

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

In the matter of an Application in terms of Article 121, read with the other relevant and applicable Articles of the Constitution in relation to the enactment of laws, for a determination, as to whether the Bill titled: "Inland Revenue (Special Provisions) (Amendment) - a BILL to Amend the Inland Revenue (Special Provisions) Act No. 10 of 2003" or any part thereof is inconsistent with and ultra-vires the Constitution and outside the limited legislative power conferred by the People to be exercised in trust by Parliament, in terms of the Constitution.

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

PETITIONER

SC/SD No. 20/2003

Vs.

K.C. Kamalabayson, P.C.
Hon. Attorney General
Attorneys General's Department,
Colombo 12.

RESPONDENT

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

On this 29th day of July 2003

The **Petition** of the Petitioner above-named appearing by Razmara Abdeen practising under the name, style and firm of **ABDEEN ASSOCIATES**, and his Assistants, Amarasinghe Priyantha Upali Amarasinghe, Leelan Indith Weerasooriya, Bushra Muheesa Hashim and Manjula Pasquel, his Registered Attorneys-at-Law, states as follows:

1. The Petitioner

- a) is a citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as "**Sri Lanka**")
- b) is a Fellow Member of the Institute of Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of UK
- c) is practising as a Consultant, having functioned as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government of Sri Lanka, and as an Advisor to the Ministry of Finance.
- d) is presenting this Petition, as advised, on his behalf and on behalf of the general public of Sri Lanka, in the national and public interest, in respect of the Bill titled "**Inland Revenue (Special Provisions) (Amendment) - a BILL to Amend the Inland Revenue (Special Provisions) Act No. 10 of 2003**" (hereinafter referred to as the "**Amendment Bill**"), contained in the Government Gazette issued on 14.7.2003 and placed on the Order Paper of Parliament on **25.7.2003**.

*True copies of the aforesaid **Amendment Bill** contained in the Government Gazette issued on 14.7.2003 and the relevant pages of the Order Paper of Parliament of 25.7.2003 and, the **purported** Inland Revenue (Special Provisions) Act No. 10 of 2003, both English and Sinhala copies thereof are annexed hereto marked ("**X1(a)**", ("**X1(b)**", ("**X2(a)**") and ("**X2(b)**"), respectively, and pleaded as part and parcel hereof.*

2. The Petitioner, as advised, states that

a) **Article 3** of the Constitution is an entrenched provision dealing with the **Sovereignty of the People** and reads thus -

"3 In the Republic of Sri Lanka Sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise"

b) In **Article 4** of the Constitution is enshrined that the **Sovereignty of the People** shall be exercised and enjoyed in the following manner;

(a) the **legislative power of the People** shall be exercised by Parliament **and by the People at a Referendum**

(b) the **executive power of the People** shall be exercised by the President of the Republic.

(c) the **judicial power of the People** shall be exercised by Parliament, through Courts, Tribunals and Institutions created and established, etc.

(d) the **fundamental rights**, which are by the Constitution declared and recognised shall be respected, secured and advanced by all organs of the Government, **and shall not be abridged, restricted or denied**, save in the manner provided in the Constitution.

(e) the **franchise** shall be exercisable at the election of the President of the Republic and of the Members of the Parliament, and at every Referendum by every citizen, etc.

c) **Thus, it is patently clear from 2 b) (a) above, that the People have conferred only a limited legislative power to be exercised in trust by Parliament to enact laws, whilst the People reserving unto themselves the right of they, themselves, approving at a Referendum the enactment of certain other laws, in terms of Article 3, read with Article 4(a) of the Constitution.**

d) **Therefore, even if Parliament unanimously votes to enact the provisions of a Bill, wherein the executive powers of the President of the Republic enshrined in the Constitution are restricted and/or removed and/or usurped and/or alienated and the Speaker certifies the passage of such a Bill, it is respectfully submitted, that the said provisions of such Bill do not become law, inasmuch as Parliament has acted outside the limited legislative power conferred upon it in trust, as aforesaid.**

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19th Amendment to the Constitution", Your Lordships, *inter-alia*, determined that:

"This specific reference to the power of the People in each sub paragraph which relates to the three organs of government demonstrates that the power remains and continues to be reposed in the People who are sovereign, and its exercised by the particular organ of government being its custodian for the time being, is for the People.

Therefore the statement in Article 3 that sovereignty is in the People and is "inalienable", being an essential element which pertains to the sovereignty of the People should necessarily be read into each of the sub paragraphs in Article 4. The relevant sub paragraphs would then read as follows:

(a) the legislative power of the People *is inalienable* and shall be exercised by Parliament;

(b) the executive power of the People *is inalienable* and shall be exercised by the President; and

(c) The judicial power of the People *is inalienable* and shall be exercised by Parliament through Courts.

The meaning of the word "alienate," as a legal term, is to transfer anything from one who has it for the time being to another, or to relinquish or remove anything from where it already lies."

e) **However, it is respectfully pointed out as aforesaid that the legislative power of the People shall be exercised by Parliament and by the People at a Referendum**

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19th Amendment to the Constitution", Your Lordships, *inter-alia*, determined that:

" this amendment would amount to an alienation, relinquishment or removal of the legislative power of the People. The amendment as contained in Clause 3 (2) would then be inconsistent with Article 3 read with Article 4 (a) of the Constitution and require to be passed by the special majority provided in Article 84 (2) and approved by the People at a Referendum" (Emphasis added)

- f) **It has been determined by Your Lordships' Court that Article 3 of the Constitution is linked with Article 4 thereof and that they must be read together.**
- g) Accordingly, the **Sovereignty of the People**, including the fundamental rights and powers of Government as aforesaid **is inalienable.**

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19th Amendment to the Constitution", Your Lordships, *inter-alia*, determined that:

"provisions inconsistent with Article 3 read together with relevant provisions of Article 4 have to be passed by a special majority required under the provisions of Article 84(2) and approved by the people at a Referendum."

3. In terms of Article 75 of the Constitution, Parliament is **debarred** from making any law **suspending** the operation of the Constitution or any part thereof.

In the summary of the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19th Amendment to the Constitution", Your Lordships, *inter-alia*, determined that

"the effect of suspending the operation of a part of the Constitution cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution."

4. Under Article 34 of the Constitution **only** the President of Sri Lanka **has been conferred with Constitutional power to**
- **grant pardon,**
 - **grant any respite,**
 - **substitute a less severe form of punishment, or**
 - **remit the whole or any part of any punishment imposed or of any penalty or forfeiture due to the State**

and no other person, whomsoever.

In the unanimous Determination made by a 7-Member Bench of Your Lordships' Court in or about October 2002 in respect of the Bill titled "19th Amendment to the Constitution", Your Lordships, *inter-alia*, determined that

"(5) the transfer of a power which is attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution."

5. The Petitioner states that **as a citizen of Sri Lanka** he, as well as other citizens are entitled to,
- a) **equality before the law and to equal protection of the law in terms of Article 12 (1) of the Constitution.**
 - b) **the freedom of speech and expression in terms of Article 14(1) of the Constitution**
6. The Petitioner states that in terms of Article 28 of the Constitution, as a citizen of Sri Lanka, it is his **fundamental duty, inter-alia,**
- a) **to uphold and defend the Constitution and the law**
 - b) **to further the national interest**
 - c) **to work conscientiously in his chosen occupation**
 - d) **to preserve and protect public property, and to combat misuse and waste of public property**

7. Article 27 of the Constitution defining the **Directive Principles of State Policy and Fundamental Duties**,

- a) stipulates that **Directive Principles of State Policy** contained in the Constitution shall guide Parliament, the President and the Cabinet of Ministers **in the enactment of laws and the governance** of Sri Lanka for the establishment of a just and free society.
- b) stipulates that the State is pledged to establish in Sri Lanka a Democratic Socialist Society, the **Objectives** of which include
 - i) **the full realization of the fundamental rights and freedoms** of all persons;
 - ii) **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**;
 - iii) **the realization 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;
 - iv) the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity **towards social objectives and the public weal**;
 - v) **the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good**;
 - vi) the **establishment of a just social order** in which the means of production, distribution and exchange are not concentrated and centralised in the State, state agencies or **in the hands of a privileged few**, but are dispersed among, and owned by, all the People of Sri Lanka;
 - vii) **raising the moral and cultural standards of the People**, and ensuring the full development of human personality;
- c) **stipulates that the State shall eliminate economic and social privilege** and disparity, and **the exploitation of man by man** or by the State.
- d) stipulates that the State shall ensure that the operation of **the economic system does not result in the concentration of wealth and the means of production to the common detriment**.
- e) stipulates that the State shall ensure **social security and welfare**.
- f) stipulates that the **State shall endeavour to foster respect for international law and treaty obligations in dealings among nations**.

