

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

In the matter of an Application in terms of Article 121, read with the other applicable and relevant Articles of the Constitution, for a Determination, as to whether any one or more provisions of the Bill titled: “Appropriation Bill 2008” is / are inconsistent with and / or ultra-vires the Constitution.

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

PETITIONER

SC/SD No. 3/2008

Vs.

Hon. Attorney General
Attorney General’s Department,
Colombo 12.

RESPONDENT

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

On this 15th day of October 2008

The **Petition** of the **Petitioner** above-named, appearing by himself in person, states as follows:

1. The Petitioner is a -
 - a) citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “**the country**”)
 - b) Member of the -
 - Institute of Chartered Accountants, Sri Lanka,
 - Chartered Institute of Management Accountants, UK.
 - Institute of Certified Management Accountants, Australia
 - Association of Certified Fraud Examiners, USA
 - International Consortium on Governmental Financial Management
 - International Association of Anti-Corruption Authorities
 - c) Consultant exposed to both the private and public sectors
 - d) public interest activist, particularly, *vis-à-vis*, fraud, corruption and combating the pillage and plunder of the resources of the people of the country

*A true photostat copy of the National Identity Card of the Petitioner is annexed marked (“**PI**”), pleaded as part and parcel hereof.*

2. The Petitioner is presenting this Petition for himself, on his own behalf, and for and on behalf of the people of the country, to prevent grave and irreparable loss, damage and detriment being caused to the people of the country, in violation of the provisions of the Constitution, more particularly *vis-à-vis*;
 - a) the control of Public Finance, as dealt with in Chapter XVII thereof; whilst the people of the country, are the real owners of the Consolidated Fund defined in Article 149 thereof, and
 - b) the due observance of the provisions of Chapter VI thereof, which lays down the ‘**Directive Principles of State Policy**’ and ‘**Fundamental Duties**’ *re* - the Judgement of Your Lordships’ Court in SC (FR) Application Nos. 10/07, 11/07, 12/07 and 13/07:

“The limitation in Article 29 which states that the provisions of Chapter VI are not justiciable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. Article 27 of Chapter VI lays down that the ‘Directive Principles of the State Policy’ contained therein shall guide “Parliament, the President and the Cabinet of Ministries in the enactment of ‘laws and the governance of Sri Lanka for establishment of a just and free society.”

3. Appropriation Bill 2008 of the Government for the Financial Year 1.1.2009 to 31.12. 2009, issued on 22.9.2008, as per Gazette Part II of 19.9.2008, was placed on the Order Paper of Parliament on 9.10.2008.

True copy of the Order Paper of Parliament of 9.10.2008 and an original copy of the Appropriation Bill 2008 are annexed marked (“P2”) and (“P3”), respectively, pleaded as part and parcel hereof.

4. The Petitioner respectfully draws the kind attention of Your Lordships’ Court to the under-mentioned Articles of the Constitution

- (a) Article 148 – “**Parliament shall have full control over public finance**”.

“No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law”.

- (b) Articles 154(G) and 154(R) – For the management of funds of Provincial Councils, including funds granted by the Government, and the **Finance Commission being responsible to Parliament.**

- (c) Article 149 (1) – “**The funds of the Republic not allocated by law to specific purposes shall form one Consolidated Fund** into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues and receipts of the Republic not allocated to specific purposes”

- (d) Article 150 (1) – “Save as otherwise expressly provided in paragraphs (3) and (4) of this Article, **no sum shall be withdrawn from the Consolidate Fund except under the authority of a warrant under the hand of the Minister in charge of the subject of Finance.**”

- (e) Article 150 (2) – “**No such warrant shall be issued unless the sum has by resolution of Parliament or by any law being granted for specified public services for the financial year during which the withdrawal is to take place** or is otherwise lawfully charged on the Consolidated Fund.”

- (f) Certain expenditure have been provided for by the Constitution, itself, to be charged to the Consolidated Fund *viz* Articles 149(2), 108(1), 65(2), 153(2), 56(6)
- (g) Article 151 (1) – “Notwithstanding any of the provisions of Article 149, **Parliament may by law create a Contingencies Fund** for the purpose of **providing for urgent and unforeseen expenditure.**”
- (h) Article 151 (2) – “**The Minister in charge of the subject of Finance,** is satisfied-
- a) that there is need for any such expenditure, and
- b) that no provision for such expenditure exists,
- may, **with the consent of the President,** authorize provision to be made therefor by **an advance** from the **Contingencies Fund**”
- (i) Article 151 (3) – “As soon as possible after **every such advance,** a **Supplementary Estimate shall be presented to Parliament** for the purpose of **replacing** the amount so **advanced.**”
- (j) Article 42 – “The **President shall be responsible to Parliament** for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law, including the law for the time being relating to public security.”
- (k) Article 43 (1) – “There shall be a **Cabinet of Ministers** charged with the direction and control of the Government of the Republic, which **shall be collectively responsible and answerable to Parliament**”
- (l) Article 45 (3) – “**Every Minister** appointed under this Article **shall be responsible and answerable** to the Cabinet of Ministers and **to Parliament.**”
5. The Petitioner respectfully draws the kind attention of Your Lordships’ Court to the under-mentioned **Clauses** in the **Appropriation Bill 2008 (“P3”)**.
- a) Clause 2 (1) Authorises the estimated expenditure of Rs. 980,634,460,000/- for the Financial Year 1.1.2009 to 31.12.2009 to be met from
- a) the Consolidated Fund or **any other Fund of the Government,** and
- b) Loans raised in or outside Sri Lanka in aggregate not exceeding Rs. 849,914,028,000/-
- (2) Rs. 980,634,460,000/- **to be expended as specified in the First Schedule**
- b) Clause 3 (1) Receipts from activities for the Financial Year 2009 specified in Column I of **Second Schedule** shall not be less than the minimum limit specified in Column III of that Schedule, and any net surplus **to be paid to the Consolidated Fund before 30.6.2010.**
- (2) The net surplus from an activity is to be determined after deducting expenses incurred in respect of such activity, including provision for depreciation.
- (3) Expenditure for activity for the Financial Year 2009 specified in Column I of **Second Schedule** to be paid from the receipts of such activity, and **shall not exceed the maximum limit specified** in Column II of that Schedule.

