

Parliamentary Select Committee Report to impeach Chief Justice

Your committee appointed by the Hon. Speaker on **14th November 2012** under Standing Order 78 A (2) to investigate and report to Parliament on the charges mentioned in this resolution within one month from the commencement of your committee as stipulated by Standing Order 78 A (6), commenced its inquiry on the 14th of November 2012 and sat on eight occasions on the dates 14th, 16th and 23rd of November and the 4th, 5th, 6th, 7th and 8th of December. At the first sitting of your committee, the Chairman of your committee explained the procedure adopted by the Committee and Standing Order 78 A and Standing Order No. 78 A (6) in particular were brought to the notice of the Hon. Members. At the same sitting, the Committee further decided to transmit a copy of the resolution placed in the Order Paper of Parliament of 6th November 2012 to the Hon. Dr. Mrs. Shirani A. Bandaranayake and requested her to submit her defence in writing before the 22nd of November 2012, as per standing order 78 a (3). Your Committee further decided to request Chief Justice Hon. Mrs. Shirani A. Bandaranayake to appear before the next sitting of the Committee to be held on 23rd December 2012. The Committee also inquired her whether she was willing to appear before its next sitting on her own or through a representative.

Your Committee sat on **16th November 2012**. Your Committee discussed the letter dated 15th November 2012 sent by Neelakandan and Neelakandan law firm and concluded that under Standing Order 78 A (5), the right to nominate her representative was vested solely in the Chief Justice and that right could not be transferred to Neelakandan and Neelakandan law firm. Accordingly it was decided to inform her to submit a request, if any, to appear before the next sitting day of the Committee on 23rd November 2012, or nominate a representative, if any representative was going to appear on her behalf. The Hon. A.D. Susil Premajayantha, expressing his views about the article titled "The Select Committee divided over the acting Chief Justice" that appeared in "Ravaya" newspaper, emphasized the need to take necessary action against media reports that twist the proceedings of the Committee. The Chairman agreed to enlighten the Speaker on this and request him to take steps to issue a set of guidelines to the print and electronic media. The Hon. Lakshman Kiriella, presenting a written statement emphasized that your committee should stick to principals of natural justice and the rule of law. The Hon. Rajitha Senarathna expressing his views on the above statement stated that at a previous occasion too, the Committee that probed allegations against a Chief Justice acted in this manner and that Parliament is supreme according to a ruling given by a former Speaker Hon. Anura Bandaranaike and the proceedings of the Committee should comply with the Standing Orders. Addressing the Committee, the Chairman opined that Members of Parliament are representatives of the people and the constitution had vested certain powers in the Parliament. He further stated that similar procedures are followed in Great Britain, India and the United States and the responsibilities vested in the Members of Parliament by the Constitution should not be belittled. Accordingly, your committee was of the view that a party outside the Parliament cannot be vested with powers to conduct such an investigation.

Your committee met again on **23rd November 2012**. **On that occasion, the Secretary of the Committee marked the following documents. A list of all documents marked by the Committee at the investigation is annexed as Appendix 1 of this report.** Drawing the attention of the committee to the documents tabled in the committee pertaining to the case SC 3/2012, Hon. Nimal Siripala De Silva emphatically stated that these documents had not been lawfully presented. He further stated that it was not the accepted procedure of Parliament to table them in the committee after having them handed over to Parliament when the same had been addressed to the private addresses of the Members of Parliament. Pursuant to discussions on the matter, the Chairman decided that these documents could not be deemed as the documents of the Committee as they had not been duly presented. The Hon. John Amarathunga, the Hon. Lakshman Kiriella, the Hon. Vijitha Herath and the Hon. Rajavarithiam Sampanthan expressed their disagreement with this decision. The Hon. Vijitha Herath and the Hon. John Amarathunga further stated that as informed by the Supreme Court, the proceedings of your committee should be suspended until the conclusion of the proceedings of the cases before the Supreme Court. Commenting on this matter, the Chairman opined that your committee had been appointed as per the powers vested in Parliament under Article 107 of the on Constitution and as set out clearly in the Standing Orders and that there were precedents in this regard and that the Committee had been given only a very limited period of time by the Parliament and as such the Committee could not deviate from the responsibility it had been entrusted with by Parliament. Expressing their views further, the Hon. Lakshman Kiriella and the Hon. Rajavarithiam Sampanthan stated that action should be pursued in such a way so as not to harm the mutual relationship with the Parliament and the Supreme Court. The Hon. John Amarathunge, the Hon. Lakshman Kiriella and the Hon. Vijitha Herath stated that they did not agree with the Committee's decision not to accept the determination by the Supreme Court. The Chairman again stated that your Committee should act in accordance with the Standing Orders and the Constitution and discharge the responsibility entrusted to it by the Hon. Speaker in an independent and impartial manner. Thereupon, the Hon. Dr. (Mrs.) Shirani A. Bandaranaike, Chief Justice, and Mr. Romesh de Silva, President's Council, were summoned before the Committee. Mr. Romesh de Silva, PC, who appeared for the Hon. Chief Justice, first thanked the Committee for the degree of courtesy accorded to them on their arrival at the Parliament. With Permission from the Committee, the following counsel were nominated to assist senior President's Counsel Mr. Romesh de Silva, who appeared for the Chief Justice :

Mr. Nalin Ladduwahetty, PC
Mr. Saliya K. Peiris, Attorney-at-Law
Mr. Sugath Caldera, Attorney-at-Law
Mr. Riyaz Ameen, Attorney-at-Law
Mr. Iraj de Silva, Attorney-at-Law
Mr. Kandayyah Neelakandan, Attorney-at-Law

Mr. Romesh de Silva, PC, submitted a certified copy of an order by the Supreme Court in Case No. 3/2012 and stated that a request had been made that the proceedings of the Committee be suspended on grounds of mutual trust between the judiciary and the legislature till the judicial action before the Court has been dealt with. The Committee discussed this at length and the Chairman decided that your Committee, which had been appointed in terms of the Constitution, had no power to suspend its proceedings. The Chairman informed that, according to the traditions of Parliament, the Hon. Chief Justice should take an oath at the first instance of her appearance before your Committee, to which Mr. Romesh de Silva, PC, who appeared for the Chief Justice, objected. However, the Chief Justice agreed to take the oath as amended when it was pointed out that the records of evidence show that on a previous occasion, the Chief Justice who appeared before the Committee last appointed to hold a similar examination had taken the oath at the first instance of his appearance before that Committee, and accordingly the Hon. Chief Justice took the oath before the Committee. As Mr. Romesh de Silva PC, who appeared for the Chief Justice, asked for a period of six weeks to submit the case for the defence, the Committee considered it and decided to give him time till 30th November 2012 to submit the statement of defence and to hold the next meeting on 4th December 2012, and informed the defendant party that, in that meeting, they could make their submissions pertaining to the jurisdiction and bias, which they have cited as their preliminary objections. **The Chairman informed the Committee that action would be taken through Secretary General of Parliament to send for documents necessary for the investigations of the Committee.** After considering a request made by the senior counsel of the Chief Justice, the committee agreed to provide the minutes of evidence of the Committee on condition that confidentiality would be guaranteed. At the following meeting of the Committee on 04 December 2012, the Hon. Vijitha Herath stated that a mechanism should be formulated for the continuance of the proceedings of this Committee. At that moment, presenting a written statement, the Hon. John Amarathunga stated that some agreement should be entered into in relation to the matters like procedures of the Committee and the onus probandi. The Hon. Rajavarithiam Sampanthan explained that the standing orders and the rules related to the procedures of the Committee should be formulated by the parliament.

Hon. (Dr.) Shirani A. Bandaranayake and the counsel were then called before the the Committee. President's Counsel Mr. Romesh de Silva informed the Committee that Counsel Saravanan Neelakandan, too, will appear before the Committee for his support at its next meeting in addition to the counsel already appearing before the Committee. Leave was granted for the aforesaid counsel to appear before the Committee. Making a request, President's Counsel Mr. Romesh de Silva stated that despite Standing Order 78 A(8) which provides that the proceedings of the committee shall not be made public until reported by the Committee, and since such right has been established in order to ensure the protection of his client, and since his client, Hon. Chief Justice, had advised him to waive such right, the public and the observers be given the opportunity to observe the proceedings of the Committee accordingly. The Hon. Rajavarithiam Sampanthan, the Hon. Lakshman Kiriella and the Hon. Vijitha Herath expressed their support for the aforesaid stance. Giving a ruling on this matter, the Hon. Chairman expressed the inability of the Committee to act in contravention of the Standing Order 78 B (8). Raising his objection, President's Counsel Romesh de Silva objected to the methodology adopted by the Committee in sending for documents necessary for the Committee. Responding to this, Hon. Chairman informed that the methodology usually adopted by the Committee in terms of the Parliamentary Practice had been adopted by this Committee in that regard. Hon. Chairman briefed the Committee of the documents that had already been sent for by the Committee.

