

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

*In the matter of an application
for orders in the nature of
writs of certiorari and mandamus
under and in terms of the provisions
of Article 140 of the Constitution*

C.A. Ap. No. /2006

Withange Don Hemantha Ranjith Sisira Kumara,
Executive Director,
Centre for Environmental Justice,
59/14, Kuruppu Road,
Colombo 08.

PETITIONER

V.

1. Mr. Maitripala Sirisena,
Minister of Agriculture, Environment, Irrigation
and Mahaweli Development,
Ministry of Agriculture, Environment, Irrigation
and Mahaweli Development,
500, T.B. Jayah Mawatha,
Colombo 10.
2. Director of Wildlife Conservation,
Department of Wildlife Conversation,
18, Gregory's Road,
Colombo 07.
3. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

**TO HIS LORDSHIP THE PRESIDENT AND THE OTHER HONORABLE JUSTICES
OF THE COURT OF APPEAL**

On this day of February 2006.

The Petition of the Petitioner abovenamed appearing by Ravindranath Dabare his Attorney at Law states as follows:

1. The Petitioner is a citizen of Sri Lanka and is the Executive Director of the Centre for Environmental Justice, 59/14, Kuruppu Road, Colombo 08, an organization having *inter alia* as its objectives the protection, preservation and conservation of nature and environment in the interests of the general public. The Petitioner is genuinely concerned with the implementation and enforcement of the laws relating to the protection of the environment and responding to the constitutional dictates enshrined in the **Chapter on Directive Principles of State Policy and Fundamental Duties** in the **Constitution of the Democratic Socialist Republic of Sri Lanka** is interested in the performance of the fundamental duty imposed on every person by **Article 28(f)** of the said **Constitution**, to protect nature and conserve its riches, in proof of which is annexed hereto the affidavit marked **P1** indicating the environment related activities of the Petitioner during the past 15 years.
2. The 1st Respondent is the Minister in charge of the subject of environment, the successor in office to the former Minister of Environment and Natural Resources whose order is impugned in the instant application, and is a member of the Cabinet of Ministers [which is charged with the direction and control of the Government of the Republic in terms of the provisions of **Article 43(1)** of the **Constitution**] and as such is an agent and/or a component of the executive arm of the Government.
3. The 3rd Respondent is a public officer appointed under and in terms of the provisions of **section 68** of the **Fauna and Flora Protection Ordinance No.02 of 1937**, as amended and is the officer in charge of the Department of Wildlife Conservation which is the main governmental agency in charge of wildlife and habitat protection in, and management of, national reserves. He is charged with the implementation and enforcement of the provisions of the said **Ordinance** and supervision thereof.
4. The 3rd Respondent is the Chief Legal Officer of the State and is made a Respondent for the purpose of giving notice of this application.
5. The then Minister of State by his order dated **27.11.1969**, published in the **Ceylon Government Gazette No. 14883** dated **05.12.1969**, made under and in terms of the provisions of **section 2(2)** of the said **Ordinance**, declared the area of land specified in the Schedule thereto be a Sanctuary for the purposes of the said **Ordinance**, in proof of which is annexed hereto a true copy of the said Gazette Notification marked **P2(a)**.
6. Thereafter, by the order of the then Minister of Lands, Irrigation and Mahaweli Development dated **31.12.1992**, published in the **Gazette Extraordinary No.748/3** dated **04.01.1993**, made under and in terms of the provisions of **section 2(4) (d)** of the said **Ordinance**, the said order reflected in **P2 (a)** was rescinded and by his order made under and in terms of the provisions of **section 2(1)** of the said **Ordinance**, the said land area , as was specified in the Schedule thereto was declared to be a **National Reserve** and a **National Park** [to be known as the **Bundala National Park**] for the purposes of the said **Ordinance**, in proof of which is annexed hereto a true copy of the said Gazette Notification marked **P2(b)**.

7. Subsequently, by the order made by the then Minister of Environment and Natural Resources on **23.07.2004** published in the **Gazette Extraordinary No.1351/18** dated **28.07.2004**, under and in terms of the provisions of **section 2(4) (a)** of the said **Ordinance**, the limits of the said Park had been altered, in effect reducing the extent of the said Park from about **6216.00 ha.** to about **3698.01 ha.**, a reduction amounting to nearly half of the original extent, in proof of which is annexed hereto a true copy of the said Gazette Notification marked **P2(c)**.

8. The Petitioner became aware of the aforesaid fact when it was published in a national news paper on **04.09.2005**, in proof of which is annexed hereto a true copy of the newspaper cutting marked **P3(a)** and states that the delay in filing the instant application was caused by the fact of the Petitioner's engagement of in an important foreign assignment, in proof of which are annexed hereto true copies of the relevant pages of the Petitioner's Passport marked **P3(b)**.

