

September 7, 2010

Mr. Mahinda Lokuge, AAL

Secretary; Bar Association of Sri Lanka,
153, Mihindu Mawatha, Hulftsdorp
Colombo 12

Dear Sir;

URGENT MOTION BY MEMBERS

We the undersigned Attorneys-at-Law/ President's Counsel of the Supreme Court of Sri Lanka (including more than 100 members of the BASL) tender herewith this motion formally of record, to be tabled at an emergency meeting of the BASL in terms of its Constitution, for immediate ratification and formal resolution; in order to give effect to our concerns as formulated more fully in the proceeding paragraphs and the "draft resolution" and "explanatory statement" annexed hereto, as a matter of urgency.

We note with grave concern the proposed constitutional amendments sought to be presented to parliament as an "Urgent Bill" titled "**the 18th Amendment to the Constitution**". We are confident that you are aware that this is, *inter alia*, in direct contravention of the Bar Council's specific recommendation not to do so. You will recall that these recommendations handed over to the Ex Co on 11/06/2010 and subsequently placed before the Council on 19/06/2010 was following a detailed study by a Special Committee of highly eminent & senior practitioners.

It is our view that these proposed amendments directly/indirectly affect the sovereignty of all Sri Lankan citizens enshrined in *Articles 3 & 4* of the Constitution; the protection of which is the bounden duty of us all who have sworn an oath to do so as Attorneys at Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka.

We emphasize that this is not a move against the incumbent executive, his administration, or indeed even the proposed amendments themselves, but to ensure that proper procedure is followed when amending the supreme law of this country; its constitution and its provisions relating to the people's sovereignty. We insist that as advised by the BASL adequate time must be afforded for consideration and challenges (if any) and most importantly; for the citizens of this country to exercise their due entitlement to approve same (or not) at a referendum, as guaranteed to them by the provisions of *Article 83*.

We are also perturbed as to why, having advised as above, when the government was acting in direct contravention of same and referred the matter for a determination by the Supreme Court as “an urgent bill”, there was not even a representation by the BASL. We are of consensus that this was a fit matter of utmost national interest warranting such intervention at our highest level. We are guided by the incumbent BASL President’s communication prior to the last election:

(Quote) “...I step forth with the confidence that I do so with your invaluable support, and that together we will be collectively embarking on this journey ... as we strive to carry out our bounden constitutional duty as protectors and promoters of the rights of citizens of this Republic. Together WE CAN lead the Bar to where it should be!” (Emphasis added - unquote)

We the undersigned are of unanimous and resolute consensus that with this clear departure by the government of the categorical & specific advice of the BASL, once again “notice has been served on the BASL”. As the Association representing Attorneys at Law of the Supreme Court of this Republic who have proclaimed an oath to uphold and protect its Constitution, we have been charged with a bounden duty, to *inter alia*:

- (a) ensure that the governance of our peoples is subject to the Rule of Law in terms of our Constitution, and;
- (b) that the guaranteed liberties of its citizenry are protected at any cost.

By us not discharging these duties to the level expected we have invited the *status quo* to deteriorate gradually to this level. We fear that we cannot ignore this situation any further and allow it to escalate to the only possible next level; which we seriously apprehend as absolute anarchy!

WE HEREBY therefore move and call upon you to immediately resolve to:

1. Issue a public statement unequivocally condemning this move by the government to depart / disregard the categorical advice of the BASL not to propose constitutional amendments as an “urgent bill”;
2. Calling upon all Members of Parliament who are also Attorneys at Law to themselves, and with the support of other MP’s to vote against this “urgent bill” titled “18th amendment to the Constitution” and to demand that the proposed amendments be subject to ordinary procedure, scrutiny & challenge (if any) following publication on the gazette and to be placed before the people for approval at a referendum;

3. Recognize this failure of the government to be guided by the BASL recommendations in this matter as a direct non-recognition of our profession as a whole, a motivated, concerted and calculated attempt aimed at undermining/suppressing/hindering the performance of our constitutional duty towards the citizenry of this Republic who expect same from us;
4. Call upon all other professional organizations / civil society/workers unions/media/professional/semi professional and all other bodies of persons to join hands with the BASL at this critical juncture, to send out a clear, concise and crisp message to our elected representatives that Sri Lankans will not stand by and watch whilst our Constitutional Rights are denied to us and violated;
5. To call upon all branches of the BASL and all its affiliates, and all other Professional Organizations, civil society, workers unions, media, professionals, semi professional and all other bodies of persons to join with us to observe a token protest-demonstration against this "urgent bill" titled "*18th amendment to the Constitution*" being rushed through in this manner without reference to the people, as a form of expression of agitation and as a sign of peaceful protest, in order to send out a clear message to society of the BASL's stand on this issue.

Please also be informed that independent of the above, we the undersigned will be calling upon all interested parties to join us and engage in a "symbolic gesture of agitation" at a place and in a manner to be determined, on 07/09/2010, aimed at highlighting the importance of this issue and harnessing adequate public outcry against this manifestation of impending anarchy looming not that far from us if things are allowed to continue in this manner un-arrested. You are also informed that in view of the very little time allowed to us for engaging in any such discourse, with the presentation of the said Bill to parliament due on 08/09/2010; we have released this communiqué to the media and all other concerned groups.

Sincerely,

Name:

BASL Mem. No:

Signature:

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