8. The Petitioner, as advised, respectfully states that,

- a) in terms of Article 121 (1) of the Constitution, any citizen is entitled to invoke the jurisdiction of Your Lordships' Court to seek determinations, as to the constitutionality and/or validity of the provisions of any Bill presented to Parliament, within one week of it being placed on the Order Paper of Parliament
- b) by the aforesaid **Amendment Bill ("X1(a)")**, the provisions of the aforesaid *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003, ("**X2(a)**")/ ("**X2(b)**") are sought to be incorporate by reference and enacted, and given life and effect to, to be operative and/or applicable as law after 30.6.2003 up to 15.8.2003.
- c) by Clauses 2 and 3 of the aforesaid **Amendment Bill ("X1(a)")** presented to Parliament on 25.7.2003, the Minister of Finance is seeking the approval of Parliament to incorporate by reference, and give life and effect to all the provisions in the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("**X2(a)**")/ ("**X2(b)**")", they being incorporated by reference into the said Amendment Bill "**X1(a)**", the questionable constitutionality, validity and effect of which said *purported* provisions (*which are under challenge and awaiting the Determination of Your Lordships' Court in the Petitioner's SC/SD Application No. 11/2003 referred to hereinbelow*) **had lapsed and/or extinguished on 30.6.2003**, and thus the said provisions which are already under challenge are of no force or avail in law by the effluxion of time, as had been stipulated in the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("**X2(a)**")/ ("**X2(b)**").

- import and/or export of items prohibited in the national or public interest
- Exchange Control violations detrimental to the national economy
- Money laundering in connection with narcotics, drug peddling, human trafficking *banned under international conventions/ treaties entered into by Sri Lanka*
- funds related to terrorism and terrorist activities, which funds are to be frozen and seized by the Government, in terms of Regulations Gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968 in terms of United Nations Resolution 1373 of 28.9.2001.

Also the above laws include,

- Turnover Tax Act,
- National Security Levy Act,
- Goods & Services Tax Act,
- Stamp Duty Act, and
- Betting & Gaming Levy Act,

which are not “income taxes”, but statutory revenue levies imposed on the public and those collected on behalf of the state by persons, who have no right or title, whatsoever or in anywise to retain such funds collected from the public, which are state property.

Though it is stated in the title of the said “Composite Bill” (“X3”), that it is “with a view to securing the future compliance with the prevalent tax laws”, there is no provision to secure and ensure compliance even with the income tax laws, let alone the other laws aforesaid, for which immunity is granted with impunity.

The provisions of this purported Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)/“X2(b)”) causes wrongful or unlawful immense losses to the government and confers wrongful or unlawful benefits, favours or advantages on wrong-doers and law breakers, who have committed fraud and crimes. Therefore, the causing of the passage of this Bill (“X1”) is in, itself, an offence of Corruption under Section 70 of the Bribery Act and those responsible therefor being liable to be punished with imprisonment for a term not exceeding 10-years.

Section 2

Declaration to be made to the Commissioner General before June 30, 2003.

Declaration to be exclusively and solely made to the Commissioner General of Inland Revenue (*or the authorised Commissioner*) and not to any other Authority enforcing any of the other laws Scheduled to the said “Composite Bill” (“X3”).

The declaration could made by any person in Sri Lanka or abroad, even by a foreigner, including *an international terrorist, a money launderer, or any fugitive from the law.*

The Commissioner General of Inland Revenue is debarred from ascertaining the correctness of any declaration.

Section 4 (2) specifically states that “tax specified by such person as being the amount of tax paid by him shall be accepted by the relevant authority”. (The word “tax” has to be understood in the context of its aforesaid perverse definition under Section 13)

Though Section 2 (1) refers to the imposition of “tax” relating to laws Scheduled to the said “Composite Bill” (“X3”),, such laws, nor the Authorities enforcing such laws, impose “taxes”, but they levy duties and impose fines and other penalties, and institute prosecutions for frauds, crimes and offences punishable with imprisonment; including the forfeiture of prohibited goods.

Also, Section 3 (1) grants full immunity from any investigation or prosecution for any offence under any of the aforesaid laws, *including the manner in which any assets were funded, or the sources of income or assets, or any matter related to or incidental thereto.*

The Commissioner General of Inland Revenue in terms of Section 2 (4) is thus simply compelled to give a mere acknowledgement in writing of a receipt of a declaration within 30-days thereof. **The contents of the declaration is unknown / undisclosed.**

There is no nexus and/or co-relationship between the value or volumes of items declared by a Declarant to the Commissioner General of Inland Revenue and any related transaction/s and/or offence/s and/or crime/s and/or fraud/s perpetrated under the other aforesaid laws Scheduled to said “**Composite Bill**” (“X3”), eg. *the nexus and co-relationship between a declaration of Rs. 1 Mn. to the Commissioner General of Inland Revenue and 10 different offences under Customs Ordinance and/or the Exchange Control Act attracting fines of Rs. 400 Mn ?*

The strict and absolute secrecy provisions as per Section 6 would prevent and debar the Commissioner General of Inland Revenue from even communicating the contents of any declaration to any one of the other statutory authorities enforcing the other laws Scheduled to said “**Composite Bill**” (“X3”).

Would not the above also mean that the Commissioner General of Inland Revenue would be debarred from even disclosing the contents of a Declaration of a Declarant even to the Assessor dealing with the Declarant’s Income Tax File, for the said Assessor to ensure correct future compliance by a Declarant ?

Such authorities also under Section 4 (2) are required to accept the “tax” (vide its perverse definition in Section 13) specified by the Declarant, regardless of the nexus / co-relationship with the Declarant’s declaration made to the Commissioner General of Inland Revenue.

Significantly, Section 4 (1) also stipulates that any investigation or prosecution “notwithstanding anything to the contrary in any other law” shall be withdrawn in respect of a Declarant.

Hence, the mere flaunting of the “acknowledgement in writing” from the Commissioner General of Inland Revenue “of a receipt of a declaration” by a Declarant affords him the unbelievable status of being above the Rule of Law, and law enforcement authorities being prevented to even question such Declarant, in relation to any other matter.

Pointedly, does this not afford a license to a person to declare a considerable value of “fictitious” movable assets (other than cash), but comprising stocks, debts receivable, etc., which are debarred from being verified (vide Section 3 (1) read with Section 4 (2)), and thereafter continue evade payment of income tax in the future years, on the basis that he finances himself, as well as any others, on such “fictitious” movable assets declared as at 31.3.2002 ?

Similarly, could not a person declare a huge loss as at 31.3.2002 as per his declaration, which is mandated to be accepted and continue to evade payment of income tax in the future years, carrying forward such “fictitious” loss declared ?

Section 3

Immunity granted to persons making the declaration

Declarant to be granted full immunity from any investigation or prosecution, “notwithstanding anything to the contrary in any other law” – vide Section 4 (1), on the mere production of the acknowledgement in writing given by the Commissioner General of Inland Revenue, which is a “**blanket receipt**”.

There is no question of payment of “**tax**” under certain laws Scheduled to said “**Composite Bill**” (“X3”), i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the code of Intellectual Property Act No. 52 of 1979 – S 166).

Whilst the Customs Ordinance, levies duties, all these laws, to uphold the **Rule of Law**, prohibit and/or debar committing of certain acts, violation of which attracts liability to be prosecuted and be fined and/or imprisoned in the very interest of maintaining the Rule of Law and social order.

Authorities enforcing the above laws, which do not concern “**tax**” as purported, are compelled to ensure under Section 3 (2) that **full immunity is granted to any person making a declaration in terms of Section 2**, which is to be made “**solely and exclusively**” to the Commissioner General of Inland Revenue and not to such authorities. Shockingly, **there is no nexus** between the facts disclosed to the Commissioner General of Inland Revenue and the magnitude and/or number of offences under the aforesaid other laws. The Commissioner General of Inland Revenue under Section 2 (4) is only required to give an “acknowledgement in writing” and is debarred under Section 6 in making any other communication.

The law enforcement authorities are debarred from investigating or prosecuting under any law of the country, the **manner of funding of assets declared, or sources of income or assets declared, whether, they be from drug peddling, arms dealing, money laundering, extortion, contract killings, terrorism or even robberies, etc.**

Would not therefore any stolen goods declared, shield and save free a Declarant from any investigation or prosecution by law enforcement authorities ?

In the context of the strict and absolute secrecy under Section 6, none of the Authorities enforcing the laws Scheduled to the said “Composite Bill” (“X3”), or any other law enforcement authorities, would be able to ascertain the contents of the declaration made, solely and exclusively to the Commissioner General of Inland Revenue.

The mere production of “**the receipt of acknowledgement**” from the Commissioner General of Inland Revenue **debars** any of the aforesaid law enforcement Authorities **from even questioning**, let alone investigating or prosecuting, a Declarant, even if it relates to an offence or crime of any other person, if the Declarant takes cover under Section 3 (1) (e) – i.e. “**any matter related to or incidental to any of the above**”.

Section 3 (3) is a new Section “smuggled” in at the Committee Stage of Parliament, and hence, was not placed on the Order Paper of Parliament and made known to the People. It is inconsistent with the other provisions of the said “Composite Bill” (“X3”).

Section 3 (3) amazingly affords a **full immunity in perpetuity** from any investigation or prosecution under any laws in respect of any foreign exchange transactions after 31st March 2002 relating to any asset declared as 31st March 2002, since such transaction, to afford such immunity, “**is deemed**” to have taken place retrospectively prior to 31st March 2002, and could be so declared before 15th August 2003. Amazingly, the Controller of Exchange would have to merely accept the “*mere say so*” of a Declarant, since he is unaware of the contents of the Declaration of a Declarant .

Section 3 (3) is in blatant violation of the United Nations Security Council Resolution No. 1373 of 28.9.2001 binding on Sri Lanka, and under which, Regulations have been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968, which said Regulations would thus be frustrated, with threat to national security, inasmuch as such foreign exchange transactions could and would pertain to terrorist related activities and terrorist organisations.