9. The Petitioner states that the said Park situated along the south coast between the Town of Hambantota and Kirindioya in the District of Hambantota in the Southern Province of Sri Lanka [*vide*.**P4**] is a wetland not only of '**national importance**' but also of '**international importance**', in proof of which are annexed hereto true copies of the relevant pages of the **Wetland Atlas of Sri Lanka** [*vide*.**33, 38, 39 p.p.**], **Directory of Asian Wetlands** [*vide*.**615, 616 p.p.**] and **Directory of South Asian Protected Areas** [*vide*. **198-201 p.p.**], marked **P5(a) - P5(c)** respectively.

10. The Petitioner states further that as a part of the Wetland Conservation Project started in September,1991 and carried out by the Natural Resources Management Division of the Central Environmental Authority of Sri Lanka, to which the technical and financial assistance was provided by the Netherlands Government, a '**Wetland Site Report and Conservation Management Plan**' for the said '**Bundala National Park**' was prepared and published in November,1993, a true copy of which is annexed hereto marked **P6(a)**, indicating the geological, biological and ecological significance of the said Park.

11. In terms of the diversity of species of fauna and flora and in view of the occurrence of endemic, rare, threatened and endangered, both nationally and globally, species the Petitioner states that the said Park, comprising the lagoons, adjacent uplands and beach front spanning from the village of Bundala to Hambantota, assumes considerable importance as a local site for bio-diversity conservation. The **Valuation Report** of the said Park is at **57p.** and is specifically marked as **P6 (b)**.

12. The features, attributes and significance of the said '**Bundala National Park**' are as follows:

i. **Location -**

The said Park lies along the coast between the town of Hambantota and Kirindioya in the Hambantota District in the Southern Province [*vide*. **3p.** of **P6(a)**].

ii. **Climate -**

Being situated within the low country dry zone the said Park has a climate which can be classified as hot and dry [*vide*. **3p.** of **P6(a)**].

iii. **Landscape -**

The original total extent of the said Park was about 6216 ha. of which 5 brackish lagoons occupied approximately 2250 ha. The lagoons are fringed by narrow stripes of marshland and are surrounded by slightly undulating terrain covered with scrub and degraded

scrub forest. The topography is generally flat and sand dunes border the coast line. [*vide. 6p. of P6(a)*]. The Park acts as a salinity buffer for agricultural land and if cleared the land will be negatively affected by ocean spray and dune encroachment [*vide. 41p. of P6(a)*].

iv. **Geology and Geomorphology -**

The parent rock of the area consists mainly of biotite and biotites-hornblende gneisses. A belt of garnet rich sand [1300 m long, 80 m wide and 5 m thick] appears in the sand dunes [*vide. 7p. of P6(a)*] which has a high commercial potential [*vide. 39p. of P5(a)*].

v. **Soils and Mineral Resources -**

The dominant soil types in the region are 'Reddish Brown Earths' and 'Low Humic Clay Soils' and 'Regosols on beach and dune sands'. Fossil shells are commonly present and in some parts ironstone gravel is common [*vide. 9, 14p.p. of P6(a)*].

vi. **Hydrology -**

The most conspicuous hydrological features of the said Park are the 5 enclosed shallow and brackish water lagoons which cover an area of 2250 ha. being 36% of the surface. They are fed by surface run off, streams and rivers, inflow through drainage channels of upstream irrigation schemes and inflow and seepage of sea water through the sand dunes. On most places the quality of the ground water can be classified as poor. Nevertheless reasonably good quality water can still be found in wind blown sand deposits along the coast where fresh water layers float on saline water [*vide. 15, 18 p.p. of P6(a)*].

vii. **Flora -**

The vegetation within the said Park can be specified as 'dry evergreen scrub' vegetation heavily disturbed by human encroachment and domestic animals [*vide. 19, 20, 22, 24p.p. of P6(a)*].

a. Dense thorny scrub provides a natural barrier to the gale-force winds that would otherwise accelerate desertification in the arid countryside [*vide. 200p. of P5(c)*].

b. Out of the 48 vascular plants species recorded within the said Park about 70% are used by people for various purposes or have the potential to be so. Of this total, 40% are used for preparing indigenous medicine.

c. Out of the total number of plants recorded 8 species [*i.e.* 16%] are used for timber.

d. Out of the 3 edible plant species recorded, 2 species are either used as a vegetable or as a preservative or tenderizer of food. The fruits of 10 species [*i.e.* 20%] are eaten raw or cooked.

e. Out of the total plant species 24% are used by local villagers for home requirements such as firewood, fencing and roofing material.

f. All plant species recorded from the said Park can be considered to be of ecological significance. The presence of 10 fruit bearing tree species supports a large variety of fruit eating animals. Grasses and sedges found along the borders of lagoons provide food to herbivorous mammals. The water plant communities and algal species in the lagoons form food sources and breeding sites for fish and aquatic animals.

g. The forests around the lagoons are critically important to the area's eco-systems. They act to stabilize the soil and protect it from wind and water erosion. In the dry season, the villagers around the said Park suffer from severe dust storms and heavy rains wash

soil into the lagoons thereby limiting their lifetime. This process can only be slowed down by maintaining healthy forests to protect the land. Forests also provide critical habitats for birds and other forms of wildlife. Removing the trees would inevitably lead to either destruction or dislocation of entire communities of forest dwelling animals [*vide.46 p. of P6(a)*].

