

Affidavit

I, **Nagananda Kodituwakku**, a citizen of Sri Lanka and the UK, a public interest litigation activist, an Attorney at Law (Sri Lanka) and a Solicitor (UK), being Buddhist, currently residing at 99, Subadrarama Road, Nugegoda, do hereby solemnly and truly declare and affirm as follows:-

I am the affirmant above-named and I affirm to the facts herein contained from my personal knowledge and by reference to records available to me, and I do so purely in the public interest to reveal the judicial corruption in the Republic of Sri Lanka that obstruct the course of justice, favouring the judges themselves or the Executive in power.

Judicial corruption too, is a punishable offence under the Bribery Act

The Bribery Law provides that any person holding any public office to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person does, or forbears to do, any act, which he is empowered to do by virtue of his office participates in the making of any decision by virtue of his office as a public servant induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act, shall be guilty of the offence of corruption and shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine (Section 70 of the Bribery Act).

‘Any public office’ referred to above includes any person holding any judicial office as well and therefore, abuse of office by any person holding a judicial office, to confer a favour or benefit to himself or any other person falls well within the definition as provided in the Bribery Act.

Representative Democracy and Judicial Power of the people

1. The Constitution of the Republic of Sri Lanka recognizes the Government of Sri Lanka as a ‘representative democracy’ and vests judicial power of the people in the judiciary to be exercised purely on trust [Article 4(3)]. Judges on being appointed to the Judiciary take oath to perform their judicial duty faithfully and according to the Constitution and the Rule of Law.

Constitution & Commonwealth Principles on three organs of the Government

2. The Constitution of the Republic of Sri Lanka requires the judges to uphold, vindicate and enforce the judicial power of the people (Article 105), and therefore it is obvious that the judiciary shall be vibrant, upright, and absolutely independent in the administration of justice without any fear or favour. However, in the former British Colonies, including Sri Lanka, there have been serious issues concerning the judiciary, that compelled the British Commonwealth of Nations to formulate principles on all three branches of the Government .
3. Since 1948, Sri Lanka is a member of the Commonwealth of Nations and has ratified the Commonwealth Latimer House Principles on the three branches (Legislature, Executive and Judiciary) of the Government, which are the guarantors in their respective spheres of the rule of law. These branches of the Government are required to promote and protect fundamental rights of the people and the entrenchment of good governance, based on the highest standards of honesty, probity and accountability.

Independence and accountability of the Judiciary

4. The Commonwealth Principles also underline the importance of an independent, impartial, honest and competent judiciary, which is integral to upholding the Rule of Law, engendering public confidence and dispensing of justice. And it identifies the importance of the functions of the judiciary in interpreting and applying national constitutions and legislations in consistent with International Human Rights Conventions and International Law, to the extent permitted by the domestic law of each Commonwealth Nation and to secure these aims and provide *inter alia* the following to be adopted by all Member Nations.
 - a. Interaction, if any, between the Executive and the Judiciary should not compromise judicial independence.
 - b. Establishment of an independent, effective and competent legal profession, which is fundamental to the upholding of the rule of law and the independence of the judiciary.
 - c. Judges to be held accountable to the Constitution and to the law, which the Judges must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin the public confidence in the judicial

system and the importance of the judiciary as one of the three pillars upon which a responsible Government relies.

- d. The Criminal Law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

Judicial Corruption effectively destroys the concept of good governance

5. However, in Sri Lanka, I state that over a period of time there exists corruption in an unimaginable scale in the judiciary, intentionally ignoring and violating the Constitutional obligations and the Commonwealth Latimer House principles to favour the Executive and also to favour or to the advantage of the judges themselves at the expense of people's sovereign rights. I state that these actions have effectively destroyed the very foundation of the representative democracy and good governance in the Republic of Sri Lanka, which is tantamount to an offence of 'corruption' as defined in the Section 70 of the Bribery Act.

