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இலங்கை சனாதிபதி  
President of Sri Lanka

**Reference under Article 129 (1) of the Constitution  
of the Democratic Socialist Republic of Sri Lanka 1978**

WHEREAS in terms of Article 34 of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 (hereinafter referred to as "the Constitution") the President of the Republic is vested with the power of 'grant of pardon' in terms thereof: quote -

- "(a) grant a pardon, either free or subject to lawful conditions;
- (b) grant any respite, either indefinite or for such period as the President may think fit, of the execution of any sentence passed on such offender;
- (c) substitute a less severe form of punishment for any punishment imposed on such offender; or
- (d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence."

AND WHEREAS the Inland Revenue (Special Provisions) Act No. 10 2003, as amended by Act No. 31 of 2003, (hereinafter referred to as "the Act"), more particularly Sections 3, 4, 8 and 10 thereof, read together with the definitions of the words "Authority", "investigation", "offence", "tax" and "tax in dispute" given in Section 13 thereof, and read in the context of the several Statutes scheduled to the said Act, purport to empower the Commissioner General of Inland Revenue and/or the Exchange Controller and/or the Controller of Imports & Exports and/or the Commissioner General of Excise and/or the Director General of Customs and/or the Minister of Finance, to grant full immunity from any investigation or prosecution and/or to withdraw any pending investigation and/or prosecution at whatever stage, notwithstanding anything to the contrary in any other law .

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இலங்கை சனநாயக சோசலிசக் குடியரசு  
Democratic Socialist Republic of Sri Lanka

AND WHEREAS I am advised, that offences under certain of the Statutes scheduled to the said Act are scheduled non-bailable offences under the Criminal Procedure Code, punishable under the Penal Code, and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant immunity from any investigation or prosecution for such offences under the said Statutes and/or empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS the Republic, as a member of the United Nations, being bound by the United Nations Security Council Resolution 1373 of 28.9.2001, to deal with terrorism, the Minister of Foreign Affairs gazetted Regulations on 16.10.2001 under the United Nations Act No. 45 of 1968, *inter-alia*, to freeze and forfeit property, funds, or financial assets of persons directly or indirectly connected with terrorist organisations or terrorist acts, etc. and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant full immunity for such property, funds, or the financial assets of persons directly or indirectly connected with terrorist organisations or terrorist acts and empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS the Republic is also bound by international law and treaty obligations to deal, *inter-alia*, with drug peddling, arms dealing, counterfeiting, money laundering, etc., and Article 27 of the Constitution lays down directive principles of State policy and fundamental duties stipulating that the State shall endeavour to foster respect for international law and treaty obligations in dealings among nations, and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant full immunity for such offences and empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS by the application of the provisions of the said Act, undue and unconscionable financial bonanzas and privileges have been / are being conferred upon a privileged few unjustly enriching them by writing-off cognisable statutory dues to the State and thereby causing cognisable losses to the Republic; and also creating a special class of people above the Rule of Law by granting immunity and/or pardon to such special class of people and thereby eroding the Rule of Law: knowingly conferring benefit on oneself or another and causing loss to the Republic is a offence of corruption punishable under the Bribery Act



... ./

AND WHEREAS the Directive Principles of State Policy and Fundamental Duties enshrined in Article 27 of the Constitution stipulate that such Directive Principles of State Policy and Fundamental Duties shall guide Parliament, the President of the Republic and the Cabinet of Ministers in the enactment of laws and the governance of the Republic; including, 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; the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the hands of a privileged few, but are dispersed among, and owned by, all the people of the Republic; raising the moral standards of the people; and further stipulating that the State shall eliminate economic and social privilege and disparity; and that 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

AND WHEREAS upon being apprised of the gravity of the foregoing, I, as the President of the Republic and the Head of the Cabinet of Ministers, submitted a Note to Cabinet in June 2003, setting out some of the foregoing, requiring that the said Act be repealed, (the Bill thereof having been approved in my absence by the Cabinet of Ministers); and regardless of my said requirement, the Cabinet of Ministers subsequently extended the date for the making of declarations under the said Act from 30.6.2003 to 31.8.2003 by the amending Act No. 31 of 2003

AND WHEREAS all Members of Cabinet, Members of Parliament and other public officers, upon assumption of such public office, have solemnly declared and affirmed or sworn, that each of them shall uphold and defend the Constitution of the Republic under and in terms of the applicable Articles in the Constitution.

AND WHEREAS the question has arisen, as to whether the foregoing in fact and in law tantamounts to an infringement and/or usurpation of and/or encroachment on and/or alienation of the powers vested in the President of the Republic under the Constitution

AND WHEREAS furthermore in the light of the foregoing, doubts have been expressed with regard to the constitutional consistency and/or validity of the provisions of the said Act



... .. /

AND WHEREAS in the context of the foregoing it appears to me that questions of law herein set out have arisen or are likely to arise and are of such nature and of such public importance, that it is expedient to obtain the opinion of the Supreme Court of Sri Lanka thereon

NOW THEREFORE in the exercise of the powers conferred upon me under and in terms of Article 129 (1) of the Constitution, I, Chandrika Bandaranaike Kumaratunga, President of the Democratic Socialist Republic of Sri Lanka do hereby refer the following questions to the Supreme Court of Sri Lanka for consideration and report thereon within ten (10) days from the date hereof,

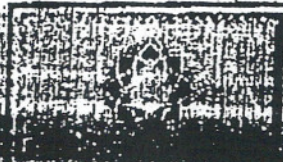
As to whether, one or more of the provisions of the said Act,

- a) has or have infringed and/or usurped and/or encroached on and/or alienated the powers vested in me, in terms of the Constitution, as the President of the Republic ?;
- b) is or are inconsistent with and/or violative of and/or prohibited / debarred by the Constitution ?
- c) is or are inconsistent with the Rule of Law and/or has or have alienated the judicial power of the people ?
- d) has or have grossly violated the directive principles of State policy and fundamental duties ?
- e) has or have been violative of international law and/or treaty obligations ?
- f) tantamounts or tantamount to the commission of the offence of corruption under and in terms of the Bribery Act ?
- g) tantamounts or tantamount to the misappropriation of public funds, which have been reposed in trust by the people ?

