

BY COURIER

27th June 2003

Mr. James D. Wolfensohn
President, The World Bank
1818 H Street, N.W.
Washington D.C. 20433,
U.S.A.

Dear Mr. Wolfensohn,

Sri Lanka: *Purported* "Income Tax Amnesty"

I thank you very much for your Letter of encouragement dated May 2, 2003, you had caused to be forwarded through Ms. Deborah A. Bateman, received on May 28, 2003, in response to my Letter dated April 28, 2003, in relation to the *purported* "Income Tax Amnesty", the passage of which legislation in Parliament, I have challenged before the Supreme Court of Sri Lanka, in the interest of, the impoverished masses, ensuring responsible governance, upholding basic tenets of representative democracy and enforcing the rule of law. The matter is pending determination before the Supreme Court.

There is no constitutional provision in Sri Lanka for *post* judicial review of legislation passed by Parliament, and the Constitution contains "ouster clauses" preventing such judicial review. Nevertheless, I, on legal advice, have challenged the passage of this purported piece of legislation on the *core premise*, that Parliament acted outside its realm of limited legislative power conferred in trust by the people, *without* conforming to the mandated constitutional procedures, obligations, limitations and specific bars, applicable for the passage of a Bill into law.

I am encouraged and strengthened in my stance and actions in the public interest by your Letter, you affirming that;

- "the World Bank as well as other development partners are assisting the country's endeavours aimed at reforming governance and empowering the poor, including the enhancement of their legal rights"
- "the senior management of the World Bank as well as the entire staff of the institution consider issues of fraud and corruption to be of grave concern"

In the context of the above, I enclose a copy of my Letter dated June 25, 2003 to the Hon. Prime Minister, with copies to Her Excellency the President, Hon. Attorney General and other persons named therein; the contents of which Letter are self-explanatory. I also enclose a copy of the Written Submissions tendered to the Supreme Court, which may have a bearing on the judicial reform project, the World Bank is at present funding.

This horrendous piece of legislation causes enormous losses to the state, further impoverishing the poverty stricken masses and unjustly enriching an elitist affluent influential few, that too, those who have defrauded the state and committed offences / crimes against society; granting immunity / pardon to whom would only erode moral and ethical standards, encouraging fraud / corruption and *demoralising the law enforcement authorities*. Would not the funding of poverty alleviation or reduction programs, *be only indirectly funding the already enriched few*, in view of this obnoxious "Amnesty" ?

This *purported* "Amnesty" is an affront to your above policies and ought be of grave concern, *warranting its rejection*.

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Peter Woicke, Managing Director, World Bank;
Mr. Praful Patal, Vice-President for South Asia, World Bank
Ms. Deborah A. Bateman, Country Program Co-ordinator for Sri Lanka
Mr. Peter Harrold, Sri Lanka Country Director, World Bank
Mr. Padoa Chino, President, Asian Development Bank, Manila, Philippine
Mr. John Cooney, Country Director, Asian Development Bank
Mr. Horst Kohler, Managing Director, International Monetary Fund
Mr. Jeremy Carter, Sri Lanka Resident Representative, International Monetary Fund
Mr. Mark Malloch Brown, Administrator, UNDP
Mr. Hafiz Pasha, Director – South Asia, UNDP
Mr. Christopher Patten, Commissioner, Directorate-General - External Relations, European Commission
Mr. Wouter Wilton, Head of Delegation Sri Lanka, European Commission
Mr. Kofi Anan, Secretary General, United Nations
Mr. Miguel Bermeo, Sri Lanka Representative, United Nations / UNDP
Dr. Peter Eigen, Chairman, Transparency International, Germany



BY FAX / COURIER

28th April 2003

Mr. James D. Wolfensohn
President
The World Bank
1818 H Street, N.W.
Washington D.C. 20433
U.S.A.

Dear Mr. Wolfensohn,

Further to my Letters dated 10th September 2002 and 25th September 2002 addressed to you, and the Letter dated 25th September 2002 addressed to me, *on your instructions*, by Ms. Deborah Bateman, Country Program Co-ordinator for Sri Lanka, I met with Ms. Bateman in Washington on 20th December 2002 and had a discussion on matters of concern, which had been dealt with in my said Letters. *I also handed over further relevant documentations at the said discussion.*

It was indeed heartening to note the contents of Ms. Bateman's Letter dated 25th September 2002, *written on your instructions, reiterating the commitment, of the senior management of the World Bank, as well as its entire staff, to take issues of fraud and corruption very seriously.* In the context of such reiteration, I urged Ms. Bateman that the World Bank ought take *positive action*, in the least, imposing conditionalities to prevent *fraud and corruption*, inasmuch as conditionalities are imposed, both by the World Bank and the IMF, *when providing funding and endorsing donor assistance.*

In the context of the World Bank's aforesaid commitment *to take issues of fraud and corruption very seriously*, then how could one turn a blind-eye to questionable personalities having been appointed by the incumbent government to hold high political / public office, and those against whom there have been prima-facie cases of *fraud and corruption*, in addition to credible allegations, *on which no action, whatsoever, has been taken due to socio-political pressures, influences and/or compromises?*

If such appointments to high political / public office, particularly to deal with financial policies / transactions and funding arrangements provided, amongst others, by the World Bank, *went unchecked*, then would it not be meaningless to impose conditions of containing and/or minimising the size of the public service?