Chief Justice Sarath N Silva concedes abuse of office to favour President Rajapakse

6. I state that, the Judiciary compromising its integrity has been causing an enormous damage to the due observance of the doctrine of separation of powers effectively nullifying the rule of law and democratic governance in Sri Lanka.
7. I state that on or about 18th Oct 2014, in an unprecedented move, Sri Lanka's former Chief Justice Sarath N. Silva apologized to the Nation for his verdict in the "Helping Hambantota" case that paved the way for Mahinda Rajapaksa to contest for the Presidential Election in 2005. Sarath N Silva confessed to BBC Sinhala Service that he had delivered the judgment to confer a favour to the President Rajapaksa, an act of which is clearly tantamount to judicial corruption and it clearly provides a credible evidence about violation of the Section 70 of the Bribery Act, which requires the Commission to conduct a credible and independent investigation into the alleged corruption in terms of Section 4 of the 'Commission to Investigate Allegation of Bribery or Corruption Act', 3 No. 19 of 1994.

A true copy of 'the Sunday Times' news report dated 26th Oct 2014, on Sarath N Silva's confession of abuse of the office of Chief Justice to favour Mahinda Rajapakse marked X1 is attached hereto.

Judicial corruption involving Shirani Bandaranayake J & K Siripavan J favouring President Mahinda Rajapakse

8. I state further that when the 18th Amendment bill was challenged in the Supreme Court on 31st Aug 2010, the, then Chief Justice Asoka de Silva did not take part at the hearing, instead a Bench consisting of *Shirani Bandaranayake J (Chair), K.Sripavan J, P. A. Ratnayake J, S I Imam J and R K S Suresh Chandra J* was appointed to hear the case. By the time, husband of Justice Shirani Bandaranayake, Mr Pradeep Kariyawasam had been appointed as the Chairman of the National Savings Bank by the President Mahinda Rajapakse.
9. This bill was challenged on the basis, *inter alia*, that the provisions contained in Clause 5 of the Bill (replacing the Constitutional Council with a Parliamentary Council giving the President absolute power over appointment of judges to the Superior Court System) have the effect of diluting the independence of the judiciary and therefore a direct impact on Article 4(c) regarding the exercise of the judicial power of the People and while affecting the sovereignty of the People, which includes judicial power enshrined in Article 3 of the Constitution, which is an entrenched provision and which cannot be amended, without people's approval is obtained at a Referendum in terms of Article 83 of the Constitution.
10. It was further argued for the petitioners that the Constitutional Council was established with the intention of safeguarding the independence of the judiciary and the purpose and the objective of the introduction of the Constitutional Council was to place a restriction on the discretionary powers of the President in appointing judges.
11. Then the, then Attorney General, Mohan Peiris, argued that the objective of the aforementioned Amendment was to make 'consequential amendments brought about by the change of the terminology' to the body known as the "Constitutional Council" for the term "Parliamentary Council" referred to in the proposed Amendment.
12. The Supreme Court, despite the fact it was patently clear that the abolition of the Constitutional Council gave the Executive President Mahinda Rajapakse unfettered power to control the Judiciary violating the doctrine of separation of powers, held in favour of the, then President Mahinda Rajapakse and ruled that it did not violate the Judicial power of the people (Article 3) which shall be exercised by an independent judiciary 4(c) and therefore a mandate from the people at a referendum (in terms of Article 83 of the Constitution) was not required.
13. I state that the said ruling given by the Bench headed by Justice Shirani Bandaranayake to confer a favour to the President Rajapakse, despite the fact that the said 18th Amendment gave him absolute control over the judiciary was tantamount to judicial corruption, clearly attracts the Section 70 of the Bribery Act. Therefore, I state that this abuse of office by the Judges in the said Bench provides plausible evidence of Corruption, requiring the Commission to

conduct a credible and independent investigation in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption committed by Chief Justice, Mohan Peiris to favour President Rajapakse

14. I state that on 15th Jan 2013, President Mahinda Rajapakse appointed Mohan Peiris, who was one of his close allies, to the office of the Chief Justice. This was a clear move to further consolidate Executive President's control over the Judiciary and the independent media and the Bar Association of Sri Lanka (BASL) refused to attend the ceremonial sitting welcoming the Chief Justice Mohan Peiris. I state that even the UN High Commissioner for Human Rights expressed concerns about Mohan Peiris's dubious conduct and his integrity. Further the International Commission of Jurists too had condemned his appointment, describing it as a "further assault on the independence of the judiciary in Sri Lanka".

