

Contents

Background to the instant Application	3
Article 12(1) and Economic Policy	6
The scope of the Petitioners Application in terms of Article 12 (1) of the Constitution	9
Absolute and unfettered discretion in Public law	13
Indian case law on discretion in Economic Policy Decisions as cited by the Respondents	15
The unique nature of the impugned decisions, actions/inaction of the relevant Respondents.....	19
Powers, duties and Responsibilities of the Respondents	20
The powers and duties of the 1(b) Respondent.....	20
Responsibility of the 2 nd and 3 rd Respondents	21
Responsibility of the 6 th and 7 th Respondents.....	22
Statutory Provisions regarding the responsibility of the 9 th Respondent.....	23
Responsibilities of the 10 th Respondent	24
Contributory Nature of the violation of the Relevant Respondents	24
The Auditor General’s Reports.....	26
The Particular Acts, Conduct, Actions or Inactions That Are Complained Of	34
The reduction of taxes and its effect on the economy in general and the Gross Official Reserves in Particular.....	34
The illegality of the abolition, removal and/or reduction of Taxes made in 2019 effected by the 1(b) and 2 nd Respondent	40
The 2 nd , 3 rd , 6 th , 7 th and 10 th Respondents failure to revise the tax statutes despite clear evidence of the negative impact of the same.....	41
Rating downgrades.....	43
The Respondents response to the rating downgrades.....	44
Consequences of the 2019 Tax Revisions	46
Effect on last tranche of IMF- Extended Fund Facility Agreement.....	48
The IMF-RFI application	50
The effect of the downgrading of the country’s credit ratings on the official reserves of the country .	51
Subscription to Treasury Bills	51
Low interest rates.....	52
Failure to adjust exchange rate as a monetary policy measure.....	53

The ‘Impossible Trinity’ or the ‘Trilemma’	55
2019-2020 Warnings of the CBSL officials with regard to the drain on foreign reserves and need to approach the IMF	59
Payment of debts of US \$ 1bn in October 2020.....	66
Warnings of CBSL officials regarding the declining reserves that were watered down when communicated to the 2 nd and 3 rd Respondents	69
Necessity for re-structuring of loans in 2022.....	71
Use of Reserves for the servicing of debt	71
The failure on the part of the 6 th , 7 th , 9 th , and 10 th Respondents (collectively and individually) to take appropriate steps to maintain monetary and price stability and also thereby to prevent the decline of foreign reserves.....	74
The fixing of the Exchange Rate and the impact on the Economy.....	74
The releasing of the peg – uncontrolled free float! – the violative conduct of the 7 th Respondent.....	78
The failure and/or omissions by the 3 rd , 7 th , 9 th and 10 th 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.....	80
Decline of Remittances as a consequence of the artificial pegging of the Rupee and the consequent effect on the foreign reserves of the county	80
The 6 th , 7 th , 9 th and 10 th Respondents financing of Domestic Debt, Purchase of Treasury Bills, Manipulation of the Market and contribution to rising inflation	84
The continued refusal by the 1(b) Respondent, the 2 nd , 3 rd and 7 th Respondents to seek the assistance of the International Monetary Fund (IMF), despite widespread calls and demands to do so	88
IMF Programs and the history of IMF Programs/assistance in Sri Lanka.....	89
Some notable IMF Programs are set out hereinbelow:.....	92
The subsequent admission by the 1(b) Respondent that the aforementioned refusal to seek the assistance of the IMF was wrong and misconceived.....	97
The unreasonable, arbitrary actions and/or omissions on the part of the 1(b) Respondent and the 2 nd , 3 rd , 6 th , 7 th , 9 th and 10 th Respondents resulted in a default of the country’s foreign debt	97
Conclusion.....	100
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	100
Preliminary Objections.....	106

Background to the instant Application

1. The Petitioners filed the instant application by way of Original Petition on the 16th day of June, 2022 which Petition was subsequently amended on the 15th day of July 2022 to reflect the resignation of the 1(b) Respondent as President of Sri Lanka.
2. The Petitioners in their Petition took up the position that the 1(b) Respondent and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents (hereinafter collectively referred to as the “Relevant 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.
3. It was the Petitioners’ contention that the said series of irrational, arbitrary, illegal and wrongful decisions and actions/ inaction of the relevant respondents, 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.
4. The Petitioners broadly categorized the said actions/inactions of the relevant respondents 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 1(b) Respondent and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents
- (iv) The refusal and failure of the 1(b) Respondent and 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 Sri Lanka 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 1(b) Respondent 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.

5. In that regard, the Petitioners have provided to Your Lordships a breakdown of particular charges made against individual Respondents upon a request for such by Your Lordships as follows:

Actions/ inactions	Respondents	Paragraph number/s from petition	Paragraph number/s from Counter Objections
Arbitrary Tax Reductions based on election manifesto without adequate consideration as to the consequences of the such reductions	1(b) R, 2R	22 (c) , 25	5,6,7,8
Failure to make/ recommend timely changes to Tax Policy despite clear evidence as to the failure of the said policy and of the negative consequences of the such tax policy	1(b) R, 2R, 3R, 6R, 7R, 10R	42	
Failure to take/ advise government to take remedial measures subsequent to downgrading of credit ratings by Sovereign rating agencies	1(b)R, 2R, 3R, 9R, 10R	44, 45, 47,	10,11,12, 13, 14, 15
Refusal to seek, IMF assistance/ obtain IMF funding at the appropriate time (as described in Petition), despite the lack of access to International Capital Markets	1(b)R, 2R, 7R, 10R	79 - 86	43-50
Continued Service of Debt by the use of Foreign Reserves that were required for essential imports of the country	1(b), 2R, 3R, 6R, 7R, 9R, 10R	72 - 74, 84, 91	38,
Arbitrary Financial decisions without obtaining or listening to advice from the Central Bank officials and without adequate plans or forecasts as to the result of the said decisions	1(b), 2R, 3R, 6R, 7R, 10R	22, 25, 29, 33, 44, 52, 53, 59, 78	
Failure to proactively disseminate information regarding the state of the economy and misleading the public as to the state of the economy and presenting to the public misleading and false assurances of the sustainability of foreign debt and state of the economy	1(b), 3R, 6R, 7R	46	51-58
Failure to take necessary steps to ensure that the rupee was not artificially pegged leading to a number of consequences including	1(b), 3R, 6R, 7R,	57, 59, 61- 71	16, 17, 18, 19,

the reduction in worker remittances	9R		21, 22
Failure to make directions/ recommendations to prevent the decline of the Gross Official Reserves beyond the minimum standard required for essential imports of the country	1(b), 3R, 7R, 9R, 10R		23,24,25-42
Failure to give adequate consideration to / take necessary steps in line with reports and warnings regarding the decline of Gross Official Reserves and the unsustainability of the economy given by the Monetary Board of Sri Lanka	1(b), 2R, 3R, 10R		59-67
Failure to maintain the international stability of the rupee	1(b), 3R, 9R	48 - 54	
Failure to submit a report in terms of the Moneray Law for the information of the public	9R	58	
Moral suasions regarding the fixing of the rupee	3R, 6R, 7R	57	19, 20
Refusal to restructure debt and the use of Foreign Reserves to service sovereign debt	1(b), 2R, 3R	44, 45, 48, 72, 73, 89	34-37
Using of Foreign reserves to artificially maintain exchange rate	1(b), 2R, 3R, 6R, 7R, 10R	64	

6. After hearing the Petitioners in support of their application and considering the limited objections of the 2nd 3rd, 6th, 7th, 9th and 10th Respondents, Your Lordships' Court was pleased to grant the Petitioner leave to proceed in terms of Articles 12 (1) and 14(1)(g) of the Constitution against 1(b), 2nd, 3rd, 6th, 7th, 9th and 10th Respondents on the 7th day of October 2022 and to make interim orders for the provision of relevant documentation requested by the Petitioner.
7. The 2nd 3rd, 5th, 6th, 7th, 9th and 10th Respondents thereafter filed their objections to the Application and the Petitioner filed their Counter Objections to the same on the 25th day of July 2022.

Article 12(1) and Economic Policy

8. While the Respondents were unable to demonstrate that their actions/inactions were reasonable or rational in the circumstances at the time, they sought to oust the jurisdiction of Your Lordships' court and to contend that the matters complained of by the Petitioners were

matters of economic policy and that Your Lordship's court did not have the expertise to determine unreasonableness in the face of competing economic theories that have far reaching consequences – Some of the Respondents contended that Your Lordships cannot act as '*super auditors*'!

9. In support of this contention many of the Respondents cited *inter alia* the case of ***Sujeewa Senasinghe v Ajith Nivard Cabraal SCFR 457/2012*** where it was held as follows:

We must not forget that in complex economic policy matters every decision is necessarily empiric and therefore its validity cannot be tested on any rigid formula or strict consideration. The Court while adjudicating the constitutional validity of the decision of the Governor or Members of the Monetary Board must grant a certain measure of freedom considering the complexity of the economic activities. The Court cannot strike down a decision merely because it feels another policy decision would have been fairer or wiser or more scientific or logical. The Court is not expected to express its opinion as to whether at a particular point of time or in a particular situation any such decision should have been adopted or not. It is best left to the discretion of the authority concerned. We have to focus on the applicable law and ascertain whether the impugned decision to invest in Greece Bonds was an arbitrary exercise of power serving a collateral purpose.

10. (a) The intention of the Respondents was an exercise of blatant misrepresentation. The aforesaid when read alone (as was done on behalf of the Respondents) leads to a misrepresentation with regard to the Your Lordship's exercise of Jurisdiction in cases of economic policy.

(b) It is respectfully submitted that in fact, Your Lordships Court did examine the exercise of discretion in respect of economic policy in the said case of *Sujeewa Serasinghe v Ajith Nivard Cabraal*, and went on to examine the circumstances in which the said bonds were invested in and held that

considering the totality of the circumstances*, it is neither *possible* nor desirable to hold that the Members of the Monetary Board in taking a decision to invest in Greece Bonds, *have acted arbitrarily, unreasonably and in a fraudulent manner*. In view of the conclusion reached, the **Court is not inclined to express any opinion on the objections raised by the learned Deputy Solicitor General on the maintainability of the application.*

11. (a) The above passage of the judgement, which was not presented to Your Lordships by the Respondents, clearly demonstrates that Your Lordships Court in that instant did examine and consider the ***totality of the circumstances***. Your Lordships Court did that by weighing the did policy of the Central Bank and the Monetary Board albeit finally holding that the Bank and the Board did not act arbitrarily.

(b) The Petitioners in these proceedings are also not requesting Your Lordships to inquire into the policy of the Respondents. What the Petitioners seek is that Your Lordships should consider whether the actions/and inactions of the Relevant Respondents (whether based on economic policy or not) is arbitrary and capricious.

12. (a) It is noteworthy that the 7th Respondents was the Respondent in the above case and appears to have clothed himself with a measure of immunity with regard to economic decisions/policy and has acted in an irresponsible and unreasonable manner as will be demonstrated further, and has mislead necessary decision makers and contributed to the economic collapse of the Country.

(b) It is therefore vital that Your Lordships clarify that no such immunity or virtually absolute discretion exists with regard to economic decisions and that Your Lordships' is willing and able to hold any public authority that acts with reckless abandon and in a manner that is arbitrary, irrational, and unreasonable, to account for such violation of public trust, in terms of Article 12(1) of the Constitution.

13. (a) It is respectfully reiterated that in the instant application the Petitioners are not asking Your Lordship's court to make decisions between possible economic decisions or to substitute Your Lordships decisions for those within the discretion of the Respondents.

(b) The Petitioners are requesting Your Lordship to examine whether, in the circumstances of the time, and with the knowledge available to the Respondents, whether the Respondents actions/ inactions were irrational, arbitrary and unreasonable.

The scope of the Petitioners Application in terms of Article 12 (1) of the Constitution

14. The Petitioners, throughout the course of these written submissions will demonstrate to Your Lordship's Court that the relevant Respondents' actions or inactions were against all evidence available to them, were arbitrary, unreasonable, irrational, and capricious and in patent disregard of warnings emanating from all quarters, and that the relevant Respondents wilfully and with knowledge of such, failed to fulfil their statutory or constitutional duties and/or failed to act in good faith.

15. The Petitioners filed this application in terms of Article 17 and 126 of the Constitution, alleging that **the relevant Respondents had singularly and collectively violated the fundamental rights guaranteed to the Petitioners in terms of Article 12 (1) of the Constitution.**

16. Your Lordships' jurisdiction in terms of Article 17 of the Constitution was set out in the case of **R. Sampanthan v AG SCFR 351-356/2018 and 358-361/2018 SCM 13 December 2018 (Dissolution Judgment)** as follows:

The inalienable right of every citizen of our country to invoke the fundamental rights jurisdiction of the Supreme Court is a cornerstone of the sovereignty of the people which is the Grundnorm of our Constitution. Thus, Article 4 (d) declares "the fundamental rights which are by the Constitution declared and recognized shall be respected, secured

and advanced by all the organs of government and shall not be abridged, restricted or denied, save in the manner and extent hereinafter provided.”.

*It has been emphasized time and again by this Court that **it is a foremost duty of the Supreme Court to protect, give full meaning to and enforce** the fundamental rights which are listed in Chapter III of the Constitution. Thus, Sharvananda CJ observed in *MUTUWEERAN vs. THE STATE* [5 Sri Skantha's Law Reports 126 at p. 130]; “Because the remedy under Article 126 is thus guaranteed by the Constitution, **a duty is imposed upon the Supreme Court to protect fundamental rights and ensure their vindication.**”. In the same vein, Ranasinghe J stated in *EDIRISURIYA vs. NAVARATNAM* [1985 1 SLR 100 at p. 106] that, “**A solemn and sacred duty has been imposed by the Constitution upon this Court, as the highest Court of the Republic, to safeguard the fundamental rights which have been assured to the citizens of the Republic as part of their intangible heritage. It, therefore, behoves this Court to see that the full and free exercise of such rights is not impeded by any flimsy and unrealistic considerations.**”.*

17. The need for Your Lordships’ Court to take all necessary measures to uphold the fundamental rights of citizens was also upheld in the case of **Nobel Resources International Pte Ltd v Ranjith Siyambalapitiaya, Minister of Power and Renewable Energy and Others SCFR 394/2017 , S.C.M 24/06/2016** where it was held that:

*The Court must regard it as its solemn duty to protect the fundamental rights jealously and vigilantly. It has an important role to play not only preventing or remedying the wrong or illegal exercise of power by the authority but has **a duty to protect the nation in directing it to act within the framework of the law and the Constitution.***

18. The Petitioners in the instant case specifically pleaded that the Respondents by their actions and/or inaction had violated the Fundamental Rights guaranteed to the Petitioners by Article 12 (1) of the Constitution.

19. Article 12(1) of the Constitution provides that *'All persons are equal before the law and are entitled to the equal protection of the law.'*

20. This Principle of 'equality' and 'equal protection of the law' was elaborated on in the case of ***Wickremasinghe vs Ceylon Petroleum Corporation (2001) 2 Sri.LR 409*** where it was held that:

The essence of equal protection is reasonableness as opposed to arbitrariness. The question of reasonableness of the impugned action has to be judged in the aforesaid state of facts. The claim of each party appears to have merit when looked at from the particular standpoint of that party. But reasonableness, particularly as the basic component of the guarantee of equality, has to be judged on the objective basis which stands above the competing claims of the parties.

21. This was further elucidated in the case of ***Hapuarachchi and v Commissioner of Elections and Another*** (2009,1 Sri.L.R.1) where, citing the case of E. P. Royappa v State of Tamil Nadu, it was held that:

Equality, which could be introduced as a dynamic concept, forbids inequalities, arbitrariness, and unfair decisions. Equality and arbitrariness are sworn enemies; one belongs to the Rule of Law in a Republic while the other, to the whim and caprice of an absolute Monarch.

22. This expansion of Article 12 (1) was further upheld in the case of ***R. Sampantham v AG (Dissolution case) Sc 351-361/ 2018- SCM 31 December 2018*** where it was held that:

"Article 12(1), which perhaps has the most dynamic jurisprudence in our constitutional law, offers all persons protections against arbitrary and mala fide exercise of power and guarantees natural justice and legitimate expectations.

In a constitutional democracy where three organs of state exercise their power in trust of the people, it is a misnomer to equate 'equal protection' with 'reasonable classification'.

It would clothe with immunity a vast majority of executive and administrative acts that are otherwise reviewable under the jurisdiction of Article 126.

23. It is respectfully submitted that when considering whether the actions or inactions of the relevant Respondents were arbitrary or unreasonable, Your Lordships will consider the doctrine of public trust and the duty cast on each public officer to use the powers bestowed on them for the benefit of the Citizens of Sri Lanka.
24. In this regard Your Lordships attention is drawn to the ***Determination of the Divisional Bench of Seven Judges of Your Lordships' Court -in regard to the constitutionality of the proposed 19th Amendment to the Constitution (2002, 3 SLR page 85)*** where it was held that:

*the principle enunciated in Articles 3 and 4 of our Constitution is that the respective organs of Government, the Legislature, the Executive, and the Judiciary are reposed power as custodians for the time **being to be exercised for the People**. In *Bulankulame and others v Secretary, Ministry of Industrial Development* this Court observed that the **resources of the State are the "resources of the People "and the organs of State are "guardians to whom the people have committed the care and preservation" of these resources (at p. 253)**. That, there is a "confident expectation (trust) that the Executive will act in accordance with the law and **accountably in the best interests of the people of Sri Lanka** (page 258);*

25. Your Lordships' attention is also drawn to the case of ***Sugathapala Mendis v Kumaratunga (Water's Edge Case) [2008] 2 Sri L.R. 339, 373*** where it was held that

*"...whilst they [public functionaries] can use their private power and their private property in an unfettered manner when granting any privileges or favours and, even in an overwhelming act of great generosity, give all their private property away, **their public power must only be used strictly for the larger benefit of the People, the long term sustainable development of the country and in accordance with the Rule of Law.**"*

Absolute and unfettered discretion in Public law

26. It is respectfully submitted that it is a well-established principle of law that there is no absolute or unfettered discretion in public law.
27. In this regard the Petitioners draw Your Lordships attention to the case of *Marie Indira Fernandopulle and Another vs E. L. Senanayake, Minister Of Lands And Agriculture*, 79 NLR 115 where it was held with as follows:

“What is the exact limit of a subjective test. Are the Courts obliged to turn a deaf ear merely because some statutory officer is able to proclaim "I alone decide". " When I open my mouth let no dog bark" ? If that be the position when the rights of the subject are involved then the Court would have abdicated its powers necessary to safeguard the rights of the individual.”

