

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

*In the matter of an application under and
in terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC/FRA/212/2022

1. Chandra Jayaratne
No. 2, Greenland Avenue,
Colombo 05.
2. Julian Bolling
No. 72, 5th Lane,
Colombo 05.
3. Jehan CanagaRetna
No. 5, Bullers Lane, Apartment 3B
Colombo 07.
4. Transparency International Sri Lanka
No. 366, Nawala Road,
Nawala, Rajagiriya

Petitioners

-Vs-

1. Hon. Attorney General
Attorney General's Department
Colombo 12
2. Hon. Mahinda Rajapakse
Former Prime Minister, Former
Minister of Buddhasasana, Religious
and Cultural Affairs, Former
Minister of Urban Development &
Housing, Former Minister of
Economic Policies and Plan
Implementation and Former Minister
of Finance.
No. 117, Wijerama Mawatha,
Colombo 07.
3. Hon. Basil Rajapakse,
Former Minister of Finance
No. 1315, Jayanthipura
Nelum Mawatha,
Battaramulla
No. 1316, Jayanthipura Nelum
Mawatha,
Battaramulla.

4. Hon. M.U.M. Ali Sabry PC
Former Minister of Finance
No. 5, 27th Lane,
Colombo 03.
5. Hon. Ranil Wickremesinghe,
Prime Minister,
Minister of Finance, Economic
Stability and National Policies.
No. 117, 5th Lane,
Colombo 03.
6. Deshamanya Professor W.D.
Lakshman
Former Governor of the Central Bank
No. 224, Ihalayagoda,
Imbulgoda.
7. Mr. Ajith Nivard Cabral
Former Governor of the Central Bank
of Sri Lanka,
No. 32/7 School Lane,
Nawala.
8. Dr P. Nandalal Weerasinghe
Governor of the Central Bank of Sri
Lanka
Central Bank of Sri Lanka
P O Box 590
Colombo 01
Sri Lanka
9. The Monetary Board of the Central
Bank of Sri Lanka
Central Bank of Sri Lanka
P O Box 590
Colombo 01
Sri Lanka
10. Mr. S.R. Attygala
Former Secretary to the Treasury/
Ministry of Finance
No. 23, Madapatha,
Pilliyandala.
11. Mr. K.M. Mahinda Siriwardana
Secretary to the Treasury/Ministry
of Finance
The Secretariat,
Colombo 01.

12. Mr. Saliya Kithsiri Mark Pieris, P.C.,
President of The Bar Association of
Sri Lanka,
No. 153, Mihindu Mawatha,
Colombo 12.

13. Mr. Isuru Balapatabendi, AAL.,
Secretary of The Bar Association of
Sri Lanka,
No. 153, Mihindu Mawatha,
Colombo 12.

Respondents

On this 16th day of June 2022.

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

The Petition of the Petitioners above named, appearing by their Registered Attorney-at-Law, Mr. K. Upendra Gunasekara state as follows:

The Petitioners

1. The 1st Petitioner is a citizen of Sri Lanka. The 1st Petitioner is prominent governance activist, and a Fellow of the Institute of Chartered Accountants of Sri Lanka and of the Chartered Institute of Management Accountants, UK, and has previously served as the President of the Ceylon Chamber of Commerce and LMD Sri Lankan of the year 2001
2. The 2nd Petitioner is a citizen of Sri Lanka. He represented Sri Lanka at three Olympic games, in the USA, South Korea and Spain. He is a professional coach with over 25 years of coaching experience who has trained multiple swimmers to win national and international competitions. He has won over 15 Gold medals at the SAARC Games and was awarded the State Award of Deshabandu in 1988. He is presently the Head Coach and Director at the Rainbow Swimming School, Colombo 07, and a Consultant Coach at Lyceum International School, Wattala.
3. The 3rd Petitioner abovenamed is a citizen of Sri Lanka, and the President of the Wildlife Nature Protection Society (WNPS), Sri Lanka, and the Chair of the sub-committee of the Human-Elephant Conflict within the same. He is a trustee of the Ceylon School for the Deaf and Blind, Navodaya School for Special Needs, and has previously worked at the Rainforest Alliance and the Federation of Environmental Organizations as a Consultant.

4. (a) The 4th Petitioner is a body incorporated under the laws of Sri Lanka

(and duly re-registered in terms of the Companies Act No. 07 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka and is entitled to make this application in terms of Article 17 read with Article 126 of the Constitution.

- (b) The primary objects of the 4th Petitioner are, *inter alia*, to encourage the growth of democratic concepts, practices and governance in Sri Lanka, to promote accountability and eradication of corruption in all public institutions, departments and other spheres of government and private sector, and to take steps to promote and bring about transparency and integrity in governance and work towards the eradication of corruption from all spheres of life in Sri Lanka.

True copies of the Certificate of Incorporation, the notice of change of registered address and the Articles of Association of the 4th Petitioner are annexed hereto compendiously marked 'X' and are pleaded as part and parcel hereof.

5. The Petitioners state that Sovereignty is vested in the People of Sri Lanka, as per Article 3 of the Constitution, and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.
6. As such, the Petitioners state that this Application has been instituted by them, in the public interest, as citizens in whom sovereignty is reposed, and who are under a constitutional duty, as per Article 28 of the Constitution to, *inter alia*, uphold and defend the law and the Constitution, to further national interest and foster national unity, to preserve and protect public property and to respect the rights and freedoms of others. The Petitioners state that they have a clear and direct interest to institute this Application, being concerned in the wellbeing of the citizens of Sri Lanka, as well as its economic prosperity, as demonstrated by their backgrounds and past work.

The Respondents

7. The Petitioners state that:

- (a) The 1st Respondent as the Hon. Attorney General of Sri Lanka is made a party to this application as required by law and in terms of:

(i) The requirements of Supreme Court Rule 44(3) read with Article 126(2) and 134(1) of the Constitution; and

(ii) The proviso to Article 35(1) of the Constitution, as this application is made in respect of infringement of fundamental rights of the Petitioners and the citizens of Sri Lanka by the action(s) of the His Excellency Gotabhaya Rajapakse the President of the Executive (hereinafter referred to as the

'President of the Republic') acting in his official capacity and as Head of the Executive, as more fully set out hereinafter.

- (b) The 2nd Respondent is the former Prime Minister of Sri Lanka and the Former Minister of Buddhasasana, Religious and Cultural Affairs, Urban Development & Housing and of Economic Policies and Plan Implementation and the Former Minister of Finance.
- (c) The 2nd Respondent was the Minister of Finance *inter alia* from the 21st of November 2019 to the 2nd of March 2020, from the 9th of August 2020 to the 8th of July 2021. The Petitioners state that the 2nd Respondent together with the President of the Republic and the 3rd, 6th, 7th, 9th and 10th Respondents was collectively and individually responsible for the majority of the decisions which have led to the violation of the fundamental rights of the Petitioners as morefully described hereinafter.
- (d) The 3rd Respondent was the Finance Minister of Sri Lanka from the 28th of July 2021 to the 3rd of April 2022, and together with the President of the Republic and the 2nd, 6th, 7th, 9th and 10th Respondents, was collectively and individually responsible for the majority of the decisions, which have led to the violation of the Fundamental rights of the Petitioners as morefully described hereinafter.
- (e) The 4th Respondent was the Minister of Finance from the 4th of April 2022 to the 9th of May 2022, and has been made a party to this Application for the fuller and fairer determination of this Application.
- (f) The 5th Respondent is the present Prime Minister of Sri Lanka and the Minister of Finance, Economic Stability and National Policies.
- (g) The 6th Respondent was the Governor of the Central Bank from December 2019 to September 2021 and was *inter alia* the chief executive officer of the Central Bank and the head of the Monetary Board of the Central Bank. The 6th Respondent together with the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, was collectively and individually responsible for the majority of the decisions which have led to the violation of the Fundamental rights of the Petitioners, as morefully described hereinafter.
- (h) The 7th Respondent was the Governor of the Central Bank from the 15th of September 2021 to the 4th of April 2022 and was, *inter alia*, the chief executive officer of the Central Bank and the head of the Monetary Board of the Central Bank. The 7th Respondent together with the President of the Republic of the 2nd, 3rd, 6th, 9th and 10th Respondents, was collectively and individually responsible for the majority of the decisions which have led to the violation of the Fundamental rights of the Petitioners as morefully described hereinafter.

- (i) The 8th Respondent is the present Governor of the Central Bank of Sri Lanka and has been made party to this Application merely to facilitate a fuller and fairer determination of this Application.
- (j) The 9th Respondent is the Monetary Board of the Central Bank of Sri Lanka which is a body corporate, and may sue and be sued in its own name established under the provisions of the Monetary Law Act No. 37 of 1974 as amended. The 9th Respondent has the power to do and perform all such acts as maybe necessary for carrying out the principle provisions of the Monetary Law Act. The 9th Respondent is also responsible *inter alia* for making all decisions with regard to the management and operation of the Central Bank and for making recommendations with regard to the value of the Rupee.
- (k) The 10th Respondent was the Secretary to the Treasury/ Ministry of Finance of Sri Lanka from the 20th of November 2019 to the 7th of April 2022 and together with the President of the Republic and the 2nd, 3rd, 6th, 7th and 9th Respondents was collectively and individually responsible for the majority of the decisions which have led to the violation of the Fundamental rights of the Petitioners as morefully described hereinafter.
- (l) The 11th Respondent is the present Secretary to the Treasury/Ministry of Finance.
- (m) The 12th and 13th Respondents are the President and Secretary of the Bar Association of Sri Lanka, respectively named for and on behalf of the Bar Association of Sri Lanka, (hereinafter referred to as the 'BASL'). The Bar Association is the main professional body in Sri Lanka, committed to upholding the Rule of Law, Fundamental Rights, the independence of the Judiciary and justice in Sri Lanka. The Petitioner states that the Bar Association has been involved in attempting to find a solution to the crisis that has occurred in the country due to the violation of the Petitioner's rights as morefully set out hereinafter. The Bar Association has also made an application before Your Lordships' court with regard to the violation of the rights of citizens that has been caused by the irrational, arbitrary and unreasonable decisions taken by the President and the 1st - 11th Respondents as morefully set out hereinafter.

A true copy of the Fundamental Rights Application bearing number SC/FR/106/2022 instituted by the Bar Association of Sri Lanka, before Your Lordships' Court is annexed hereto marked "P-1" and is pleaded as part and parcel hereof.

The BASL has also been actively engaged in the politics and governance sphere, and has been instrumental in engendering tangible systematic change therein, and has most recently, released a statement dated 7th April 2022, calling for the Executive and the Legislature to take swift steps to address the prevailing economic and political crisis in the country.

A true copy of the Statement issued by the Bar Association of Sri Lanka, dated 7th April 2022 is annexed hereto parked "P-1(a)" and is pleaded as part and parcel hereof.

- (n) The Petitioners respectfully reserve their right to add further parties to the instant application *in limine* and/or, in the event further material revealing their complicity, in respect of the acts and/or omissions impugned hereinafter arises.

Background to the instant Application

8. The Petitioners state that the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents made a series of irrational, arbitrary, patently illegal, wrongful decisions, in complete dereliction of their statutory duties and fiduciary responsibility, for collateral and extraneous purposes, during the years 2019 to 2022, which has resulted in the Petitioners and the public of Sri Lanka being denied their right to equality, equal protection of the law and their right to life as guaranteed by the Constitution of Sri Lanka.
9. (a) The Petitioners state that the aforesaid series of irrational, arbitrary, patently illegal, and wrongful acts on the part of the President and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, has resulted in catastrophic long-term and short-term ramifications to the economy, and caused the country to default on the repayment of foreign debts, for the first time in its history, and has relegated Sri Lanka to a state of bankruptcy/insolvency, as will be morefully elaborated in this Application.