The aforesaid Gazetted Regulations, *inter-alia*, prohibit any funding directly or indirectly connected with terrorism, and any such funds discovered are to be frozen by the State, and any person upon conviction in Court is liable to imprisonment and any such financial assets or resources of such person shall be forfeited to the State. How could such Regulations be made impotent and freedom granted to the movement of terrorism related funds, in violation of the obligations as a member country of the United Nations ?

Would not the provisions of the said “Composite Bill” (“X3”), enable a person to declare, say US \$ 500 Mn., as per his Declaration made under Section 2 of the said “Composite Bill” (“X3”), to the Commissioner General of Inland Revenue as receivable from foreign sources, **which cannot be questioned**, and thereafter, regularly “**channel**” **foreign exchange into the country**, with no questions being able to be asked, let alone investigations and prosecutions, by any law enforcement authority, in view of Section 4 (1) – “**notwithstanding anything to the contrary in any other law**”.

Even the quantum of declaration in view of the strict and absolute secrecy provision of Section 6 could not be ascertained or questioned and the “**mere flaunting of the acknowledgement receipt**” given by the Commissioner General of Inland Revenue to a Declarant, would **debar law enforcement authorities from questioning / investigating / prosecuting such Declarant.**

Section 3 (3) also violate international treaties on *money laundering*, to which Sri Lanka is a party and *bound under international law*.

Section 4

**Investigations,
prosecutions &
c. to be
withdrawn.**

Any pending investigation or prosecution against the Declarant under any of the aforesaid laws shall stand withdrawn “**notwithstanding anything to the contrary in any other law**” i.e. immunity from all laws. **A Declarant transcends all laws !**

Any fraud or crime committed by any person arising out of and/or connected with any matter of a Declarant shall stand abrogated notwithstanding anything to the contrary in any other law, including the Penal Code.

The “**mere flaunting of the written acknowledgement of a receipt**” of a declaration given to a Declarant by the Commissioner General of Inland Revenue, affords such Declarant an “**all encompassing**” immunity from all frauds, crimes and offences under any other law - vide Section 3 (1) (e) – “*any matter related to or incidental to any of the above*”

In the above context, would it not mean, that a Declarant is immune from prosecution even for a murder, where he has robbed money by killing a person, if he has declared such ill-gotten money as a Declarant to the Commissioner General of Inland Revenue and has obtained an “**acknowledgement receipt**” therefor ?

Section 4 (2) stipulates that the “**tax**” (vide its perverse definition in Section 13) dictated by the Declarant is compelled to be accepted by the relevant Authorities enforcing the laws Scheduled to the said “**Composite Bill**” (“**X3**”); *whereas the declaration has been made solely and exclusively to the Commissioner General of Inland Revenue as per Section 2.*

The strict and absolute secrecy of Section 6 debars the Commissioner General of Inland Revenue from affording any information to any of the other Authorities or they obtaining details of such declaration to establish the **nexus** (i.e. value / number of offences / correlation) between the Declaration made to the Commissioner General of Inland Revenue and the offence or crime confronting the said other Authorities, who are required to accept what is dictated to them by a Declarant.

This would enable a Declarant to dictate his own fines and/or penalties and reclaim, as a matter of right any prohibited goods forfeited under the Customs Ordinance, **including arms, ammunitions, narcotics, drugs, etc.**, with Section 4 (1) stipulating “**notwithstanding anything to the contrary in any other law**”, and Section 7 (b) giving the right to a Declarant to recover a refund of tax (which includes forfeited goods as per the definition of the word “**tax**” in Section 13).

This would also enable a Declarant to obtain the release of **forfeited prohibited items**, such as **drugs, narcotics, firearms, ammunition, counterfeit currency, etc.**, *in violation of other laws and international treaties particularly in relation to money laundering and terrorism*, in the context of the perverse definition of the word “**tax**” in Section 13, and the proviso in Section 4 (1) – “**notwithstanding anything to the contrary in any other law**”.

Section 4 (3) gives indemnity, immunity or pardon to persons, who are not Declarants who obviously do not wish to be identified as Declarants and wish to remain “**hidden**” for offences and crimes committed upto 31.3.2000. *They too are entitled to dictate their own fines and penalties, and as matter of right reclaim all forfeited goods, as aforesaid and/or recover parts of any fines and penalties already paid.*

Would the right to dictate the penalty by a Declarant, also entitle him to dictate vis-à-vis penalty a declarant has to pay by way of a custodial sentence i.e. imprisonment ?

Section 4 also includes recoveries made from the public under the Turnover Tax Act, National Security Levy Act and Goods & Services Tax Act made by a Declarant as an agent of the State, where such monies having been so collected, **legitimately belong to the State and the Declarant has no right or title to retain such monies; if at all, such monies ought be refunded to the public.**

The very word “**tax in dispute**” (taking into account the perverse definition of the word “**tax**” as per Section 13) bears out, that public officials performing their lawful duties have discovered and disputed and consequently imposed penalties / fines, including the forfeiture of prohibited goods. **How could this come under the purview of a declaration of “undeclared monies” under the guise of an Inland Revenue Bill ?**

Such disputed matters would even be in the stage of having been already proven in a Court of Law, including criminal offences, and are pending in Appeal in Superior Courts.

On the contrary, however, under the proviso of Section 4 (3), persons who have lawfully agreed and settled with the authorities enforcing the above laws have been denied such benefit, they being discriminated and treated unequally before the law.

Section 5
Liability to tax
for year of
assessment
2002/2003

Section 5 (1) pertains to persons, who do not have an income tax file and who are Declarents. Such persons are not liable to any prosecution or penalty, if their income tax for the year 2002/2003 is paid in full on or before 30.9.2003.

On the contrary, as per Section 5 (2) pertaining to persons, **who having been law abiding citizens have an income tax file, in complete contrast, are liable to penalties**, if their quarterly instalments and the final payment of tax for the year 2002/2003 are not paid on the due dates, except the instalment for the 1st quarter. *This transcends all logic and is unequal arbitrary treatment before the law.*

Section 5 (3) is rather hilarious, in that, it goes without saying that those who have to pay "tax" (vide perverse definition of the word "tax" in Section 13) under the laws, have to lawfully comply and pay such taxes from 1.4.2002. This is stating the obvious, inasmuch as this is what stands in the prevalent law.

It is quite curious as to what the words "other than income tax under any other laws specified in the Scheduled hereto" (vide – Section 5 (3)) really mean, in that, what are those "other taxes" in the light of the "all encompassing" perverse definition of the word "tax" given at the very end of the said "Composite Bill" ("X3"), at Section 13 ?

Could it not be construed to mean, that Declarents are entitled to an indemnity *in perpetuity* from paying "tax" under any of the laws Scheduled to the said "Composite Bill" ("X3"), for future periods after 1.4.2002, since it is stipulated, that they shall only pay all such "other taxes" excluding those that come under the laws Scheduled to the said "Composite Bill" ("X3")? !

Section 6
Secrecy

Sections 6 (1) and 6 (2) enforce absolute secrecy prohibiting any officers of the Authorities enforcing the laws Scheduled to the said "Composite Bill" ("X3") from disclosing the identity of the Declarents or any matter contained in their declarations made under Section 2. Whereas Section 2 provides for declaration only to be "solely and exclusively" made to the Commissioner General of Inland Revenue and not to any other Authorities enforcing the above laws !

For contravention of such oath of absolute secrecy, the punishment is summary trial before a Magistrate, with a fine of Rs. 100,000/- and imprisonment of one year, or both such fine and imprisonment.

On the contrary for those offenders, who have violated not only income tax laws, but also those who have perpetrated frauds, crimes and offences against the State under the above laws Scheduled to the said "Composite Bill" ("X3") are being granted absolute indemnity, immunity and pardon from any investigation, prosecution, even those found guilty in Courts of Law and have Appealed to the Superior Courts. **What a tragedy and injustice, and a travesty of justice ?**

In the context of the above punishment for breach of secrecy, ought not those persons holding political and public office, who have mooted, designed, crafted, drafted and recklessly caused the passage through Parliament of the said "Composite Bill" ("X3"), *ultra-vires* the Constitution and outside the legislative power conferred by Parliament, in breach of the solemn oath and/or affirmations, which such persons have taken under Articles 53 and/or 61 and/or 63 and/or 165 of the Constitution to uphold and defend the Constitution, then receive far more severe punishments, for having breached solemn oaths taken / affirmations made under the Constitution ?

In comparison, ought not such political and/or public officers stand disqualified to hold such political and/or public office under the Constitution, for having breached the solemn oath taken / affirmation made by them under the Constitution ? If not, why ?

Sections 6 (3) and 6 (4) stipulate that no Commission of Inquiry or Regulator or Court of Law shall have the right to call upon any Officer in any of the aforesaid Authorities to divulge the identity of the Declarent or any information contained in any declaration made under Section 2, whereas the declaration is "solely and exclusively" made to the Commissioner General of Inland Revenue, and not to such Authorities, as per Section 2 .

A Commission of Inquiry or Regulator is debarred from calling for any information from the Declarent.

anything to the contrary.

Would this not mean an *estoppel* to criminal investigations, including investigations into murders, robberies, extortions, money laundering, counterfeiting, exchange control frauds, financing terrorists, contract killings, narcotics / drug trafficking, arms smuggling, etc., if those persons concerned and/or connected are shielded and protected from being questioned and details ascertained, simply because they are Declarants under the said “Composite Bill” (“X3”) and “flaunt a mere acknowledgement receipt” from the Commissioner General of Inland Revenue ?

