
**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.**

In the matter of an application to determine whether the Bill titled 'Anti-Corruption' or any part thereof is inconsistent with the Constitution in terms of Article 120 read with Articles 121 & 78 of the Constitution &/or Article 134 of the Constitution.

1. *Transparency International Sri Lanka*
No.366, Nawala Road Nawala, Rajagiriya.
2. *Ashala Nadishani Perera* No.31, Shalawa
Road Mirihana, Nugegoda

PETITIONERS

SC (SD)
Application. No-

Vs.

Hon. Attorney General, Attorney
General's Department, Colombo 12.

RESPONDENT

**TO HIS LORDSHIP THE CHIEF JUSTICE, AND THEIR LORDSHIPS AND
LADYSHIPS; THE OTHER HONOURABLE JUDGES OF THE SUPREME
COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

On this 09th day of May 2023.

The Petition of the Petitioners above named appearing by M/s Niluka Dissanayake their registered Attorney-at-Law states as follows;

1. The Petitioners state that the 1st Petitioner is a juristic person represented by a membership of whom more than three-fourths are citizens of Sri Lanka, with primary objects, *inter alia*, of promoting and bringing about transparency and integrity in governance, and eradicating corruption. The 2nd Petitioner is a citizen of Sri Lanka and the Executive Director of the 1st Petitioner. The Petitioners are entitled to proffer this application under *Article 121(1)* of the Constitution.

True copies of the Certificate of Incorporation and the notice of change of registered address of the 1st Petitioner are annexed hereto compendiously marked 'P1(a)' and are pleaded as part and parcel hereof.

True copies of the Memorandum and Articles of the 1st Petitioner are annexed hereto compendiously marked 'P1(b)' and are pleaded as part and parcel hereof.

2. The Petitioners state that the Respondent is the Hon. Attorney General, and is made a party hereto in terms of the Law and in particular Article 134(1).
3. The Petitioners state that a Bill titled "Anti-Corruption" was placed on the Order Paper of the Parliament on 27th April 2023.

Copies of the said Bill as published in all three languages as found on <http://www.documents.gov.lk/en/bills.php> are annexed hereto marked 'P2(a)', 'P2(b)' and 'P2(c)' respectively and pleaded as part and parcel hereof.

4. In the instant application, the jurisdiction of Your Lordships' Court has been invoked in terms of Articles 120 and 121 of the Constitution to determine whether any provisions of the Bill titled 'Anti-Corruption' (hereinafter referred to as 'the Bill') are inconsistent with the Constitution.
5. The Petitioners state that such Bill has been formulated purportedly, *inter alia*, to give effect to certain provisions of the *United Nations Convention against Corruption* (hereinafter referred to as the *UNCAC*) and other internationally recognized norms, standards, and best practices and to promote and advance the prevention of corrupt practices.

A copy of the United Nations Convention against Corruption is annexed hereto marked 'P3' and pleaded as part and parcel hereof.

6. The Petitioners state that they are not opposed to the Anti-Corruption Bill in principle, but such must be carried out in accordance with accepted international

norms, whilst safeguarding Fundamental Rights which are safeguarded and protected by the Constitution.

7. The Petitioners respectfully state that certain clauses of the Bill as set out below are inconsistent with the rights guaranteed under the Constitution and the law, and violative of *Articles 1, 3 & 4(d)* of the Constitution and the jurisdiction of Your Lordships' Court is invoked to determine the same.
8. The Petitioners state that, *inter alia*, the following clauses of the Bill, are amongst other things, vague and overbroad, disproportionate, lacking in clarity and provide insufficient protection to protect fundamental rights, especially non-derogable rights, and are inconsistent with *inter alia, Articles 1, 3, 4, 12, 13, 14(1)(a) 14A, 126 & 140* of the Constitution, as well as accepted international norms and standards;
 - i) *Clause 28(3)* which provides for a declaration of secrecy;
 - ii) *Clause 29(1)* which provides for every investigation carried out under the Bill to be *deemed to be a judicial proceeding*;
 - iii) *Clause 30(2)* which provides *inter alia*, that any officer of the Commission may not be required to produce in any court, any document, matter or thing, coming to the notice of the Commission in the course of any investigation except in relation to contempt of court of an offence under Chapter XI of the Penal Code;
 - iv) *Clause 31(4)(b)* which fails to require public disclosure, especially of 'donations' received;
 - v) *Clause 41* which provides for investigations
 - vi) *Clause 42(11)* which authorizes the Commission not to act on investigations etc., without imposing a duty to inform the victim and/or complainant regarding the same;
 - vii) *Clause 43(3)* which provides for public authorities to notify the commission *only of past acts of bribery and/or corruption*;

