

CHAPTER 1

INTRODUCTION

1. This Presidential Commission of Inquiry to investigate and inquire into, take necessary action and report on the findings and recommendations of preceding Commissions of Inquiry and Committees (hereinafter referred to as the Commission/this Commission or PCOI) was appointed by former President Gotabaya Rajapaksa by a Presidential Warrant issued in terms of Section 2 of the Commission of Inquiry Act and published in the Gazette Notification bearing No.2211/55 and dated 21 January 2021. The mandate of the Commission was to investigate and inquire into, take necessary action and report on the findings and recommendations of preceding Commissions of Inquiry and Committees that had been appointed to investigate human rights violations, serious violations of international humanitarian law and other such serious offences.
2. Upon a perusal of the preambulatory clauses of the aforesaid Gazette Notification, it becomes clear that prior to the establishment of this Commission the GOSL had withdrawn from the co-sponsored UNHRC resolution 40/1 on reconciliation, accountability and promotion of human rights in Sri Lanka¹ and its preceding resolutions 30/1 of October 2015 and 34/1 of March 2017.²
3. It would appear that the GOSL announced its decision of withdrawal at the 43rd Session of the UNHRC held on 26th and 27th of February 2020.
4. On the 26th of February 2020, the GOSL made a declaration before the UNHRC in Geneva that it remained committed to achieve sustainable peace through an

¹ Dinesh Gunawardena, Minister of Foreign Relations, *Text of speech delivered at the High-Level segment of the 43rd Session of the UNHR*'' <https://mfa.gov.lk/43rd-session-hrc/>

² For a verbatim reproduction of the preambulatory paragraphs of the mandate of this PCOI, which refer to the withdrawal of GOSL from the resolutions; also see para 73 in *Chapter 2* of this final report.

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.

5. In this context it is appropriate to take note of the second and third paragraphs of the speech of the Minister of Foreign Relations at the time, which refer to the appointment of this Commission. Despite the withdrawal of the GOSL from resolutions 30/1, 34/1 and 40/1, there is an articulation of an avowed policy by the GOSL to remain engaged with the UN agencies, while promoting and ensuring justice and reconciliation and addressing the concerns of the vulnerable sections of society.

The pertinent declaration and the pledge in the speech of the minister on 26 February 2020 repay attention...

"...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.

Secondly, the government will also address other outstanding concerns and introduce institutional reforms where necessary, in a manner consistent with Sri Lanka's commitments, including the 2030 Sustainable Development Agenda (SDGs). We will implement policies rooted in the government's commitment to the people by advancing individual and collective rights and protections under the law, ensuring justice and reconciliation, and addressing the concerns of vulnerable sections of society. A discussion has already been held between the President and the UN Resident Coordinator where it has been agreed to connect the relevant UN agencies to help the Government of Sri Lanka in the implementation of the SDGs.

Thirdly, Sri Lanka will continue to remain engaged with, and seek as required, the assistance of the UN and its agencies including the regular human rights mandates/bodies and mechanisms in capacity building and technical assistance, in keeping with domestic priorities and policies.

Finally, in conjunction with all members of the UN, Sri Lanka will seek to work towards the closure of the resolution”.³

6. The Gazette Notification establishing this Commission (PCOI) also reiterates the aforesaid declaration of the GOSL made at the UNHRC and goes on to state that the policy of the GOSL is to ensure that other issues remain to be resolved through a democratic process. It has also been identified by the GOSL that it shall pursue a non-aligned foreign policy that protects the sovereignty of Sri Lanka in achieving the objectives stated in the policy statement of the GOSL.
7. It is worthy of note that though the GOSL announced that it would no longer abide by the commitments made in resolution 30/1 and its successive resolutions, it expressed its resolve to continue its comity to work with the UN process. Sri Lanka’s constructive engagement with the UN is demonstrated by its interaction with the United Nations Human Rights Committee⁴ and the recent conclusion of its voluntary undertaking with the UN namely the Universal Periodic Review (UPR).⁵

³ Statement made by Hon. Dinesh Gunawardena, Minister of Foreign Relations at the 43rd Session of the Human Rights Council; <https://mfa.gov.lk/statement-made-by-minister-of-foreign-relations-at-the-43rd-session-of-the-hrc-eng/>

⁴ See National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21; The ICCPR Review that took place on 8th - 9th March 2023.

⁵ See Report of the Working Group on the Universal Periodic Review Sri Lanka A/HRC/53/16.