- (4) The debit balance outstanding as at 31.12.2009 of any activity specified in Column I of **Second Schedule** shall not exceed the maximum specified limit in Column IV of that Schedule and total liabilities of that activity shall not exceed the maximum limit specified in Column V of that Schedule.
- c) Clause 4 – If the receipts from any activity specified in Column I of **Second Schedule** are insufficient to meet the expenditure, the **Minister** may from time to time **Order** that such sums deemed necessary to meet such expenditure shall be paid by way of advances out of the Consolidated Fund or **any other Fund of the Government**, however, the aggregate of such sums advanced shall not exceed the maximum limit of expenditure specified in Column II of that Schedule.
- Any such sum so advanced to be **refunded** to the Consolidated Fund in such manner as the **Minister** by **Order direct**.
- d) Clause 7 – **Where the Minister is satisfied**, that
- (a) receipts from taxes and other sources will be less than the amounts anticipated to finance authorised expenditure; or
- (b) the amounts originally appropriated for a particular purpose are no longer required,
- he may, with the approval of the **Government** withdraw in whole or in part, any amounts previously released for expenditure under the authority of a warrant issued by him from the Consolidated Fund or **any other Fund** of the Government to meet any authorised expenditure.
- e) Clause 8 (1) The **Minister**, with the approval of the **Government** on or before 31.5.2009 by **Order** may vary or alter
- (a) any maximum limit specified in Column II, Column IV and Column V;
- (b) any minimum limit specified in Column III
- of the **Second Schedule**.
- (2) **No such Order made by the Minister shall have effect, unless it had been approved by Parliament by resolution.**
- f) Clause 9 – **Parliament may by resolution amend the Second Schedule, by adding** to the appropriate Columns, **any activity** and providing for -
- (a) maximum limit for that activity
- (b) minimum limit relating to such activity
6. The Petitioner respectfully draws the kind attention of Your Lordships' Court to **Clauses 5 and 6** of the **Appropriation Bill 2008 ("P3")** in relation to the **First Schedule** thereof, set out herein below:
- a) "5. (1) Any moneys which by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head, by Order of the Secretary to the Treasury or by Order either of a Deputy Secretary to the Treasury or the Director General of the National Budget Department, who may be authorised in that behalf by the Secretary to the Treasury.

- (2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme."
- b) "6. (1) Any money allocated to Recurrent Expenditure or Capital Expenditure under the **"Development Activities"** Programme appearing under the Head **"Department of National Budget"** specified in the First Schedule, may be transferred subject to Guidelines stipulated in printed Budget Estimates approved by Parliament for the relevant year to any other Programme under any other Head in the Schedule, by Order of the Secretary to the Treasury or by Order either of a Deputy Secretary to the Treasury or the Director General of National Budget Department, who may be authorised in that behalf by the Secretary to the Treasury. **The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.**" (*Emphasis added*)
- (2) **Details of all transfers made under subsection (1), including the reasons for such transfers, shall be incorporated in the reports relating to the Government's fiscal performance, which are required to be tabled in Parliament under the Fiscal Management (Responsibility) Act No. 3 of 2003"** (*Emphasis added*)
7. a) It is evident that funds allocated for Recurrent or Capital Expenditure under the "Development Activities" Programme, are readily **'available to be transferred'**, for **'unforeseen' or 'hidden expenditure'** and not for any **'specified public services'** or any **'specific public purpose'**, in violation of Articles 150(2) and 149(1) of the Constitution.
- b) i) **The aforesaid Section 6 (1) had been included in the Appropriation Act, only from the Financial Year 2004, in terms of the Appropriation Act No. 44 of 2003, and**
- ii) **The aforesaid Section 6 (2) has been included only in the Appropriation Bill 2008 (P3), evidently as a consequence of the Determination made by Your Lordships' Court on the Appropriation Bill 2007.**
8. In examining the Clauses of the **Appropriation Bill 2008 ("P3")** it is revealed that;
- a) **other funds of the Government are not disclosed, nor the utilisation of such funds disclosed**
- b) 6 Clauses namely, 2, 3, 4, 7, 8 and 9, *inter-alia*, specify authorised limits for expenditure, including limits for receipts, and any variation thereof to be by an Order of the Minister of Finance, **with approval by Parliament by resolution**, with any advances from the Consolidated Fund to be refunded.
- c) **contrary to the above, Clauses 5 and 6**, on the other hand, have given authority for varying such specified authorised limits to the **Secretary to the Treasury**,
- i) including transfers from one specified authorised limit to a another and
- ii) **to be expended on items of expenditure not approved by Parliament, without any Order of the Minister of Finance and/or without Parliamentary approval and 'deeming' that money so transferred and/or expended to have been covered by 'Supplementary Estimates' submitted by the Minister of Finance and being approved by Parliament** – *vide* Clause 6 (1).
- d) **Clause 6 (2)** would be an amendment to the Constitution more particularly Article 151 thereof, and **could not be passed by Parliament in the manner proposed.**