On this 08<sup>th</sup> Day of March 2004

  
Chandrika Bandaranaike Kumaratunga  
President of the Democratic Socialist Republic of Sri Lanka





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இலங்கை சனாதிபதி

President of Sri Lanka

## NOTE TO THE CABINET

### Repeal of the Inland Revenue (Special Provisions) Act No. 10 of 2003

I find that the Inland Revenue (Special Provisions) Bill, which was considered by the Economic Policy Committee of the Cabinet (in which I am not represented) on 23<sup>rd</sup> December 2002 had been adopted by the Cabinet at its Meeting held on 8<sup>th</sup> January with just two working days notice and confirmed at the next Cabinet Meeting on 22.01.2003. That means, this important Memo was presented to the Cabinet and approved on dates, where I had informed the Hon. Prime Minister that I could not be present at these Cabinet Meetings. Apart from that, this could be cited as a clear case of rushing matters of public importance through the Cabinet, including crucial legislation. I have elsewhere, drawn the attention of the Cabinet to the undesirability of such hurried dispatch, especially proposals leading to enactment of law.

In addition to the haste with which this Bill has been put through the Cabinet, I find that the Cabinet has also not been made aware of the full implications of its contents. The relevant Cabinet Memorandum dated 23<sup>rd</sup> December 2002, submitted by the Minister of Finance, does not contain even an explanatory note giving the implications of the intended legislation. It is merely presented as an extension of the earlier Inland Revenue (Special Provisions) Act No. 7 of 2002; supplementary provisions required to realize the objects of that legal enactment. Apparently, the Cabinet has approved this Bill on that basis.

After approval by the Cabinet, the Bill has been presented in Parliament and passed, under the title of "Inland Revenue (Special Provisions) Act No. 10 of 2003". However, on several representations made to me against the provisions of this Act, I have now got this examined in detail and I find many unsatisfactory features in this piece of legislation.



The first of these is the extension of the law goes far beyond a tax matter. This extension is achieved by way of the interpretations given to the terms 'tax' and 'tax in dispute' in the Act, which includes also matters such as levies, penalties, forfeitures and fines, coming under all the legal enactments mentioned in the Schedule. This is evident from the fact that at least five of the legal enactments given in the Schedule are certainly not tax statutes:-

Item No. in the Schedule	Title of the legal Enactment
22	The Exchange Control Act (Cap. 423)
23	The Import and Export Control Act No. 1 of 1969
24	The Excise (Special Provisions) Act No. 13 of 1989
25	The Excise Ordinance (Cap. 52)
26	The Customs Ordinance (Cap. 235)

It is a matter of grave and serious concern as to how these enactments, which are not administered by the Commissioner General of Inland Revenue, came to be included in the 'Inland Revenue' Bill. I am advised that some of these involve offences, punishable with forfeiture or even imprisonment, under the Penal Code. I am also advised that, by inclusion of these in the present legislation, even some of the prosecutions pending in higher Courts of Law, by way of appeals from convictions already made by the courts, will now have to be withdrawn. This will amount to granting pardon to the offenders concerned, a power exclusively vested in me, as President of the Republic, under Article 34 of the Constitution.

Apart from the moral, ethical and constitutional implications of this legislation, it is clear that the financial impact of this, affecting the economy of the country and the people, would also be very great. I tried to obtain through official channels particulars with regard to the estimated volumes of state revenues already assessed or enforced, but will have to be waived under the 'amnesty' provided under the Inland Revenue (Special Provisions) Act No. 10 of 2003. The responses I have received are so evasive, that they are of no use to evaluate the situation. This can mean only one of two things: either the authorities have embarked on this 'venture' without any idea as to its financial implications or, they are trying to conceal something. In any case, since no official information is forthcoming, I have collected some data through other sources and I find that the revenue loss on the discontinuance of pending Customs cases alone would be in the region of Rs. 9 billion. A further sum of Rs. 4-billion may be lost, on account of refunds that may have to be effected in respect of income tax, security levy and turn-over tax already collected. According to a group of experts whom I consulted, the loss to

In addition to the above, it is a good point as to whether the amnesty granted under this Act would not violate the United Nations Security Council Resolutions with regard to Governments' international obligations in matters such as freezing and seizing of terrorists' funds, 'money laundering' etc. That apart, this would certainly benefit a few who have broken the law and impoverish the masses.

It should be clear from the foregoing that this legislation has been enacted 'in a hurry' without allowing sufficient time for the Members of the Cabinet and even the legislators themselves to reflect upon its implications. As for the members of the public, complaints have been received that they had no opportunity to examine its provisions. Further, it is now seen that some of the provisions of the enacted legislation are in fact inimical to the economy of the country and may even be contrary to the normally acknowledged canons of natural justices.

In view of the above, I suggest that all action under this Act No. 10 of 2003 be suspended forthwith and approval of the Cabinet of Ministers be granted to move Parliament to repeal the said Act.

  
Chandrika Bandaranaike Kumaratunga,  
PRESIDENT.

July 10, 2003