8. The evidence before this Commission is that a report has been submitted to the CEDAW Committee and accession to the Optional Protocol on CAT has already taken place as far back as 5th December 2017.
9. Though Sri Lanka asserted that it would instead be implementing its own autochthonous peace and reconciliation process, its engagement with the UN and solicitation of technical assistance and capacity building have been salutary. Emboldened by these declarations and covenants it is safe to assume that the GOSL remains committed to pursuing a genuine process of truth seeking and reconciliation and though the GOSL repudiated the covenants in resolution 30/1, the fact that it sought to continue its interactive dialogue and constructive engagement with the UN must be construed as a commitment to advance the pillars of transitional justice. Though there has to be a sincere and genuine commitment to implement the avowed statement of policy in order to put in place a domestically rooted transitional justice mechanism, it must also be pointed out that the GOSL has continued with the OMP, a truth seeking mechanism that had been stipulated in the disavowed resolution 30/1.
10. As the evidence of the OMP Chairman revealed before the PCOI, on the expiry of the term of office of its first ever Commissioners in February 2021, the GOSL appointed a new set of Commissioners to succeed the preceding Commissioners. In August 2021, the OMP branched out to the districts by establishing offices to serve the victims at their doors. This shows continuity and such a course of action must inspire confidence in the minds of the people whom the OMP has to serve in regard to truth and justice during different eras.⁶
11. It is in these circumstances that this Commission (the PCOI) articulated the inauguration of a truth seeking mechanism that would respond to allegations that continue to survive the previous Commissions and Committees. In its second interim report dated 18th February 2022, the PCOI reiterated the necessity for the establishment of a credible truth seeking mechanism which

⁶ See the narrative on OMP in *Chapter 3, Part III* of the final report.

has been the rallying cry of not only some of the previous resolutions of the UNHRC but also domestic mechanisms such as the Paranagama Commission.⁷

Synopsis of Recommendations dated 6th February 2023 - A Statutory Truth and Reconciliation Commission (TRC)

12. In fact, in the synopsis of recommendations to be included in this report, which was submitted to the President on 6th February 2023, this Commission emphasized the need for the contours of a Truth and Reconciliation Commission to be defined and demarcated statutorily and towards this end the PCOI would seek to deal with such contours in Chapters 5 and 6 of this final report. It has been brought home to this PCOI that its recommendation of a Truth and Reconciliation Commission in its second interim report has been followed through by the GOSL by an initial Cabinet Paper, which acknowledged the said recommendation of this PCOI and the PCOI has been notified that after the imprimatur of the cabinet to draft a Bill for the purpose, an Interim Secretariat has since been established with a view to overseeing the setting up of a Truth and Reconciliation Commission. The PCOI notes that these steps are in the right direction. This PCOI has taken cognizance of the references made by two foreign ministers of this country on their attempts at a

⁷ See res/19/2 adopted on 22nd March 2012; res/22/1 adopted on 21st March 2013; res/25/1 adopted on 27th March 2014; res/30/1 adopted on 1st October 2015; res/34/1 adopted on 23rd March 2017; res/40/1 adopted on 21st March 2019; res/46/1 adopted on 23rd March 2021, which have referred to truth seeking mechanisms and see paragraph 620 of the Paranagama report. See in particular p 2, 129 and 130 of the second interim report of this PCOI. It is worth noting that it is from res 30/1, res 34/1 and res 40/1 that GOSL withdrew on 26th of February 2020.

truth seeking anchoring it on the recommendations of this Commission to establish the same.^{8 9}

13. This Commission (the PCOI) proposes to discuss such a mechanism and its imperative need since this key pillar of transitional justice has figured in several discourses over the years and remains outstanding for implementation. It is important to note that the disavowed resolution 40/1 dated February 2019, which is directly linked to its predecessor resolutions 30/4 and 34/1, highlighted and recognized in one of its prefatory clauses the following:

(b) The steps taken by the government to implement resolution 30/1, including the progress made towards establishing an Office on Reparation and the submission made to the Cabinet of a concept paper on a Bill to establish a Truth and Reconciliation Commission (TRC), the proposed repeal of the Prevention of Terrorism Act of 1978 and the preparation of a draft Counter Terrorism Act.