- e) transfer to an ‘authorised and approved limit’, would be an ‘**increase**’ in the allocation approved by Parliament for that limit, and such ‘**increase**’ would require approval by Parliament.
- f) allocations for “**Development Activities**” Programme, under the Head “Department of National Budget” are for ‘**unforeseen**’ and ‘**hidden expenditure**’, *to be expended with the sole authority of the Secretary to the Treasury and persons authorised by him*, with the ‘**specified public services**’ and/or ‘**specific public purposes**’ not being specified, as mandated by Article 150 (2) of the Constitution. As per page 9 of the Bill (Head 240) **such allocation amounts to Rs. 32.5 billion.**
- g) the ‘creation’ of and ‘transfer’ of funds to any ‘new activity’ would require the approval by Parliament, as provided for in Clause 9 of the Appropriation Bill 2008 (**P3**), in conformity with the dictates of the Constitution.
- h) Clause 5 historically providing for approval for transfer of unutilised ‘Recurrent Expenditure’ is an old inherited British practice, then referred to as a ‘virement’, which means ‘the transfer of unutilised funds from one financial account to another’ **already approved by Parliament.**
9. In the Opinion pronounced by a 5-Member Bench of Your Lordships’ Court on the Inland Revenue (Special Provisions) Act No. 10 of 2003, in a Reference made by the President, and reiterated by Your Lordships’ Court in SC (SD) Determination No. 26/2004, Your Lordships’ Court, *inter-alia*, observed thus;
- a) “It is to be borne in mind that public revenue is held in trust for the People of Sri Lanka, who cannot be denied its benefit”
- b) “It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act No. 10 of 2003, as amended, are inconsistent with Article 12 (1) of the Constitution, which guarantees to every person equal protection of the law; in that, it grants, immunities and indemnities to persons who have contravened the laws that had been referred to and thereby defrauded public revenue causing extensive loss to the State.”
10. A 7-Member Bench of Your Lordships’ Court in the Determinations made on the aborted 18th and / or 19th Amendments to the Constitution, *inter-alia*, observed thus;
- a) “Article 3 of the Constitution, which is an entrenched provision, deals with the Sovereignty of the People and reads as follows;
- “3 In the Republic of Sri Lanka Sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise” ”
- b) “In fact this Court has ruled in a series of cases that Article 3 is linked up with Article 4 and that these two Articles must be read together. Article 4 of the Constitution deals with the exercise of sovereignty and provides that; - The Sovereignty of the People shall be exercised and enjoyed in the following manner:-
- (i) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People *and* by the People at a Referendum,
- (ii) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People,
- (iii) the judicial power of the People shall be exercised by Parliament, through courts, tribunals and institutions created and established, or organised by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and/or his Members, wherein the judicial power of the People may be exercised directly by Parliament according to law,”

- c) "We determine that Clause 4 of the Bill is inconsistent with Articles 3 and 4 of the Constitution. We also state that the Bill in its present form therefore requires to be passed by a special majority in terms of the provision of paragraph (2) of Article 84 and approved by the people at a Referendum by virtue of the provisions of Article 83."
- d) "This specific reference to the power *of the People* in each sub paragraph which relates to the three organs of government demonstrates that the power remains and continues to be reposed in the People who are sovereign, and its exercised by the particular organ of government being its custodian for the time being, is for the People".
- e) "Therefore the statement in Article 3 that sovereignty is in the People and is "inalienable", being an essential element which pertains to the sovereignty of the People should necessarily be read into each of the sub paragraphs in Article 4. The relevant sub paragraphs would then read as follows:
- (i) the legislative power of the People *is inalienable* and shall be exercised by Parliament;
 - (ii) the executive power of the People *is inalienable* and shall be exercised by the President; and
 - (iii) the judicial power of the People *is inalienable* and shall be exercised by Parliament through Courts".
- f) "The meaning of the word "alienate," as a legal term, is to transfer anything from one who has it for the time being to another, or to relinquish or remove anything from where it already lies. Inalienability of sovereignty, in relation to each organ of government means that power vested by the Constitution in one organ of government shall not be transferred to another organ of government, or relinquished or removed from that organ of government to which it is attributed by the Constitution."
- g) "Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution".
- h) "It necessarily follows that the balance that had been struck between the three organs of government in relation to the power that is attributed to each such organ, has to be preserved if the Constitution itself is to be sustained"
- i) "The powers of government are included in the sovereignty of the People as proclaimed in Article 3 of the Constitution".
- j) "These powers of government continue to be reposed in the People and they are separated and attributed to the three organs of government; the Executive, the Legislature and the Judiciary, being the custodians who exercise such powers in trust for the People."
- k) "The powers attributed to the respective organs of government include powers that operate as checks in relation to other organs that have been put in place to maintain and sustain the balance of power that has been struck in the Constitution, which power should be exercised only in trust for the People."
- l) "The exercise of the sovereignty of the People can only be perceived in the context of the separation of powers as contained in Article 4 and other connected provisions of the Constitution, by the respective organs of the government."
- m) "The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution"

- n) "The People in whom sovereignty is reposed have entrusted the organs of government, being the custodians of the exercise of the power, as delineated in the Constitution. It is in this context that we arrived at the conclusion that any transfer, relinquishment or removal of a power attributed to an organ of government would be inconsistent with Article 3 read with Article 4 of the Constitution"
- o) "The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People. This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the 'trust' that is implicit in the conferment of power has been stated as follows:

"Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended" – (Administrative Law 8th Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356)"

- p) "It had been firmly stated in several judgments of this Court that 'rule of law' is the basis of our Constitution".
- q) "A.V. Dicey in Law of the Constitution" postulates that 'rule of law' which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-

"It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone "

- r) "If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective" _ (*Cited from Indian Judgment*)
- s) "The concept of judicial review of administrative action, being a predominant feature of Constitutional jurisprudence, prevents total immunity being given to any body, created under the Constitution as such restriction of judicial scrutiny, would impair the very foundation of the Constitution and the Rule of Law.

"They are – (1) that it would alienate the judicial power of the People; (2) that it creates a special class of People in violation of Article 12 (1) of the Constitution, who would not be subjected to judicial review."

- t) "The proposed Amendment thus undermines the Parliamentary control over the Rule making powers of an institution established by the Constitution, which in turn is an application as well as an alienation that affects the sovereignty of the People, which is inconsistent with Articles 3 and 4 of the Constitution."
- u) "The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"
- v) "We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to "uphold and defend the Constitution" "

11. The Petitioner respectfully submits that one or more of the Clauses of the **Appropriation Bill 2008 ("P3")**

- a) amount to the alienation, relinquishment or removal of the legislative power of the People and are inconsistent with Article 3, read with Article 4 of the Constitution.
- b) usurp and subvert the Constitutional mandate that '**Parliament shall have full control over public finance**', thereby violating Article 148 of the Constitution.