Flawed ruling on two questions referred to Court by the President

15. I state that sometime thereafter on 03rd Nov 2014 President Mahinda Rajapakse referred two questions, concerning purely his private interests to the Chief Justice Mohan Peiris, seeking an opinion from the Supreme Court, whether there was any impediment for him to contest for a further term. Obviously these two questions lacked the primary requirement of 'public importance', which is a prerequisite to invoke the Article 129 of the Constitution, for the Supreme Court to express its opinion.
16. I state that, however, Chief Justice Mohan Peiris, accepted the two questions referred to Court as a '**matter of public importance**', and on 10th November 2014 abused the office of the Chief Justice to invoke the provisions of the Article 129 of the Constitution to confer a favour to the President Rajapakse. The Chief Justice Mohan Peiris denied the people of Sri Lanka any opportunity whatsoever to challenge the said two questions referred to the Court, and ruled with all the other judges agreeing, in favour of President Rajapakse and in very submissive language as follows.

"... Thus Your Excellency shall exercise your right and power vested in you by virtue of Article 31 (3A) (a) (i) of the Constitution and seek re-election for a further term and there exists no impediment for Your Excellency to exercise the right and powers accorded to you under the Constitution to offer yourself for a further term..."

17. I state that the said conduct of the Supreme Court conferring a benefit to the Executive President was a clear betrayal and also a total surrender of people's judicial power to the Executive and I state that this is a clear violation of Section 70 of the Bribery Act, which requires the Commission to conduct a credible and independent investigation into the alleged

judicial corruption in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

A true copy of the certification of the said opinion by all the judges in the Supreme Court marked X2 is attached hereto

Judicial corruption committed by the President of the Court of Appeal, Justice Vijith K Malalgoda

18. I state that on **09th Sep 2014** the, then Executive President, Mahinda Rajapakse appointed Additional Solicitor General Vijith K Malalgoda to the Office of the President of the Court of Appeal and this appointment too was made purely according to the whims and fancies of the President Rajapakse, disregarding the objections raised by the Bar Association, against making such improper appointments.

The objections raised against the said appointment published in the Sunday times dated 14th Sep 2014 marked X3 is attached hereto.

19. I state that few months thereafter, on **20th November 2014** the former President Mahinda Rajapakse, issued a proclamation declaring his intention to hold a Presidential Election seeking a third term, and nominations were called from the prospective candidates and accepted on **08th December 2014**, including the one from the former President Mahinda Rajapakse.
20. I state that the 18th amendment does not provide an expressed provision to the effect that the amended provision of law made to Article 31 of the Constitution shall also apply to the person who was occupying the office of the President under the old law that placed a restriction of not more than two terms, effectively denying the application of the new law to the then President Mahinda Rajapakse.
21. I state that therefore on 15th Dec 2014 I filed a Writ Application before the Court of Appeal (CA/434/2015) challenging the candidacy of the former President Mahinda Rajapakse for a 3rd term, wherein I had prayed for an **interim relief**, for the suspension of the Presidential Election until the final determination of the said Petition. Considering the public interest and urgency involved in the case, a request was also made to the President of the Court of Appeal to fix it for support before the Court vacation, which was due to commence on 20th Dec 2014.
22. I state that thereafter, the Petition duly acknowledged by the Registry of the Court of Appeal, was suddenly disappeared from the Registry, apparently removed by some interested party to stop the said Petition being supported and thereby to favour the President Mahinda Rajapakse. By the time, Mohan Peiris occupied the office of the Chief Justice and Justice V K

Malalgoda, the President of the Court of Appeal and I strongly suspected their involvement in this untoward action of removing the Petition from the Registry.

23. I state that when I questioned the Registrar about this deplorable state of affairs at the Court of Appeal Registry, I was requested to file the Petition afresh. Accordingly, on 19th December 2014, a further copy of the Petition was filed along with a Motion setting out the circumstances under which the Petition had gone missing. And considering the National Interest and urgency involved in this case, permission was also sought to support the Petition either on 19th, 24th or 26th of Dec 2014. However, I state that Justice V K Malalgoda abused the office to ignore this request too, apparently to favour the President Mahinda Rajapakse.

A true copy of the Motion dated 19th Dec 2014 filed in the Registry of the Court of Appeal marked X4 is enclosed.