The Committee sat on **05 December 2012**. The Chairman informed the Committee that the future meetings of the Committee could be discussed. The Hon. Lakshman Kiriella and the Hon. Rajavarithiam Sampanthan stated that it had been the convention of the parliament not to have sittings or committee meetings after the budget debate and that they had already made personal arrangements for this period. The Hon. Vijitha Herath stated that the four members who represent the opposition had already made a request in that regard. The Committee, after deliberation, agreed to continue the proceedings of the Committee until 12th December 2012 and then take a decision on the future meetings of the Committee. In response to the question raised by Hon. Dr. Senarathne with regard to the news published in the newspapers about the affairs of the committee, Hon. Chairman informed that action would be taken to obtain a decision from the Speaker by raising a question of privilege in Parliament in this regard. **The documents received by the committee so far were distributed among the Members and the Hon. Chairman informed the committee that these documents had been legally obtained by the Secretary General of Parliament.** In addition to that, the Hon. Neomal Perera requested the committee that the assets reconciliation statements and receipts and payments accounts details of Hon. Chief Justice, her husband, and her son should be obtained.

The Committee resumed sittings on **06th December 2012**. The Hon Rajavarothiam Sampanthan, the Hon. John Amarathunga, the Hon. Lakshman Kiriella and the Hon. Vijitha Herath informed that they had informed the Speaker of their inability to participate in the affairs of the committee from 08th December 2012 to 08th January 2012 and requested not to have committee meetings during that period. In response to that Hon. Chairman informed that as per the decision taken on 05th December 2012, permission for an extension of time should be sought from Parliament after having the maximum possible meetings in the month of December. Thereafter, Chief Justice Hon. Dr. (Mrs.) Shirani A. Bandaranayake and her panel of lawyers including the senior counsel were invited to the committee. Hon. Chairman of the committee, making an announcement, rejected the verbal submission by the senior counsel of Chief Justice on bias and tabled his order in that regard. At this stage, the secretary of the committee read out the list of all the documents that had been received by the committee so far and the copies were provided to the senior counsel of the Chief Justice. Here, the senior counsel of the Chief Justice stated that time was required to study these documents and in order to take a decision in this regard the committee suspended its activities briefly and carried out a discussion only with the participation of the members of the committee. **Subsequently the Committee convened and the Hon. chairman of Committee informed the senior counsel for the Chief Justice that the investigation into the first and second charges mentioned in the resolution against the Chief Justice would be conducted at 1.30 p.m. on the following day, when submissions could be made and witnesses could be sent for to disprove the aforesaid charges and if the witnesses required for that were nominated they could be called before the Committee.** On that occasion Mr. J. Romesh de Silva, the senior counsel for the Chief Justice objected to this decision and the panel of lawyers walked out of the Committee along with the Chief Justice informing that they would not participate in the proceedings of Committee any further due to the fact that the defence was not provided sufficient time and precise information with regard to the procedures of the Committee was not made available.

Your Committee reconvened on the **07 December 2012**. The Hon. Lakshman Kiriella and the Hon. Vijitha Herath expressed their objection regarding the fact that minutes of the Committee held on the 06th December 2012 were not available on that occasion. The Hon. John Amarathunga made a written submission to the Committee and inquire the Chairman whether the Committee would consider the fact mentioned therein and provide the Chief Justice sufficient time and request her to appear before the Committee again. The Chairman of the Committee informed that it was clearly evident as per the letter forwarded by the Law Firm Neelakandan and Neelakandan to the Hon. Speaker that the Chief Justice would not appear before the Committee again. On that occasion the Hon. John Amarathunga, the Hon. Lakshman Kiriella, the Hon. Rajavarothiam Sampanthan, and the Hon. Vijitha Herath walked out of the Committee. The Hon. Dilan Perera making a request from the Committee reminded that it had been decided to investigate into the first and second charges of the aforesaid resolution of 6th November 2012. **On that occasion the Committee decided to send for witnesses and the following witnesses were called to give evidence before the Committee.**

1. Mrs. Shirani Thilakawardane, Judge of the Supreme Court
2. Mr. Lalith Weeratunga, Secretary to the President
3. Mr. Duminda Prabath Mudunkotuwa, Registrar of the Supreme Court
4. Mrs. Amitha Chandrasekara, Registrar of the Chief Magistrate's Court
5. Mr. Janaka Ratnayake, Chief Executive Officer, Trillium Residencies Company Ltd.
6. Mrs. Aroshi Perera, Notary Public
7. Mr. Russell De Mel, Chief Executive Office, National Development Bank
8. Mr. Ajith Niward Cabral, Governor of the Central Bank
9. Mrs. D.K. Abeygunawardane, Notary Public, Director of Law, Trillium Residencies
10. Mrs. Mallika Samarasekara, Commissioner General of the Inland Revenue Department, and Mrs. Deepani Herath, Commissioner (Tax Policy) of the Inland Revenue Department
11. Mr. H.M. Hennayake Bandara, General Manager, National Savings Bank
12. Mr. K. B. Rajapaksha, Deputy General Manager and Mr. M.A.B. Silva, Deputy General Manager of People's Bank
13. Mr. D.M. Gunasekara, Acting Deputy General Manager, Bank of Ceylon
14. Mr. W.A. Chulananda Perera, Controller General of the Department of Immigration and Emigration.
15. Mr. Sisira Paranathanthri, Editor, "Rivira" Sunday Edition
16. Mr. Manjula Thilakarathne, Secretary, Judicial Services Commission.

Accordingly, the above mentioned witnesses were called before the Committee and the documents in the Appendix I were taken into consideration to arrive at the following decision.

In the investigation carried out with respect to the first Charge, the Witnesses, Mrs. Shiranee Thilakawardhana, Supreme Court Judge, Mr. Mudunkotuwa, Registrar of the Supreme Court, Mr. Janaka Rathnayaka, Executive Director of Trillium Residencies Company, Mrs. Dharshi Kalyani Abeygunawardhana, Legal Officer of Trillium Residencies Company and Mrs. Aroshi Perera, Attorney-at-Law and Notary Public, were summoned before the Committee. In addition, 20 Documents relevant to the transaction of purchase of Apartment 2C/F2/P4 located in Sunset Wing of Trillium Residencies by the Hon. Dr. (Mrs.) Shirani Bandaranayake in the names of her sister and the brother-in-law, using a special Power of Attorney were submitted as written evidence and they have been marked from X10 – 19 and X10 – X and attached to this Report. Further, the Minutes dated 06.05.2010 of the Case bearing No. SC/FR 262/2009 were also submitted, marked as X5. We wish to present a summary of the evidence placed before the Committee pertaining to the aforesaid Charge, first.

