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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Le Pont, a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 May 2021]

* Issued as received, in the language(s) of submission only.



Sri Lanka's New Eye wash commission of inquiry

The Sri Lankan president has announced the appointment of yet another Commission of Inquiry, purportedly to investigate the findings of all previous human rights commissions and committees created by the Sri Lankan government.

As Sri Lanka announces yet another internal inquiry ahead of the UNHRC session, this time investigating all previous human rights commissions and committees previously established. The new commission dedicated to “finding closure to burning issues” follows several failed attempts, including the Lessons Learnt and Reconciliation Commission and the Presidential Commission to Investigate Complaints Regarding Missing Persons (Parangama Commission report).

Tamil peoples victims of Genocide, crimes against humanity and war crimes don't have any faith on Sri Lankan domestic process as Sri Lanka has a long history of Commissions of Inquiry that have repeatedly failed to deliver justice and reconciliation for victims of human rights violations, in response to the announcement all Human Rights organization don't believe on sri lankan domestic process.

No. 2211/55 Extraordinary Gazette issued by Gotabaya Rajapaksa, on 21 January 2021. This appointed A.H.M.D.Nawaz Judge of the Supreme Court, Chandra Fernando, Retired Inspector-General of Police and Nimal Abey Siri, Retired District Secretary as Commissioners to investigate and inquire into:

- (i). whether preceding Commissions of Inquiry and Committees which have been appointed to investigate into human rights violations, have revealed any human rights violations, serious violations of the international humanitarian law and other such serious offences;
- (ii). Identify what are the findings of the said Commissions and Committees related to the serious violations of human rights, serious violations of international humanitarian laws and other such offences and whether recommendations have been made on how to deal with the said facts;
- (iii). Manner in which those recommendations have been implemented so far in terms of the existing law and what steps need to be taken to implement those recommendations further in line with the present Government policy;

A.H.M.D. Nawaz, Judge of the Supreme Court is to be the Chairman of the said Commission.

Background to the Commission

The background to the establishment of the Commission of Inquiry is provided in the Gazette itself.

According to the president himself:

“The decision taken by the Government of Sri Lanka to withdraw from co-sponsorship of 40/1 Resolution on Reconciliation, Accountability and Promotion of Human Rights Sri Lanka and its preceding resolutions 30/1 and 41/4 was announced at the 43rd Session of the United Nations Human Rights Council. Even though Sri Lanka withdrew from the co-sponsorship of the aforesaid resolutions, the policy of the Government of Sri Lanka is to continue to work with the United Nations and its Agencies to achieve accountability and human resource development for achieving sustainable peace and reconciliation. The Government is also committed to ensure that, other issues remain will be resolved through democratic and legal processes and to make institutional reforms where necessary to ensure justice and reconciliation.

This Inquiry is consistent with an announcement made by Foreign Affairs Minister Dinesh Gunawardena on 26 February 2020 at the 43rd Session of the Human Rights Council entitled “withdraw from co-sponsorship of Resolution 40/1 on ‘Promoting reconciliation, accountability and human rights in Sri Lanka’ which also incorporates and builds on preceding Resolutions 30/1 of October 2015 and 34/1 of March 2017”.

“Firstly, the Government of Sri Lanka declares its commitment to achieve sustainable peace through an inclusive, domestically designed and executed reconciliation and accountability process, including through the appropriate adaptation of existing mechanisms, in line with the Government’s policy framework. This would comprise the appointment of a Commission of Inquiry (COI) headed by a Justice of the Supreme Court, to review the reports of previous Sri Lankan COIs which investigated alleged violations of Human Rights and International Humanitarian Law (IHL), to assess the status of implementation of their recommendations and to propose deliverable measures to implement them keeping in line with the new Government’s policy.

On 29 October 2020, the 20th Amendment to the Constitution was certified. This permits all appointments to commissions which included the HRCSL, to be made by the President. The effect of the 20th amendment to the constitution was that no commission would function independently.