- c) Secretary Treasury appointed by the President and being under the control and direction of the Executive, the power attributed to Parliament cannot be alienated, relinquished, removed or transferred to the Executive.
 - d) vest unfettered discretion or authority in the Secretary to the Treasury or any other officer authorised by him, **when the Constitution does not attribute any such unfettered discretion or authority**, and such is antithetic to the ‘rule of law’ .
 - e) violate the basic premise that public finance is held in trust for the people of Sri Lanka, who cannot be denied of the due and proper accountability therefor, which is against the ‘rule of law’.
 - f) are themselves contradictory, as disclosed hereinabove.
 - g) seek Parliamentary approval for allocations of public funds, without **specifying the public services or specific public purposes for such funds**, in violation of Articles 150(2) and 149(1) of the Constitution.
 - h) violate the Constitutional mandates by not disclosing the **‘other funds of the Government’** and the utilisation of such funds.
 - i) violate the scheme set out in Chapter XVII of the Constitution for full control by Parliament over public finance.
 - j) violate the **‘Directive Principles of State Policy’** and **‘Fundamental Duties’** set out in Chapter VI of the Constitution.
12. (a) Article 27 of the Constitution defining the **‘Directive Principles of State Policy’** and **‘Fundamental Duties’**, *inter-alia*, stipulates that;
- (1) **‘Directive Principles of State Policy’** contained in the Constitution shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.
 - (2) the State is pledged to establish in Sri Lanka a Democratic Socialist Society, the Objectives of which include –
 - (a) the full realization of the fundamental rights and freedoms of all persons;
 - (b) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political), shall guide all the institutions of the national life;
 - (c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;
 - (d) the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity towards social objectives and the public weal;
 - (e) 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;

- (f) the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the State, state agencies or in the hands of a privileged few, but are dispersed among, and owned by, all the People of Sri Lanka;
 - (g) raising the moral and cultural standards of the People, and ensuring the full development of human personality;
 - (h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels
- (7) the State shall eliminate economic and social privilege and disparity, and the exploitation of man by man or by the State.
 - (8) the State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.
 - (9) the State shall ensure social security and welfare.
- b) In terms of Article 28 of the Constitution, it is the **‘fundamental duty’** of every person in Sri Lanka, *inter-alia*, to;
 - a) **uphold and defend the Constitution and the law;**
 - d) **preserve and protect public property, and combat misuse and waste of public property;**
 - c) The President, Ministers and Members of Parliament have made constitutional affirmations / taken oaths to uphold and defend the Constitution.
13. In Judgment in SC (FR) Applications Nos. 10/07, 11/07, 12/07 and 13/07 Your Lordships’ Court, *inter-alia*, observed:

“The relevant principle of interpretation with particular reference to the interpretation of provisions in a Constitution is set out in Bindra’s Interpretation of Statutes – 9th Ed, page 1182 as follows:

“The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that not one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument.”

“In applying these principals of interpretation I am of the view that the broad phrase “National Policy” appearing at the top List II should be interpreted together with the relevant provisions in Chapter VI of the Constitution which contains the “Directive Principles of State Policy.”

“The limitation in Article 29 which states that the provisions of Chapter VI are not justiciable would not in my view be a bar against the use of these provisions to interpret other provisions of the Constitution. Article 27 of Chapter VI lays down that the ‘Directive Principles of the State Policy’ contained therein shall guide “Parliament, the President and the Cabinet of Ministries in the enactment of ‘laws and the governance of Sri Lanka for establishment of a just and free society.”

“Hence the restriction added at the end in Article 29 should not detract from the noble aspirations and objectives contained in the Directive Principles of State Policy, lest they become as illusive as a mirage in the desert.”

14. It is respectfully submitted that **with the adoption of the 1978 Constitution** the foregoing dictates *vis-a-vis* ‘**Directive Principles of State Policy**’ and ‘**Fundamental Duties**’ in Chapter VI thereof, and ‘**Control of Parliament over Public Finance**’ in Chapter XVII thereof, **imposed a new regime of governance.**

15. The kind attention of Your Lordships’ Court is also respectfully drawn to

- a) Articles 154(1) and 154(6) of the Constitution, *vis-à-vis* the Audit of Accounts of the Government by the Auditor General;

Article 154 (1) – “The Auditor General shall audit the accounts of all Departments of Government, the Offices of the Cabinet of Ministers, the Judicial Service Commission, the Public Service Commission, the Parliamentary Commissioner for Administration, the Secretary General of Parliament and the Commissioner of Elections, local authorities, public corporations and business or other undertakings vested in the Government under any written law.”

Article 154 (6) – “The Auditor General shall within ten months after the close of each financial year and as and when he deems it necessary report to Parliament on the performance and discharge of his duties and functions under the Constitution.”

- b) Paragraph 11 of Letter dated 15.11.2007 (P13(a)) addressed by the Petitioner to the Secretary to the Treasury

“It is indeed shocking that Auditor General, Mr. P.A. Pematilaka, who had given an ‘unqualified’ audit opinion on the Government’s Financial Statements for the Year 2006, had in fact been the Director General, State Accounts, General Treasury during the very Year 2006, presumably at least upto 20th October 2006, as disclosed by the Government’s Financial Statements for the Year 2005 issued by him on 20th October 2006, as Director General, State Accounts, under your very direction, purview and control, as Secretary to the Treasury.”