First, the evidence given before the Committee by Mrs. Shiranee Thilakawardhana, Supreme Court Judge, in respect of the aforesaid Charge, was very helpful to the Committee in reaching an accurate conclusion regarding the matters related to that Charge. Giving evidence before the Committee upon taking oaths, she provided a detailed analysis of the cases which were called Golden Key Cases, filed before the Supreme Court by Depositors of various companies seeking relief including those of Golden Key Company which collapsed. According to her evidence, the Committee was informed with examples that the Supreme Court had to adopt a new innovative procedure to investigate the tragic grievances of over 9,000 Depositors and to provide redress to them under the protection of law. She explained how action was taken to give rulings on the legal action by obtaining agreement of all parties to settled these cases as a whole, leaving room for the Depositors to seek redress from District Courts as well on their discretion, in consideration of the high cost and practical difficulty involved in presenting the cases of 9,000 Depositors separately and the difficulty of settling a large number of Cases separately. Giving evidence before the Committee, she stated that for 3 ½ years she had continuously been a member of the panel of Judges in the hearing of these cases which had been started during the period when former Chief Justice, the Hon. Mr. Sarath N. Silva was in office, that she had studied the problems and the context of these cases with great commitment and effort and that Chief Justice the Hon. Sarath N. Silva had stated prior to his retirement that she should be a mandatory member of the panel of Judges appointed to hear these cases as it was apt to solve those cases making use of the experience she had gained through such study. She pointed out that she had acted as the chair of the Bench appointed to hear the said Golden Key Cases subsequent to the retirement of the Hon. Sarath N. Silva, Chief Justice, and that the said Bench took action to develop a method to provide to the Depositors at least 65% of the money they had deposited. She admitted that in the Fundamental Rights Case No. 262/09, with the agreement of the stakeholders and the Counsels, a practical method of protecting the properties administered under various companies, preventing mismanagement of such property generating a high income out of such property and distributing that income among the Depositors was formulated on 06.05.2010 and it was included as an order of the said Case and that the said Order was mentioned in the document marked X5. The Committee studied the said Order and paid specific attention to the following paragraph of the said Order in particular,

“This Court also directs the Committee of Chartered Accountants to pursue all negotiations for the Sale of other properties by advertising and calling for quotations with a view to obtaining the highest going prices on these properties. **No properties to be alienated without the express permission of the Court.** For the moment, the properties to be disposed would be

- 1) Pioneer Tower (Head Office Building)
- 2) Trillium Residencies (Sale of the housing units)
- 3) Celestial Residencies ”

Accordingly, it has been decided that the alienation of the properties

- 1) Pioneer Tower (Head Office Building)
- 2) Trillium Residencies (Sale of the housing units)
- 3) Celestial Residencies

should be done by the Committee of Chartered Accountants after discussing about those deals and advertising the property intended to be sold and the properties must be sold at the highest bid made and also that no property shall be alienated **without permission granted by the Court.** This is very important because this Court Order is directly applicable to the property mentioned in this Charge. The Committee intends to discuss the manner in which this Order has been violated, at a later stage.

Mrs. Thilakawardhana stated that subsequent to the said Order given on 06.05.2010, a request was made by a party to have the case heard before a Bench comprised of 5 Judges. She stated that on that occasion, she and the other two Judges of the Bench referred it to the Hon. Chief Justice pointing out that it had to be decided by the Chief Justice under Article 132 of the Constitution, but Her Ladyship had the case heard before a Bench of three Judges chaired by the Chief Justice without giving a ruling in that regard and stated that she was not aware of the reason for that. This matter was reason for great consternation and keen attention of the Committee. This Committee emphasizes that the absolute power to give a ruling on the request to have the case heard before a panel of Judges consisting of five members made by a party to the case is vested in the Chief Justice as per Article 132 of the Constitution. Article 132(2)(ii) thus states:

“at the request of two or more Judges hearing any matter ; or

On the application of a party to any appeal, proceeding or matter if **the question involved is in the opinion of the Chief Justice one of general and public importance,**

Direct that such appeal, proceeding or matter be heard by a Bench comprising five or more Judges of the Supreme Court.”

Hence, it is patently clear that when such a request is made, the said matter has to be decided by the Chief Justice on his/her own. In the light of evidence of Justice Thilakawardana, it is exceedingly obvious that the Chief Justice has on purpose neglected the giving of such a ruling and Justice Thilakawardana had brought this to the notice of the Chief Justice and even after being so informed, action had been taken to remove Justice Thilakawardana and other Judges and the said case was brought under a three-member Bench, chaired by the Chief Justice. The Committee without any hesitation whatsoever, decided to admit the evidence of Justice Thilakawardana as truthful and credible.

Accordingly, in respect of this case, the conduct of Chief Justice Shirani Bandaranayake is in violation of the Constitution and is highly suspicious. The Committee focused special attention on the action pursued by the Chief Justice to purchase a house in Trillium Housing Scheme, in the name of her sister and the brother-in-law, which could not have been alienated without the approval of the Supreme Court particularly under these circumstances. The Chief Justice with such profound knowledge of the law, stepping in to purchase a property which was a subject in a case she was hearing, in violation of its Orders, is astonishing. This suspicion was further consolidated by the evidence given by Mr. Janaka Ratnayake. He stated that he held many positions including the position of the Executive Director of many companies, including Trillium Residencies Company and was an active and high profile figure in many companies that were stakeholders of this case. Mr. Janaka Ratnayake admitted the fact that he appeared for this Case bearing number 262/2009 to and expressed his objection over some rulings given against him. He also stated that in the meanwhile, the Chairman of National Savings Bank Mr. Pradeep Kariyawasam spoke to him over the phone and expressed the need for the sister and the brother-in-law of his wife, Justice Shirani Bandaranayaka to purchase an Apartment from the Trillium Residencies, following which arrangements were made for them to have a look at it and a discount of Rs. 1.6 million was offered as she was a Judge of the Supreme Court. In the course of intensive interrogation regarding this transaction, it was inquired from Mr. Janaka Ratnayake whether this discount was given in anticipation of some future favour on an advantage from the Judge. **He did not answer that question.** This intensified the suspicion of the Committee in regard to this transaction. Mr. Janaka Ratnayake in his evidence said that he maintained the photocopies of every Cheque issued by Mrs. Shirani Bandaranayaka pertaining to all transactions, in safe custody. When questioned as to why copies of Cheques pertaining to this transaction were maintained when it was not done so pertaining to other transactions, **Mr. Janaka Ratnayake failed to answer.** Further when a Member of the Committee questioned whether there was an incident of an employee of Trillium Residencies being dismissed, Mr. Ratnayake admitted that Justice Shirani Bandaranayaka often visited this Apartment driving the vehicle on her own and at one such occasion a Muslim employee on duty had not paid due respect to her regarding which a complaint was made upon which that employee was dismissed. This very clearly demonstrates the fact that Mr. Janka Ratnayaka and Justice Shirani Bandaranayaka had a very close relationship. The Committee concluded that the Chief Justice who, having been engaged in a process of purchase on behalf of her sister and brother-in-law upon enjoying a discount of Rs. 1.6 million, has committed an illegal and unethical act by taking up a number of very controversial cases relating to Companies in which the said Mr. Janaka Ratnayaka invested in and from which he derived financial benefits, for hearing before a Bench chaired by her instead of having the said cases taken before a bench of five Judges chaired by Justice Shirani Thilakawardana. This is totally unbecoming of a person holding the position of the Chief Justice. Further, Justice Shirani Thilakawardana in her evidence very clearly stated that as she felt that Mr. Janaka Ratnayaka had engaged in an act of gross misconduct pertaining to Trillium transactions she ordered the Criminal Investigation Department to initiate an inquiry into it immediately but to no avail. It was abundantly clear that Mr. Janaka Ratnayaka wanted Mrs. Shirani Thilakawardana who took such a drastic step against him out of the said case. Mr Janaka Ratnayaka and Mrs. Abeygunawardana, Legal Officer of Trillium Residencies admitted that Trillium Residencies apartments were sold by his company in contravention of a special order given by her requiring permission from the Court and without following the stipulated procedure.

The conduct of the Chief Justice Shirani Bandaranayaka, who enjoyed a discount of Rs. 1.6 million for this property while having close relations with Mr. Janaka Ratnayaka, against whom the Justice who chaired the former Bench had ordered the Criminal Investigation Department to initiate prompt inquiry into the fraud, cannot be condoned. Ms. Nalani Abeygunawardana, Attorney-at-Law, who attested the Deed Number 895 pertaining to the property purchased by her sister and brother-in-law testified before the Committee. She admitted the fact that two parties had been involved in a sales agreement prior to this property being purchased and that the scheme of payment is clearly laid down in the annexure of the Sales Agreement. Mr. Janaka Ratnayaka stated that the payments in relation to this transaction were made by Cheques. Mrs. Nalani Abeygunawardana, an experienced Attorney-at-Law and Notary who has served as a legal officer of the Company for a long period has certified how the financial transaction took place as follows:

“I do further certify and attest that out of the said consideration of Rs.26,125,000/- a sum of Rs.19,362,500/- was paid by cash prior to the execution of these Presents and the balance sum of Rs.6,762,500/- was paid by Cheque bearing No. 489461 dated 20/07/2012 drawn by National Development Bank Privilege Banking at the execution of these Presents”

That is Mrs. Shirani Bandaranayaka had paid a sum of Rs. 19,362,500/- prior to the execution of the Deed. When questioned about it she said that it was a fault on her part. When the Chief Executive Officer of the Company claimed that payments were made by Cheques in terms of the agreement reached in relation to the scheme of payment in the Sales Agreement signed, the

Attorney-at-Law who attested the Deed certifying that the said sum was paid by cash further intensified the suspicion on this transaction. Chief Justice Shirani Bandaranayaka, making her submissions relating to this in her response has stated as follows by quoting only a portion of the Order of the Supreme Court Case bearing Number 262/09 dated 06.05.2010.