viii. **Fauna -**

a. Birds -

The lagoons enclosed within the said Park are the most important wetlands outside the Northern Province supporting very important populations of every species of water bird [representing approximately 45% of avi-fauna] resident in the country. Additionally, the lagoons constitute one of the most important wintering areas for migratory shorebirds in the country accommodating over 20,000 shorebirds at any time. In total 48 migratory species have been spotted in the said Park and of them 9 are considered rare or very rare. Many of the recorded bird species, particularly the migratory water species, depend on the aquatic and mud fauna of the lagoons such as molluscus, crustaceans, worms and insects [*vide. 24, 25, 58 p.p. of P6(a)*].

b. Mammals -

The mammals recorded from the said Park include many of the country's larger species. Of them elephant and leopard are globally endangered and threatened species included in the IUCN Red List [*vide. 25, 26, 58 p.p. of P6(a)*].

c. Reptiles and Amphibians -

The reptiles and amphibians found in the said Park include many IUCN Red list species and endemic species [*vide. 26 p. of P6(a)*].

d. Fishes -

Many fish and prawn species have been recorded from the said Park [*vide. 27p. of P6(a)*].

ix. **Tourism -**

Tourism in the said Park is a relatively major industry. Aside from its waterfowl population it has been an attractive destination for tourists due to its elephants and the large expanse of undisturbed coastline and beaches [*vide. 47, 68 p.p. of P6(a)*].

13. The complex of lagoons within the said Park form the wintering ground of the richest variety of waterfowl outside the Northern Province and are among the most important habitats for birds [southern-most land mass in the migratory route: *vide vi p. of P6(c)*] and other wild life species in the entire country. As a consequence, 'bio-diversity', 'scientific value' 'uniqueness' and 'habitat for wildlife' of the area score high on the developed valuation scale [*vide.61p. of P6(a)*].

14. In recognition of the biological and ecological values of the area in which the said Park is situated it was declared a Sanctuary on **05.12.1969** and it was designated as a '**Wetland of International Importance**' under **Article 2** of the **Convention on Wetlands of International Importance Especially as Waterfowl Habitat [Ramsar Convention,1971]**, the first of its kind in Sri Lanka, at the time of ratification of the said Convention by Sri Lanka on **15.10.1990**. Given the renewed attention received, the Sanctuary was upgraded to a National Park on **31.12.1992**. [*vide. 01, 48, 49, 61,63 p.p. of P6(a)*].

15. The criteria for inclusion of the Bundala Wetlands as a **Wetland of International Importance [Ramsar Site]** are [*vide. 39, 73, 74 p.p.* of **P5(a)**];

- i. a particularly good example of a wetland characteristic of the region [1b].
- ii. support an appreciable assemblage of rare, vulnerable or endangered species of plant or animal or an appreciable number of individuals of any one or more of these species[2a].
- iii. is of special value for maintaining the genetic and ecological diversity of a region because of the quality and peculiarities of its flora and fauna [2b].
- iv. regularly supports 20,000 waterfowl [3a].

16. On account of the unique, diverse and abundant wildlife the said Park has been included as one of the 7 protected areas brought under the **Protected Area Management and Wildlife Conservation Project of the Department of Wildlife Conservation**, which aims to sustainably manage and conserve the protected areas coming under its purview [*vide.P7 (a) - P7(c)*].

17. However, being located close to human settlements, cultural and tourism centers the bio-diversity and natural resources of the said Park are under considerable pressure, real and potential, some of which are as follows [*vide. 41,44,45,46p.p.* of **P6(a)**]:

i. Wetland Degradation -

Efforts to clear and irrigate land and settle large numbers of people in or close to the area would lead to wetland degradation, mainly because of impacts resulting from a range of activities such people would carry out , such as livestock grazing and fuel wood cutting.

ii. Alteration of Salinity Levels -

If drainage from upstream irrigation schemes delivers large quantities of fresh water that would significantly alter salinity levels, the effects on the lagoonal ecosystems will be negative.

iii. Water Contamination -

A potentially serious source of environmental degradation stemming from the agricultural sector is water contamination with farming chemicals.

iv. Threat to Avifauna -

Migratory birds have a low tolerance for frequent disturbances which if occur would prevent them visiting the area as their winter habitat.

v. Problems Associated with Aquaculture -

a. Problems would arise if intensively managed aqua cultural systems are to be developed within the lagoons. Intensification of fisheries would undoubtedly lead to conflicts between fishermen and fish eating birds.

b. Interventions to control the water level can have serious effects on the lagoons and the surrounding areas. Artificial stabilization of natural entrances to the sea can result in extensive changes in hydrology, tidal and salinity regimes, as well as plant and animal ecology, while dams for water impoundment have the effect of intercepting sediment, decreasing the quantity of in-filling, and increasing the salinity of the lagoons, especially during dry seasons. The lagoons also have a proven function as fish nurseries, and water control structures would disrupt the movement of fish and fry.

vi. **Mining of Shells -**

Extracting fossil shells from beds which can be found just beneath the ground surface is environmentally destructive because it disturbs the soil structure, destroys the vegetation cover and leads to increased soil erosion; it is undesirable from an aesthetic point of view too.

vii. **Fuel Wood Collection -**

Fuel wood collection is the most environmentally damaging human activity in the area. Destruction of forests would destabilize the soil and would lead to wind and water erosion resulting severe dust storms and silting of lagoons. Further, removing the trees would inevitably lead to either destruction or dislocation of entire communities of forest dwelling animals.