The then member of the HRCSL, Ambika Satkunanathan, resigned. In an interview she had stated that;

“Globally we have what are called the Paris Principles and any human rights institution that is established in any country has to abide by the Paris Principles. There is a Global Alliance on National Human Rights Institutions (GANHRI) which reviews human rights commissions all over the world, not just Sri Lanka, based on these Paris Principles and gives them grading. If a Commission fulfills all elements, it will be awarded ‘A’, if not ‘B’. Sri Lanka was downgraded from A to B first in 2007 and then again the downgrading was confirmed in 2009 because it was no longer deemed independent, since the appointment process after the 18th Amendment rested with the President. There were also allegations that it had not inquired into complaints of custodial violence, enforced disappearances and that it did not engage actively with civil society. So based on those factors, it was downgraded. After we were appointed, we re-applied for accreditation and in 2018 May were awarded ‘A’ status again. Right now, we are not adhering to one of the core Paris Principles, which is independence of appointments. If institutions are not independent, both in law and in practice, then naturally questions and doubts will be raised about their investigations.

Backgrounds of individual commissioners

All three commissioners including the chairman have been implicated in impropriety and have been and are part of the President’s inner circle.

Chairman A.H.M.D. Nawaz issued an interim injunction preventing the Colombo High Court from proceeding with the case against former Navy Commander Admiral of the Fleet Wasantha Karannagoda, the Defendant in the 11-youth abduction case.

A.H.M.D. Nawaz had also issued an order quashing the Jaffna Magistrate’s decision to issue a summons on Gotabaya Rajapaksa requiring him to appear before Jaffna Magistrates Court as a witness in connection with the Habeas Corpus inquiry.

More significantly, A.H.M.D. Nawaz is defendant in the CIABOC application (Case No: 87741/01/18). He had been accused of conspiring to commit and thereafter commit an act of corruption to bestow undue benefit to the officers of Lanka Electricity Company (Pvt) Ltd (LECO) by gross subversion of established practices in the Attorney General’s Department, in contravention of Section 113(b) of the Penal Code and Section 102 read with Section 70 of the Bribery Act. The private commission was established Under the former presidency of Sirisena. They have been a flurry of applications and the cases were due to be heard by the Supreme Court. Following the election of the current president these proceedings have been stayed possibly indefinitely.

Former IGP Chandra Fernando, Which part of the presidential team sent to investigate one of the emblematic cases of human rights abuse, that of the killings of the Trincomalee students. Given that the ambit of the current investigation is to review the previous Investigations, Chandra Fernando, will be investigating himself.

Former District Secretary Abeysiri, is part of the president's in a circle of government advisors. He has also been implicated in financial irregularity at a huge scale in the Uma Oya project. Executive Director Human Rights and Research Centre (Sri Lanka) Keerthi Tennakoon District Secretary Abeysiri "Unless these people are relocated by paying them the cabinet approved housing rentals without delay, there is an impending tragedy which will be far more disastrous than the Meetotamulla debacle. It is questionable as to why the District Secretary is blatantly ignoring Presidential directives".

The institution of this commission demonstrates beyond any doubt that the domestic mechanisms of enquiry for the purposes of achieving transitional justice and reconciliation like any veracity or or transparency.

The finding of these commissions often go unpublished and recommendations are never implemented. None of these commissions have led to prosecutions, or helped families trace missing relatives.

International observers, UN experts, and the UN high commissioner for human rights have repeatedly highlighted deep systemic problems in Sri Lanka's judicial processes".

Since coming to office Gotabaya Rajapaksa has rapidly reversed the little progress made by previous administrations, and last February announced that the government would no longer honour its commitments to the UN Council's resolution.

Rajapaksa is implicated in many of the worst abuses and crimes of Genocide against Eelam Tamils. Rajapaksa since appointed alleged perpetrators to senior positions, and even pardoned one of the few soldiers ever jailed for killing civilians.

Recommendations

We call upon the UNHRC members to adopt new resolution to refer sri Lanka to the International Criminal Court, outlining that the affected Tamil people have no faith in any domestic commission or inquiry.

GLOBAL TAMIL MOUVEMENT, NGO(s) without consultative status, also share the views expressed in this statement.