya Projects. Nevertheless, any information relevant to the recommendations or the approvals for entering into such Memorandum of Agreement had not been revealed to the Audit. Even though the Project had been awarded to the CAMCE the recommendation for that had not been revealed to the Audit. Further, an Expression of Interest forwarded by any other institution whatsoever or by this institution had not been revealed to the audit.

4.2.2 Even though both parties had entered into an agreement that Memorandum of Agreement did not contain any specific information about the manner in which the Ministry and the construction company would take action with regard to the Gin Nilwala and the Malwathu Oya Projects in the future. Nevertheless, the conduct of a Feasibility Study and the other activities of the Yan Oya Project had been agreed to.

4.2.3 The Minister of Irrigation and Water Resources Management had submitted a Cabinet Memorandum on 05 November 2009 by giving reference to the said Memorandum of Agreement (Annexe V) and seeking approval for the following matters.

- (a) To update the Feasibility Study and preparation of Estimates
- (b) To assist in obtaining the funds required for the implementation of the Project from the Government of the People's Republic of China
- (c) To prepare the detailed designs
- (d) To obtain approval for the construction of the Project Components

- 4.2.4 Nevertheless, the approvals for the Gin Nilwala Project had not been expected from that Cabinet Memorandum and the recommendations of the Minister of Finance on that Memorandum (Annexe VI) had expressed the concurrence only for the implementation of the Yan Oya Project.
- 4.2.5 Subsequently, on 18 November 2009, the Cabinet of Ministers had granted approval (Annexe VII) for the action on the Yan Oya Project subject to such concurrence.
- 4.2.6 The letter of the Secretary to the Ministry of Irrigation and Water Resources Management dated 24 February 2014 addressed to the Secretary to the Ministry of Finance and Planning (Annexe VIII) indicated that the Chinese Company had forwarded a Feasibility Report relating to the Gin Nilwala Project to the Minister of Irrigation and Water Resources Management in April 2011. The Ministry had failed to furnish any information in order to ascertain whether any request had been made to the Chinese Company to conduct such Feasibility Study or to whom that Feasibility Report was submitted or to furnish a copy of the Feasibility Report to the Audit. (The Secretary to the Ministry had stated that the CAMCE Company did not forward a Feasibility Report in the year 2011 and it was only a Technical Proposal and a Feasibility Report forward by the CAMCE Company in the year 2012 and the Mahaweli Consultancy Bureau had updated that in the year 2014).
- 4.2.7 Subsequently, the review of the Feasibility Report referred to above as prepared by the CAMCE Company in April 2011 and the preparation of the Project Proposal after taking into consideration the social problems and the requirements of the public in the project area had been awarded by the Ministry to the Mahaweli Consultancy Bureau (Annexe IX). Accordingly, the Report of the Mahaweli Consultancy Bureau (Annexe X) (This had been shown as the Revised Proposals) had been forwarded to the Ministry.

- 4.2.8 The Secretary to the Ministry had appointed a Technical Evaluation Committee on 12 November 2013 (Annexe XI) for the review of the Terms of Reference relating to the review of the Feasibility Report furnished by the Mahaweli Consultancy Bureau. In addition, when the Mahaweli Consultancy Bureau forwarded its Technical and Financial Proposals for the recommendation of that Committee, the review of those proposals as well had been assigned to that Committee at that instance itself. Accordingly, the Chairman of that Committee had forwarded the Terms of Reference to the Secretary to the Ministry on 17 October 2013 (Annexe XII).
- 4.2.9 The Ministry had awarded the review of the Feasibility Report forwarded by the CAMCE Company to the Ministry and forwarding the Final Report within 04 months to the Mahaweli Consultancy Bureau (Annexe XIII).
- 4.2.10 Thereafter, on 02 September 2014 another Cabinet Memorandum (Annexe XIV) indicating that the China CAMC Engineering Company Ltd., had forwarded a Complete Feasibility Report in accordance with the approval of the Cabinet of Ministers granted under the Cabinet Memorandum No. CP/09/2425/356/022 dated 18 November 2009 and that the complete Feasibility Report thereof was forwarded to the Minister in April 2011. That Memorandum had the Heading shown as the Implementation of the Gin Nilwala Diversion Project and according to the information made available to the Audit it was the first instance in which any sort of approval had been sought for this Project.
- 4.2.11 According to the Cabinet Memorandum forwarded under the subject Implementation of the Gin Nilwala Diversion Project, the main benefits expected from the Project had been as given below.