28. Your Lordships attention is also draw to the case of *Janatha Finance & Investments Ltd v Liyanage* and other (1983) 2 SLR 111 where it was held that:

*Now that the theory of uncontrolled and unfettered discretion free from judicial review no longer holds sway, the question that arises immediately is the scope of the judicial review, the nature, and the extent to which the Courts should interfere in the exercise of a discretion, and the limits within which it is practicable to question the exercise of such discretion. The real question is - as Wade (supra) states at page 340 - whether the discretion is wide or narrow and where the legal line has to be drawn; and that for this purpose, everything depends upon the true intent and meaning of the empowering Act. In the case of *Roberts v. Hopwood*"⁴, Lord Wrenbury stated:*

"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes

merely because he is minded to do so - he must in the exercise of his discretion do, not what he likes but what he ought. *In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably."*

29. The aforesaid judgment further holds that, in the application of the legal standard of reasonableness in respect of acts done by public authorities in the exercise of powers which have been vested in them in subjective terms an important matter that has to be considered is the nature of the subject matter and the circumstances in which such discretion has to be exercised.
30. This principle was further upheld in the recent judgment of Your Lordships' Court in *Janath Vidanage v Pujith Jayasundara & Others*, SCFR 163/2019 S.C.M 12.01.2023 (Judgment regarding the Easter Sunday disaster), where Your Lordships' citing the case of *Priyangani v Nanayakkara* (1996) 1 Sri.LR 399 at 404-405, held that:

"We are not concerned with contractual rights, but with the safeguards based on the Rule of Law which Article 12 provides against the arbitrary and unreasonable exercise of discretionary powers. Discretionary powers can never be treated as unfettered unless there is compelling language; when reposed in public functionaries, such powers are held in trust, to be used for the benefit of the public, and for the purpose for which they have been conferred-not at the whim and fancy of officials, for political advantage or personal gain."

31. (a) The Petitioners in the instant application have not come to Your Lordships' Court merely on the basis that some of the actions taken by the Respondents were wrong or displayed an innocent error or mistake in judgment.
- (b) The Petitioners have filed the instant application on the basis that the Respondents acted contrary to the evidence available to them in an unreasonable and arbitrary manner that

easily satisfies the test of being so unreasonable that no reasonable man would have come to the same conclusion.

Indian case law on discretion in Economic Policy Decisions as cited by the Respondents

32. Counsel for the 2nd and 3rd Respondent cited the cases of *Shri Sitararam Sugar Company V Union of India & Ors* (1990 AIR 1277) and *Ugar Sugar Works Ltd v Delhi Administration and Ors* – Judgment dated 22/03/2001 in support of his contention that court must not inquire into economic decisions on which the Respondents exercised some discretion.

It is submitted that the following dicta in the case of *Shri Sitararam Sugar Company V Union of India & Ors* (1990 AIR 1277) is of value in the instant case:

*Where a question of law is at issue, the Court may determine the rightness of the decisions of the authority on its own independent judgment. If the decision does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the findings. When the finding is found to be **rational and reasonably based on evidence** then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact. (7.2 on page 7)*

...

*The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, **is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair-minded authority could ever have made it.** The impugned orders are **undoubtedly based on an exhaustive study by experts...** (at page 27 of the Judgment)*

...

Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agent as to matters within the province of either. The court does not supplant the 'feel of the expert' by its own views.

*When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact, which are conclusive **provided such findings satisfy the test of reasonableness.** In all such cases, **judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence** and whether such findings are consistent with the laws of the land. (Vide page 29 of the judgment)*

33. Your Lordships' attention is also drawn to the case of *Ugar Sugar Works Ltd v Delhi Administration and Ors*, cited by counsel for the 2nd and 3rd Respondent, which clearly held as follows:

*“...the challenge, thus is in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, **do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.** Indeed, arbitrariness, irrationality, perversity, and mala fide will render the policy unconstitutional. However, **if the policy cannot be faulted on any of these grounds,** the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference to the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the state.*

34. It is respectfully submitted that counsel for the 2nd and 3rd Respondents sought to only highlight the latter part of this paragraph but failed to draw Your Lordships attention to the first part of the said paragraph which categorically states that a court will interfere if the policy (economic or otherwise) is unreasonable, irrational, perverse or mala fides rendering such policy unconstitutional.

35. Your Lordships attention is also drawn to the case of ***Benedict and Others v Monetary Board of the Central Bank of Sri Lanka and Others*** (2003- Volume 3, Page No. 68). This case considered an order issued by the Director of Bank Supervision regarding the Pramuka Bank. In this case Your Lordships held as follows:

This court does not dispute that the first respondent has a discretion in the matter. However, it is a discretion that has to be exercised reasonably, fairly and justly. As Lord Diplock said "the administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred." - Secretary of State for Education v Tameside Metropolitan B.C (1).

*The valid exercise of a discretion requires **a genuine application of the mind and a conscious choice by the first respondent**. The effect of the Monetary Law Act is not to set up the court as an arbiter of the correctness of one view over the other. It is the first respondent alone who can take such a decision and, **provided the first respondent acts fairly and reasonably** within the four corners of its lawful jurisdiction, this court in my opinion cannot interfere. Accordingly, it follows, that the **court can examine the exercise of the discretionary power in order to see whether it has been used properly, fairly and according to the rules of reason and justice.** (vide page 75 of the Judgment)*

*There can be no legal objection to the first respondent obtaining advice and consulting suitable persons **but it is vital that it should analyse the options available and come to a correct decision in the public interest.** It is the duty of court to strike a suitable balance between executive/administrative efficiency and legal protection of the citizen. Judicial review means, review of the manner in which the decision was made. Lord Green, MR expounded this theory in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (2)* as follows - "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the*

things that must be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably."

"There is no absolute and unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted." - G.P.S. De Silva C.J. in Premachandra v Jayawickrama (3)

*Lord Wrenbury dealing with this argument in R v Secretary of State for the Environment ex. p Nottinghamshire (4) laid down the law as follows -" A person in whom is vested discretion must exercise his discretion upon reasonable grounds. **A discretion does not empower a man to do what he likes merely because he is minded to do so - he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably."***

(Vide Page 76 and 77 of the Judgment)

36. In that regard, Your Lordships' attention is respectfully drawn to the judgement of Samarakoon CJ in Marie Indira Fernandopulle vs. E. L. Senanayake, Minister of Lands and Agriculture 79 N.L.R Page 115 at page 120:

"What is the exact limit of a subjective test. Are the Courts obliged to turn a deaf ear merely because some statutory officer is able to proclaim "I alone decide". " When I open my mouth let no dog bark"? If that be the position when the rights of the subject are involved then the Court would have abdicated its powers necessary to safeguard the rights of the individual. I do not think that is the test

The unique nature of the impugned decisions, actions/inaction of the relevant Respondents

37. (a) It is respectfully submitted that the impugned actions/inactions of the relevant Respondents cannot be equated merely with the classification for tax purposes or the creation of financial legislation, that may appear onerous to one party.

(b) The decisions taken by these Respondents affected the country and its' citizens as a whole, were taken when Sri Lanka was in a crisis situation on the cusp of imminent default and brought about immediate and irremediable far-reaching consequences.

(c) There is therefore a clear justification for placing a high burden on the relevant Respondents and or on any person holding high levels of public office, to act reasonably and in a calculated and considered manner.

(d) This would not remove all risk taking but would require any public officer taking any policy decision (that would have far reaching consequences) to ensure that all risks are calculated and that any failure to consider or act in terms of the advice and evidence provided by the officials/experts appointed in terms of the law is a well-reasoned departure that can be rationally explained should an explanation be sought.

38. (a) The Respondents regularly stated that no person would be willing to take public office if Your Lordships were to question the decisions taken by them – that they should not be second guessed in hindsight.

(b) However, this argument is misconceived and untenable, in that the very nature of Article 12 (1) read together with Article 3, 4, 17 and 126 of the Constitution empowers if not demands Your Lordship to review executive and administrative action to determine whether decisions taken satisfy the test of reasonableness and are not mere arbitrary decisions taken for political expediency or out of a cavalier experimental attitude.

39. As will be adverted to morefully hereinafter, the Petitioners are not second guessing in hindsight. All the matters that have been presented to Your Lordships by the Petitioners and the 9th and 10th Respondents, and the Report of the Auditor General presented upon the direction of Your Lordships and in fact, the very documents presented to Court by the 2nd and 3rd Respondents clearly demonstrates that the said materiel, expert advice, cautions and reports were presented to the relevant Respondents and/or the relevant had the said materiel in their possession at the time the impugned decisions were taken by the relevant Respondents.
40. It is submitted that having acted in this cavalier and capricious manner and having failed to provide any justification for the taking of the decisions that were taken, the Respondents cannot now be heard to suggest that Your Lordships court cannot test the reasonableness of these decisions merely because are economic decisions.

Powers, duties and Responsibilities of the Respondents

The powers and duties of the 1(b) Respondent

41. (a) It is noted that the 1(b) Respondent has thought it fit not to participate in these proceedings even after notices were issued by Your Lordships to the 1(b) respondent after the 1(b) Respondent resigned from the office of the President of the Republic.
- (b) This inaction on the part of the 1(b) Respondent clearly demonstrates the cavalier attitude the said Respondent has as against the basic tenets of law. At the least, the 1(b) Respondent has not even acted with the basic courtesy of a responsible citizen of Sri Lanka to respond to a Notice from your Lordships' Court!
- (c) As such, the Petitioners respectfully submit that the allegations and complaints against the 1(b) Respondent remains unassailed, uncontradicted and as such proven.

42. (a) The 1(b) Respondent was at all times material to this application, the President of Sri Lanka.

(b) In terms of Article 4(b) of the Constitution, ‘The executive power of the People, including the defense of Sri Lanka’, is exercised by the President of the Republic elected by the People.

(c) In terms of Article 30 (1) of the constitution, at all times material to this application, the 1(b) Respondent was the **Head of the State, the Head of the Executive and of the Government**, and the Commander-in- Chief of the Armed Forces.

43. It is respectfully submitted that the 1(b) Respondent as the main proponent of the arbitrary, irrational, illegal and unreasonable 2019 tax revisions (which is dealt with in detail further on in these submissions) was personally responsible for one of the main causes of the default on sovereign debt. The 1(b) Respondent as Head of State and Head of Cabinet was also responsible for any relevant cabinet decisions.

Responsibility of the 2nd and 3rd Respondents

44. The powers and functions of the Ministry of Finance as set out in Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka - 25.09.2020, including:

a) Responsibilities in relation to macro-economic policies, annual budget and Appropriation Acts, public financial management, local and foreign savings and investments, public debts, banking, finance and insurance activities, international financial cooperation and directing social security and economic development activities

03. Special Priorities

- a) Establishing a sustained, high economic growth rate that distributes benefits to all, covers all provinces, and minimizes income disparities.
- b) Reducing unemployment giving priority to low income earners and increasing per capita income.
- c) Ensuring price stability by maintaining annual average inflation rate at a low level.
- d) Reducing uncertainties in public revenue policies by reducing budget deficit and public debt.
- e) Expanding financial resources and economic needs by maintaining loan interest rate at a lower level.
- f) Stabilizing the interest rates, financial and balance of payment policies in order to ensure that the exchange value of the rupee is maintained at a stable level.
- g) Introducing measures to promote domestic production, empower low-income earners and incentivize investments.
- h) Expanding the business environment for the domestic business community in a manner that would provide benefits to general public.
- i) Strengthening public enterprises.
- j) Strengthening the institutional structure required for the efficient management of state revenue and expenditure.

Responsibility of the 6th and 7th Respondents

45. The duties of the 6th, and 7th Respondents and are set out in the Monetary Law Act, and include, *inter alia*, the following:
46. The Governor is the Chairman of the Monetary Board in terms of Section 8 of the Act, convenes the meetings of the Board, executes the policies and measures approved by the Monetary Board and is in charge of the directions, supervision and control of the operations of the Central Bank its internal management and administration. (Vide section 19(1))

47. In terms of section 19(2) of the Act, the Governor also prepares the agenda for the Monetary Board and is required to **submit for the consideration of the board policies and measures considered by him to be necessary for the purpose carrying out the principles and provisions** of the Act.

Statutory Provisions regarding the responsibility of the 9th Respondent

48. The law with regard to the Responsibilities of the 9th Respondent are set out in Section 8 and Section 5 of the Monetary Law Act and include the maintaining of the (a) economic and price stability and (b) financial system stability with a view to encouraging and promoting the development of the productive resources of Sri Lanka.

49. The role and responsibilities of the Central Bank is set out in sections 63, 64, 65, 66, 67, 68, 73, 74, 76, 87, 90, 104, 112 and 116 of the Monetary Law Act.

50. As per 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.*”

51. Furthermore, as per Section 66 of the Monetary Law Act, the 9th Respondent, is charged with a duty, 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.

52. 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.

Responsibilities of the 10th Respondent

53. The responsibilities of the 10th Respondent are set out in Article 52 of the Constitution which states as follows:

Article 52 of the Constitution

(1) There shall be for each Ministry a Secretary who shall be appointed by the President.

(2) The Secretary to the Ministry shall, subject to the direction and control of his Minister, exercise supervision over the departments of Government or other institutions in the charge of his Minister

54. The 10th Respondent was also vested with the following powers in terms of Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka - 25.09.2020

Minister of Finance will delegate to the Chief Accounting Officer the responsibility of overseeing the financial activities of the department in terms of Chapter III of the Financial Regulation and under F.R.124 (2) subject to the provision of the Treasury

Contributory Nature of the violation of the Relevant Respondents

55. (a) The Relevant Respondents have at various stages of their objections sought to pass liability and/or culpability to persons other than themselves, on the basis that it was not their actions alone that caused the 2022 sovereign default and the resultant economic collapse.

(b) Some of these Respondents have also conveniently blamed previous legacy issues and sought to present that they were unable to solve the debt sustainability problems that came about due to COVID-19 and significant debt repayments that became due during this period.

56. (a) It is respectfully submitted that as will be demonstrated in these submissions, each of these Respondents are liable in their own right for their actions and/or inactions in their exercise of powers. As demonstrated by the table reproduced in paragraph 5 above. It may be under one count some Respondents may not be culpable – however, the said Respondents would be culpable under another count. It is respectfully submitted that no individual Respondent can clearly say that they are individually not responsible for the matters that have been alleged against the said individual Respondent.

(b) It is submitted that all of these Respondents had full knowledge of the need to take careful and measured decisions (supported by evidence, scientific analysis) to steer Sri Lanka through troubled waters and instead chose to take unreasonable and irrational, short term, populist measures against all advice and against the data and evidence available to them.

(c) In fact, it is respectfully submitted that although Sri Lanka has consistently had balance of payment issues it was purely due to this mis-management that Sri Lanka had to go through immense hardship resulting in default on sovereign debt.

57. (a) It is respectfully submitted that a glaring example of the manner in which different Respondents had individual as well as joint statutory duties is demonstrated by the manner in which the 9th Respondent and the 2nd and/or 3rd Respondents have acted in respect of Section 116 of the Monetary law.

(b) In terms of section 116 (1), on or before the 15th Day of September of each year the Monetary Board shall submit to the Finance Minister (for use in preparation of the budget speech) a confidential report describing and analysing the monetary situation in Sri Lanka and the current monetary policy of the Monetary Board and examining the effect of the current fiscal policy of the government upon the ability of the Central Bank to achieve the objects specified in the section.

(c) in terms of section 116 (2), in the difference of opinion between the Finance Minister and the Monetary Board as to whether the monetary policy of the board is directed to the greatest advantage of the people of Sri Lanka, the two parties shall endeavour to reach agreement. However if they are unable to reach such agreement the Finance Minister may inform the Monetary Board that the government accepts responsibility for the adoption by the Monetary Board of a policy in accordance with the opinion of the Government and direct that such a policy be adopted by the Board. The said section further specifically provides that where a direction is so given by the Finance Minister, the board shall carry out that direction.

58. It is respectfully submitted that no evidence whatsoever was presented by the 9th Respondent or the 2nd and 3rd Respondents, as the relevant finance ministers, of any such disagreement having arisen, whether the same was amicably resolved or whether the 2nd and/or 3rd Respondent directed the Monetary Board to act in accordance with the Government policy.
59. In such circumstances where no evidence has been provided that the provisions of section 116 has been carried out by the 9th, 2nd and/or 3rd Respondents the contentions/accusations made by the 2nd and 3rd Respondent that the said Respondents in turn acted on the advice of the other notwithstanding the glaringly contradictory evidence that has now been presented to Your Lordships' Court, the said Respondents are estopped in law and fact from contending that where such contradictions occurred the said Respondents have attempted to resolve such disputes amicably or that the 2nd and or 3rd Respondents directed the 9th Respondent in terms of section 116 (2). The only evidence that is available is that either the Finance Minister or the 10th Respondent as Secretary to the Treasury or Dr P. B. Jayasundera has compelled the Monetary Board to act in accordance with their dictates without following the statutory provisions embedded in the Monetary Law.

