<u>IN THE SUPRME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</u>

<u>PETITION</u>

In the matter of an application under and in terms of Article 121(1) of the Constitution read with Article 120 and Rule 63(1) of the Supreme Court Rules of 1978, against the Bill titled "ANTI-CORRUPTION (AMENDMENT) BILL"

SC (SD) Application No :

Media Law Forum (Guarantee) Limited
170,
1st Floor,
Hulftsdorp Street,
Colombo 12

PETITIONER

-Vs-

The Honorable Attorney-General
Attorney General's Department
Colombo 12

RESPONDENT

On this 01st Day of September 2026

<u>TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONORABLE LORDSHIPS OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</u>

The Petition of the Petitionerabove-named appearing by Mrs. Dayani Panditharathne as his registered Attorney-at-Law states as follows :

1. The Petitioner states that, Media Law Forum, is a non-profit organization engaged in the promotion and protection of media freedom, freedom of expression, digital rights and access to information in Sri Lanka. In view of its objects, activities and legitimate interest in matters concerning legislation affecting the aforesaid rights, the Petitioneris a person/entity entitled to invoke the jurisdiction of Your Lordships' Court under the Constitution and accordingly files the present Petition seeking a Special Determination in respect of the Bill in question.
*(A copy of the Certificate of Incorporation of the Petitioneris annexed hereto marked as **P-1** and pleaded as part and parcel hereof)*

2. The Petitioner states that the Honorable Attorney-General is made a Respondent to this application under and in term of Article 134(1) of the Constitution.

3. The Petitioner states that this Petition is invoked in terms of Article 121(1) of the Constitution and seeks a Special Determination of Your Lordships' Court in respect of the Bill titled "Anti-Corruption (Amendment) Bill" (hereinafter referred to as 'the Impugned Bill') which seeks to amend the Anti-Corruption Act No. 9 of 2023 (hereinafter referred to as 'the Principal Enactment').
*(A copy of the Act is annexed hereto marked as **P-2** and pleaded as part and parcel hereof)*

4. The Petitioner states that the principal enactment was enacted, inter alia, for the purposes of preventing and eradicating bribery and corruption, enhancing transparency and accountability in governance, establishing an independent Commission to investigate allegations of bribery and corruption and to institute prosecutions, and giving effect to Sri

Lanka's obligations under the United Nations Convention Against Corruption and other internationally recognized norms and standards.

5. The Petitioner states that the principal enactment establishes a Commission to Investigate Allegations of Bribery or Corruption and expressly provides that the Commission shall exercise and perform its powers and functions without being subject to any direction or other interference proceeding from any person, save for lawful direction or supervision by a Court or Tribunal entitled by Law to do so.

6. The Petitioner respectfully states that the independence, institutional integrity and proper functioning of the statutory framework governing the investigation and prosecution of allegations of bribery and corruption are matters of considerable public importance and are directly connected with the Rule of Law, equality before the law, due process and the protection of the fundamental rights guaranteed by the Constitution.

7. The Petitioner states that the Bill titled "An Act to Amend the Anti-Corruption Act No.9 of 2023" was published in the Gazette on 27th July 2026 and was presented to Parliament on 19th August 2026.
   *(Copies of the English. Sinhala and Tamil versions of the said Bill are annexed hereto marked as **P-3(a), P-3(b)** and **P-3(c)** respectively and pleaded as part and parcel hereof)*

8. The Petitioner states that the impugned Bill contains provisions seeking, inter alia, to amend Sections 26, 67, 70, 79, 80, 81, 82, 84, 85, 88, 89, 90, 91, 92, 111, 149, 162 and 163 of the principal enactment. While some of these Amendments contained in the impugned Bill may be administrative, clarificatory or consequential in nature, several provisions of the Bill introduce substantive changes affecting the Criminal Process. Fundamental Rights, Liberty of Persons, Privacy, Property and Employment Rights.

9. The Petitioner respectfully states that the impugned provisions must therefore be examined by Your Lordships' Court for their consistency with the Constitution.