- (a) The supply of 71 million cubic metres of drinking water to the Divisional Secretariat Divisions of Pitabeddara, Athuraliya, Weligama, Maulatiyana, Malimbada, Thihagoda, Dikwella and Kirinda-Puhulwella in the Matara District.
- (b) The supply of 47 million cubic metres of drinking water to the region such as Katuwana, Okkewela, Beliatta, Angunukolapelassa, Suriyawewa, Hambantota Town and Ambalantota in the Hambantota District.
- (c) The supply of about 193 cubic metres of water to the industries and the commercial agriculture in the Greater Hambantota Region.
- (d) To ensure the supply of water to both Yala and Maha Seasons for the paddy lands cultivated at present as well as the supply of water to 8,500 hectares of new cultivations.
- (e) Generate 70 Giga Watt hours of electricity per year and add to the National Electric Grid System.
- (f) Increase in the agriculture productivity and the creation of beneficial environmental impacts through the increase of ground water level of different areas of Hambantota District.

4.2.12 The following matters as well had been included in that Memorandum.

- (a) The documents required for the launch of this Project had been forwarded by the CAMCE Company to the Ministry.
- (b) That those documents had been evaluated by an Evaluation Committee appointed by the letter No. PFD/PMV/04-19-13 dated 15 August 2014 of the Department of Public Finance.

- (c) That the Standing Cabinet Appointed Procurement Committee appointed for this Ministry had held discussions based on the Report of the Evaluation Committee, with the CAMCE Company and reached a final decision on 29 August 2014.
- (d) That the Standing Cabinet Appointed Procurement Committee had recommended the award of the implementation of the Gin Nilwala Diversion Project for a sum of US \$ 690,000,000 to the CAMCE Company under an Engineering Design Procurement and Constructed Contract (EPC).

4.2.13 The Minister of Finance had given its concurrence to that Memorandum (Annexe XV) and the Memorandum had sought the approval for the following matters.

- (a) The award of an EPC contract to the CAMEC Company for the implementation of the Gin Nilwala Project for a sum of US \$ 690,000,000.
- (b) The Ministry of Irrigation and Water Resources Management to enter into the relevant agreements with the CAMCE Company for the launch of the Project.
- (c) The implementation of the Project by the Special Projects Launching Unit of the Ministry of Irrigation and Water Resources Management with the participation of the Department of Irrigation and the Mahaweli Authority of Sri Lanka.
- (d) The Department of External Resources to be assigned the function obtaining the foreign funds required for the Project from the Government of the People's Republic of China on concessionary terms.

Accordingly, the Cabinet of Ministers had, at the meeting of the Cabinet held on 30 September 2014, granted the approval for the above request. In addition to that, having considered the final recommendation of the Minister of Finance, directed the Secretary to the Ministry to take action accordingly.

4.2.14 Accordingly, a decision according to the second proposal in the above said Memorandum, had been taken to award an EPC contract to the CAMCE Company, and an agreement had been entered into on 05 November 2014 (Annexe XVI). That Memorandum stated that the CAMCE Company had forwarded the following documents.

- | | | | |
|-----|----------------------|-------|---|
| (a) | Technical Proposals | (i) | Technical Proposals |
| | | (ii) | Designs |
| (b) | Commercial Proposals | (i) | Bills of Quantities and Estimate of Expenditure |
| | | (ii) | General Contract Conditions |
| | | (iii) | Contract Agreement and Special Conditions |

5. Implementation of the Agreement

5.1 According to the condition No. 05(d) of the above said agreement (Annexe XVI), the following conditions including the grant of 15 per cent of the estimated sum of the Project as a mobilization advance to the contractor for the commencement of the underground investigations, had been included.

- (a) To obtain the required approvals from the relevant institutions of the Democratic Socialist Republic of Sri Lanka and the Government of China.
 - (b) Finalisation of the Agreement between the Ministry of Finance of the Democratic Socialist Republic of Sri Lanka (User Credit) and the Lending Institution of the Government of China (Lender).
 - (c) The Contractor to produce an acceptable Performance Bond.
- Nevertheless, the first installment of the Mobilisation Advance amounting to 15 per cent of the contract value had been reduced later to 5 per cent on the concurrence of both parties (Annexe XVII).

