

PRESIDENTIAL COMMISSION OF
INQUIRY (COI) INTO POLITICAL
VICTIMISATION AND
ATTEMPTS TO DENY SRI LANKAN
OPPOSITION POLITICIANS
OF THEIR CIVIC RIGHTS

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A little over a month after the Presidential election, in January 2020 a Presidential Commission of Inquiry (PCol) into Political Victimisation, chaired by retired Supreme Court Judge Upali Abeyratne and comprising of retired Court of Appeal Judge Chandrasiri Jayathilake and former Inspector General of Police (IGP) Chandra Fernando, was appointed by President Gotabaya Rajapakse. The PCol was mandated “to inquire into and obtain information in respect of the alleged political victimization during the period commencing 8th January 2015 and ending 16th November 2019.”¹ 16th November 2019 being the day of the Presidential election. The PCol functioned from 9th January 2020 to 25th November 2020. Its report was submitted to the President on 08 December 2020. The report has not been officially published, has not been tabled in Parliament, but is in the public domain.²

Following the submission of the report, a Special Presidential Commission of Inquiry has been appointed to recommend, inter alia, whether civic disability should be imposed on Opposition politicians, senior lawyers, senior administrators and senior Police officers named by the PCol. If so recommended, the Government has the requisite two-thirds majority in Parliament to impose such civic disability for a period upto seven years.

Recommendations made by the PCol in regard to the discontinuance of pending criminal proceedings and the acquittal and discharge of accused including the release of a politician close to the Rajapakse family who was convicted of unlawful assembly and murder and sentenced to death will be dealt with another note to follow.

¹ Extra Ordinary Gazette No. 2157/44 (9 January 2020) http://www.documents.gov.lk/files/egz/2020/1/2157-44_E.pdf

² As at 20th February 2021.

Anti-Corruption Efforts following the Presidential Elections of 2015

After the Presidential election of 2015 at which the Rajapakse regime was defeated by a coalition of democratic forces across all ethnic groups, the then Cabinet of Ministers on 21st January 2015, approved the recommendation of the National Executive Council to establish an Anti-Corruption Committee (ACC)³. The ACC was established in February 2015⁴. The National Executive Council comprised representatives of various political parties.

The Cabinet meeting of 21st January 2015 discussed a framework to address corruption including in the short term to investigate (i) items brought for distribution during the time of Presidential Election which are lying in storage, (ii) corrupt acquisition of land, movable and immovable property, (iii) frauds and corruptions relating to the Employees' Provident Fund and stock exchange, and (iv) the assets and liabilities of fraudulent persons who are considered responsible for large scale corruption and take necessary action. The long terms goals were (i) to investigate monies sent out of Sri Lanka fraudulently, (ii) to introduce a Commission with wide powers to investigate into complaints of Bribery and Corruption, (iii) Appoint a National Procurement Commission for granting approval to all projects, (iv) Present a National Audit Act, and (v) implement the Anti-Corruption Convention of the United Nations to which Sri Lanka is a signatory.

Establishment of the Anti-Corruption Committee (ACC)

ACC was established to strengthen anti-corruption intuitions in the country and to ensure that the investigative agencies will be financially sustained. The Anti-Corruption Secretariat that was set up

³ The ACC comprised of the following persons as holders of office at the time - (i) Hon. Ranil Wickremasinghe, Prime Minister - (Chairman), (ii) Hon. Mangala Samaraweera, Minister of Foreign Affairs; (iii) Hon. Patali Champika Ranawaka, Minister of Power and Energy; (iv) Hon. Rauff Hakeem, Minister of Urban Development, Water Supply and Drainage; (v) Hon. R. Sampanthan, Member of Parliament and the Leader of the Tamil National Alliance; (vi) Hon. Anura Kumara Dissanayaka, Member of Parliament and the Leader of the People's Liberation Front (JVP); (vii) Hon. M. A. Sumanthiran, Member of Parliament; (viii) Mr. Sarath Fonseka, Leader of the Democratic Party; (ix) Dr. Jayampathy Wickremaratna; (x) J.C. Weliamuna, Attorney General; and (xi) Mr. Malik Samarawickrema.