True copies of the Statement issued by the then Ministry of Finance dated 12th April 2022 and an article by The Guardian demonstrating the above, dated 16th May 2022 is annexed hereto parked "P-2(a) and "P-2 (b)" respectively and pleaded as part and parcel hereof.

- (b) In such circumstances, the Petitioners seek the aid and assistance of Your Lordships' Court by invoking the fundamental rights jurisdiction of Your Lordships' Court to, *inter alia*:
- (i) Declare that the fundamental rights of the Petitioners and the citizens of Sri Lanka has been violated by the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents;
 - (ii) To direct the relevant Respondents to produce before Your Lordships Court all recommendations, reports and other documentation with regard to the matters complained of by the Petitioners in this Application;
 - (iii) To investigate the causes and the basis on which the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents

carried out or did not carry out the wrongful actions/inactions complained of herein;

- (iv) To take appropriate action or make such directions as Your Lordships' Court may seem meet against the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, upon the said investigation of the wrongful actions/inactions of the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents;
 - (v) To make such orders or directions against the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents in the interim so that any orders or directions made by Your Lordships' Court with regard to the culpability of the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents are not rendered ineffectual.
10. (a) The Petitioners state that, as morefully set out in this Application, the said actions / inaction and gross mismanagement of the economy by the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, have resulted in an unprecedented economic crisis driven by debt unsustainability, which has garnered the attention of the world at large.
- (b) The Petitioners state that the International Monetary Fund (hereinafter referred to as the "IMF") by its IMF-Sri Lanka Staff Report for the 2021 Article IV Consultation dated 10/02/2022, categorized, for the first time, the sovereign debt of Sri Lanka as "unsustainable" thereby bringing into effect a cascade of inimical repercussions to the economy of Sri Lanka in general and the external debt portfolio in particular, and thereby leading the State to issue a Notice of Default dated 12/04/2022 (P-2(a)), whereby the State of Sri Lanka informed all its creditors that all foreign debt repayment would be suspended, which debt repayments included the following categories of debt:
- a. All outstanding series of bonds issued in international capital markets
 - b. Certain bilateral (government to government) credits
 - c. All foreign-currency denominated loan agreements or credit facilities with commercial banks or institutional lenders, including those owned by foreign governments
 - d. All amounts payable following a call during the said interim period upon a guarantee issued in respect of a debt of a third party

A true copy of the IMF Country Report No.22/91 (2021 Article IV consultation-Press Release; Staff Report' and Statement by the Executive Director for Sri Lanka) is annexed hereto, marked as "P-3", and is pleaded as part and parcel hereof.

11. The Petitioner states that thereafter, on or around the 19th of May 2022, Sri Lanka defaulted on loans that fell due and has now been downgraded by rating agencies as a defaulting nation, as will be morefully elaborated on in this Application.
12. The Petitioners state that the Petitioners are invoking the fundamental rights jurisdiction of Your Lordships' Court on the basis that President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents by a series of actions, commencing in 2019 and continuing to date, (as morefully set out hereinafter) including acts that have necessitated the defaulting of Sovereign debt, have infringed and/or violated and continue to infringe and/or violate the fundamental rights of the Petitioners and of all citizens of Sri Lanka, as made abundantly clear at the recent meeting of the Committee on Public Enterprises (COPE) on or about 25th May 2020, where it transpired that the actions of the said Respondents in respect of, *inter alia*, the RFI facility (Rapid Financing Instrument) of the IMF and the management of the rupee, had engendered the present crisis, as will be morefully elaborated in this Application.

A true copy of a newspaper article dated 26th May 2022 as well as a containing videos demonstrating the above are annexed hereto, compendiously marked as "P-3(a)", and are pleaded as part and parcel hereof.

13. The Petitioners state that such actions and/or inactions of the President of the Republic and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, are broadly categorized as follows:
 - (i) The illegal, arbitrary and unreasonable abolition, removal and/or reduction of taxes effected in the year 2019 and the consequent reduction in government revenue;
 - (ii) The refusal to change the aforesaid illegal, irrational and arbitrary decisions to reduce taxes despite the consequent downgrading of Sri Lanka's credit rating and the emergence of the Covid-19 Pandemic.
 - (iii) The failures and/or omissions to take remedial measures subsequent to rating downgrade caused *inter alia* by the illegal, arbitrary and unlawful actions of the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents
 - (iv) The refusal and failure of the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents to ensure conditions were met in a manner that would permit Sri Lanka to avail itself of the sum of money agreed to be given to SL by the IMF in terms of the Extended Fund Facility agreement as morefully set out hereinafter;

- (v) The failure to obtain available aid to combat the economic hardships faced as a consequence of COVID, especially in the face of a lack of government revenue;
 - (vi) The failure to act in terms of the Monetary Law of Sri Lanka, to maintain international reserves and the international stability of the rupee;
 - (vii) The failure to devalue the Sri Lankan Rupee in a timely, orderly and appropriate manner, despite widespread calls and demands to do so;
 - (viii) The failure and/or omissions to appropriately devalue the Sri Lankan Rupee which resulted in fluctuations in worker remittances, and subsequently, the country's foreign reserves and Sri Lanka's balance of payment;
 - (ix) The decision, to continue to service Sovereign debt without any restructuring, despite the futility and grievous prejudice in doing so.
 - (x) The continued refusal to seek the assistance of the International Monetary Fund (IMF), despite widespread calls and demands to do so;
 - (xi) The subsequent admission by the President of the Republic that the aforementioned refusal to seek the assistance of the IMF was wrong and misconceived; and
 - (xii) The unreasonable, arbitrary actions and / or omissions which resulted in a default of the country's foreign debt.
14. As such, the Petitioners state that, as will be morefully elaborated in this Application, the aforementioned Respondents are directly responsible for, *inter alia*, the unsustainability of Sri Lanka's foreign debt, its hard default of foreign loan repayments, and the current state of the economy of Sri Lanka, and must be held accountable for the patently illegal, arbitrary and unreasonable acts and / or omissions which culminated in the above.

The abolition, removal and/or reduction of taxes effected in the year 2019 and the consequent fall in government revenue

15. The President of the Republic, His Excellency Gotabaya Rajapakse was elected and took oaths as the President of Sri Lanka on the 18th of November 2019. On the 20th November 2019, the then Prime Minister Hon. Ranil Wickramasinghe resigned and the 2nd Respondent the Hon. Mahinda Rajapakse was appointed as the Prime Minister and the Minister of Finance on the 21st November 2019.
16. The Petitioners state that in or around November/December 2019, the Commissioner General of Inland Revenue issued a number of notices on the

instructions of the 2nd Respondent which sought to reduce a number of taxes [hereinafter referred to as 'tax revisions'] by *inter alia*:

- a. Removing/abolishing the Taxes set out by Parliament under the Nation Building Tax Act, No. 9 of 2009 as last amended by Act, No. 20 of 2019
- b. Removing/ abolishing the Taxes set out Parliament under the Economic Service Charge Act, No. 13 of 2006
- c. Removing/ Abolishing the Debt Repayment Levy
- d. Reducing the threshold for payment for Value Added Tax from 12%-8%
- e. Increasing the VAT registration threshold from LKR 12,000,000 million- LKR 300,000,000
- f. Increasing the rate of Taxable Income on Personal Income Tax from LKR 500,000 to LKR 3,000,000.00
- g. Reducing the Top Marginal Tax Rate on Personal Income tax from 245-18%
- h. Abolishing the mandatory withholding tax for most employees
- i. Reducing the Standard Corporate Income Tax from 28%- 24%

True Copies of the following notices relating to the aforesaid Tax revisions are annexed hereto, compendiously marked as "P-4", and pleaded as part and parcel hereof.

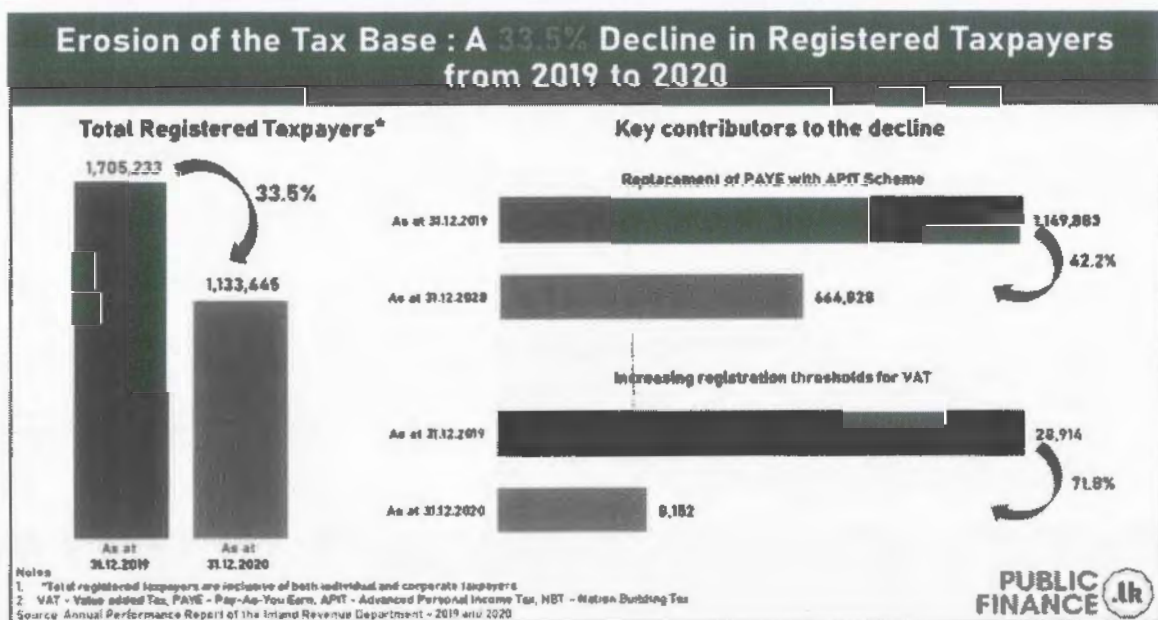
- a) Notice dated 18th February 2002 issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance on January 31.2020- Implementation of proposed changes to Inland Revenue Act No. 24 of 2017

(Pending Parliamentary Approval)
- b) Notice issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Implementation of New Tax Proposals on Value Added Tax and Nation Building Tax.
- c) Notice issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Removal of Economic Service Charge (ESC)
- d) Notice dated 5th February 2020 issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Instruction on Withholding Tax (WHT)- (Pending formal amendment to the Inland Revenue Act 24 of 2017)

- e) Notice issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Guideline for Deduction of PAYE Tax, Period from 01.01.2020 to 31.03.2020, (subject to formal amendment to the Inland Revenue Act, No. 24 of 2017, to be passed in Parliament).
- f) Notice issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance-Change of Nation Building Tax (NBT), pending parliamentary approval for amendment to the Nation Building Tax Act, No. 9 of 2009.
- g) Notice issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Exemption of Value Added Tax (VAT) on supply of Residential Accommodation
- h) Notice dated 20th January 2020, issued by the Commissioner General of Inland Revenue as instructed by the Ministry of Finance - Removal of Debt Repayment Levy (DRL) pending parliamentary approval for amendment to the Finance Act, No. 35 of 2018.