5.2 According to clause 5 of the Agreement relating to this Project, if the agreement is to reach the implementation stage all matters in that clause should be complete. In the event of the agreement not reaching the implementing stage without the approval of both parties within one year from the date of signing the Agreement, the Agreement becomes null and void.

5.3 Subsequent to reducing the Mobilization Advance to 5 per cent, the Ministry of Irrigation and Water Resources Management had paid a Mobilisation Advance of Rs.4,011,045,982 to the foreign Contractor Company for the Gin Nilwala Diversion Project comprising Rs.998,576,311 and Rs.3,012,478,471 in the years 2014 and 2015 respectively.

Date	Particulars	Amount Paid
-----	-----	-----
		Rs.
2014.012.30	Mobilisation Advance	998,576,311
2015.01.06	Mobilisation Advance	2,009,342,335
2015.01.07	Mobilisation Advance	1,003,136,336

		4,011,045,982
		=====

5.4 The Ministry also had spent a sum of Rs.14,879,722 as shown below for this Project from the year 2009 to October 2017 in addition to the advance shown above.

Date	Particulars	Amount Paid
-----	-----	-----
		Rs.
2013.01.24	Topographical Sheet Gin Nilwala Project (Survey)	102,000
2014.02.10	Being the Payments for establishing GPS Control Points and Bench Marks in Gin Nilwala Project	1,335,750

2014.04.04	Being the payments for EIA Administrative charges of Gin Nilwala Project	500,000
2014.05.29	Being the payments of Consultancy Services for review of Feasibility Study of Gin Nilwala Project	4,614,625
2014.08.06	Being the payments of Consultancy Services for review of the Feasibility Study of the Gin Nilwala Project	1,193,717
2014.10.14	Being Payment for the Survey on the Evaluation of the Archaeological Impact	1,963,550
2017.08.17	To the Mahaweli Consultancy Bureau for the preparation of the Environment Impact Assessment Report	5,170,722

		14,879,722
		=====

In addition to the above expenditure, the Ministry had agreed with the Mahaweli Consultancy Bureau to spend a sum of Rs.20,680,360 on the Environment Impact Assessment Report.

- 5.5 The Secretary to the Ministry of Irrigation had informed the CAMCE Company on 22 June 2015 (Annexe XVIII) to temporarily suspend the work of the Project, to return the advances granted up to date without being used on the Project and that the advance will be granted again for the Project Work after receiving the clearance from the Government as the Prime Minister who is the Chairman of the Cabinet Sub-committee on Economic Affairs had directed that despite spending a sum of Rs.4,025,925,704 as shown above, that in view of the uncertainty existing due to the possible environmental impact emerging from the Project, the Project should be temporarily suspended and carry out a formal investigation before the commencement of the Project.

- 5.6 Nevertheless, the CAMCE Company had furnished a reply to the Secretary to the Ministry on the refund of the advance on 15 July 2015 (Annexe XIX), that it would suspend the Project work temporarily in future and to consider the expenditure incurred on the project by both parties and the payment of taxes to the Department of Inland Revenue in the context of the contract and the law.
- 5.7 Subsequently, on 16 February 2016, the Minister of Irrigation and Water Resources Management had presented a Cabinet Memorandum on the subject, Commencement of Construction Work of the Gin Nilwala Diversion Project (Annexe XX) and the Cabinet of Ministers after having considered the observations of the Minister of Finance as well (Annexe XXI), referred those requests to the Cabinet Committee on Economic Management chaired by the Prime Minister to obtain the recommendations of that Committee (Annexe XXII).
- 5.8 Subsequently, the Secretary to the Ministry of Irrigation and Water Resources Management had, by his letter No. MI/Irr-Dev/02/20/GNDP dated 18 March 2016 on Loan Proposal for Government Concessional Loan (GCL) Preferential Buyers Credit (PBC) – Gin Nilwala Diversion Project, (Annexe XXIII) requested the Director General of the Department of External Resources of the Ministry of National Policies and Economic Affairs to take necessary action on the loan proposal.
- 5.9 Further, the Secretary to the Ministry had, by his letter No. MI/Irr-Div/02/20/GNDP dated 21 June 2016 (Annexe XXIV) addressed to the Secretary to the Prime Minister, indicated the following matters.
- (a) That the Cabinet Committee on Economic Management (CCEM) has given instructions to take action by separating the Turnkey Project to two stages as follows.