The Auditor General's Reports

60. It is respectfully submitted that Your Lordships on or about 07.10.2022 directed the Auditor General to submit a report to Your Lordships Court directing the Auditor General to conduct an audit upon examining all relevant material and submit a report on the following:

- a. the decision made by the 28th respondent (Monetary Board) to set the value of the Sri Lankan Rupee at or around 203/- as against the US Dollar and all matters connected to the said decision;
- b. the delay in seeking facilities from the IMF by the Republic;
- c. all matters relating to the settlement of International Sovereign Bond/s to the value of US\$ 500 million on 18.01.2022, utilising foreign reserves;

61. Your Lordships also directed that the said report should comprise observations, **including whether any loss had been caused to the Central Bank due to one or more of the three matters referred to above.**

62. The Auditor General did file an Audit Report including Observations of the Auditor General pertaining to the Fundamental Rights case No: 195/22 dated 1st March 2023.

63. In the said Report, the Auditor General at page 439 states as follows:

3.4. ඉහත 3.1, 3.2 සහ 3.3 හි සඳහන් කරුණු එකක් හෝ කීපයක් හේතුවෙන් ශ්‍රී ලංකා මහබැංකුවට යම් අලාභයකට හේතු වී තිබේද යන්න පිළිබඳ නිරීක්ෂණ

(අ) අධිකරණ නියෝගය ප්‍රකාරව, ප්‍රශ්න කරුණු එකක් හෝ ඊට වැඩි ගණනක් හේතුවෙන් ශ්‍රී ලංකා මහබැංකුවට යම් අලාභයක් සිදු වී තිබේද යන්න පිළිබඳව නිරීක්ෂණ ඉදිරිපත් කරන ලෙස සඳහන් කර තිබුණි. එසේ වුවද, මා විසින් මෙහිදී අධිකරණ නියෝගය පරිදි සිය විගණන කාර්යය සිදුකලද මෙවැනි සිද්ධීන් හේතුවෙන් යම් අලාභයක් සිදුවී තිබේද යන්න නිගමනය කිරීමට පහත තත්ත්වයන් හේතුවෙන් නොහැකි වී ඇත.

I. විෂයගත කරුණු තුනම රජයේ ප්‍රතිපත්තිමය තීරණ ලෙස බැලූ බැල්මට විද්‍යාමාන වන හෙයින් රජයේ/මහබැංකුවේ ප්‍රතිපත්තිමය තීරණ හේතුවෙන් සිදුවන යහපත් හෝ අයහපත් ලෙස විවිධාකාරයෙන් විවිධ පාර්ශව විසින් අර්ථ දැක්විය හැකි ප්‍රතිඵලයන්ගේ හිතකර හෝ අහිතකර මූල්‍ය ප්‍රති විපාක මා විසින් ගණනය කිරීම අභියෝගයට ලක් කිරීමට හැකි වීම.

II. විෂයගත කරුණු තුන ක්‍රියාත්මක කළ කාලය හා ඒවායේ ප්‍රතිඵලයන් අපේක්ෂා කළ හැකි කාලය තුළ එකී කරුණු තුනට අමතරව රටේ සමස්ත ආර්ථික ක්‍රියාවලියට බලපෑම් ඇති කළ වසංගත තත්ත්වයක් දිවයින තුළ පැවතීම හා ගෝලීය වශයෙන්ද පැවති එම වසංගත තත්ත්වය සහ ඒවායේ යහපත් සහ හෝ අයහපත් ප්‍රභවල දේශීය ආර්ථිකයටද බලපෑම් කිරීම හේතුවෙන් විෂයගත කරුණු තුන හේතුවෙන් පමණක්ම මහ බැංකුවට සිදුවූ මූල්‍යමය බලපෑම නිශ්චිතව ගනනය කළ නොහැකි වීම.

III. සීමිත විදේශ සංචිත උපයෝගී කරගෙන ගතයුතුවූ ප්‍රශස්තම තීරණය කුමක්ද යන්න මා හට නිර්ණය කළ නොහැකිවීම සහ විවිධ වෘත්තීමය හා සමාජීය තත්ත්වයන් යටතේ එම තීරණය සමපාත වියයුතු යයි නිගමනය කළ නොහැකි වීම.

(ආ) කෙසේ වෙතත්, මෙම කරුණු එකක් හෝ කිහිපයක් හේතුකොටගෙන ශ්‍රී ලංකා මහබැංකුවට යම් අලාභයක් සිදු වී තිබේද යන්න සම්බන්ධ නිශ්චිත නිරීක්ෂණ මෙම වාර්තාවේ අන්තර්ගත නොවූනද ප්‍රශ්නගත එකිනෙක කරුණු සිදු වී ඇති පසුබිම සහ එම එකිනෙක කරුණු අනෙකුත් කරුණුවලට සෘජුව හෝ සහ වක්‍රව බලපා ඇති ආකාරය මෙම වාර්තාව පරිශීලනයේ දී නිරීක්ෂණය වනු ඇත.

64. The Petitioners respectfully state that although the Auditor General did not specifically state the loss caused to the Central Bank of Sri Lanka (for the reasons set out by the Auditor General as reproduced above), the Petitioners respectfully bring to Your Lordships attention the following information taken from the Auditor General’s Reports dated 1st March 2023, the Special Audit Report on Financial Management and Public Debt Control in Sri Lanka 2018-2022 dated 4th July 2022 and the Annual Report of the Central Bank for the year 2022:

- a. The net profit of the Central Bank which was Rs. 131 billion in 2021 decreased to a negative (loss) of Rs. 374 billion 2022 - A depletion in the profit of the CBSL by Rs. 505 billion.
- b. The total equity of the Central bank which was Rs. 463 billion in 2021 reduced to Rs. 82 billion in 2022 - A reduction of Rs. 381 billion.

- c. The total holdings of government securities by the Central Bank rose from approximately Rs. 1.4 trillion in 2021 to Rs. 2.5 trillion in 2022 – an increase of Rs. 1.1 trillion
 - d. The Total foreign currency assets of the Central Bank which was Rs. 763.7 billion in 2021 was Rs. 981 billion in 2022, however, total foreign currency liabilities rose from Rs. 1133 billion in 2021 to Rs. 2605 billion in 2022 – an increase of Rs. 1,472.
65. The Petitioners further respectfully submit that:
- a. The Gross Domestic Product of Sri Lanka which was US\$ 88.5 billion in 2021 reduced to US \$ 77.1 Billion in 2022. GDP per capita dropped from US \$ 3,997/= in 2021 to US \$ 3474 in 2021.
 - b. Inflation as per National Consumer Price index (2013 = 100) rose from an annual average of 7% in 2021 to 50.4% in 2022.
 - c. The National poverty line increased by 74% from Rs. 7913/= in 2021 to Rs. 13777/= by end 2022.
 - d. Departures for foreign employment increased from 122,264 persons in 2021 to 311,056 persons in 2022.
66. The Petitioners further respectfully submit that:
- The CBSL held the exchange rate around Rs. 203 per US Dollar. At a meeting held on 13th May 2021, the Banks “agreed” with CBSL to quote around Rs. 203 per US\$ (Page 185).
67. The Auditor General noted that this fixed exchange rate was maintained from end of April 2021 to 07th March 2022.

68. The following matters have also been detailed in the Report of the Auditor General filed in keeping with the Interim Order issued by Your Lordships' court in SC FR 195/2022

The impact of holding the exchange rate fixed on public debt of 2022

- a. *Remittances declined during this period from \$ 3500 million to below \$ 2000 million (Page 4).*
- b. *No International Sovereign Bonds were issued in 2020 and 2021 due to adverse "ratings" and sharp rise in bond yields (Page 9).*
- c. *On two occasions Central Bank reserves were used to settle International Sovereign Bonds of \$ 1000 million and \$ 500 million instead of utilizing bank and or treasury funds (Page 2).*
- d. *The Central Bank has to maintain adequate reserves as per Monetary Law. In 2021 US\$ 1262.99 million was sold in the market by the Central Bank while only US\$ 505 was purchased. – a difference of US\$ 757.99 M.*
- e. *In 2022 from January to April US\$ 1045 million while only US\$ 668.93 million was purchased. A difference of US\$ 376.07. Accordingly, a total of US\$ 1134 million was spent to keep the exchange rate at Rs. 203 per US\$ (Page 36).*
- f. *The Central Bank had to release large amounts of reserves for the import of essential items. For example, at the monetary board meeting of 27th October 2021 the Central Bank decided to release US\$ 250 million immediately to licensed banks and release US\$ 200 million per month thereafter to finance essential imports.*
- g. *The result of this was a sharp depletion of reserves to extent that usable reserves were near zero by end 2021.*

69. It is submitted that as set out in the report of the Auditor General the respective Finance Ministers were fully informed of the true position with regard to the reserves and the economy well ahead of the full-blown crisis in 2022.
- a. As per Monetary Board paper by DG(S) of 11 November 2020 - Page 131 and presentation to the MBEDMC meeting of 19th July 2021 – Page 226.
 - b. On 06th January 2020 Governor Prof Lakshman in his “Road Map 2020” stated that the continuation of the prevailing EFF programme of IMF is likely to be instrumental in supporting external sector stability (Page 118).
 - c. On 4th Aug 2020 Governor Prof Lakshman reported to the Finance Minister Mahinda Rajapakse inter alia that there is an urgent need for foreign financing options and that most multi laterals require an IMF programme even to consider lending to Sri Lanka. Even the support from the Reserve Bank of India required a Staff level agreement with IMF as informed by Governor Prof Lakshman to the President on 11 Jan 2021. On 28th Feb 2022 Governor Cabraal wrote to Finance Minister Basil Rajapakse that a debt default will occur soon due to the depletion of reserves.
70. The following matters regarding tThe Government policy against seeking assistance from the IMF were also set out in the said Report of the Auditor General
- a. The Extended Fund Facility of the IMF negotiated for the period June 2016 to April 2020 was “abandoned” before receiving the final tranche of SDR 118.55 million with the change of government on 18th November 2019 due to policy differences (Page 344).
 - b. At the Monetary Board meeting of 03rd February 2021 Secretary to the Treasury stated that the Government policy is not to go to the IMF (Page 154).
 - c. At the same meeting the Chairman of the Monetary Board stated that sacrifices to be made to go to IMF will be far greater than the current difficulties and that it

would amount to the abandoning of the Government policy framework (Page 154).

- d. However, there is no evidence of a Cabinet Decision to that effect and a formal communication to the CBSL as required by the MLA. Even though Secretary to the President Dr. P.B. Jayasundera by a letter dated 08 April 2020 to the Managing Director of IMF requested a Rapid Finance Instrument (Page 122) this initiative did not bear fruit due to the debt not being sustainable.
- e. The Board Paper of 11th November 2020 to the Monetary Board was deferred on the suggestion of the Secretary to the Treasury until the budget is presented to the Parliament.
- f. The Treasury was not present at several Monetary Board meetings and therefore it is difficult to understand the stance of the Government of matters taken up (Page 249).
- g. By a letter dated 12th August 2021 by Finance Minister Basil Rajapakse to the Governor Prof Lakshman indicating the preference for a reform package without the IMF (Page 288).
- h. CBSL officials advised the Monetary Board (MB) to seek IMF support very early**
- i. As per the Monetary Board minutes of 29th January 2022, urgent financing of upcoming foreign currency debt repayment was taken up for discussion (Page 118).
- j. The Monetary Board paper of 11th November 2020 emphasized the high probability of reserves dropping to critical levels in 2021 and the need to engage with IMF (Page 131).

- k. Further it was noted that the Chinese SWAP was not usable due to its conditionalities. At the MB meeting of 04 Aug 2021, two members urged seeking IMF support (Page 250).
- l. At the Monetary Board meeting of 24th August 2021 DG (S) stressed the need to seek IMF support urgently (Page 271).
- m. The Auditor General concurred accordingly that obtaining IMF support was required (Page 370).

71. The Auditor General's report also found the following

- a. that the Liquid reserve position of the CBSL was negative.
 - The Monetary Board paper dated 22nd March 22 stated that the liquid reserves of CBSL will be negative US\$ 709 million after allowing for essential imports. Further, the CB was already technically bankrupt and so was the nation.
- b. The Chinese SWAP approx. US\$ 1.5 was not usable.
 - A condition attached to this facility was that if Sri Lanka was unable to draw or make use of IMF funds or any such programme is cancelled or suspended it will be considered a default (Page 119 and 436).
- c. Sri Lanka could not afford to settle the US\$ 500 million ISB which matured but was settled in January 2022.
 - Monetary Board was well aware that usable reserves will drop zero by December 2021 (Page 161).
- d. Usable reserves were near zero.
 - The Monetary Board paper of 4th April 22 states that the liquid reserves were zero although gross official reserves were estimated to be \$1,948 (Page 369).
- e. No evidence of alternative financing arrangements lined up as against IMF support.

- As per a Board paper to the Monetary Board dated 11th November 2020 the attempt to obtain Japanese Samurai bonds as a measure of alternative financing was held up inter alia for want of an IMF facility (Pages 131 and 132).
 -
 - However, Governors Lakshman and Cabraal have alluded to the need / availability of such financing arrangements at various times and places.
- f. Monetary Board was aware that even friendly nations required an IMF programme to support Sri Lanka
- The Monetary Board meeting minutes of 24 Aug 2021). On 4th August 2020 Governor Lakshman reported to Finance Minister Mahinda Rajapakse that most multi-lateral agencies require an IMF programme to consider lending to Sri Lanka.

The Particular Acts, Conduct, Actions or Inactions That Are Complained Of

The reduction of taxes and its effect on the economy in general and the Gross Official Reserves in Particular

72. The 1(b) Respondent 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.
73. (a) In or around November/December 2019, the 1(b) Respondent presented a number of tax revisions to cabinet *in line with the pledges given in his election manifesto presented to the people prior to the Presidential Election 2019.* (Vide Page 1 of 3R1)
- (b) At the time of obtaining cabinet approval for the said revisions, the Secretary to the President allegedly highlighted the desirable immediate impact on the economy and the 2nd Respondent also submitted a note on the above.

(c) It appears however that neither of these deliberations were based on any sound reasoned or rational economic projection. This was highlighted in the findings of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court.

Vide: The Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022 (point 3.1.4 on page 339) where the Auditor General states that no analysis was conducted or presented regarding the estimated loss in tax revenue, impact on the budget deficit, how the deficit would be financed, or the macroeconomic effects of the policy.

74. Thereafter, the Commissioner General of Inland Revenue, acting on the instructions of the 2nd Respondent, immediately (without obtaining parliamentary approval for the same) issued a number of notices, which sought to reduce a number of taxes [hereinafter referred to as ‘tax revisions’] as set out in the document marked P4 and annexed to the Petition in SCFR 212/2022.

75. (a) 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% as set out in the document marked **P6** and annexed to the Petition in SCFR 212/2022.

(b) In this manner 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 of P7, P7(a) and P7(b), annexed to the Petition in SCFR 212/2022).

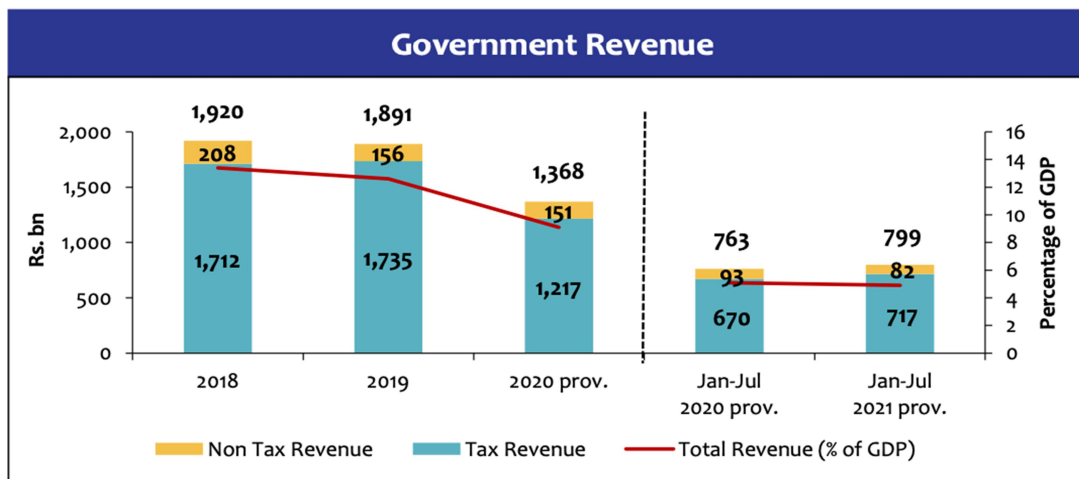
(a) Tax revenue declined from Rs. 1,734.9 billion in 2019 to Rs. 1,216.5 billion in 2020, mainly due to low revenue from income tax, VAT, NBT, CESS and excise duties, which is a reduction of 29.9%;

(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%.

76. As per the Annual Report of the Central Bank (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 tax 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).

77. The notable decline in revenue as indicated by the Central Bank Reports was further illustrated as follows in the *Six-Month Road Map of CBSL* published on 1st October 2021 marked “P8”, and the relevant page number 9 is marked “P8(a)”



Vide: *P8 annexed to the Petition - Six-Month Road Map of CBSL* published on 1st October 2021

78. This loss of revenue was also highlighted at page 351 of the Auditor General’s Special Audit Report on Financial Management and Public Debt Control in Sri Lanka 2018-2022 which reads as follows:

*As compared with the year 2019, the **tax revenue** collected by the Inland Revenue Department has **decreased significantly in the year 2020 due to the above-mentioned tax revisions** as well and the tax revenue collected by the said Department from the year 2019-2020 were as follows:*

Type of Revenue	Revenue Collection- 2020	Revenue Collection 2019	Percentage of Decrease of Revenue
	<i>Rs.</i>	<i>Rs.</i>	<i>%</i>
Income Tax	252,941,572,901	371,795,681,316	(31.79)
Value Added Tax	233,786,120,184	443,87,131,612	(47.33)
Debt Repayment Levy	3,002,271,834	28,673,572,980	(89.53)
Economic Service Charge	14,950,042,437	55,301,397,165	(72.97)
Nation Building Tax	3,740,463,661	105,185,802,597	(96.44)
Source: Performance Report – 2020- Inland Revenue Department			

According to the above details, it is clear that the tax revenue collected by the Inland Revenue Department has decreased by 49% in the year 2020 as compared with the year 2019 relating to the five types of taxes indicated. (emphasis added)

79. (a) It is respectfully submitted that in addition to lowering the Taxes, the government also changed the way in which taxes were paid. Whereas previously **in line with the IMF and World Bank recommendations**, decisions were taken to make tax collection easier (by for example deducting taxes at the source) this too was removed.