Would not such questionable personalities posing for photographs, with you / other international personalities, to be published in the media, be counter-productive to the aforesaid stance of the World Bank *to take issues of fraud and corruption very seriously*? Would not this only tantamount to endeavours to sanctify / white-wash such questionable personalities in the public eye, but also would it not erode the credibility of the World Bank on its pronounced stance *to take issues of fraud and corruption very seriously*?

I am enclosing 2 Petitions I have filed recently in the Supreme Court in the national and public interest, more particularly *in the interest of the poverty-stricken helpless masses in our country*, and also in the interest of the *enforcement of the rule of law*, including ensuring *the adherence to norms of social justice, moral and ethical standards.*

- i. Fundamental Rights Application made under Articles 17 & 126 of the Constitution, filed on 15.4.2003
- ii. Bill Challenge Application made under Articles 121 & 78 of the Constitution, filed on 21.4.2003.

Given the World Bank's aforesaid commitment *to take issues of fraud and corruption very seriously*, I trust that you and the officials of the World Bank would take serious cognisance of the contents of the two Petitions enclosed and take positive action deemed warranted. I am sure you would concur, that responsible governments *ought not protect wrong-doers and law breakers*; and those against whom, there are *credible* allegations of wrong-doing, fraud and corruption. I have furnished documentary evidence, *including judicial determinations by the Supreme Court in this regard, and could adduce more.*

Much is reiterated of the need for good *corporate governance* and business ethics by so many. Good *corporate governance* must necessarily emanate from the apex body i.e. the Government, itself, so that such norms and standards would flow down to all institutions / levels.

I trust that you and the officials of the World Bank would take due cognisance of the grave and serious matters borne out by the two Petitions and prevent the sanctification and legitimisation of *fraud and corruption*, thereby encouraging the continuance of the same, by lawful warranted actions not being taken, to deal with socio-politically influential and/or privileged fraudsters and/or law breakers and to collect cognisable funds defrauded to the state, whilst the World Bank, itself, is currently funding a Judicial Reform Project, *to enhance the efficacy of the judiciary*.

The cogent question necessarily arises, that had warranted actions been taken on the representations referred to in my Letters dated 10th September 2002 and 25th September 2002 (*copies annexed*), as to whether the matters on which the Supreme Court jurisdiction had to be invoked in the national and public interest by me, *would have arisen in the first instance* ?

I quote below some pertinent paragraphs from the aforesaid Petitions:

- i. "even the mere revision of poorly paid salaries of public servants is decided upon, *only after examination, study and review by a Committee, upon representations being entertained / received*, whereas, in this instance, *ad-hoc privileges / favours / financial benefits* have been conferred upon a privileged few , that too, wrong-doers and law breakers, *without any such examination, study and review, devoid of any representations, whatsoever.*"
- ii. "the aforesaid unconscionable colossal bonanzas, in violation of the provisions of the Constitution, as aforesaid, are attempted to be given to a privileged few, *who could easily afford to pay and should in law be made to pay* "
- iii. "there are scores of poverty stricken persons lingering in jails for non-payment of bail monies and/or minor fines. These are persons, who have no means to pay such bail monies and/or minor fines, and they in contrast have thus been denied equal treatment under the law as enshrined in the Constitution."
- iv. "In the context of the Prime Minister's Address to the Nation, it is beyond comprehension, rationality and logic, as to how such bonanzas of billions of rupees are being conferred upon a privileged few law breakers, denying the revenue that rightfully belong to the people of this country, *who are said to be gravely indebted as aforesaid, with the per capita debt level rising.*"
- v. "the Petitioner verily believes, that even rich and developed countries could not have and would not have afforded such all encompassing amnesty, denying the public of its rightful revenues, affording wrongful and unlawful privileges and unjust enrichment to a privileged few, who had knowingly and deliberately violated the law and acted contrary to the interest of the State and the public, and *being permitted to pillage and plunder the resource that rightfully belong to the people.*"
- vi. "the Petitioner is unaware of any such far reaching and wide amnesties and/or pardons being given in any other civilized country in the world, for such crimes against society, where law is not only enforced to deal with crimes, but also new laws are continuously being enacted to deal with and curb crime, including the menace of *fraud and corruption.*"

