

April 6, 2004

Her Excellency Chandrika Bandaranaike Kumaratunge,  
President of Sri Lanka,  
President's House,  
Janadhipathi Mawatha,  
Colombo 1.

Your Excellency,

**Misappropriation of public funds and defrauding public revenue  
causing extensive loss to the State**

The unanimous judicial opinion on the Tax Amnesty Law delivered on March 26, 2004 by a 5 - Member Bench of the Supreme Court, presided by the Chief Justice, has pronounced that the said law had condoned the misappropriation of public funds collected from the public on behalf of the State, and that amnesties had been granted to those who had contravened the law, pivotal to the country's revenue, public finance and fiscal control, and thereby defrauded public revenue, causing extensive loss to the State; the Supreme Court having observed that it is to be borne in mind that public revenue is held in trust for the People, who cannot be denied its benefit.

The above pronouncement had been in the light of one of the questions referred to the Supreme Court by Your Excellency, as set out in the judicial opinion, i.e. - "(c) whether there has been misappropriation of public funds held in trust for the benefit of the people resulting in an erosion of the Rule of Law?". The said questions had been referred to the Supreme Court by Your Excellency exercising the constitutional right on a matter of public importance.

The Supreme Court had also held that the said law had violated the right to equality guaranteed under Article 12(1) of the Constitution, which was also a component of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Article 2); and that the said law was antithetic to the Rule of Law, which is the underlying basis of our Constitution.

Causing loss to the State and conferring benefit on others or on oneself is corruption in terms of the law. The impugned law, contrary to norms of public disclosure, provides for absolute secrecy, except the right given to the Commission to Investigate Allegations of Bribery or Corruption, to be exercised in the course of "any proceedings instituted", whilst the very institution of proceedings requires information for the conduct of investigations. Thus, has not the effective probe of bribery and corruption been blunted, contrary to international convention on corruption?

On or about July 10, 2003, Your Excellency, pointing out that the said law had been undesirably hurriedly dispatched during Your Excellency's absence from Cabinet Meetings and setting out the obnoxious features of the said law had forwarded a Note to the Cabinet of Ministers of former Prime Minister, Ranil Wickremasinghe. Your Excellency had, *inter-alia*, drawn attention to Sri Lanka's obligation *vis-à-vis* the United Nations Security Council Resolution No. 1373 of September 28, 2001, in respect of which Regulations had been gazetted on October 16, 2001 under the United Nations Act No. 45 1968, *inter-alia*, to freeze and seize of funds of terrorists or funds related to terrorist activities, and the issues of money laundering and criminal offences.

Your Excellency had pointed out that the said law was inimical to the economy of the country, would impoverish the masses, and would be contrary to canons of natural justice, and had required that the said law be suspended forthwith, and approval be granted for the repeal of the said law.


With scant regard to the foregoing, former Prime Minister, Ranil Wickremasinghe and former Finance Minister K.N. Choksy, notwithstanding having been apprised of the correct position, rather than repealing the said law, had extended its period of validity, facilitating more persons to misappropriate public funds and defraud public revenue, causing further loss to the State. In the light of the judicial opinion of the Supreme Court delivered on March 26, 2004, ought not they be held accountable and responsible, including the other former Cabinet Ministers, who had acted collusively, *vis-a-vis*, such misappropriation of public funds and the defrauding of public revenue, causing extensive loss to the State?

The loss caused to the State, pivotal to the country's revenue, public finance and fiscal control, has been estimated at Rs. 200 billion and placed before Court, which estimate has not been denied, nor the correct figure adduced before Court or the public. At the time the said law was placed before Parliament disclosure had not been made of an estimate of the loss of public funds. The puerile statement made that irrecoverable public funds had been written-off had not been so certified by the revenue collecting authorities and the Auditor General. A probe would reveal that even recovered State revenue had been refunded.

I draw Your Excellency's attention to the fact that the country's debt level increased by Rs. 194 billion in 2003 and a borrowing of Rs. 350 billion is budgeted for 2004, whilst the average annual borrowing for the 5 years to 2003 had been Rs. 187 billion.

It is incomprehensible, as to how, the international community and agencies, involved in the peace and economic development process of Sri Lanka (pledging in Tokyo a debt of Rs. 450 billion over 4 years), could condone or endorse the foregoing, inasmuch as, the BBC, whilst recently reporting daily on Sri Lanka, had intriguingly "blacked out" the foregoing unanimous judicial opinion delivered by the Supreme Court on March 26, 2004 - an indictment on former Prime Minister, Ranil Wickremasinghe and the Cabinet of Ministers ?

Yours respectfully,



Nihal Sri Ameresekere

Hon. Mahinda Rajapaksa, Prime Minister of Sri Lanka

cc: ✓ International Country / Agency Delegations, *Tokyo Conference*

Encl: *Supreme Court Opinion*