Since the Declaration under Section 2 is solely and exclusively to be made to the Commissioner General of Inland Revenue, (or the authorised Commissioner) and the only communication by the Commissioner General of Inland Revenue is an “acknowledgement in writing of the receipt of a declaration” in terms of Section 2 (4), then in the context of the aforesaid absolute secrecy, how then do the other Authorities enforcing the other aforesaid laws i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the Code of Intellectual Property Act No. 52 of 1979 – S 166) obtain relevant and pertinent data for them to grant indemnity or immunity to a Declarant from any investigation or prosecution for violations of the said laws, without knowing and verifying the co-relating details in such very regard ?

There being no nexus as above, vis-à-vis, the co-relation of the magnitude and/or number of transactions / violations / frauds / crimes / offences, would the “mere flaunting of the written acknowledgement of the receipt” of the declaration given to a Declarant by the Commissioner General of Inland Revenue, grant such Declarant unquestioned, instantaneous and automatic immunity, indemnity and pardon from all his crimes and misdemeanors under such laws, and also all other laws vide Section 4 (1) i.e. “notwithstanding anything to the contrary in any other law”, regardless of such nexus / co-relationship, whatsoever, to the Declarations they had made to the Commissioner General of Inland Revenue, since the details thereof would be hidden in secrecy by the Commissioner General of Inland Revenue, and he and his officers threatened with fines and imprisonment for any divulgence of the details of such Declaration ?

The Commissioner General of Inland Revenue (or the authorised Commissioner) is debarred from ascertaining the correctness of any declaration. Section 4 (2) states that “tax specified by such person as being the amount of tax paid by him shall be accepted by the relevant authority” (The word “tax” has to be understood in the context of its *perverse* definition under Section 13). The Commissioner General of Inland Revenue in terms of Section 2 (4) is compelled to give a mere acknowledgement in writing of a receipt of a declaration. As per Section 6 (1) the identity of a Declarant and the contents of the declaration is unknown / undisclosed; and cannot be communicated to any other, including the Authorities enforcing the above other Laws. Would this not also include even the Assessors enforcing the Inland Revenue Act ? If so, how would and how could even future income tax compliance be secured and enforced correctly ?

The only exception specifically stipulated is “bribery and corruption”, thereby specifically excluding all other crimes, such as those referred to above.

Section 7

Avoidance of doubts

Section 7 provides that a person could declare money or investments in his name or any other name or without any name, whereby would not those who hold political and public office, liable for offences of “bribery and corruption”, be able to declare any ill-gotten funds in the names of other persons, and show such funds, as loans received from such persons, thereby they escaping the provisions of the Bribery and Corruption law, by means of the provisions of the said “Composite Bill” (“X3”) ?

Section 7 also affords the opportunity to a Declarant to declare monies or any investment in his own name, or any other name, or and mysteriously even without any name, affording an opportunity for any person to declare another person’s monies, but in the Declarant’s name.

The above would mean in direct conflict and contradiction with the international treaties on money laundering, to which Sri Lanka is a party.

This would provide a “haven” to circumvent the very Bribery and Corruption laws, which had been sought to be excluded under Section 6, where those who holding political and public office having gained “ill-gotten wealth” through Bribery and Corruption, could now declare such “ill-gotten wealth” in the name of other persons, who do not fall within the definition of “public servant” under the Bribery Act, and thereby and thereafter, the concerned politician / public servants, could easily show such monies as “loans” received from such Declarants, *from whom no questions could be asked, in terms of Section 6.*

This is in direct contradiction to and a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Allegations of Bribery or Corruption and escaping from punishment therefor.

Section 7 (b) is intriguing, in that, a person is not prevented from claiming or instituting proceedings for the recovery of a refund of “tax” (vide perverse definition of “tax” in Section 13) or from seeking protection or privilege under the above laws.

Would this not mean, that persons, who had made correct declarations previously to the Commissioner General of Inland Revenue or to other Authorities enforcing to the laws Scheduled to the said “Composite Bill” (“X3”), who are also entitled to make a declaration under the *proviso* to Section 2 (1) in order to “ascertain the correctness of his position,” which the Commissioner General of Inland Revenue or the said other Authority is compelled to accept and grant full indemnity / immunity as per Section 4 to such persons, and that thereafter, *such person could proceed to recover a refund of “tax” now deemed to be an over payment, after making such Declaration under Section 2 (1) of the said “Composite Bill” (“X3”),, including the right to obtain the release of any “prohibited goods” confiscated?*

Section 8

Regulations.

By Section 8, the Finance Minister has been empowered to make Regulations to give effect to the principles and provisions of the said “Bill” (“X3”) and that such Regulations shall come into operation on publication in the Gazette or on a later date as stipulated.

Such Regulations made by the Finance Minister, as soon as convenient after gazetting, are to be brought before Parliament for approval and any Regulation not approved by Parliament is to stand rescinded from the date Parliament disapproves the same, which date is also to be gazetted, **but without prejudice to anything done previously under such Regulation, disapproved by Parliament.**

A significant feature is that, where Parliament disapproves a Regulation, any act which has been done under such Regulation, before it had been brought for approval to Parliament and disapproved, questionably and curiously stand valid and not invalidated.

The above has conferred “unchecked and unfettered” power to the Finance Minister at his whim and fancy to wrongfully Regulate to suit and/or oblige and/or favour any particular person/s, and *even if Parliament disapproves the same, any act conferring such unlawful benefit / favour to such person/s stands valid and not invalidated.*

Section 9

Consequence of failure to come within provisions of this Act

Section 9 **clearly reveals** that the said “Composite Bill” (“X3”) is only meant to be in respect of Income Tax under Inland Revenue Act No. 38 of 2000 and not the other above laws Scheduled to the said “Composite Bill” (“X3”), in that, Section 9 states that persons, who intend to hide under the cover of the said “Composite Bill” (“X3”), should do so in accordance with the procedure and within the time specified in this Bill (“X1”), and that any person who fails to take such necessary steps to hide under the said “Composite Bill” (“X3”), **would be liable to be dealt with under and in terms of the “Inland Revenue Act No. 38 of 2000” - only.** What a contradiction ?

Thus Section 9 is significantly silent and avoids any reference, whatsoever, to the other laws Scheduled to the said “Composite Bill” (“X3”), encompassed under the previous Sections to grant indemnity, immunity and pardon to those who have defrauded, perpetrated frauds, crimes and offences against the state, shielding them from any investigation or prosecution, whatsoever, even under any other law – vide Section 4 (1) – “notwithstanding anything to the contrary in any other law”.

Section 10

Transitional provisions.

Section 10 is misleadingly titled “transitional provisions” and warrants close scrutiny.

period of 5-years, from which the payment of tax (vide perverse definition in Section 13) is in default, in terms of the laws Scheduled to the said “Composite Bill” (“X3”).

This as far as "income tax" under the “Inland Revenue Act No. 38 of 2000” is concerned is contradictory to Section 9 above, in that, any actions pending in the Department of Inland Revenue or Courts of Law would automatically extinguish **after a period of 5-years from the date of the initial default** i.e. a default in 1999, the *cause of action is extinguished in Courts of law in 2004 and Courts of Law would stand impotent and the actions frustrated.*

Similarly, in respect of the other laws Scheduled to the said “Composite Bill” (“X3”), i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance (including the Code of Intellectual Property Act No. 52 of 1979 – S 166), all prosecutions for frauds, crimes and offences perpetrated in violation of such laws, **would also stand extinguished after the expiration of a period of 5-years from the date of committing of such frauds, crimes and offences.**

That is, prosecutions in respect of frauds, crimes or offences committed in 1999, even whether proven and sentences of convictions passed in Courts of law and are pending in Appeal in the Superior Courts, would stand extinguished in 2004 and Courts of Law would stand impotent and the actions frustrated.

The above should also be read and construed together with Section 4 (1) which states – “**notwithstanding anything to the contrary in any other law**”.

The above provisions would appear to be clearly to cater to some persons, who for mysterious reasons do not wish to hide under the said “Composite Bill” (“X3”), making any declaration, thereby disclosing themselves to the Commissioner General of Inland Revenue and having their name on record !

More importantly, would not Section 10 cover even the future periods ? That is, no action shall be instituted or any pending action proceeded with under those laws Scheduled to the said “Composite Bill” (“X3”), after the expiration of a period of 5-years from the date of default or offence ?

Therefore, is Section 10 really a “transitional provision” or on the contrary, is it not a provision *in perpetuity* limiting investigations and prosecutions in respect of any of the aforesaid Offences to be extinguished and/or frustrated after a period of 5 years making Courts of Law impotent and the actions frustrated ?

Why not have all criminal prosecutions, if not completed within a period of 5-years, also be so extinguished after period of 5 years ?

Section 11

Repeal of Act No. 7 of 2002 and savings.

Section 11 repeals the Inland Revenue (Special Provisions) Act No. 7 of 2002, which had been enacted in June 2002.

On the very heels of Act No. 7 of 2002, what was the rationale and hasty necessity, only a few months thereafter, to endeavour to enact this horrendous legislation crafted, drafted and attempted to be passed covertly by Parliament *ultra-vires* the Constitution and outside the limited legislative power conferred on Parliament ?

This had been done, amongst other persons, by those persons referred to in paragraph 12 of the Petition, some of whom are Attorneys-at-Law and President's Counsel, who have acted as aforesaid in total disregard to the unanimous determination by 7-Member Benches of Your Lordships' Court in respect of the proposed 18th and 19th Amendments to the Constitution, made as recently as October 2002.