- (b) Subsequent to the completion of the Environment Impact Assessment by the Ministry of Irrigation and Water Resources Management, completion of the investigation and review of the Feasibility Study the preliminary designs and the evaluation of the environmental impacts by the Ministry of Irrigation and Water Resources Management.
- (c) On the receipt of the approval for the Environment Impact Assessment Report after the first stage, obtaining the approval of the Cabinet of Ministers for the commencement of the Project construction under the second stage.
- (d) The advance granted to the CAMCE Company to be made use of for the first stage and reaching consensus on the studies necessary for the supply of foreign funds necessary for the second stage.

5.10 The following matters were indicated in the letter No. PMO/01/ASP/2016/01/(VOL – III) dated 23 June 2016 (Annexe XXV) of the Secretary to the Prime Minister addressed to the Secretary to the Ministry.

- (a) That the Cabinet Memorandum referred to the CCEM was discussed in detail by the Officials Committee on Economic Management (OCEM).
- (b) That the following matters were recommended thereat
 - (i) Completion of a full examination and investigation of the Feasibility Study in order to enable the Ministry to finalise the Environment Impact Assessment and the completion of the preliminary designs.
 - (ii) Implement the Project on the receipt of the approval for the first usage and the Environment Impact Assessment and obtain the approval of the Cabinet of Ministers for the second stage.

- (iii) The advances granted to the CAMCE to be made use of for the first stage and to carry out studies and arrive at a concurrence for the supply of foreign funds for the second stage.

5.11 The Cabinet Memorandum on the subject of obtaining additional Water required for the Greater Hambantota Development submitted by the Minister of Irrigation and Water Resources Management on 07 July 2016 (Annexe XXVI) had sought approval for the following matters.

- (a) The work components according to the Engineering, Procurement and Construction Contract Agreement No. MIWRM/AGR/CONS/2014/064 entered into on 14 November 2014 by the Ministry with the CAMCE Company for the implementation of the Gin Nilwala Rivers Water Diversion Project to be implemented in two stages as stated in the above paragraph,
- (b) For the appointment of a three member Committee with the Secretary to the Ministry of Irrigation and Water Resources Management as the Chairman and another Technical Officer with an understanding of the matters relating to this Project to hold discussions with the relevant Company for the execution of the Engineering, Procurement and Construction Contract in two stages as stated in paragraph (a) above and for the preparation of a Revision Annexe to the existing Agreement, containing all the matters discussed,
- (c) Subject to signing the Revision Annexe prepared according to the discussion notes referred to in paragraph (b) above by the Secretary to the Ministry of Irrigation and Water Resources Management and the relevant Company, the payment of the balance sum of US \$ 4.511 million by using domestic funds to the CAMCE Company Ltd, in order to bring the preliminary advance to 5 per cent,

- (d) To take ensuing action by the Ministry of Finance and the Department of External Resources for obtaining the financial provision required for the second stage of the Project.
- (e) After obtaining the environmental approval for the launch of the Project on the completion of the first stage, implement the second stage in accordance with the existing Engineering, Procurement and Construction Contract Agreement.

5.12 At the meeting of the Cabinet of Ministers held on 20 July 2016 the approval for this Memorandum had been postponed for carrying out further study. Having considered the matters contained in the Cabinet Memorandum dated 07 July 2016, the following matters in the Note to the Cabinet No. MF/55/CM/2016/191 dated 05 December 2016 of the Minister of Finance (Annexe XXVII) had been included.

- (a) Whether the Contract Agreement can be implemented without any further charge on the Government.
- (b) If any of the parties wants to cancel the agreement unilaterally, what are its adverse impacts and what would be the costs.
- (c) Whether the connected officers had breached the Financial Regulations, the Government Procedure and Circular Instructions.
- (d) That it is appropriate to appoint a Special Committee consisting Senior Officers representing the Administrative, Financial, Engineering and Laws of Contract areas for obtaining a report with observations and recommendations on how to recover the advance without any adverse impact.