18. The intensive use which is made of the various resources of the said Park imposes great pressure and to a large extent are incompatible with the aim to protect the said Park against further degradation. Therefore, the Petitioner states that it cannot be reasonably said that the step taken by the predecessor in office of the said 1st Respondent to re-demarcate the boundaries of the said Park is in the best interests of protection of bio-diversity and natural resources of the said Park.

19. Wetlands, which are defined as ‘areas of marsh, fen, peatland or water, whether natural or artificial, permanent and temporary, with water that is static or flowing, fresh, brackish or salt including areas of marine water, the depth of which at low tides does not exceed 6 m [**Article 1, Convention on Wetlands of International Importance Especially as Waterfowl Habitat**], comprise one of the 4 major eco-systems in Sri Lanka, the others being Forests, Coastal and Marine Systems and Agricultural Systems, which together constitute the panorama of natural eco-systems or the array of basic habitats in the country; **A Framework of Action for Bio-diversity Conservation in Sri Lanka, 1999** [*vide. 03, 23, 24, 26, 28 p.p. of P8*].

20. Wetlands in Sri Lanka are of 3 main types, which in turn are divided into 10 general types; **Wetlands are No Wastelands, A Manual and Strategy for Conservation and Development of Wetlands in Sri Lanka, 1994**, [*vide. 07-10p.p. of P9*]:

1. Freshwater Wetlands -
 - a. Streams and Rivers
 - b. Lakes
 - c. Freshwater Marshes
2. Saltwater Wetlands -
 - a. Deltas and Estuaries
 - b. Lagoons
 - c. Marine Wetlands
3. Manmade Wetlands -
 - a. Tanks and Reservoirs
 - b. Agricultural Wetlands
 - c. Salt Pans
 - d. Aquaculture

21. The Petitioner states that wetland eco-systems are valuable in terms of hydrology, plant and animal productivity and bio-diversity. They are among the most productive areas in the world; their shallowness, high temperature, high nutrient content and profusion of light guarantee a large biomass turnover and thus contain a large part of the world’s biological heritage. The benefits provided by wetland eco-systems are as follows:

i. Attributes -

a. Bio-diversity, Uniqueness and Gene Pool -

Wetlands form important habitats for rich and diverse plant and animal species which are specially adapted to survive in conditions prevalent only in wetlands eco-systems. For some plant and animal species, a particular wetland or wetland type provides every element required to complete their life cycles and some other species may depend on wetland areas for part of their life cycles. All such floral and faunal species constitute integral components of an inter-linked and inter-dependent system of food chains.

Wetlands are also important as gene pools for wild varieties of crop species having the potential to contribute genetic material for the improvement of commercially important species.

Freshwater aquatic systems are among the most valuable habitats in terms of macro-fauna. The structural diversity and vegetation and the availability of water and open spaces have created an ideal habitat for a broad spectrum of wildlife ranging from fish, reptiles, birds and amphibians to mammals supporting a high animal biomass including many endemic /rare/ threatened or endangered species.

Inlands wetlands offer food, water, and cover to a rich diversity of avi-fauna, including resident and many migratory species that winter in the country. Destruction of wetlands can seriously threaten the future of such birds and become an issue of international importance.

b. Socio - Cultural Significance -

Many communities value distinct areas as sites of religious, cultural or historical significance, or value such sites for religious, spiritual or historic events that were taken place. Not seldom such sites are located amidst or adjacent to wetlands.

c. Landscape Beauty -

Wetlands are often unique elements in the landscape contributing to scenic beauty. Such landscapes may be important to local communities as part of their perceived quality of living and to entrepreneurs when they attempt to attract business or tourism to the region.

ii. Functions -

a. Water Flow Regulation -

Wetlands can store excess water during times of heavy rain falls or peak flow in rivers. They act as sponges and flood water is stored in the soil or retained as surface water; and wetland vegetation slows down the flow of flood water. Such buffering effect of wetlands results in downstream flow regulation and flood control [prevention or mitigation].

b.Prevention of Saline Water Intrusion -

Freshwater floats on saltwater leading to the formation of a freshwater wedge at the surface that overlays the saltwater wedge. The existence of the freshwater wedge is maintained by rain water and inflow from coastal freshwater wetlands, and its removal or over-extraction allows inland penetration of saline water and results in salinization of the soil.