24. I state that however, when President Mahinda Rajapakse faced a formidable opposition, suddenly the matter initially ignored by Justice V K Malalgoda was fixed for support on 02nd Jan 2015 that was during the Court Vacation and just 6 days before the Presidential Election was due to be held on 08th January 2015. I state that this action too had been motivated to favour the then President Rajapakse who was facing an imminent defeat at the Presidential Election.
25. I state that in the meantime I was approached by certain individuals, representing the Opposition Camp, showing their concerns about the reemergence of the case record with a date fixed for support the case just before election and hence requesting to withdraw the case. They were strongly of the view that there was a possibility of granting the interim relief sought for, to suspend the Presidential Election, allowing President Rajapakse to remain in office, jeopardizing the opposition election campaign.
26. I state that after objectively considering the request made by the Opposition Camp, I was compelled to withdraw the Writ Application on the day it was fixed for support (02nd Jan 2015). I made no appearance in Court and instead, a Motion was filed at the Registry, setting out, *inter alia*, the following reasons for the withdrawal of the Writ Application.

'Whereas since the filing of this Petition, I believe that the public opinion on the Extant President has been evidently eroded and in this background I contemplate that the Attorney General who performs his office under the Extant President would have been instructed to concede the Interim Relief prayed for in the Petition to suspend the holding of the Presidential Election scheduled for 08th Jan 2015 until the final determination of this Petition, effectively throwing a life-line to the Extant President to remain in Office for a considerable period, against the Will of

the People that has been expressed by both in the electronic and print media since filling of this Petition'

'Whereas in this background I believe that the Petition filed in the national Interest could be defeated if preceded with it, I withdraw the Petition, with due respect to the Will of the people and their Sovereignty that would determine their choice through the exercise of their franchise at the forthcoming Presidential Election'.

27. I state that on 02nd Jan 2015 the Writ Application was taken up before the Justice V K Malalgoda and Justice A H M D Navaz (both appointed to the office without the due process being followed by the then President Mahinda Rajapakse) and as per the motion filed in Court had no other option but to allow the withdrawal of the Writ Application.

A ruling allowing withdrawal made by the Court on 02nd Jan 2015 marked X5 is attached hereto.

28. I state that there was no way that the Petition duly acknowledged by the Registry can go disappeared without a tacit approval of either the, then Chief Justice Mohan Peiris or the President of the Court of Appeal Justice V K Malalgoda who were to confer a unlawful benefit or favour to the then President, Mahinda Rajapakse. It was patently clear that after having realized that the, then Executive President was facing a possible defeat the matter was fixed for support during the vacation, on 02nd Jan 2015, apparently to confer a favour to the President Mahinda Rajapakse to continue to occupy the office with the suspension of the election. And therefore I state that these shocking actions were clearly tantamount to acts of judicial corruption, which fall within the offence of Corruption as defined in Section Section 70 of the Bribery Act.

Chief Justice Mohan Peiris seeking unlawful favours from the Prime Minister

29. I state that after the defeat of President Rajapakse at the Presidential election 2015, on 19th January 2015, Chief Justice Mohan Peiris had met the Prime Minister Ranil Wickramasinghe at Prime Minister's official residence and offered him improper favours (which included his readiness to give judgements and make judicial appointments favouring the new Government) if allowed to remain in the office of Chief Justice. When the Prime Minister rejected these offers, the Chief Justice Mohan Peiris had offered to resign from the office of the Chief Justice for a favour, seeking a diplomatic posting in Switzerland instead. I state that this improper acts committed by the then Chief Justice, Mohan Peiris clearly amount to abuse of office to betray the judicial power of the people for unlawful favours not permitted by law.

A true copy of the official copy of the Hansard (page 252) dated 30th Jan 2015, which contained the Prime Minister's statement made in Parliament, concerning the inappropriate conduct of Chief Justice Mohan Peiris marked X6 is attached hereto.

30. I state that the information presented herein with plausible evidence, reveals a commission of an offence of judicial corruption by the Chief Justice Mohan Peiris, which clearly attracts the Section 70 of the Bribery Act, requiring the Commission to conduct a credible and independent investigation into the alleged judicial corruption involving Mohan Peiris in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption by the Chief Justice, Shirani Bandaranayake favouring the new Government

31. I state that after the Presidential Election 2015, the Chief Justice Dr Shirani Bandaranayake, who had been unlawfully expelled from office, was recalled and reinstalled on 29th Jan 2015. However, apparently her recall was subject to a clear order from the Executive that she should step down within 24 hours, which she had complied with apparently under moral duress. In fact, this unacceptable act of compromising the integrity of the judiciary by the Chief Justice on Executive orders had been reported well in advance in the media 'Colombo Telegraph' on 21st Jan 2015, before the Chief Justice was recalled and reinstalled in the office on 29th Jan 2015 with the caption "CJ Shirani just only for one day"

