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Joint Press Release: Sri Lanka's Mohan Peiris should not be framing international law at the UN.

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Johannesburg: In a breath-taking attempt to subvert international institutions and the rule of law, the Government of Sri Lanka has proposed a candidate for election to the United Nations' *International Law Commission*¹, who is compromised by his failure to hold accountable the perpetrators of enforced disappearance, execution, torture and rape during his tenure as the country's chief law officer. Mohan Peiris is now Sri Lanka's permanent representative to the United Nations in New York but from 2008-11 he served as Attorney General of Sri Lanka, failing to investigate or prosecute those responsible for war crimes and crimes against humanity. In 2013 he was appointed to the post of Chief Justice, amidst a national and international outcry over the Government's unlawful impeachment of his predecessor, Shirani Bandaranayake, which the UN Human Rights Council said was an assault on judicial independence and Sri Lanka's Supreme Court ruled as illegal².

"The UN's International Law Commission codifies international laws, with some of its recent work being on areas like immunity, extradition and crimes against humanity. All lawyers and those who care about a more just world order must urge members of the UN General Assembly not to vote for this man," said the ITJP's Executive Director, Yasmin Sooka.

"Under Peiris's watch, serious international crimes were alleged to have been perpetrated by the Sri Lankan security forces for which nobody has been held accountable. His appointment as Sri Lanka's top diplomat at the UN in New York already sent an appalling signal to the international community regarding Sri Lanka's disregard for accountability and was a slap in the face for thousands of victims who have still not accessed justice," she added.

"This is a man who presided over a period in which journalists in Sri Lanka were abducted and disappeared, assassinated, brutally tortured and locked up just for doing their jobs. Media rights groups around the world must stand in solidarity with us against his nomination for a job that would help whitewash his record and that of his Government," said Bashana Abeywardane of Journalists for Democracy in Sri Lanka.

¹ <https://legal.un.org/ilc/elections/2021election.shtml>

² <https://uk.reuters.com/article/instant-article/idUSBRE90209D20130103>

“Those were journalists who exposed credible evidence warranting international legal intervention for gross human rights violations committed by the Sri Lankan State. Appointing a man who denied them justice to a global body that decides on international law is like handing over a hen coop to a jackal,” added Mr. Abeywardene.

Background Notes

War Crimes

As Attorney General during the final phase of the civil war, Mohan Peiris was the chief legal adviser to the President and to all departments and ministries of government, including the state security forces and the police³. He had the power and responsibility to direct and advise police investigators, and properly to prepare cases for indictment and prosecution. As Attorney General it was expected that he should have independently and credibly investigated the multiple allegations of war crimes and crimes against humanity that were reported at the time – attacks on civilian objects, denial of food and medicine to the civilian population, enforced disappearances, summary executions, rape and torture by state forces.

Mass Arbitrary Detention

As Attorney General, Peiris has been criticized by the *International Commission of Jurists* (ICJ) for failing to address serious legal shortcomings in the Government’s “rehabilitation programme” for thousands of ex combatants - described at the time by ICJ as operating in a “legal vacuum”⁴. This programme was described as possibly the largest mass administrative detention anywhere in the world at the time by the *International Commission of Jurists*⁵. Peiris was also responsible for a draft policy document outlining the government’s legal framework, which the ICJ indicated raised a number of serious human rights concerns, including: the mandatory and involuntary nature of rehabilitation, which involved the deprivation of liberty of the ‘rehabilitee’ and which the ICJ said would amount to individual and collective punishment without criminal conviction; the denial of the right to challenge the detention and rehabilitation; and the duration of up to two years’ detention without charge or trial or access to legal representation (with no indication whether time already spent in the ‘surrender’ camps counts towards rehabilitation)⁶. Testimony that’s since emerged shows torture was rife in the ‘rehabilitation’ programme. The International Commission of Jurists report in September 2010 warned of the legal problems with the “rehabilitation” programme that at the time detained at least 8,000 people. Detainees were deprived of due process and fair trial rights – or as the ICJ said “in a legal black hole”⁷. In addition, the camps were administered by units of the Sri Lankan Army that had been engaged and directly involved in active combat against the people they now detained which made violations entirely foreseeable. The ICJ also made the point that the continuing lack of any independent check and balance on the use of such detention powers, or provision for review by the courts, significantly increased the risk of abuse⁸.

Denying War Crimes

³ International Independent Group of Eminent Persons (IIGEP) report to donors, Page 7.

⁴ Page 7 on legal vacuum.

In its September 2010 report the International Commission of Jurists (ICJ) says the establishment of the legal framework underpinning surrender, rehabilitation and reintegration of ex-combatants was the responsibility of the Attorney General. It cites a 2009 document outlining a legal framework from the AG to the Commissioner General of Rehabilitation on this issue but said it had no legal status and could not be considered a legally binding framework (footnote 40, Page 14). <https://www.refworld.org/pdfid/4ca0ae592.pdf>

⁵ Page 5, ICJ report.

⁶ <https://www.icj.org/wp-content/uploads/2012/06/Sri-Lanka-mass-detention-LTTE-analysis-brief-2010.pdf>

⁷ Page 6. ICJ Report.

