

Sinnadurai Sundaralingam & Balendra

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On this 4th day of March 2016

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

The **Petition** of the Intervenant Petitioners above named appearing by RAJ MOAHAN
BALENDRA practicing in the name style and firm of

SINNADURAI SUNDARALINGAM & BALENDRA

and his Assistants UDUGAMA SURIYAGE OMEGA LALANI SENANAYAKE, MATHINI
VIGNESWARAN and USHETTIGE NIMASHA SHAMEN PERERA their Registered
Attorneys state as follows:

THE INTERVENIENT PETITIONERS

1. The 1st Intervenant Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No.7 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka.
2. The primary objects of the 1st Intervenant Petitioner are *inter alia* to make inputs into public policy-making and implementation process in constitutional, legislative and administrative spheres to ensure responsible and good governance, and to propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the rule of law, human rights and social justice.

True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the 1st Petitioner are annexed hereto marked 'P1' and 'P2' respectively and pleaded as part and parcel hereof.

3. The 1st Intervenant Petitioner has over several years worked to protect the language rights of citizens including by conducting language audits and highlighting violations of language rights and making representations to the government, by creating material needed to educate citizens of their language rights, by supporting citizens whose language rights have been violated to seek redress from Your Lordships' Court, the Human Rights Commission of Sri Lanka or the Official Languages Commission of Sri Lanka.

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4. Furthermore the officers of the 1st Intervenient Petitioner have supported government officials to obtain physical infrastructure needed to ensure that language rights of citizens are protected.
5. The 2nd Intervenient Petitioner is a citizen of Sri Lanka and the Executive-Director of the 1st Intervenient Petitioner above-named.
6. The Intervenient Petitioners make this Application in their own right and in the public interest, with the objective of safeguarding the rights and interests of the general public of Sri Lanka and securing due respect, regard for the Fundamental rights and Language rights as enshrined in and protected by the Constitution.

BACKGROUND TO THE INSTANT APPLICATION

7. The Petitioners-Respondents (herein after referred to as "the Petitioners") above named have filed a Petition dated 26th February 2016 and bearing number SC. FR. 67/16, in Your Lordships Court seeking to impugn the decision to sing the National Anthem of Sri Lanka in the Tamil language at the official celebration of the Independence Day 2016.
8. The Petitioners allege that singing the National Anthem in Tamil contravenes Article 7 of the Constitution.
9. The Petitioners allege that accordingly the National Anthem of Sri Lanka can only be sung in the Sinhala language and the decision to sing the National Anthem of Sri Lanka in the Tamil language is arbitrary and capricious and a violation of the rights enshrined in Article 12(1) and 12(2) of the Constitution and as such a violation as a whole of the fundamental rights of the Petitioners.

SUBMISSIONS ON THE CONSTITUTIONAL PROVISIONS

10. The Intervenient Petitioners respectfully state that the Constitution does not stipulate that the National Anthem can only be sung in the Sinhala language.
11. Article 18 and 19 of the Constitution clearly and unambiguously provides that Sinhala **and** Tamil shall be the official and national languages of Sri Lanka.

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- 12. Furthermore unlike subordinate legislation such as acts of Parliament, the Constitution contains no provision, which stipulates that the Sinhala text shall prevail over the Tamil text.

13. Article 7 of the Tamil version of the Constitution of Sri Lanka reads as follows

“இலங்கைக் குடியரசின் தேசிய கீதம் “சிநீ லங்கா தாயே” என்பதாக இருத்தல் வேண்டும்; அதன் சொற்களும் இசையமைப்பும் மூன்றாம் அட்டவணையில் தரப்பட்டவாறாக இருத்தல் வேண்டும்”

The translation of the text to English can be provided as follows;

“The National Anthem of the Republic of Sri Lanka shall be ‘Sri Lanka Thaaye’, the words and music of which are set out in the Third Schedule”.

- 14. The words and music of the National anthem in the Tamil language is constitutionally recognized by Article 7 read with the Third Schedule of the Tamil version of the Constitution of Sri Lanka.

A true copy of the words and melody of the National Anthem which is found in the Third Schedule of the Tamil version of the Constitution of Sri Lanka is annexed hereto marked ‘P3’ and pleaded as part and parcel hereof.

- 15. The Interventient Petitioners respectfully state that the National Anthem that was sung in the Tamil language at the Independence Day celebrations on the 4th of February 2016 contained the same words and melody as entrenched in the Constitution in terms of Article 7 read with the Third Schedule of the Tamil version of the Constitution of Sri Lanka.

- 16. The Constitution does not provide for the Sinhala language to supersede the Tamil language, in fact the Constitutional scheme on language rights as it exists recognizes the parity of status of the Sinhala and Tamil Languages. As such there is no inconsistency between the Constitution of Sri Lanka and the decision to sing the National Anthem Tamil as provided in the Third Schedule of the Tamil version of the Constitution of Sri Lanka.