A true copy of the news item with the caption "CJ Shirani just only for one day" published in the Colombo Telegraph on 21st Jan 2015 marked X7 is attached hereto

32. I state that after her return to the office on 29th Jan 2015, the Chief Justice Shirani Bandaranayake, attended her ceremonial farewell and made a statement, that she was retiring from Office [at the age of 57 years, 8 years prior to the retirement age] on her own accord. I state that the said statement was purportedly untrue and made in fulfilment of her undertaking given to the Executive, effectively surrendering the independence of the judiciary to the Executive and betraying the people of their judicial power that the Chief Justice exercised purely on trust. I state that this was purportedly done to surrender the office of the Chief Justice for benefits and retirement perks offered, enabling the Executive to appoint a person of its choice to the office.
33. I state that this gross betrayal of the judicial power of the people by the Chief Justice Shirani Bandaranayake for improper purposes was clearly tantamount to an act of judicial corruption that falls well within the definition of the Section 70 of Bribery Act that the Commission is

empower to inquire into in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

Judicial corruption by Chief Justice, K Sripavan favouring the new Government

34. I state that after the constructive dismissal of the Chief Justice Dr Shirani Bandaranayake from office on 30th January 2015, the Executive President Maithripala Sirisena, on his own volition, appointed Justice K Sripavan (63) to the office of the Chief Justice.
35. I state further that, sometime thereafter, being a public interest litigation activist, I filed a Petition (SC/Writ/02/2015) on 12th May 2015 in the Supreme Court against the Corruption Commission for its failure to conduct a credible investigation into a formal complaint made by me on 11th Dec 2014 against the unlawful selling of the tax exemption permits issued to Parliamentarians and the Cabinet of Ministers, to import high valued vehicles defrauding the Government revenue running into several billions rupees. These permits had been issued under Section 19A of the Customs Ordinance purely in the public interest, enabling the permit recipients to discharge their offices effectively for public good.
36. I state that on 06th Aug 2015, when the aforesaid Writ application (SC/Writ/02/2015) was supported, the Supreme Court, in principle conceded that there was an abuse of tax-free permits, yet refused to use its judicial power by declaring that as the selling of permits had been permitted under the prevailing Government policy despite the fact that the abuse of the tax-free permits by the Members of Parliament and Cabinet of Ministers for unjust enrichment was a punishable offence under Section 70 of the Bribery Act.
37. I state that therefore, I filed a revision application before the Supreme Court on 10th of Aug 2015, requesting the Chief Justice K Sripavan, to exercise the Court's inherent power and jurisdiction to revise this *per incuriam* and flawed order. Yet, the Chief Justice K Sripavan abused the office of the Chief Justice to ignore the said revision application and deny a hearing, keeping the said revision application in the official chambers of the Chief Justice since 2nd of September 2015. I state that the inaction in this regard on the part of the Chief Justice, K Sripavan was tantamount to judicial corruption by abuse of office for the purpose of condoning the unlawful favours and/or benefits enjoyed by the Members of Parliament and the Cabinet of Ministers, which is an offence that falls within the provisions of Section 70 of the Bribery Act.

A true copy of the Motion filed in Court together with the application for revision of the order made by the Court dated 10th Aug 2015 marked X8 is attached hereto.

Judicial corruption involving the Supreme Court headed by Chief Justice Parinda Ranasinghe during the J R Jayewardene regime

38. I state that further to the public criticism against the appointment of rejected candidates by the people at the Parliamentary Election 2015 to the Parliament through the National List, I voluntarily undertook an investigation, to ascertain the credibility of the process adopted by the Executive to enact the relevant law that permits the party secretaries to appoint rejected candidates as MPs through the National List, bypassing the mandatory process to effect amendments to the Constitution as provided in Chapter 12 of the Constitution.
39. I state that during the process of the said investigation, I was able to discover hard evidence of serious corruption involving all three organs of the Government collectively and surreptitiously permitting a smooth passage for the 14th Amendment bill, which carries a clause unlawfully inserted to Article 99A of the Constitution, allowing defeated candidates to be elected as MPs by the Party Secretaries through the National List. This clause clearly violates people's sovereign right of franchise protected by the entrenched Article 3 of the Constitution without approval by the people at a referendum. Yet, it was revealed that on 18th April 1988 the Supreme Court apparently under moral duress, had made a manifestly flawed order that the said clause was not inconsistent with the Article 3 of the Constitution.
40. The detailed investigation conducted in this regard further revealed that the said 14th Amendment Bill approved by the Parliamentary Select Committee (appointed for the purpose), **did contain no such clause** permitting the Party Secretaries to appoint rejected candidates through the National List.

