

PETITION

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

In the matter of an application to determine whether the Bill titled 'the Twentieth Amendment to the Constitution' or any part thereof is inconsistent with the Constitution in terms of the Constitution and in particular Article 121 thereof.

1. *Transparency International Sri Lanka,*
5/1, Elibank Road, Colombo 05
2. *Mr. S. C. Asoka Obeyesekere,*
Executive Director, 11/5,
Rajakeeya Mawatha,
Colombo 07

PETITIONERS

SC (SD) Application. No- 09/2020

Vs.

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

RESPONDENT

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ATTORNEY-AT-LAW

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

On this 24th day of September 2020

*The Petition of the Petitioner above named appearing by M/s Gowry Shangary Thavarasha his
registered Attorney-at-Law states as follows;*

1. The Petitioners state that;

- a) The 1st Petitioner is a company registered under the *Companies Act No. 7 of 2002* and is the Sri Lankan chapter of a global anti-corruption initiative;
- b) The 2nd Petitioner is the *Executive Director* of the said Company, and a citizen of Sri Lanka and is entitled to proffer this application under *Article 121(1)* of the Constitution;
- c) The primary objects of the 1st Petitioner are inter alia to encourage the growth of democratic concepts, practices and good governance in Sri Lanka, to promote accountability and eradication of corruption in all public institutions, departments and other spheres of government and the private sector, and to take steps to promote and bring about transparency and integrity in public life, governments and undertakings and national and multinational trade and industry and work towards the eradication of corruption from all spheres of life in Sri Lanka.

True copies of the Certificate of Incorporation and the notice of change of registered address of the 1st Petitioner are annexed hereto compendiously marked 'P-1(a)' and are pleaded as part and parcel hereof.

True copies of the Memorandum and Articles of the 1st Petitioner are annexed hereto compendiously marked 'P-1(b)' and are pleaded as part and parcel hereof.

- d) The 1st Petitioner has on previous occasions invoked the jurisdiction of your Lordships' court in the matters S.C.(S.D.) No.24/2016 and S.C.(S.D.) No. 14/2018, with the purpose of upholding citizens' interests of accountability, oversight, transparency and public participation.
2. The Petitioners state that the Respondent is the Hon. Attorney General, and is made a party hereto in terms of the Law and in particular *Article 134(1)*.
3. The Petitioners state that a Bill titled "*the Twentieth Amendment to the Constitution*" was issued on or around 02-09-2020 and placed on the Order Paper of the Parliament on 22-09-2020.

Copies of the said Bill as published in all three languages as found on <http://www.documents.gov.lk/en/bills.php> are annexed hereto marked 'P-2(a)', 'P-2(b)' and 'P-2(c)' respectively and pleaded as part and parcel hereof.

4. The Petitioners respectfully state that certain clauses of the Bill as set out below are inconsistent with the rights guaranteed under the Constitution and the law, and violative of *Article 83* of the Constitution as read with *Article 3 & 4(d)* of the Constitution.
5. The Petitioners specifically state that *inter alia*;
- a) *Clause 6* of the Bill replaces the functioning *Constitutional Council* which safeguards the independence of Independent Commissions with a *Parliamentary Council* which is, amongst other things, only mandated to provide non-binding observations, and as such has adverse implications on the *Right to Information Commission of Sri Lanka*. Such would adversely impact on several fundamental rights including *Article 14A* of the Constitution, and therefore also violative of *Article 1 & 3* of the Constitution;
- b) *Clause 19* of the Bill has grave implications on franchise by (amongst other things) affecting the independence of the *Elections Commission* and

restraining its ability to oversee the public service and is thus *inter alia*, violative of Articles 3, 4, 14(1)(a) & 103 of the Constitution requiring a referendum;

c) Clause 31 to Clause 40 of the Bill has serious adverse consequences to the *National Audit Service Commission*, and similar provisions are found in Clause 55 of the Bill which abolishes the *National Procurement Commission* both of which affect oversight of Public Finance; with the former restricting the oversight powers of Parliament over Public Finance exercised through such commissions' especially the *Audit Service Commission's* answerability to Parliament, and is thus *inter alia* violative of Article 3, 4(a) & 148 of the Constitution requiring a referendum;

d) Clause 54 of the Bill removes the recognition awarded to the *Commission to Investigate Allegations of Bribery and Corruption* and has adverse implications for the proactive and independent nature of the commission that has a mandate to apprehend corrupt actors and to thereby prevent the misuse of public resources in a manner that advantages some at the cost of others, contrary to globally accepted best practices permitting anti-corruption agencies to function *suomotu*; thus violative of Article 3, 4 & 12(1) of the Constitution.

6. The Petitioners state that in the circumstances hereinbefore more fully enumerated, the clauses in the Bill referred to above, cannot become Law, unless passed by two-thirds of the whole number of members in Parliament and approved by the People at a referendum.

7. The Petitioners have taken steps to furnish a copy of this Petition to the Honourable Speaker of Parliament in compliance with Article 121(1) of the Constitution.

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8. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
9. The Petitioners state that in the aforesaid circumstances they are entitled to invoke the jurisdiction of Your Lordships' Court for the reliefs prayed for herein.
10. The Petitioners respectfully reserve their right to furnish such further facts and documents in support of the matters set out herein at the hearing of this Application should the Petitioners become possessed of any such material.
11. An affidavit of the 2nd Petitioner is appended hereto in support of the averments contained herein.

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

- (a) Entertain/hear the instant application;
- (b) Declare that *clauses 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 54 & 55* of the Bill titled '*the Twentieth Amendment to the Constitution*' are inconsistent with *Articles 3, 4(a), 12(1) &/or 148* of the Constitution, and therefore require the following of the appropriate procedure laid down in *Articles 83* of the Constitution for enactment into law;
- (c) Declare that *clauses 6 & 19* of the Bill titled '*the Twentieth Amendment to the Constitution*' is inconsistent with *Article 4* read with *Article 3* as well as *Article 1, 14(1)(a), 14A &/or 103* of the Constitution, and therefore require the following of the appropriate procedure laid down in *Articles 83* of the Constitution for enactment into law;

(d) Communicate the determination(s) made above to the Honourable Speaker of Parliament; and

(e) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

T. Sangary

Attorney-at-Law for the Petitioners

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