In the circumstance there was no restriction for the sale of any of the housing units of Trillium from 6.5.2010. In the circumstances from 6.5.2010 the housing units in Trillium residencies were in effect not a property in the list of properties in Case 262-2009 that could not be alienated.

It is obvious that the Chief Justice has deliberately concealed facts. She has tried to get cover by citing only the first part of the Order dated 06.05.2010. The following portion which is of specific importance:

“This Court also directs the Committee of Chartered Accountants to pursue all negotiations for the sale of other properties by advertising and calling for quotations with a view to obtaining the highest going prices on these properties. **No properties to be alienated without the express permission of this Court.** For the moment, the properties to be disposed would be”

has been deliberately concealed. Therefore that property as she claimed, **has not become an alienable property.** Our committee has no difficulty in arriving at the conclusion that the Chief Justice who constantly perused the report of this case has, deliberately concealed facts for her advantage. The Committee paid its specific attention to the following part of her reply:

“Cases bearing Numbers 262-09, 191-09 and 317-09 referred to in the Charge were meant to be taken up together. On 23.8.2011 a Motion was filed asking that the matter be heard by a Bench of 5 Judges. This Motion was submitted to our Client, who made Order that the Motion be supported before the Bench which sat on 29.6.2011, which was Hon. Justice Thilakawardene, Justice Ekanayake and Dep P.C. J. ”

Despite the fact that the Article 132 of the Constitution very clearly specifies that only the Chief Justice can make the Order for a Case to be taken up for hearing before a number of Judges, the Order made by her on 29.06.2011 that the said Motion be tried before a Bench comprised of Justice Thilakawardana, Justice Ekanayake and Justice Dep, is inconsistent with the Constitution. The Judges including Justice Thilakawardana are not bound to carrying out such an Order. She has, in her reply not mentioned the basis on which she decided to take that Motion up for hearing before a Bench presided by her. This gives the Committee the clear impression that she has something to hide and has deliberately violated the Constitution and neglected to discharge the duties and responsibilities entrusted in her.

Subsequent to the Publication of the reply of the Chief Justice in newspapers, the former Chief Justice Ashoka De Silva had sent a Letter of clarification to the Hon. Speaker. That Letter had been referred to this Committee by the Hon. Speaker and it is included as a part of the minutes of the Committee. According to that clarification, the former Chief Justice Mr. Ashoka De Silva has rejected the claim made by the Chief Justice in her reply that he heard the Trillium Case and said that only on one occasion when the Case came before him he postponed it to another day. He categorically states that he was not involved in hearing the said case. Mr. Ashoka De Silva, in his reply further stated that Mr. Manjula Thilakrathna had been recruited as an Assistant Secretary during his time and subsequently there had been grave allegations against him. Pursuant to the investigations into those allegations, the Judicial Services Commission had met to take a decision regarding him, but the incumbent Chief Justice had been quite reluctant to take any decision against him. The Letter in full is annexed to the Minutes.

The Committee concludes that, the conduct of the Chief Justice in this transaction by maintaining a close rapport with Mr. Janaka Ratnayaka, the Executive Director of Trillium Residencies who was suspected of gross misappropriation and fraud in the investigation carried out in relation to the Trillium Case heard by Justice Shirani Thilakawardana and obtaining from him a discount of Rs.1.6 million and subsequently refusing to make an Order in response to the request that this Case be heard before a Five Member Bench as provided to by the Constitution and deciding to take the Case up for hearing by herself with her two outside Judges by removing Justice Shirani Thilakawardana from hearing this case for which she had been painstakingly committed for 3½ years amount to an organized effort made with an ulterior motive. She said that she had never voluntarily withdrawn from hearing this Case and that she had been surprised to hear that she had been moved from that Case. This was confirmed by Mr. Janaka Ratnayaka maintaining stoic silence when Members of the Committee posed to him the following questions while he was testifying. The questions and answers are as follows:

The Hon. Nimal Siripala De Silva: When you gave her a discount of Rs.1.6 million did not it occur to you that it was unethical. Did not you think that the Case should be taken up without her ? Did not you advise your Lawyers in that regard? You gave a discount of Rs. 1.6 million as the name of the Chief Justice was mentioned ?

The Hon. Wimal Weerawansa: Did not you think that this would amount to offering a bribe?

The Hon. Nimal Siripala De Silva: Did you actually offer it as a bribe ?

The Hon. Wimal Weerawansa: Did you offer that in that form ?

Hon. Nimal Siripala de Silva: It was given with the intention of getting some favour, wasn't it ? The idea that "we could get some benefit if we are in good terms with the Chief Justice" must have been there at least in the back of your mind?

Mr. Janaka Ratnayake: No answer.

The Hon. Wimal Weerawansa: Or did Mr. Kariyawasam come out with such a suggestion ?

Mr. Janaka Ratnayake: No answer.

This was further substantiated by the following answers given by him in response to questions asked by Committee Members.

Hon. Nimal Siripala de Silva: Were you not there around at that moment ? The Chief Justice is coming now. You have given a discount of Rs.1.6 million. You loved it. When the Chief Justice has been offered the discount of Rs.1.6 million, didn't you say, "if Chief Justice comes this way to sign these, call me, too." ? "Didn't you say so ? Speak the truth."

Mr. Janaka Ratnayake: That's why I myself signed the Deed. (Produces the Deed) Here, I have signed here on the Deed. I met her and I myself signed the Deed.

Hon. Nimal Siripala de Silva: Oh ! You visited her ! You met her ?

Mr. Janaka Ratnayake: Yes, I met her. Twice.

Hon. Nimal Siripala de Silva: What did you discuss at that time ?

Mr. Janaka Ratnayake: At that time we discussed Spoke of apartments. I went there and handed over the key to the apartment to her and showed her everything. I think I have signed only one Deed although I have been working at Trillium for four years - only this deed.

Hon. Nimal Siripala de Silva: Only this Deed ?

Mr. Janaka Ratnayake: Yes.

Hon. Nimal Siripala de Silva: You have shown particular interest in this transaction when compared to the interest shown to other Clients.

Mr. Janaka Ratnayake: Yes, I did

Hon. Wimal Weerawansa: Much more interest, than you show to others ?

Mr. Janaka Ratnayake: That's the only Deed I've signed in Trillium.

In drawing a conclusion on this allegation, the Committee paid its attention to the analysis of the above evidence, the submissions made and the legal principles related to misbehaviour.

I wish to report that the Committee seriously considered the laws and conventions accepted in the English law about the principles related to this issue and the determinations made by Courts in several countries. For easy reference, the legal matters extracted from determinations of Courts and other documents, which were considered by the Committee, are given below in English.

"In Dimes v Proprietors of Grand Junction Canal (1852) 3 HL Car 759, 10 ER 301, the House of Lords, after consulting the judges, set aside a decision of the Lord Chancellor, Lord Cottenham, granting relief to a company in which he was a substantial shareholder. In the course of his speech Lord Campbell C.J. Said: "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern but, my Lords, it is of the greatest importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest but to avoid the appearance of labouring under such influence."

In Lacabail Ltd. , Bayfield Properties Ltd. And Four Others Matters (2000) All E.R. 65 at P.70 it was stated that if a judge has a personal interest in the outcome of an issue which he is to resolve, he is improperly acting as a judge in his own cause and that such a proceeding would, without more, undermine public confidence in the integrity of the administration of justice.

In England, for a long time, a person who had a pecuniary interest in the outcome of a case was regarded as disqualified to adjudicate, no matter how small the interest. Thus in R.V. Rand (1866 Lr 1 QB 230 at P.232) Blanburn, J. said: "There is no doubt that any direct pecuniary interest, however small in the subject of inquiry does disqualify a person from acting as a judge in the matter."

Halsbury 4th Edition Vol. 1 para 68 states that “there is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating.

The pecuniary interest involved in the Trillium transaction can by no means be regarded as small.