(b) By the removal of PAYEE tax, the country lost 500,000 tax payers from the tax system and also took away withholding tax (interest on income). The said Tax revisions thus, further dismantled two efficient collection methods.

80. The above is captured in a report by the IMF dated 11/11/2022 titled “*Mobilizing Revenue in Sri Lanka*” (Annexed to the Petitioner’s counter objections marked A1). The said IMF report identified that the tax revisions not only resulted in several individuals and entities falling outside the purview of the tax net and that Sri Lanka’s tax to GDP ratio fell to a historic low of 8.1% in the year 2020.

81. In that regard Your Lordships attention is drawn to item ‘6’ of A1 which reads as follows:

6. The number of registered taxpayers in Sri Lanka fell sharply following the 2019 tax reforms. As a result of the higher tax exemptions and more generous registration thresholds, relatively few Sri Lankan individuals and businesses are now captured by the tax system. Due to the change in the PIT rate structure and withholding regime, the number of registered income tax payers fell by 32 percent in 2020. In addition, more than three-quarters of previously registered VAT payers dropped out of the tax net. Finally, a large number of businesses that were previously only captured by the Nation Building Tax are no longer registered.

From an international perspective, persistently large fiscal deficits in Sri Lanka reflect relatively low tax revenues, not excessively high government expenditures. In a bid to promote production and reduce the cost of living, the current government revamped the tax structure shortly after taking office, legislating a variety of rate revisions and exemption increases to the Personal Income Tax (PIT), Corporate Income Tax (CIT), and

Value Added Tax (VAT) in December 2019. Largely as a result, Sri Lanka's tax-to-GDP ratio fell to a historic low of 8.1 percent in 2020 and is now among the lowest in the world.²

82. (a) According to the Ministry of Finance Annual Report, 2020 (P9), Sri Lanka's budget deficit doubled between the period of 2019 and 2020.

(b) 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.

83. The said Tax reductions were all made in the run up to the General Election of 2020. Despite ample opportunity being given to the 1(b), 2nd, 3rd and 10th Respondent 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.

84. (a) It is further respectfully submitted that there was a period of nine months before the decision of the 1(b) Respondent as the President and 2nd Respondent as the Finance Minister carrying out the tax revisions through the hand of the Commissioner General of Inland Revenue (a clear case of Rule by Fiat) and the said revisions were presented to Parliament.

(b) during this period of time when all economic advisers/experts and the IMF were informing the Government of the adverse repercussions of the Tax revisions, the IMF withholding the final tranche of the 2016 EFF facility and the rating agencies downgrading the sovereign rating (completely stopping the access to the international money market), the relevant Respondents did not in any way revisit the ill-advised tax revisions and even considered the rolling back of any of the revisions.

(c) There is therefore, no evidence that the relevant Respondent, did any analysis consideration at the time of the tax reduction or thereafter. In the words of the Auditor General: "no analysis was conducted or presented regarding the estimated loss in tax

revenue, impact on the budget deficit, how the deficit would be financed, or the macroeconomic effects of the policy” (Vide 3.1.4 of the The Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022)

The illegality of the abolition, removal and/or reduction of Taxes made in 2019 effected by the 1(b) and 2nd Respondent

85. It is respectfully submitted that, in addition to being irrational, arbitrary and unreasonable the aforementioned tax revisions were also patently illegal at the time they were made.
86. It is respectfully submitted 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. The Commissioner General by the said notice 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.
87. (a) 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 such reduction.
- (c) This is exacerbated by the fact that the said decision was made without due deliberation in Parliament and was made by the executive acting illegally and with no rational basis.
- (d) Although the newly appointed Parliament did pass laws on these tax reductions with retrospective effect in the latter part of 2020, until the said laws were passed the**

reduction of taxes was patently illegal and caused irremediable damage to the reputation, credit ratings and income of the country.

88. Further, although the 1(b) Respondent 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 revisions (Vide P9a annexed to the Petition), the 1(b) Respondent and the 2nd Respondent did not make any efforts to set out the government strategy or policy for meeting the said shortfall.
89. It is respectfully submitted that during the course of the Arguments, the 2nd and 3rd Respondents made no attempt to justify the said reduction of taxes and the 32B and 32C Respondents (senior members of the Monetary Board) in SCFR 195/2022 clearly stated that this drastic reduction in taxes was the starting point of the economic collapse of the country.

The 2nd, 3rd, 6th, 7th and 10th Respondents failure to revise the tax statutes despite clear evidence of the negative impact of the same

90. It is respectfully submitted that even after implementing the aforesaid Tax revisions and being well aware of the loss of revenue and other negative consequences of the same, the 1(b) and 2nd Respondent in or around October 2020 and 2021 presented bills to Parliament, without disclosing to Parliament all of the negative consequences that had already been faced consequent to and as a direct result of the reduction of Taxes, and got approval for the said tax reductions.

Vide: Table 1 annexed to paragraph 14 of the Objections of the 10th Respondent and paragraph 23 of the Petition in SCFR 212/2022

91. The 10th Respondent in his objections clearly states that these bills were passed following due process. This would necessarily include the 1(b) and 2nd Respondent having obtained the advice of the 10th Respondent. The Objections of the 10th Respondent further make it clear

that the 10th Respondent never sought to warn the 1(b) and 2nd Respondent of the negative consequences of these Tax revisions and supported the passing of the same.

92. It is respectfully submitted that upon the passing of the said bills into law, the said bills were clothed with legality and the previous collection of tax by Administrative action was retrospectively accepted. However, it is respectfully submitted that there is no evidence whatsoever to demonstrate that the 1(b) or 2nd Respondent ever presented an accurate picture of the negative consequences of the said Finance Acts to Parliament – especially in view of the fact that a period of over 9 months had passed since the revisions and the adverse repercussions were apparent.
93. It is further respectfully submitted that the 2nd, 3rd and 10th Respondents supported the said Tax revisions and even proposed the continuance of the same without paying heed to the warnings of the officials of the Central Bank or countering the said arguments/ evidence.
94. (a) Further, by the time the said Bills were presented, Sri Lanka had already suffered the consequences of the said Tax revisions. Rating Agencies had downgraded Sri Lanka, Sri Lanka had lost access to international capital markets, inflation had increased, Sri Lanka's debt had become unsustainable and the final EFF tranche had not been released and the IMF-Rapid Finance relief (as will be elaborated hereinafter) was not released.
- (b) Despite all of this, Parliament was not informed of any of these issues or the manner in which the reduction of Tax had set off a domino effect that had caused these losses to the economy of Sri Lanka and was asked to vote in favour of these taxes on the basis that:
- a. It was part of the election manifesto of the 1(b) Respondent;
 - b. It would stimulate the economy.
 - c.
95. (a) Furthermore, it is submitted that the 6th, 7th and 9th Respondents were aware of the effect that the Tax revisions did have on the revenue of the Government.

(b) Moreover, there is clear evidence that the government sought to bridge some of the shortfall in revenue by resorting to instructing the Central Bank to purchase Treasury Bills and to inject money into the economy (as will be morefully dealt with hereinafter).

(c) The said Respondents however never clearly advised the 1(b), 2nd or 3rd Respondents to reconsider the tax revisions and the low tax to GDP ratio that resulted and to attempt to reduce the deficit without resorting to measures that were unfavourable to the economy.

96. (a) The 6th, 9th and 10th Respondents and subsequently the 7th Respondent were statutorily bound to advise the Government of any fiscal measures that should be taken by the Government in terms of section 64 and 68 of the Monetary Law Act.

(b) However, such advice and warnings are conspicuously absent in the reports submitted by the 6th, 7th and 9th Respondents under Section 64 and 68 of the Monetary Law Act No. 37 of 1974, as amended.

97. It is clear that the 9th Respondent has been conscious of these ramifications, as demonstrated by paragraph 5 of the Objections dated 02/06/2023, wherein it is stated that the revenue and fiscal health of the country was *“exacerbated beyond reversibility, by the removal of Rupees Six Hundred Billion worth of taxes by the state, which crippled the General Treasury, and which led to, inter alia, the downgrading of the country ratings and in turn, the downgrading of the bank ratings.”*

Rating downgrades

98. It is respectfully submitted that the sweeping tax revisions brought in by the 1(b) and 2nd Respondent (with the knowledge and support of the 10th Respondent) resulted in an almost immediate downgrading of Sri Lanka’s credit ratings by rating agencies.

Vide: Table 8 on page 60 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022

99. (a) In or around 18th December 2019 Fitch Ratings downgraded Sri Lanka to a B Negative rating citing the tax revisions as a cause for the immediate downgrade.

Vide: Page 60 of the Audit report pertaining to Fundamental Rights Case No. 195/2022)

(b) By about April 2020 Fitch ratings clearly indicated in their report that the tax revisions and associated shift in fiscal policy had created some challenges to debt sustainability and that projected that *Sri Lanka would lose access to International Bond Markets in 2020*.

Vide: Page 60 of the Audit report pertaining to Fundamental Rights Case No. 195/2022

(c) Fitch Ratings in their April 2020 report also state that *“The authorities are seeking to meet external funding needs in 2020 through multilateral and bilateral support, but securing these funds could be challenging due to the pandemic and its effect on global liquidity and financing conditions.”*

(d) Standard & Poor also downgraded Sri Lanka to B Negative on the 14th of January 2020 and Moody’s Investor Service rated Sri Lanka as B2 Under review for downgrade on the 17th of April 2020.

(d) Fitch Rating also further downgraded Sri Lanka to B Negative on the 24th of April 2020 citing the coronavirus pandemic and the tax revisions and associated fiscal policy as reasons affecting the downgrade.

Vide: Page 62 of the Audit report pertaining to Fundamental Rights Case No. 195/2022

The Respondents response to the rating downgrades

100. The 2nd and 6th Respondents instead of considering the reports of the Rating Agencies criticized the said rating agencies and accused the Rating Agencies of not considering the ‘Economic and Policy Developments’ in the country.

In that regard Your Lordships’ attention is drawn to:

- The Press Release issued by the Ministry of Finance on the 27th of November 2020 ‘Rating Action by Fitch Ratings based on uncorroborated Facts sans due Consideration Given to Recent Economic and Policy Developments’ –Annex 6 (7) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.
- The Press Release issued by the Ministry of Finance on the 28th of September 2020 ‘Moody’s Ratings Downgrade unwarranted; Analysis Erroneous; suggest Reckless Reaction’ –Annex 6 (9) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.
- The Press Release issued by the Central Bank of Sri Lanka dated the 18th of December 2021 titled ‘The Government strongly disputes the hurried rating action by Fitch Ratings’- Annex 6 (8) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.
- The Press Release issued by the Ministry of Finance dated the 19th July 2021 titled ‘Statement by Moody’s Investors Service is ill-timed, ill-judged and hence unacceptable’- Annex 6 (8) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.

101. The Petitioners state that all these press releases were issued at a time when the 2nd and/or 3rd and 6th and/or 7th and 9th and 10th Respondents were well aware that Sri Lanka was in fact facing economic hardships, had unsustainable debt, had depleting reserves and no definite plan of paying its debt.

102. The Petitioner also draws Your Lordships attention to page 232 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022, point 2.9.97 which refers to a meeting of the Monetary Board held on 28th July 2021 under the subject of presentation by SPD on “Recent Developments in the OECD Risk Classification and Moody’s Sovereign Rating s Announcement of the Government of Sri Lanka”

The said meeting clearly highlighted

- a) The fact that OECD Sri Lanka Country Risk classification has been 6/7 in June 2021 and has been downgraded to 7/7.
- b) Credendo financial risk assessment of Sri Lanka was downgraded risk assessment rate from 5/7 to 6/7
- c) Challenging debt repayments amid pressure on the rupee and foreign exchange reserves are increasing the risk of sovereign default
- d) That with no market access financial dependence on China will increase
- e) That IMF financial rescue and debt restructuring might be needed.

Consequences of the 2019 Tax Revisions

103. It is respectfully submitted that the aforesaid Tax revisions and the obstinate refusal of the 1(b), 2nd, 3rd and 10th Respondents to consider the revision of the Taxes, especially in light of changing circumstances, coupled with an irrational and arbitrary refusal to take considered and reasonable evidence-based decisions to resolve the ensuing problems was the primary cause for the sovereign default and the violation of the rights of the Petitioners and the citizenry.

104.(a) It is respectfully submitted that the aforesaid tax revisions, created an **unmanageable budget deficit** and resulted in the immediate **downgrading of Sri Lanka's credit ratings** by Fitch and other rating agencies, and Sri Lanka's **debt being unsustainable**.

(b) In this regard it is submitted that it is clear that the 9th Respondent has been conscious of these ramifications, as demonstrated by paragraph 5 of the Objections dated 02/06/2023, wherein it is stated that the revenue and fiscal health of the country was *“exacerbated beyond reversibility, by the removal of Rupees Six Hundred Billion worth of taxes by the state, which crippled the General Treasury, and which led to, inter alia, the downgrading of the country ratings and in turn, the downgrading of the bank ratings.”*

(c) This in turn led to Sri Lanka having limited access to International Capital Markets (for international borrowing), which in turn resulted in its inability to roll over the debt as it had in the past, and consequently to the debt being categorized as unsustainable.

(d) This immediately resulted in Sri Lanka not being able to obtain sufficient foreign exchange inflows to service upcoming debts or to meet the resultant budget deficit and the depletion of the foreign reserves of the country.

105.(a) **The categorization of Sri Lanka's debt as unsustainable also resulted in Sri Lanka not being able to obtain the final tranche of the IMF Extended Fund Facility and also prevented Sri Lanka obtaining the IMF- Rapid Finance Instrument that was received by many countries during Covid-19, as will morefully explained hereafter.**

(b) The Tax revisions also resulted in an immediate budget deficit exacerbated by the government's reliance on domestic borrowing and printing of money, given its limited access to foreign inflow, as will morefully explained hereafter.

(c) This in turn resulted in high levels of inflation. The said budget deficit also resulted in the use of foreign reserves by the government in an attempt to bridge the budget deficit, as will morefully explained hereafter.

Effect on last tranche of IMF- Extended Fund Facility Agreement

106.(a) On or around 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 catalyse 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 instalments subject to quarterly reviews.

(c) 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) 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.

Vide: *The 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) (P10)*

107.(a) On 1st November 2019, the Executive Board of the IMF completed the Sixth Review of Sri Lanka's economic performance under the program supported by an extended arrangement under the EFF. The final disbursement of SDR 18.550 Million (8th Installment) was expected to be released on 3 April 2020 upon the completion of the 7th Review based on end-December 2019 and continuous performance criteria.

Vide: Page 87 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022

(b) The reduction of taxes 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.

Vide: *The History of Lending Commitments by the IMF is annexed to the original Petition filed in this Application dated 16th June 2022 marked "P-11".*

108.The IMF in their staff review from January 29 – February 2020 also indicated that there was a need to reduce the budget deficit and reconsider the tax revisions.

Vide: Page 90 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022

109.Despite these warnings from the Central Bank officials, Rating Agencies and the IMF and the loss of the last tranche of the Extended Fund Facility, the 1(b) Respondent and the 2nd and 10th Respondent did not consider any revisions to the taxes or any measures to solve the budget deficit or to regain access to capital markets.

The IMF-RFI application

110. Thereafter, in or around April 2020, a request was made to the IMF for a Rapid Financing Instrument for urgent support.

111. The IMF-RFI however indicated that they were not in a position to give an RFI to Sri Lanka as Sri Lanka's debt did not appear to be sustainable. The IMF indicated that in order to give the RFI, they would first have to do a Debt Sustainability Analysis and appoint Debt Advisors to assist in re-structuring of debts. The Secretary to the President, Mr. P. B. Jayasundera however informed the IMF that Sri Lanka would never restructure its debts and would manage without the RFI.

(Vide page 21 of the minutes of the Committee on Public Enterprises, dated 25th May 2022)

112. The Public Debt Department in the board paper dated 25/09/2020 states as follows:

The negotiations with the IMF were not in the economic agenda of the Government in 2020. The Government indicated that there is no intention to go for an IMF bailout programme. Sri Lanka also indicated that the country will obtain RFI only if the IMF support was provided with no conditionality

113. It is respectfully submitted that as demonstrated above, the 1(b) Respondent, 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 expediently. (Vide P13)

114. It is respectfully submitted :

- (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) Sri Lanka was not able to access this relief on account of the fact that the 1(b) Respondent as the Head of the Executive and the 2nd Respondent as the Minister of Finance together with the Secretary to the President did not accede to certain conditions imposed by the IMF.
- (c) In any event the said negotiations should not have been carried out by the Secretary to the President but by the Central Bank, especially in the light of Article 111 of the Monetary Law Act which reads as follows

The Central Bank may represent the Government of Sri Lanka in any dealings, negotiations, or transactions with the International Monetary Fund and shall carry such accounts as may result from Sri Lanka's membership in, or operations with, the fund.