10. The Petitioner further states that the Constitution guarantees to every person Equality before the Law and Equal Protection of the Law under Article 12(1), Freedom from Arrest except according to procedure established by Law under Article 13(1), Freedom of Speech and Expression including publication under Article 14(1)(a), together with the Right of access to Information under Article 14A.

11. The Petitioner states that Article 14A (2) permits restrictions on Access to Information only where prescribed by Law and necessary in a democratic society for one of the stated purposes, including the protection of the rights or reputation of others. Articles 3 and 4(d) further require the sovereignty of the People and the fundamental rights to be respected, secured and advanced.

12. The Petitioner states that Section 88(1) of the principal enactment requires the Centralized Electronic System to generate a redacted version of every Assets-and-Liabilities declaration, accessible to the general public through the Commission's official website within one month of submission.

13. The Petitioner further states that the existing Section already requires the removal of defined personal identifiers, including residence addresses, full addresses of real estate, dates of birth, National Identity Card and passport numbers, bank-account numbers and deposit details. The statutory framework therefore already contains an express mechanism for protecting specified private information before a citizen obtains the redacted record.

14. The Petitioner states that Section 84 of the principal enactment recognizes the importance of public sources and citizen-generated material in the verification of declarations, including complaints concerning illicit enrichment or conflicts of interest. Section 86, while permitting specified State bodies to call for and refer to declarations with the sanction of the Central Authority, is not a substitute for the citizen's separate right under Section 88(1) to access a public redacted declaration.

GROUNDS OF UNCONSTITUTIONALITY

<u>Clause 2 – Institutional Independence of the Commission</u>

15. The Petitioner states that Clause 2 permits the Commission to appoint Officers from the police force, including on a permanent basis. The Commission is intended by the principal enactment to function Independently. The Bill contains no express safeguard concerning conflicts of interest, prior investigative allegiance, reporting lines, selection criteria, duration, return to the police service or protection of the Commission's Institutional Independence.

Clause 2: This clause amends section 26 of the Anti-Corruption Act, No. 9 of 2023 (hereinafter referred to as the "principal enactment") and the legal effect of the section as amended is to make provisions to appoint officers and servants of the provincial public service or the police force to the Commission, temporarily or permanently.

16. The Petitioner respectfully states that the absence of such safeguards requires strict Constitutional Scrutiny in light of Article 41B and the constitutional status and Independence of the Commission.

<u>Clauses 3 and 4 – Withdrawal of Charges and Non-Prosecution of Accomplices</u>

17. The Petitioner states that Clauses 3 and 4 of the impugned Bill expand the Director General's powers in relation to withdrawal of charges in Magistrate's Courts and non-prosecution of an Accomplice.

<u>Clause 3</u>

This clause amends section 67 of the principal enactment and the legal effect of the section as amended is to make provisions to enable the Director-General to withdraw charges filed in Magistrate's Courts.

Clause 4

This clause amends section 70 of the principal enactment and the legal effect of the section as amended is to make provisions to enable the Commission to authorize the Director-General not to charge or prosecute an accomplice charged under the provisions of Part III of the principal enactment on condition of making a full or true disclosure of the whole of the circumstances within his knowledge relating to the offence.

18. The Petitioner states that the exercise of such powers should be subject to transparent criteria, written reasons, judicially reviewable safeguards and protection against selective or arbitrary decisions. In their absence, the citizen's Right to Equal protection under Article 12(1) and confidence in the equal enforcement of Anti-Corruption Law are impaired.

Clause 6 – Expansion of Persons subject to the Declaration of Assets and Liabilities Regime

19. The Petitioner states that Clause 6 of the impugned Bill seeks to amend Section 80 of the principal enactment, which identifies the classes of persons to whom the provisions relating to Declarations of Assets and Liabilities apply.