⁴ A natural death for Anti-Corruption Secretariat (Sri Lanka Mirror, 12 July 2017)
<https://srilankamirror.com/news/3891-a-natural-death-for-anti-corruption-secretariat>

was to receive public representations/communications of frauds/misappropriations/ money laundering. The Secretariat consisted of serving and retired public servants (including representatives of the Auditor General) to submit an expert analysis of the communications received. None of the investigative agencies had such expert accountants/auditors. The officers serving in the Anti-Corruption Secretariat were senior Secretaries/Additional Secretaries with extensive financial administration/public audit knowledge/skills. Representatives of the Attorney General's

representative serving part time had the opportunity to look at the communications together with the reports of the experts. Thereafter, on the recommendations of the representatives of the Attorney General, the communications were forwarded to the Inspector General of Police (head of the Sri Lanka Police) or the Bribery Commission or to the public institution that was empowered take relevant administrative or disciplinary actions. When the police received these communications from the Inspector General of Police, formal statements were recorded by police so that criminal investigations could commence. No criminal investigations were conducted by the Secretariat.

Establishment of the FCID

The idea of establishing the Anti-Corruption Secretariat was to look into communications and/or letters of allegations received from the public on corruption and fraud and to refer genuine complaints to the Commission to Investigate Acts of Bribery and Corruption (CIABOC) or the Financial Crimes Investigation Division (FCID) of Sri Lanka Police.⁵

Establishment of the FCID was a decision of the then Cabinet and it was the Inspector General of Police who gazetted the establishment of FCID under Section 55 of the Police Ordinance following regular procedures. Almost all the police divisions are established under s.55 of the Police Ordinance. The gazette for the FCID was challenged by several parties in Supreme Court and Court of Appeal, which cases are still pending.

Originally, given a one-year term, the Anti-Corruption Secretariat received a six-month extension through a cabinet paper on 22 November 2016. Reports suggest that on 11th July 2017 it was unofficially decided at a Cabinet meeting to allow the Anti-Corruption Secretariat to cease

⁵ See n(2)

functioning. News reports carried allegations that the Anti-Corruption Secretariat ceasing to function was due to persons within the government of the day coming under investigation.

It was reported that the Anti-Corruption Secretariat had received 480 communications on serious financial fraud, 547 complaints on financial irregularities and minor financial fraud, and 120 other complaints. It was revealed that the INSPECTOR GENERAL OF POLICE had referred a large number of complaints to FCID, CID, Fraud Bureau and other police divisions. Some communications were forwarded to the FCID and the Bribery Commission, with the former having concluded investigations into 72 and having sent reports to the Attorney General, presumably for consideration of criminal action.

Presidential Commission of Inquiry (PCol) into Political Victimisation (2020)

As mentioned, the PCol was appointed in January 2020. Its term was extended several times and the final report was handed over to the President on 08 December 2020. The report has not been officially published. There have been unconfirmed reports that an addendum to the report has also been submitted.

The procedure followed by the PCol

The PCol report states that public complaints were called for through print and electronic media and time to lodge such complaints was given till 6 March 2020. Complaints beyond this deadline were also entertained. More than 1500 complaints were purportedly received. The report states that not all complaints received fell within the mandate of the PCol and all such complaints were directed to the Committee appointed by the Prime Minister to look into political victimization.⁶ The report states that statements were obtained, and relevant documents and productions were

⁶ Report of the Presidential Commission of Inquiry (Col) into Political Victimisation, <https://www.colombotelegraph.com/wp-content/uploads/2021/01/Gotabaya-Rajapaksas-PCol-Report-on-Political-Victimisation-complete.pdf> p.15

obtained. After the preliminary investigations, inquiries into the statements of the complainants and witnesses were conducted before the Commission.⁷

In late January 2020, the Commission ordered a halt to the trial of naval officers accused in connection with the abduction and disappearance of the 11 people. The Attorney General said the Commission had no power to do so and the trial was scheduled to proceed. However, the proceedings were stayed by the Court of Appeal in June 2020. The PCol also sought to intervene in several other emblematic human rights cases, including the abduction and torture of Keith Noyahr, the murder of Lasantha Wikremetunge, and the disappearance of Prageeth Ekneligoda. Several accused testified to the commission that they felt persecuted by investigators and were accused having of an agenda against President Gotabaya Rajapaksa.