14. This is an allusion to the submission of a TRC bill made by the then Prime Minister who is the incumbent President Mr. Ranil Wickremesinghe to the Cabinet as far back as September 2018 but it must be pointed out that further progress of the Bill from the Cabinet to the legislative process appears to have

⁸ See the statement made by the Minister of Foreign Affairs of Sri Lanka, Ali Sabry at the UNHRC on 6 October 2022, <https://srilankaembassy.at/wp-content/uploads/2022/10/Full-Statement.pdf> ;

See further statements made at other fora <https://www.ft.lk/news/Foreign-Minister-gives-emphatic-reassurances-at-UNHRC-sessions-in-Geneva/56-739810>;

<https://www.srilanka.co.za/news/minister-of-foreign-affairs-ali-sabry-accompanied-by-the-minister-of-justice-prison-affairs-and-constitutional-reforms-wijeyadasa-rajapakse-concluded-the-3-day-working-visit-to-south-africa-from-21-25-march-2023>

⁹ See other statements made by Prof. G. L. Peiris; <https://www.themorning.lk/articles/195180> ;

<https://srilankaembassyjakarta.com/2022/01/31/access-to-justice-programme-begins/> ;

<https://www.news.lk/news/political-current-affairs/item/33735-foreign-minister-peiris-addresses-diplomatic-corps-based-in-new-delhi>

proved abortive owing to extraneous events that happened in October 2018, as one witness highlighted and lamented it before this Commission exasperatedly.

15. All this shows in earnest that the institution of a TRC had been in the womb of time but its birth has remained distant due to untoward circumstances.

Joint communiqué

16. Accountability and the way forward have long been on the table as the Commission surveys a series of the post conflict documents. The introductory part to this final report would not be complete without a reference to the joint communiqué by the GOSL and the UN at the conclusion of the UN Secretary-General's visit to Sri Lanka.¹⁰ Among the elements of the joint statement on 23 May 2009 were the following:

a) Agreement that addressing the aspirations and grievances of all communities and working towards a lasting political solution was fundamental to ensuring long-term socio-economic development. The expression by the President of his firm resolve to proceed with the implementation of the 13th amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and bring about lasting peace and development in Sri Lanka

b) Reiteration of Sri Lanka's strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's international obligations. The Secretary General underlining the importance of an accountability process for addressing

¹⁰ Joint statement by UN – Secretary General, Government of Sri Lanka, SG/2151, 26 May 2009; the former Minister of Foreign Affairs giving evidence before this Commission described the facts and circumstances of UNSG's visit on 18 May 2009 and the signing of the joint statement – see his full testimony in Vol II of this final report.

violations of international humanitarian and human rights law and the government stating that measures will be taken to address these grievances.

17. Thus, establishing independent domestic mechanisms within the framework of the Constitution to address issues relating to truth seeking, justice, reconciliation, reparations and the prevention of recurrence of conflict have pervaded the post conflict period of Sri Lanka and this is also reflected in the resolution (S-11/1) that was carried in favour of Sri Lanka on 27 May 2009.¹¹
18. Before the Commission focuses on the previous Commissions of Inquiries and the Committees, it must be stated at the outset that divergent views exist in regard to the last stages of the war. These include the version of the last phase of the war given by the Army in its report¹² on the humanitarian operation, the advocacy oriented documents of the International Non-Governmental Organizations (INGOs) such as Human Rights Watch, International Crisis Group and Amnesty International and the more authentic eyewitness account of the Jaffna University Teachers for Human Rights (UTHR). The Commission (the PCOI) has observed copious references to the UTHR accounts by the Paranagama Commission.¹³
19. But among all these reports, the reports that have received much attention and critique were submitted by two sources - a Panel of Experts (POE) appointed by the UN Secretary-General¹⁴ and a Commission appointed by the GOSL - the

¹¹ In May 2009, the then Government of Sri Lanka proposed in the UN Human Rights Council a Resolution (S-11) titled '*Assistance to Sri Lanka in the promotion and protection of Human Rights*' which Sri Lanka succeeded in getting the Council to adopt by a vote (29 in favor, 12 against and 6 abstentions) on 27 May 2009.

¹² A brief summary of findings of the Court of Inquiry is included in the GOSL's 2013 Report to the Human Rights Committee.

¹³ See the Report of the Paranagama Commission titled *Report on the Second Mandate of the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances August 2015*.

¹⁴ The establishment of the POE is perhaps traceable to the last two sentences of the joint communique as described in (b) of paragraph (16) above. The POE Report became the basis for the demand for an international investigation at the UNHRC, inclusive of in the UNHRC's Resolutions in 2012, 2013 and 2014.