c. Protection Against Natural Processes and Calamities -

Wetland vegetation acts as shields against strong winds, wave action and current energy and trap sediments, and their roots and deposited matter bind and stabilize substrate thus preventing or reducing erosion of coastlines, estuaries and riverbanks which in turn protect adjacent human settlements, agricultural fields and infrastructure facilities.

d. Sediment Removal and Retention -

Wetlands tend to slow down the flow of water because of their physical properties such as stagnant water and vegetation and thus act as filters facilitating the deposition and trapping of sediments carried along with the water from streams and rivers. Sediment removal by wetlands maintains downstream water quality and prevents shallowing of waterways.

e. Removal and Retention of Nutrients and Toxic Compounds -

Nutrients and toxic compounds stemming from a wide variety of sources are often associated with sediments. When the sediment is deposited the compounds may be stored with it, taken up by wetland vegetation or transformed by chemical and biological processes. The removal of nutrients and toxic substances maintains downstream water quality and prevents eutrophication, an explosive growth of algae, giving rise to excessive growth of noxious aquatic weeds clogging waterways and lowering the oxygen content of waters with the risk of dying-out of the entire eco-system.

f. Maintenance of Processes in Natural Systems -

Wetlands frequently contribute to ecological, geomorphological or geological systems or processes. Wetlands contain large amount of undecomposed organic material and thus act as a carbon sink. Wetlands can affect the microclimate: Evapotranspiration from wetlands maintain local humidity and rainfall levels.

iii. Uses -

a. Source of Natural Products -

Wetlands carry out ecological functions that contribute, directly or indirectly to the well-being and development of communities. Due to their key role in cycling of nutrients, wetlands can support a high biomass and they have provided mankind with almost inexhaustible sources of wood, food, pasture, manure and minerals.

b. Water Supply and Transportation -

Wetlands are used as a source of water for domestic, agricultural and industrial use; their surfaces can be used for transportation of people and goods. Wetlands are valuable in terms of sustaining hydrological cycle; when water percolates from the wetland area into underlying aquifer system, groundwater levels are replenished and this ensures a long term supply of water resource.

c. Energy Production -

Wetlands can provide energy by various means, the most common being hydro-electricity, firewood and peat.

d. Research and Education -

Wetlands can be used as sites for scientific research and experimentation with management of plant and animal species, and monitoring of biological processes and for educational purposes.

e. Recreation and Tourism -

Extensive and largely undisturbed wetlands containing a high diversity of species and habitats and endemic/ rare/ threatened or endangered species and scenic landscapes are suitable for recreation and eco-tourism which may contribute significantly to local regional and national economics.

22. Wetland eco-systems, and thus the plant, animal and human communities that depend on them, are vulnerable in several ways;

i. Wetland eco-systems are dependent on water levels and inundation, which are easily modified by water usage, excessive and impeded drainage and water regulatory works in upstream catchments.

ii. Biotic communities in wetlands are differentiated by water table, seasonal flooding regime, water depth and nutrient inflow etc., and are inherently unstable. Many wetlands contain transient habitats, representing a stage in the ecological succession towards land formation, or are a deflected climax formation maintained by hydraulic agents such as tidal flooding and seasonal inundation.

iii. Wetlands depend on specific qualities of water that are easily affected by eutrophication, sedimentation, industrial effluents, garbage dumping and inflow of sewage and other pollutants.

23. The Petitioner states that wetland eco-systems in Sri Lanka have been and to a large extent still are being indiscriminately exploited for residential, agricultural, commercial and industrial development and for dumping of waste. Main problems met in wetland use are;

i. Agricultural Water Use: Irrigation and Drainage -

Irrigational and drainage projects are being implemented to increase farm productivity and to meet the increasing national demands for crops. When project sites are situated in upstream areas or in areas adjacent to wetlands, such projects may negatively affect wetland eco-systems.

ii. Aquaculture Farms -

Improper siting and design of aqua-cultural farms often leads to untimely decline in productivity, abandonment and serious impacts on the wetland eco-systems undermining the very resource base on which aquaculture depend.

iii. Fisheries -

Fisheries often take place in wetlands: coastal wetlands and inland wetlands and deepwater habitats. Certain fisheries practices lead to over exploitation of this renewable natural resource and are destructive to spawning, nursing and feeding grounds.

iv. Landfill -

Increasing human populations and expanding industrial development require more land, already a scarce resource, putting much pressure on wild lands and wetlands. Landfills will eliminate natural values, eco-system functions and attributes of wetlands.

v. Mangrove Clearing -

Mangrove forests are of great value to man and his environment. Mangroves are of enormous value in sustaining coastal fisheries. They serve as a link between terrestrial and marine eco-systems thus playing an important role in the food chain of a large number of aquatic organisms. Mangroves act as silt traps and as filters of pollutants and in stabilizing coastal mud flats, they provide protection to the coastal and hinterland against the destructive and erosive energy of storms and waves.