The Attorney General informed the PCol by a written communication dated 22nd June 2020 that the Commission had no jurisdiction to go into complaints made by private individuals. The Members of the Commission have refused to hear the submissions of the Deputy Solicitor General who came before the Commission and have also refused to make a ruling on the letter written by the Attorney General and have proceeded with the relevant inquiry.

Recommendations of the PCol

The PCol, with regards to the ACC, states that

- a. the establishment of the ACC by the National Executive Council on the basis of a Cabinet paper was unconstitutional as it was not established by any law, or with the approval of Parliament;
- b. The relevant Members of Parliament have violated the oath they take upon assuming office;

⁷ See n(12) p.16

- c. The members have committed an offense in terms of Section 70 of the Bribery Act⁸ – for working in an organisation that was not legally founded, and for using Temple Trees (the official residence of the Prime Minister) as the venue for meetings;
- d. The members are guilty of the offence described in Section 5 of the Public Properties Act⁹ and Section 386 of the Penal Code¹⁰ for working in a on governmental organization and receiving payments from the state;
- e. Guilty under Section 5 of the Public Properties Act¹¹ and Section 389 of the Penal Code¹² for using more than Rs. 33 million for the Anti-Corruption Secretariat from State funds;
- f. The report has further alleged that the investigations of the ACC, Anti-Corruption Secretariat, CIABOC, FCID and SIU of the Police, were directed against specific individuals (in item nos. 9 and 10 of the report) as a form of political victimization;

⁸ Bribery Act No. 11 of 1954, Section 70 states that “A person who (a) wilfully neglects or omits to carry out any direction given to him under subsection (2) of section 3 by the Bribery Commissioner or by any officer empowered by that section to direct and conduct an investigation, or (b) gives a false answer when questioned under that subsection, or (c) makes a false statement in an affidavit submitted by him in compliance with a direction under that subsection - shall be guilty of an offence and shall upon summary trial and conviction by a Magistrate be liable to a fine of not less than one hundred rupees and not more than five hundred rupees, or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.”

⁹ Offences Against Public Property Act No. 12 of 1982, Section 5 states (1) Any person who dishonestly misappropriates or converts to his own use any movable public property or commits the offence of criminal breach of trust of any movable public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher. (2) Any person who commits the offence of cheating, forgery or falsification of accounts in relation to public property shall be guilty of an offence and shall upon conviction be **punished with imprisonment of either description for a term not less than one year but not exceeding twenty years and with a fine of one thousand rupees or three times the amount in relation to which such offence was committed**, whichever amount is higher.

¹⁰ Section 386 of the Penal Code states “Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

¹¹ See footnote 9 above.

¹² See footnote 10 above.

- g. The PCoI also states that the Anti-Corruption Secretariat caused the arrest of several persons who were cited as offenders in the media, prior to such individuals being convicted by a Court of Law;
- h. The PCoI has alleged that the ACC misused public property, as it was registered as a NGO, for the reason that meetings were held at Temple Trees, and the employees were paid salaries and allowances using state funds, and that the Anti-Corruption Secretariat misappropriated Rs 33.7 million.¹³

The PCoI has recommended that:

- A Special PCoI be established to advise Parliament to investigate the ACC's and Anti-Corruption Secretariat's violation of the Constitution and punish the 22 Respondents named in the report
- The evidence and documents received by the PCoI be sent to the CIABOC and the Attorney General's Department to take legal action against the 22 Respondents

The report specifically mentions the following individuals, as those targeted by the ACC/ Anti-Corruption Secretariat - Gotabaya Rajapaksa – with regards to the Avant Garde case¹⁴, Yoshitha Rajapaksa, Former Minister of Economic Development Basil Rajapaksa and Secretary Nihal Jayathilaka and others. For example, the Commission has recommended that charges be filed against the aggrieved party in response to an ongoing case involving allegations of cheating by Udaya Gammanpila (after August 2020 he holds office of Minister of Energy) in the sum of Sri