Lessons Learnt and Reconciliation Commission (LLRC).¹⁵ It must be noted however that the POE Report was never placed on the official record of the UNHRC and it was announced that the purpose of commissioning the POE was to inform the Secretary General of possible violations during the war, and to make recommendations for the edification of the Secretary General.¹⁶

20. It is axiomatic that Sri Lanka followed up with another Commission¹⁷ in order to give effect to LLRC's recommendations that it should adopt a comprehensive approach to address the issue of missing persons as the absence of such an approach would otherwise present a serious obstacle to any inclusive and long-term process of reconciliation.¹⁸
21. It is apposite at this stage to turn to the mandate of this PCOI. While the establishment of this Commission is in furtherance of a commitment given to the UNHRC by the GOSL on 26 February 2020, the mandate specifically empowers the PCOI to look for violations of international human rights law and international humanitarian law as found by the previous Commissions of Inquiry and Committees and propound recommendations and suggestions for a way forward.

¹⁵ For an introduction to the LLRC see *Chapter 2* of this final report titled *Previous Commissions and Committees*.

¹⁶ See the report of a civil society seminar on the review of the report of the Secretary General's Panel of Experts on Accountability in Sri Lanka and connected papers titled '*Accountability, Restorative Justice and Reconciliation*' (Maga Institute, September 2011).

¹⁷ The Presidential Commission of Inquiry into disappearances to inquire into enforced and involuntary disappearances that allegedly took place in the Northern and Eastern Provinces between 10 June 1990 and 19 May 2009 (Extraordinary Gazette No.1823/42 [(15 August 2013)]. For an introduction to the Paranagama Commission see *Chapter 2* of this final report titled *Previous Commissions of Inquiries and Committees*.

¹⁸ See paragraphs 9.48 and 9.49 of the LLRC Report and recommendations

22. In order to understand the import of the above proposition, it is appropriate to examine the mandate of the present Commission, which was laid down in the relevant Gazette Notification.¹⁹

¹⁹ See Gazette Notification bearing No. 2211/55 and dated 21 January 2021.

1. The Mandate.

23. On 21 of January 2021, the former President Gotabaya Rajapaksa in pursuance of the provisions of Section 2 of the Commission of Inquiry Act initially appointed three (03) Commissioners and thereafter made an appointment of a fourth member to the Commission.²⁰
24. The Commission was tasked to investigate and inquire into, take necessary action or report on the following matters, namely –
- a) *Find out 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 international humanitarian law and other such serious offences;*
 - b) *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;*
 - c) *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;*
 - d) *Overseen of whether action is being taken according to (b) and (c) above. (sic)*
25. Conterminous with the above powers and functions, it is evident that the PCOI was authorized and empowered to conduct necessary investigations and inquiries and to transmit interim reports where it deemed necessary.
26. At the outset, it should be stated that the continued operation and execution of the mandate of the PCOI was beset with the permacrisis of Covid 19, but the Commission is pleased to report that it toured and visited for purposes of its inquiries several

²⁰ Vide the Gazette Notification bearing No.2214/75 and dated 12 February 2021.

places of the conflict affected Provinces namely the Northern and Eastern Provinces. So far, this Commission has issued two interim reports containing several recommendations and it is noteworthy that some of its recommendations have been implemented by the GOSL such as the establishment of an advisory board under Section 13 of the PTA and an overhaul of the PTA by way of its repeal was also long advocated by the Commission in its first interim report dated July 2021. The Commission further recommended that the PTA had to be replaced with a modern Anti-Terrorism legislation in keeping with international best practices. Since the submission of its second interim report in February 2022, the events in the country stalled the expedition and dispatch of its final report, which this Commission wanted to submit sooner, and after His Excellency Ranil Wickremesinghe assumed the office of the President of this country, he was pleased to extend the duration of this Commission periodically in order to enable the Commission to accomplish the submission of its final report. Prior to the submission of this final report, the Commission delivered to His Excellency the President on 6th of February 2023 a synopsis of the prospective recommendations it hoped to include in this final report.

27. Turning now to the mandate, the primary responsibility of the PCOI is to identify the previous Commissions of Inquiry and Committees which had gone on to investigate violations of IHRL and IHL. Thereafter, it is incumbent upon this Commission to ascertain whether such Commissions and Committees have revealed any human rights violations, serious violations of international humanitarian law and other such serious offences. This part of the mandate sufficiently empowers the Commission to limit the scope of inquiry of the Commission only to such violations of human rights, serious violations of international humanitarian law and other such serious offences as found by the previous Commissions and Committees.
28. That raises the question of identification of the previous Commissions, Committees and the violations of IHRL and IHL as found by them. Before the PCOI comes to that question, a few words of edification on the types of violations follow.