Mangrove forests can supply a variety of wood and non-wood products and they act as carbon sinks in converting inorganic carbon into plant material. Mangroves are unique plant communities of high bio-diversity value, providing habitats for a large variety of animal species. Clearing of mangroves leads to partial or complete loss of these functions and values, which would entail serious consequences for the coastal zone development potential.

vi Mining of Mineral Resources : Sand, Shells and Coral -

The mineral resources of a country are part of the endowment of nature to its geological environment which shall be utilized in a sustainable manner and bequeathed to the future generations. Mining of sands, shells and coral are the most threatening uses of finite resources in wetlands.

Removal of sand from traditional sites *i.e.* rivers and beaches reduce the quantities of sand required for the maintenance of beaches with the risk of accelerated coastal erosion. Shell mining consists of extracting fossil shells from beds which can be found just beneath the ground surface: it is environmentally destructive because it disturbs the soil structure, destroys the vegetation cover and leads to increase erosion.

Coral reefs are very complex eco-systems with high bio-diversity values supporting a large variety of marine organisms and their destruction results in loss of species diversity and habitat structure, decline in coastal and marine fisheries and elimination of the important coastal protection function of reefs in breaking wave energy, and loss of income and employment from tourism industry.

vii.Pollution: Agro-chemical Pollution, Domestic Waste Pollution, and Industrial Pollution -

Many wetlands have been used as dumping grounds for agricultural and industrial effluents, domestic wastes, sewage and other toxic materials. Because wetlands are natural sinks for nutrients as well as pollutants they can be easily contaminated by waste products. Excessive nutrient levels, organic waste products and toxic compounds can negatively affect the wetland eco-system and eliminate important wetland values, functions and attributes. Moreover, wetland pollution may result in higher incidence rates of certain water related diseases among local communities.

viii.Siltation -

Accelerated soil erosion in river catchments can cause siltation of downstream wetlands resulting loss of species and genetic diversity, habitat structure and scenic and aesthetic value with associated economic loss.

ix. Excessive Livestock Gracing -

Intensive livestock grazing may degrade the vegetation cover in wetlands. The impact stems not only from over-grazing of fringing grassland and over-browsing of shrubs and small trees but also from trampling and wallowing.

x. Constraints to Environmental Conservation -

Conservation of the natural resources is essential for long-term sustainable development. Conservation measures are in many cases weak or absent. Reasons for this are many and have been identified as obstacles or constraints to conservation. *e.g.* lack of rational policy and planning, inadequate legislation and inefficient institutional infrastructure.

24. Many benefits provided by wetland eco-systems are essential to communities, agriculture and industries. The Petitioner states that loss of wetlands removes such benefits permanently and often results in impediment of development and extinction of species that depend on the well-functioning of the natural wetlands.

25. Protection and conservation of wetland eco-systems will contribute significantly to sustainable development. Hence, the Petitioner states that an effective wetland conservation and management strategy shall be formulated and implemented with the twin objectives of preserving the wetland production function and its intrinsic values and attributes and of providing for the wise use of wetlands, guaranteeing the durable existence of wetland eco-systems and their productivity and natural resources.

26. Taking judicial cognizance of the aforesaid facts and circumstances the Court of Appeal in **C.A. Ap. No.1088/03** ordered the then Minister of Environment and Natural Resources, to formulate a '**National Policy on Wetlands**' for the protection, preservation and conservation of wetland eco-systems of Sri Lanka while fostering their sustainable use for the benefit of present and future generations of the people of Sri Lanka, which was subsequently tendered to court on 10.12.2004 with the approval of the Cabinet of Ministers [*vide. P10(a) - P10(c)*]. Although a period of more than 01 year has lapsed since then the Petitioner states that the said 1st Respondent or his predecessor in office, has failed to take any meaningful steps and/or measures for the purpose of implementing the said **Policy** resulting in and/or enabling such arbitrary action as the said order as reflected in **P2(c)**, which is sought to be reviewed in the instant application.

27. On account of rich and diverse eco-systems, extensive gene pools, high species diversity and high levels of endemism, Sri Lanka has been named as one of the 18 bio-diversity hot spots in the world. Conservation of Sri Lanka's bio-diversity, therefore the Petitioner states, transcends national boundaries; it is of global relevance.

The overall national goal of bio-diversity conservation shall therefore be to conserve the biological diversity while fostering its sustainable use to meet the needs of the present generation without compromising the ability of the future generations to meet their own needs.

The present generation, therefore, has a duty to those yet unborn to use the natural resources in a sustainable manner and bequeath them to the next generation so that the latter in turn would use them in the same equitable manner in their life time. Where there are threats of serious or irreversible damage, effective precautionary measures shall be taken to prevent environmental degradation.

28. Hence, the Petitioner states that the primary responsibility for the protection, preservation and conservation of the country's biological diversity and ecological heritage and for the exploitation and utilization of such resources in a rational manner for the well-being, development and advancement of the people of Sri Lanka lies with the Government, of which the said Respondents are components and/or agents, as the guardian of the natural resources of Sri Lanka on behalf of the present and future generations of the people of Sri Lanka.