5.13 The Secretary to the Ministry of Irrigation and Water Resources Management had, by his letter No. M1WRM/IRRDev/SP/02/62(EIA) dated 01 September 2016 (Annexe XXVIII) addressed to the Chairman of the Mahaweli Consultancy Bureau, informed that the updated Technical and Financial Proposals should be furnished and that services of specialists should be obtained for the study of decisive problems.

- 5.14 In reply to that letter, the Chairman of the Mahaweli Consultancy Bureau had forwarded the Technical and Financial Proposals by his letter No. MCB/EIA/Gin- Nil/08 dated 21 October 2016 on Environment Impact Assessment (EIA) for the Proposal Gin Nilwala Diversion Project sub: Submission of Technical and Financial Proposals (Annexe XXIX). The Secretary to the Ministry of Irrigation and Water Resources Management had appointed a Committee of 3 Members on 03 November 2016 for the evaluation of the above proposals. That Committee had forwarded the Report on Recommendations of the Committee (Annexe XXX) on 14 December 2016 and that Report had been sent to the Mahaweli Consultancy Bureau on 30 December 2016.
- 5.15 Having considered the Cabinet Note dated 05 December 2016 together with the decisions of the Minister of Finance (Annexe XXXI) at the meeting of the Cabinet of Ministers held on 06 December 2016, the following decisions had been taken.
- (a) To appoint a Cabinet Sub-Committee to examine and consider the matters contained at (a), (b), (c) and (d) of the Cabinet Note and forward the recommendations to the Cabinet of Ministers within 02 weeks and that to consist of
- The Minister of Finance as the Chairman and the
Minister of Health, Nutrition and Indigenous
Medicine and the Minister of Megapolis and
Western Development as the other Members
- (b) A Senior Officer of the General Treasury named by the Secretary to the Treasury to be the Convenor Secretary to the Cabinet Sub-Committee.
- (c) To obtain the services of the Senior Officers in the areas of Administration, Finance, Engineering Science and Law of Contract considered as required for the purposes of the Sub-Committee.

5.16 Accordingly, that Sub-Committee had paid its attention the following matters.
(Annexe XXXII)

- (a) The reference made in the Report of Investigation Committee appointed by the Ministry of Irrigation and Water Resources Management that there is no possibility questioning the then Secretaries of the Ministry of Irrigation and Water Resources Management and the Ministry of Finance.
- (b) Despite the provision of Rs.40 million made in the year 2015 for the Project, sums of Rs.2,009,342,335 and Rs.1,003,136,336 had been paid on 06 January 2015 and 07 January 2015 respectively.
- (c) That the Department of Treasury Operations of the Ministry of Finance had, during the period 01 January 2015 to 08 January 2015 had released imprests amounting to Rs.3,549 million to the Ministry of Irrigation and Water Resources Management.
- (d) That this money had been paid for the Gin Nilwala Project in the first week of the financial year 2015 (prior to the Presidential Election) and incurring such expenditure is unusual.

5.17 That Report had been forwarded under the hand of the Chairman of the Cabinet Sub-Committee referred to above and the Minister of Health, Nutrition and Indigenous Medicine, the Member of that Sub-Committee by letter No. MF/17/CM/2017/029 dated 23 January 2017 (Annexe XXXII).

That Sub-Committee had recommended that this problem should be handed over to the Financial Crimes Investigations Division for examination and obtain a report for the Cabinet of Ministers and if the investigation is not finalised to obtain an interim report within 02 weeks.

- 5.18 Changes in the revised Technical Proposals and the Project Proposal according to the Report of the Review Committee and the Official Committee on Economic Management had been made by the Letter No. MCB/EIA/Gin-Nil/08 dated 06 March 2017 of the Chairman of the Mahaweli Consultancy Bureau (Annexe XXXIII). The Committee had made necessary evaluation of that Proposal and forwarded a report.
- 5.19 The Secretary to the Ministry of Irrigation and Water Resources Management had, by his letter No. MIWRM/Irr-DEV/ISP/GNDP/EIA dated 03 April 2017, (Annexe XXXIV) addressed to the Chairman of the Mahaweli Consultancy Bureau had accepted the revised Technical and Financial Proposals for the preparation of the Environment Impact Assessment Report on the Gin Nilwala Diversion Project forwarded on 06 March 2017. The fee of Rs.22,138,000 excluding the local taxes and contract period of 09 months had been determined for that purpose.
- 5.20 The Attorney General had furnished the observations for the Commercial Agreement for the Implementation of Gin Nilawala Diversion Project on 31 October 2014 (Annexe XXXV). The Cabinet of Ministers had decided on 01 April 2015 to stop all Unsolicited Proposals (Annexe XXXVI). An Advance Payment Guarantee had been signed with the CAMCE Company Ltd. on 08 December 2014 and was valid up to 09 December 2017 (Annexe XXXVII). A Performance Guarantee had been signed with the China CAMCE Company on 08 December 2014 and that covered the period from 05 December 2014 to 08 December 2020 (Annexe XXXVIII).