A true copy of the 14th Amendment Bill as approved by the Parliamentary Select Committee marked X9 is attached hereto.

41. I state that the investigation also revealed that the said clause had been interpolated to the Article 99A of the 14th Amendment by the Executive President J R Jayawardene, a fact which was affirmed by the statement made by Prime Minister R Premadasa, who had introduced the Bill at the parliamentary debate held on the 14th Amendment on 04th May 1988. The relevant extracts of the statement of the Prime Minister are reproduced below.

"... Mr Speaker, what is this Fourteenth Amendment to the Constitution? I have to raise this question, because there was a discussion of a Forteenth Amendment, which as I came to

understand later, is different from the amendment to the constitution that I speak of, in this instance ...”

“... These 29 seats will be allocated the different parties contesting in election, in proportion to the votes received by each such party at National level. The names of party nominees are known beforehand. In fact their names are published in the Gazette immediately after the closing nominations. Therefore the voters are aware of the identity of the candidates of the different parties who are to be elected as National Members...”

*“... Let me make it very clear, that the 14th Amendment presented today, is the result of the decisions taken by the Select Committee on Franchise and Elections, which concluded its sittings on 29th February 1988. **It is based on the Report adopted by this Committee..** (the report referred to herein did contain no such clause permitting party secretaries to appoint defeated candidates as MPs through the national list ... “*

*A true copy of the relevant part of the Parliamentary proceedings dated 04th May 1988 marked **X10** is attached hereto.*

42. I state that the evidence of judicial corruption found in the Supreme Court’s Special Determination Record (SC/SD/02/1988) during the investigation are given below.

- a) President J R Jayewardene sends a ‘typed written note’ to the Chief Justice Parinda Rajasinghe, claiming to be the 14th Amendment to the Constitution (which was not a bill published in the gazette as required by Article 78 and 82 of the Constitution) accompanied by a letter dated 08th April 1988, demeaning the office of the Chief Justice, addressing the office **‘My dear Chief Justice’**
- b) The Chief Justice entertains the said typed written note despite President J R Jayewardene not adhering to the process specified in Chapter 12 of the Constitution.
- c) The Supreme Court holds a ‘hearing’ on 18th April 1988, to determine the consistency of the document referred to by the President J R Jayewardene with the Constitution, despite there was no such bill published in the Gazette to amend the Constitution thereby denying the citizens of their legitimate right to challenge it.

- d) A citizen, namely K Leelatunga, presents an affidavit at the hearing, requesting a copy of the note sent to Court by the President J R Jayewardene and the Court refuses to issue a copy, on the basis that citizens are not entitled to have access to it.
- e) The Court rules on the same day, that the clause permitting Party Secretaries to elect rejected candidates as MPs through the National List does not violate people's sovereign right of franchise, the entrenched Article 3 of the Constitution with no reasons whatsoever given for the said ruling.

*A true copy of the letter sent to the Chief Justice by President J R Jayewardene dated 08th April 1988 marked **X11** and the type written note sent to the Chief Justice marked **X12** and the affidavit furnished to Court by K Leelatunga Marked **X13** are attached hereto.*

43. I state that the process adopted by the Supreme Court in 1988 to approve the 14th Amendment clearly suggests that the Supreme Court's determination had been made apparently under moral duress. I state that President J R Jayewardene's abuse of Judiciary in this manner has been well documented and revealed that in fact, the President Jayewardene had declared that he was seeking to teach the judges a lesson in order to make them more pliable to the wishes of the Executive.

*A true copy of an extract obtained from the Report published by the International Commission of Justice with a caption **Sri Lanka: A Mounting Tragedy of Errors** by Paul Sieghard marked **X14** is attached hereto.*

44. I state that further to these findings I was assigned to support a Fundamental Rights Application SC/FR 344/2015) filed in the Supreme Court on 31st of August 2015, challenging the appointment of 11 rejected candidates appointed as MPs by Party Secretaries through the National List. According a request was made to the Supreme Court to obtain a certified copy of the Supreme Court Special Determination Record (SCSD/02/1988). The Court however refused the request with the following order made by the Justice Eva Wanasundara.