Clause 6

This clause amends Section 80 of the principal enactment and the legal effect of the section as amended is –

(1) to rectify an error in the Sinhala version of the principal enactment;

(2) to include staff officers of statutory bodies;

(3) to include the applicable provision of the Constitution of the Democratic Socialist Republic of Sri Lanka;

(4) to apply the provisions of this section to Executives of trade unions with more than one thousand registered members;

(5) consequential to the amendment made to the public official;

(6) to insert chairmen, directors and staff officers to make the provision precise;

(7) to include proprietors, chairmen and directors of media companies; and

(8) to rectify an error in the Sinhala version of the principal enactment.

20. The Petitioner states that the impugned Clause, inter alia seeks to include:

    a) Staff Officers of statutory bodies
    b) Executives of Trade Unions having more than one thousand registered members
    c) Proprietors, Chairmen and Directors of Media Companies registered at the relevant Ministry and licensed under section 22 of the Sri Lanka Telecommunications Act No. 25 of 1991

21. The Petitioner states that the requirement to make declarations of Assets and Liabilities constitutes a substantial Statutory Obligation requiring the disclosure of private financial and personal information.

22. The Petitioner respectfully states that any classification of persons subjected to such obligations must bear a rational and constitutionally permissible nexus to the object sought to be achieved by the legislation. But the impugned Clause subjects' categories of persons in civil society and the private media sector to the statutory declaration regime without establishing, within the framework of the Bill, a constitutionally sufficient basis for treating such persons as equivalent to Public Officials exercising public power or entrusted with public resources.

23. The Petitioner states that executives of trade unions and proprietors, chairmen and directors of private media companies may exercise important social, professional or commercial functions, but are not, merely by reason of such status, necessarily holders of public office or persons exercising governmental authority. Therefore, the Petitioner respectfully states that the indiscriminate extension of the declaration regime to such categories of persons is capable of giving rise to arbitrary and unequal treatment contrary to Article 12(1) of the Constitution.

24. The Petitioner states that the impugned clause has the potential to interfere disproportionately with the Privacy and Personal Autonomy of persons belonging to the said categories, and the inclusion of executives of trade unions and proprietors, chairmen and directors of media companies may additionally have a chilling effect upon the independent exercise of trade union activity and Media Freedom.

25. The Petitioner respectfully states that, insofar as the impugned provision subjects the aforesaid categories to intrusive Statutory Obligations without a rational and proportionate basis, Clause 6 is inconsistent with Article 12(1) of the Constitution, and insofar as the said provision disproportionately interferes with constitutionally protected freedoms and personal interests, the same requires strict Constitutional Scrutiny.

Clause 7 – Removal of Household-Based Declaration Duty

26. The Petitioner states that Clause 7 of the impugned bill repeals Section 81(e) of the principal enactment. Under the existing enactment, a declarant is required to include the Assets and Liabilities of any person who has cohabited and shared the common household with the declarant for at least six months, except where that person does not share mutual Rights and Obligations with the declarant.

Clause 7: This clause amends section 81 of the principal enactment by repealing paragraph (e) thereof and the legal effect of the section as amended is to remove persons who are total strangers to the declarant in order to safeguard the privacy of such person.

27. The Petitioner states that the Bill thereby preserves disclosure by a spouse, dependent children and dependents, but removes disclosure of another member of the declarant's household who may share mutual rights and obligations. This may include an adult relative, partner or other person through whom assets, liabilities, benefits or interests may be held or enjoyed.

28. The Petitioner states that the amendment creates a route by which property, benefit or interest connected to the exercise of Public Power may be kept outside the declaration while remaining within the economic household. It is directly at odds with the objects of transparency, integrity, public confidence and public participation and weakens the citizen's interest in an effective system for identifying illicit enrichment and conflicts of interest.

29. The Petitioner respectfully states that the removal is arbitrary and irrational under Article 12(1), as it eliminates a category capable of exposing household-based concealment without providing a criterion, safeguard, substitute disclosure or verification mechanism. The change further undermines Articles 3 and 4(d), read with Article 14A, and is contrary to the preventive transparency and public participation objectives reflected in Articles 5, 7, 10 and 13 of the United Nations Convention against Corruption.