Why was such horrendous legislation so hastily endeavored to be passed violating the **Rule of Law**, and also *ultra-vires* the Constitution and outside the limited legislative power conferred on Parliament, when there was already the Inland Revenue (Special Provisions) Act No. 7 of 2002 enacted as recently as June 2002, providing for a plain and simple Income Tax amnesty ?

In fact, the **Inland Revenue (Special Provisions) Act No. 7 of 2002**, whilst not only **not including** those other laws i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, (including the Code of Intellectual Property Act No. 52 of 1979 – S 166), **but also had not included** the several other laws such as Turnover Tax Act, National Security Levy Tax Act, Save the Nation Contribution Act, Goods and Services Tax Act, Stamp Duty Act, Finance Act, Betting & Gaming Levy Act, which are not laws to collect “**income taxes**”, but laws to generate Revenues to the State to finance public expenditure.

Section 11 also enables those persons, who had already made declarations under the Inland Revenue (Special Provisions) Act No. 7 of 2002 to amend or vary their such declarations, enabling them to encompass all such aforesaid frauds, crimes and offences perpetrated against the State, under the those other laws Scheduled to the said “**Composite Bill**” (“X3”) i.e. Exchange Control Act, Import and Export Control Act, Excise (Special Provisions) Act, Excise Ordinance and Customs Ordinance, ((including the Code of Intellectual Property Act No. 52 of 1979 – S 166) and the other aforesaid Revenue Collection laws.

Amazingly, whilst Section 2 stipulates that a Declaration *exclusively and solely* has to be made to the Commissioner General of Inland Revenue, Section 11 (2) refers to notifying in writing those Authorities enforcing the above laws and those other aforesaid Revenue collection laws, requesting any *alternations, amendment or variation* of a declaration made under the **previous Inland Revenue (Special Provisions) Act No. 7 of 2002, whereas there was no provision, whatsoever, to have made such a declaration in the first instance previously under he said Act No. 7 of 2002 . How could then there be any alteration, variation to a declaration previously made.?**

10. The Petitioner respectfully sets out as advised, the **unconstitutionality** of the respective Sections of the said “**Composite Bill**” (“X3”), as borne out by the foregoing analysis, as summarised below, and it is respectfully submitted that;

i) **Sections 2, 3, 4, 5, 6 and 8 of the said “Composite Bill” (“X3”):**

- the provisions of these Sections grant immunity creating a “**special class of people**”, above the rule of law, in violation of Article 12 (i) (*fundamental right to equality before law and equal protection of the law*) of the Constitution, which is inconsistent with Article 3 (*where sovereignty, including fundamental rights, is in the People and is inalienable*), read with Article 4 of the Constitution.
- any of the aforesaid provisions to become law constitutionally warrants a 2/3rd majority of Parliament and the approval by the People at a Referendum – *vide unanimous Determinations by the 7-Member Benches of Your Lordships’ Court in respect of the proposed 18th and 19th Amendments to the Constitution;*.

In the unanimous Determination made by a 7-Member Bench of Your Lordships’ Court on or about October 2002 in respect of the Bill titled “18th Amendment to the Constitution”, Your Lordships, *inter-alia*, determined that

“The effect of amendment in Clause 4 is to introduce a different class of people whose actions are not subject to judicial review. There is no justification for such immunity to be granted, which is contrary to Article 12 (1) of the Constitution and the basic principles of Rule of Law”

ii) **Sections 2, 3, 4, 6, 8 and 10 of the said “Composite Bill” (“X3”):**

- the provisions of these Sections usurp and/or alienate directly and/or indirectly by implication and/or otherwise, the sole and exclusive power vested in the Executive President under Article 34 of the Constitution, which in effect tantamounts to suspending / amending the operation of that part of the Constitution, and therefore could not have been validly enacted into law, in the context of the **specific bar** under Article 75 of the Constitution.
- A 7-Member Bench of Your Lordships’ Court unanimously determined in respect of the proposed 19th Amendment to the Constitution that –

“Clause 6 of the Bill has the effect of suspending the operation of a part of the Constitution and cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution”

- Under Article 34 of the Constitution only the President of Sri Lanka has been conferred with Constitutional power to:
 - grant pardon,
 - grant any respite, .
 - substitute a less severe form of punishment, or
 - remit the whole or any part of any punishment imposed or of any penalty or forfeiture due to the State

and no other person, whomsoever.

- In the unanimous determination by the 7-Member Bench of Your Lordships' Court in respect of the proposed 19th Amendment to the Constitution, Your Lordships' Court *inter-alia*, determined,

"the transfer of a power which is attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution."

"the effect of suspending the operation of a part of the Constitution cannot be validly enacted by Parliament in view of the specific bar contained in Article 75 of the Constitution."

"... this manifests a cardinal rule that applies to the interpretation of a Constitution, there can be no implied amendment of any provision of the Constitution."

iii) Sections 3, 4, 6 and 10 of the said "Composite Bill" ("X3"):

- the provisions of these Sections **alienate the judicial power of the People**, thus and thereby alienating the sovereignty of the People, and therefore are inconsistent with Article 3 read with Article 4 of the Constitution, and hence, such provisions to become law constitutionally warrants the approval by the People at a Referendum, in addition to a 2/3rd majority vote (including those not present) in Parliament in terms of Article 83 of the Constitution, as was unanimously upheld by a 7-Member Bench of Your Lordships' Court in respect of the proposed 18th Amendment to the Constitution.

In the unanimous determination by the 7-Member Bench of Your Lordships' Court in respect of the proposed 18th Amendment to the Constitution, Your Lordships' Court *inter-alia*, determined,

" the proposed Article 41 J referred to above grants an immunity to the Constitutional Council, the Chairman, a Member, the Secretary or an officer, from judicial proceedings in respect of anything done or omitted to be done, attracts both objections dealt with, in the preceding paragraphs of this determination. They are;

- 1) that it would alienate the judicial power from the people;
- 2) that it creates a special class of people in violation of; Article 12(1) of the Constitution, who would not be subjected to judicial review.

For the reasons stated above we determine that there is merit on both grounds of objection and the proposed Article 41 J is therefore inconsistency with Article 3 read with Article 4 of the Constitution."

Whereas by the provisions of the said "Composite Bill" "X3" immunity from judicial action and/or review **has been granted arbitrarily.**

- forfeited prohibited items, such as, drugs, narcotic, firearms, ammunition, counterfeit currency, etc. are to be released to a Declarant in contravention of relevant other laws and **in breach of international treaties / international laws, including in relation to Money Laundering, and the United Nations Security Council Resolution No. 1373 on terrorism binding on the country**, thereby alienating or abrogating or frustrating or suspending the judicial power of the People, which is being exercised through Courts of Law.

iv) Section 3 (3) of the said "Composite Bill" ("X3"):

- Section 3 (3) gives a *carte blanche* open ended licence to perpetrate Exchange Control violations and/or frauds, which could and would involve, inter-alia, transactions pertaining to narcotics / drugs peddling, human trafficking, money laundering, terrorist activities and/or terrorists and/or terrorist organizations, etc.

- The provisions of this Section 3 (3) pertaining to absolute immunity in perpetuity from any investigation and prosecution granted to foreign exchange transactions, as morefully explained hereinbefore, is **violative of international treaties of money laundering, to which Sri Lanka is a party and is bound under international law.**
- Article 27 of the Constitution enshrines the Directive Principles of State Policy and Fundamental Duties and Article 27 (15) stipulates that the *State shall endeavour to foster respect for international law and treaty obligations in dealings among nations.*
- The provisions of this Section 3 (3) also affords an “haven” for funds related to terrorist activities and terrorist organisations *in violation of the United Nations Security Council Resolution 1373 of 28.9.2001 binding on Sri Lanka, and under which Regulations have been gazetted on 16.10.2001 under the United Nations Act No. 45 of 1968; which Regulations by the provisions of Section 3 (3) would thus be frustrated or abrogated, with threat to national security.*
- The relevant regulation from Gazette Extraordinary No. 1206/14 of 16.10.2001 are quoted below:

“6. For the purpose of these regulations, the Minister does hereby provide that

- a) no person who is a citizen of Sri Lanka or residing in Sri Lanka and no citizen of Sri Lanka living outside Sri Lanka shall do, or cause to be done, any act which assists or promotes or is intended to assist or promote any act which is directly or indirectly connected with the collections of funds, for any terrorist organizations or which are intended to be used to carry out a terrorist act
 - b) any funds or other financial assets or resources of persons who do, or cause to be done, any act which assists or promotes or is intended to assist or promote any act which is directly or indirectly connected with any terrorist organization or a terrorist act, or participates in, or facilitates, the commission of any terrorist act shall be frozen with immediate effect;
 - c) no citizen or any other person or body of person shall within the terrorist of Sri Lanka, made available directly or indirectly for the benefit of any organization or person, who commits or attempts to commit or participates in, or facilitates, the commission of any terrorist act, any funds, financial assets or economic resources.
7. Any person who contravenes the provisions of regulation 6 of these regulations shall be guilty of an offence under these regulations and shall on conviction by the High Court holden in Colombo, be liable to imprisonment of either description for a period not less than five years and not exceeding ten years.
- (a) Upon the conviction of any person for an offence under these regulations, any funds or other financial assets or resources of such person shall by reason of such conviction, be forfeited to the State.
 - (b) Any property forfeited to the State under paragraph (a) of this regulation shall -
 - (i) if not appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction, expires;
 - (ii) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this regulation, “rélevant conviction” means the conviction in consequence of which any property is forfeited to the State under paragraph (a).”

