

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

In the matter of an application under and in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Transparency International Sri Lanka (Guarantee) Ltd.

No. 366, Nawala Road,
Nawala – Rajagiriya.

SC (FR) Application No. 22/2025

2. Pulasthi Hewamanna

Chairperson,
Transparency International Sri Lanka (Guarantee) Ltd.,
No. 366, Nawala Road,
Nawala – Rajagiriya.

Petitioners

v.

1. Sudharma Karunarathna,

Chairperson,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.

2. W. Ivan Tissera,

Member,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.

3. D. A. P. S. Daranagama,

Member,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.

4. **S. Sumanthiran,**
Member,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.
5. **A. G. P. A. Gunawansa, P.C.**
Member,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.
6. **D. C. Siribaddana**
Secretary General,
National Procurement Commission,
No.44(B90),
R.G. Senanayake Mawatha,
Colombo 07.
7. **Hon. Attorney General**
Attorney General's Department,
Hulftsdorp, Colombo 12.

Respondents

On this 31st day of January 2025

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The **Petition** of the Petitioners above-named appearing by their Registered Attorney-at-Law Thushari Jayawardena states as follows:

THE PETITIONERS

1. The **1st Petitioner** is a body incorporated under the laws of Sri Lanka (and duly re-registered under the Companies Act No. 07 of 2007) and is made up of members, more than three-fourths (3/4) of whom are citizens of Sri Lanka.
2. The 1st Petitioner is *inter alia* part of a leading global movement against corruption, where it raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle corruption.

True copies of the Certificate of Incorporation and Articles of Association of the Petitioner are annexed hereto marked 'P1' and 'P2' respectively and pleaded as part and parcel hereof.

3. The **2nd Petitioner** is a citizen of Sri Lanka, the Chairperson of the 1st Petitioner and an Attorney-at-Law of Your Lordships' Court, engaged in active practice since 2008. He has appeared as counsel *inter alia* in numerous cases for the protection and promotion of the public interest, including matters pertaining to elimination of corruption.
4. The Petitioners make this Application:
 - a. in the public interest, with the objective of safeguarding the rights and interests of the People of Sri Lanka and securing due respect, regard for and adherence to the Rule of Law, the Constitution, which is the supreme law of the land; and
 - b. with a view to protecting the fundamental rights required to be respected, secured and advanced against any imminent infringement of fundamental rights of the citizens of Sri Lanka in view of the Procurement Guidelines 2024 and the Procurement Manual 2024 formulated and published by the National Procurement Commission as more fully set out hereinafter.

THE RESPONDENTS

5. The Petitioners state that the 1st Respondent is the Chairperson of the National Procurement Commission of Sri Lanka and that the 2nd – 5th Respondents are the members of the National Procurement Commission.
6. The 6th Respondent is the Secretary General of the National Procurement Commission and is only made a party for the purpose of notice, in view of the instant Fundamental Rights Application being preferred against the National Procurement Commission.
7. The 7th Respondent is the Hon. Attorney General who is made a Respondent to this application as required by law, in terms of the contemplation and requirements of Rule 44(1)(b) of the Supreme Court Rules read with Article 126(2) and Article 134(1) of the Constitution.

THE IMPORTANCE OF STRONG PROCUREMENT GUIDELINES AND PREJUDICE TO THE PEOPLE BY PERMITTING UNSOLICITED PROPOSALS WITH LAX REGULATIONS