<u>Clause 11 – Criminal Liability relating to the Use of Redacted Declarations</u>

30. The Petitioner states that Clause 11 of the impugned Bill seeks to amend Section 88 of the principal enactment and the proposed amendment introduces a new subsection 88(1A).

<u>Section 88</u>

(1) The centralized electronic system shall automatically generate redacted version of every declaration of assets and liabilities which is accessible to the general public within one month of its submission through the official website of the Commission. Such redacted version shall not include –

a) the address of the residence of the declarant or of any other person, whose assets are declared by the declarant;

b) full addresses of declared real estate except information pertaining to the ward and district in which the real estate is situated;

c) date of birth, National Identity Card Number, Passport Number or any other number recognized by the relevant authorities for the purpose of identification of individuals mentioned in the declaration;

d) bank account numbers; or

e) any other deposit details:

Provided that, when generating the aforementioned redacted version of a declaration of assets and liabilities, the commission shall ascertain the identity of the person obtaining the redacted version and the identity of such person shall be recorded.

(2) The Central Authority shall, within a period of three months of the commencement of the functions of the Central Authority, appoint an officer as the Information Officer of the Central Authority in terms of section 23 of the Right to Information Act, No. 12 of 2016 and the Head of the Central Authority shall be the Designated Officer for the purposes of the said Act.

<u>Clause 11</u>

This clause amends section 88 of the principal enactment and the legal effect of the section as amended is to make clarity to the provisions of the section and to protect the privacy of the declarants of assets and liabilities.

31. The Petitioner states that the proposed subsection 88(1A)(a) provides that a person who has obtained a redacted version of another person's declaration of Assets and Liabilities shall not use such declaration for any purpose other than submitting such declaration to an Officer or Institution under section 86 of the principal enactment.

32. The Petitioner states that the proposed subsection 88(1A)(b) makes it a criminal offence, punishable after summary trial by a Magistrate by a fine up to Rs.100,000, imprisonment up to one year, or both, where a person uses such declaration in violation of another person's privacy

33. The Petitioner respectfully states that the impugned provision is vague and uncertain in material respects. In particular, the expression "in violation of such other Person's Privacy" is not sufficiently defined within the impugned provision so as to enable a citizen to ascertain with reasonable certainty the precise conduct that constitutes a Criminal Offence.

34. The Petitioner states that a provision creating Criminal Liability must satisfy the Constitutional requirements of legality, certainty and fairness and must not leave citizens exposed to penal consequences on the basis of vague, uncertain or subjective standards.

35. The Petitioner further states that a person may obtain a redacted declaration lawfully, including through a statutory process intended to promote accountability and transparency. The impugned provision nevertheless restricts the subsequent use of such information in a manner capable of criminalizing conduct involving legitimate public discussion, investigative journalism, academic analysis, public-interest reporting or the disclosure of matters relevant to accountability and corruption.

36. The Petitioner respectfully states that the provision is overbroad and is not confined by sufficiently clear statutory safeguards to conduct which demonstrably and unlawfully violates a legitimate and identifiable privacy interest. Therefore, the Petitioner states that Clause 11 is inconsistent with Article 12(1) of the Constitution by reason of its vagueness, uncertainty and arbitrary scope.

37. The Petitioner further states that the Criminalization of the use of information capable of being relevant to matters of public accountability may unjustifiably restrict Freedom of Expression and therefore requires Constitutional Scrutiny under Article 14(1)(a) of the Constitution.

38. The Petitioner states that Right to Access Information is not confined to a momentary technical download. It includes meaningful receipt, retention, consideration and use of information for the exercise and protection of Constitutional Rights. A record that may be obtained only on pain of Criminal Liability if put to ordinary civic use amounts to access in name but secrecy in substance.

39. The Petitioner states that although Privacy is a Legitimate Constitutional Interest, Article 14A (2) requires a restriction to be prescribed by Law and necessary in a democratic society. The proposed Section 88(1A) covers every use other than delivery to the specified persons or institutions under Section 86, notwithstanding that the document has already been redacted and less restrictive measures are available.