- 16.a) The kind attention of Your Lordships’ Court is respectfully also drawn to Article 170 of the Constitution

Article 170 – interprets a ‘**public corporation**’ thus – “‘**public corporation**’ means any corporation, board or other body which was or is established by or under any written law **other than the Companies Ordinance**, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.”
(*Emphasis added*)

- b) Therefore, where the Government invests **public funds** and **forms a company, more particularly, a private company**, under the Companies Act No. 7 of 2007 (previously Companies Act No. 17 of 1982 / Companies Ordinance), such company and the control over and management of such public funds and review of its operations, **then go outside the control of Parliament**, in that,

- (i) such company is not subject to examination by the Public Accounts Committee or the Committee of Public Enterprises, of Parliament
- (ii) its Accounts are not subject to Audit by the Auditor General and presented to Parliament

- (iii) if it be a private company, then its Accounts are not available with the Registrar General of Companies for public inspection, ***thereby denying transparent disclosure for public scrutiny.***
- (iv) the **utilization of public funds by such companies** have not been disclosed for scrutiny and evaluation by the public, in violation of the dictates of the Fiscal Management (Responsibility) Act No. 3 of 2003.
- (v) the foregoing tantamounts to an usurpation of Parliamentary powers and a subversion of the Constitutional mandate for **'full control over public finance by Parliament'**, thereby denying the right of the public to scrutinize and evaluate the accountability for such public funds, **in violation of the stipulations in the Fiscal Management (Responsibility) Act No. 3 of 2003** (vide - Section 22 thereof), **whereby the public are entitled to scrutinize and evaluate the utilization of public funds.**
- (vi) within the meaning of Article 148 of the Constitution, any such funding by the Government to any body, other than a public corporation, where Parliament's mandate to have full control over public finance is rendered nugatory, **would be patently unconstitutional and illegal.**

17. The following provisions of the Fiscal Management (Responsibility) Act No. 3 of 2003 are cited for easy reference of Your Lordships' Court:

- a) Title - "An Act to Ensure that the financial strategy of the Government is based on principles of Responsible Fiscal Management; to facilitate public scrutiny of fiscal policy and performance ; and to provide for matters connected therewith or incidental thereto.
- b) Section 2 – "The fiscal strategy of the Government shall be based on the principles of responsible fiscal management hereinafter referred to."
- c) Section 3 – "The objectives underlying responsible fiscal management which need to be adhered to, by the Government in outlining the fiscal strategy of the government are as follows :-
 - (a) reduction of government debt to prudent levels, by ensuring that the budget deficit at the end of the year 2006, shall not exceed five *per centum* of the estimated gross domestic product and to ensure that such levels be maintained thereafter ;
 - (b) prudent management of the financial risks faced by the government, having regard to the changing economic circumstances ;
 - (c) adoption of policies relating to spending which do not increase government debt to excessive levels ;
 - (d) adoption of policies relating to spending and taxing, as are consistent with a reasonable degree of stability and predictability in the level of tax rates in the future ;
 - (e) ensuring that the sum which is calculated as the guarantee and given as a percentage of the gross domestic product for the current financial year along with the two preceding financial years, does not in the aggregate exceed 4.5 *per centum* ;
 - (f) ensuring that at the end of the financial year commencing on January 1, 2006, the total liabilities of the Government (including external debt at the current exchange rates) do not exceed eighty-five *per centum* of the estimated gross domestic product for that financial year ; and that at the end of the financial year commencing on January 1, 2013, the total liabilities of the Government (including external debt at the current exchange rates) do not exceed sixty *per centum* of the estimated gross domestic products for that financial year ; and

- (g) ensuring that the policy decisions of the Government have regard to the financial impact of such decision on future generations.”
- d) Sections **4, 5, 6** – **‘Fiscal Strategy Statement’ to be released to the public** and also be laid before Parliament to increase **public awareness** and to establish standards for evaluating government’s conduct of its Fiscal Strategy, specifying the contents thereof *vide* – Section 6
- e) Sections **7, 8, 9** – **‘Budget Economic & Fiscal Position Report’** to be tabled in Parliament with the Appropriation Bill, **to provide information as a basis for evaluation**, specifying the contents thereof, excluding those prejudicial to national security and litigation / commercial activity (*vide* – Section 9)
- f) Sections **10, 11, 12** – **‘Mid-Year Fiscal Position Report’** to be tabled in Parliament by 30th June to enable the **public to evaluate** Government’s fiscal performance against fiscal strategy set out in the Fiscal Strategy Statement, specifying the **estimates** and **actual** in respect of – (a) **expenditure**, (b) **revenue** (c) **cash flow** and (d) **borrowings** for the first 4 months of the year, **stating the reasons for variations** (*vide* – Section 12)
- g) Sections **13, 14, 15** – **‘Final Budget Position Report’** to be tabled in Parliament by 30th May to enable the public to evaluate Government’s fiscal performance against that set out in the Fiscal Strategy Statement, specifying the **estimates** and **actual** in respect of – (a) **expenditure**, (b) **revenue** (c) **cash flow** and (d) **borrowings** for the first 4 months of the year, **stating the reasons for variations** (*vide* – Section 15)
- h) Section **22** – Provides for information to be included in reports referred to as Sections 7, 10, 13 & 16 referred to above **to include information in respect of** public corporations and **companies in which the Government owns shares**
- i) Section **26** – “(1) **The Government may in exceptional circumstances, with the approval of Parliament granted by way of a Resolution of Parliament and for such period as may be specified in such Resolution, depart from the requirements of this Act.**
- (2) **The Minister shall in every instance where a departure from the requirements of this Act is made, inform Parliament of –**
- (a) **the reasons for such departure ;**
- (b) **the steps that the Government will be taking to overcome the causes necessitating such departure ;**
- (c) **the period of time within which the Government expects such departure from the requirements, to come to an end.**
- (3) **The Minister shall in every instance where a departure is made-**
- (a) **if Parliament is sitting on the date when such departure is necessitated, inform Parliament within two weeks of the date of the departure of the matters specified in subsection (2) relating to such departure ; or**
- (b) **if Parliament is not sitting on the date of such departure, take steps to ensure that Parliament is informed within two weeks of the next sitting of Parliament of the matters specified in subsection (2) in relation to such departure.”**

18. a) In the foregoing premises, the Petitioner respectfully states that he stands entitled to invoke the jurisdiction of Your Lordships' Court in terms of the applicable Articles of the Constitution for the reliefs prayed for herein.
- b) The Petitioner respectfully submits that the foregoing is of grave and serious national and public importance, warranting the invocation of the jurisdiction of Your Lordships' Court for the exercise of the judicial power of the people, and for the intervention of Your Lordships' Court in that behalf.
- c) The timely passage of the Appropriation Bill 2008 ("**P3**") being of importance, has necessitated the Petitioner to plead in *ex-tenso as* aforesaid, so as to assist Your Lordships' Court to Hear and Determine this matter expeditiously.
- d) The Petitioner is tendering this Petition in the national and public interest of the People of the country, and respectfully seeks the permission of Your Lordships' Court, to tender further relevant facts and documents at the Hearing.