"... Communication between the President and the Chief Justice and the Observations of the Court, which are communicated to the President and to the Speaker, need not be disclosed to Mr Kodituwakku. The request contained in the Motion is therefore refused..."

45. Followed by this refusal I state that a further request was made to the Chief Justice, requesting for a certified copy of the Supreme Court's Special Determination Record

(SC/SD/02/1988), which was of paramount importance to the matter (SC/FR/344/2015) fixed for support on 16th Sep 2015. And I state that further to the said request, the Court issued a certified copy of the said Special Determination Record, the issuance of which was denied earlier by Justice Eva Wanasundara.

A true copy of the request made to the Chief Justice on 10th Sep 2015 marked X15 is attached hereto.

46. I state that the Supreme Court was well aware that in 1988 the five-judge Bench of the Supreme Court had breached the trust placed in it by the people to uphold the people's democratic rights enshrined in the Constitution. Apparently, this would have been the only reason for the refusal to release a copy of the determination record and as to why Justice Eva Wanasundara did not want people to know the judicial corruption that paved way the enactment of the 14th amendment by unlawful means.

Chief Justice Sripavan ignores the law to confer unlawful favour to Executive

47. I state that the Constitution very clearly provides [Article 82(6)] that any amendment made with no adherence to the process specified in Chapter 12 of the Constitution, would make such amendments *ab initio void*. This fact was highlighted in my oral submissions made in support of the fundamental rights application (SC/FR/344/2015) on 16th Sep 2015. However, the Bench headed by the Chief Justice K Sripavan absolutely ignored the mandatory process specified in Chapter 12 to amend or repeal the Constitution and also the unlawful process that had been adopted by the President J R Jayewardene to have the 14th amendment passed in 1988 and refused to grant leave to proceed to the said rights application.
48. I state that the decision of the Chief Justice K Siripavan is the result of compromising the judicial independence, impartiality and integrity to confer a favour to the Executive by ignoring the role of the Judiciary to uphold the Rule of Law and the Constitution. And I state that the failure on the part of the Judiciary has paved the way for those who have been unlawfully elected as MPs through the National List to consolidate their respective offices, which also include portfolios in the Cabinet of Ministers and the Office of the Speaker.
49. Therefore, I state that conduct of the Chief Justice K Sripavan referred to above is clearly tantamount to an act of judicial corruption that falls well within the definition of the Section 70 of Bribery Act that the Commission is empower to inquire into in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.

CJ Sripavan rules that abuse of National List is not a matter of National importance

50. I state that thereafter on **13th Oct 2015** the National List appointments made by the Party Secretaries were challenged by me in my personal capacity in the Supreme Court by way of a Writ Application (SC/Writs/05/2015), invoking the jurisdiction of the Court in terms of Article **104H** of the Constitution. This provision of law **[104H (2)]** requires the Court to hear and finally dispose the application within a period of two months.
51. I state that in a Motion filed in Court on 13th Oct 2015 by me an application was made to the Chief Justice in terms of Article 132 (3) (iii) of the Constitution, requesting a Fuller Bench of the Supreme Court to hear the case. This request was made on the basis of the fraudulent manner in which the said 'flawed clause' has been inserted to the Article 99A of the Constitution, denying the people of their sovereign right of franchise, which is a matter of paramount National importance. However, the Chief Justice on 24th Oct 2015 refused this application as well with the following opinion made with no reasons given.

"I am of the view that the matters involved in this case are not of general and public importance. Hence the request made in terms of Article 132 (3) (iii) of the Constitution is refused"