- viii) Clause 44 which fails to provide any overriding public interest justification *vis-à-vis* right to information;
- ix) Clause 48(3)- which provides for the *nearest* Magistrate to order the production of a person arrested before the Magistrate *having jurisdiction* in the case within a period not exceeding 14 days without empowering him to make orders regarding bail or remand;
- x) Clause 51- which provides for taking of finger impressions, photographs, non-intimate samples, blood samples and voice samples etc., without *inter alia*, making provision for investigations in relation to sexual gratification;
- xi) Clause 52(2)- which provides for maintaining confidentiality in relation to obtaining the assistance of Magistrates, without any provision for a public interest justification for disclosure;
- xii) Clause 53(1) which provides for "freezing orders" to be made by the Commission without judicial oversight;
- xiii) Clause 57- which provides for the Commission to obtain information from service providers without judicial oversight;
- xiv) Clause 62(1)- which provides that the Commission shall not be compelled to disclose the *manner* in which it obtains information (as opposed to merely the *source* of the information);
- xv) Clause 67- which provides for withdrawal of indictments, even in situations which appear that an offence has *prima facie* been committed;
- xvi) Clause 68- which provides for Appeals *only* for the Director General
- xvii) Clause 70- which provides, *inter alia*, for an accomplice to be treated as a witness but yet requires such "witness" to be detained until the termination of trial;
- xviii) Clause 71 which deals with Deferred Prosecution Agreements
- xix) Clause 75(4) - which provides for the safety of persons assisting the Commission, only insofar as "reasonably possible";
- xx) Clause 80(1)(m) - which limits the Application of this Part [Declaration of

- Assets and Liabilities] to staff officers of the Central Bank of Sri Lanka
- xxi) Clause 81(2) – which relates to the duty of persons to whom this Part applies to make declarations of assets and liabilities *only* to the extent such does/may give rise to conflicts of interest
 - xxii) Clause 82(2) which purports to exclude candidates at elections;
 - xxiii) Clause 88(1) which provides for *Public Access* to asset declarations, only after 3 months of submission, and in most instances too late for citizens to duly evaluate their election candidates;
 - xxiv) Clause 88(2) which provides for information officers under the *Right to Information Act* who are bound by the secrecy provisions of the Bill;
 - xxv) Clause 89 which purports to provide access to declarations of candidates of elections whilst limiting it to office-bearers of recognized political parties;
 - xxvi) Clause 90- which *inter alia*, provides for offences related to the declaration of Assets and Liabilities, without providing any such offences or manner to enforce asset declarations;
 - xxvii) Clause 92- which provides for “*Assets and Liabilities*” to only be those which may give rise to conflicts of interest;
 - xxviii) Clause 93- which relates to bribery of Judges of the Supreme Court, Court of Appeal, High Courts, judicial officers and Members of Parliament to the exclusion of other similarly circumstances categories;
 - xxix) The proviso to Clause 101 which relates to the bribery of public officials by persons having dealings with the Government;
 - xxx) Clause 106(2) – which deals with bribery in the private sector without providing incentives for the private sector to introduce and implement measures to combat corruption;
 - xxxi) Clause 112(2)- which limits the provisions of the *Prevention of Money Laundering 10 Act, No. 5 of 2006* only for the proceedings but not investigations under the Bill;

- xxxii) Clause 119- which purports to penalize speech acts not inciting violence, contrary to the purported protections in Clause 73 including 73(1) and disproportionate to 73(4);
- xxxiii) Clause 120- which penalizes contravening the secrecy provisions in the Bill. Such ignores any public interest justification, whilst also appearing disproportionate vis-à-vis other penal provisions such as Clause 125(1) which relates to obstruction of justice;
- xxxiv) Clause 127(1)(m) which makes it an offence to divulge the fact that a report has been made or any information has been provided to the Commission;
- xxxv) Clause 149- which limits bail to exceptional circumstances;
- xxxvi) Clause 161- which provides for the provisions of this Act to prevail over other law including the *Right to Information Act*;
- xxxvii) Clause 163(2)(d)- which deals with repeals, savings and transitional provisions and purports to exclude any inquiries/investigations already commenced under the existing law.