¹³ *Over Rs 33 million spent on Anti-Corruption Committee Secretariat during previous government, former PM testifies* (Colombo Page, 15 October 2020)

http://www.colombopage.com/archive_20B/Oct15_1602786452CH.php

¹⁴ The Avant Garde case involved operation a floating armoury as part of an agreement entered between Avant Garde and the then Ministry of Defence under the purview of then Secretary to the Minister of Defence, Gotabhaya Rajapaksa. The loss of revenue (reported to be Rupees 11.2 Billion) to Sri Lanka in removing the Navy as the institution responsible for maintaining the custody of weapons brought into the territorial waters of Sri Lanka by ships passing through, was one aspect of corruption investigated and the other was the weapons and ammunition that was found undeclared or maintained without permission, in various containers by Avant Garde Maritime Services (Private). In 2015, the Attorney General after investigations served indictment setting out 7573 charges and in July 2020 the Special High Court ordered 5 of the accused be released and 19 charges be prosecuted against the 8 remaining accused. The 19 charges maintained relate to maintenance of an illegal floating armoury off the Southern seas of Sri Lanka, as well as the possession of 816 firearms and 203,395 bullets.

Lankan Rupees 21 Million and misappropriation of a further 21 Million together with another in a private business transaction.¹⁵ Another example is the PCol recommendation that Udayanga Weeratunga (member of the Rajapaksa family) who is the main accused of the infamous MiG aircraft deal, and at one time pursued by Interpol necessitating an international red notice, be released from all the accusations against him.¹⁶

The PCol has recommended that therefore, the former Prime Minister Ranil Wickremesinghe and 21 others be punished for violating the Constitution. Others include Mangala Samaraweera, Patali Champika Ranawaka, Rauff Hakeem, Sarath Fonseka, R. Sampanthan, M.A. Sumanthiran, Anura Kumara Dissanayake, J.C. Weliamuna, Malik Samarawickrama, Dr Jayampathy Wickramaratne and former Prime Minister Wickremesinghe's Secretary Saman Ekanayake.¹⁷ It has recommended that the following individuals among others be granted relief: Udaya Gammanpila, Yoshitha Rajapaksa, Nalaka Godahewa, Sivaneshathurai Chandrakanthan alias 'Pillayan,' Rohitha Bogollagama, Udayanga Weeratunga, Wasantha Karannagoda and Jagath Wijeweera.

The establishment of a Special Presidential Commission of Inquiry

The report of the PCol, of over 2000 pages, was handed over to the President. The President thereafter sought the approval of the Cabinet Ministers to implement selected recommendations in the report.

In the Memorandum submitted by President Gotabaya Rajapaksa dated 15th January 2021, it is stated *"It has also been reported through public statements of government officials, recorded telephone conversations, media reports and private complaints that a group of politicians of the Yahapalana government elected in January 2015 have acted to take political leaders, government*

¹⁵ <https://economynext.com/political-victimization-commission-releasing-criminals-vijitha-herath-78257/>

¹⁶ <https://economynext.com/political-victimization-commission-releasing-criminals-vijitha-herath-78257/>

¹⁷ Presidential Commission recommends punishing opposition politicians including Ranil, Samapathan, AKD, Mangala, Patali and Jayamapathi (Sri Lanka Brief, 23 January 2021) <https://srilankabrief.org/2021/01/presidential-commission-recommends-punishing-opposition-politicians-including-ranil-samapathan-akd-mangala-patali-and-jayamapathi/>

officials, and war heroes who eradicated the brutal LTTE terrorism of 30 years from this country, before an international war tribunal, by holding political leaders, government officials, and war heroes who had performed law-abiding honest service, for long periods of time under such detention orders, subjecting them to various physical and mental harassments, compelling them in various ways and obtaining false statements, obtaining statutory statements under section 127 of the Criminal Procedure Code, and the Foreign Minister of the Yahapalana government of 2015 Mangala Samaraweera signing UN Resolution 30/1 as a co-sponsor.” In Attachment 1 to the Memorandum, which refers to Item 8 of the PCol report (page 17) it appears that recommendation against the 22 persons named therein is based on the sole witness of one Dr. Wijedasa Rajapakse, a parliamentarian sitting in government.