8. The Petitioners state that:

- a. The establishment of robust procurement guidelines is crucial for a country aiming to combat corruption, as they provide a clear and transparent framework for the acquisition of goods and services by government entities;
- b. In the absence of such guidelines, procurement processes tend to become opaque, creating opportunities for corrupt activities such as bribery, kickbacks, and favouritism. By standardizing and publicly disseminating procurement procedures, the potential for exploitation is minimized, as individuals are required to adhere to clearly defined rules and maintain an accountable paper trail which could be monitored. This transparency serves as a deterrent to those who might otherwise seek to manipulate or circumvent the process for collateral purposes;
- c. Moreover, comprehensive procurement guidelines ensure that government resources are utilized efficiently and effectively. A well-structured and transparent procurement process facilitates the objective evaluation of bids and contracts based on merit rather than personal interests, resulting in better value for public funds, and in the absence of strong procurement rules, the lack of accountability entails undue risk of substandard services, inflated contract prices, and the misallocation of taxpayer resources, which undermines public trust in government institutions and jeopardizes the integrity of the procurement process;
- d. A significant advantage of strong and efficient procurement guidelines is their contribution to fostering public trust. When citizens are able to perceive procurement processes as fair and transparent, they are more likely to have confidence in the actions of their government; and
- e. The lack of strong and efficient procurement guidelines would necessarily result in a propensity or likelihood to encourage or permit the infringement and/or violation of fundamental rights of the citizens of Sri Lanka.

9. The Petitioners further state that:

- a. Unsolicited proposals tend to undermine transparency in the procurement process. Since these proposals are submitted without a formal published public request, they often bypass established procedures that ensure fair competition;

- b. The resultant lack of transparency creates opportunities for favouritism or bias, where certain individuals or companies may have an advantage in securing contracts without being subject to the same scrutiny as proposals that are submitted in response to official solicitations;
- c. Unsolicited proposals lead to inefficient use of resources;
- d. When a proposal is submitted without the government's prior identification of needs, there is a risk that it may not align with the country's actual requirements or priorities. This can result in unnecessary spending on projects or services that were not originally planned for, thereby diverting limited and/or scarce resources from more urgent or necessary initiatives;
- e. Unsolicited proposals may also limit competition, as they are typically directed at specific government officials or departments rather than being open to the broader market. This reduced competition can lead to higher costs and lower quality in the final product or service. By virtue of bypassing the competitive bidding process, governments miss the opportunity to evaluate a wide range of options and select the best offer available;
- f. Unsolicited proposals increase the potential for corruption. Without the checks and balances that come with a formal, competitive procurement process, there is an elevated risk of bribes, kickbacks, or other unethical practices influencing the awarding of contracts. This can result in the selection of companies that offer personal benefits to officials, rather than those that are most qualified or offer the best value for public money;
- g. The use of unsolicited proposals tend to erode public trust in government processes. When contracts are awarded through unsolicited proposals, citizens may perceive the process as being secretive or unfair. This perception of favouritism and lack of accountability can lead to dissatisfaction with government operations and a general sense of mistrust in public institutions.

*A true copy of a document titled 'Transparency, accountability and integrity of public procurement systems' by Transparency International published on 15th February 2024 is annexed hereto marked '**P3**' and pleaded as part and parcel hereof.*

*(The said document marked '**P3**' is available at:*

https://knowledgehub.transparency.org/assets/uploads/helpdesk/Transparency-accountability-and-integrity-of-public-procurement-systems_2024-English-Version.pdf)

*A copy of the publication titled 'Benefits and Pitfalls of Unsolicited Proposals' published by the World Bank is annexed hereto marked as '**P4**' and pleaded as part and parcel hereof.*

*(The said document marked '**P4**' is available at:*

<https://ppp.worldbank.org/public-private-partnership/applicable-all-sectors/benefits-and-pitfalls-unsolicited-proposals>)

*A copy of the Document titled 'Unsolicited Proposals: Why, Why not, Under what conditions' published by the World Bank is annexed hereto marked as '**P5**' and pleaded as part and parcel hereof.*

*(The said document marked '**P5**' is available at:*

https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/2022-03/InfraFinance-Quick-Read_USPs_FINAL_v3.pdf)

THE SRI LANKAN CONTEXT

10. The Petitioners state in Sri Lanka, unsolicited proposals have frequently led to significant concerns regarding transparency and accountability in public procurement.