19. The Petitioner respectfully states that

- a) the Petitioner filed an Application in terms of Article 121 of the Constitution challenging the Appropriation Bill 2007
- b) Your Lordships' Court made determination and communicated same to the Hon. Speaker of Parliament in October 2007

*A true copy of the aforesaid Determination is annexed marked ("**P4**"),
pleaded as part and parcel hereof*

- c) On that occasion, the Petitioner was not able to explain in full the relevant matters pertaining to the Appropriation Bill, which is primarily for the control of public finance by Parliament exercising the power of the People, **and for due scrutiny and accountability to the People to whom the resources belong.**

20. The Petitioner very respectfully states that:

- a) **the Appropriation Bill is not a mere legislative enactment to enforce the rule of law, but is an enactment by which Parliament is expected to discharge its full control over public finance, the resources held in trust for the People.**
- b) in addition, Parliament enacted the Fiscal Management (Responsibility) Act No. 3 of 2003, which came into operation on 3.6.2003 as per Gazette Extraordinary No. 1291/15 of 3.6.2003, **whereby the oversight and accountability of public finance was statutorily extended to the People, whose funds are managed in trust by the Government.**

21. In the context of the foregoing, the following facts are respectfully set out to demonstrate the gravity of the fiscal predicament and patent lack of fiscal responsibility and accountability;

- a) As per the Budget for 2008, the revenue for 2007 estimated was Rs. 605 Bn. However, as per the Central Bank Report 2007 Table 6.2, the provisional revenue for 2007 is estimated at Rs. 565 Bn., whilst at Table 95 of the same Report the provisional revenue for 2007 is estimated at Rs. 583 Bn. Whichever figure is right, the revenue for 2007 is below the estimate of Rs. 605 Bn. As per the Government's Audited Financial Statements for the Year 2007, the total revenue is given as Rs. 571 Bn.

- b) Notwithstanding the foregoing, as per the Budget for 2008, revenue estimated for 2008, is Rs. 750 Bn., confirmed by Table 6.2 of the Central Bank Report 2007. However at Table 95 of the same Report, revenue for 2008 is estimated at Rs. 771 Bn. ! Reviewing the 2007 revenue figures, one can not expect the revenue reaching Rs. 700 Bn. this year – 2008.

True copies of the said Tables 6.2, 95, Annex VI of Budget 2008 (part II) and Page 1 of Government's Audited Financial Statements for the Year 2007 are annexed respectively marked ("P5(a)", ("P5(b)", ("P5(c)", ("P5(d)", pleaded as part and parcel hereof

- c) In fact, as per the undated Mid-Year Fiscal Position Report 2008 Table 1.2, it is revealed that the revenue for the 5 months upto May 2008 has been Rs. 261.4 Bn., which prorated for 12 months would amount to Rs. 626 Bn., even with increases in the revenue levels expected in the second half of 2008, one wonders, whether the revenue of 2008 would reach Rs. 700 Bn., as against the budgeted Revenue of Rs. 750 Bn !

A true copy of the said Table 1.2 is annexed marked ("P6") pleaded as part and parcel hereof

- d) As per the Central Bank Report Table 6.8, the debt service for 2008 is a staggering Rs. 602 Bn., including Rs. 209 Bn., as interest. Hence only about Rs. 100 Bn. of the Revenue will be left for expenditure, even if a revenue level of Rs. 700 Bn. is reached in 2008 !
- e) Against the above, one has to reckon the expenditure estimated for 2008 in the Budget 2008 of Rs. 1044 Bn., (P5(c)) which as per the Central Bank Report 2007 Table 96 is estimated to be Rs. 1486 Bn.
- f) Hence, would not the borrowings for 2008 have to be in the range of Rs. 1350 Bn. to Rs. 1400 Bn. - i.e. almost double the revenue for 2008 ?
- g) As per the Central Bank Report 2007 Tables 6.7 and 107, the total debt level of the Government as at December 2007 was Rs. 3070 Bn., of which the foreign debt was Rs. 1355 Bn. (i.e. 44 %). However, as per Table 5.11 of the same Report the external debt is given as Rs. 1,550 Bn., and with Bank Liabilities as Rs. 1,821 Bn. As per the Mid-Year Fiscal Position Report 2008, the estimated foreign debt service for 2008 is US \$ 995 Mn.!

True copies of the said Tables 6.8, 96, 6.7, 107, 5.11 and Page 46 of the Mid-Year Fiscal Position Report 2008 are annexed respectively marked ("P7(a)", ("P7(b)", ("P7(c)", ("P7(d)", ("P7(e)", ("P7(f)", pleaded as part and parcel hereof

- h) As per the Central Bank Report 2007 Table 86 it is revealed that the country is running on the 'remittances' of the 'poor workers toiling in the middle-east'. In 2007 they had remitted US \$ 2502 Mn. As per the Mid-Year Fiscal Position Report 2008, in the first 4 months of 2008, they have remitted US \$ 975 Mn.

True copies of Table 86 of Central Bank Report 2007 and Page 38 of Mid-Year Fiscal Position Report 2008 and are annexed marked ("P8(a)", ("P8(b)", pleaded as part and parcel hereof

- i) During the last 10-years, these 'worker remittances', as per the Central bank Reports, have amounted to US \$ 15,000 Mn. If 50% of it did not come, what would have been the consequent 'dire straits' of the economy ? Most of this money is converted into local currency, thereby distributing revenue in the hands of the poor rural people, which has been lubricating the economy.