6. Observations

- 6.1 Taking action in terms of the concurrences arrived at, referred to in paragraph 5.1 above had been defaulted by the parties of the Government and the advance granted had been limited 4.35 per cent of the Project Estimate. Accordingly, the Ministry had not taken action to grant the minimum of 5 per cent advance in order to commence the activities of the Project.

- 6.2 According to the conditions relating to default referred to in paragraph 5.2 above, it was observed that, legally the agreement should have become invalid at present.
- 6.3 According to the matters appearing in paragraph 5.3, it was observed that the agreement should have become invalid at present.
- 6.4 Even though the Ministry of Irrigation and Water Resources Management had entered into a Memorandum of Agreement on 31 October 2009 with the China CAMC Engineering Company Ltd., (CAMCE), a Company registered in China for the three Projects of Yan Oya and Malwathu Oya including the Gin Nilwala Project, the matters which formed the basis of that Memorandum of Agreement had not been established through documentary evidence. As such the transparency with regard to entering into this Memorandum of Agreement is a questionable issue.
- 6.5 According to the above matter it was observed that though the Gin Nilwala Project had been mentioned in the those documents, the specific consensus, recommendations or approvals with regard to the ensuing action on the implementation of the Project had not been included in those documents.
- 6.6 In the circumstances, it was observed that at the time of signing the Memorandum of Agreement with the CAMCE Company that at least a Feasibility Study of this Project had not been carried out.
- 6.7 Even though the Cabinet Memorandum dated 02 September 2014 indicated that in accordance with the approval granted on the Cabinet Memorandum No. CP/09/2425/356/022 dated 18 November 2009, the CAMCE Company had carried out a full Feasibility Study of this Project and the Final Feasibility Report had been forwarded to this Ministry in April 2011, it was observed that this is controversial as such approval had not been granted and that a Feasibility Report had not been either called for from the contractor or obtained a report.

- 6.8 Even though the Mahaweli Consultancy Bureau had been assigned the task of reviewing the Feasibility Report forwarded by the CAMCE Company referred to in paragraph 4.2.9 above and forwarding a Final Report within 04 months, that Report had not been forwarded even by October 2017.
- 6.9 Even though the task of the supply of funds on concessionary basis from the Government of the People's Republic of China as approved by the Cabinet of Ministers should have been assigned to the Department of External Resources as referred to in paragraph 4.2.13 (d) above, there was no evidence that the said Department had taken ensuing action with the Government of China.
- 6.10 Information in support of action taken on the last recommendation of the Minister of Financial on the Cabinet Memorandum referred to in the paragraph 4.2.13 above was not revealed.
- 6.11 The requirements of 5.1 (b) and (c) had not been fulfilled up to the date of this report.
- 6.12 Even though the Company concerned had stated that it had commenced the Project after the receipt of the advance by the Company and requested instructions from the Secretary to the Ministry of Irrigation and Water Resources Management to deploy its Technological Specialists in Sri Lanka and commence the final geological investigations (Annexe XXXIX) such instructions had not been provided.
- 6.13 Even though provisions of Rs.1,500,000 from the Annual Budget Estimates for the year 2014 and Rs.40,000,000 from the Annual Budget Estimates for the year 2015 had been made for this Project, expenditure exceeding those provisions had been incurred. Even though the Chief Accountant had informed the Secretary to the Ministry that the provision for this purpose is not available (Annexe XL) the Secretary to the Ministry of Irrigation and Water Resources Management had issued written instructions to the Chief Accountant that provision is available and

to make payment. As such it was observed that making payment despite the Secretary being specifically aware of the unavailability of provision is a breach of the Financial Regulation 94.