- 17. The Interventient Petitioners further state that the assertion that the National Anthem can only be sung in Sinhala is a violation of the spirit and essence of the

constitutional provisions that provide for the fundamental rights of citizens of Sri Lanka, in as much as;

- (i) In terms of Article 12(1) of the Constitution, which states that all persons are equal before the law and entitled to the equal protection of the law, the prohibition on singing and/or the non-recognition of the National Anthem in Tamil would be discriminatory towards citizens who speak the Tamil language.
- (ii) Such an order would also run counter to the provisions of Article 18 and 19 of the Constitution which recognizes the parity of status between the languages of Sinhala and Tamil.
- (iii) Article 12(2) of the Constitution recognizes that no citizen shall be discriminated against on the grounds of language. A prohibition on singing and/or the non-recognition of the National Anthem in the Tamil language would serve to alienate and discriminate a specific group of citizens, thereby violating their fundamental rights as provided for in Article 12(2).

18. The Constitution in Article 4(d) requires that the fundamental rights declared and recognized by the Constitution shall be **respected, secured and advanced by all the organs of government** (including the judiciary), and shall not be abridged, restricted or denied, except in the manner and to the extent provided in the Constitution itself.

19. The Constitution further grants to the Supreme Court **sole and exclusive jurisdiction to hear and determine** any question relating to the infringement or imminent infringement by executive or administrative action **of any fundamental right or language right declared and recognized by Chapter III or Chapter IV**. Thereby assigning to the Supreme Court a unique responsibility in respecting, securing and advancing the said rights.

20. In view of the aforesaid, the Intervient Petitioners state that declaring that the National Anthem in the Constitution should be sung only in the Sinhala language and/or in the Sinhala words contained in the Third Schedule to the Sinhalese version of the Constitution would violate the fundamental rights of the citizens of Sri Lanka enshrined in Article 12(1) and 12(2) of the Constitution, would also be in contravention of the fundamental law pertaining to language rights in Sri Lanka which is provided for in Article 18 and 19 of the Constitution.

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SUBMISSIONS ON THE NATIONAL ANTHEM AND RECONCILIATION

21. Discrimination based on language and the inability and/or unwillingness of the post-independence State to recognize and accommodate the different languages used by its peoples came to symbolize discrimination and institutionalize alienation which eventually led to an armed insurrection against the State.
22. The adoption of the 13th and 16th Amendment to the 1978 Constitution was part of a broader attempt to rectify these historic failings of the State.
23. As such the Interventient Petitioners state that protecting the language rights guaranteed by the Constitution is a necessary but –on its own- insufficient pre requisite to protect peace, reconciliation and unity in a pluralist society such as Sri Lanka.
24. The importance of protecting language rights was recognized by the Lessons Learnt and Reconciliation Commission (LLRC) appointed by the Government of Sri Lanka in May 2010. In its final report the LLRC *inter alia* stated the following;

“The people of the North and East are separated from the people of the South due to communication barriers. Every attempt must be made to create a sense of belonging among all the citizens irrespective of race, religion or social status. It is language that unifies and binds a nation. Therefore, it is essential that policies relating to language are formulated towards this end. It is imperative that the official languages policy is implemented in an effective manner to promote understanding, diversity and national integration.” (LLRC Final report at paragraph 9.242)
25. As set out above the Tamil version of the National Anthem is a translation of the Sinhala version of the National anthem. Its substance and melody are the same as the Sinhala version.
26. There remains a considerable amount of work to be done to ensure that the official languages policy is fully implemented. The singing of the National Anthem in both Sinhala and Tamil at state functions is symbolic of the State’s recognition of the importance of the task at hand and an indication of its political commitment to achieve this objective.

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27. Furthermore the recognition of the right of Tamil speaking citizens of Sri Lanka to sing the National Anthem in a language they can comprehend could potentially engender a sense of belonging, equal citizenship among all citizens of Sri Lanka regardless of the language they speak. As such it is an important symbolic step in the post war reconciliation process.

Conclusion

28. In the aforesaid circumstances the Interventient - Petitioners are compelled to seek the permission of Your Lordships' Court, to be permitted to intervene and/ or make submissions through their Counsel in the Petition in SC.FR. 67/16.

29. The Interventient Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

30. An affidavit of the 2nd Interventient Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Interventient Petitioners respectfully pray that Your Lordship's court be pleased to:

- (a) Make order in terms of Article 134 (3) of the Constitution permitting the Interventient - Petitioners to intervene and / or make submissions through their Counsel with regard to the Petition in SC. FR. 67/16;
- (b) Dismiss the Petition of the Petitioners *in limine* or otherwise;
- (c) Grant Costs;
- (d) Grant such further and other relief as to Your Lordships' Court shall seem meet;

Sgd. Sinnadurai Sundaralingam & Balendra

REGISTERED ATTORNEYS FOR THE INTERVENIENT PETITIONERS

DOCUMENTS ANNEXED TO THE PETITION

Documents marked 'P1' to 'P3'

**REGISTERED ATTORNEYS FOR THE
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