11. The Petitioners state prominent examples of such unsolicited proposals include but are not limited to:

- a. **The Hambantota Port Development Project** - where a Chinese company, China Merchants Port Holdings, proposed to develop the port, which eventually led to a deal under a long-term lease agreement. The deal was criticized for lacking competitive bidding and transparency. There were concerns about the lack of due process, and the terms of the agreement were seen by some as unfavourable to Sri Lanka, leading to an outcry over potential corruption and inefficiency;
- b. **Adani Group - Wind Farm Project** - a proposed energy project in the Mannar district of Sri Lanka raised concerns, particularly around the lack of transparency in the awarding of contracts and the absence of clear competition. The project was negotiated directly with the Sri Lankan government without inviting competitive bids, thus depriving other potential companies from participating in the process. This practice undermines the principle of fair competition, which is crucial to achieving the best value for public money;
- c. **VFS Global's Outsourcing of Visa Application Services** - VFS Global, which provides visa application outsourcing services, was awarded contracts in Sri Lanka without undergoing a competitive bidding process. This raised concerns about whether the best-suited service provider was selected and whether the terms of the agreement were favourable to the Sri Lankan government. The absence of an open tender process created an opportunity for favouritism, where

a specific company could have been awarded the contract without proper evaluation of other potential vendors;

- d. Procurement of 750,000 Machine Readable Passports** - where the Department of Immigration and Emigration procured 750,000 Machine Readable Passports from Thales DIY Finland OY and Just In Time Technologies (Pvt) Ltd without resorting to an open competitive bidding process for same, which ultimately resulted in widespread criticisms with regard to the quality of the passport provided, the several typographical errors, lack of security features and the higher cost per passport considering the reduced number of pages;
- e. Colombo Port City Project** - the project was initiated as an unsolicited proposal by a Chinese company named China Communications Construction Company and the development of it raised issues regarding transparency and whether the project aligned with national priorities. There was concern about the lack of open bidding processes and whether proper environmental and social impact assessments were conducted.

*Copies of several newspaper articles highlighting concerns with regard to unsolicited proposals are annexed hereto, marked '**P6(a)**' to '**P6(g)**', and pleaded part and parcel hereof, and are as follows:*

'P6(a)' – A copy of the Sunday Times newspaper article titled 'Unsolicited projects open highway to corruption' dated 16.03.2014

'P6(b)' – A copy of 'The Secret History of Hambantota' published by Jonathan E. Hillman on 26.08.2021 available at <http://reconasia.csis.org/the-secret-history-of-hambantota/>

'P6(c)' – A copy of the Morning newspaper article titled 'Governance assessment: Unsolicited bids still making a play' dated 02.06.2024

'P6(d)' – A copy of Economy Next article titled 'Controversy erupts over pricing on unsolicited Adani wind power project' dated 06.06.2022

'P6(e)' – A copy of DailyFT newspaper article titled 'How transparency and competitive bidding could have averted VFS visa fiasco' dated 30.05.2024

'P6(f)' – A copy of Daily Mirror newspaper article titled 'Court suspends Cabinet approval of controversial passport deal' dated 26.09.2024

'P6(g)' – A copy of the Morning newspaper article titled 'New 'P' series passports: Fresh concerns amid ongoing legal challenges?' dated 27.10.2024

13. The Petitioners state that the Corruption Perceptions Index (CPI) is the most widely used global corruption ranking in the world and that it measures the level of corruption in the public sector of each country on a scale of 0-100, where 0 indicates ‘highly corrupt’ and 100 means ‘very clean’ and that Sri Lanka has dropped two places to be ranked 115 in the latest Corruption Perceptions Index (CPI) for the year 2023 which is the lowest ranking within the past five years in comparison to 93 in 2019, 94 in 2020, 102 in 2021 and 101 in 2022 showing a decline in the ranking. As per the index released by Transparency International, out of 180 countries, Sri Lanka has obtained a score of 34/100 in 2023. Sri Lanka has been ranked 115 alongside Ecuador, Indonesia, Malawi, the Philippines, and Turkey.
14. The Petitioners state that the Report of the Governance Diagnostic Assessment of Sri Lanka, was conducted by the Sri Lankan government with technical assistance from the International Monetary Fund (IMF). The Petitioners further state that the said report identifies multiple avenues through which officials influence public and private actions, often lacking transparency, especially in public procurement and policy implementation.
15. The Petitioners further state that in 2016, Advocata Institute released the 'State of State-Owned Enterprises' report, which highlighted the significant losses incurred by Sri Lankan state-owned enterprises (SOEs). This report was notable for being one of the few publications to focus on SOE losses. The second report on SOEs goes beyond simply identifying these entities as loss-making; it examines the underlying reasons for persistent losses and how SOEs are exploited for political or individual gain.