Copies of News Article relating to the said Tax Revisions are also annexed hereto marked "P-5", and pleaded as part and parcel hereof.

17. The Petitioners state that as a direct result of the aforementioned tax revisions, the VAT base of the country contracted by as much as 71%, while its income tax base contracted by as much as 33%.



The above infographics and other infographics prepared by Publicfinance.lk titled - "Erosion of the Tax Base: A 33.5% Decline in Registered Tax Payers from 2019-2020" based on the Annual Performance Report of the Inland Revenue Department - 2019

-‘Shrinking Tax Base Increases Tax Burden on Existing Taxpayers’ based on the Inland Revenue Department and the Ministry of Finance Annual Reports
-‘How does Sri Lanka’s Corporate Taxes Compare With Other Countries?’ based on the Ministry of Finance Fiscal Management Report 2020-2021 page 8
as published on the website ‘Public Finance’ and compendiously marked “P6” and annexed hereto and pleaded as part and parcel of the petition.

18. The Petitioners state that Government revenue declined in 2020, both in nominal terms as well as a percentage of the Gross Domestic Product (GDP), as a result of the combined impact of the tax revisions implemented from late 2019, as well as the Covid-19 pandemic, as per the Annual Report 2020 of the Central Bank (at page 153-155).

Soft copies of the Central Bank Annual Reports for the year 2020, 2021 contained in a CD drive, are annexed hereto, marked P-7 and are pleaded as part and parcel hereof.

Relevant extracts of the aforementioned pages of the Central Bank reports are hereto marked “P-7a”, and “P-7b” and are pleaded as part and parcel of this Petition.

19. The Petitioners state further that the grave extent that the Government revenue was severely affected by these tax revisions is reflected in the annual report of the Central Bank of Sri Lanka 2020 (P7) which, *inter alia*, state as follows:

- (a) Tax revenue declined from Rs. 1,734.9 billion in 2019 to Rs. 1,216.5 billion in 2020, mainly due to low revenue from income tax, VAT, NBT, CESS and excise duties, which is a reduction of 29.9%;
- (b) The revenue from Income Tax declined from Rs. 427.7 billion in 2019 to 268.3 billion in 2020, which is a reduction of 37.3%;
- (c) The revenue from VAT declined from Rs. 443,877 million in 2019 to 233,786 million in 2019, which is a reduction of 47.3%.

20. In this regard, the Petitioners respectfully draw Your Lordships’ attention to the ‘Summary of Government Revenue’ as published in the Annual Report of the Central Bank of Sri Lanka for the year 2020, page 154, and in the Annual Report of the Central Bank of Sri Lanka for the year 2021, page 186 (**produced marked P7**).

Table 6.2
Summary of Government Revenue

Item	2020 (a)	2021 (b)
Rs. million		
Tax Revenue	1,216,542	1,298,019
Income Taxes	268,249	302,115
VAT	233,786	308,213
Excise Taxes	321,932	306,861
Import Duties	114,183	64,339
Other Taxes	278,392	316,490
Non Tax Revenue	151,417	159,052
Total Revenue	1,367,960	1,457,071
As a Percentage of GDP (c)		
Tax Revenue	8.1	7.7
Income Taxes	1.8	1.8
VAT	1.6	1.8
Excise Taxes	2.1	1.8
Import Duties	0.8	0.4
Other Taxes	1.9	1.9
Non Tax Revenue	1.0	0.9
Total Revenue	9.1	8.7

(a) According to the Ministry of Finance, the fiscal sector statistics of 2020 have been adjusted as announced in the Budget Speech for 2020.

Source: Ministry of Finance

(b) Provisional

(c) For 2020, revised GDP estimates were used, as released by the Department of Census and Statistics on 29 March 2022.

21. The Petitioners further state that as per the Annual Report of the Central Bank (produced marked P7), at pages 153-154, the decline in income tax revenue was mainly attributable to the abolition of Pay as You Earn (PAYE) tax and Economic Service Charge (ESC), along with the revisions to Withholding Tax (WHT) and corporate and non-corporate income tax with effect from January 2020, and to the decline in revenue from VAT and excise duties effective from 1st December 2019. This was further highlighted in IMF Article IV Consultation Press Release published on the 25th of February 2022 (produced marked P3).

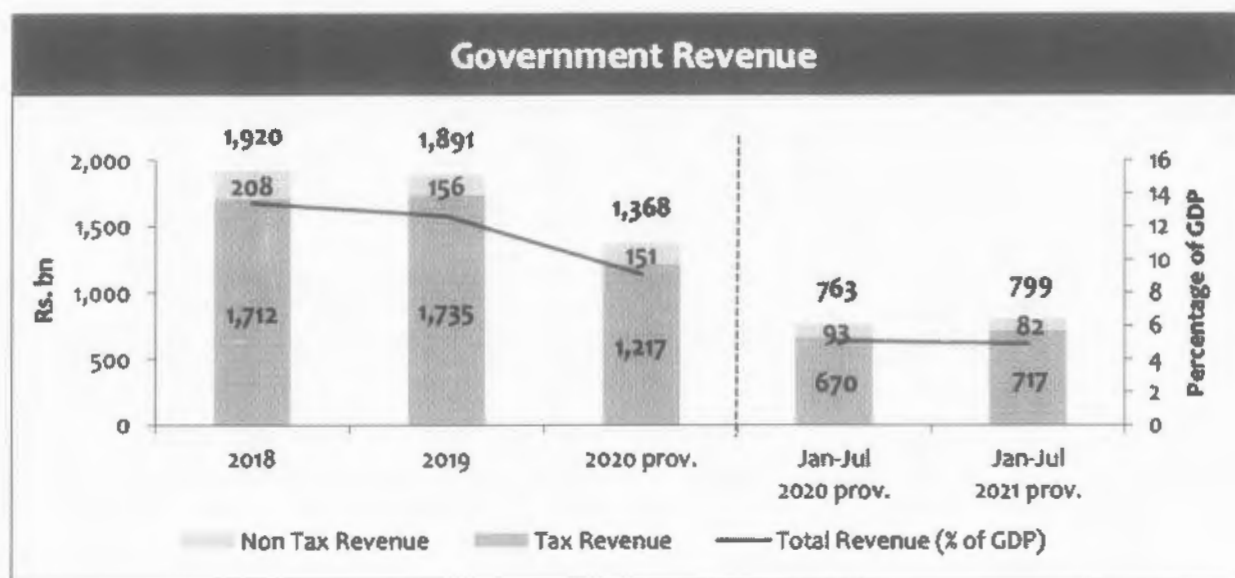
The illegality of the abolition, removal and/or reduction of Taxes made in 2019 effected by the 2nd Respondent

22. (a) The Petitioners state that the abolition, removal and/or reduction of taxes were arbitrary, irrational, unreasonable and made for a collateral purpose.
- (b) The Petitioners state that in addition to being irrational, the aforementioned tax revisions were patently illegal at the time they were made.
- (c) The said Tax reductions were all made in the run up to the General Election of 2020, no rationale, calculation or proper reasoning was given as to the basis on which these tax reductions were made, and in the circumstances, it appears that these tax reductions were not made after exercising due diligence and forethought and for the benefit of the citizens as a whole.
23. Subsequent to the said election, the new Parliament passed, *inter alia*, the following amendments to the relevant tax statutes in an attempt to retrospectively give effect to the unlawful notices:
- a) Nation Building Tax Amendment No. 3 of 2020- certified on the 12th of October 2020
- b) Economic Service Charge Amendment Act No. 4 of 2020- certified on the 12th of October 2020
- c) Inland Revenue Amendment Act No. 10 of 2021 – certified on the 13th of May 2021
- d) Value Added Tax Amendment Act No. 9 of 2021- Certified on the 13th of May 2021

Add other Amendments

24. The Petitioners state that the said notices issued by the Commissioner General of Inland Revenue on the instructions of the Executive was patently illegal at the time it was made, as it sought to amend an **Act of Parliament by administrative action**, and reduced the revenue of the State in a manner contrary to that set out in Article 148 of the Constitution and to thereby remove and reduce the very basic constitutional protections by which Parliament has been given full control over Public Finance.
25. (a) The Petitioners are reliably aware that the aforesaid revision of Taxes was not done after due consultation with the Revenue Collection Agencies or after any informed cost benefit analysis as to the impact such a drastic reduction of government revenue would have on the economy of Sri Lanka.

- (b) In fact, the aforesaid abolition, removal and/or reductions were so drastic in nature and the reduction of revenue so severe that it would have required an impossible level of economic growth to compensate for the same.
- (c) This is exacerbated when the said decision was made without due deliberation in parliament and was made by the executive acting illegally and with no rational basis.
26. As pleaded hereinabove, the tax revisions resulted in a notable decline in revenue as indicated by the Central Bank Reports:



A true copy of the 'Six-Month Road Map of CBSL' published on 1st October 2021 is marked "P8", and the relevant page number 9 is marked "P8(a)" and annexed hereto and pleaded as part and parcel of this Petition.

27. The Petitioners further state that as stated in the Central Bank Annual Report 2021 the Government revenue recorded a sluggish growth in 2021, yielding the historically lowest tax to GDP ratio amidst the low tax regime instituted since late 2019. (As stated at page 184 of P7)
28. The Petitioners state that according to the Ministry of Finance Annual Report (2020), Sri Lanka's budget deficit has doubled between the period of 2019 and 2020. The budget deficit increased from Rs. 1,052 billion in 2019 to Rs. 2,115 billion in 2020, an increase of Rs. 1,063 billion. (As set out in page 208 of the 2020 Annual Report of the Ministry of Finance). This increase in the budget deficit can be attributed to a decline in revenue by Rs. 526 billion and an increase in expenditure by Rs. 548 billion in 2020.

A soft copy of the Ministry of Finance Annual Report contained in a CD drive is annexed hereto marked "P9" and is pleaded as part and parcel of this Petition.

29. The Petitioners state that although the President and the 2nd Respondent were repeatedly warned, as early as in the year 2019, that many significant

sovereign debts had to be paid in the upcoming years, and asked to explain how they would make good on the shortfall in government revenue caused by the aforesaid Tax cuts, the President and the 2nd Respondent did not make any efforts to set out the government strategy or policy for meeting the said shortfall.

A true copy of a news article by the Daily FT dated 18th October 2019, is annexed hereto, marked "P9(a)" and is pleaded as part and parcel hereof.

30. The Petitioners further state that the said illegal, irrational, unreasonable abolition, removal and/or reduction of tax, (which were made without due consultation and for extraneous and collateral purposes) in addition to the immediate reduction in tax revenue, also had a detrimental effect on the facilities granted to Sri Lanka by the IMF, and also affected Sri Lanka's credit ratings as morefully set out hereinafter.

The effect of the abolition, removal and/or reduction of Taxes on an agreement between Sri Lanka and the IMF, which was in effect during such time.

31. (a) The Petitioners state the on 03/06/2016, the Executive Board of the International Monetary Fund (IMF) approved a 36-month extended arrangement under the Extended Fund Facility (EFF) with Sri Lanka for an amount equivalent to SDR 1.1 billion (about US\$ 1.5 billion, or 185 percent of quota) to support the country's economic reform agenda.
- (b) It was also expected to catalyze an additional US\$ 650 million in other multilateral and bilateral loans, bringing total support to about US\$ 2.2 billion. The Executive Board's decision enabled an immediate disbursement of SDR 119.894, 11 million (about US\$ 168.1 million), and the remainder would have been available in 6 installments subject to quarterly reviews.
- (c) The Petitioner states that when entering into the said agreement, the IMF clearly stated that *"A return to fiscal consolidation, targeting a reduction in the overall fiscal deficit to 3.5 percent of GDP by 2020, is the linchpin of the reform program. Rebuilding tax revenues through a comprehensive reform of both tax policy and administration will be key in this regard, supplemented by steps toward more effective control over expenditures and putting state enterprise operations on a more commercial footing."*
- (d) The Petitioner states that delegations from the IMF have visited Sri Lanka on many occasions to evaluate the state of the Inland Revenue Department, with a particular focus on Value Added Tax (VAT) and the Nation Building Tax and to strengthen Public Financial Management, improving oversight of the State-Owned Enterprises, strengthening budget preparation, and improving the commitment control system.