- Section 3 (3) was not in the original Bill (“A3”) part of (“X4”) but was a new Section “smuggled” in surreptitiously at the Committee Stage of Parliament, and hence, had not been placed on the Order Paper of Parliament, **thereby denying the constitutional right of the Citizens to have challenged the same, vis-a-vis, the legislative power of the People. Section 3 (3) is inconsistent with other provisions of the said “Composite Bill” (“X3”).**

v) **Section 7 of the said “Composite Bill” (“X3”):**

- the provisions of this Section would provide an “haven” to circumvent the **Bribery and Corruption laws**, where those who holding political and public office, having gained “ill-gotten wealth” through Bribery and Corruption could now declare such “ill-gotten wealth” in the name of other persons, who do not fall within the definition of “public servants” under the Bribery Act, and thereby and thereafter, the concerned politicians / public servants, could easily show such monies as “loans” received from such Declarents, **from whom no questions could be asked**, under Section 6.

by Act No. 20 of 1994, and liable to imprisonment for a term not exceeding 10-years.

- under the Bribery Act a “public servant” is define to include Cabinet Ministers, Non-cabinet Ministers, Speaker, Deputy Ministers, Members of Parliament, etc.
- the provisions of this Section are in direct contradiction to and grant a means of contravening the provisions of the Bribery Act to be enforced by the Commission to Investigate Bribery or Corruption, which amendments to the Bribery Act and the establishment of the Commission to enforce this law was unanimously enacted by Parliament in October 1994.
- Those public servants, who mooted or lobbied or participated or acted to cause the unconstitutional passage of this purported legislation, which is *ultra vires* the Constitution and outside the scope of limited power conferred on Parliament and/or seek refuge under such purported legislation **have committed the offence of Corruption, which Your Lordships’ Court ought take judicial notice of.**

vi) **Section 8 of the said “Composite Bill” (“X3”):**

- the provisions of this Section is violative of Article 76 (1) of the Constitution, which stipulates that **Parliament shall not abdicate or in any manner alienate its legislative power**, and is contrary to Article 76 (3) of the Constitution in view of the *absolute nature of power given to the Finance Minister* by the provisions of this Section and hence such provision cannot become law in view of the specific bar contained in Article 76 of the Constitution.
- A7-Member Bench of Your Lordships’ Court in the unanimous determination made in respect of the proposed 18th Amendment to the Constitution, *inter-alia*, held thus,

“if such immunity is given to the Constitutional Council, it would in effect be elevated to a body that is not subject to law, which is inconsistent with the rule of law. The Rule of Law, means briefly the exclusion of the existence of arbitrariness and maintaining equality before the Law the effect of the amendment in clause 4 is to introduce a different class of people whose actions are not subject to judicial review. There is no justification for such immunity to be granted, which is contrary to Article 12(1) of the Constitution and the basic principles of Rule of Law”

“the proposed Amendment enable the council to exercise legislative power, which according to Article 4(a) of the Constitution, is reposed in the people and is exercised by Parliament. In terms of Article 76(1) of the Constitution, Parliament cannot abdicate or alienate its legislative power”

“The proposed Amendment thus undermines the parliamentary control over Rule making powers of an institution established by the Constitution, which in turn is abdication as well as an alienation that affects the sovereignty of the people, which is inconsistent with Articles 3 and 4 of the Constitution.”

vii) **Title and the said “Composite Bill” (“X3”) in its entirety:**

- though camouflaged under a misleading title as an “Inland Revenue Bill”, the scope and ambit of the provisions of the Bill shockingly go beyond the known bounds of “Inland Revenue”, and intrudes upon other laws Scheduled to the Bill.
- the provisions of the Bill create a “**special class of people**” transcending the **Rule of Law** and grants them absolute indemnity, immunity and pardon from investigation, prosecution and conviction, usurping and/or alienating and/or frustrating and/or abrogating the right of the Judiciary and the Executive, *thereby alienating the sovereignty of the People*.
- such “**special class of people**” created, transcending all laws (vide Section 4 (1)) are ironically, those who have violatived the law, perpetrated fraud, committed crimes and offences against society and defrauded the State and the People. This by no means is a “Tax Amnesty”.

- the foregoing has been covertly designed with ulterior motives for extraneous purposes by perversely defining the word “**tax**”, consistently used right throughout the Sections of the Bill, but so perversely defined **only at the very end of the Bill** in the “Interpretation Section 13”, wherein the interpretation of the word “tax” appallingly goes beyond the known realms of the English Language !
- the above is an act of deception and fraud perpetrated, not only on Parliament, but also on the People of this country.
- though the Title of the Bill makes pronouncement that the Bill is “**with a view to securing the future compliance with the prevalent tax laws**”, there is no provision, whatsoever, to **secure any compliance**, *let alone with the other laws Scheduled to this Bill, not even with the tax laws.*
- on the contrary, pardon and immunity for Offences under such other laws are granted with impunity, with no suspension of sentences or undertakings obtained to re-impose such “tax”, which includes penalties, punishments, etc. **should there be any non-compliance in the future**, *which alone would only ensure any such contemplated future compliance by such miscreants.*
- **the provisions of the Bill undermine the arduous efforts of long years of investigations, even with risk to their lives, by public officers and law enforcement authorities and the prosecutions conducted before the judiciary into offences, crimes and frauds perpetrated against the State and would only demoralise the concerned public servants discouraging them from taking any future actions to curb offences, crimes or frauds, as they are statutorily mandated to do, violative of principles of good governance and in breach of the oath taken / affirmation made by them under the Constitution.**
- the provisions of the Bill afford immunity from punishments for criminal offences and “colossal bonanzas” *ultra vires* the Constitution to a “privileged affluent few”, who could easily afford to pay, whilst there are scores of poverty-stricken persons languishing in jails for non-payment of bail monies and minor fines, thus *denying them equal treatment, with equality before the law and equal protection of the law.*
- the provisions of the Bill, as it stands now, gives the clear signal and message that such “**privileged affluent persons**” could continue to commit offences, crimes and frauds and defraud the State, expecting to influence peddle, lobby and cause “laws” to be enacted, time and again, by their political mentors, to similarly receive immunity, indemnity and pardon, *with absolute secrecy.*
- on the very heels of the Inland Revenue (Special Provisions) Act No. 7 of 2002, which had been enacted in June 2002, what was the rationale and hasty necessity shortly thereafter to covertly endeavour to enact this horrendous purported legislation, crafted, drafted and attempted to be unlawfully and unconstitutionally enacted, *ultra-vires* the Constitution and outside the scope of limited legislative power conferred on Parliament, **alienating the sovereignty of the People, which is inalienable ?**

11. a) The Petitioner filed before Your Lordships’ Court an Application SC/SD No. 11/2003 on 21.4.2003 praying for the reliefs contained therein challenging the **validity and/or the constitutionality** of the provisions of the aforesaid *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)”/“X2(b)”), asserting that the said purported Act had not been validly and constitutionally passed by Parliament, in that, Parliament had acted *ultra-vires* the constitutional provisions and outside the limited legislative power conferred on Parliament by the People. The Petitioner reiterates the averments contained in his aforesaid Petition and Affidavit.

True copies of the Motion, Petition and Affidavit, together with the Documents annexed thereto, bearing the original markings, are annexed hereto collectively marked (“X4”) and pleaded as part and parcel hereof.

- b) The Petitioner subsequently by Motion dated 29.4.2003, tendered a further Affidavit dated 29.4.2003, together with Documents annexed thereto, more particularly in relation to **the violation of the United Nations Security Council Resolutions No. 1373 of 28.9.2001 and the Regulations gazetted in that regard on 16.10.2001 under the United Nations Act No. 45 of 1968 in relation to the freezing and seizing of assets of terrorists and terrorist related organisations, et al.** The Petitioner reiterates the averments contained in his aforesaid further Affidavit, supported by the said Documents.

- and pleaded as part and parcel hereof.
- c) The Petitioner subsequently having received the **Sinhala copy** of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(b)”), by Motion dated 23.6.2003 tendered a further Affidavit dated 23.6.2003, together with Documents annexed thereto, bringing to the attention of Your Lordships’ Court, that the **Sinhala copy** (which takes **precedence**) of the aforesaid *purported Act had contained additional words giving a “further dimension” included at the printing stage of the same, the said words having not been in the original Sinhala Bill, nor in the Committee Stage Amendments*, and that provisions titled “transitional provisions” **had been made provisions in perpetuity at the Committee Stage, denying the citizens the constitutional right to have challenged the same, via-avis, the legislative power of the People. The Petitioner reiterates the averments contained in his aforesaid further Affidavit, supported by the said Documents.**

True copies of the said Motion and Affidavit, together with the Documents annexed thereto, bearing the original markings, are annexed hereto collectively marked (“X6”) and pleaded as part and parcel hereof.