Several documents of Transparency International, International Monetary Fund (IMF) and the Advocata Institute that are published online at the following respective links are respectively annexed hereto, marked and pleaded part and parcel hereof, as:

‘P7’ - *Assessment of Corruptions Perceptions Index by Transparency International*
- <https://www.transparency.org/en/cpi/2023/index/lka>

‘P8’ - *The Report of Governance Diagnostic Assessment of Sri Lanka* -
<https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

‘P8(a)’ - *The Report of The State of State-Owned Enterprises Sri Lanka published by Advocata Institute.* - <https://www.advocata.org/state-enterprise-srilanka>

16. The Petitioners state that as more fully averred hereinabove, Sri Lanka’s history of awarding unsolicited proposals highlights a significant lack of open and transparent bidding process.

17. The Petitioners state that Sri Lanka's low ranking on the Corruption Perceptions Index (ranked 115th out of 180 countries in the most recent assessment in 2023 – falling by two positions from 113 in 2022) underscores the urgent need for strong procurement guidelines to prevent corrupt activities as comprehensive procurement guidelines aligned with international standards and best practices that can establish effective and adequate safeguards such as mandatory compliance reviews to prevent corruption.

CONCERNS AND CHALLENGES ARISING FROM THE RECENT PROCUREMENT GUIDELINES AND PROCUREMENT MANUAL

18. The Petitioners state The Procurement Guidelines 2024, formulated by the 1st-5th Respondents (the National Procurement Commission) for the procurement of goods, works, and non-consultative services by Government institutions and related matters, were published by Extraordinary Gazette Notification No. 2412/01 dated 25th November 2024.

The said Extraordinary Gazette Notification No. 2412/01 dated 25th November 2024 is annexed hereto marked as 'P9' and plead the same as part and parcel hereof.

19. The Petitioners state the accompanying Procurement Manual 2024 was published on the website of the National Procurement Commission only subsequently, on or about 1st January 2025.

The Procurement Manual 2024 published on or about 1st January 2025 is annexed hereto marked as 'P10' and pleaded as part and parcel hereof.

A screen capture of the website of the National Procurement Commission is annexed as 'P10(a)' and pleaded part and parcel hereof.

20. The Petitioners state that both the Procurement Guidelines 2024 and the corresponding Procurement Manual were required, in order to assess and evaluate the impact and/or implications of both, in as much as the Procurement Guidelines could not be properly assessed without reference and resort to the corresponding Manual published only on or about 1st January 2025.

21. The Petitioners state upon perusal of the said Procurement Guidelines 2024 and the Procurement Manual published on or about 1st January 2025, it is evident that although a number of significant changes have been introduced, several critical issues remain unaddressed, which could in effect lead to an imminent infringement of the fundamental rights of the People of Sri Lanka, inasmuch as *inter alia*:

- a. it would be tantamount to permitting certain actions of the State, especially with regard to unsolicited proposals, go without adequate timely check, which would

have a direct adverse impact on the effective and transparent management of public finance; and