- (d) 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 effect of the downgrading of the country's credit ratings on the official reserves of the country

Subscription to Treasury Bills

115. The tax reductions, combined with the consequent downgrade of Rating Agencies and the inability to repay international sovereign bonds, against the backdrop of significantly low foreign investments, created an urgent need for the Government to explore alternative financing avenues to meet its foreign currency debt service payment obligations.

116.(a) As the government was facing both a rupee crisis as well as a dollar crisis, the 2nd and 10th Respondent made a request to the Governor of the Central Bank, to issue and subscribe to Treasury Bills amounting to Rs. 50 Billion. Despite the serious concerns expressed over such issuance, particularly in relation to the adverse impact on the country's monetary policy, the Central Bank subscribed to the issuance of Treasury Bills and thereafter continued to regularly subscribe to a large number of treasury bills in order to finance the payment of government liabilities.

(b) The Secretary to the President, Dr P.B. Jayasundera also wrote to the 9th Respondent by letter dated 25th March 2020 and 31st March 2020 (Vide 2.9.5 (iv and v) on page 119 of the Report of the Auditor General filed in terms of the Interim Orders given in SCFR 195/2022), instructing the Governor of the Central Bank of Sri Lanka that '*wherever there is a short fall the CBSL is required to purchase such treasury bill*'.

(c) It is respectfully submitted that the said request was irregular and in violation of section 112 of the Monetary Law Act and the Monetary Board's decision to accede to this request was unreasonable and irrational.

117.(a) It is submitted that the excessive injection of Rupee liquidity through the subscription of Treasury Bills was a key factor in increasing inflation and the broad money available in the market and led to the CBSL suffering a loss in market value due to DDO based exchange of the existing stock of Treasury Bills in 2023.

(b) The Government thereafter used the money that was printed to buy foreign currency from the Central Bank thus depleting the reserves of the Central Bank.

Low interest rates

118. It is respectfully submitted that the 9th Respondent also continued to maintain low interest rates. In that regard, it is respectfully submitted that determining the interest rate in the

economy is a pivotal monetary policy instrument, which enables the Central Bank to send signals to the public to make decisions on their spending. The maintenance of a low interest rate together with the injection of rupees into the market promoted public spending. In addition to this the 9th Respondent, in deference to the views of the cabinet and or the 2nd and/ or 3rd Respondents continued to artificially maintain a fixed interest rate.

(a) In a desperate bid to generate revenue that had been lost due to the reduction of taxes, the Secretary to the President, Dr P.B. Jayasundera wrote to the 9th Respondent by letter dated 23rd March 2020 (Vide 2.9.5 (iii) on page 119 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022) instructing the 9th Respondent to ‘facilitate Bank of Ceylon, People’s Bank, National Savings Bank, Sri Lanka Insurance Corporation Limited, Employee’s Trust Fund and Employees’ Provident Fund to work as ‘one corporate team’ working in the national interest to bring down yield rates of Treasury Bills and Bonds to around 7%.”

(b) It is respectfully submitted that the 6th and/or 7th Respondents, should not have acceded to this request from an unconnected to third party and should not have used these organizations for the purpose of manipulating the market as to do so was arbitrary, unreasonable, irrational and manifestly unfair.

Failure to adjust exchange rate as a monetary policy measure

119. A floating exchange rate is **determined by the forces of demand and supply, thereby enabling the rupee to accurately** reflect the value of the Dollar. In contrast, artificially pegging the value of the rupee distorted the foreign exchange market. Thus, the demand for importation increased whilst conversely reducing the country’s competitiveness in the export market.

120. Although some of the Respondents stated that it was the government policy to fix the exchange rate, this is not borne out by the documents that were cited in support of the same. It is respectfully submitted that though through many Government papers the cabinet has indeed stated that they would endeavour to ensure that the rupee rate remains stable, this

cannot be translated into a policy that the rupee rate should be ‘artificially maintained at a stable level’.

121.(a) In order to maintain this Fixed Exchange rate in the face of rising inflation the 9th Respondent used scarce foreign reserves to buttress the rupee, thus further reducing the usable reserves. (Vide the statements made by the 32B & C Respondents in submissions made is SCFR 195/2022 and evidence set out in Section 2.3 of the Auditor General’s report filed in terms of the Interim Orders made by Your Lordship’s court in SCFR 195/2022)

(b) Further the low interest rates, high inflation and fixed exchange rate resulted in the increase of imports and in speculative purchasing. The fixed exchange rate also brought about the rise of the Hawala or Grey Market financing system and disincentivize the deposit of money in banks (as morefully described hereinafter). Thus worker remittances and other foreign currency inflows were reduced and thus the available foreign currency inflows were reduced.

(c) This in turn meant that banks were short on foreign exchange to honour the LCs opened for the excessively high amount of imports that came around as a consequence of the low interest rates, fixed exchange rate and excessive liquidity in the market. The Central Bank therefore began to use foreign reserves to support banks to honour their commitments. Central Bank was also unable to absorb sufficient foreign currency from the banks as people began to not put their foreign currency into the banking system. (Vide the affidavit filed by the 32B and 32C Respondents on the 4th of July 2023).

122.(a) The maintenance of a low interest rate, disincentivizes the public to accumulate their savings, and instead, enables the public to obtain loans at lower interest. This consequently facilitated the public to make significant purchases of foreign currency as it was at a fixed rate at the time.

(b) It is submitted that the ability of the public to purchase foreign currency at artificial values, in anticipation that the fixed exchange rate will be removed, caused a substantial amount of hoarding of the Dollar. As such, there was a scarcity of foreign currency amongst

licensed commercial banks, thereby inducing the Central Bank to inject foreign currency into the market. This led to further depletion of foreign reserves in the Central Bank.

123. Despite numerous requests by the 9th Respondent, the relevant Respondents continuously failed to put adequate restrictions on imports in place or to permit the increase of margins on imports and thus failed to control the leakage of foreign reserves through imports, it is submitted that the decisions made in respect of the interest rates and exchange rates facilitated the promotion of imports.

This necessary requirement to change the existing Monetary Policy was highlighted by the Monetary Policy Committee in a number of meetings or Board papers as set out the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022 including *inter alia* the following:

Page 321 of the Auditor General Report (2.9.147 regarding them Monetary Board Meeting held on 19th January 2022) where the MPC called for

- i) An upward adjustment in policy rates
- ii) Depreciation of the exchange rate
- iii) Reducing the Central Bank holding of Treasury Bills

The ‘Impossible Trinity’ or the ‘Trilemma’

124.(a) The well recognised economic theory ‘the impossible trinity’ emphasizes that an autonomous country cannot simultaneously maintain a fixed exchange rate, and an independent monetary policy, whilst also allowing the free movement of capital.

(b) It is respectfully submitted that the aforesaid series of decisions of fixed exchange rate, low interest rates and an open account system where capital could freely move in and out of

the Country, is against the theory of “Impossible Trinity”, which was recognized by the Economic Research Department of the Central Bank.

Vide: Annexure 1 (h) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

In determining the monetary policy framework the monetary authority is expected to abide by the condition of ‘impossible trinity’, i.e. the choice between independent monetary policy, fixed exchange rate and capital account openness... According to the ‘impossible trinity’ condition, a country cannot have a fixed exchange rate, an open capital account and independent monetary policy (ability to move the domestic interest rate freely) simultaneously. If the capital account [imports] is closed, monetary policy penetrates into domestic demand, regardless of the exchange rate regime. On the other hand with free capital mobility, transmission of monetary policy depends on the exchange rate regime.

125. It is submitted that the 9th Respondent admittedly as did the officers of the Central Bank and the 32B and 32C Respondents constantly requested the curbing of imports, this however did not take place.

Vide: 2.9.102 on page 243 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022 which reads *inter alia* as follows

“g) Dr Jayamaha stated that it is time for the Monetary Board (MB) to assess its own performance. She noted that by law, the MB has been given instruments to deal with situations like this and over the last one and a half years the MB has only been debating about using these instruments.

One of the key instruments in dealing with this situation is the interest rate, which has been fixed, out of concern that the debt servicing cost of the Government would otherwise increase and to facilitate low cost money for business and individuals in this exceptional pandemic environment.

The other instrument which the MB has been given by the statute, namely the exchange rate is also not being used. The exchange rate is fixed by moral suasion and it is currently at an unrealistic level with hardly any transactions taking place at that rate.

The natural way to curb imports is to allow the exchange rate to depreciate to some extent. She stated that the MB has not used the two instruments given to the MB by law, and in doing so MB has also brought the net CBSL reserves to a negative value today.

h) Mr Jayawardena said that repeated attempts by the MB, MBEDMC and the CBSL officers to restrict imports have not been successful. He was of the view that if the Government is not inclined to impose restrictions on imports, then allowing the exchange rate to depreciate may be the only solution. Dr Jayamaha noted that the relaxation of import restrictions by the Government has exacerbated the situation.

i) DG(S) giving a broader perspective to the issue, stated that for the last one and a half years, the CBSL officials have been warning the MB and the Government of what the country would have to face if certain actions were not taken. Unfortunately, the MB and particularly the Government, did not take it seriously.

He pointed out that for the Government to settle USD 1 billion ISB, the Central Bank sold the USD 1 billion to the Government from its reserves and the CBSL also had to provide the Rs 200 billion rupees by way of Treasury bill purchases. He said that the Government does not have foreign currency (FX) nor rupees at present. He noted that the FX issues are significantly impacting the oil and gas sectors and it is spreading to other sector as well.

He stated that the country is now in a crisis. He pointed out that the Sri Lanka's ISBs are trading at deep discounted rates, the debt to GDP ratio is over 100 percent and increasing with no sign of improvement, over 75 percent of government revenue is being used to meet interest payments,

Government does not have FX and GOR has declined to critical levels, Government has no rupees either, the Government is depending on the CBSL for FX as well as rupees for its domestic and foreign financing and very soon the CBSL will be required to meet the obligations of state banks and state entities such as CPC, as well. Sri Lanka cannot go to the international market and borrow, foreign governments are not lending to Sri Lanka because of the credit ratings of the country and its high default risk.

*DG(S) stated that the MB and Government must understand this situation and act now since time is very critical. **He stated that these issues have been repeatedly brought to the attention of the MB by himself as well as by many departments over and over again. However, no tangible decision has been taken so far by the MB.***

126.(a) It is respectfully submitted that the 9th Respondent and the officials of the Central Bank were attempting to rectify the adverse impact of maintaining the 'impossible trinity' by introducing the import restrictions thereby correcting the 'open account; factor in the trinity in view of the avowed policy of the Government dictated to the Central Bank that there must be a fixed exchange rate and low interest.

(b) It is well accepted that the Government (including the 2nd, 3rd and 10th Respondent, for unspecified reasons were reluctant to restrict imports- despite regular requests by the 9th Respondent).

(c) It is respectfully submitted that in the light of this failure to restrict imports the officials of the 8th Respondent repeatedly requested the 9th Respondent to make necessary adjustments to the interest rates and the exchange rate (which tools were available to the 9th Respondent),

but the 9th Respondent failed to follow this advice – all these attempts were to rebalance/rectify the impact of maintaining the ‘impossible trinity’.

127. Thus, it is respectfully submitted that in light of the fixed exchange rate, the low interest rate, and free inflow of imports, the 1(b), 2nd, 3rd, 6th, 7th, 9th, and 10th acted in contravention to the research put forward by the Central Bank, without any reasonable justification and with knowledge of the consequences of their actions and therefore, it is respectfully submitted that the aforesaid decisions were arbitrary, unreasonable, and irrational.

128. Thus and otherwise the foreign reserves of the Central Bank began to reduce even faster than expected and Sri Lanka.

129. It is further respectfully submitted that the 9th Respondent cannot be heard to say that they were prevented from taking these decisions by the 2nd and/or 3rd Respondents and/or the cabinet of ministers, as the Monetary Law clearly demonstrates that the Monetary Board is charged with determining the monetary (as opposed to fiscal) policy of the country. In fact this is clear by the fact that the 9th Respondent subsequent to April 2022 made all of these decisions regarding the change in exchange rate and policy rate without recourse to any political will or dictate.

130. It is therefore submitted that the 9th Respondents accession to the requests of the external actors such as the Secretary to the President (specially with regard to the fixing of margin deposits on LCs etc) and of the 2nd and 3rd Respondents, was an abdication of statutory responsibility and in specifically in the circumstances and in light of the knowledge available to them when making this decisions, acted unreasonably and irrationally and should be held to account for the same.

2019-2020 Warnings of the CBSL officials with regard to the drain on foreign reserves and need to approach the IMF

131. At around this time officials of the Central Bank regularly warned the 6th, 10th, and 9th Respondents of the drain on foreign reserves, the desperate need to increase existing reserves and even called on them to consider approaching the IMF.

132. In that regard Your Lordships' attention is drawn to the following papers which consist of some of the many warnings issued by the officials of the Central Bank as early as 2020.

Matters noted at the Monetary Board Meeting on 26th December 2019- relating to Board Paper No. MB/ER/47/3/2019 review of the Monetary Policy Stance

- a) *The successful continuation of the IMF-EFF program and improving sovereign rating are necessary to maintain investor confidence.*
- b) *The reform agenda under the IMF-EFF program is needed to enhance investor confidence, strengthen medium term potential of the economy while bolstering the fiscal and external sectors.*

Vide: 2.9.1 on page 117 the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022

Matters noted at the Monetary Board meeting held on 29th January 2020 relating to Board Paper No. MB/ER/3/3/2020 review of the monetary Policy Stance

- a) *Gross official reserves increase to US Dollars 7.6 billion by end December 2018. Preliminary cash flow projection for 2020 show that reserves could decline to around US dollars 6 billion by end May 2020.*
- b) *Accelerating credit growth and economic growth could lead to increased pressure on the balance of payments, which needs to be managed through appropriate macro-prudential and tax measures.*

c) *Urgent financing of upcoming foreign currency debt repayment is necessary to avoid near term pressures on the exchange rate and the level of reserves (MPC views)*

Vide: 2.9.3 on page 117 of the Report of the Auditor General which was made in terms of the Interim Order of Your Lordships court in SCFR 195/2022

Pre- MPC presentation, 01.07.2020, CBSL, annex 24(4)- 9 of at page 234

“These low inflows will result in some additional financing requirements, (exceptional financing from the IMF). In the absence of further financing, there is the risk of running down reserves to finance the current account deficit.

Foreign financing avenues have been reduced considerably with SL’s inability to access international financial markets with the prevailing high secondary market yields of GOSL ISBs... In the current context, it is unlikely that the access to international markets is possible for the rest of the year, necessitating alternative financing sources

Vide: PRE- MPC PRESENTATION, 01.07.2020, CBSL, ANNEX 24(4)- of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.

REVIEW OF THE MONETARY POLICY STANCE- MPC Meeting no. 5- JULY 2020- 1.69 k) Dated 03.07.2020

Foreign debt repayments in the remainder of 2020, including the October 2020 ISB payment, could exert pressure on the external sector, unless the earmarked credit lines such as the IMF Rapid Financing Instrument (RFI) facility and project and programme loans from other development partners materialize. Thus external sector vulnerabilities

(foreign debt servicing, foreign financing, maintaining reserves adequacy) could amplify ahead.

Foreign financing options remain limited due to volatile global market conditions... Financing arrangements from IMF and other multilateral and bilateral agencies are yet to materialize.

Subject of the need to explore the possibility to commence discussions with International Sovereign Bond investors on future liabilities.

Budget deficit increased in first 4 months of 2020 amidst a reduction in revenue collection due to the policy measures taken in December 2019 and January 2020, and following COVID.

“...it is essential to implement appropriate structural adjustments that could result in improved investor sentiment and sustained high economic growth over the medium term”

Decline of NFA of the banking system mainly due to deterioration of foreign reserves of the central bank.

Foreign financing options remain limited due to volatile global market conditions... financing arrangements from the IMF and other multilateral and bilateral agencies are yet to materialize.

Government revenue declined due to low tax revenue collection mainly from VAT, NBT and income taxes reflecting the impact of the policy changes made in December 2019.

Gross official reserves are projected to decline significantly, foreign financing sources have been severely affected, limiting SLs ability to access international financial markets. High

foreign debt service payments along with large fiscal deficits could trigger further downgrades by rating agencies, worsening prospects of accessing foreign capital markets.

Vide: ANNEX 24(4)- 9 of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

REVIEW OF THE MONETARY POLICY STANCE- AUGUST 2020, Date submitted to monetary board- 19.08. 2020

Large scheduled foreign debt service payments due in second half of 2020 continue to threaten the stability of the external sector by possibly causing a decline in gross official reserves.

SL's foreign financing options still remain restricted. Access to international financial markets before the October 2020 ISB payment seems costly. "Exceptional concessional financing arrangements from the IMF and other associated agencies are yet to be confirmed. This situation could possibly result in a sizable reduction in gross official reserves over the next one year horizon."

Reserve adequacy relating to short term debt and liabilities has gradually worsened. "If not managed carefully, the continuation of this trend could trigger a further downgrade in sovereign ratings and depreciation pressure on the exchange rate"

Vide: ANNEX 24(4) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

The Monetary Board meeting held on 19 August 2020 relating to the Board paper No. MB/ER/29/3/2020 – Referred to at page 126 of the Audit Report pertaining to SCFR case No. 195/2022

Foreign currency debt service payments of the government are projected to be around USD 2.2 billion from August to December 2020. Beyond 2020, in order to meet future debt service commitments, external debt financing of around USD 5-6 billion is required annually in the medium term. Each of the first three quarters of 2021 has foreign currency debt service obligations of over US dollars 2 billion. Given this situation, arranging required financing to meet next year's debt service obligation must be done on a priority basis.

Governor's Note submitted to the Monetary Board meeting held on 26 August 2020 under the 25/09/2020, Public Debt Dept,

Page 21- Letter from the Governor to the 2nd Respondent about the challenges in Public Debt Management and the way forward:

Noted that: A major part of the proceeds from commercial borrowing sources has been utilized for meeting rising foreign currency debt servicing obligations.