It has been noted that a judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

The reasonable observer, according to the Bangalore Draft, is “a reasonable, fair-minded and informed person” who “might believe” that the judge is unable to decide the matter impartially.

It is important to draw specific reference to the expansion of the law on automatic disqualification of judges as enunciated by the House of Lords in R. v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte [199] All E.R. 577.

In Pinochet, a petition had been brought by Senator Pinochet to set aside an order made by the House of Lords on 25 November 1998. It was said the links between one of the members of the Appellate Committee who heard the Appeal, Lord Hoffmann, and Amnesty International (“AI”) were such as to give the appearance that he might have been biased against Senator Pinochet.

It appears that neither Senator Pinochet nor (save to a very limited extent) his legal advisers were aware of any connection between Lord Hoffmann and AI until after the judgement was given on 25 November. Two members of the legal team recalled that they had heard rumours that Lord Hoffmann’s wife was connected with AI in some way. During the Newsnight programme on television on 25 November, an allegation to that effect was made by a speaker in Chile. On that limited information the representations made on Senator Pinochet’s behalf to the Home Secretary on 30 November drew attention to Lady Hoffmann’s position and contained a detailed consideration of the relevant law of bias.

On 10 December 1998 Senator Pinochet lodged the present petition asking that the order of 25 November 1988 should either be set aside completely or the opinion of Lord Hoffmann should be declared to be of no effect. The sole ground relied upon was that Lord Hoffmann’s links with AI were such as to give the appearance of possible bias.

It is important to stress that Senator Pinochet made no allegation of actual bias against Lord Hoffmann; his claim was based on the requirement that justice should be seen to be done as well as actually being done.

The evidence adduced with regard to the Trillium matter clearly establishes that the Chief Justice had a pecuniary interest in the subject matter.

The contrasting feature of this case, as distinguished from Pinochet, is that in Pinochet the House of Lords were confronted with a situation where the outcome of the litigation did not lead to financial benefit to anyone. The interest of Amnesty International in the litigation was not financial; it was a broad public policy interest. However, in this case, the Chief Justice had a significant pecuniary interest in the case before her, and there was failure on her part to disclose that interest.

There is no need to inquire into where there was likelihood of bias, The mere fact that the relationship was not disclosed, means that justice has not been seen to be done (see the observations of Lord Widgery C.J. in R. v Altrincham Justices, ex parte Pennington [1975] 1 Q.B. 549 at p.552)

We note that the jurisprudence of the European Convention of Human Right insists that the appearance of bias, even if there is no actual bias, is sufficient to taint a decision. It has been observed that the test of bias is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased: see Laval v Northern Sports Ltd. (2003) UKHL 35.

If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice having been done, thereby destroying confidence in the judicial system.

It is also relevant to note the effect of section 49(3) of the Judicature Act which provides that “Where any Judge who is a party or personally interested, is a Judge of the Supreme Court or the Court of Appeal, the action, prosecution, proceeding or matter to or in which he is a party or is interested, or in which an appeal from his judgment shall be preferred, shall be heard or determined by some other Judge or Judges of the said court.”

The conduct of the Chief Justice in this matter clearly amounts, in our view, to misbehaviour.”

The office of the Chief Justice is a position which demands maximum confidence of the public. A moral conduct of an exceptional degree is expected from a Chief Justice unlike from an average citizen. Your Committee observes that any discredit to such conduct leads to a decrease in the confidence of the public towards a holder of such office. Your Committee is of the view that no further facts are needed to prove the allegation of misconduct. The Committee concludes that ample evidence has been provided to prove misconduct.

02nd Allegation - Allegation No.02 reads as follows:

'The misbehaviour "in making the payment for the purchase of the above property, by paying a sum of Rs. 19,362,500/- in cash, the manner in which such sum of money was earned had not been disclosed, to the companies of City Housing and Real Estate Company Limited and Trillium Residencies prior to the purchase of the said property.'

In reply to this allegation, the Chief Justice has stated in her statement of defence that the sum of Rs. 19,362,500/- was a part of the consideration spent on purchasing the house in Trillium Residencies, the sum of Rs.19,362,500/- is included in the sum of Rs. 29,688,255.88 which was remitted by her sister, and that the aforesaid sum of Rs.19,362,500/- was remitted to the seller when purchasing the aforesaid house and the aforesaid sum of Rs. 19,362,500/- does not belong to her.

The Select Committee considered the following facts based on the submissions made to the Committee:

- (1) In purchasing Trillium Residencies Hon. Shirani A Bandaranayake, Chief Justice, had paid the consideration by Cheque and the said Cheque had been realized.
- (2) The Notary who attested Deed No. 895 admitted that he had accepted a sum of Rs. 19,362,500/- million from the purchaser prior to attesting the aforesaid Deed in the name of the seller and had stated so in the Notary attestation.
- (3) The Notary attestation of the aforesaid Deed indicates that the payment was made in cash, but according to the statement of defence the payment was made by Cheque and Hon. Shirani A Bandaranayake, the Chief Justice, failed to explain the reasons for this contradiction to the satisfaction of the Committee.
- (4) The Chief Justice did not submit any evidence to explain the causes for the above mentioned difference and the contradiction of whether the payment was made in Cash or by Cheque and there is some reasonable doubt as to whether the aforesaid sum of 19,362,500/- was really paid. These matters have to be referred to the authorities for further investigation.
- (5) Although there is evidence to prove that various amounts of money have been received for a long time prior to the actual date of purchase, 20.07.2012, i.e. from a date as far back as 28.03.2008, and money has been remitted to the Accounts of the Chief Justice even after the date on which the said property was purchased and such remittances have to be referred for investigation.

However the Committee is not satisfied that the facts submitted to the Committee are sufficient enough to substantiate the misconduct referred to in allegation No. 02

03rd Allegation

'Not declaring in the annual Declaration of Assets and Liabilities that should be submitted by a Judicial Officer, the details of approximately Rs. 34 million in foreign currency deposited at the branch of NDB Bank located at Dharmapala Mawatha, Colombo 07 in the Accounts, 106450013024, 101000046737, 100002001360, and 100001014772 during the period from 18 April 2011 to 27 March 2012'.

In Section 8(1) of the written statement of defence submitted by the Chief Justice, the Chief Justice has questioned about the Assets and Liabilities referred to in the 3rd allegation. However, the Chief Justice has later replied to the aforesaid allegation. In reply to the aforesaid allegation, the Chief Justice said that foreign currency to the value of Rs. 34 million had not been remitted to her Account, but her sister had sent a sum similar to the value of Rs. 29,688,225.38 from Australia in order to purchase a house in Trillium Residencies. The Chief Justice further stated that the aforesaid amount of money did not belong to her. Moreover, she has stated further that her sister had asked her to keep the remaining sum of Rs. 800,000/- after purchasing the aforesaid house to be spent on an alms giving for their parents. The Chief Justice has further stated in her statement of defence that she had been keeping a sum of Rs. 10,061,819.31, which she had stated in her Declaration of Assets and Liabilities, to purchase a house for her sister. According to the Bank Accounts of the Chief Justice which have been provided to this Committee by NDB Bank, it appears that the sister of the respondent has remitted money in foreign currency to the Accounts of the Chief Justice. However, upon close scrutiny of the said Accounts, it appears that the abovementioned foreign currency had been invested by the Chief Justice. However, it was apparent from the documents and evidence presented to this Committee, that the Chief Justice has paid money to purchase a house from the Trillium Housing Project.

As it appears from the Bank Accounts Statements of the Chief Justice that she has invested the foreign currency remitted by her sister, and at a time that such money has been used by the Chief Justice, the Chief Justice had failed to disclose that she was holding such money on behalf of another person. The aforesaid amount which she failed to disclose is a sum additional to the money which was claimed to be belonging to her sister indicated in the Declaration of Assets and Liabilities submitted by her as of 31.03.2012, viz, relating to the money connected with payments made by her at the initial stages of purchasing the house. Under the circumstances, even though it was stated by the Chief Justice in her Declarations of Assets and Liabilities which should be made in accordance with the Declaration of Assets and Liabilities Act No. 01 of 1975 as amended by Act No 74 of 1988 that she had been holding money on behalf of her sister, she has not mentioned anything about the interest received by investing the money remitted by her sister as claimed by the Chief Justice. However, it was the Chief Justice herself who could have made a comprehensive explanation on the matters. But as a result of her refusal to give evidence before this Committee, the Committee was unable to know about the necessary facts as regards the said allegation. Therefore this Committee was not in a position to reach a decision with regard to the said allegation.