On 29th January 2021, a Special Presidential Commission of Inquiry (Special PCol) was established and comprises of (1) Hon. Dhammika Priyantha Samarakoon Jayawardena Esquire (Chairperson) Judge of the Supreme Court, (2) Hon. Khema Kumudini Wickremasinghe, Judge of the Supreme Court and (3) Hon. Rathnapriya Gurusinghe, Judge of the Court of Appeal. The Special PCol was mandated to investigate into whether persons mentioned in item 8¹⁸ of the PCol’s report had violated the Constitution, carried out political relations, or committed abuse or misuse of power, interference, fraud, corruption or criminal misuse.¹⁹ It is important to note that the Special PCol is restricted to investigating person named in item 8 and does not contemplate considering whether the then President, the then Cabinet of Ministers, the then Inspector General of Police and the then Attorney General who were also part of the ACC and its activities. This partiality demonstrates the political bias in the course of action taken in establishing the Special PCol.

¹⁸ (1) Prime Minister Ranil Wickremasinghe (Chairman), (2) Minister Mangala Samaraweera, (3) Minister Patali Champika Ranawaka, (4) Minister Rauf Hakeem, (4) Leader of the Democratic Party Sarath Fonseka, (5) Leader of the Tamil National Alliance R. Sambandan, (6) M. A. Sumanthiran MP, (7) Leader of Janatha Vimukthi Peramuna Aruna Kumara Dissanayaka, (8) J.C. Weliamuna, Attorney-at-Law, (9) Dr. Jayampathi Wickramaratne, (10) Malik Samarawikrema, (11) Ananda Wijayapala, (12) SSP Shani Abeywikrema, (13) ASP Premashantha, (14) IP Nihal Amarasiri, (16) W.J.C. Sujatha Kumari, (17) C.I. Weerasena, (18) Thusith Mudalige, (19) Lal Nanayakkara, (20) Anusha Kumaraswami, (21) Dinesh Perera and (22) Former Secretary to the Prime Minister Saman Ekanayake.

¹⁹ Extra Ordinary Gazette No. 2212/53 (29 January 2021) http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf

After submitting its report on 8th December 2020²⁰, the Chairman of the PCol, retired Supreme Court Judge, Upali Abeyratne, was appointed as Chair of the Office of Missing Persons (OMP).

A Special Presidential Commission of Inquiry is established in terms of the Special Presidential Commission of Inquiry Law of 1978. A notable feature of such a Commission is that its inquiries are considered 'judicial proceedings'²¹ for the purposes of the Penal Code and the Commission is empowered to recommend to the President that civic disability be imposed²². However, the lack of independence draws on the fact that members of the Commission are appointed by the President and the Chief Justice or the Judicial Service Commission are not involved.

Commentary on the PCol (2020)

- ◆ Presidential Commissions of Inquiry (PCol) are designed in law to be inquisitorial bodies with power to entertain a wide range of information. The submissions are not public and there is no requirement to adhere to procedural safeguards that are a necessary part of civil or criminal legal proceedings. This means the findings of a PCol cannot be considered findings reached by adherence strict rules of evidence or public transparency.

This is highlighted in the concerns raised, which state that findings of this PCol mostly rely on hearsay and statements by the complainants themselves or witnesses on their behalf.²³ Principles of natural justice has not been adhered to as both sides have not been given a fair

²⁰ <http://www.dailynews.lk/2020/12/09/local/235619/pcoi-report-political-victimisation-handed-over-president>

²¹ Section 8 of the Special Presidential Commission of Inquiry Law of 1978.

²² Section 9 of the Special Presidential Commission of Inquiry Law of 1978.