29. The Petitioner states that the recognition of such responsibility by the Government of Sri Lanka is manifest by it becoming a contracting party and subsequently ratifying, or acceding to/ or becoming a signatory to a number of international conventions and declarations relating to environmental conservation such as :

- i. Ramsar Convention on Wetlands of International Importance, 1971
- ii. Stockholm Declaration on Human Environment, 1972
- iii. Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972
- iv. Bonn Convention on the Conservation of Migratory Species of Wild Animals, 1979
- iv. Rio Convention on Biological Diversity, 1992
- v. Rio Declaration on Environment and Development, 1992
- vi. Paris Declaration on the Responsibilities of Present Generation Towards Future Generations, 1997
- viii. Johannesburg Declaration on Sustainable Development, 2002.

The Petitioner annexes hereto true copies of the aforesaid instruments marked **P11(a) - P11(h)** respectively.

30. Thus, for the aforesaid reasons, the Petitioner both in his capacity as a citizen of Sri Lanka and the Executive Director of the said Centre for Environmental Justice in the public interest and responding to the constitutional dictates enshrined in the said **Chapter on Directive Principles of State Policy and Fundamental Duties of the Constitution**, requested through his Attorney at Law, the predecessor in office of the said 1st Respondent and the said 1st Respondent by letters dated **06.10.2005** and **30.11.2005** respectively, which were copied to the 2nd Respondent, to take cognizance of the aforesaid facts and circumstances and to take action forthwith to rescind the order reflected in the said **Gazette Notification No. 1351/ 18 of 28.07.2004 [P2(c)]** under the powers vested on them by the provisions, particularly of **sections 2(4)(a) and/or 2(5)**, of the said **Fauna and Flora Protection Ordinance**, as amended and to take steps and/or measures to implement the said **National Policy on Wetlands** by formulating Regulations in that regard in the performance of the statutory duty in compliance with the provisions, particularly of **section 32(2)(b)** of the **National Environmental Act No.47 of 1980**, as amended, read with **Section 71** of the **Fauna and Flora Protection Ordinance**, as amended, or otherwise as required by law as being consonant also with the provisions contained in **Articles 27(14) and (15) and 28(f)** of the **Constitution**. [True copies of the said letters dated **06.10.2005** and **30.11.2005**. are annexed hereto marked **P12(a)(i)** and **P12(a)(ii)** respectively]. However, the said 1st Respondent or his predecessor in office has failed to respond and to take necessary actions satisfactorily in this regard up to date.

31. The Petitioner, inquired further through his Attorney at Law from the Chairman and the Country Representative of the World Conservation Union [IUCN] by letters dated **06.10.2005** and **30.11.2005** respectively, whether in making the said order, as reflected in **P2(c)**, by the former Minister of Environment and Natural Resources, the Government of Sri Lanka had in fact complied with the obligations under the said **Convention on the Wetlands of International Importance**, inasmuch as the **Article 2(5)** of the said **Convention** permits a contracting party *‘to delete or restrict the boundaries of wetlands already included by it in the List of Wetlands of International Importance’* only *‘because of its urgent national interests’* and obligates such party to, *‘at the earliest possible time, inform the organization or the government responsible for the continuing bureau duties..... of any such changes’*, [which is the International Union for Conservation of Nature and Natural Resources (IUCN), as per **Article 8(1)**] and as the **Article 4(2)** of the said **Convention** mandates in such situation, that *‘a contracting party should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection,of an adequate portion of the original habitat’*, to which the Petitioner has not yet received a response.

The Petitioner annexes hereto true copies of said letters dated **06.10.2005** and **30.11.2005** marked **P12(b)(i)** and **P12(b)(ii)** respectively.

32. Being aggrieved by the said order as reflected in **P2(c)**, and by the said inaction and/or failure to act and/or neglect to perform duty of/by the said 1st Respondent, the Petitioner respectfully seeks to invoke the jurisdiction of Your Lordships' Court under and in terms of the provisions of **Article 140 of the Constitution** for orders in the nature of the *writs of certiorari and mandamus* and for other incidental relief, on the following among other grounds that may be urged by Counsel at the hearing of this application;

i. The said order and the said inaction and/or failure to act and/or neglect to perform duty of/by the said 1st Respondent is wrong, illegal and contrary to law.

ii. It is submitted with respect that the said order has been made without considering the relevant facts [as indicated in paras. 09-18 above] and/or any scientific feasibility report, and/or after considering irrelevant facts and therefore, arbitrary, unreasonable and irrational and hence *ultra vires* the powers vested by the provisions of **section 2**, particularly of **subsection 4(a)**, of the said **Fauna and Flora Protection Ordinance**, as amended.

iii. It is submitted further with respect that the said order amounts to an unlawful and/or illegal exercise of power inasmuch as the exercise of power under the provisions of **section 2(4) (a)** of the said **Fauna and Flora Protection Ordinance**, as amended, in respect to the said Park is subject to the preconditions contained in **Articles 2(5) and 4(2)** of the said **Convention on the Wetlands of International Importance** [as indicated in para. 31 above] which have not been complied with and therefore is void *ab initio* and is a nullity.

