



**BY E-MAIL / COURIER**

20<sup>th</sup> December 2012

Mr. Bernard Savage  
Ambassador/ Head of Delegation  
Delegation of the European Union to Sri Lanka and the Maldives  
26 Sir Marcus Fernando Mawatha  
Colombo 7  
Sri Lanka

Dear Mr. Bernard Savage,

***Press Release***

***"Local European Union (EU) Statement on the Rule of Law in Sri Lanka"***

In the context of the Statement captioned – *"EU concerns over independence of judiciary"*, I addressed to you my Letter dated 5<sup>th</sup> December 2012, attaching copies of the following:

1. My Petition dated 18<sup>th</sup> October 2012 to the Supreme Court, whereby I put in issue the very grave and serious matter of *'perceived judicial bias and disqualification'* on the part of the Chief Justice and two other Justices of the Supreme Court, who in my view had acted *without jurisdiction* and *ultra-vires* the Constitution. I cited the Judgment in Appeal in the House of Lords *re – Pinochet vide* paragraph 13 of my said Petition. *I intimated that the response I received was even more appalling*, but did not disclose the same in my said Letter.

Hence, I attach hereto my Affidavit dated 5<sup>th</sup> December 2012 addressed to the Hon. Speaker of Parliament, *inter-alia*, setting out the aforesaid responses I received, which are *lucidly self-explanatory*. Attached to my Affidavit was my further Written Submission, which I had tendered, *as far back as 9<sup>th</sup> February 2012*, to the Supreme Court on the same matter of *'perceived judicial bias and disqualification'*, on the part of Chief Justice, also setting out other pertinent facts, which however was not entertained, but returned to me by the Supreme Court. I urge you to cause a close examination and study of the facts contained in my said Affidavit of 5<sup>th</sup> December 2012 and my further Written Submission of 9<sup>th</sup> February 2012, and reach your conclusions thereon, *as to whether such conduct could in anywise be condoned and/or ignored ?*

2. My Letter dated 5<sup>th</sup> November 2012 to the Attorney General, with attachments thereto, which reveals the conduct on the part of the Supreme Court, *vis-à-vis, illegal contracts* pertaining to which, citing international authorities, I had sought *anti-suit injunctions*. As a consequence of such conduct, Sri Lanka faces Claims of around SL Rs. 40 billion (US \$ 315 million) – *a cognizable sum of money*.

Your aforesaid repeated concerns have been on the Resolution in terms of Article 107 of the Constitution, *which reigns supreme*, and the Standing Orders made thereunder for the process to impeach the Chief Justice, by 117 law makers of a total of 225, consequent to which, the Hon. Speaker had no option, other than to appoint a Parliamentary Select Committee to investigate into Charges contained in such Resolution. To *allay the controversy* caused, as in the famous instance in France of *Alfred Dreyfus* affair, I attach a Chart *depicting* the administrative procedure for disciplinary action against judicial and public officers, together with an Article I had caused to be published, and the relevant Articles of the Constitution. I have observed as reported in the *media*, that Article 14 of the International Covenant on Civil & Political Rights was to be extended. Nevertheless, Judges are accountable to the prevalent Constitution under which they entered upon Office, and must not usurp Parliament's Legislative function *vide - Latimer House Principles*; whereas as revealed in my Petition dated 18<sup>th</sup> October 2012 forwarded previously the Chief Justice has violated the UN Universal Declaration of Human Rights and had overwritten Article 157 of the Constitution, which she could not !

I attach a *scanned* copy of the Report of the Parliamentary Select Committee, without the recorded proceedings of, the list of documents examined by and the oral submissions made before, the said Committee, the contents of which are *self-explanatory*. The Parliamentary Select Committee is only an administrative process, enabling the President of the Republic to remove a Chief Justice, if the Committee's Report makes an *adverse* finding and is passed after an Address of Parliament. I myself have appeared before Parliamentary Standing Committees, which are fact finding Committees, not exercising any judicial power, which I believe is as the same as in the House of Commons and Lords in the UK. The fact disclosed, that the Opposition Members of the Parliamentary Select Committee, after having seen the evidence, had *'walked out'*, without participating and writing a *dissenting* Report, with *justifiable* reasoning only *reinforces* the findings.

A hue and cry has been raised on the matter of natural justice, which perhaps triggered your concerns. On an examination of the attached Report of the Parliamentary Select Committee, it would be revealed that the facts are otherwise, and that the Chief Justice had been, in fact, afforded adequate time of one month, to respond to matters, which were within her own knowledge. Please do compare this with the contents of my aforesaid Affidavit, where the people and I, particularly parties affected, had been knowingly denied natural justice of even having been heard, whilst she and the other Members of the Bench had acted in my view, without jurisdiction, ultra-vires the Constitution, rendering nugatory the tenet that all are equal before the law.