A true copy of the IMF Country Report No 16/150 (Staff Report for the 2016 Article IV for the 2016 Article IV consultation and request for a three-year extended Arrangement under the extended fund facility- Press Release; Staff Report; Staff statement, and Statement by the Executive Director for Sri Lanka) is marked "P10" and annexed hereto and pleaded as part and parcel of this Petition.

32. (a) The Petitioners state that it was in this backdrop and during the pendency of this Extended Fund Facility Agreement that the executive including the President of the Republic and the 2nd Respondent decided to drastically abolish, remove and/or reduce the taxes charged by the state and to reduce the tax revenue of the state.
- (b) This reduction resulted in the cancellation of an extension of the said facility, on the basis that the said Agreement pertained to *inter alia*, the improvement of government revenue. The Petitioners state that to the best of their knowledge, the said extension which the country lost, amounted to a sum of as much as USD 715.230 million, as demonstrated by the History of Lending Commitments of the IMF.

A true copy of the History of Lending Commitments by the IMF is annexed hereto marked "P-11", and pleaded as part and parcel hereof.

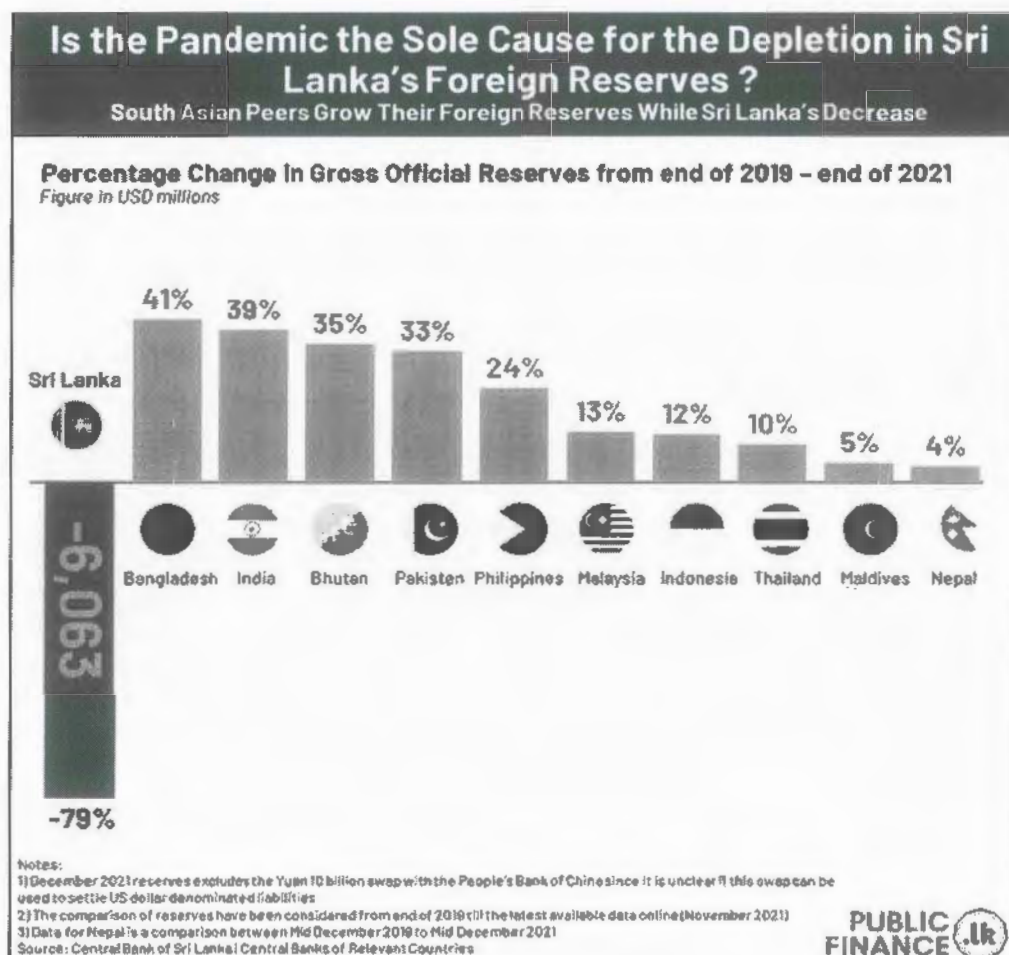
33. The Petitioners state that such actions by the 2nd Respondent, with the approval and cognizance of the President, were reckless, cavalier and unreasonable, as it not only resulted in serious financial losses to the country, but also placed Sri Lanka in disrepute in terms of its international standing and further buttressed the perception as to Sri Lanka's economic volatility.
34. It is pertinent to note that the former Minister of Finance, i.e., the 4th Respondent, conceded at an interview with the BBC, on or about April 2022, that the decision to reduce taxes in the said manner was a mistake, and that the level of VAT was "definitely not sustainable" for the country.

A true copy of a newspaper article dated 29th April 2022 demonstrating the above is annexed hereto, marked "P-11 (a)", and is pleaded as part and parcel hereof.

The aforementioned reduction of state revenue by the President and the 2nd Respondent weakened the economy to the extent that it could not withstand any external shock

35. The Petitioners state that the aforesaid major reduction in government revenue affected Sri Lanka's ability to face any external shocks. It was due to this unstable environment, as well as the drastic reduction of government revenue, and the consequent inability to borrow from capital markets, that Sri Lanka's economy did not recover post covid in the same manner as neighboring countries with similar economies. In fact, in most comparable South Asian economies, the external reserves have increased in clear distinction to the reduction of the foreign reserves of Sri Lanka.

36. In that regard the Petitioners state that other countries that were deeply reliant on the income through its tourism industries, such as the Maldives and Thailand, too encountered similar issues engendered by the pandemic, yet did not fall to the same dire straits as Sri Lanka, due to sustained increases in their reserves.



True copies of the articles titled 'Is the Pandemic the Sole Cause for the Depletion in Sri Lanka's Foreign Reserves?' (based on the Central Bank of Sri Lanka and Central Banks of other countries) and 'SL hasn't emulated the successes of region's other countries during pandemic by Nishan De Mel' which appeared in the Morning Newspaper dated February 6, 2022 are annexed hereto, compendiously marked as "P-12" and are pleaded as part and parcel of this Petition.

The President and the 2nd Respondent's failure to obtain available aid to combat the economic hardships faced as a consequence of COVID, especially in the face of a lack of government revenue.

37. The Petitioners state that the President, as well as the 2nd Respondent, further failed to avail themselves of the IMF- Rapid Financing Instrument (RFI), available to all member countries facing a crisis in their balance of payments due to the Covid 19 Pandemic. The said RFI dispenses with the need to have a fully-fledged IMF program in place, and is a large sum of money that may be obtained expeditiously.

True copies of 'The IMF's Rapid Financing Instrument (RFI)' as published on the International Monetary Fund web site is annexed hereto marked P-13 and is pleaded as part and parcel hereof.

38. The Petitioners state that:

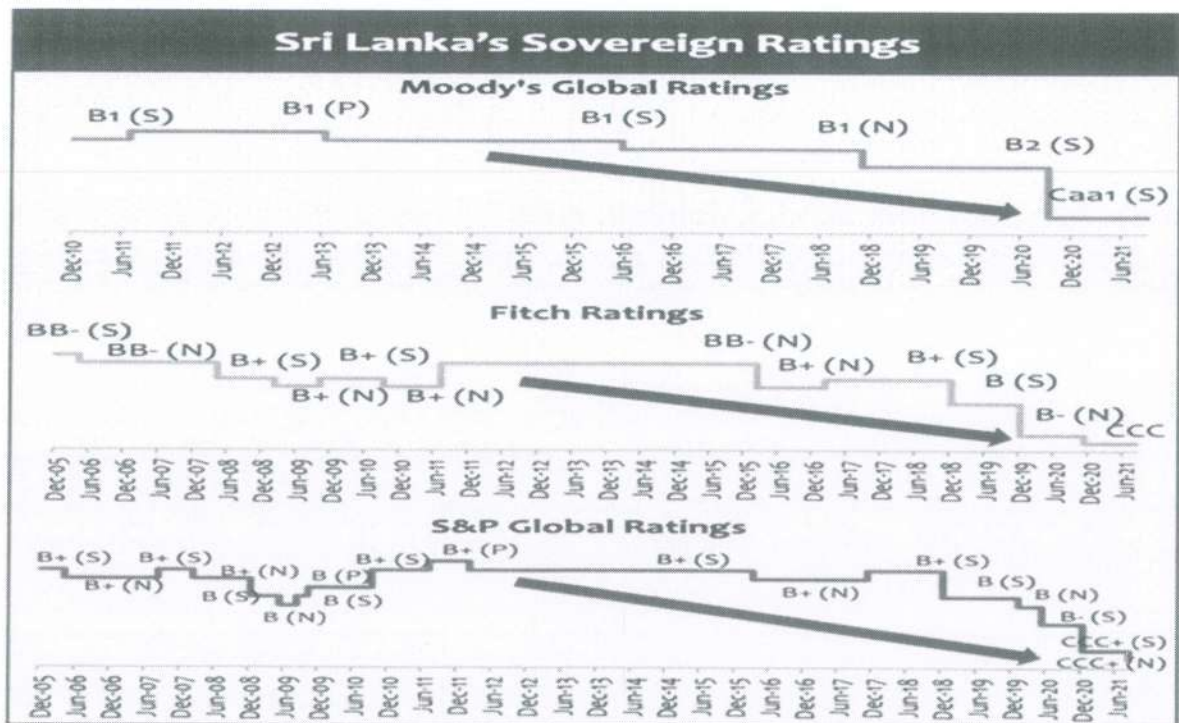
- (a) the said relief (for which access was further enhanced until December 2021 in view of the Covid-19 pandemic), should have been available to Sri Lanka and the receipt of relief of this nature was not onerous.
- (b) to the best of the knowledge of the Petitioners, Sri Lanka was not able to access this relief simply because the President as the Head of the Executive and the 2nd Respondent as the Minister of Finance did not accede to certain conditions imposed by the IMF.
- (c) This further demonstrates the manner in which the Respondents failed to take all possible efforts to mitigate the impact of their own actions and / or omissions on the economy.

The downgrading of Sri Lanka's credit ratings as a consequence of, *inter alia*, the tax revisions made in 2019, the refusal to change these taxes and the emergence of the Covid-19 Pandemic

39. The Petitioners state that as a result of, *inter alia*, the aforementioned tax revisions implemented by the 2nd Respondent, Sri Lanka began to experience a sharp decline in its credit ratings in the latter portion of 2019 onwards, with its Long-Term Foreign-Currency Issuer Default Rating (IDR) stipulated by Fitch Rating (hereinafter referred to as 'Fitch') falling to 'C' in the year 2022 from B1. The Petitioners state that as repeatedly stated by Fitch, the said downgrading was due to *inter alia*, "Sri Lanka's worsening external liquidity position."