40. The Petitioner further states that the proposed prohibition is not confined by any requirement of actual harm, likely harm, intention to cause harm, knowledge, recklessness, harassment, deception or improper gain. It consequently criminalizes conduct which may include reading, retaining, copying, translating, analysing, advising, comparing, teaching, quoting, communicating in legal proceedings or reporting an apparent discrepancy.

41. The Petitioner states that the uncertainty is compounded by the absence of a clear relationship between paragraph (a), which categorically prohibits use for any other purpose, and paragraph (b), which refers to use in violation of privacy. A citizen should not be required to risk Criminal Liability in order to discover the boundary of a criminal prohibition.

42. The Petitioner respectfully states that targeted provisions could protect against the knowing disclosure of a specifically identified personal datum included by manifest error, conduct involving threats, identity fraud, harassment or improper gain, or publication creating a real and demonstrable risk of serious harm. The Bill instead adopts a blanket criminal prohibition without a public-interest defence, a harm threshold, an independent review mechanism or a tailored exception.

43. The Petitioner further states that the Right to Information Act, No. 12 of 2016 provides a structured access regime containing identified exemptions, severability, reasons and review. The impugned Amendment attempts to create a parallel criminal restraint on information which the principal enactment itself directs to be publicly accessible, thereby undermining the constitutional minimum required by Article 14A.

44. The Petitioner states that in the Determination on the Right to Information Bill, S.C. S.D. Nos. 19–23/2016 (4 May 2016), Your Lordships' Court recognized the connection between Article 14A, Articles 3 and 4(d), and the sovereignty of the People. Similarly, the Determination on the Regulation of Election Expenditure Bill (2023) is also relevant to the relationship between the Right to Information Act and Article 14A.

45. The Petitioner respectfully states that the prohibition is Arbitrary under Article 12(1), because the same record may be communicated to one specified institution while an equally privacy-preserving communication to another public authority, professional adviser, court, electoral body or fellow citizen is Criminalized. The classification therefore turns on the identity of the recipient rather than on any identified privacy harm.

46. The Petitioner states that the uncertainty and potential deprivation of liberty are inconsistent with Article 13(1), while the breadth of the restraint violates Articles 10 and 14(1)(a).

Clause 11(1)(d) – Open-ended Redaction and Uncontrolled Delegation

47. The Petitioner states that Clause 11(1)(d) of the impugned Bill permits the Central Authority to suppress any additional information which it may consider to violate an individual's privacy, as may be prescribed. The provision supplies no objective criterion, threshold of serious harm, requirement of necessity, notice, reasons, independent review or public-interest balance.

48. The Petitioner states that the scope of what the public may see, and consequently what a citizen may safely use, is left substantially to a subjective administrative opinion and future prescription. Such an arrangement is incompatible with the requirement that a restriction on Article 14A be prescribed by clear Law and necessary in a democratic society, and further facilitates unequal and selective treatment contrary to Article 12(1).

<u>Clause 12 – Dilution of Election-Related Disclosure</u>

49. The Petitioner states that Clause 12 of the impugned Bill replaces the requirement that an Election Candidate submit both the prescribed form and a summary of the declaration to the Commissioner of Elections with a requirement to submit only a copy of the declaration.

Clause 12: This clause repeals and replaces section 89 of the principal enactment and the legal effect of the section as amended is to make clarity.

50. The Petitioner states that unless the Bill preserves a timely, standardized and publicly accessible disclosure mechanism, the amendment dilutes the citizen's ability to obtain comparable information concerning candidates and should be assessed consistently with Articles 14A and 14(1)(a) of the Constitution.