- j) As against this, a 'voluntary survey' done for the 3rd quarter of 2004, where only 50% of the exporters responded, **they on their own volition** admitted that US \$ 125 Mn. had been spent abroad by them from the exports proceeds of that quarter alone – hence prorated for 100% of the exporters, the export proceeds leakage for that quarter alone would have been over US \$ 250 Mn. Against such admitted factual revelations, the economists at the Central Bank have chosen to 'turn a blind eye' !
- k) The foregoing has resulted from the questionable Gazettes of 1993 and 1994 on the purported premise that such 'freedom of the jungle' was necessitated by the IMF Article VIII Status, whereas as disclosed in the IMF Report 2004, Article VIII Status countries such as India, Pakistan, China, Malaysia, Thailand and South Africa enforce not only export proceeds 'repatriation requirements', but also 'surrender requirements'.

True copies of the said Gazettes of 1993 and 1994, IMF Report 2004 Summary Sheets and Report of Exchange Controller's Survey Report dated 5.5.2005 are annexed respectively marked ("P9(a)", ("P9(b)", ("P9(c)", and ("P9(d)") pleaded as part and parcel hereof

- l) Apart from *ad-hoc* short-term borrowings, including 10% discount given on payment of tax one month before the due date i.e. *discounting revenue at 120 % p.a.*, what are the mid-term and long-term strategies to resolve the foregoing critical fiscal situation ? What are the answers, if any ?

A true copy of the Newspaper Notice is annexed marked ("P10") pleaded as part and parcel hereof

- m) There has been a plethora of multiplicity of statutory payments and taxes, which have been introduced in an *ad hoc* manner, perhaps out of desperation ! The cost of administration of tax collection appears not to have been taken into reckoning ! The World Bank website 'Doing Business in Sri Lanka' discloses that a medium size company has to make 62 payments in a year, by way of various statutory payments and taxes ! Would this not be an impediment to the very profit creating companies causing loss of unproductive time and effort ?

True copy of an extract from the Website is annexed marked ("P11") pleaded as part and parcel hereof

- n) (i) There are two categories of persons, one who have to and do pay taxes, and two, persons who are exempted from paying taxes having obtained concessions from the Board of Investments, where such extra-ordinary concessions are granted, sometimes by administrative and executive action, by a mere Officer.
- (ii) On the other hand, politicians, who consume public revenue very lavishly, are questionably outside the tax net, and thereby shielded from being reported for bribery, where suspected, in terms of the provisions of the Inland Revenue Act.
- o) (i) The accountability to public, from whom taxes are being collected has eroded, as disclosed by the former Auditor General, S.C. Mayadunne's Report, as Project Director, to the Public Accounts Committee and COPE last September - *viz*

'the Rs. 220.2 billion of discretionary payments made by the Secretary to the Treasury, in terms of Section 5 (Rs. 54.2 billion) and Section 6 (Rs. 166 billion) of the Appropriation Act No. 39 of 2005, raises the question whether it tantamounts to a partial abdication of the powers of full control over public finance vested in Parliament by Article 148 of the Constitution'.

- (ii) **Notwithstanding the Supreme Court direction in the Determination on the Appropriation Bill 2007, the details of these payments, for which there had been no Supplementary Estimates transparently submitted to Parliament, have not been disclosed.**
- p) (i) Even the Mid-Term and Final Annual Reports published in terms of the Fiscal Management (Responsibility) Act No. 3 of 2003, which came into operation in June 2003, do not disclose as statutorily mandated the information that is required to be disclosed to the public, in the manner stipulated in the said Act.
- (ii) There is provision for secrecy, where it concerns national security and defence expenditure, **but there is no room for any secrecy in relation to any other expenditure**, where public finances are being consumed, particularly by politicians *sans* any accountability.
- q) In a ‘**Special Audit Report**’ submitted to Parliament in July 2006 in terms of Article 154 (6) of the Constitution by the Auditor General, in the ‘Executive Summary, *inter-alia*, it was reported thus:
- **‘According to test checks carried out during the course of audit it was observed that the annual loss of the Government Tax Revenue is extraordinarily large. According to audit test checks the computable value of the loss of Government Tax Revenue and the failure to collect in accordance with the legal provisions during the last few years amounts to about Rs. 389 billion while the amount that cannot be computed is extremely large’.**
 - **‘The institutions dealing with the Tax Revenue had not maintained an adequate tax management co-ordination with their supervisory institutions that is, the General Treasury and the Ministry of Finance’.**
 - **‘The responsibilities devolving on the Secretary to the relevant Ministry in terms of the provisions in the Constitution, and on the Secretary to the Treasury and the respective Heads of Departments as the Accounting Officers through the Financial Regulations had not been discharged properly’.**

A true copy of the ‘Executive Summary’ of the said Special Audit Report of July 2006 to Parliament by the Auditor General is annexed marked (“P12”), pleaded as part and parcel hereof

- r) (i) Pertinent ‘*extracts*’ from the Annual Report 2005, published in 2006, by the Ministry of Finance & Planning are given below:

“The establishment of the National Procurement Agency (NPA) as an independent regulatory body to oversee procurement monitoring, capacity building and policy related matters is a strategy policy taken by the government to address public procurement issues.”

“Procurement policy reforms includes - Government procurement guidelines - Harmonization provisions Procurement guidelines for emergency procurement - Development of procurement manuals Development of NPA website - Procurement appeal board Development of standard functional specifications - Development of standard bidding documents (SBD) and Requests for Proposals (RFP)”

“Public Enterprises Reform Commission (PERC) is to restructure the identified non strategic enterprises and concentrate post privatisation issues on already privatised enterprises.”