A true copy of the Fitch Ratings reports for Sri Lanka dated 25th October 2019, 2nd July 2021 and 4th January 2022 and the Fitch Rating Action Commentary dated 13th April 2022, is annexed hereto marked P-14(a), P14(b), P14 (c) and P14(d), and are pleaded as part and parcel hereof.

40. The Petitioners state that, as found in page 18 of the document titled 'The Six-Month Road Map for Ensuring Macroeconomic and Financial System Stability' presented by the Central Bank of Sri Lanka on 1st October 2021 (produced marked P8), three credit rating agencies Moody's, Fitch Group, and S&P Global Ratings (S&P) downgraded Sri Lanka as follows:



41. The Petitioners state that as set out in the IMF- Sri Lanka Staff Report for the 2021 Article IV Consultation dated 10/02/2022, included in the Country Report No.22/91 (produced marked P3), Sri Lanka lost access to international capital markets to roll over maturing international sovereign bonds (ISBs) as a result of this downgrade by rating agencies.
42.
 - (a) Despite the above, the Petitioners state that the President of the Republic and the relevant Respondents, to this date, have refused and/or failed to increase all taxes, despite the present issue of debt sustainability, and in the teeth of compelling advice by the IMF to the contrary.
 - (b) The Petitioners state that the said Respondents, when implementing the tax revisions in the year 2019, as averred above, stated categorically that the present tax regime would remain in place for a period of five years.
 - (c) Most pertinently, the Petitioners state that the said Respondents have failed, to date, to mitigate the effects of their failures and/or actions, and remedy the same, continuing to violate the rights of the citizens.
 - (d) The Petitioners state that the same irrational decisions pertaining to the majority of the taxes are still in effect, despite their proven detriment to the economy in the past, and the crises they continues to engender in the present, as evinced by the recent downgrades in Sri Lanka's rating as an issuer of foreign currency debt to 'selective default' by S&P Global Ratings, on the basis that, *inter alia*, the government failed to service interest payments on certain dollar bonds in the preceding week.

A true copy of the newspaper articles demonstrating the above are annexed hereto, compendiously marked as P-15, and are pleaded as part and parcel hereof.

43. Most recently, the Petitioners state that Sri Lanka's credit ratings plummeted further, on or about 20th May 2022, where Fitch Ratings downgraded Sri Lanka's Long-Term Foreign-Currency (LTFC) Issuer Default Rating (IDR) from 'C' to 'RD' (restricted default). The Petitioners state that as stated by prominent newspapers, and to the best of the knowledge of the Petitioners, the said downgrade was the result of the country's inability to make payments on two international sovereign bonds, by the 30-day grace period provided, and the downgrade to 'RD' reflects a 'default event.'

True copies of the newspaper articles demonstrating the recent downgrade, are annexed hereto, compendiously marked as P-15 (a), and are pleaded as part and parcel hereof.

The failures and / or omissions on the part of the President and the 3rd, 9th and 10th Respondents to take remedial measures subsequent to the said ratings downgrade.

44. The Petitioners state that at the time of downgrades by credit rating agencies in or around 2019, the President and the 3rd Respondent, necessarily could, and should have, engaged in one of the following solutions, in consultation with the 8th and 9th Respondents:
- a. Commence requisite reforms and action to upgrade the country's ratings in order to regain access to international markets, and/or,
 - b. Engage in the restructuring of the country's debt, and/or
 - c. Seek assistance from international bodies such as the IMF
45. The Petitioners state that despite the compelling need to remedy the said credit rating downgrade, the 3rd, 9th and 10th Respondents, as well as the President (as Head of the Executive), who should have necessarily made a timely decision in this regard, failed and / or refused to do so. The Petitioners state this responsibility is vested directly in the hands of such Respondents, given that:
- a. the Sovereign debt in question, and which debt is now in default, is government debt accrued by the Executive, and
 - b. where payments of debt are facilitated through the Central Bank of Sri Lanka, it is so done on the instruction of the Minister of Finance.
46. The Petitioners state further that the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents should have acted in terms of the Regulations promulgated under the Right to Information Act 2016 and Article 14A of the Constitution and proactively disseminated information as to the manner in which they would attempt to

mitigate the effects caused by the aforesaid downgrading by Credit Rating agencies.

47. The Petitioners state however that:

- a. to date, no official communication has emanated from such Respondents, nor has there been any indication that any of the aforementioned measures were taken or of any other meaningful remedial measures sought to be taken to meet the downfall in government revenue, despite the downgrading in the credit ratings, and that
- b. such inaction and/or failures, whilst themselves violating the rights of the citizen, further contributed to the existing crises.

The failure on the part of the 9th Respondent to act in terms of the Monetary Law of Sri Lanka, to maintain international reserves and the international stability of the Rupee.

48. The Petitioners state that the aforementioned downgrade in credit ratings and the decline in government revenue resulted in Sri Lanka having to use its foreign reserves to pay debts, with no hope of replenishing the foreign reserves. This caused a deficit in the international balance of payments of such magnitude as to cause serious decline in the International Reserves.
49. The Petitioners state that the Gross official reserves of the country had fallen to US \$ 3.1 billion at the end of 2021, from US \$ 5.6 billion at the end of the year 2020, and US \$ 7.6 billion at the end of the year 2019. The Petitioners state that the said decline signifies a reduction from 4.2 months of import cover to 1 month within a year.

True copies of the Official Foreign Reserves extracted from Table 5.12 on page 170 of the Annual Report of the Central Bank 2021 are annexed hereto, compendiously marked as "P16" and are pleaded as part and parcel of this Petition.

50. (a) The Petitioner states that in terms of Section 65 of The Monetary Law Act, the 9th Respondent is tasked with *maintaining exchange arrangements in the manner that is consistent with the underlying trends in the country and so relate its exchange with other currencies as to assure its free use for current international transactions.*"
- (b) The Petitioner states that to date, it is unclear as to whether the 9th Respondent Board made any attempts to value the rupee in a manner consistent with the *'underlying trends in the country'*.
51. (a) The Petitioners further state that it is the 9th Respondent, is charged with a duty, under and in terms of Section 66 of the Monetary Law Act, as an expert body with access to the Central Bank officials, to take steps to ensure that there is no decline in the international reserves of the

Country, and maintain adequate international reserves to meet foreseeable deficits in the country's balance of payments.

- (b) The Petitioners state that the 9th Respondent was necessarily under a specific statutory duty in the face of the looming economic crisis, to ensure an adequate reserve to meet deficits in the country's balance of payments. The Petitioners state that the international norm with regards to what constitutes an 'adequate' reserve, amounts to finances in the value of three to four months of imports.
52. (a) The Petitioners further state that in terms of section 68(1) of the Monetary Law Act, the 9th Respondent should necessarily have taken remedial measures to negate or mitigate economic losses where the 9th Respondent **anticipated** *inter alia*, a deficit in the international balance of payments of such magnitude that would result in a serious decline in the international reserve, or when such reserve has depleted to the extent that the international stability of the rupee is at risk.
- (b) As such, the 9th Respondent Board is under a duty, couched in mandatory terms, to adopt requisite policies, and to submit a report to the Minister of Finance setting out the (i) nature, causes and magnitude of the actual or potential threat to the international stability of the Sri Lankan Rupee; and (ii) the measures which the board has already taken and the further **monetary, fiscal or administrative measures which it proposes to take or recommend for the adoption by the Government.**
- (c) The 9th Respondent is further mandated to continue to submit further periodical reports to the Minister in charge of the subject of Finance until the threat to the international stability of the rupee has passed.
53. (a) The Petitioners state that to the best of the knowledge of the Petitioners, the 9th Respondent did not provide the necessary guidance to the 2nd and 3rd Respondents, and failed to fulfill its duties in terms of the aforementioned section 66 and 68 of the Monetary Law of Sri Lanka.
- (b) Thus and otherwise, the 9th Respondent has, by this inaction, caused serious harm and damage to the economy of Sri Lanka and has violated the fundamental rights granted to the Petitioners and the citizens of Sri Lanka in terms of Article 12 (1) of the Constitution.
54. The Petitioner states that subsequent to a public outcry against the mishandling of the economy, the 3rd Respondent resigned from his post as Finance Minister in April 2022. No members of the 9th Respondent have however resigned or taken responsibility for their complicity in the actions that resulted in a serious downturn of the economy of Sri Lanka. In these circumstances the Petitioners state that it is necessary to ascertain whether the

Monetary Board had fulfilled their duties in terms of section 65, 66 and 68 of the Monetary Law.

The failure by the 3rd, 7th, 9th and 10th Respondents to devalue the Sri Lankan Rupee in a timely and appropriate manner, despite widespread calls and demands to do so.

55. The Petitioners state that the 9th Respondent, in as much as it is under a duty to maintain international stability in respect of the rupee and international reserves, is also under a duty to ensure domestic stability in the economy (by the careful management of the exchange rate and currency of the country). The acts and/or omissions of the 9th Respondent, as well as the 3rd, 7th and 10th Respondents in this regard, have violated the rights of the people guaranteed under Article 12 (1) of the Constitution, as will morefully be set out hereinbelow.

56. The Petitioners state that the rupee to USD exchange rate depreciated sharply from Rs. 185 in September 2020, to approximately Rs.200 by May 2021. Since May, it remained relatively stable until it depreciated to approximately. Rs. 256 in March 2022.

True copies of page 17 of the Monthly Economic Indicators for September 2020, May 2021 and March 2022 is annexed hereto marked P17(a), P17(b) and P17(c) and pleaded as part and parcel hereof.

57. The Petitioners state that the Central Bank, as well as the 6th and 7th Respondents, directed commercial banks to fix the buying and selling rate of the dollar, at Rs. 197 and Rs. 203 respectively. As such the 6th and 7th Respondents effectively engaged in moral suasion, by (to the best of the knowledge of the Petitioners), writing directly to banks, and publishing rates daily on its website.

A true copy of a Statement made by the 6th Respondent published in the website of the Central bank is annexed hereto marked "P18" and is pleaded as part and parcel hereof.

A true copy of a newspaper articles demonstrating the above are annexed hereto, compendiously marked as "P19" and are pleaded as part and parcel hereof.

58. (a) The Petitioners state that in terms of section 63 of the Monetary Law Act, the 9th Respondent is charged with the duty of ensuring the supply and availability of money in the economy, at a cost conducive to domestic monetary policy.

(b) Furthermore, the Petitioners state that in terms of Section 64 (1) and (3) of the Monetary Law, where the 9th Respondent Board anticipates a threat to domestic monetary stability, the 9th Respondent Board is mandated to adopt policies, take remedial measures, submit and make public a detailed report which should include the cause of the

economic disturbances, the probable effect of such disturbances on the production, employment and real income of Sri Lanka and the measures which the Monetary Board has already taken, and the further monetary, fiscal or administrative measures which it proposes to take, or recommends for adoption by the government.

- (c) The Petitioners state that to the best of the knowledge of the Petitioners, the 9th Respondent has not made any public report, to date, as stipulated.

59. The Petitioners state that the 7th and 9th Respondents, as well as the Central Bank, have failed to base the fluctuations of the currency in a rational, reasonable and sound economic analysis, and has failed to adhere to unambiguous and compelling warnings to adopt a nuanced and cautious approach in respect of the rupee, which resulted in further detriment to the economy.