<u>Clause 16 – Mandatory Penalty and Automatic Invalidation of Grants, Appointments, Benefits and Advantages</u>

51. The Petitioner states that Clause 16 of the impugned Bill seeks to amend Section 111 of the principal enactment.

<u>Section 111</u>

Any public official who, with intent or knowledge to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or on any other person, or with intent or knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person-

a) does, or forbears to do, any act by virtue of his office as a public official or by use of such office with or without any power therefor vested with such officer;

b) induces any other public official to perform, or refrain from performing, any act by virtue of his office as a public official;

c) uses any information coming to his knowledge by virtue of his office as a public official;

d) *participates in the making of any decision by virtue of his office as a public official; or*

e) *induces any other person, by the use, whether directly or indirectly, of his office as such public official to perform, or refrain from performing any act,*

commits the offence of corruption and shall upon trial and conviction by a High Court or upon summary trial and conviction by a Magistrate be liable to rigorous imprisonment for a term not exceeding ten years or to a fine not exceeding one million rupees or to both such imprisonment and fine.

<u>Clause 16</u>

This clause amends section 111 of the principal enactment and the legal effect of the section as amended is to make provisions to obtain to the Government the value of any property which was acquired or converted as a proceed of corruption and also to make unlawful any grant, appointment, benefit or advantage obtained by any person as a result of corruption from the date of the conviction.

52. The proposed subsection 111(2) provides that where a person is convicted under subsection (1), the Court shall, in addition to imposing the fine otherwise provided for, impose a penalty of not less than three times the value of property acquired or converted as proceeds of corruption or, where loss has been caused to the Government, an amount determined by the Court as such loss.

53. The Petitioner states that the proposed provision creates a mandatory minimum financial penalty which may operate in addition to other penalties provided by law. While the Parliament is entitled to prescribe penalties for criminal offences, a mandatory penalty must nevertheless be consistent with the constitutional guarantees of equality and the Rule of Law. The impugned provision does not, on its face, provide for adequate differentiation between materially different factual circumstances, degrees of culpability or the individual circumstances of a convicted person.

54. The Petitioner states that the compulsory imposition of a penalty of not less than three times the relevant value may operate arbitrarily and disproportionately in particular cases.

55. The proposed subsection 111(3) further provides that where a public official is convicted of corruption, any grant, appointment, benefit or intangible advantage acquired as a result of corruption and continuing to be enjoyed by the public official or another person shall cease to be lawful from the date of conviction.

56. The Petitioner states that the impugned provision purports to affect not only the convicted public official but may also affect "any other person" who continues to enjoy a grant, appointment, benefit or advantage.

57. The Petitioner respectfully states that such other person may not necessarily have been charged, prosecuted or convicted of any offence. The automatic deprivation of the lawfulness of a benefit or advantage enjoyed by another person, without requiring a separate judicial determination regarding that person's entitlement, knowledge, culpability or participation, is arbitrary and contrary to the requirements of due process.

58. The Petitioner states that the impugned provision is therefore capable of adversely affecting the rights and legitimate interests of persons who are not parties to the criminal proceedings and respectfully states that Clause 16 is inconsistent with Article 12(1) of the Constitution.

<u>Clause 17 – Restriction of Bail based upon a Certificate issued by the Director General</u>

59. The Petitioner states that Clause 17 of the impugned Bill seeks to repeal and replace subsection (1) of Section 149 of the principal enactment.

<u>Section 149</u>

(1) All offences under this Act shall be congnizable and non-bailable and where any person suspected or accused of, being concerned in committing or having committed an offence under this Act, appears, is brought before or produces or surrenders before a Magistrate shall grant bail as per the provisions of the Bail Act, No. 30 of 1997:

Provided that any person detected of having committed an offence under this Act consisting of soliciting, accepting or offering a gratification is brought before or produced or surrenders before any Magistrate with a certificate of the Director-General confirming such detection, the Magistrate shall remand such person until the conclusion of the trail.

Provided however, that the Magistrate may, in exceptional circumstances and for reasons to be recorded release such person on bail at any time prior to the conclusion of the trial.

(2) Notwithstanding the provisions of subsection (1), in any proceeding under such subsection, where the Commission informs the Magistrate that it does not intend to institute proceedings against the person in custody, such person shall be discharged forthwith.