- d) The Petitioner’s aforesaid Application SC/SD No. 11/2003 having been heard *is pending determination by Your Lordships’ Court.*
12. The Petitioner also on 15.4.2003 filed in Your Lordships’ Court a **Fundamental Rights Application No. 194/2003** under Articles 17 and 126 of the Constitution in regard to the administrative and executive actions in relation to the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)” / (“X2(b)”) praying for the reliefs contained therein, *citing,*

- i) **Ranil Wickremesinghe, Attorney-at-Law, Prime Minister, and Minister of Policy Development & Implementation**
- ii) **Kairshasp Nariman Choksy, President’s Counsel, Minister of Finance**
- iii) **Bandula Gunawardene, Deputy Minister of Finance**
- iv) **Milinda Moragoda, Minister of Economic Reform, Science & Technology, and Deputy Minister of Policy Development & Implementation**
- v) **Charitha Ratwatte, Attorney-at-Law, Secretary Ministry of Finance & Secretary to the Treasury, and Secretary, Ministry of Policy Development & Implementation**
- vi) **Ramalingam Paskaralingam, Advisor to the Prime Minister, and Minister of Policy Development & Implementation**
- vii) **Gamini Lakshman Peiris, Prof. of Law, Minister of Enterprise Development, Industrial Policy, Investment Promotion & Constitutional Affairs**
- viii) **Ranjith Fernando, Secretary, Ministry of Enterprise Development, Industrial Policy, Investment Promotion & Constitutional Affairs,**
- ix) **W.J.M. Lokubandara, Attorney-at-Law, Minister of Justice, Law Reform & National Integration**
- x) **Dhara Wijetilleke, Attorney-at-Law, Secretary, Ministry of Justice, Law Reform & National Integration**
- xi) **Joseph Michael Perera, Speaker of Parliament of Sri Lanka**
- xii) **Priyani Wijesekere, Attorney-at-Law, Secretary General of Parliament of Sri Lanka**
- xiii) **Therese R. Perera, Attorney-at-Law, Legal Draftsman**
- xiv) **Kandiah Susilar, Commissioner General of Inland Revenue**
- xv) **S.A.C.S.W. Jayatilleke, Director General of Customs**
- xvi) **Parakrama Ekanayake Bandara, Director General of Excise**
- xvii) **H.A.G. Hettiarachchi, Controller of Exchange, Central Bank of Sri Lanka**
- xviii) **Ranjan Samaraweera, Controller of Imports & Exports**
- xix) **A.S. Jayawardena, Governor, Central Bank of Sri Lanka, Chairman, Monetary Board of Sri Lanka**
- xx) **Ananda Coomaraswamy, ex Supreme Court Judge, Chairman, Commission to Investigate Allegations of Bribery or Corruption**
- xxi) **K.C. Kamalabayson, P.C., Hon. Attorney General**

as Respondents therein.

13. a) In terms of Articles 53 and/or 61 and/or 165 the **holders of public office**, are bound to faithfully perform and discharge the functions of such public office in accordance with the Constitution and the law, and **are bound to be faithful to the Republic of Sri Lanka and uphold and defend the Constitution**, under and in terms of the solemn official oath / affirmation taken in terms of the Fourth Schedule to the Constitution; and in addition, **Members of Parliament are further bound to uphold and defend the Constitution in terms of Article 63 of the Constitution.**

- b) The Petitioner respectfully states that, similarly, in terms of Article 107 of the Constitution, **Your Lordships are bound to faithfully perform and discharge the functions of judicial office in accordance with the Constitution and the law, and are bounden in duty to be faithful to the Republic of Sri Lanka and uphold and defend the Constitution**, under and in terms of the solemn official oath / affirmation Your Lordships have taken in terms of the Fourth Schedule to the Constitution.
14. a) The provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)”) / (“X2(b)”) had been mooted and/or crafted/drafted and/or endeavoured to be unlawfully and/or unconstitutionally enacted *ultra-vires* the Constitution and outside the scope of the limited legislative power conferred on Parliament by the People in terms of Article 4 (b) (a), read with Article 3 of the Constitution.
- b) The foregoing had been done, among others, by those persons referred to in paragraph 12 hereinabove, **some of whom are President’s Counsel and Attorneys-at-Law**, who notwithstanding being Officers of Your Lordships’ Court, **have acted as aforesaid, in total disregard to the unanimous dicta** of the unanimous Determinations made by 7-Member Benches of your Lordships’ Court in respect of the proposed 18th and 19th Amendments to the Constitution, *made recently as October 2002.*
- 15 a) The Petitioner on 25.6.2003 addressed a Letter to the **Hon. Prime Minister** pointing out, *inter-alia*, the obnoxious features and the unconstitutionality, including the incongruencies in the provisions of the *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)”)/ (“X2(b)”), forwarding copies thereof to **Her Excellency the President**, the **Hon. Attorney General** and certain others.
- b) Among those certain others to whom the Petitioner forwarded copies of aforesaid Letter dated 25.6.2003 were the following persons:
- **Mr. K. Suseelar, Commissioner General Inland Revenue**
 - **Mr. S.A.C.S.W. Jayatilleke, Director General of Customs**
 - **Mr. P.E. Bandara, Director General of Excise**
 - **Mr. R. Samaraweera, Controller of Import & Exports**
 - **Mr. H.A.G. Hettiarachchi, Controller of Exchange**
 - **Mr. A.S. Jayawardena, Governor, Central Bank of Sri Lanka**
 - **Mr. A. Coomarasamy, Chairman, Commission to Investigate Allegations of Bribery or Corruption**

The Petitioner exhorted the aforesaid persons to concur with / refute / controvert any of the facts set out in the Petitioner’s aforesaid Letter dated 25.6.2003.

None of the aforesaid persons has responded to date refuting or controverting the said facts, whereby the said facts stand admitted as correct.

- c) The Petitioner received on or about 25.7.2003 copy of a Letter dated 30.6.2003 from the Asst. Secretary (for the Secretary) to the Hon. Prime Minister addressed to the Secretary, Ministry of Finance requesting him to take necessary action regarding the matters referred to and to send a reply to the Petitioner, with a copy to the Hon. Prime Minister, in order that it may apprise the Hon. Prime Minister accordingly.
- d) However, no reply as aforesaid has been received to date by the Petitioner from the Secretary Ministry of Finance.

True copies of the Petitioner’s Letter dated 25.6.2003 addressed to the Hon Prime Minister and Letter dated 30.6.2003 of the Asst. Secretary (for the Secretary) to the Prime Minister addressed to the Secretary, Ministry of Finance are annexed hereto marked (“X7 (a)”) and “X7(b)”) and pleaded as part and parcel hereof.

16. a) Consequently, however, **Her Excellency the President** had taken action and the Petitioner on or about 23.7.2003 came to know from a news release issued by the Office of Her Excellency the President, that Her Excellency the President had forwarded a Statement to the Cabinet of Ministers, *inter-alia*, stating that the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 (“X2(a)”)/ (“X2(b)”) had been *surreptitiously* and *hastily* “enacted, **without the knowledge and approval of Her Excellency the President**, (who is the Head of the Cabinet and of the Government) and that **the Cabinet of Ministers and the Legislators had not been made fully aware of its implications**, and that the relevant Bill [(“A3”) a part of (“X4”)] had not contained *the explanatory notes giving the implications of the intended legislation.*

The Petitioner points out that the original Bill [(“A3”) a part of (“X4”)] presented to Parliament on 31.1.2003, had questionably not contained in the inner cover as required – the “STATEMENT OF LEGAL EFFECT”.

Committee of the Cabinet (in which the President is not represented) on and had been adopted by the Cabinet on 8.1.2003, with just 2 working days notice.

- ii. there are a number of unsatisfactory and undesirable features in the above piece of legislation. **(The Petitioner points out the above includes some of the perverse and obnoxious features dealt with in paragraph 9 hereinbefore).**
- iii. the above legislation does not confine only to tax matters, but goes far beyond, encompassing tax disputes, levies, penalties, forfeitures and fines. This extension had been achieved by way of the interpretations given to the terms "tax" and "tax in dispute" in the Act, which include not only tax, but also matters such as levies, penalties, forfeitures and fines coming under all the legal enactments given in the Schedule, which are certainly not "tax statutes"
- iv. **the exclusive power vested in the President under Article 34 of the Constitution had been usurped, pointing out that there are pending prosecutions in Appeal in Higher Courts of Law on convictions already made by Lower Courts.**
- v. **it is a matter of serious concern**, as to how legal enactments not coming under the purview of the Commissioner General of Inland Revenue had crept into the said Bill, **coupled with Offences punishable under the Penal Code** - these legal enactments pointed out have been, the Exchange Control Act, the Import & Export Control Act, the Excise (Special Provisions) Act, the Excise Ordinance and the Customs Ordinance.
- vi. apart from the moral, ethical and **constitutional implications**, the financial impact of the said Bill would adversely affect the economy of the country and the people, with losses of billions of rupees being caused to the Government, and that this legislation is inimical to the economy of the country impoverishing the masses, and **that it is contrary to the canons of natural justice.**

(The Petitioner points out the recent financial crisis reported by the Finance Ministry of a short-fall in the collection of Value Added Tax Revenue of Rs. 20 billion, stating that steps need be taken in that regard to bridge such massive Revenue Deficit. In these circumstances, how could legitimate revenues due to the State be arbitrarily written-off and/or refunded under this purported legislation?)

- vii. **the gravity of the violation of the United Nations Security Council's Resolutions and Government's international obligations in respect of matters, such as freezing and seizing of terrorist funds and money laundering, etc.**

- c) **Accordingly, Her Excellency the President had called for the immediate suspension and repeal of the aforesaid legislation.**

True copies of the said news release issued by the Office of Her Excellency the President, which appeared in the Daily News, The Island, Daily Mirror, Dinamina, Divaina and Lankadeepa all of 23.7.2003 are annexed hereto collectively marked ("X8") and pleaded as part and parcel hereof.