“The Department of Public Enterprises of the Treasury works closely with SEMA and PERC to co-ordinate their activities in terms of the government's economic policy framework. In addition, a code of Best Practice in Corporate Governance for Public Enterprises and a set of Implementation Guidelines were published by the Department of Public Enterprises”

- (ii) Ironically, in the very next year 2007, both the National Procurement Agency and the Public Enterprise Reform Commission were questionably and mysteriously closed, thereby rendering the foregoing to be mere ‘fallacies’ ! PERC alone had nearly 50 post-privatisation issues and post-privatisation litigations to have been pursued and resolved ! All the files have been dumped in a Store, possibly with the fervent hope, that revealing documentations will either rot, or be misplaced or stolen, thereby jeopardising any future ‘probes’ into ‘malpractices’ and fraud on the people.
- s) The Petitioner’s endeavour to have the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 enforced, though agreed thereto by the Hon. Attorney General, is still pending settlement since October 2005 in the Court of Appeal Writ Application No. 1661/2003, as more fully disclosed by Letters dated 2.4.2008 and 24.7.2008 (“**P13(g)**”) and (“**P13(h)**”) to the Hon. Attorney General.

22. The Petitioner respectfully brings to the kind attention of Your Lordships’ Court the following Letters to demonstrate that the Petitioner has been persistently endeavouring to act in the public interest *vis-à-vis* the protection of public finance, the resources of the people of the country.

- (a) Letter dated 15.11.2007 to the Secretary to the Treasury
- (b) Letter dated 10.12.2007 to Hon. Speaker of Parliament
- (c) Letters dated 9.5.2008, 29.5.2008 and 19.9.2008 to Auditor General
- (d) Letter dated 4.6.2008 to Secretary, Presidential Commission *vis-à-vis* the Vat Fraud.
- (e) Letters dated 2.4.2008 and 24.7.2008 to the Hon. Attorney General

*True copies of the said Letters annexed hereto respectively marked (“**P13(a)**”), (“**P13(b)**”), (“**P13(c)**”), (“**P13(d)**”), (“**P13(e)**”), (“**P13(f)**”), (“**P13(g)**”) and (“**P13(h)**”) pleaded as part and parcel hereof*

23. The Petitioner respectfully appeals to Your Lordships’ Court to grant and afford him time, as Your Lordships’ Court shall seem meet, to explain and clarify matters in detail, in view of the Appropriation Bill 2008 (**P3**) being of grave and serious national and public importance.

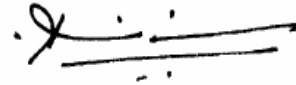
24. Affidavit of the Petitioner in support of the averments contained herein is annexed hereto.

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

- a) determine that in terms of Article 148 and Article 152 of the Constitution, the full control over public finance shall be exercised only by Parliament, except under and in terms of Articles 150(3) and 150(4) of the Constitution,
- b) determine that Parliament is debarred from abdicating and / or alienating and/or transferring its Constitutional duty to exercise full control over public finance, in terms of Article 148 and Article 152,

- c) determine that Parliament could approve the withdrawal of public funds from the Consolidated Fund only for specified public services and/or for specific public purposes, in terms of Articles 150(2), 149(1) and 151(3) of the Constitution,
- d) determine that Parliament is debarred from approving the withdrawal of public funds from the Consolidated Fund, where the public service and/or the specific public purpose is not specified, in terms of Articles 150(2), 149(1) and 151(3) of the Constitution,
- e) determine that any urgent and/or unforeseen expenditure for any specified public service or specific public purpose approved by Parliament, in respect of any Head and/or Programme in the Appropriation Bill 2008 (“**P3**”), could only be made from the Contingencies Fund and replaced thereafter by a Supplementary Estimate approved by Parliament in terms of Article 151 of the Constitution,
- f) determine that any excess expenditure, over and above the authorised limit for any specified public service or specific public purpose approved by Parliament, could only be approved by Parliament, as and by way of Supplementary Estimates and/or Amendments to the Appropriation Act, prior to such expenditure being incurred, in terms of Article 150 of the Constitution,
- g) determine that the grant of power to the Secretary to the Treasury in terms of Clauses 5 and/or 6(1) of the Appropriation Bill 2008 (“**P3**”) amounts to the abdication and / or the alienation and/or transfer of the powers of Parliament and such abdication and / or alienation and/or transfer of powers by Parliament is prohibited, in terms of Article 148 and Article 152,
- h) determine that Clause 6(2) of the Appropriation Bill 2008 (**P3**) would be an amendment to the Constitution, more particularly Article 151 thereof, and could not be passed by Parliament in the manner proposed,
- i) determine that the Appropriation Bill 2008 (**P3**) is not in conformity with and is in violation of the provisions in Chapters VI and XVII of the Constitution, and usurps and subverts the Constitutional stipulation that Parliament shall have full control over public finance,
- j) determine that all funds of the Government not allocated by law to specific purposes shall form one Consolidated Fund in terms of Article 149(1) of the Constitution,
- k) determine that the Appropriation Bill 2008 (“**P3**”) should disclose all other funds of the Government and the utilisation thereof, in terms of Article 149(1), read with Articles 148, 150(1), 150(2) and 152 of the Constitution,
- l) determine that public finance cannot be put beyond the reach, supervision, direction and control of Parliament by the Government investing such funds, wholly or partly, in limited liability companies, excluded in the definition of ‘public corporations’ in terms of Article 170 of the Constitution,
- m) determine that one or more of the Clauses of the Appropriation Bill 2008 (“**P3**”) is / are inconsistent with the provisions of the Constitution,
- n) determine that one or more of the Clauses of the Appropriation Bill 2008 (“**P3**”) require a Special Majority in Parliament and approval by the People at a Referendum under and in terms of the Constitution, for such Clauses to become law,

- o) determine that one or more of the Clauses of the Appropriation Bill 2008 (“P3”), could not be legitimately passed by Parliament to become law, in view of the specific prohibitions in the Constitution,
- p) communicate to the Hon. Speaker of Parliament any or all the Determinations made by Your Lordships’ Court,
- q) grant such other and further reliefs as to Your Lordships’ Court shall seem meet,

A handwritten signature in black ink, consisting of a stylized initial 'J' followed by a series of horizontal strokes and dots.

Petitioner