iv. It is respectfully submitted that the said 1st Respondent by the said unlawful and/or illegal and/or wrongful inaction and/or failure to act and/or neglect to perform duty has failed to perform the public statutory duty imposed on the said Respondent by the provisions of **sections 32(2)(b)** of the said **National Environmental Act**, as amended read with **Section 71(1)** of the said **Fauna and Flora Protection Ordinance**, as amended.

v. It is respectfully submitted further that the said order and the said inaction and/or failure to act and/or neglect to perform duty by the said 1st Respondent are obnoxious to the declared objectives of the aforesaid enactments as stated in their Long Titles and the expressly stated objectives and directions of the said **National Policy on Wetlands** and thus amount to an abuse and/or misuse of power and/or discretion.

vi. It is submitted with respect that the said order and the said inaction and/or failure to act and/or neglect to perform duty by the said 1st Respondent are detrimental to and/or in violation of the fundamental rights of the citizens of Sri Lanka, declared, recognized and guaranteed, particularly by **Articles 12(1) and 14(1)(f)** of the **Constitution** and thereby the said Respondent has failed in the constitutional duty imposed on all organs of government by **Article 4(d)** to respect, secure and advance the fundamental rights declared and recognized by the **Constitution**.

vii. It is submitted further with respect that the said order and the said inaction and/or failure to act and/or neglect to perform duty of/ by the said 1st Respondent is/are in violation of

the legitimate expectations of the citizens of Sri Lanka including the Petitioner, as the said concept is judicially understood and/or interpreted *i.e.* the exercise of statutory power and/or discretion by governmental authorities would be fair and/or reasonable and that the ratification of a treaty by a state is an express statement to the comity of nations and to its citizenry that its organs of government intend to be bound by the provisions of the particular treaty creating a legitimate expectation on the part of its citizens and the world at large that it would act in conformity with its treaty obligations.

viii. It is respectfully submitted that the said order and the said inaction and/or failure to act and/or neglect to perform duty of/by the said 1st Respondent is/are inconsistent with and/or repugnant to the **Directive Principles of State Policy and Fundamental Duties**, particularly those enunciated in **Articles 27(2)(a) and (c), 27(14), 27(15) and 28(a) and (f)** of the **Constitution**. According to **Article 27(1)**, the **Directive Principles of State Policy** are the guiding principles for the legislature and executive in the enactment of laws and the governance of the country. They are in the nature of an instrument of instructions, which both the legislature and executive must respect and follow.

ix. It is respectfully submitted further that the organs of the government in which the said 1st Respondent is a component and/or an agent, are the guardians to whom the people have committed the care and preservation of natural resources, including the bio-diversity of the country and thus, in making the said order and by the said inaction and/or failure to act and/or neglect to perform duty the said Respondent has failed and/or neglected to perform his duty in the said capacity of the 'Public Guardian' as the said concept is judicially formulated.

x. It is further submitted with respect that the said order and the said inaction and/or failure to act and or neglect to perform duty of/by the said 1st Respondent and his predecessor in office are in violation and/or derogation of the **Concepts and Principles of Environmental Law** enshrined in the international conventions and declarations indicated in para. 29 above, particularly the **Concepts of Sustainable Development and Inter-generational Equity, Principle of Precautionary Action and Doctrine of Public Trust** which as has been judicially determined have become part of the domestic law of Sri Lanka.

33. The Petitioner humbly pleads that he has encountered difficulty in obtaining certain documents [particularly a map/plan indicating the altered/new boundaries of the said Park] in further proof the matters set out herein and respectfully moves that Your Lordships' Court be pleased to permit the Petitioner in the said circumstances, to furnish them to Your Lordships' Court, as and when they are obtained.

34. Although the impugned order which is sought to be reviewed by this application was made and published in late July, 2004. [*vide. P2(c)*] and this application is being filed in February, 2006 having regard to the facts and circumstances as pleaded above and the public interest nature of the matter Your Lordships' Court be pleased to excuse any delay [if any] in making this application while however respectfully pleading that, the said inaction and/or failure to act and/or neglect to perform duty in not taking steps and/or measures to rescind the said order and to implement the said **National Policy on Wetlands** constitute a continuing refusal which continues to date.

35. The Petitioner has not invoked the jurisdiction of Your Lordships' Court in respect of this matter prior to this application.

WHEREFORE the Petitioner prays that your Lordships Court be pleased to:-

- a. Issue notice of this application on the Respondents in the first instance;
- b. Grant and issue an order in the nature of a *writ of certiorari* quashing the order reflected in **P2(c)**;
- c. Grant and issue an order in the nature of a *writ of mandamus* directing the 1st Respondent to formulate Regulations to implement the said **National Policy in Wetlands** in the performance of his statutory duty in compliance with the provisions, particularly of section **32(2)(b)** of the **National Environment Act**, as amended read with **section 71(1)** of the **Fauna and Flora Protection Ordinance**, as amended;
- d. Grant costs of this application;
- e. Grant such other and further reliefs as to Your Lordships' Court shall seem meet.

Attorney at Law for the Petitioner