17. The Hon. Attorney General in terms of Article 77 of the Constitution is bounden in duty,
- a). to examine every Bill for any contravention of the requirements of paragraphs 1 and 2 of Article 82 of the Constitution and **for any provisions, which cannot validly be passed, except by the special majority prescribed by the Constitution,** and
 - b) if he is of the opinion, that a Bill contravenes any of the requirements in paragraphs 1 and 2 of Article 82 of the Constitution or **that any provisions in a Bill cannot be validly passed except by a special majority prescribed by the Constitution, he shall communicate such opinion to the President; provided that in the case of an amendment proposed to a Bill in Parliament he shall communicate his opinion to the Speaker at the stage when the Bill is ready to be put to Parliament, inasmuch as the Hon. Attorney General is bound by the oath / affirmation as aforesaid to uphold and defend the Constitution**

18. a) In terms of Article 79 of the Constitution, the Hon. Speaker of Parliament, is required to give a Certificate that a Bill has been duly passed by Parliament.
- b) **Inherent** in such certification of a Bill being duly passed would be that a Bill has been lawfully and/or legitimately and/or constitutionally passed, and that it is not repugnant to any provisions of the Constitution; *inasmuch as the Hon. Speaker is bound by the oath / affirmation as aforesaid to uphold and defend the Constitution*.
19. a) The Amendment Bill ("X1(a)") though contained in a Government Gazette stated to have been issued on 14.7.2003, was not available with the Government Publications Bureau, nor with the Department of the Government Printer at Colombo 8. Frequent inquiries from both these Government Offices resulted in the Petitioner being informed that such institutions were unaware of any such Government Gazette.
- b) Subsequently on 23.7.2003 upon the Petitioner coming to know that printed copies of the aforesaid Government Gazette were available at the Government Printing Press at Narahenpita, the Petitioner was able to obtain a copy of the said Government Gazette containing the Amendment Bill ("X1(a)") from the Government Printing Press at Narahenpita.
- c) Consequently, after several telephone communications with the Parliamentary Office, the Petitioner was able to ascertain, that the 1st reading of the said Amendment Bill ("X1(a)") was to be on 25.7.2003 placed on the Order Paper of 25.7.2003.
- d) However, even after the said Amendment Bill ("X1(a)") had been placed on the Order Paper of Parliament on 25.7.2003 there has been no official announcement by the Government thereof to date hereof, placed in the media, for the same to be made known to the citizens, who have only 7 days to challenge a Bill. This is even more significant in the background of the extensive media campaign, incurring valuable public funds, carried out by the Ministry of Finance after the Petitioner challenged on 21.4.2003 the aforesaid purported Inland Revenue (Special Provisions) Act No. 2003 ("X2(a)" / "X2(b)").
- e) The foregoing demonstrates the *sheer contempt on the part of a Government elected by the People* of the Constitution and respect for the constitutional procedures and the sovereignty of the People, *regardless of the fact that the Petitioner's aforesaid Application SC/SD No. 11/2003 was already pending Determination before Your Lordships' Court*.
- f) **How could in such circumstances any citizen have acted exercising his/her constitutional right, within the narrow "window" of 7 days from the date a Bill is placed on the Order Paper of Parliament, such not being made known to the public ?**
20. A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "18th Amendment of the Constitution", *inter-alia*, held –

"The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"

A 7-Member Bench of Your Lordships' Court in the unanimous determination in respect of the Bill titled "19th Amendment of the Constitution", *inter-alia*, held

"The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised where necessary, in trust for the People. This is not a novel concept. The basic premise of Public Law is that power is held in trust."

"These powers of government continue to be reposed in the People and they are separated and attributed to the three organs of government; the Executive, the Legislature and the Judiciary, being the custodians who exercise such powers in trust for the People."

The powers attributed to the respective organs of government include powers that operate as checks in relation to other organs that have been put in place to maintain and sustain the balance of power that has been struck in the Constitution, which power should be exercised only in trust for the People."

"..... any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution"

".... this manifests a cardinal rule that applies to the interpretation of a Constitution, there can be no implied amendment of any provision of the Constitution."

“provisions inconsistent with Article 3 read together with relevant provisions of Article 4 have to be passed by a special majority required under the provisions of Article 84(2) and approved by the people at a Referendum.

Your Lordships also reiterated an **Indian Judgment**, which had held;

“if there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective” (emphasis added]

A 7-Member Bench of Your Lordships’ Court in the unanimous determination in respect of the Bill titled “18th Amendment of the Constitution”, *cited the following*;

“The Rule of Law, means briefly the exclusion of the existence of arbitrariness and maintaining equality before the Law” (A.V. Dicy, Law of the Constitution, pg 120)”

In Your Lordships’ aforesaid Determination, *vis-à-vis*, the Bill titled “19th Amendment of the Constitution”, **Your Lordships lucidly stated thus**:

“We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to “uphold and defend the Constitution” ”

21. In the circumstances aforesaid, the Petitioner respectfully states that he is entitled to invoke the jurisdiction of Your Lordships’ Court for the reliefs prayed for herein.
22. The Affidavit of the Petitioner is annexed hereto in support of the averments herein contained.

WHEREFORE the Petitioner respectfully prays that Your Lordships’ Court be pleased to:

- a) make Order declaring that in terms of Article 3 read with Article 4 (a) of the Constitution that only a limited legislative power had been conferred on Parliament to be exercised by Parliament to enact certain laws, whilst the People have reserved onto themselves the right to pass certain other laws in terms of the Constitution by the People themselves approving such laws at a Referendum.
- b) make Order declaring that laws, which have to be approved by the People at a Referendum in terms of Article 3 read with Article 4 (a) of the Constitution, and which have been unconstitutionally passed by Parliament and certified by the Speaker, would not become law, since Parliament had acted *ultra-vires* the Constitution and outside the limited legislative power conferred by the People to be exercised in trust by Parliament.
- c) make Order determining that one or more of the provisions of the “**Composite Bill**” (“X3”) is / are inconsistent with the provisions of the Constitution
- d) make Order determining that one or more of the provisions of the “**Composite Bill**” (“X3”) require a Special Majority in Parliament and Approval by the People at a Referendum under and in terms of the Constitution, before such provisions could become law.
- e) make Order determining that one or more of the provisions of the “**Composite Bill**” (“X3”), could not be legitimately passed by Parliament to become law in view of the specific prohibitions in the Constitution.
- f) make Order directing the Respondent to obtain Statements from the Director General of Customs, Director General of Excise, Controller of Exchange, Controller of Imports & Exports and the Commissioner General of Inland Revenue, estimating the extent of revenue losses to the State reckoned by each one of them, as per the provisions of the “**Composite Bill**” (“X3”), under and in terms of the respective Statutes set out in the Schedule thereto, and adduce the said Statements before Your Lordships’ Court and to direct them to collect such revenues legitimately due to the State

- g) make Order directing the Respondent to obtain Statements from the Director General of Customs, Director General of Excise, Controller of Exchange, Controller of Imports & Exports and the Commissioner General of Inland Revenue of the prosecutions, criminal or otherwise, which have been instituted and are to be instituted as at date hereof, under and in terms of the respective Statutes set out in the Schedule to the **"Composite Bill" ("X3")**, and to direct them to proceed with the said prosecutions
- h) make Order directing the Respondent to obtain Statements from the Director General of Customs, Director General of Excise, Controller of Exchange, Controller of Imports & Exports and the Commissioner General of Inland Revenue, stipulating as to extent of the aforesaid State revenues, both statutory dues under respective Statutes set out in the Schedule to the **"Composite Bill" ("X3")**, and fines imposed by Courts of law thereunder, each of them, as estimated, are unable to collect, and to adduce the said Statements before Your Lordships' Court.,
- i) make Order directing the Respondent to require the Commissioner General of Inland Revenue to forward to the Chairman of the Commission to Investigate Allegations of Bribery or Corruption, copies of Declarations made to Commissioner General of Inland Revenue under the **Composite Bill "X3"** by "public servants" coming within the meaning of the definition in the Bribery Act, and/or to require the Chairman of the Commission to Investigate Allegations of Bribery or Corruption to call for all such Declarations made by such "public servants" from the Commissioner General of Inland Revenue and to direct the Chairman of the Commission to Investigate Allegations of Bribery or Corruption to take all warranted actions in such regard,
- j) make Order requiring that the Hon. Speaker of Parliament and the Secretary General of Parliament to lay down Rules and Guidelines, as may be approved by Your Lordships' Court, to give due, wide and timely publicity to the public, giving the implications of Bills to be presented in Parliament, and to prevent any interpolations at the printing stage of legislation, in order to avoid any repetition of what has taken place with regard to the said *purported* Inland Revenue (Special Provisions) Act No. 10 of 2003 ("**X2(a)**" / "**X2(b)**") and this **Amendment Bill ("X1(a)")**.
- k) communicate any or all the declarations and Determinations and Orders made as above to the Hon. Speaker of Parliament
- l) make Order granting costs, and
- m) grant such other and further relief as to Your Lordships' Court shall deem meet in the given facts and circumstances averred as aforesaid, in view of the imminent danger to public interest and the public good

Abdel Assouad

Attorneys-at-Law for the Petitioner

Settled by:

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