- 6.14 In view of the above matters, the expenditure of Rs.4,011,045,982 incurred contrary to the Financial Regulation 94 without formal authority as referred to the paragraph 5.4 above, had not yielded any benefits to the Government of Sri Lanka up to date and in view of the questionable nature whether that money can be recovered due to the matters appearing in the above paragraphs, it was further observed that the Government resources valued at Rs.4,011,045,982 given to an external foreign party for use over a period of about 18 months is tantamount to allowing the misuse of Government resources.
- 6.15 Even though the Secretary to the Ministry of Irrigation and Water Resources Management had informed the CAMCE Company to suspend the Project work temporarily as it had been decided to carry out a formal investigation by stopping the Project due to the existing uncertainty about the environmental impacts that could emerge from the Project, to return the advance granted without being used for the Project and that the advances will be granted again for the Project activities on the receipt of clearance from the Government (Annexe XLI), the advance had not been refunded to the Government of Sri Lanka.
- 6.16 Even though the Cabinet of Ministers had granted approval for the implementation of the Project on 30 September 2014, the Ministry had failed to obtain an adequate allocation of provision for the year 2015 for its implementation.
- 6.17 Even though the Advance Payment Guarantee produced by the contractor Company is due to expire on 08 December 2017 the Ministry had not taken action up to date either for extending it or for the encashment of the Guarantee.

6.18 The Minister of Megapolis and Western Development, a member of the Sub-Committee had not signed the Sub-Committee Report referred to in paragraph 5.15 above.

7. Recommendations

- 7.1 Payments should not be made without taking action for obtaining provision from the Annual Budget Estimates or through Supplementary Estimates.
- 7.2 Prior to the implementation of Projects, an environmental study should be carried out and study the suitability of the Projects and the impact on the environment.
- 7.3 The activities agreed upon should be executed prior to the expiry of the contract agreement in order to prevent the agreement becoming null and void.
- 7.4 As the Government resorts to borrowings on interest for settling the budget deficit, such money should not be paid to contract Companies without accruing any benefits.
- 7.5 The identification of Projects with such national importance should be made in accordance with a integrated plan.
- 7.6 The Feasibility Study should be given priority and the reports thereon should be updated based on problems emerging from time to time.
- 7.7 The selection of contractors should be made with transparency and according to a justifiable methodology.
- 7.8 Primary concurrences on the supply of funds should be reached and follow-up action should be ensured.

- 7.9 The process for obtaining the Expressions of Interest should be followed formally.
- 7.10 Except the specific provisions or imposts for a project, funds from other sources should not be utilized for Projects.
- 7.11 Action in accordance with the clauses of the agreements should be taken.
- 7.12 The facilities agreed to be provided to the contractors as well as solutions for problems should be made available on a timely basis.
- 7.13 The Performance Guarantees / the Bank Guarantees to cover an adequate period should be obtained.
- 7.14 The decisions for implementation or abandoning of projects should be taken promptly after a study with minimum cost / loss to the Government.
- 7.15 Identify the weaknesses that prevailed in this particular process and introduce new regulations for the Projects Sector where necessary.
- 7.16 The system of assigning the supply of foreign funds for projects to the contractors and its appropriateness should be reviewed.
- 7.17 The need for secured maintenance of all important information of projects in written form should be introduced through legal provision and the responsibility for that should be assigned specifically.
- 7.18 The co-ordination with the Department of External Resources on projects for which foreign funding is expected should be maintained throughout from the inception.
- 7.19 Strengthen the Progress Review Process, identify project problems and provide solutions and instructions on a timely basis.

8. Conclusions

- 8.1 It is concluded that the parties responsible for the matters such as the identification of the Project, the selection of a contractor, grant of advances, implementation and follow-up in connection with this Project had, by a considerable level, defaulted in appropriate planning, protection of transparency, compliance with regulations, etc.

- 8.2 It is concluded that in view of the non-receipt of any considerable benefits as compared with the money spent by the Government in this process, the officers who opened up ways and means for the uneconomical utilization of Government resources should be responsible for such acts.

- 8.3 It is concluded that the then Secretary to an Ministry of Irrigation and Water Resources Management should be directly responsible for the release of funds without paying due consideration to the established fact that adequate provision was not available for the payment of the advance.

H.M.Gamini Wijesinghe
Auditor General