04th Allegation

‘Not declaring in the annual Declaration of Assets and Liabilities that should be submitted by a Judicial Officer, the details of more than twenty Bank Accounts maintained in various Banks including nine Accounts bearing numbers 106450013024, 101000046737, 10002001360, 100001014772, 100002001967, 100101001275, 100110000338, 100121001797 and 100124000238 in the aforesaid Branch of NDB Bank.’

In paragraph 08 (iii) of the written statement of defence submitted by the Chief Justice, an inquiry has been made about details of the Bank Accounts mentioned in the 04th allegation. Similarly, an inquiry has been made as regards the Annual Accounts and Liabilities in paragraph 08 (iv). A prima facie matter in this regard is that there is no mention of a statement on Accounts and Liabilities in the said allegation. It is apparent from the statement of defence submitted by the Chief Justice herself. The said allegation refers to an annual Declaration of Assets and Liabilities. The persons to whom the Declaration of Assets and Liabilities Act No. 01 of 1975, as amended by Act No 74 of 1988 apply, have been specified in Section 2 of the said Act and accordingly the said Act is applicable to Judicial Officers too. Hence under Section 03(3) of the said Act, the Judicial Officers too, should make a Declaration of Assets in the prescribed form and submit before 31st March every year. Other than this, there is no need for a Judicial Officer to make any other Declaration of Assets and Liabilities annually and the only Declaration of Assets and Liabilities made by the Judicial Officers is the Declaration of Assets and Liabilities made under the aforesaid Act. Under such circumstances, inquiring as to what Declaration of Assets and Liabilities should be submitted by a Judicial Officer is baseless and cannot be accepted.

The letter forwarded by the Secretary to the President submitting the Declaration of Assets and Liabilities is marked xl-x, the declaration of assets and liabilities of the Chief Justice for the year 2000 is marked as xl-(1), the Declaration of Assets and Liabilities for the year 2002 is marked as xl-(2), the Declaration of Assets and Liabilities for the year 2003 is marked as xl-(3), the Declaration of Assets and Liabilities for the year 2004 is marked as xl-(4), the Declaration of Assets and Liabilities for the year 2005 is marked as xl-(5), the Declaration of Assets and Liabilities for the year 2006 is marked as xl-(6), the Declaration of Assets and Liabilities for the year 2007 is marked as xl-(7), the Declaration of Assets and Liabilities for the year 2008 is marked as xl-(8), the Declaration of Assets and Liabilities for the year 2009 is marked as xl-(9), the Declaration of Assets and Liabilities for the year 2010 is marked as xl-(10), the Declaration of Assets and Liabilities for the year 2011 is marked as xl-(11) and the Declaration of Assets and Liabilities for the year 2012 is marked as xl-(12).

Further, the request by the Chief Justice for details of the Bank Accounts referred to in the said allegation is baseless. Since the Chief Justice has the knowledge of her Bank Accounts and since she can obtain the necessary details of the Bank Accounts from her Banks it is baseless to make a request for their details from the Select Committee. Responding to this allegation, in the written statement of defence of the Chief Justice, she has stated that she had disclosed details of active Bank Accounts in NDB Bank with money. Though the Chief Justice has made inquiries about matters pertaining to the 4th allegation as stated by her in paragraph 8 of her statement of defence, she has subsequently submitted her defence in relation to the said allegation in the same statement of defence **which could give rise to a doubts about her own good faith**. However, since the Chief Justice has not submitted proper details of her Bank Accounts, the details of the Bank Accounts of the Chief Justice submitted by NDB Bank in which she maintains her bank Accounts according to her own admission have to be considered. Accordingly, some important details of the Bank Accounts of the Chief Justice can be analyzed as indicated below:

Details of Bank Accounts

(1)

- Account Number (old) : 100002001360
- Account Number (new) : 10111002058
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake
- Type of Account : Special Current Account
- Date of Commencement : 11.11.2005

This account remains active up to today. Every year the Chief Justice has withdrawn money from this account by 31st March so as to make the balance zero and had invested the withdrawn money. Though all Accounts have to be disclosed in the Declaration of Assets and Liabilities made annually irrespective of the fact whether funds are available or not, this Account has not been disclosed in a Declaration of Assets and Liabilities of any year.

An important part of the said Account of the Chief Justice can be extracted as follows :

Date	Balance
13.01.2010	700,078.18
31.03.2010	00
07.04.2010	910,473.22
18.02.2011	2,051,098.56
18.02.2011	00
05.05.2011	974,280.39
25.10.2012	00

[This account record has been marked as X2-1 (6)]

(3)

- Account Number (old) : 100121001797
- Account Number (new) : 106450000542
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake

This is a RFC Account. This Account has not been disclosed in any of the Declarations of Assets and Liabilities, declared in any year. Further, the official designation of the Chief Justice has been used, having given a new Account number for the same Account. (This bank statement has been marked as X2- 1(8))

(5)

- Account Number : 106110012128
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake

The available balance of the said Account of the Chief Justice is given below :

Date	Balance
23.04.2012	356,963.83
30.04.2012	357,648.42
30.04.2012	357,593.65
31.05.2012	360,251.11
25.06.2012	361,250.82
30.06.2012	364,164.09
06.07.2012	384,732.58
31.07.2012	387,971.99
31.08.2012	391,267.09
30.09.2012	394,482.98
31.10.2012	397,833.38

[This account has been marked as X2-1 (18)]

This Account too has not been disclosed in the Declarations of Assets and Liabilities submitted by the Chief Justice.

(2)

- Account Number (old) : 100002001967
- Account Number (new) : 10110002778
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake

This is an Account which had been very active up to 15-04-2010. A sum of Rs. 4,653,468.92 had been withdrawn on 15-4-2010 to be invested (Securities). The balance Rs. 736.47 continues to remain in the account. This Account has not been mentioned in the Declarations of Assets and Liabilities made by the Chief Justice for any of the years.

The balances remained in the aforesaid account belonging to the Chief Justice before 31st March and after 31st March can be shown as follows:

Date	Balance
13.01.2010	4,566,724.47
31.03.2010	00
15.04.2010	4,566,724.47
15.04.2010	736.47
03.11.2012	736.47

[This bank statement has been marked as X2-1 (10)].

Rs. 250 has been charged on 01.11.2011 for not maintaining the minimum balance in the Account. However, that fee has been cancelled on 03.11.2011.

(4)

- Account Number : 106110012694
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake

The available balance of the said Account of the Chief Justice is given below:

Date	Balance
24.10.2012	4,601,883.35
24.10.2012	4,530,029.48
24.10.2012	4,880,029.48
31.10.2012	4,916,550.25

[This account has been marked as X2-1 (19)]

This Account has not been disclosed in the Declarations of Assets and Liabilities submitted by the Chief Justice.

(6)

- Account Number : 100124000238
- Account Number (new): 106450013024
- Category of Account : R.F.C.Savings Account – Australian Dollars
- Bank : NDB
- Account Holder's Name: Shirani Anshumala Bandaranayake

The available balance of the said Account of the Chief Justice is given below:

Date	Balance
30.11.2009	0.00
26.04.2011	1,297.19
01.09.2011	26,306.15
05.09.2011	1,306.15
28.03.2012	9,348.83
30.03.2012	1,358.83
31.03.2012	1,362.38
30.04.2012	1,364.69
31.10.2012	1,378.52

[This account has been marked as X2-1 (16)]

This Account has been disclosed only in the Declaration of Assets and Liabilities in 2012 and had not been included in 2010 and in 2011 Statements

- (7)
- Account Number : 101110002058
 - Category of Account : Special Current Accounts
 - Bank : NDB
 - Account Holder's Name: Shirani Anshumala Bandaranayake

The available balance of the said Account of the Chief Justice is given below :

Date	Balance
03.10.2011	782,291.15
09.02.2012	5,108,682.35
09.02.2012	00
17.02.2012	5,108,682.35
17.02.2012	5,117,696.03
17.02.2012	7,566,471.03
17.02.2012	7,568,617.90
17.02.2012	00
24.02.2012	7,568,617.90
24.02.2012	7,580,592.91
24.02.2012	00
02.03.2012	7,580,592.91
30.03.2012	10,047,779.95
30.03.2012	00
05.04.2012	10,047,779.95
05.04.2012	10,061,819.31
05.04.2012	50,000.00
05.04.2012	00
11.04.2012	10,011,819.31
11.04.2012	10,025,808.43
16.04.2012	00
20.04.2012	10,025,808.43

[This account is marked as X2-1 (7)]

The Chief Justice has not declared this account in any of the Declarations of Assets and Liabilities

- (8)
- Account Number : 100100039660
 - Account Number (new) : 106000134433
 - Type of Account : Savings Account
 - Bank : NDB
 - Account Holder's Name: Shirani Anshumala Bandaranayake

Financial status of the aforesaid Account of the Chief Justice can be quoted as follows:

Date	Balance
30.11.2009	219,037.55
31.03.2010	252,253.47
31.03.2010	252,157.43
30.04.2010	253,089.83
30.04.2010	252,996.56
03.05.2010	252,984.09
31.03.2011	306,975.32
31.03.2011	306,858.45
01.04.2011	306,845.95
30.04.2011	307,980.85
30.11.2011	339,945.98
29.02.2012	355,712.87
31.03.2012	356,996.72
23.04.2012	00

[This account is marked as X2-1 (14)].