60. The Petitioners further state the actions, inactions and practices used in respect to maintain the stability of the currency was also in complete contravention of the advice made by the IMF to Sri Lanka regarding the management of its exchange rate. The Petitioners respectfully draw the attention of Your Lordships' Court to page 21 of the IMF Country Report No. 22/92 (produced marked as P3) which, at paragraph 33, states as follows:

"To facilitate the external adjustment, the authorities should gradually return to a market-determined and flexible exchange rate. The current policy to effectively fix the official exchange rate, which has led to dysfunctional FX markets, is unsustainable. To help rebalance supply and demand in the FX markets, moral suasion used to dissuade exchange rate movements should be phased out to allow the exchange rate to adjust to market conditions, as exercised before April 2021. To avoid disorderly movements in the exchange rate, these measures should be carefully sequenced and implemented as part of a comprehensive macroeconomic adjustment package. FX intervention by the CBSL should be limited to truly disorderly market conditions, especially given the precarious reserves position. When needed, additional monetary policy tightening should be considered to counter FX market pressures and mitigate exchange rate pass-through to inflation. Greater exchange rate flexibility is also a prerequisite for flexible inflation targeting." (Emphasis added).

61. The Petitioners state that in respect of the stability of the currency, the Respondents has to carry out such an exercise in a nuanced and scientific manner keeping within the accepted economic principles and practices. The Petitioners state that the 3rd, 7th, 9th and 10th Respondents did not at any time act in such a manner exacerbating the stability of the currency,

The failure and/or omissions by the 3rd, 7th, 9th and 10th Respondents to appropriately devalue the Sri Lankan Rupee resulted in reduction in worker remittances, the use of unofficial remittance mechanisms and subsequently, the country's foreign reserves.

62. The Petitioners state that, as pleaded hereinabove, the failure and/or omissions of the 3rd, 7th, 9th and 10th Respondents to devalue the rupee in accordance with the exigencies at the time in an orderly manner, resulted in far-reaching ramifications, including those affecting foreign remittances.
63. The Petitioners state that such 'fixing' of the rupee, was met with resounding criticism by independent economists and analysts, who had long-warned the Government and the Central Bank that the fixing of the rupee-dollar rate at such values, without a favourable foreign exchange rate, was detrimental to the economy.
64. The Petitioners state that the failure on the part of the 3rd, 7th, 9th and 10th Respondents to appropriately devalue the currency in light of the changing economic situation in the country, resulted in further prejudice to the economy, including the reserves therein, which reserves were employed in order to buttress the currency in order to maintain its stability when the same was fixed at a selling rate of Rs. 203 to the US dollar.
65. The Petitioners state that official worker remittances fell by as much as 61.6% within a year (i.e., from January 2021 - January 2022), as migrant workers remitted monies through unofficial channels at a higher exchange rate.

A true copy of the newspaper articles demonstrating the above are annexed hereto, compendiously marked as "P-20", and are pleaded as part and parcel hereof.

66. The Petitioners state that when the Central Bank and the 7th Respondent directed commercial banks to fix the buying and selling rate of the dollar Rs. 203 on or around September 2021, as demonstrated by the document produced marked P19, it resulted in the following sequence of events:
 - a) In September 2021 the Central Bank (CB) set an upper limit of SLR 203 per USD;
 - b) The demand for USDs was higher than the supply of USDs at the upper limit of SLR 203 per USD;
 - c) The demand for foreign currency exceeding its supply in the unofficial market for dollars was created;
 - d) With the significant price difference between the official and unofficial market rates for the USD, the Hawala/Undiyal arrangements have provided a ready alternate/unofficial avenue for Sri Lankan workers;

- e) Remittances through the banking system have declined precipitously, from USD 600-700 million per month, to USD 200-300 million per month;
- f) In November 2021, foreign worker remittances through official channels had declined by USD 340 million compared with November 2020.
- g) By February 2022, which is the month for which official data is available the official remittances had fallen to USD 204 million compared to USD 579 million in February 2021.

	2019	2020	2021	2022
January	545.3	580.9	675.3	259.2
February	500.5	527.3	579.7	204.9
March	571.4	492.1	612.0	
April	553.7	375.0	518.8	
May	562.1	431.8	460.1	
June	536.6	572.5	478.4	
July	625.7	702.1	453.3	
August	518.2	664.5	446.6	
September	516.3	702.7	353.2	
October	607.0	630.7	317.4	
November	515.3	611.7	271.4	
December	665.0	812.7	325.2	
Total	6,717.2	7,103.9	5,491.5	464.1

A true copy of the above table of official worker remittances as published in the Central Bank Website https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/sheets/table2.14.2_20220331_e.xlsx is annexed hereto marked "P-21", and is pleaded as part and parcel hereof.

67. In demonstration of the above, the Petitioners draw Your Lordships' attention to the data published by the Central Bank with regard to the exchange rates within that time period:

4.1 Exchange Rates

Item	Week Ending - 24-Sep-2021			Average Rate	
(Rs Per Unit) ^(a)	Buying Rate	Selling Rate	Average Rate	Week Ago	Year Ago
USD	198.50	203.00	200.75	200.75	184.98
GBP	271.04	279.82	275.43	276.75	235.32
Yen	1.79	1.86	1.82	1.83	1.75
Euro	232.16	240.72	236.44	236.90	215.74
INR ^(b)			2.71	2.72	2.52
SDR	As at 23-Sep-2021		283.66	284.62	260.97
Central Bank Purchases and Sales ^(c) (US\$ Mn.)			August 2021	Month Ago	Year Ago
Purchases			49.38	37.65	121.00
Sales			225.50	-	28.00

Exchange Rates Month End

Month	GBP	US\$
J/17	185	150
J/18	195	155
J/19	215	165
J/20	235	180
J/21	285	205

Item	Week Ending	Week Ago	Year Ago
	24-Sep-2021		
Average Daily Interbank Volume (US\$ mn)	13.00	14.54	50.52



Average Daily Interbank Volume (US\$ mn)

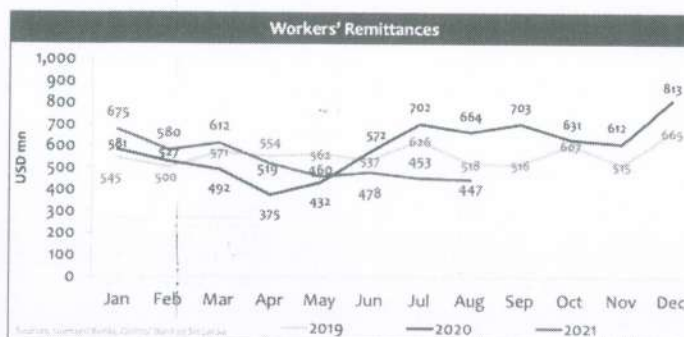
(spot, tom and cash transactions among commercial banks)

A true copy of CBSL Exchange Rates on September 2021 as published in the Central Bank Weekly Economic Indicators dated 24th September 2021 is marked as "P22" and Diagram 4.1 of the Central Bank Weekly Economic Indicators for September 2021 is marked as "P-23" and pleaded as part and parcel of this Petition.

68. Furthermore, the Petitioners draw Your Lordships' attention to the data published by the Central Bank with regard to the workers' remittances within that time period:

Workers' Remittances by Non-resident Sri Lankans have recorded mixed results...

- Despite recording more than USD 500 mn per month consecutively from June 2020 till April 2021, workers' remittances moderated in recent months
- The prevailing large exchange rate anomaly between official and unofficial channels, which drives foreign exchange earners to use unofficial channels, and the dwindling number of departures could be the major contributing factors for this behaviour



- 2021 Aug : USD 447 mn (-32.8%, y-o-y)
- 2021 (Jan-Aug): USD 4,224 mn (-2.8%, y-o-y)
- 2020 (Jan-Aug): USD 4,346 mn
- 2020: Workers' remittances increased by 5.8% (y-o-y)

A true copy of Remittances as published in the Six-Month Road Map for Ensuring Macroeconomic & Financial Stability, appearing at page 27 of the document produced marked as "P8"

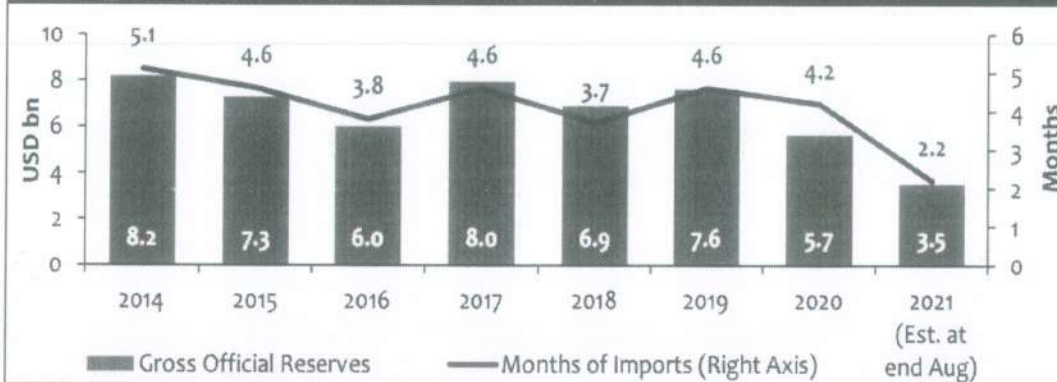
69. (a) The Petitioners state that the loss in worker remittances emanated directly from the failures and / or inaction on the part of the 3rd, 7th, 9th and 10th Respondents to devalue the rupee in an appropriate and timely manner, as averred above.
- (b) The Petitioners further state that had worker remittances continued to flow through official channels, such remittances would have buttressed the country's reserves, and that the loss stemming directly from migrant remittances, which declined from January to November 2021, over the corresponding period in 2020, resulted in a loss in excess of USD 1 billion.
70. The Petitioners reiterate that the provisions stipulated in Section 65 of the Monetary Law Act, No. 37 of 1974, and states further that there is a tangential link between the failures and inactions of the said Respondents, and the resulting economic losses, rendering the said actions and/or inactions of such Respondents, illegal, unreasonable, irrational, and in violation of the fundamental rights of the citizenry.
71. The Petitioners state that while the 3rd, 7th, 9th and 10th Respondents should necessarily have engaged in a 'managed float' of the currency or allowed the rates to adjust as per market forces, the Rupee was instead subject to a dramatic depreciation in March 2022 (at a buying rate of Rs.290 to the USD), despite the fact that there were clear and categorical statements emanating from the aforementioned Respondents that the rupee would not be depreciated in such manner.

A true copies of newspaper articles, citing statements made by the 7th Respondent in support of the above is annexed hereto, compendiously marked as "P-24", and are pleaded as part and parcel hereof.

The decision by the President, 3rd and the 7th Respondents, to continue to service Sovereign debt without any restructuring of the Debt, despite the futility and grievous prejudice in doing so

72. The Petitioners respectfully draw Your Lordships' attention to the document titled '*The Six-Month Road Map for Ensuring Macroeconomic and Financial System Stability*' presented by the Central Bank of Sri Lanka on 1st October 2021 (produced marked P8), which provides the declining of gross official reserves due to continued debt servicing as follows:

Gross official reserves declining with continued large debt service payments...