52. I state that the said ruling is absolutely flawed, as the Chief Justice has not acted fairly and reasonably according to law and abused the office to confer a favour the Executive, directly violating the Constitution and Commonwealth Latimer House Principles referred to paragraph 4 above and his decision is tantamount to compromising the independence and integrity of the Judiciary. And I further state that the failure to uphold the rule of law in this manner by the Chief Justice, K Sripavan also falls well within the definition of the Section 70 of Bribery Act and that the Commission is empowered to inquire into in terms of Section 4 of the Commission to Investigate Allegation of Bribery or Corruption Act, 3 No. 19 of 1994.
53. I state in this background I filed a Motion on 26th Nov 2015 wherein it was stated that the Chief Justice is biased towards the Executive despite credible evidence produced in the case that the impugned 'flawed clause' referred to above (the focal point in the matter) has been fraudulently inserted to the Article 99A of the Constitution by the then Executive President J R Jayewardene in 1988, by circumventing the procedure established by law and hence *ab initio void* and therefore the case be fixed for support before the Full Bench of the Supreme Court sans the Chief Justice **K Sripavan**, Justice **Eva Wanasundara** (who had clearly shown bias towards the Executive as shown in paragraphs 34-36 above) and Justice **Sarath De Arbrew** presently indicted in the High Court of Colombo.

A true copy of the Motion dated 26th Nov 2015 filed in Court marked X16 is attached hereto

54. I state that as I have refused to compromise my integrity and committed to discharge my duty as an Attorney-at-Law conscientiously as required by the Constitution [(Article 28(c)] to condone unlawful actions of the Executive which abuse the National List provision to appoint defeated candidates to the Parliament, the Chief Justice is now abusing the office to make manifestly unfounded allegation of '**obstruction of justice**' against me, which I state is tantamount to an act of intimidation and denial of my right to perform my professional duty without intimidation, hindrance, harassment or improper interference' as specified in **Article 16** on the United Nations Basic Principles on the Role of Lawyers adopted in Sep 1990.
55. I state that the **Article 23** of the United Nations Basic Principles on the Role of Lawyers further state that Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

A true copy of the Principles on Role of Lawyers adopted by the United Nations in September 1990 marked X17 is attached hereto.

56. And I state further that the alleged inappropriate conduct of the Chief Justice K Sripavan also violates the Commonwealth Latimer House Principles, (refer to in paragraph 4 above), which require the Court shall not use Criminal Law and contempt proceedings to restrict legitimate criticism of the performance of judicial functions. I state however, that these rights that are recognised by the International Community are being ignored and not respected by the Judiciary in the Republic of Sri Lanka.
57. I state that for the reasons set above, the allegation levelled against me by the Chief Justice is manifestly unfounded and apparently initiated with an objective of evading the Court's Constitutional Obligation to hear and determine this all important case according to the rule of law and the Constitution within the stipulated period of two months, which has already been violated by the Court.
58. I state that the judiciary's failure to discharge its duty of protecting, vindicating and enforcing the rights of the people as per the Constitution (Article 105) in this manner has put the Government in a very embarrassing situation before the international community, particularly before the United Nations Human Rights Council, compelling the Government of Sri Lanka to concede that people of Sri Lanka have no trust and confidence in the justice

system and therefore to cosponsor a resolution (A/HRC/RES/30/1) on 01st Oct 2015, to set up a judicial mechanism with international dimension to try serious crimes committed against the humanity.

A true copy of the Resolution (A/HRC/RES/30/1) adopted by the United Nations Human Rights Council with full agreement of the Government of Sri Lanka on 01st Oct 2015 marked X18 is attached hereto.

59. I state further that the professional body of lawyers, the Bar Association of Sri Lanka in a press statement issued on 28th Nov 2015 too has affirmed that the existing judicial system in this country has not met the confidence of the people and that it is an undeniable fact that over a period of time the independence and credibility of many of these institutions have suffered resulting in an erosion of the confidence in the system as a whole.

A true copy of the Press statement dated 28th Nov 2015 issued by the President of the Bar Association referred above marked X19 is attached hereto.

60. I state that the material facts contained herein concerning the conduct of the incumbent Chief Justice, K Sripavan and other Judges referred to herein, establish a *prima facie* case of judicial corruption, emanating from the abuse of judicial office for improper purpose of favour themselves and/or the Executive, which falls within the offence of corruption as defined in the Section 70 of the Bribery Act, requiring the Commission to initiate a credible and independent investigation into this complaint in terms of Section 4 of the Act No 19 of 1994.

Read over, explained, affirmed
to and signed at Colombo on
this 15th day of Feb 2016



[Handwritten signature]

Before me

[Handwritten signature]

Justice of Peace

DESHA KIRTHI SRI LANKA PUTHRA
JAGATH AABEYSINGHE
Justice of the Peace
2000/05/WP/NTL/B/651
No. 49, Jambugaswatha Road,
Nugegoda.