- b. it enables negation of due practical application of the principle of 'level playing field' which directly infringes the right to equality before the law and/or equal protection of the law, a fundamental right recognised and guaranteed by Article 12(1) of the Constitution.
22. The Petitioners state the said Procurement Guidelines and the Procurement Manual are intended to serve as a comprehensive framework governing all aspects of procurement, both within and beyond the immediate scope of government institutions. However, the identified gaps and unresolved issues undermine the objectives of transparency, accountability and fairness in the procurement process, thereby giving rise to serious apprehensions regarding their efficacy and adequacy.
23. The Petitioners further state that:
- a. The Procurement Guidelines fail to stipulate a clear, regularized process or adequate accountability measures for handling unsolicited proposals, creating significant risks of misuse and inefficiency;
 - b. The inclusion of the term "Project Proposal", which falls outside the definition of bids or proposals as outlined in the guidelines, creates opportunity for unsolicited proposals to bypass formal invitation-based procurement procedures;
 - c. The guidelines allow deviations from competitive procedures in "extremely urgent and exceptional circumstances," provided Cabinet approval is obtained. This clause lacks strict definitions or oversight, creating a loophole for bypassing public advertising and open bidding;
 - d. The criterion under Direct Contracting that allows procurement "where the price is reasonable and no price benefit can be gained from competition" is vague and open to manipulation. The lack of a clear definition for "reasonable" creates opportunities for officials to avoid competitive bidding without proper justification, potentially leading to inflated or unjustifiable prices;
 - e. The provision allowing Direct Contracting "when there is no other option even after considering advantages of substitute products or sources" is subjective and open to abuse. Officials could manipulate this clause to justify avoiding alternative suppliers, thereby steering procurement toward specific vendors with whom they may have vested interests;
 - f. The clause permitting Direct Contracting in "exceptional cases, such as in response to natural disasters," is excessively broad and lacks precise definitions.

This ambiguity can lead to abuse, allowing officials to bypass competitive processes under almost any circumstances. Disaster relief efforts often involve significant funds, and the urgency of such situations can be exploited to divert resources toward personal or politically connected parties, with limited scrutiny;

- g. The definition of "properties" in emergency procurement provisions is ambiguous. While public properties are covered under "public assets," the broader term "properties" could extend to private assets, creating uncertainty and potential misuse in determining what qualifies under emergency procurement;
- h. The Manual grants complete discretion to Procuring Entities (PEs) to determine the "manufacturer or reputed local agents" for first preference in emergency procurement without clear criteria. This lack of guidance creates a high risk of favouritism, arbitrary selection, and potential corruption, undermining the principles of fairness and competitiveness;
- i. Emergency procurement processes lack a mandated, stepwise progression to ensure controls are maintained. Procuring Entities are allowed to arbitrarily select options without being required to justify or document why competitive bidding or prior agreements with pre-qualified suppliers are not feasible;
- j. The guidelines lack clear provisions requiring Ministers to issue written instructions, enabling verbal directives to evade accountability and circumvent responsibilities. This loophole creates opportunities for misuse of power, lack of transparency, and avoidance of oversight in procurement decisions;
- k. There are no mandatory provisions requiring Procuring Entities to publish all contract award details on a centralized platform. Without such oversight mechanisms or sanctions for non-compliance, Procuring Entities can easily evade their duty to disclose procurement decisions, undermining transparency and accountability;
- l. The absence of provisions for monitoring compliance or imposing sanctions for violations, such as failing to publish contract details or adhering to specification restrictions, weakens accountability in the procurement process. This lack of enforcement creates an environment where rules can be ignored without consequences, allowing corruption and inefficiency to persist;
- m. The Procurement Guidelines 2024 raise the minimum threshold for mandatory publication of contract award details from LKR 250 million (as stipulated in the 2006 Guidelines) to LKR 750 million. This significant increase limits the disclosure of details for a majority of public procurement contracts, undermining transparency and reducing opportunities for public scrutiny;