In the foregoing context, I quote below the following paragraph from the World Bank's Letter dated 25th September 2002 addressed to me;

"As noted in your letter, the senior management of the World Bank, as well as the entire staff of the institution, take the issues of fraud and corruption very seriously. Furthermore, the community of developing countries acknowledged this issue at the meeting held in Monterrey earlier this year. Specifically, developing countries in Monterrey said "We understand that if there is to be development assistance, then we have to put our house in order. We have to deal with building our human capacity, we have to deal with legal systems that protect rights, we have to have financial systems that are transparent, and we must fight corruption." "

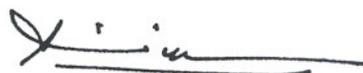
I am undoubtedly confident that you would endorse, that pillaging and plundering by a privileged few of resources rightfully belonging to the people, *thereby impoverishing them further and aggravating poverty*, cannot be condoned and must necessarily be stopped. If not, would it not be meaningless to provide funding for *poverty alleviation programmes*, when bonanzas are being wrongfully and/or unlawfully bestowed on a privileged few, *who have defrauded legitimate revenues to the state, which they could afford to pay* ?

Ought not law enforcement be necessarily more rigidly enforced against the socio-politically powerful, affluent and influential, than against the hapless poor ?

I also enclose copy of my Letter dated 25th April 2003 addressed to the Hon. Minister of Defence, with copies to Her Excellency the President and the Secretary-General, United Nations, and those others stated in the said Letter. I set out below the penultimate paragraph of my said Letter.

"The aforesaid provisions are blatantly violative of Resolution 1373 of the Security Council of the United Nations, pertaining to funds financing terrorism / terrorist activities and funds of terrorist organisations, et al, which said United Nations' Security Council Resolution is binding on our country, and to give effect to the said Resolution, Regulations had been enacted shortly thereafter under the United Nations Act; which said Regulations would have to be enforced by the relevant Authority, in this instance, the Monetary Board of Sri Lanka, responsible for enforcing the Exchange Control Act."

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Horst Kohler, Managing Director, International Monetary Fund
Mr. Kofi Annan, Secretary-General, United Nations

Mr. Peter Eigen, Chairman, *Transparency International (Re- Representations made at the recent Meeting in Washington)*

Mr. Peter Harrold, Sri Lanka Country Director, World Bank
Mr. Jeremy Carter, Sri Lanka Resident Representative, International Monetary Fund
Mr. Miguel Bermeo, Sri Lanka Resident Representative, United Nations

Mr. C. Weliamuna, Attorney-at-Law, Sri Lanka - Executive Director, *Transparency International*

Her Excellency President Chandrika Bandaranaike Kumaratunga

X-Sender: tisl@sltnet.lk
Date: Tue, 29 Apr 2003 13:49:25 +0600
To: nihalsri@slt.lk
From: Transparency International Sri Lanka <tisl@sltnet.lk>
Subject: Receipt of docs re FC SR 194/2003

Dear Mr. Amarasekera,

We thank you for your letter dated 28th April 2003- enclosing documents pertaining to FC SR Application 194/2003.

As you may be aware, TI Sri Lanka is precluded from taking up individual issues.

However ,your papers also indicates certain systemic matters that will certainly be considered by TI Sri Lanka for future action.

Thanks
J. C. Weliamuna

J.C. Weliamuna
EXECUTIVE DIRECTOR

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BY HAND

6th June 2003

Mr. J.C. Weliamuna, Attorney-at-Law
Executive Director
Transparency International Sri Lanka
17, Spathodia Avenue
Colombo 5.

Dear Mr. Weliamuna,

I thank you for your brief E-mail of 29.4.2003 in response to my Letter of 28.4.2003 addressed to Mr. James D. Wolfensohn, President, World Bank, with copies, amongst others, to Dr. Peter Eigen, Chairman Transparency International (TI) and you, as Sri Lanka TI Executive Director.

In the context of the espousal of the cause and pontification in the public domain on "good corporate governance" and action against commercial crime, fraud and corruption at various fora, I find quite intriguing the significant silence on this matter of grave public and national interest, *from those who so pontificate at public fora !*

I wish to clarify to you, that this is not "**an individual issue**", as you have stated, but an action instituted in the right and in the interest of the public and is a public and national issue of grave concern and consequence. Hence, I cannot understand, how TI could be precluded from supporting the cause I have espoused, in the face of socio-political influences and pressures from those, who peddle fraud and corruption and others who afford them refuge and sanctification.