73. The Petitioners state that as per the cited graph on page 8 of the said Report (produced marked P8), and the Central Bank Records relating to Official Foreign Reserve Balances (produced marked P8), it is *prima facie* evident on the documents produced by the Central Bank and Verité Research, that the continued servicing of debt was a major contributing cause to the declining of the gross official reserves.
74. The Petitioners state that the abolition, removal or reduction of taxes and the reduction of workers remittances coupled with the continued servicing of debt, acted as a catalyst to set off a chain reaction which culminated in a greater budget deficit, greater effect on the balance of payment and declining of gross official reserves to perilous levels.
75. Furthermore, the Petitioners state that the 2nd, 3rd, 6th, 8th, 9th and 10th Respondents were individually and collectively responsible for the declining of the official reserves, as the appointed authorities vested with the power to ensure the stability of the economy of Sri Lanka, as will be further elucidated in this Application.
76. The Petitioners state the reduction of the country's credit ratings, as a result of the irrational and ill-motivated actions of the President and the above Respondents, immediately placed the economy of the country in peril and has given rise to the present issue of debt sustainability, given that credit ratings effectively determine the country's ability to repay loans, though borrowing in the international market.
77. Furthermore, the Petitioners state that there were a series of far-reaching ramifications that emanated immediately from the downgrade in ratings, which were in turn, a result of the actions of the President and the said Respondents, and which include, *inter alia*:
 - a. A rise in the country's interest to cost revenue to 71.7% as a result of the drastic fall in revenue, where previously the said interest to cost revenue was at approximately 50%. It is pertinent to note that at 71%, Sri Lanka's interest to revenue cost was the highest globally.

- b. The country effectively being precluded from accessing finance or loans in the international borrowing market.
- c. The worsening of the country's already-high external debt servicing ratio (wherein a large portion of exports earnings are employed to pay foreign loans, resulting in a significant opportunity cost to the economy).
- d. A disequilibrium in the Balance of Payments (BOP) of the country, as more money is spent on the foreign payments, whilst the country simultaneously loses its ability to borrow requisite funds to buttress dollar reserves.

A true copy of an article titled "Interest Cost Accounts for 71.7% of Government Revenue" published by PublicFinance.lk on their website is annexed hereto, marked as "P-25", and is pleaded as part and parcel hereof.

- 78. In such circumstances, the Petitioners state that given the country's historically negative BOP, it was patently irrational that the relevant Respondents abovenamed did not envisage a critical outcome, subsequent to being locked out of international markets, as demonstrated in Key Economic Indicators of the Central Bank Annual Report 2021, produced marked P7.

The continued refusal by the President, the 2nd, 3rd and 7th Respondents to seek the assistance of the International Monetary Fund (IMF), despite widespread calls and demands to do so.

- 79. The Petitioners state that traditionally, the Minister of Finance seeks the engagement of the International Monetary Fund (IMF), in order to better the country's balance of payments or reserves. Sri Lanka has previously sought the assistance of the IMF as set out in the document marked P11.
- 80. The Petitioners state that the 2nd and 3rd Respondents should necessarily have sought the assistance of the IMF as early as the year 2020, as demonstrated by independent economists and other entities, who continuously and vociferously enunciated the need to seek such support, prior to the situation becoming untenable, as it has in the present instance.
- 81. The Petitioners state that according to leading economists, it was not unusual during the Covid pandemic for many countries in the world to receive IMF assistance, as it was an unexpected crisis and even countries with strong foreign exchange situations received the IMF assistance including Bangladesh, which received \$ 732 million from the IMF to address the Covid-19 pandemic under emergency financial assistance in May 2020.

True copies of the articles 'Sri Lanka says it won't rush to IMF despite rising economic risks' published on The Morning online edition on 19th December 2022, an article published on the IMF website titled 'Helping Bangladesh Recover from

COVID-19' are annexed hereto, compendiously marked "P-26", and are pleaded as part and parcel of this Petition.

82. The Petitioners state however, that the repeated calls and demands from all quarters were met by abject refusal on the part of, primarily the 2nd, 3rd and 7th Respondents, to initiate programs or engagement with the IMF, which refusal is evinced by the Hansard dated 10/12/2021, wherein, at page 2834, the 3rd Respondent, stated categorically that Sri Lanka should not seek the support of the IMF, citing a lack of faith and trust in the IMF.

A true copy of the Hansard dated 10/12/2021 is annexed hereto, marked as P-27, and is pleaded as part and parcel hereof.

83. The Petitioners state further that as of February 2022 when foreign exchange reserves had reached dangerously low levels, the 3rd Respondent, once again, refused to seek the help of an IMF bailout.

True copy of the article 'Will Sri Lanka default in 2022?' published in The Morning is marked as "P-28" and is pleaded as part and parcel of this Petition.

84. The Petitioners state that the refusal to seek IMF assistance and the continued servicing of debt was carried out at the behest of the 2nd, 3rd and 7th Respondents, even when the lack of dollars was already holding up goods from coming into the import-dependent country of 22 million people, which typically spends about \$1.6 billion every month for imports of fuel, essential food and medicine.

85. The Petitioners state that the decision of the said Respondents, has resulted in grievous detriment to both the economy and the people of the nation, and that the present debt sustainability issue and default faced by Sri Lanka, could well have been circumvented, had the timely and prudent assistance of the IMF been sought.

86. (a) The Petitioners further state that to date, the President of the Republic and the 2nd, 3rd and the 7th Respondents have offered no explanation or reasoning whatsoever as to his refusal to seek the engagement or assistance of the IMF, in the face of an impending economic debacle.
- (b) The Petitioners state that an objective mind must necessarily be brought to bear, in matters of such a serious nature, and that the President of the Republic and the 2nd, 3rd and 7th Respondents must necessarily demonstrate a rational and reasonable basis for the same.

The subsequent admission by the President that the aforementioned refusal to seek the assistance of the IMF was wrong and misconceived.

87. The Petitioners state that the irrationality and cavalier disregard demonstrated by the President of the Republic and the 2nd, 3rd and 7th Respondents in refusing to seek the assistance of the IMF was further evinced

during a public address by the President, who, in an address to the newly-appointed Cabinet in April 2022, as well as a statement issued by his office, stated that the country should have sought the assistance of the IMF "a long time ago", as urged by opposition parties and independent experts.

True copies of newspaper articles demonstrating the admission of the President regarding delays in seeking IMF assistance as well as newspaper articles by experts pertaining to the same, are annexed hereto, marked compendiously as P-29 and are pleaded as part and parcel hereof.

88. As such, the Petitioners state that the refusal and / or failure on the part of the President of the Republic and the 2nd, 3rd and 7th Respondents, must be censured, and necessarily be evaluated against the objective tests of reasonableness and rationality, and adherence to the relevant laws and the Constitution.

The unreasonable, arbitrary actions and/or omissions on the part of the President and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents resulted in a default of the country's foreign debt

89. The Petitioners state that it is patently apparent that the aforementioned actions and omissions on the part of the said Respondents which led to the default, is evinced by the notice of default, dated 12/04/2022 (produced marked P-2(a)) by the Ministry of Finance, signed by the 3rd Respondent, which admits to the absence of a 'tenable policy' in the absence of preemptive attempts to restructure debt or engage in negotiations with creditors, as well as the hard default and subsequent ratings downgrade on or about May 2022, on account of the country's inability to make repayments on two international sovereign bonds, as has been agitated hereinabove by the Petitioners.
90. The Petitioners state that the indebtedness of the Sri Lankan Government, compounded by its inability to borrow requisite funds from international markets, resulted in its failure to secure even the most basic of needs for its citizens, as evinced by the sustained food, medicine, medical supplies, fuel and gas shortages across the country, as well as the electricity shortages that persist even at the time of the filing of this Application.
91. The Petitioners state that the actions of the President and relevant Respondents to continue the servicing of debt (as averred hereinabove), as well as their failures to remedy the impending debt crisis resulted in the opportunity cost of depriving the citizens of Sri Lanka of essential goods and services, in a bid to ensure continued funding of creditors. The Petitioners state that this is a clear violation of the fundamental rights of the people, specifically Article 12 (1) read with Article 3 and 4 of the Constitution, as will be morefully elaborated on hereinbelow.
92. The Petitioners further state that the reckless and cavalier attitude of the President of the Republic and the aforementioned Respondents, resulted in staggering economic losses to the country. For instance, as stated by the

Public Utilities Commission of Sri Lanka, the Sri Lankan economy loses as much as Rs. 1 billion daily, due to existing power cuts across the country.

A true copy of a newspaper article dated 6th March 2022 demonstrating the above is annexed hereto, marked P-30, and is pleaded as part and parcel hereof.

93. It is pertinent to note, in this regard, that the former Minister of Finance, i.e., the 4th Respondent, in a session of Parliament on 4th May 2022, conceded, *inter alia*, the following, which buttress the position taken by the Petitioners in the present Application, and demonstrate that the impugned actions and/or omissions and/or failures of the aforementioned Respondents were ill-thought and detrimental to the economy of the country:
- a. The reduction in taxes resulted in grievous ramifications to the economy.
 - b. The rupee should have been floated earlier and its depreciation should have been managed
 - c. The assistance of the IMF should have been sought with greater promptitude
 - d. The delay in rescheduling foreign loans resulted in severe ramifications to the economy
 - e. The conspicuous drops in foreign reserves and government revenue

True copies of the newspaper article dated 4th May 2022 demonstrating the above, the relevant Hansard dated 4th May 2022, as well as the English translation of the speech by the former Minister of Finance at the Parliamentary session on 4th May 2022 are annexed hereto, compendiously marked P-31, and are pleaded as part and parcel hereof.

94. The Petitioners reiterate that it is critical that executive authorities, including the 2nd, 3rd and 7th Respondents, as well as the President, be held accountable for the said actions and/or inactions and/or omissions impugned in this Application, a culmination of which has given rise to the most serious of fundamental rights violations of citizenry, as well as the destruction of jobs and livelihoods, whilst causing permanent damage to the economy, as will morefully be adverted to.

The President, who is also the Head of the Executive, is directly responsible for the violations of the fundamental rights of the citizenry of Sri Lanka, which have emanated from the present economic crisis and unsustainability of debt.

95. (a) The Petitioners state that the President, as the Head of the Executive, has failed most patently and abjectly, to take timely and meaningful measures to mitigate or negate the several issues agitated in this Application.

- (b) The Petitioners state that as clearly demonstrated in the preceding paragraphs of this Application, decisions pertaining to *inter alia*, abolition, removal and/or reduction of taxes, credit ratings downgrades, restructuring or servicing debt and default, fall squarely within the purview of the executive, and as such, the President, as the Head of the Executive, should necessarily have anticipated the impending debt unsustainability issue, and made timely decisions and interventions, particularly where the President had direct jurisdiction to do so.
96. In such circumstances, the Petitioners state that the negligence on the part of the President assumes odious proportions, but is also violative of the Fiscal Management (Responsibility) Act, No. 3 of 2003, which, at sections 2 and 3, stipulates the objectives underlying responsible fiscal management, which includes, *inter alia*, the mitigation of financial risks, as per the changing economic circumstances, adoption of nuanced policies in respect of spending and taxation, and management of the liabilities of the government, and significantly, the cognizance of the impact of executive decisions and / or government action on future generations.
97. The Petitioners state that the President, as the Head of the Executive, as well as any one or more of the Respondents abovenamed, have, most conspicuously, failed to manage the critical fiscal needs of the country, and in doing so, have grievously violated the fundamental rights of the public, as will be morefully elaborated hereinbelow.

Violation of Articles 12 (1), 14(1)(g) and 14A read with Article 3 and 4 of the Constitution, as well as the violation of the Public Trust

98. The Petitioners state that the actions and / or failures and / or omissions on the part of the President, as well as the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, constituted grievous mismanagement of the economy, and which were a series of illegal, arbitrary and unreasonable actions and inactions, which necessitated the present decision to default on repayment of foreign loans. The Petitioners further state that in the totality of the foregoing, it is patently clear that the fundamental rights guaranteed to the citizens of Sri Lanka, under Articles 12 (1), 14(1)(g) and 14A have been violated most grievously.
99. (a) The Petitioners state that it is trite that in terms of Articles 3 and 4 of the Constitution, sovereignty vests wholly in the people, and is inalienable, and that such sovereignty is given expression to, and exercised by the Executive, the Legislature and the Judiciary.
- (b) As such, the Petitioners state that such organs of government are beholden to the people, and must necessarily exercise the powers vested in them to further uphold the sovereignty of the people.