It was stated that there is high probability that the international reserves could drop to critical levels during 2021 if the expected proceeds from major financing sources do not materialize. The total foreign currency debt service payments of the Government and Central bank for 2021 are projected at USD 7.3 billion.

Weak Ratings not only affect the Government ability to access international markets, but have ripple effects on the strength of domestic financial and non-financial institutions which have accessed the global financial market.

Vide: Annex III- Page 21-149- of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

MONETARY BOARD CBSL- REVIEW OF THE MONETARY POLICY STANCE MPC Meeting no. 5, MINUTE PAPER, Meeting number 24/2020, Date 08.07.2020

Gross official reserves declined from 6.7 billion end 2019 to 7.6 billion end June 2020.

Reserve adequacy= 4.2 months imports and 51% of short term liabilities as at end June 2020.

Reserves will continue to decline “unless foreign currency financing, including an IMF facility is secured”

“External debt financing of around USD 5.6 billion is required annually in the medium term” to meet future debt service commitments.

Monetary policy review: August 2020, PRE- MPC PRESENTATION, CBSL, 12.08.2020 Page 000202 (page 79 of the presentation). “Low inflows to the financial account will result in some additional financing requirements (ex: exceptional financing from the IMF). In the absence of further financing, there is a risk of running down reserves to finance the current account deficit).

Vide: PRE- MPC PRESENTATION, 01.07.2020, CBSL, ANNEX 24(4)- 9 at page 000234 of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023.

133. The 6th Respondent in his report to the 2nd Respondent in terms of section 68 of the Monetary Law Act, dated the 4th of August 2020, warned the 2nd Respondent that:

*There is a high probability that international reserves could drop to critical level in 2020 due to the large foreign debt service payment falling due in the period ahead...scheduled debt servicing obligations (excluding SLDB and FCBU loans) of around US \$2.3bn are falling due in last five months of 2020...**most of the loans from multilateral sources referred to above are likely to follow an IMF facility for which the IMF has indicated debt sustainability to be a significant impediment.***

Vide: Annex 1 of the documents filed by in SCFR 212/2022 by the 8th Respondent by way of motion dated 6 December 2022

134. It is respectfully submitted that although this report was also copied to the 1(b) Respondent, the only response received was a letter dated 2nd September 2020 sent by the Secretary to President, Dr. P.B. Jayasundera, whereby the Secretary to the President instructed the 9th Respondent to *look at strategies in keeping with the government policy and not come up with conventional guidance.*

Vide 1(b) R 1 b annexed to the 8th Respondents motion dated 20th of December 2022

Payment of debts of US \$ 1bn in October 2020

135. It is respectfully submitted that thus and otherwise, as hereinbefore demonstrated, by October 2020:

- a) Sri Lanka was scheduled to have very high debt repayment from 2020-2025 amounting to approximately USD 5.6 bn a year.
- b) Sri Lanka was facing a significant budget deficit due to Tax revisions
- c) Sri Lanka was unable to obtain foreign currency inflow by way of debts and could not approach the IMF as Sri Lanka's debt was unsustainable.
- d) Sri Lanka had been downgraded by rating Agencies and was unable to raise significant loans and most bi-lateral or multi-lateral agencies were only willing give loans subsequent to Sri Lanka engaging with the IMF
- e) Sri Lanka did not have a strong foreign currency buffer and needed to manage with existing reserves for essential imports and for servicing of debts
- f) Sri Lanka's reserves alone were insufficient to pay the debts that were falling due;

- g) Sri Lanka had not received the final Tranche of the EFF and/or the Rapid Financing Instruments.
- h) There was a desperate need for Sri Lanka to make its debt sustainable and to approach multilateral lenders such as the IMF and/or to restructure its debts.

136. It is respectfully submitted that notwithstanding compelling evidence and warnings regarding all of the above the 1(b) Respondent and the 2nd Respondent acting on the advice of and in collusion with the other Relevant Respondents and the Secretary to the President, Dr. P.B. Jayasundera:

- a) Refused to restructure its debt or conduct or conduct a debt sustainability analysis
- b) Refused to accept the rating agencies advise and rejected the ratings given by the independent rating agencies;
- c) Further depleted the limited foreign reserves by paying US\$ 1 bn in October 2020.

137. It is respectfully submitted that although the Secretary to the President indicated that the economy would grow and that these debts could be met by:

- a) Exploiting already existing production capacity which is operating well below its capacity,
- b) By regulating External Resource Mobilizations;
- c) By redesigning Trade and Industry Policy to create export oriented industrial strategy and improve competitiveness in import substitution economic activities
- d) Getting debt re-profiling assistance from multi-lateral and bi-lateral donors
- e) Financial investments in Swap arrangements
- f) Creating a growth friendly policy to revive the economy

Vide: 1(b) R 1 b annexed to the 8th Respondents motion dated 20th of December 2022.

138. It is respectfully submitted that other than a few short term currency swap agreements, none of these measures succeeded or could have been expected to succeed in generating sufficient foreign currency incomes to meet the budget deficit and to service foreign currency debt repayments that were falling due.

139.(a) It is respectfully submitted that in any event, these ideas were not in keeping with the advice of the officials of the Central Bank of Sri Lanka (who were the persons with the most access to relevant research and statistics and best able to predict future financial and economic movements).

(b) Further this refusal to follow or give credence to the warnings of the 6th Respondent and the officers of the Central Bank or to conduct any debt sustainability analysis, in the face of looming debt and being unable to access international capital markets, was irrational and arbitrary and a complete dereliction of duty and disregard for the Public Trust reposed in the said Executive and Administrative officers.

(c) The 1(b), 2nd, 10th Respondents and the Secretary to the Treasury by these actions failed patently to use the full resources available to them for the benefit of the people, but instead chose to obstinately continue on the path chosen by them irrespective of the warnings relating to the possibility of default and the serious economic consequences the people of Sri Lanka would have to face.

140. It is respectfully submitted that as predicted by the officials of the Monetary Board and the 6th Respondent, no significant loans were received by Sri Lanka until the default on sovereign debt in May 2022 and the Relevant Respondents continued to service debts until the reserves had declined to an extent that debt could not be paid any longer as the reserves had depleted to around 1.8bn in April 2022 out of which a large majority was not usable reserves.

Vide: Table 2 in the audit report pertaining to fundamental rights case NO. 195/2022

Warnings of CBSL officials regarding the declining reserves that were watered down when communicated to the 2nd and 3rd Respondents

141.(a) It is respectfully submitted that the officials of the Central Bank continuously issued very serious warning signals but these were not heeded and the 3rd, 7th and 10th Respondents insisted on not going to the IMF or restructuring Debt.

(b) It is respectfully submitted that these decisions were completely irrational and unreasonable as with limited foreign currency inflows there was no possibility that the country could continue to pay all its debt.

142. In that regard Your Lordships' attention is drawn to the following warnings issued by the Market Operations Committee of the Central Bank:

Market Operations Minute Paper dated 22.11. 2021 (Vide File 7, Annexure 15-2, page 61 of the files handed over by the 8th Respondent in keeping with the Interim Order of Your Lordship's court and the subsequent motion filed by the Petitioner in SCFR 212/2022)

MOC deliberated on the critically low level of usable reserve positions of CBSL. MOC highlighted the significant FX requirement coming from two state banks (PB and BOC) in relation to energy related bills which are falling due in coming months.

Market Operations Minute Paper dated 30.12. 2021 (Vide File 7, Annexure 15-3, page 110 of the files handed over by the 8th Respondent in keeping with the Interim Order of Your Lordship's court and the subsequent motion filed by the Petitioner in SCFR 212/2022)

MOC highlighted that they have taken all possible measures and actions to inform the relevant authorities including the Governor, MB on possible policy tools that are available for the CBSL to address the current situation but, **certain seemingly inconsistent and imprudent policy decisions have been taken place and this had led CBSL as well as the country to reach this extremely critical situation with virtually no usable reserves at CBSL, default situation with regard to high government debt service payments** and CBSL's own liabilities. It was highlighted by January 2022 debt service payments will amount to USD 1500

million and there is no liquid reserves in CBSL and there are uncertainties about the timing of expected inflows.

Market Operations Minute Paper dated 19.01.2022 (Vide Annexure 15-4, page 52 of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

IOD highlighted that **by the end of January 2022, the level of liquid foreign reserves may be at negative levels causing FX defaults by CBSL** in absence of adequate FX inflows...

Minute Paper of IOD dated 4th August 2021, Vide Annexure 2(c)-5, page 17 of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023

Deputy Governor - DG(S) stated that for the last 1.5 years CBSL officials have warned MB and the GoSL that the country will have to face severe issues if certain actions were not taken. He also noted that FX issues are significantly impacting the oil and gas sectors. He highlighted that the country is now in a crisis, GoSL doesn't have FX, GOR has declined to critical levels, GoSL has no rupees, GoSL is depending on CBSL for FX as well as rupees. He also stated that the situation is critical now as SL cannot go to international market and borrow because of the credit ratings of the country and its high default risk. And so far no decision had been taken by the MB.

8-12-2021 The Monetary Board granted approval to sell the Gold reserves. (vide Minute Paper of Monetary Board dated 8th December 2021 Vide Annexure 2(a)-12, page 6 of the files handed over by the 8th Respondent in keeping with the Interim Order of Your Lordship's court and the subsequent motion filed by the Petitioner in SCFR 212/2022.

143. It is respectfully submitted that it is in this context and with full knowledge of the precarious position of the country's reserves that the 7th, 1(b), 3rd and 10th Respondent settled a US \$ 500 million bond that matured in January 2022.

Necessity for re-structuring of loans in 2022

144.(a) The 7th Respondent and the 10th Respondent in their objections have confidently asserted that the Debt default was premature and that in fact Sri Lanka was to receive foreign funds that would have permitted Sri Lanka to continue to service debts.

(b) It is respectfully submitted that these assertions are manifestly false and false to the knowledge of the 7th and 10th Respondents. It is extremely untenable that any country would give Sri Lanka any significant loans in light of the fact that Sri Lanka's debt was unsustainable, rating agencies were signalling looming default, Sri Lanka clearly did not even have sufficient reserves to purchase essential imports.

(c) The documentation provided by the 7th and 10th Respondent in support of these assertions also only demonstrate that funds were requested and that some negotiations were ongoing but do not show that there was a confirmation of any of these discussions materializing into foreign currency inflows. In fact, the only foreign currency that Sri Lanka could obtain were credit lines or short-term swaps, some of which were not usable.

145. In that regard the Petitioner's draw the attention of Your Lordships respectfully to Table No. 4 of the Auditor general's report in SC/FR/195/2022 at page 34 where the Auditor General has set out the actions taken by the CBSL to enhance the amount of official reserves and in particular to Item No. 7 with regard to the requests from regional Central Banks and responses thereto at page 36.

Use of Reserves for the servicing of debt

146. It is respectfully submitted that Reserves should not have been used for the servicing of debt and that the use of the same is a violation of law by the 9th Respondent

147. 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.

148.(a) In that regard, it is respectfully submitted that, Section 66(1) of Monetary Law states that in order to maintain the international stability of the Sri Lankan rupee, the Monetary Board shall endeavour to maintain among the assets of the Central Bank an international reserve adequate **to meet any foreseeable deficits in the international balance of payments.**

(b) It is respectfully submitted that in these circumstances, the decision of the 9th Respondent to use official reserves for the service of large debt payments, was irrational, unreasonable and arbitrary.

(c) It is respectfully submitted that, had the 9th Respondent insisted that the said money could not be disbursed for settlement of loans, the 2nd and 3rd Respondents would have been forced to approach the IMF at an earlier date and to restructure loans as appropriate.

149. It is respectfully submitted that the negative impact of the persistent use of foreign reserves without replenishment was also highlighted by the 6th Respondent in the report submitted to the 3rd Respondent by him on the **15th of September 2021**, which reads as follows:

The large, excessive and unprecedented levels of public sector borrowings and the use of gross official reserves to meet foreign currency debt obligations of the Government without adequate replenishment, cannot continue without intensifying the already observed pressures on attaining the objectives of the Central Bank, namely the maintenance of economic, price and financial system stability, as per the Monetary Law Act

150. In fact as a result of the mismanagement of the Official Reserves 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 said decline signifies a reduction from 4.2 months of import cover to 1 month within a year.

Vide: P16 and the documents titled “Observations of the Auditor General Pertaining to the Fundamental Rights case No. 195/2022.”

151. **Further, 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.**

152.(a) As such, the 9th Respondent Board was 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.**

(b) The 9th Respondent is further mandated by law to continue to submit periodical reports to the Minister in charge of the subject of Finance until the threat to the international stability of the rupee has passed.

153. It is respectfully submitted that the 9th Respondent has violated the mandatory statutory provisions as contained in sections 66(1) and 68(1) of the Monetary Law.

The failure on the part of the 6th, 7th, 9th, and 10th Respondents (collectively and individually) to take appropriate steps to maintain monetary and price stability and also thereby to prevent the decline of foreign reserves.

154. In terms of section 5 of the Monetary Law Act, the Central Bank has two core objectives, namely economic and price stability, and financial system stability with a view to encouraging and promoting the development of the productive resources of Sri Lanka.

155. Section 63 (1) of the Monetary Law Act states that '*the Monetary Law Board shall endeavour to regulate supply, availability and cost of money as to secure as far as possibly by action authorized by this act, the objects mentioned in section 5 and shall for that purpose have regard to the monetary needs of particular sectors of the economy as well as of the economy as a whole*'.

The fixing of the Exchange Rate and the impact on the Economy

156.(a) It is respectfully submitted 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) It is respectfully submitted that 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*' and it appears instead that the 9th Respondent merely fixed the rupee exchange rate based on instructions given to the 6th Respondent by the Secretary to the President.

Vide: Page 2 of Document 3 annexed to the Motion dated 20th December 2022 in case No. SCFR 195/2022).

157. It is respectfully submitted that the 3rd, 7th, 9th and 10th Respondents failed thereafter to **devalue the Sri Lankan Rupee in a timely and appropriate manner, despite widespread calls and demands to do so.**

158.(a) 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).

(b) It is respectfully submitted that, 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 herein below.

159.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.

Vide: P17(a), P17(b) and P17 (c) annexed to the Petition in SCFR 212/2022

160.It is submitted that in the context of the extremely low level of foreign reserves and the difficulty in obtaining proper financing, it was necessary for the 9th Respondent to prudently manage the monetary policy of the country.

161.(a) In that regard, 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.

(b) Initially, the 9th Respondent used the foreign reserves of the country to maintain this artificial exchange rate and when there were insufficient foreign reserves resorted to moral suasion, writing directly to banks, and publishing rates daily on its website.

Vide: P18 and P19 annexed to the Petition and Monetary Board Level External Debt Monitoring Committee (MBEDMC) at its meeting held on 15 April 2021 as stated on page 168 of the Audit Report including Observations of the Auditor General Pertaining to the Fundamental Rights case No. 195/20023.

162.(a) Further 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, 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.

163. The actions, inactions and practices used in respect to maintain the stability of the currency was also in complete contravention of the advice given by the IMF to Sri Lanka regarding the management of its exchange rate.

Vide: Page 21 of the IMF Country Report No. 22/92 (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).

164. It is respectfully submitted 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 3rd, 7th, 9th and 10th Respondents did not at any time act in such a manner, exacerbating the stability of the currency.

165. It is respectfully submitted that, **in terms of the Monetary Law Act, monetary policy is completely within the ambit of and under the control of the 9th Respondent.** Nevertheless, in determining whether to peg the exchange rate or not, the 6th, 7th and 9th Respondents often bowed to the wishes of the 2nd and /or 3rd Respondent, thus making the determination of the exchange rate a knee-jerk reaction based on political considerations, and not a scientific, researched exercise.

166. Two of the many instances where the 9th Respondent simply followed the instruction of the Secretary to the President and/or the 3rd Respondent are cited here for Your Lordships’ consideration.

Vide: The letter sent by P.B. Jayasundera, Secretary to the President to the 6th Respondent on the 23rd of March 2020 (Document 3 of the documents filed by the 28th Respondent with motion dated 20th December 2022 in SCFR 195/2022) where P.B. Jayasundera said at item 9 on page 2

“take immediate steps to stabilize Exchange Rate preferably around Rs. 185 USD (commercial Bank selling rate) to prevent uncertainties to the business community and unwarranted speculation...”

Vide: Annex 2(c)- 5) of the documents handed over by the 8th Respondent in response to the motion filed by the Petitioner in SCFR 212/2022 and the undertaking given by the 8th Respondent in Your Lordships court on the 8th of May 2023, page 18- Minute Paper to Monetary Board dated 4th August 2021

*Chairman has stated that **the Minister of Finance was strongly against any adjustment being made to the exchange rate.***

167. (a) Furthermore, upon the loan receipt of USD 500 Mn from China Development Bank, on 15.04.2021, Bank of Ceylon and People's Bank were given USD 75 Mn each (i.e. USD 150 Mn in total) by the Treasury to bring down USD/LKR exchange rate Rs. 192 levels. The two state banks were instructed to sell USD 50 Mn to Central Bank of Sri Lanka and utilize the balance of USD 100 Mn, to stabilize the USD/LKR exchange rate at 192.00 levels.

Vide: Page 169 of the Audit Report including Observations of the Auditor General pertaining to the Fundamental Rights case No. 195/20023.

(b) Therefore, it is respectfully submitted that USD 100 million was employed to artificially sustain the exchange rate at Rs. 192, in an arbitrary, irrational, and capricious manner given the prevailing circumstances at the time as the Central Bank of Sri Lanka was facing a severe dollar shortage in the market – whether it was on the instructions of the 2nd or 3rd Respondents or any other State official, the final decision on pegging the dollar was that of the 9th Respondent and no other! Any, in doing that, it is respectfully submitted, the 9th Respondent did violate the mandatory provisions of the Monetary Law.