²³ *Full Text Of The Leaked Report: War Criminals, Murderers And Fraudsters Exonerated By Nandasena's Political Victimisation Commission*, (Colombo Telegraph, 28 January 2021)
<https://www.colombotelegraph.com/index.php/full-text-of-the-leaked-report-war-criminals-murderers-and-fraudsters-exonerated-by-nandasenas-political-victimisation-commission/>

and equal hearing.²⁴ It has been reported that accused law enforcement officers were not given the opportunity to present their own evidence or cross-examine witnesses.

- ❖ This PCol report has essentially made a series of political commentaries without any corroborating evidence, thus undermining its independence. Attempts made by the PCol to halt ongoing trials and judicial proceedings before various courts, has stated that persons who have been convicted by courts should not be so convicted and calling for the acquittal of those being currently tried for offences before the Courts, amount to interference in independent judicial proceedings, and contempt for the reason that it is prejudicial to the maintenance of the authority and impartiality of the judiciary. The recommendations of the PCol in effect undermine the judiciary by publicly condemning the judiciary as political tool for engaging with rigour in a process of testing of evidence and fair trial, which the PCol itself has not afforded its respondents.
- ❖ The findings and recommendations of the PCol have a chilling effect on law enforcement and legal officials such as officers of the Attorney General's Department and discourage such officials from acting impartially and independently in bringing perpetrators to justice.²⁵
- ❖ Members of the unofficial Bar who have represented their clients and or appeared in public interest cases have been vilified and portrayed as been involved in political victimization. This has also created a hostile environment for public interest litigation and provision of legal representation.

²⁴ Upali Abeyrathana commission has overstepped its mandate; Lawyers to move CA against PCol report, (Sri Lanka Brief, 1 February 2021) <https://srilankabrief.org/2021/02/upali-abeyrathana-commission-has-overstepped-its-mandate-lawyers-to-move-ca-against-pcoi-report/>

²⁵ Alan Keenan and K Mudiyanse, *Sri Lanka: Under Rajapaksas' Watch, Rule of Law Suffers the Onslaught of Politics* (The Wire, 13 November 2020) <https://thewire.in/south-asia/srilanka-rajapaksa-rule-of-law-suffers-onslaught-politics>

- ❖ The members of the Commission themselves and their suitability to make findings and recommendations on political victimisation have been censured. The Chairperson, has been the subject of disciplinary inquiry and faces allegations of misconduct.²⁶ Further, concerns relating to conflict of interest of another Commissioner, former Inspector General of Police, Chandra Fernando had also been raised but not taken into consideration.²⁷
- ❖ Certain persons who were never involved in the ACC such as Saman Ekanayake, Secretary to the former Prime Minister, have been named as respondents. Others, such as former President Maithripala Sirisena who presided himself over the meeting of the ACC on 5th February 2015²⁸, and former Inspector General of Police Illangakoon who set up the Financial Crimes Investigation Department (FCID) have not been held responsible.²⁹ Further calling into question the independence of the PCol and political victimization and incentivization that has been wielded by it.
- ❖ In terms of the Commission of Inquiry Act (s.7(2)), the Commission can summon individuals living within Sri Lanka. Both Dr. Jayampathi Wickramaratne, JC Weliamuna, Mr. Prasad Kariyawasam, Capt. Welagedara – were living outside the country and cannot be summoned but the Col had made adverse recommendations. Even those who were summoned had been treated adversely with personal and derogatory remarks made by the Commissioners themselves.

²⁶ Victor Ivan, *Decline of the Judiciary* (Daily Financial Times, 7 February 2020) <http://www.ft.lk/columns/Decline-of-the-Judiciary/4-695192>

²⁷ Alan Keenan and K Mudiyanse, *Sri Lanka: Under Rajapaksa's Watch, Rule of Law Suffers the Onslaught of Politics* (The Wire, 13 November 2020) <https://thewire.in/south-asia/srilanka-rajapaksa-rule-of-law-suffers-onslaught-politics>

²⁸ See page 401 of the PCol on Political Victimization (2020) report.