From the year 2011, the designation of the Chief justice has been used in this Account. This account has not been declared in the Declarations of Assets and Liabilities in the years 2007 and 2008. It has been included only in the Declarations of Assets and Liabilities made in the years 2010, 2011 and 2012.

Section 2 of Declarations of Assets and Liabilities Act No. 1 of 1975 as amended by Act No. 74 of 1988 stipulates the following:

"2. (1) The provisions of this Law shall apply to every person belonging to any one of the following classes or descriptions of persons:-

- members of Parliament;
- Judges** and public officers appointed by the President, public officers appointed by the Cabinet of Ministers, **Judicial Officers** and scheduled public officers appointed by the Judicial Service Commission and staff officers in Ministries and Government Departments;
- Chairmen, Directors, members of the Boards and staff officers of public corporations;
- elected members and staff officers of local authorities;
- office-bearers of recognized political parties for the purposes of elections under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981 or the Provincial Councils Elections Act, No. 2 of 1988 or the Development Councils (Elections) Act, No. 20 of 1981 or the Trade Unions Ordinance;
- the executive of trade unions registered under the Trade Unions Ordinance;
- candidates nominated for election at elections to be held under the Presidential Elections Act, No. 15 of 1981, the Parliamentary Elections Act, No. 1 of 1981, the Provincial Councils Elections Act, No. 2 of 1988, the Development Councils (Elections) Act, No. 20 of 1981 or the Local Authorities Elections Ordinance;
- proprietors, editors and members of the editorial staff of newspapers in respect of which declarations have been made under section 2 of the Newspapers Ordinance;
- Chairmen, Directors and staff officers of companies registered under the Companies Act, No. 17 of 1982, in which the majority of shares are held by the State or by a public corporation;
- such categories of other officers as may be specified by regulations.

(2) A person to whom the provisions of this Law apply by virtue of the operation of the preceding provisions of this section, is hereafter in this Law referred to as a "person to whom this Law applies".

As per Section 2 (1) (b) of the said Section, the aforesaid Act is applied to the Judicial Officers as well. Accordingly, it is relevant to the Chief Justice who too is a Judicial Officer. Therefore, the Chief Justice is obliged to act as stipulated in the aforesaid Act.

Further, Section 3(3) of the Declaration of the Assets and Liabilities Act No. 1 of 1975 stipulates the following.

Every person who is required to make the first Declaration of Assets and Liabilities under subsection [1] or subsection [2] shall, unless such person ceases to be a person to whom this Law applies, by the thirtieth day of June in each year, make in the prescribed form, a Declaration of his Assets and Liabilities as at the thirty-first day of March of such year and include in such Declaration the Assets and Liabilities he held on the date on which he was first required to make a Declaration of his Assets and Liabilities under this Law.

Accordingly, under the said Act, non submission of the Declaration of the Assets and Liabilities that should be submitted before the 31st March of the relevant year or submission of incorrect details in the said Assets and Liabilities Declaration or not submitting correct details, is a punishable offence under the said Act. Paragraph 04 of the Assets and Liabilities Declaration that should be submitted under the said Act is as follows.

"Do you, does your wife/husband or any of your children maintain Accounts (Current Accounts / Savings Accounts / Fixed Deposit Accounts etc.) in Sri Lankan Banks including Post Offices, Savings Banks and National Savings Bank or in any foreign Banks ? If so, provide the following information.

Section 9 of the said Act stipulates the following:

9. (1) A person-
 - (a) who fails without reasonable cause to make any declaration of assets and liabilities which he is required to make under section 3 ; or
 - (b) who makes any false statement in any such declaration ; or
 - (bb) who wilfully omits any asset or liability from any such declaration; or
 - (c) who fails without reasonable cause to give such additional information as the *Commission to Investigate Allegations of Bribery or Corruption may require under this Law ; or
 - (d) who otherwise contravenes any provisions of this Law, shall be guilty of an offence and shall, unless any other penalty is otherwise provided, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.
- (2) A person who is convicted of an offence under paragraph (a) of subsection (1) shall, within a period of fourteen days after the date of conviction, or in the event of an appeal against such conviction, within a period of fourteen days after the date of affirmation of such conviction, make the declaration of assets and liabilities referred to in section 3. The provisions of section 3 and the provisions of the other preceding sections of this Law shall, mutatis mutandis, apply to any declaration of assets and liabilities made by such person under this subsection in like manner and to the same extent as they apply to any declaration of assets and liabilities made under section 3.
- (3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment and to a further fine of fifty rupees for each day of continuation of that offence.
- (3A) Where any person is convicted of an offence under paragraph (bb) of subsection (1) the asset in respect of which the offence was committed shall by virtue of such conviction be vested in the State free of all encumbrances.
- (3B) The vesting of any assets in the State under subsection (3A) shall take effect-
 - (a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the order of forfeiture, upon the determination of the appeal, conforming or upholding the order of forfeiture;
 - (b) where no appeal has been preferred to the Court of Appeal against the order of forfeiture after the expiration of the period within which an appeal may be preferred to the Court of Appeal against the order of forfeiture.
- (4) Where any person has been convicted by a court of any offence under paragraph (a) or paragraph (b) of subsection (1), it shall be the duty of the court to bring the fact of such conviction to the notice of the person to whom such convicted person was bound to make the declaration of assets and liabilities under this Law.
- (5) No prosecution for any offence under this Law shall be instituted except with the prior sanction of the Attorney-General.

As per the Bank Account statements submitted to the Committee, the Chief Justice has withdrawn all the money out of certain Accounts and has zeroed them by 31st March and has invested the said money in different ways after which, she has neglected declaring such zeroed Accounts in the Assets Declaration. Further, she has deposited money in Treasury Bills and Fixed Deposits and has indicated that as only one sum of money under 'Treasury Bills' without properly disclosing the relevant details. As per Section 4 of the Assets and Liabilities Declaration form that should be submitted under the aforesaid Act, details of Bank Accounts of the relevant officer, his or her spouse or children should be provided. According to that, it is necessary to disclose all the accounts owned by an officer regardless of the availability or non-availability of a balance. Furthermore, the Chief Justice

has made investments of various forms and she has mentioned in her Assets and Liabilities Declarations that she had invested some of the aforesaid money in Treasury Bills and as per the Bank Account Statements, it has been declared that aforesaid money had been prevalent since the year 2005. **However the perusal of the Declarations of Assets and Liabilities made by her in each year shows that each amount of money as made in the Declarations of Assets and Liabilities has not prevailed since 2005 as there is a mismatch of the amounts mentioned in the Assets and Liabilities Declarations.** Given all the aforesaid facts, it is evident that the Chief Justice has not declared her Assets and Liabilities truthfully to which she is bound as a Judicial Officer under Declaration of Assets and Liabilities Act No. 01 of 1975 as amended by Act No. 74 of 1988 and thereby an offence punishable under the aforesaid Act has been committed. **Furthermore, it has been informed by the Letter of the Secretary to His Excellency the President, Mr. Lalith Weerathunga dated 30 November 2012 that the Chief Justice had not made the Assets and Liabilities Declaration for the year 2001 and the aforesaid fact was confirmed by him in his evidence before this Committee. The said act is a punishable offence under the Declaration of Assets and Liabilities Act No. 01 of 1975, as amended by Act No. 74 of 1988.** Furthermore, it is evident from the Bank Account records that the Chief Justice has used her designation in Bank Accounts. It is an obvious fact that the use of one's official designation for personal Bank Accounts amounts to an abuse of such person's official status. Furthermore, committing such acts is unbecoming of a Chief Justice and the Committee resolves that it is misbehavior on the part of a Judge under Article 107(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Furthermore, non disclosure of at least 13 Accounts in the Assets and Liabilities statements submitted in the relevant years as per the Bank Statements marked and submitted in this investigation as mentioned above, is unbecoming of a Chief Justice who holds the highest position in the Judiciary and through that, allegations of misbehavior are substantiated. **This Committee resolves that the aforementioned misbehavior amounts to gross misconduct sufficient for the removal of the Chief Justice from her office under the Constitution of Sri Lanka.** It is also recommended that the aforementioned facts be forwarded to the Finance Intelligence Unit of the Central Bank for further investigations.