Given below are two strips of scanned newspaper photographs of scenes, within the precincts of the Supreme Court, portraying organized protests, including rituals performed, uproars created and the demeanor of the Chief Justice, whilst leaving to attend the Parliamentary Select Committee proceedings, which alone speaks volumes, and brings into issue, as to whether such hullabaloo is acceptable under the Commonwealth Latimer House Principles and the Bangalore Principles of Judicial Conduct adopted by the UN. Would any ordinary litigant have been permitted to so conduct demonstrations in the Supreme Court precincts, to bring about undue pressure to endeavour to stymie and stultify an inquiry ?

DAY 1



DAY 2



As disclosed in my previous Letter, my interest is as an Individual Member of the International Association of Anti-Corruption Authorities, committed to promoting and facilitating the implementation of the UN Convention Against Corruption (UNCAC), which Sri Lanka ratified on 31<sup>st</sup> March 2004, whilst India ratified same only on 9<sup>th</sup> May 2011. No doubt you are committed to support the same in the context of achieving good governance and the rule of law. In the circumstances revealed in my aforesaid Affidavit dated 11<sup>th</sup> December 2012 and further Written Submission dated 9<sup>th</sup> February 2012 attached thereto, the Chief Justice comes within the ambit of Article 52 of the UNCAC, pertaining to category of 'politically exposed persons' (PEPs), warranting enhanced scrutiny of their affairs in terms of the UNCAC.

Yours truly,

Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A, C.G.M.A., C.F.E.

cc: Mr. Luis Felipe Fernández de la Peñ, Managing Director, Europe and Central Asia, European External Action Service, 1046 Brussels, Belgium

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**BY E-MAIL**

5<sup>th</sup> December 2012

Mr. Bernard Savage  
Ambassador/ Head of Delegation  
Delegation of the European Union to Sri Lanka and the Maldives  
26 Sir Marcus Fernando Mawatha  
Colombo 7  
Sri Lanka

Dear Mr. Bernard Savage,

**“ EU concerns over independence of judiciary ”**

I read with interest the above captioned Statement, reported in today's media, in the context of which, I forward for your kind attention, copies of the following, for you to be apprised of the contents thereof and communicate same to EU member countries, who have shared such concerns :

1. My Petition dated 18<sup>th</sup> October 2012 to the Supreme Court of Sri Lanka, *the contents of which*, also dealing with issues under the United Nations Universal Declaration of Human Rights and Universal Declaration of Human Rights and International Covenant on Civil & Political Rights, *are self-explanatory. The response I received is even more appalling.*
2. My Letter dated 5<sup>th</sup> November 2012 to the present Attorney General of Sri Lanka, and attached thereto Letter dated 13<sup>th</sup> August to the Minister of Petroleum Industries, and Letter dated 24<sup>th</sup> June 2010 to the former Attorney General of Sri Lanka, *the contents of which too are self-explanatory.*

As you are aware, I am a public interest activist from early 1990s – *vide* – [www.consultants21.com](http://www.consultants21.com). My very first derivative actions in law on fraud in the construction of the Colombo Hilton Hotel – upheld by the Supreme Court of Sri Lanka is reported in the Commonwealth (Commercial) Law Reports of 1992 @ Page 637.

I am also an Individual Member of the International Association of Anti-Corruption Authorities (IAACA) established in 2006, to promote and facilitate the implementation of the United Nations Convention Against Corruption (UNCAC), which came into force in December 2005.

Articles of the UNCAC, which Sri Lanka had ratified, contain mandatory obligations to be fulfilled on the part of the State Parties. I have published a series of Books in the US - *vide* - [www.consultants21.com/publications](http://www.consultants21.com/publications).

In examining the foregoing documents, it would be relevant and pertinent to take into reckoning, the provisions in the Articles of the UNCAC, particularly with Sri Lanka being one of the countries selected to be reviewed this year, under the review mechanism conducted by UNODC on the implementation of the UNCAC.

Whilst I fully endorse the “Basic Principles on the Independence of Judiciary” and “The Commonwealth's Latimer House Principles” and the dire necessity to have an independent fearless judiciary, it is of equal importance that the rights of citizens are recognized, upheld and protected in compliance with the applicable UN and EU Conventions, which require an independent, impartial, honest and competent judiciary.

In terms of the Constitution of Sri Lanka, the sovereignty is in the people, and is inalienable, and is exercised in trust by the Executive, Legislature and the Judiciary. You would appreciate that a correct and realistic knowledge and appreciation of the totality of the facts should have been ascertained prior to issuing such statements on impressions and/or perceptions.

Yours truly,



Nihal Sri Ameresekere, F.C.A., F.C.M.A., C.M.A, C.G.M.A., C.F.E.

cc: Mr. Paul Lachal Roberts  
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