I enclose a copy of a Letter with annexures thereto, the contents of which are self-explanatory. You would note therefrom an emerging dangerous trend, *contrary to all norms in a civilised democracy.*

Mr. K. Kanag-Isvaran P.C. called it a "horrendous" piece of purported legislature in the Supreme Court ! The Hon. Attorney General (AG) could not controvert the same, but merely took up an objection of a constitutional technicality !

If you examine the provisions of the Bill, as per the analysis given in the Spread Sheet, you will realise the perverseness thereof. Any responsible democratic government ought take cognisance and remedy the same in the public and national interest. The AG at the moment is examining the same. There is of course, the issue of a "constitutional crisis" being precipitated between the judiciary and the legislature !

The real issue is, *can the sovereignty of the people be alienated and the limited legislative power of Parliament exceeded, Parliament acting ultra vires the Constitution usurping the power and right of the people to enact certain laws by their approval at a Referendum, whilst certain other provisions, such as alienating the power vested in the executive by the legislature, which is prohibited, being blatantly violated ?*

It would be relevant for you to note from the Letter from the World Bank, attached, that World Bank has recognised and endorsed my efforts and actions ! I hope their deeds would match their words and the Sri Lanka government required to repeal this perverse Bill, inasmuch as they impose other conditionalities on the government.

You would, no doubt, be surprised to know, that I was in touch with TI at the time it was being mooted and formed. This was just after my enlightening experience in successfully instituting a public interest action in the form of a derivative action in law on the fraud perpetrated on the government in the construction of the Colombo Hilton Hotel and its cover-up by socio-politically influential persons, *who have now been shamelessly afforded political refuge and sanctity.* My said action saved the country US \$ 207 Mn. in 1995, *which is of national economic proportions.*

I have had communications with TI's original Program Officer, Mr. Fredrik Galtung in Berlin and subsequently, with Ms. Sophia Schlette and Mr. Jeremy Pope.

I have met and have had discussions with Mr. Frank Vogl, Vice Chairman of TI in the US, Mr. Kamal Hossain, Vice Chairman of TI in Bangladesh and Mr. Laurence Cockcroft, TI Director of UK, and also Mr. George Moody – Stuart in UK.

I have also had the occasion to meet and have a discussion with Dr. Peter Eigen and his wife in September 1993 at a Conference at the Oxford University, UK.

There was also then one Mr. John Rosthorn, who was resident in Sri Lanka and very active in endeavouring to moot a Sri Lanka TI Chapter.

Though I had the invitation and the opportunity for involving myself with TI at that time of its evolution, I did not get involved, since I wished to be able to take positive actions to deal with the cancerous menace of fraud and corruption, that is impoverishing the already poor people in our country; *and the pillaging and plundering of public resources by political lackeys.*

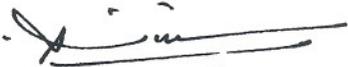
I have been observing TI Sri Lanka originating under the presidency of Mr. R.K.W. Gunasekera, Attorney-at-Law, and thereafter being handled by Mr. Aritha Wickramanayake, Attorney-at-Law, and recently by you. One needs to ask the cogent question, as to what impact TI has hitherto had in Sri Lanka and whether not, TI should, more *pro-actively* take up issues with the government in the public and national interest. *This Bill is diametrically opposite to TI's stated objective of transparency !*

I was of the view that TI developing as a funded NGO to advise governments, would then not be in a position to stand up and criticise the government and take action in the public interest on a collision course with and/or bringing to bear pressure on the government, as I have done. Your reply only endorses the view that I had taken at that time, as indicated above.

However, I was somewhat encouraged by your recent press release published in the Financial Times on Sunday 25th May under the caption "TI urges transparency in tax amnesty laws". In actual fact, under the guise and ruse of a camouflaged "tax amnesty", what is being provided is the granting of immunity and/or indemnity and/or pardon to those who have violated the law and perpetrated crimes against society, and those who are being and are to be prosecuted by the law enforcement authorities under the criminal laws of the country. *This has nothing, whatsoever, to do with a "tax amnesty" – vide Spread Sheet attached !*

I read recently that Amnesty International has urged South Korea to repeal a draconian law. TI could similarly urge the Sri Lanka government to repeal this perverse purported law, after having comprehended the analytical exposure set out in the annexed Spread Sheet, in respect of each and every provision of this purported law and the entirety of it, inasmuch as it is diametrically opposite to TI's stated objective and goal of transparency to prevent and/or contain fraud or corruption, *whereas this Bill endeavours to hide the culprits and the truth from public view and scrutiny, countermanding the demand for transparency !*

Yours sincerely,



Nihal Sri Ameresekere

cc: Mr. Peter Eigen, Chairman, *Transparency International*