The releasing of the peg – uncontrolled free float! – the violative conduct of the 7th Respondent

168.(a) It is respectfully submitted that despite recommendations of the 9th Respondent to the contrary, the 7th Respondent, at a meeting participated by 24 licensed Commercial Banks and 6 Licensed Specialized Banks and several other persons, stated that "*certain trades may take place beyond the exchange rate stated by CBSL considering the greater flexibility that has been permitted.*"

Vide: Paragraph 340 of the Affidavit of the 32B and 32C Respondents dated 4th July 2023 in fundamental rights case No. 195/2022

(b) Consequent to the aforementioned statement by the 7th Respondent, there was an exponential increase in terms of a further overshoot of the exchange rate in the market to Rs 240/= (inter-bank rates), by or around 27/04/2022.

Vide: Paragraph 342 of the Affidavit of the 32B and 32C Respondents dated 4th July 2023 in fundamental rights case No. 195/2022

(c) Thereafter, the rate kept rising drastically and eventually recorded the historically highest exchange rate of approximately Rs. 365/=. The exchange rate in the Hawala system reached Rs. 420/=.

Vide: Paragraph 343 of the Affidavit of the 32B and 32C Respondents dated 4th July 2023 in fundamental rights case No. 195/2022

169. It is respectfully submitted that the statement made by the 7th Respondent which resulted in far reaching consequences to the economy was irrational, arbitrary and capricious as it was in direct contravention of the decisions taken by the 9th Respondent where the 9th Respondent most categorically and unequivocally decided on 07/03/2022, that the Exchange rate shall be not more than Rs. 230 and the Director of Economic Research was directed to monitor the status and to report back to the 9th Respondent for the 9th Respondent to consider making any further adjustments, if necessary, pursuant to the material/ data presented by the Director of Economic Research.

Vide: Paragraph 336 of the Affidavit of the 32B and 32C Respondents dated 4th July 2023 in fundamental rights case No. 195/2022

170. It is respectfully submitted that the 9th Respondent was aware and conscious of the serious dangers and consequences of an overnight free-float of the rupee, specifically and expressly decided inter-alia that:-

The decision of the 9th Respondent on depreciation was as follows:

*"allow the market to have a greater flexibility in the exchange rate with immediate effect and communicate that the **central bank is of the view that forex***

transactions would take place at levels which are not more than Rs. 230 per us dollar"

Vide: Paragraph 333 of the Affidavit of the 32B and 32C Respondents dated 4th July 2023 and the press release issued by the Central Bank Annexed 32R- 44 in fundamental rights case No. 195/2022.

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.

171. As averred 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.

172. The aforesaid '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.

173. 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.

Decline of Remittances as a consequence of the artificial pegging of the Rupee and the consequent effect on the foreign reserves of the county

174. As a direct consequence of the pegging of the rupee 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.

Vide: P-20

175. Upon the Central Bank and the 7th Respondent directing 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 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.

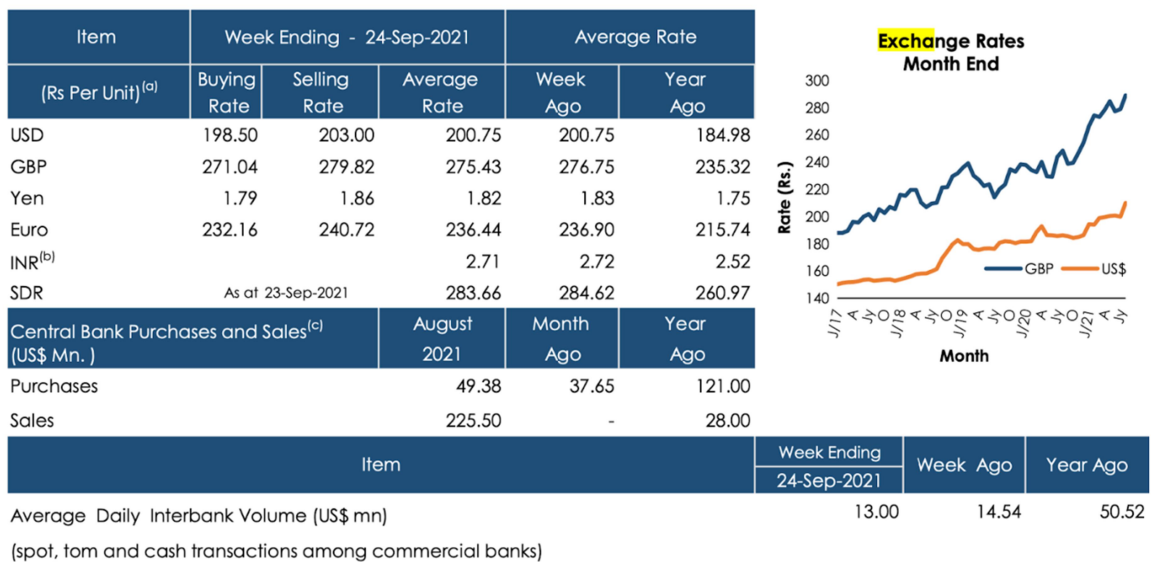
- g) By February 2022, **which is the month for which official data was available** (at the time this Application was instituted) the official remittances had fallen to USD 204 million compared to USD 579 million in February 2021. By July 2022 after relevant measures were introduced post default remittances increased to USD 325 by July 2022.

Vide: *The 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 (“P-21”)*

Auditor General’s Report in 195/2022 Table 17 at page 98

In demonstration of the above, Your Lordships’ attention is drawn to the data published by the Central Bank with regard to the exchange rates within that time period:

4.1 Exchange Rates

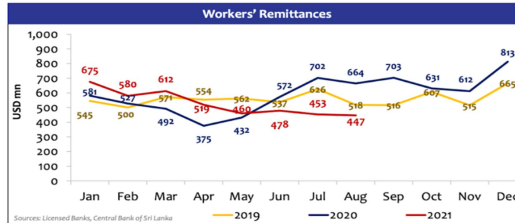


Vide: CBSL Exchange Rates on September 2021 as published in the Central Bank Weekly Economic Indicators dated 24th September 2021 (P22) and Diagram 4.1 of the Central Bank Weekly Economic Indicators for September 2021 (P-23) and pleaded as part and parcel of this Petition.

176. Furthermore, Your Lordships’ attention is drawn 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)

27

THE SIX-MONTH ROAD MAP FOR ENSURING MACROECONOMIC & FINANCIAL SYSTEM STABILITY



Vide: *Six-Month Road Map for Ensuring Macroeconomic & Financial Stability, appearing at page 27 of the document produced marked as “P8”*

177.(a) It is respectfully submitted that as afore stated 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) Further 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.

178. In this regard it is respectfully submitted that there is a direct 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 citizens of the country.

179.(a) In this regard it is submitted 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, instead, however, the Rupee was 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. (Vide P24(a)).

(b) It is respectfully submitted in this regard that the 9th Respondent agreed on the 7th of March 2023 *to allow them a market to have a greater flexibility in the exchange rate with immediate effect and communicate that the CBSL is of the view that forex transactions would take place at levels which are not more than Rs.230 per US Dollar. The Monetary Board also decided to discontinue all special incentive schemes offered in terms of the conversion of workers' remittances.*

180. Notwithstanding the above the 7th Respondent released the rupee thereby leading to a number of adverse consequences. This release was also not done concurrently with prudent management measures, such as the regulation of interest rates etc.

The 6th, 7th, 9th and 10th Respondents financing of Domestic Debt, Purchase of Treasury Bills, Manipulation of the Market and contribution to rising inflation

181. It is respectfully submitted that in view of the fact that the Government no longer had any credible foreign currency inflows, the Government relied completely on domestic debt. This was raised by demanding that the Central Bank issue and purchase Treasury Bills and set rates. This is clearly proved by the documents filed by the 28th respondent in SCFR 195/2022.

182.(a) It is submitted that the Central Bank was initially reluctant to purchase/engage in the excessive injection of rupee liquidity through the Central Bank purchases of Treasury Bills from the primary market, as this could also destabilize the foreign exchange market, as set out in the letter dated 11th March 2020 sent by the 6th Respondent to the 1st Respondent.

Vide: Document 1 of the documents filed by the 28th Respondent with motion dated 20th December 2022 in SCFR 195/2022).

(b) However, upon receipt of a letter from the Secretary to the President to the 6th Respondent in very strong terms insisting that treasury bills amounting to Rs. 50 billion be immediately issued by the CBSL, the CBSL acceded to this request.

Vide: Page 3 of Document 1 of the documents filed by the 28th Respondent with motion dated 20th December 2022 in SCFR 195/2022

(c) The Secretary to the President also wrote to the 6th Respondent by way of letter dated 23rd March 2020, allegedly in terms of a cabinet decision held on the 18th of March 2020 and directed the 6th Respondent to make a number of decisions regarding Monetary Policy, including:

- i. Providing Rs. 50 billion to the General Treasury
- ii. To facilitate Bank of Ceylon, People's Bank, National Savings Bank, SLIC, EPF and ETF to work as one corporate team working in the national interest to bring down the yield rates of treasury bills and bonds to around 7% this would enable the government to reduce its interest cost on domestic debt which is estimated to be around Rs 750bn for 2020.
- iii. Take immediate steps to stabilize exchange rate preferably around Rs. 185 USD (Commercial Banks selling rate) to prevent uncertainties to the business community and unwarranted speculation.
- iv. Impose a maximum interest rate of 15% on local credit card transactions.

Vide: Document 3 of the documents filed by the 28th Respondent with motion dated 20th December 2022 in SCFR 195/2022

183.(a) The 10th Respondent also wrote to the 6th Respondent on the 25th of March 2020 instructing the 6th Respondent that the Treasury has decided to request the State Banks, (having considered the secondary market trading levels of the Treasury Bills at its 3

maturities) to bid at 7 per cent for 3 months maturities, 7.25% for 6 months maturity and 7.50% for 12 months maturity.

Vide: documents filed by the 28th Respondent with motion dated 20th December 2022 in SCFR 195/2022)

184.(b) Notwithstanding the fact that these were all matters of monetary policy falling under the purview of the 9th Respondent, the 6th Respondent and the 9th Respondent, without obtaining and following the research of the departments of the Central Bank as to the impact of these decisions blindly acceded to the same and thereby surrendered the discretion that should have been exercised by them – this was done when there was adequate information provided by the officials of the Central Bank as to the adverse repercussions of such a policy.

(c) It is respectfully submitted that the 9th Respondent in fact failed and or neglected to do this as stated below:

- a) The 9th Respondent held interest rates low till about mid-2021. Although the justification given was that there was a need to stimulate the economy post covid, in fact the said low interest rates led to increased consumption instead of investment.
- b) Further, the said reduction in interest rates without adequate import controls resulted in an increase of imports and resulted in a further drain on the foreign reserves of the country
- c) Failure to control imports. Although a number of import restrictions were laid down, importers were allowed to by-pass these restrictions by use of the Open Account system. This led to the use of the Havala/ Undiyal system and also of stockpiling of imports.
- d) All of these caused a further drain on reserves. It is respectfully submitted that even in instances where the Monetary Board decided to impose Margin Credit on LCs the 10th Respondent together with the 3rd Respondent and the Secretary to the Treasury

managed to prevent this. It is noteworthy that in fact the highest level of imports was recorded in 2021.

- e) Financing the domestic debt by printing money and/or the CBSL subscribing to government Treasury Bills, which created inflation and in turn resulted in pressure on the rupee.

185. It is respectfully submitted that this was in direct contraventions of the theory of ‘impossible trinity which the relevant Respondents should have been aware of and was so warned by the officials of the Central Bank as submitted hereinbefore.

186. It is reiterated that the negative impact of the persistent use of monetary financing was also highlighted by the 6th Respondent in the report submitted to the 3rd Respondent by him on the 15th of September 2021, which reads as follows:

The persistent use of monetary financing even to meet day-to-day expenses of the Government has put the Central Bank into a precarious situation, where its balance sheet strength has deteriorated significantly, as demonstrated by the low equity to domestic assets ratio. This poses significant challenges in the implementation of monetary policy, with pressures on conducting open market operations in accordance with the current monetary policy stance. Further, this limits to Central Bank's ability to intervene in a situation where stress levels in the domestic financial system remain intensified, thereby creating risks to ensuring the stability in the financial system

187.(a) It is respectfully submitted that while it is without doubt that, given the circumstances there were short term gains by the adoption of these policies, the 9th Respondent, who had all the officials and economic analysts at their disposal was charged with not only taking short term measures but balancing the short-term gains with the long-term losses to the country and on deciding on the best way forward.

(b) It is respectfully submitted that while there is some evidence that the 9th Respondent did consider the short-term benefits as against the long-term losses, the 9th Respondent failed to make a calculated reasoned decisions based on the evidence before them as set out hereinbefore.

The continued refusal by the 1(b) Respondent, the 2nd, 3rd and 7th Respondents to seek the assistance of the International Monetary Fund (IMF), despite widespread calls and demands to do so

188.(a) It is respectfully submitted 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**.

(b) It is respectfully submitted 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.

189.As demonstrated in the Petition and these submissions, 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.

In that regard Your Lordships attention is drawn to the following

'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-compendiously annexed to the Petition as "P-26".

190. Notwithstanding the repeated calls and demands from all quarters, these 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 (P7) 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.

191.(a) It is submitted that this lack of faith and trust in the IMF is irrational and misplaced as Sri Lanka has completed 9 of the 16 IMF programs it has entered into with the most successfully completed IMF programme was negotiated by the Central Bank of Sri Lanka and the Ministry of Finance and Planning in 2009 – it is ironic that at that time in 2009 the 2nd Respondent was the Finance Minister and the 7th Respondent was the Governor of the Central Bank! It is also noted that Dr. P.B. Jayasundara was the Secretary to the treasury at that time!

(b) It is respectfully submitted that the 2nd and 7th Respondents having successfully negotiated and completed the largest IMF facility in the economic history of Sri Lanka should 10 years later be so obtuse to reject seeking IMF assistance in any form. This clearly and unequivocally demonstrates the irrationality, unreasonableness, and arbitrariness of the conduct of the said Respondents.

Vide: Paragraph 25 of the 38th Respondent in Fundamental Rights case No. 195/20023 and the article titled ‘Sri Lanka vs. IMF Programme Targets’ and published by Public Finance.lk at <https://publicfinance.lk/en/topics/sri-lanka-vs-imf-programme-targets-1673609338>

Vide: Paragraph 5 of the Limited Objections of the 2nd and 3rd Respondents and paragraph 33 of the Limited Objections of the 7th Respondent.

IMF Programs and the history of IMF Programs/assistance in Sri Lanka

192.(a) It is respectfully submitted that IMF assistance is provided through Stand-By Arrangements (SBAs) to address short term or potential Balance of Payment problems. The Stand-By Credit Facility (SCF) serves a similar purpose for low-income countries. The Extended Fund Facility (EFF) and the corresponding Extended Credit Facility (ECF) for low-income countries are the main facilities aimed at providing medium term support to countries facing protracted Balance of Payment problems. To help prevent or mitigate crises and boost market confidence, members with already strong policies can use the Flexible Credit Line (FCL) or the Precautionary and Liquidity Line (PLL). The Rapid Financing Instrument (RFI) and the corresponding Rapid Credit Facility (RCF) for low-income countries provide rapid assistance to countries with urgent Balance of Payment needs, including difficulties posed by commodity price shocks, natural disasters, and domestic fragilities. Objectives, policies and conditionality under an IMF funding arrangement depend on a country's specific economic circumstances.

(b) The only document available in the public domain is a Report by Professor Prema-Chandra Athukorale (Fellow of the Academy of the Social Sciences of Australia, Emeritus Professor of Economics at the Australian National University). The said report was handed over to Your Lordships during the reply submissions of the Petitioners. The following information and details have been collated from the said Report and other official documents published by the Central Bank of Sri Lanka and the IMF.

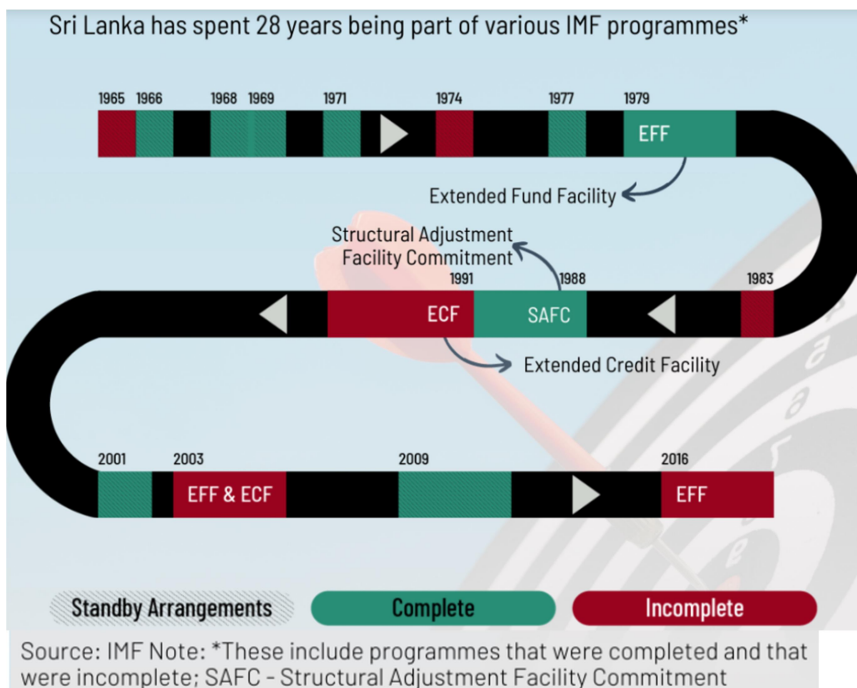
(c) Sri Lanka has engaged in sixteen IMF programmes since obtaining membership of the IMF in 1950.