100. (a) The Petitioners state that the acts or omissions of the State as represented by the President of the Republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents has infringed and is a continuing violation of the fundamental rights of the citizens including that of the Petitioners guaranteed under article 3, 4, 12(1), 14(1)(g) and 14A of the Constitution.
- (b) The Petitioners further state that concept of rule of law has within it, *inter alia*, elements that dictate that public power which should be exercised in good faith, reasonably, for the purpose it was given, and should ensure that the basic human rights of the citizens are protected.
- (c) The Petitioners also state that, the principle of fairness also dictates that the citizens have a right to be informed, and requires obligations and responsibilities be placed on the State, to fairly and transparently be accountable for all its decisions.
- (d) The Petitioners state that the President of the Republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, as holders of the respective public offices during the relevant period, must therefore be held accountable for the impugned actions and/or non-action morefully pleaded herein.
101. The Petitioners state that Article 12(1) of the Constitution requires the dignity of all persons to be protected whilst preventing unfairness, and in this vein state that a proper and thorough investigation must be carried out, to ascertain as to the causes which led a a troubled but stable economy in 2019, being driven to bankruptcy and insolvency within a short period of 24 months, and that a failure to do so would be an affront to the said constitutional guarantee.
102. The Petitioners further state that subsequent to such investigation, all persons, who by their illegal, irrational, arbitrary and unreasonable actions have caused and/or contributed to the mismanagement of the economy, and the resultant Sri Lanka's and resulted in Sri Lanka being brought down to virtual bankruptcy should be held accountable for such actions and or inactions.
103. The Petitioners state that the citizens of the Republic have a right (as provided in, *inter alia*, Articles 3, 4, 12, and 14 read together with Article 27 of the Constitution) to:
- (a) live in contemporary society with dignity;
- (b) the freedom to engage by themselves or in association with others in any lawful occupation, profession, trade, business or enterprise;
- (c) demand that the State secures or protects, as effectively as it may, a social order in which social and economic justice shall guide all the institutions of national life;

- (d) demand that the State secures and protects the right of the 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 cultural opportunities;
 - (e) Demand that the State provides for the continuous development of the whole country by means of public and private economic activities;
 - (f) To be proactively given information as to the manner in which decisions affecting them are taken, and as to the basis on which these decisions are taken and, in such matter, to be able to effectively participate and hold public authorities accountable for their actions/inactions;
104. The Petitioners state that the impugned actions and/or inactions of the President of the Republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents have completely violated such rights as aforesaid, and it is the duty of the Petitioners to seek Your Lordships' intervention to protect such rights as enshrined in the Constitution of the Republic.
105. (a) The Petitioners state that the present Application also engages the doctrine of Public Trust, and that the willful and gross negligence in the exercise of lawful power and authority of the State as represented by the President of the republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, is tantamount to a violation of the said Doctrine.
- (b) The Petitioners state that the 2nd, 3rd, 6th, 7th 9th and 10th Respondents as well as the President, are reposed with all power and authority under the doctrine of public trust, and that in recklessly ignoring or failing to take cognizance of external advice and opinions, failing to react proactively with due promptitude to prevent a spiraling of debt sustainability, and failing to make rational, reasonable decisions which could demonstrate that an objective mind has been brought to bear on the same, the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, as well as the President have violated the said Doctrine.
106. The Petitioners state that the actions and/or omissions of these Respondents, impugned herein, constitute Executive and Administrative actions within the meaning of Articles 17 and 126 of the Constitution.
107. The Petitioners state that Your Lordships Court has time and again held that:
- (a) The basic premise of public law is that power is held in trust;
 - (b) Powers conferred on the executive are solely used for the public good, as such powers are held in trust for the public to be exercised reasonably and in good faith, and upon lawful and relevant grounds of public interest;

- (c) The Doctrine of Public Trust assures each and every citizen that their best interests, and the nation's best interests are paramount and pivotal, and the only and central concern would be the safeguarding of the people's interests;
 - (d) Such public trust extends to all facets of the Country including economic opportunities or other assets all of which must be used in a manner for economic growth and always for the benefit of the entirety of the citizenry; and
 - (e) The Directive Principles of State Policy must be taken into account when considering the responsibility of the State in respecting and protecting fundamental rights.
108. (a) The Petitioners state that Article 4(d) of the Constitution specifically requires that the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all organs of the State.
- (b) In that regard, Your Lordships Court has always acted according to such principles especially as Article 118(1) vests Your Lordships Court with the jurisdiction for the protection of fundamental rights, which jurisdiction has been interpreted widely.
- (c) the Petitioners also state that thus and otherwise, when exercising Your Lordships' jurisdiction under Article 126, Your Lordships have always granted equitable relief in the best interest of the people.
109. In all such circumstances, the Petitioners state that Your Lordships' court is empowered to take judicial notice of all matters of fact pleaded, and that Your Lordships' Court has always upheld its duty to protect the rule of law by making appropriate and timely orders as and where necessary, to guide the direction of all organs of State in a manner that protects and advances the rule of law and the fundamental rights of the citizens.

Requirement to call for records and an immediate investigation into the default of Sri Lanka's international sovereign debt by the State and the reduction of the foreign reserves of Sri Lanka

110. The Petitioners state that the circumstances morefully pleaded hereinabove, clearly demonstrates that the default of the foreign debt of Sri Lanka and the reduction of the foreign reserves of Sri Lank were a direct result and culmination of illegal, arbitrary and unreasonable actions and/or failures and/or omissions of the President, as well as the 2nd, 3rd, 6th, 7th 9th and 10th Respondents.

111. (a) The factual matters pleaded hereinabove (which demonstrates the attendant circumstances of Sri Lanka defaulting its sovereign debt and the drastic reduction of the foreign reserves of Sri Lanka), have been obtained by the limited information available in the public domain including published Reports of the Central Bank of Sri Lanka, the International Monetary Fund and other multilateral agencies and by third party institutions.
- (b) The Petitioners state that there is no information available in the public domain with regard to the manner in which the relevant Respondents arrived at the impugned decisions or did not act prudently and in accordance with accepted principles of law and economics and in particular what reports or recommendations were provided by the Central Bank and decisions taken on the said recommendations/reports if made.
112. In such circumstances, unless and until a proper and comprehensive investigation to the causes of the actions/non actions, the result of such actions/non actions are carried out, including a forensic audit of the reserves of the Central Bank (if necessary) and other relevant facts and data, neither the Petitioners nor the citizens of Sri Lanka nor the State itself would be in a position to ascertain such factors and take remedial actions so that no situation such as has taken place is repeated in the future.
113. This requirement is more important as the preamble to the Constitution clearly assures to all people's freedom, equality, justice, fundamental human rights and the independence of the judiciary as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of Sri Lanka and of all the People of the World, who come to share with those generations the effort of working for the creation and preservation of a just and free society, and more particularly due to the responsibility of the State, the Petitioners and the citizens of Sri Lanka to future generations of Sri Lanka.
114. The Petitioners state that, in the totality of the aforesaid circumstances, the violations complained are of the most grievous continuing nature.
115. The Petitioners state that unless the interim relief sought for in this Application are not granted, grave and irreparable loss, harm, damage and prejudice to the fundamental rights of the Petitioners and citizens of Sri Lanka would be caused, and the instant application would be rendered nugatory.
116. The Petitioners respectfully seek the indulgence of Your Lordships; Court, considering the grave urgency of the instant application, the limited materiel available in the public domain and the severe time constraints, to reserve their right to:
- (a) Amend pleadings, add any person/persons as parties to this application in the event of further materiel revealing their complicity of the actions complained in the preceding paragraphs; and

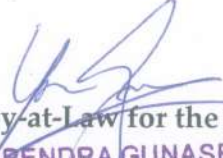
- (b) Tender any further evidence or affidavits and documents necessary substantiating the averments pleaded above.

117. The Petitioners have not invoked the jurisdiction of Your Lordships' Court hereinbefore with regard to this same matter.
118. Affidavits of Petitioners are annexed hereto in support of the factual matters pleaded herein.

Wherefore the Petitioners pray that Your Lordships' Court be pleased to;

1. Grant the Petitioners, Leave to Proceed;
2. Declare that the Fundamental Rights of the Petitioners and / or the citizens of Sri Lanka to Equality and Equal Protection of the Law, as guaranteed by Article 12 (1), 14(1)(g) and 14A of the Constitution, have been infringed by the President of the Republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, and/or their servants or their agents, and that there is a continuing violation of their said rights;
3. Declare that the Fundamental Rights of the Petitioners and/ or the citizens of Sri Lanka to Equality and Equal Protection of the Law, as guaranteed by Article 12 (1), 14(1)(g) and 14A of the Constitution are in imminent danger of infringement by the actions and/or inactions of the State including the 2nd, 3rd, 6th, 7th 9th and 10th Respondents;
4. Grant and issue the following interim reliefs/orders:
 - a) Make Order in terms of Article 126 (4) of the Constitution, and call for and examine the following record, including, but not limited to:
 - i. All records pertaining to communications and recommendations received by and or given to the 2nd, 3rd, 6th, 7th 9th and 10th Respondents by the Central Bank;
 - ii. All communications between the President of the Republic and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents in respect of the decisions taken with regard to the matters impugned in this Application;
 - iii. The fiscal records, all reports published and or given to the 2nd, 3rd and/or 9th Respondents of and by the 9th Respondent Board under and in terms of Sections 64 and 68 of the Monetary Law Act, No. 37 of 1974;
 - iv. Relevant Cabinet decisions in respect of the Ministry of Finance and the 2nd and 3rd Respondents, as well as decisions and Regulations by 2nd and 3rd Respondents with regard to the matters impugned in this Application;

- v. A transcript of the proceedings of the Committee on Public Enterprises (COPE) held on or about 25th May 2022.
- (b) Direct the appointment of a committee under the auspices of Your Lordships' Court to investigate the causes, steps taken by the aforementioned Respondents, and compile a report on the financial irregularities and mismanagement of the economy in relation to the specific instances enunciated in the present Application;
- (c) Restrain the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents, from overseas travel without the prior approval of the Supreme Court, pending the investigation by the aforementioned Committee;
5. Upon the submission of a report by the said Committee (appointed under the auspices of Your Lordships' Court) to direct the Hon. Attorney General or any other appropriate authorities or officers of the State to consider initiation of investigations and prosecutions against any persons (as necessary) based on the findings from the said report.
6. Make such further and other just and equitable orders as Your Lordship's Court shall seem fit in the circumstances of this Application, under and in terms of Article 126 (4) of the Constitution;
7. Grant Costs;
8. Grant further and such other relief as Your Lordships Court may seem meet.


Attorney-at-Law for the Petitioners
K. UPENDRA GUNASEKARA
Attorney-At-Law
135/1/3, Gunasinghapura Office Complex
St. Sebastian Street,
HULFTSDORP, COLOMBO - 12

Settled by:

Manisha Dissanayake
Sayuri Liyanasuriya
Chinthaka Fernando
S.A Beling
Attorneys-at-Law

Chandaka Jayasundere
President's Counsel