<u>Clause 17</u>

This clause repeals and replaces subsection (1) of the Section 149 and the legal effect of the section as amended is to make a distinction regarding applicable bail provision with respect to a person who is suspected of causing a loss not less than five hundred thousand rupees to the Government.

60. The proposed provision provides that all offences under the Act shall be cognizable and non-bailable in accordance with the Bail Act, No. 30 of 1997.

61. The Petitionerstates that the impugned provision further provides that where a person is suspected or accused of specified offences involving a bribe of not less than Rs. 100,000 or a Government loss, benefit, favor or advantage of not less than Rs. 500,000, the relevant person shall not be granted bail except in exceptional circumstances by a High Court.

62. The Petitioner states that the proposed provision makes the relevant monetary value subject to confirmation by the Director-General through the issuance of a certificate.

63. The Petitioner respectfully states that the impugned provision is constitutionally objectionable insofar as the liberty of a suspect or accused person is substantially affected

by a unilateral certification issued by the Director-General, who is connected to the statutory prosecutorial and investigative process.

64. The Petitioner states that the question of whether the statutory monetary threshold has been satisfied is capable of being a matter requiring judicial examination. Therefore, a certificate issued by an authority connected with the investigation or prosecution should not, without adequate judicial safeguards, operate as the determinative basis upon which a substantially more restrictive bail regime is imposed.

65. The Petitioner states that the provision is capable of creating unequal treatment between persons accused of offences under the Act based upon an administrative certification process rather than a judicial determination following an appropriate opportunity to challenge the relevant basis of valuation.

66. The Petitioner respectfully states that the liberty of a person is a matter of fundamental constitutional importance and any restriction imposed thereon must be prescribed by clear, fair and constitutionally permissible procedures. Clause 17 therefore is inconsistent with Article 12(1) of the Constitution and requires appropriate constitutional safeguards.

Clause 18 – Reduction of the Public Ownership Threshold

67. The Petitioner states that Clause 18 of the impugned Bill raises the Public-Ownership threshold in the definitions of 'Public Official" and 'Scheduled Institution' from more than 25% to not less than 50%. It correspondingly removes the Act's coverage from a company in which public money and public influence are substantial but Government ownership is between the previous and new thresholds. The Bill also narrows the definition of 'Staff Officer' in relation to employees of Public Corporations.

Clause 18: This clause amends the definitions of the public official and the scheduled institution in section 162 of the principal enactment and is consequential to the amendments made to the provisions applicable to public officials and scheduled institutions.

68. The Petitioner states that these changes shrink the class of persons and entities subject to the Anti-Corruption duties and offences. A citizen cannot rationally be denied accountability safeguards merely because public ownership or public control falls short of 50% where public money and influence remain substantial.

69. The Petitioner states that the said amendments are Arbitrary under Article 12(1), impair the effective exercise of Articles 3, 4(d) and 14A, and contradict the stated objects of the principal enactment.

<u>Clause 19 – Retrospective deeming of Officers and Officials Recruited to the Commission</u>

70. The Petitioner states that Clause 19 seeks to amend Section 163 of the principal enactment.

Clause 19: This clause amends section 163 of the principal enactment and the legal effect of the section as amended is to save the rights of some officers and officials recruited to the Commission during the period commencing from September 15, 2023 and the commencement of this Act

71. The impugned Clause seeks to introduce a new subsection 163(2A). The proposed subsection seeks to provide that every officer and official recruited to the Commission during the period commencing on 15th September 2023 and ending upon the commencement of the proposed Amendment Act, for specified posts previously approved for the Commission established under the repealed Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994, shall be deemed to be officers and officials of the Commission.

72. The Petitioner states that the impugned provision seeks to retrospectively validate and regularize the employment status of a category of persons recruited during the relevant period. The retrospective legislative validation affecting public employment must be supported by a constitutionally permissible and rational basis.

73. The Petitioner states that the impugned provision creates a special statutory benefit for a specified category of officers and officials recruited during a particular period.