- n. By raising the threshold for publication to LKR 750 million, contracts of smaller or medium-scale value, which still involve significant public funds, are excluded from mandatory disclosure. This lack of transparency opens opportunities for favouritism, inefficiencies, and potential misuse of public resources; and
 - o. The guidelines fail to stipulate mandatory use of a centralized electronic procurement (e-GP) system, which is a global best practice for promoting transparency and accountability. A comprehensive e-GP system would ensure that all stages of public procurement, including contract award details, are accessible and trackable in real time, reducing opportunities for corruption and inefficiency.
24. The Petitioners state, as averred hereinabove, that it is clear that the Procurement Guidelines 2024 and the corresponding Procurement Manual published on or about 1st January 2025 have not adequately addressed certain major issues, especially in relation to the regulation of unsolicited proposals, leaving a significant gap in the regulatory framework which creates a propensity or likelihood to encourage or permit the infringement and/or violation of fundamental rights of the People of Sri Lanka.
25. The Petitioners state that in addition to the aforementioned gaps, the current omissions within the Procurement Guidelines 2024 and the corresponding Procurement Manual published on or about 1st January 2025 have also created ample opportunity for the mismanagement and misuse of public finance. This failure to address key issues, particularly with regard to unsolicited proposals, has led to vulnerabilities in the procurement process, which could potentially be exploited to undermine the principles of fairness, accountability, and transparency which would ultimately result in the violation of the fundamental rights to be treated equal before the law and to engage in lawful occupation, profession, trade or business.
26. The Petitioners further state that:
- a. A lack of clear, transparent, and standardized procurement processes can lead to discriminatory practices, where certain individuals or entities may be unfairly favoured or excluded from opportunities;
 - b. The lack of transparency in the procurement process undermines citizens' ability to effectively hold the government accountable, denying them due and timely access to public information;
 - c. The absence of clear and equitable procurement frameworks could harm businesses, especially smaller enterprises, by leaving them vulnerable to unfair competition, favouritism, and corrupt practices;

- d. Improper or inadequate procurement guidelines increase the likelihood of corruption, which could lead to the misuse of public funds;
- e. Without a comprehensive procurement framework, the government may be less accountable for how public funds are spent, leading to a lack of responsibility for improper decisions or actions; and
- f. A deficient procurement process can undermine the fairness and transparency of public administration, making it more difficult for citizens to trust that public resources are being managed impartially and efficiently. This lack of clarity in procurement processes can lead to unchecked executive discretion and arbitrary decision-making.

INTERNATIONAL APPROACHES TO PROCUREMENT GUIDELINES ADDRESSING UNSOLICITED PROPOSALS

- 27. The Petitioners state that several countries and international organizations have developed more extensive criteria to more adequately ensure due transparency and minimise corruption risks when entering into unsolicited proposals.
- 28. The Petitioners state that best practices demonstrate how governments can maximize private-public partnerships by contracting innovative, large-scale, or expensive projects without sacrificing accountability, transparency, or allowing the project to devolve into a nepotistic patronage endeavour.

*A copy of the Procurement Guidelines published by the Asian Development Bank (ADB) is annexed hereto marked as '**P11**' and pleaded part and parcel hereof.*

*(The said Procurement Guidelines published by the Asian Development Bank (ADB) marked '**P11**' have been published and are available online at:*
<https://www.adb.org/sites/default/files/procurement-guidelines-april-2015.pdf>)

*A copy of documents titled "Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects - Volume I, Volume II and Volume III" published by the World Bank are compendiously annexed hereto marked as '**P12**' and pleaded part and parcel hereof.*

*A copy of the document titled PPP Cycle Module 3 published by the World Bank is annexed hereto marked as '**P13**' and pleaded part and parcel hereof.*

*(The said document titled PPP Cycle Module 3 published by the World Bank marked '**P13**' is published and available online at:*
<https://ppp.worldbank.org/public-private-partnership/sites/default/files/2021-08/PPP%20Reference%20Guide%20Version%203%20-%20PPP%20Cycle.pdf>)

*A copy of the document titled “Unsolicited Proposals in Infrastructure Procurement: A growing reality for governments, requiring robust management frameworks” published by the International Institute for Sustainable Development is annexed hereto marked as ‘**P14**’ and pleaded part and parcel hereof.*

*A copy of the document titled “Treating with unsolicited proposals” published by the Office of Procurement Regulation, Trinidad and Tobago is annexed hereto marked as ‘**P15**’ and pleaded part and parcel hereof.*

*A copy of the Procurement Rules and Regulations 2023 of Bhutan, a fellow South Asian country with a Corruption Perception Index score of 68 and ranked 26, is annexed hereto marked as ‘**P16**’ and pleaded part and parcel hereof.*

*A copy of the National Treasury Practice Note No. 11 of 2008/2009 of the Republic of South Africa is annexed hereto marked as ‘**P17**’ and pleaded part and parcel hereof.*