²⁹ Sri Lanka Brief (1 February 2021) <https://sinhala.srilankabrief.org/%e0%b6%b4%e0%b7%85%e0%b7%92%e0%b6%9c%e0%b7%90%e0%b6%b1%e0%b7%93%e0%b6%b8%e0%b7%8a-%e0%b6%9a%e0%b7%9c%e0%b6%b8%e0%b7%92%e0%b7%83%e0%b6%b8%e0%b7%9a-%e0%b6%85%e0%b6%bb%e0%b7%94%e0%b6%b8-%e0%b6%b4/>

- ◆ Members of the ACC never received formal appointment letters but the officers serving at the Secretariat received letters of appointment consequent to formal approval by the Cabinet. The financial provisions were duly approved by the Secretary and the then Finance Minister Ravi Karunakayaka. It is important to note that Hon. R. Sampanthan, Member of Parliament and the Leader of the Tamil National Alliance, Hon. Anura Kumara Dissanayaka, Member of Parliament and the Leader of the People's Liberation Front (JVP) and Hon. M. A. Sumanthiran, Member of Parliament did not attend ACC meetings. All others received invitations for meetings which were scheduled in an ad hoc manner and mostly often in the form of requests over the phone to be present at meetings. Apart from the Avant Garde case, which was raised for discussion by Hon. Wijedasa Rajapakse (who is the same person who is named as the sole witness by the PCoI in making allegations against others purportedly as members of the ACC), there is no record of and the ACC did not discuss any individual or specific cases. The only information reported to ACC was the number of investigations pending and cases filed and the needs of the agencies. None of these factors have been considered by the PCoI in making allegations against members of the ACC.

Commentary on the Special PCoI (2021)

- ◆ **The Sri Lankan Constitution empowers a Special Presidential Commission of Inquiry to impose civil disabilities and remove legislators.**

Article 81 of the Constitution of Sri Lanka states as follows:

*(1) Where a Special Presidential Commission of Inquiry established under the Special Presidential Commissions of Inquiry Law, No. 07 of 1978 and consisting of a member each of whom is a Judge of the Supreme Court, Court of Appeal, High Court or the District Court recommends that any person should be made subject to civic disability by reason of any act done or omitted to be done by such person before or after the commencement of the Constitution, Parliament may by resolution pass by not less than two-thirds of the whole number of Members (including those not present) voting in its favour **-(a) impose civic disability on such person for a period not exceeding seven years, and (b) expel such person from Parliament, if he is a Member of Parliament.***

Subsection (3) states the resolution once endorsed by the Speaker in the form of a certificate *"...shall be conclusive for all purposes and shall not be questioned in any court, and no court or tribunal shall inquire into, or pronounce upon or in any manner call in question, the validity of such resolution on any ground whatsoever."*

This Constitutional provision was introduced by the then President J R Jayawardene and was used against his then opponents precedent Prime Minister Mrs Sirimavo Bandaranaike and Felix Dias Bandaranaike (who held a cabinet position in Mrs. Bandaranaike's government). Mrs. Bandaranaike was retrospectively found guilty of "acts of political misuse or abuse of power" (not being offences under any law) during her administration, and civic disabilities imposed meant she was deprived of the right to hold or campaign for public office, or to support anyone else who did. She was stripped of her civic rights³⁰ for seven years and expelled from Parliament.

- ◆ The recommendations for a Special Presidential Commission of Inquiry by this PCol signals that the President intends to empower a body capable of triggering a process by which civic disabilities are imposed on individuals. Section 9 states *"the commission shall recommend whether such person should be made subject to civic disability, and the President shall cause such finding to be published in the Gazette as soon as possible, and direct that such report be published."* The procedure adopted, the clear partial aims of the series of events encapsulated in the PCol and Special PCol, and the possibility that several members of parliament sitting in opposition (including leaders of key political parties) to-date and persons having served the state in professional capacities can be potentially subject to imposition of civic disabilities, is extremely damaging to the rule of law and maintenance of checks and balances in the governance of the country.

The End.

³⁰ Article 157A(12) of the Sri Lankan Constitution states that 'civic rights' includes right to hold a passport, right to own any immovable property and right to engage in any trade or profession which requires a licence, registration or other authorization.