9. The Petitioners state that several provisions of the Bill, *inter alia*;
- a) Have the effect of restricting the salutary provisions of the *Right to Information Act No.12 of 2016* which makes provision for the citizens of Sri Lanka to exercise their fundamental right of access to information under *Article 14A* of the Constitution [*vide* for example clause 28(3), 161 etc];
 - b) Have no rational nexus between the stated objects of the Bill and the restrictions that are imposed [*vide* for example clause 28(3), 44 etc.];
 - c) Are vague, constitutionally overbroad, are lacking in clarity or adequately guidelines, and/or are inconsistent with principles of transparency and accountability [*vide* for example clause 30(2), 44, 48(3), 149 etc.];
 - d) Are disproportionate and/or have a chilling effect on various rights including concepts of transparency and accountability such as “fire alarm” oversight

mechanisms to prevent corruption; [*vide* for example *clause 119, 127(1)(m)* etc.];

e) Are discriminatory and/or unreasonable [*vide* for example *clause 149 etc.*]

f) Impinge on the judicial power of the People [*vide* for example *clause 53*]

10. The Petitioners therefore state that the Bill fails to adhere to the requirements of *Article 15* of the Constitution in imposing restrictions, as *inter alia*, certain provisions as set out above, and will be enumerated by way of Counsel at the appropriate stage do not reach the requisite standard of being "by law" [i.e., suffers from lack of clarity, vagueness, overbreadth etc.], or seek to achieve a legitimate aim in a manner that is proportionate and necessary in a democratic society.

11. The Petitioners specifically reserve their right to make submissions by way of Counsel contesting the constitutionality of any other clause of the Bill with any other Articles of the Constitution at an appropriate stage.

12. The Petitioners state that in the circumstances hereinbefore morefully enumerated, the clauses in the Bill referred to above, infringe the fundamental rights of the People, and thus and otherwise contravene *Article 3* read with *Article 4* and cannot become Law, unless passed by two-thirds of the whole number of members in Parliament and approved by the People at a referendum as required by *Article 83* of the Constitution read with *Article 80*.

13. The Petitioners state they have taken steps to furnish a copy of this Petition to the Honourable Speaker of Parliament in compliance with *Article 121(1)* of the Constitution.

Annexed herewith marked P4 is proof of such delivery.

14. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
15. The Petitioners state that in the aforesaid circumstances they are entitled to invoke the jurisdiction of Your Lordships' Court for the reliefs prayed for herein.
16. The Petitioners respectfully reserve their right to furnish such further facts and documents in support of the matters set out herein at the hearing of this Application should the Petitioners become possessed of any such material.
17. An affidavit of the 2nd Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioners pray that Your Lordships' Court be pleased to:

(a) Hear the Petitioners;

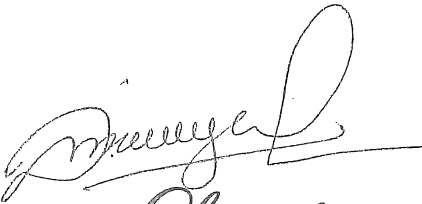
(b) Declare/Determine, that the proposed *Clauses 28(3), 29(1), 30(2), 41, 42(11), 43(3), 48(3), 51, 52(2), 53(1), 57, 62(1), 67, 68, 70, 71, 75(4), 80(1)(m), 81(2), 82(2), 88(1), 88(2), 89, 90, 92, 93, 101, 106(2), 112(2), 119, 120, 127(1)(m), 149, 161, and 163(2)(d)* as set out in the Bill titled "Anti-Corruption" are inconsistent with *Article 1, 3, 4, 12, 13, 14(1)(a) 14A, 126 & 140* of the Constitution;

(c) Declare/Determine that the proposed *Clauses 28(3), 29(1), 30(2), 31(4)(b), 41, 42(11), 43(3), 48(3), 51, 52(2), 53(1), 57, 62(1), 67, 68, 70, 71, 75(4), 80(1)(m), 81(2), 82(2), 88(1), 88(2), 89, 90, 92, 93, 101, 106(2), 112(2), 119, 120, 127(1)(m), 149, 161, and 163(2)(d)* as set out in the Bill titled "Anti-Corruption" require the following of the appropriate procedure laid down in Articles 83 as read with Article 80 of the Constitution for enactment into law, and cannot be enacted into law except unless approved by the People at a Referendum in

addition to a two-thirds vote of the whole number of the members of Parliament in favour;

(d) Communicate the determination(s) made above to the Honourable Speaker of Parliament; and

(e) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.


Attorney-at-Law for the Petitioners

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