IMMINENT INFRINGEMENT OF FUNDAMENTAL RIGHTS OF THE PEOPLE OF SRI LANKA AND/OR PROPENSITY OR LIKELIHOOD TO FACILITATE AND/OR ACCOMMODATE INFRINGEMENT OF FUNDAMENTAL RIGHTS

29. The Petitioners state that in the circumstances more fully described hereinabove, whereas certain other countries and international organizations have afforded due protection and/or set out the way in which due protection could be afforded where unsolicited proposals are concerned, the failure to do so in formulating the Procurement Guidelines 2024 and the Procurement Manual published on or about 1st January 2025, constitutes and/or entails imminent infringement of the fundamental rights enshrined under **Article 12(1)** of the Constitution of Sri Lanka.
30. The Petitioner further states that the failure to introduce mechanisms to duly safeguard and regulate the procedure and the manner in which unsolicited proposals are permitted constitutes and/or entails imminent infringement of the fundamental rights enshrined under **Article 14(1)(g)** of the Constitution inasmuch there exists a propensity or likelihood to encourage the infringement of the fundamental right of the citizens of Sri Lanka to engage in lawful occupation, profession, trade, business or enterprise.
31. In the circumstances, the Petitioners state that the Petitioners invoke the jurisdiction of Your Lordships’ Court in the public interest and further state that:
- a. the Petitioners are entitled to obtain the relief sought hereinbelow; and
 - b. the People of Sri Lanka at large would be adversely affected and gravely prejudiced unless the reliefs sought hereby are granted.

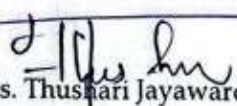
32. The Petitioners state that unless the relief sought through this application are granted expeditiously, there is a real danger of further imminent harm and prejudice to the People of Sri Lanka, in a manner that entails infringement of fundamental rights as set out herein.
33. The Petitioners respectfully reserve the right to amend this Petition and/or add further parties and/or adduce further material in the event it becomes necessary and/or expedient to do so, depending on the disclosures emanating from the pleadings and/or submissions made on behalf of the Respondents.
34. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
35. The Petitioners annex hereto an Affidavit of the 2nd Petitioner, Chairperson of the 1st Petitioner, in support of the averments set out herein and further state that the 2nd Petitioner is duly authorised by the 1st Petitioner to affirm to the same on behalf of the 1st Petitioner as well.

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

- a) Grant Leave to Proceed with this Application in the first instance;
- b) Declare that the failure to duly provide for safeguards pertaining to unsolicited proposals in the Procurement Guidelines 2024 and the Procurement Manual (marked '**P9**' and '**P10**' respectively), constitute and/or entail infringement of **Article 12(1)** and/or **Article 14(1)(g)** of the Constitution;
- c) Declare that the Fundamental Rights of the Petitioners and the People of Sri Lanka guaranteed under and in terms of **Article 12(1)** of the Constitution have been infringed and/or continue to be infringed by the 1st – 5th Respondents and/or the State and/or that such infringement is imminent on account of the actions and/or inactions of the 1st – 5th Respondents;
- d) Declare that the Fundamental Rights of the Petitioners and the People of Sri Lanka guaranteed under and in terms of **Article 14(1)(g)** of the Constitution have been infringed and/or continue to be infringed by the 1st – 5th Respondents and/or the State and/or that such infringement is imminent on account of the actions and/or inactions of the 1st – 5th Respondents;
- e) Direct the 1st to 5th Respondents and/or the State to take steps within a determinate timeline to promulgate forthwith, guidelines for provision of effective due safeguards pertaining to unsolicited proposals;
- f) Grant the Petitioners compensation in such sum as Your Lordships' Court shall deem meet;

g) Grant Costs; and

h) Grant such further and other relief as Your Lordships' Court may deem meet.


Mrs. Thushari Jayawardena,
Attorney-at-Law

Registered Attorney-at-Law for the Petitioners

Settled by:

Ms. Shermine Bangsajayah
Mr. Pramod Perera
Attorneys-at-Law

Mr. Viran Corea
President's Counsel


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