History of IMF Programmes Obtained by Sri Lanka						000' SDRs
Facility	Date of Arrangement	Expiration Date	Amount Agreed	Amount Drawn	Amount Outstanding	
EFF	Jun 03, 2016	Jun 02, 2020	1,070,780	952,230	892,283	
SBA	Jul 24, 2009	Jul 23, 2012	1,653,600	1,653,600	0	
ECF	Apr 18, 2003	Apr 17, 2006	269,000	38,390	0	
EFF	Apr 18, 2003	Apr 17, 2006	144,400	20,670	0	
SBA	Apr 20, 2001	Sep 19, 2002	200,000	200,000	0	
ECF	Sep 13, 1991	Jul 31, 1995	336,000	280,000	0	
SAFC	Mar 09, 1988	Mar 08, 1991	156,170	156,170	0	
SBA	Sep 14, 1983	Jul 31, 1984	100,000	50,000	0	
EFF	Jan 01, 1979	Dec 31, 1981	260,300	260,300	0	
SBA	Dec 02, 1977	Dec 01, 1978	93,000	93,000	0	
SBA	Apr 30, 1974	Apr 29, 1975	24,500	7,000	0	
SBA	Mar 18, 1971	Mar 17, 1972	24,500	24,500	0	
SBA	Aug 12, 1969	Aug 11, 1970	19,500	19,500	0	
SBA	May 06, 1968	May 05, 1969	19,500	19,500	0	
SBA	Jun 15, 1966	Jun 14, 1967	25,000	25,000	0	
SBA	Jun 15, 1965	Jun 14, 1966	30,000	22,500	0	

Source: Sri Lanka Country Page (IMF Website)

EFF – Extended Fund Facility, SBA – Stand-By Arrangement, ECF – Extended Credit Facility, SAFC – Structural Adjustment Facility Commitment

193.(a) Over the 54-year period from 1965 to 2019, Sri Lankan governments signed 16 agreements for IMF assistance. Those agreements were in place for 28 years. In other words, Sri Lanka has been in an IMF programme for over 50% of the period.



(b) With regard to the said Programs, seven of them were terminated early. In each case the government committed to increasing public revenue as a proportion of GDP. In each case, the revenue targets were missed. Sri Lanka has only completed 9 of the 16 programmes it has entered into.

194. The largest IMF programme in value was the SBA which commenced in 2009, in which the IMF disbursed the full allocation of funds to Sri Lanka.

195. The previous IMF programmes concentrated primarily on improving foreign reserves and the conduct of monetary policy. In addition, there was emphasis on undertaking vital structural reforms that included the introduction of a fuel price formula, improving the Central Bank's independence, a flexible exchange rate policy, and revenue based fiscal consolidation. In the Sri Lankan context, for official dealings with the IMF, the Hon. Minister of Finance holds the capacity of the Governor of the IMF, and the Governor of the Central Bank of Sri Lanka (CBSL) holds the capacity of the Alternate Governor of the IMF.

196. In addition, the IMF has extended many technical assistance opportunities to the Central Bank and to the Government, including the Forecasting and Policy Analysis System (FPAS) model that was aimed at improving the technical capacity of the CBSL in its transition to the flexible inflation targeting framework.

Some notable IMF Programs are set out hereinbelow:

a. *IMF-SBA Programme from 1970 to 1975*

The finance minister (Dr. N.M Perera) at that time, started negotiation for a fifth SBA with IMF within months of the new Government coming into power. In his 1970 Budget Speech Dr. N.M. Perera the finance minister argued that “*we cannot brush aside and completely ignore these international institutions; we can*

repudiate their terms only if we are prepared to face the far-reaching distortions”.

The IMF approved a SBA of \$ 25.6 million on 17 May 1971. To facilitate the implementation of the SBA, the IMF enlisted assistance of the World Bank and some donor countries for an aid programme. After signing the SBA, Dr. N.M Perera the finance minister emphatically defended his decision to go to the IMF in the Parliament: *‘effort to put its own house in order was not the result of IMF advice but was the obvious thing to do in the national interest.’*

The worsening balance of payment situation in the wake of the oil price increase in 1973 compelled the Government to negotiate another SBA. The negotiations took two years and a personal visit by the Finance Minister to the IMF before signing the agreement to the tune of \$ 29.6 m on 30 April 1974.

Sri Lanka obtained only the first instalment (\$ 8.5 m) under this SBA. The IMF withheld the balance as the Government failed to adhere to the ceiling imposed on domestic credit.

The Government approached the IMF for another SBA in 1975. However, the discussions floundered allegedly on account of the Government’s reluctance to cut further subsidies as required by the IMF.

The Government made considerable progress towards macroeconomic adjustment with the help of the IMF programmes. Both the annual debt servicing burden and the term structure of external debt significantly improved.

b. *IMF-SBA Programme in 2009*

As per the IMF staff report for the eighth and final review under the SBA, Sri Lanka fulfilled the net international reserve targets, net domestic financing and reserve money indicative targets related to the programme. Sri Lanka also

implemented all structural benchmarks, except the proposed reforms to the regulatory framework for private pension funds prior to the expiration of the programme.

c. IMF-EFF Programme in 2016

As per the IMF staff report for the sixth review under the EFF, Sri Lanka was unable to meet fiscal targets due to the significant revenue shortfalls after the Easter Sunday attacks in April 2019.

The net international reserve targets were met, and the CBSL was committed to rebuilding reserves, while allowing greater exchange rate flexibility. Sri Lanka also made significant progress on the structural reforms agenda under the programme by implementing key structural benchmarks, including developing a roadmap for flexible inflation targeting and flexible exchange rate regime, submitting the 2018 budget to the Parliament in line with the programme targets including a tax expenditure statement, a plan to rationalise tax expenditures in 2018, and the estimated fiscal cost of non-commercial obligations (including subsidies) for State Owned Business Enterprises (SOBEs), preparation of an effective strategic plan and operating business model by the Board of Sri Lankan Airlines, obtaining approval of the Cabinet of Ministers for a strategy to rationalise para-tariffs over the medium term together with new revenue sources to offset revenue losses, and the rolling out of the Integrated Treasury Management Information System (ITMIS), among others ¹.

197. As evident by the Cabinet paper under the subject of the ‘Economy Way Forward’ presented to the meeting of the Cabinet Ministers held on 3rd January 2022, the 3rd Respondent has promoted a home-grown solution while assuring the Cabinet that the **“Government has the capacity to implement a home-grown solution to the issues that the country is faced with”**.

¹ Central Bank Annual Reports, 2021, Sri Lanka

Vide: Averments pleaded on page 14 of the affidavit of the 32B and 32C Respondents dated 4th August 2023 in fundamental rights case NO. 195/2022.

198. In this regard, the Petitioners produce the following Key Economic Indicators at the pertinent time of presenting the Cabinet paper under the subject of the ‘Economy Way Forward’ presented to the meeting of the Cabinet Ministers held on 3rd January 2022 as follows: The Petitioners also produce below the key economic indicators as at November 2019 as cited in the Monthly Economic Indicators of December 2019 to contrast and put in context to Your Lordships the relevant indicators that was in existence in Sri Lanka at the relevant times.

KEI	Exchange Rate (USD)	Gross Official Reserves (USD MN)	Workers’ Remittances (USD MN)	Tax Revenue (Rs MN)
As at January 2022	201.7362	2,362	259	1,188,453
As at November 2019	181.25	7,520	515	1,300,774

Vide: The Monthly Economic Indicators for February 2022 and December 2019 published by the Central Bank of Sri Lanka

199. It is respectfully submitted that in light of the aforementioned dire economic situation that was persisting at the time, these assurances given by the 3rd Respondent in his capacity as the Minister of Finance are irrational, and arbitrary and a complete dereliction of duty and disregard for the Public Trust reposed in the office of an Executive and Administrative officer.

200. In that regard, at the Monetary Board External Debt Monitoring Committee held on the 29th of June 2021 the Director of Economic Research Department presented a presentation on

critical near terms challenges faced by the Economy, under the title ‘*In the eye of the storm*’- in the said presentation among other factors the DER, recommended:

Plan B

- i. Approaching the globally accepted lender of last resort, i.e., the IMF, must be considered.*

- ii. Failure to adopt plan A or B will leave us with the final option of plan C, which is preparing for a sovereign default, together with a Central Bank default and an economic, financial, and social crises.*

Vide: *Page 208 of the Audit Report including Observations of the Auditor General Pertaining to the Fundamental Rights case No. 195/2022.*

201. It is respectfully submitted that it was the measured opinion of the officials of the Central Bank of Sri Lanka that the pain to the economy and the people of Sri Lanka would have been less if the decision to approach the IMF was taken at least one year ago.

Vide: *Board paper No. MB/DG(S)/9/31/2022 dated 21 March 2022 under the subject of the current critical situation of the Sri Lankan economy, recent policy decisions and the way forward as cited on page 332 of the Audit Report including Observations of the Auditor General Pertaining to the Fundamental Rights case No. 195/2022.*

202. Further 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.

Vide: P28 - a copy of the article ‘*Will Sri Lanka default in 2022?*’

203. It is respectfully submitted 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 foreign exchange was already preventing the purchase of goods to an import-dependent country of 22 million people, which typically spends about \$1.6 billion every month for imports of fuel, essential food and medicine.

204. The aforesaid decisions of the Relevant 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.

The subsequent admission by the 1(b) Respondent that the aforementioned refusal to seek the assistance of the IMF was wrong and misconceived.

205. It is respectfully submitted that the irrationality and cavalier disregard demonstrated by the Relevant Respondents in refusing to seek the assistance of the IMF was further evinced during a public address by the 1(b) Respondent, who, in an address to the newly-appointed Cabinet in April 2022, as well as in 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.

Vide: P29 annexed to the Petition in SCFR 212/2022

206. As such, the Petitioners state that the refusal and / or failure on the part of the 1(b) Respondent and the 2nd, 3rd, 6th, 7th and 10th 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 1(b) Respondent and the 2nd, 3rd, 6th, 7th, 9th and 10th Respondents resulted in a default of the country’s foreign debt

207. It is respectfully submitted that it is patently apparent that the aforementioned actions and omissions on the part of the Relevant 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 pre-emptive 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.

208. It is respectfully submitted 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.

209.(a) It is respectfully submitted that the actions of the 1(b) Respondent 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. It is further submitted 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 more fully elaborated on herein below.

(b) Further, the reckless, obstinate and cavalier attitude of the 1(b) Respondent and the other Relevant 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 revisions across the country. (Vide P30)

210. 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 buttresses 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

Vide: **P-31** 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.

211. The Petitioners reiterate that it is critical that executive authorities, including the 2nd, 3rd, 6th 7th Respondents and 10th Respondents as well as the 1(b) Respondent, 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 1(b) Respondent, who was 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 economic crisis and unsustainability of debt.

212.(a) It is respectfully submitted that the 1(b) Respondent, 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) It is further respectfully submitted that as clearly demonstrated in the preceding paragraphs of these submissions, 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 1(b) Respondent, as the Head of the Executive, should necessarily have anticipated the impending debt unsustainability issue, and made timely decisions and interventions, particularly where the 1(b) Respondent as President, had direct jurisdiction to do so.

213. In such circumstances, the negligence on the part of the 1(b) Respondent 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.

214. It is further respectfully submitted that the 1(b) Respondent, 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 more fully elaborated hereinbelow.

Conclusion

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

215. It is respectfully submitted that the actions and/or failures and/or omissions on the part of the Relevant 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. Further 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.

216.(a) 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 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.

In that regard Your Lordships' attention is respectfully drawn to the cases of:

Sugathapala Mendis v Kumaratunga (Water's Edge Case) [2008] 2 Sri L.R. 339, 373

"...whilst they [public functionaries] can use their private power and their private property in an unfettered manner when granting any privileges or favours and, even in an overwhelming act of great generosity, give all their private property away, their public power must only be used strictly for the larger benefit of the People, the long term sustainable development of the country and in accordance with the Rule of Law."

Determination of the Divisional Bench of Seven Judges of this Court -in regard to the constitutionality of the proposed 19th Amendment to the Constitution (2002 3 SLR page 85)

The principle enunciated in Articles 3 and 4 of our Constitution is that the respective organs of Government, the Legislature, the Executive and the Judiciary are reposed power as custodians for the time being to be exercised for the People. In Bulankulame and others v Secretary, Ministry of Industrial Development this Court observed that the resources of the State are the "resources of the People" and the organs of State are "guardians to whom the people have committed the care and preservation" of these resources (at p. 253). That, there is a "confident

expectation (trust) that the Executive will act in accordance with the law and accountably in the best interests of the people of Sri Lanka (page 258);

Douglas Nethasinghe v Ratnasiri Wickramanyake (SCFR 770/1999) SCM 13th July 2001

The Court has specifically rejected the notion of unfettered discretion given to those who are empowered to act in such capacity and held that discretions are conferred on public functionaries in trust for the public, to be used for the good of the public and propriety of the exercise of such discretion is to be judged by reference to the purposes for which they were so entrusted. It is clear that the supreme court has held that the discretion should be exercised in conformity with the general tenor and policy of the statute and for the proper purposes and that it should never be exercised unreasonably.

217.(a) It is respectfully submitted that the acts or omissions of the State as represented by the relevant 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 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 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 1(b) Respondent 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.

218. 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 to 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.

219. 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.

220. It is respectfully submitted 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.

221. In such circumstances, it is respectfully submitted that the impugned actions and/or inactions of the Relevant 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.

222.(a) It is further respectfully submitted 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 1(b) Respondent and the 2nd, 3rd, 6th, 7th 9th and 10th Respondents, is tantamount to a violation of the said Doctrine.

(b) In that regard, it is respectfully submitted that, the Relevant Respondents 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 1(b) Respondent have violated the said Doctrine.

223. As such, it is respectfully submitted 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.

224. It is respectfully submitted 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.

225.(a) 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) 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.

226. In all such circumstances, it is respectfully submitted 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.

Preliminary Objections

227.(a) It is respectfully submitted that the 2nd and 3rd Respondents Preliminary Objection with regard to time should be dismissed in limine.

(b) It is further respectfully submitted that these very same preliminary objections were taken up by the Respondents at the time of considering whether leave to proceed be granted by Your Lordships and Your Lordships did grant leave to proceed disregarding the said preliminary objections and therefore the Respondents are estopped from continuing to pursue these preliminary objections.

228.Suffice it to state that:

(a) Although the 2nd and 3rd Respondents may have resigned before the Petitioners became aware of the manner in which their actions had violated the rights of the Petitioner, however the series of actions they engaged in were still in play at the time the action was filed and in fact continued to violate the rights of the Petitioners even beyond their resignation and was in operation at the time that this action was filed.

(b) Many of the arbitrary, unreasonable, irrational, and capricious decisions taken by the Relevant Respondents were not decisions that were easily available to the public. It was only with the default of payment of debt, that the general public became aware of the true nature of the state of the economy of Sri Lanka and it was only on further investigation that these Petitioners were thereafter able to ascertain the precise unreasonable arbitrary irrational and capricious decisions of the Respondents named in the Petition that occasioned the said collapse of the economy. The Respondents cannot be permitted to benefit from their own falsehoods and misleading of the public.

- (c) Most significantly, it is submitted that the Petitioners fundamental rights continue to be violated as complained of in the Petition filed by the Petitioners.

229. In that regard Your Lordships attention is drawn to the case of Wijesekera and 14 Others vs Gamini Lokuge Minister of Sports and Public Recreation and 20 others (2011) 2 Sri.LR 329

While this Court accepts that the entirety of the substantive relief prayed for in Prayer (c) of the Application relates to the Order, we do not agree with the Respondents that the dates of these two documents (and especially the date of the Order) are alone appropriate in determining compliance with the timing requirement in Article 126(2). Though the Petitioner has indeed filed an Application more than one month after the issuance of the Order, to reject the Application on this basis alone would be to ignore the continuing nature of the violation of the Petitioner's fundamental rights at issue in this case. The decision in Sugathapala Mendis and another v. Chandrika Bandaranaike Kumarathunga and others (2) articulates the nature of the injustice we seek to avoid here, noting that the nature of a large-scale development project was one that, by definition, continued over time, and therefore, the commencement of the project could not fairly be used as the point from which time began. In this case too, the petitioner has alleged that by the suspension of the Petitioner from the team of the Sri Lanka Rugby football Union, merely on the basis of his refusal to participate in the Asian Rugby Football Union Five Nations Division- Rugby Tournament which was to be held in Dubai, which he alleged was legitimately refused by him on the basis that his Captaincy was wrongly and unfairly overlooked and a partisan appointment to Captaincy had been purportedly made.

As in Sugathapala (supra), the instant case involves the violation of the Petitioners' fundamental rights in the context of a situation, which by definition, continues this violation. Indeed, in a matter where the violation is of a serious nature, affecting material rights which are pertinent and critical to the Petitioner, where mala fides, bias or caprice can be established and if it is a continuing violation, this Court will not dismiss the case in limine, without at least considering the grievance of the Petitioners especially in a matter that affects youth and young persons. Therefore, this Court refuses to dismiss, in these particular circumstances, this case in limine based on non-compliance with Article 126(2).

230. In all of the aforesaid circumstances, it is the contention of the Petitioners that the actions and/or inactions of Relevant Respondents are arbitrary, unreasonable, ad hoc and capricious, irrational, and in breach of the public trust doctrine. Furthermore, such actions and / or inactions also offend the principles of Rationality, Equal Protections of the Law, Legitimate Expectation, and the Rule of Law.

231. Therefore, in view of the totality of the facts, matters and documents submitted hereinabove, in addition to those averred in the Amended Petition of the Petitioners, as well as the fact that the Respondents have failed to refute the Petitioners' case in respect of the principal issues that have been urged, it is respectfully submitted that the Petitioners are entitled to the reliefs prayed for in the Amended Petition.