74. The Petitioner states that the Bill does not, on its face, provide a sufficiently clear basis upon which persons recruited during the relevant period are retrospectively deemed to have been validly appointed, while other persons who may have been eligible for appointment or affected by the recruitment process are excluded from such benefit.

75. The Petitioner respectfully states that retrospective deeming provisions cannot be employed in a manner that arbitrarily validates appointments or defeats the constitutional requirements of equality, transparency and fairness applicable to public employment.

76. The Petitioner therefore states that Clause 19 is inconsistent with Article 12(1) of the Constitution unless the retrospective validation is supported by constitutionally sufficient safeguards and a rational classification.

CUMULATIVE EFFECT OF THE IMPUGNED PROVISIONS

77. The Petitioner respectfully states that the impugned Bill must not merely be considered by isolating individual words or phrases but must also be examined having regard to the cumulative effect of the substantive changes introduced thereby.

78. The Petitioner states that several provisions of the Bill expand the powers and consequences of the anti-corruption regime while simultaneously creating new criminal liabilities, imposing enhanced restrictions on liberty, affecting private information and retrospectively determining employment rights.

79. The Petitioner respectfully states that the legitimate objective of combating bribery and corruption does not relieve Parliament of the obligation to ensure that legislation enacted for such purpose remains consistent with the Constitution.

80. The Petitioner states that the fight against corruption and the protection of Fundamental Rights are not mutually exclusive and that legislation intended to combat corruption must itself conform to the requirements of legality, equality, fairness, proportionality and the Rule of Law.

81. The Petitioner therefore respectfully states that the impugned provisions identified herein are inconsistent with the Constitution in the respects set out above and accordingly Your Lordships' Court is required to make a Special Determination in terms of Article 121 of the Constitution regarding the Constitutionality of the aforesaid provisions of the impugned Bill.

WEHEREFORE the Petitioner respectfully pray that Your Lordships' Court be pleased to:

a) Hear the Petitioner

b) Issue Notices to the Honorable Attorney-General

c) Determine that Clauses 2, 3 and 4 of the Anti-Corruption (Amendment) Bill requires appropriate constitutional safeguards, including objective criteria, reasons, judicial review and protection of institutional independence, to avoid inconsistency with Article 12(1) and, where applicable, Article 41B

d) Determine that Clause 6 of the Anti-Corruption (Amendment) Bill is inconsistent with Article 12(1) of the Constitution in respects set out herein

e) Determine that Clause 7 of the Anti-Corruption (Amendment) Bill is inconsistent with Articles 3, 4(d), 12(1) and 14A of the Constitution unless the household-based disclosure safeguard is retained or effectively replaced

f) Determine that Clause 11 of the Anti-Corruption (Amendment) Bill is inconsistent with Article 12(1) and Article 14(1)(a) of the Constitution in respects set out herein

g) Determine that Clause 12 of the Anti-Corruption (Amendment) Bill requires appropriate amendment to preserve a timely, standardized and publicly accessible election-related disclosure mechanism consistent with Articles 14A and 14(1)(a)

h) Determine that Clause 16 of the Anti-Corruption (Amendment) Bill is inconsistent with Article 12(1) of the Constitution

i) Determine that Clause 17 of the Anti-Corruption (Amendment) Bill is inconsistent with Article 12(1) and the Constitutional Guarantees relating to personal liberty and due process

j) Determine that Clause 18 of the Anti-Corruption (Amendment) Bill is inconsistent with Articles 3, 4(d), 12(1) and 14A of the Constitution unless the existing or comparably effective risk-based coverage of entities subject to the anti-corruption regime is preserved

k) Determine that Clause 19 of the Anti-Corruption (Amendment) Bill is inconsistent with Article 12(1) of the Constitution

l) Determine, in respect of each provision found to be inconsistent with the Constitution, whether such inconsistency may be removed by amendment or whether the relevant constitutional procedure prescribed by the Constitution is required

m) Grant such other and further relief as to Your Lordships' Court shall seem meet

Attorney-at-Law for the Petitioner