05th Allegation

'Whereas, Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake is a suspect in relation to legal action initiated at the Magistrate's Court of Colombo in connection with the Offences regarding acts of Bribery and/or Corruption under the Commission to Investigate into Allegations of Bribery or Corruption Act, No 19 of 1994.

Whereas, the post of Chairperson of the Judicial Service Commission which is vested with powers to transfer, disciplinary control and removal of the Magistrate of the said Court which is due to hear the aforesaid Bribery or Corruption Case, is held by the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake as per Article 111D (2) of the Constitution;

Whereas, the powers to examine the judicial records, registers and other documents maintained by the aforesaid Court are vested with the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake under Article 111H (3) by virtue of being the Chairperson of the Judicial Service Commission;

Whereas, the Hon. (Dr.) (Mrs.) Upatiss Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake becomes unsuitable to continue in the office of the Chief Justice due to action pertaining to the allegations of Bribery or Corruption levelled against Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upetissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake in the aforesaid manner, and as a result of her continuance in the office, of the Chief Justice, administration of Justice is hindered and the fundamentals of administration of Justice are thereby violated and whereas not only administration of Justice **but visible administration of Justice should take place.'**

In terms of Article 111 of the Constitution (inclusive of the 16th and 17th Amendments incorporated) provision has been made that a Judicial Service Commission comprised of the Chief Justice and two other Judges of the Supreme Court should be constituted. The Constitution states that the Chief Justice should Chair the said Judicial Service Commission. According to Article 111 (h), such Judicial Service Commission should conduct the appointment, promotion, and transfer of and have disciplinary control over Judicial Officers.

Action has been filed against Mr. Pradeep Gamini Suraj Kariyawasam, husband of the Chief Justice, at the Colombo High Court for counts of bribery and corruption under the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 and the case has been filed in the Colombo Magistrate's Court No. 1 as Case No. 13029/01/12, the report of which was submitted before the Committee. The above-mentioned Case has been filed at the Colombo Magistrate's Court No. 1 and the transfer, promotion and disciplinary control and termination of service of the Magistrate of this Court is handled by the Judicial Service Commission chaired by the Chief Justice. **For this reason, a doubt emerges whether the Magistrate of the Colombo Magistrate's Court No. 1 would perform his duty of administering justice acting impartially and in accordance with the law. Further, that doubt is a cause for the diminution of the people's trust towards the process of the administration of justice.** Further, the

power to inspect the court reports, registers and other reports rests with the Judicial Service Commission, and its chairperson is the Chief Justice herself. Similarly, as it is the Supreme Court that finally hears the appeal and revisionary applications that are referred from various Courts, the appeals including revisionary applications of the aforesaid case pending before the aforementioned Magistrate's Court would also be heard by it. The appointing of a Bench of Judges necessary for hearing a case at the Supreme Court is a function of the Chief Justice. Therefore a doubt emerges with regard to the bias of the Judges appointed to hear the case. In addition, it is a matter for concern whether justice would be exercised by the Judges of the Supreme Court, who serve along with the Chief Justice. **When the husband of the Chief Justice of a country becomes a defendant of charges of bribery or corruption, the spouse of such a person holding the office of the Chief Justice of the Supreme Court puts a blemish not only on the process of Administration of Justice, but also on the whole country and its courts system.**

The reply submitted by the Chief Justice in this regard is that if the government wishes to remove a Judge, the government could do so by filing a criminal case against the spouse of the Judge concerned and remove such Judge by using the fact as a pretext. This is a hypothetical argument. Another matter which becomes important here is that the company from which the Chief Justice purchased an apartment in her sister's and the brother-in-law's name as well as the finance company from which her husband contrived to buy shares paying a price which was higher than their price in the stock market that prevailed at the time of purchase belong to the Ceylinco Group of Companies.

As in taking into consideration these series of occurrences, it becomes apparent prima facie that the obtaining of the Power of Attorney on 6th April 2011 as the beginning of the process of purchasing the apartment in Trillium Residencies stated in the first count of the Charges in the Impeachment Motion against the Chief Justice and the execution of Sale and Purchase Agreement No. 829 signed also by the Chief Justice on 21.04.2011 and 27.05.2011; and in the meantime, i.e. since the date of appointment to the office of Chief Justice and in the latter part of year 2011 and when the afore-mentioned series of events were taking place, the purchasing of an apartment in Trillium Residencies; being the Chief Justice holding the Chair in the Bench hearing Case No. 262/2009 and other Cases relating to Golden Key; and within that same period the subsequent purchase of 7,863,363 Shares for Rs.39, 137,554/33 for the National Savings Bank from the 'The Finance Company', which is one of the companies belonging to the group of companies associated with the said Case No. 262/2009 and other associated lawsuits, transacted by Mr. Pradeep Gamini Suraj Kariyawasam, husband of the Chief Justice, as Chairman of the National Savings Bank which would cause a loss to the Bank were not mere co-incidences but events that are inter-linked; the Committee decides that the Chief Justice has committed a misbehaviour by continuing to function in the office of Chief Justice because the aforesaid bribery case being heard by herself and by a Magistrate who is directly subject to her control reflects influence and bias. **Further, it is the decision of this Committee that the above-mentioned misbehaviour of hers is one of so serious a degree as to remove her from the office of Chief Justice.**

Decisions were reached by analyzing the oral and written evidence submitted before the Select Committee of Parliament pertaining to the allegations of misbehaviour stated in the first, second, third, fourth and fifth Charges in examining the acts of misbehaviour alleged to have been committed by the Hon. Dr. Shirani A. Bandaranaiyake, Chief Justice, that are contained in the Impeachment Motion against her presented to the Hon. Speaker by Hon. Members of Parliament, and the Select Committee of Parliament decides that the evidence presented before the Committee is not sufficient to make Hon. Dr. Shirani Bandaranayake, Chief Justice, guilty of the acts of misbehaviour stated in the second and third charges, as per the evidence presented pertaining to the said charges.

The Select Committee of Parliament concludes that in view of the oral and written evidence presented pertaining to the acts of misbehaviour in the first, fourth and fifth charges, the said acts of misbehaviour have been proved.

Taking into consideration the need to complete the examination within a limited period of time, the Committee decided that the need to conduct an investigation into the remainder of the charges does not arise as the Select Committee of Parliament has decided that it is a futile effort in the circumstances to examine whether evidence is available to prove the guilt of a person who is already guilty of acts of misbehaviour contained in the first, fourth and fifth Charges since they are of a very serious degree.

As such, the Select Committee of Parliament decides that the allegations of misbehaviour against Hon. Dr. Shirani A. Bandaranayake, Chief Justice, contained in the first, fourth and fifth Charges have been proved and taking into consideration the seriousness of the Charges the Committee decides that they are of such a degree of sufficiency and seriousness as to remove the said Hon. Dr. Shirani A. Bandaranaike, Chief Justice from her office.

Sgd.
Hon. Anura Priyadarshana Yapa
Chairman

Sgd.
Hon. Nimal Siripala de Silva

Sgd.
Hon. Susil Premajayantha

Sgd.
Hon. Dr. Rajitha Senaratne

Sgd.
Hon. Vimal Weerawansa

Sgd.
Hon. Dilan Perera M.P.

Sgd.
Hon. Neomal Perera

(Emphasis added)