⁸ <https://www.icj.org/wp-content/uploads/2012/06/Sri-Lanka-mass-detention-LTTE-analysis-brief-2010.pdf>

Peiris has defended the record of the Government of Sri Lanka at UN bodies in the past, denying crimes well documented by the United Nations. Former Foreign Minister Mangala Samaraweera told the Sri Lankan parliament:

“Even the records of the Committee against Torture... would bear testimony to the fact that Mr. Mohan Peiris states untruths before it. This is there in the international arena and he was thereafter called a ‘liar’ by one of its members. The Chief Justice of Sri Lanka was called a ‘liar’ in public by one of its members. This is judicial corruption at its best. Mohan Peiris was, without doubt at the rotten core of the institutional mechanism that stands accused of committing violations of human rights and crimes against humanity.”⁹

2011, UN Committee Against Torture (UNCAT)

In November 2011, the Sri Lankan delegation to the Committee Against Torture was headed by Mohan Peiris. This was after he had retired as Attorney General in September 2011 but remained as legal advisor to the cabinet¹⁰. The questions from UN experts focused on the existence of secret detention facilities in Sri Lanka and the lack of effective guarantees against torture in detention during the period Peiris had been Attorney General. UN experts also raised the issue of enforced disappearances, admissibility of confessions as evidence, and threats to human rights defenders.

The Asian Human Rights Commission (AHRC) noted that the Sri Lankan Government’s response was “a theatre of evasion”¹¹. Asked about Sri Lanka’s defence ministry website denouncing certain lawyers as traitors, Mohan Peiris claimed before the Committee that the publication did no harm. In response to a question about a hand grenade attack on the home of human rights lawyer, J. C. Weliamuna, Peiris’ reply was that since the victim could not say who threw the bomb, it was not possible to identify the culprit¹².

Journalist Prageeth Ekneligoda

The disappearance of Sinhalese cartoonist Prageeth Ekneligoda remains one of the emblematic cases in Sri Lanka. He disappeared after leaving his office on 24 January 2010, two days before the presidential election in Sri Lanka. Ekneligoda’s wife Sandya said in a statement that she believed her husband “was abducted on the orders of the government because he criticised the government”.¹³ She filed a habeas corpus application.

At the UN Committee Against Torture session in Geneva the Sri Lankan government was asked about the fate of Ekneligoda. In the Government’s written responses in 2011, it said the disappearance was being investigated by police¹⁴. But in questioning, Mohan Peiris told the UN Committee Against Torture that the high profile disappearance case was a hoax:

“..our current information is...that Mr Ekneligoda is .. he has taken refuge in a foreign country...It is something that we are reasonably certain of.”¹⁵

⁹ <https://mfa.gov.lk/foreign-minister-speaks-in-parliament-on-removal-of-mohan-peiris-from-cjs-office-2/>

Hansard: <https://www.parliament.lk/uploads/documents/hansard/1423457395025390.pdf>

¹⁰ <http://archives.dailynews.lk/2011/09/01/news60.asp>, 1 SEPTEMBER 2011, Daily News Lanka. New post for former AG.

¹¹ https://www.omct.org/files/2011/12/21543/omctcat_eng2.pdf accessed Nov. 13, 2020.

¹² <https://reliefweb.int/report/sri-lanka/reality-there-may-be-torture-our-law-against-torture-fine> accessed Nov. 13, 2020.

§13, CAT/C/LKA/CO/3-4, *Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture*, 8 Dec. 2011.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fLKA%2fCO%2f3-4&Lang=en

¹³ <https://cpj.org/2011/11/sri-lankas-savage-smokescreen/>

¹⁴ “117. An investigation into the abduction of Prageeth Ekneligoda is being conducted by the Homagama Police and by the CCD. Facts have been reported to the Magistrate’s court of Homagama under case No: B/7417/10. Investigation is being continued. So far no one has been arrested in this connection. Further progress reports will be filed in Court on 24 October 2011”. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/121/63/PDF/G1612163.pdf?OpenElement> List of issues in relation to the third and fourth periodic report of Sri Lanka.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fLKA%2fQ%2f3-4%2fAdd.1&Lang=en Addendum, Replies of Sri Lanka to the list of issues, received October 2021.

¹⁵ Transcript on file.

Also <https://cpj.org/2011/11/sri-lankas-savage-smokescreen/> accessed Nov. 13, 2020 and <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-171-2011/>

When asked about this, Sandya Ekneligoda, who was recognised in 2017 by the US Government as a “Woman of Courage”¹⁶, said:



“If my husband is hiding as was mentioned by Peiris he would never have stayed without contacting me. He loves our children and would not put us through such pain. Mohan Peiris says he knows where my husband is. I want him brought to me if his claims are true.”¹⁷

The statement also created outrage among Sri Lanka’s journalists and human rights defenders, prompting Sandya Ekneligoda to write a letter to Joao Nataf, the secretary of UNCAT saying:

“I believe that the statement made by Mr. Mohan Peiris to your Committee is an irresponsible and a mala fide act as he had not presented any of this information to me, my children and the Sri Lankan Courts and as he hid those facts from us”¹⁸.

Amnesty International described in its 2013 publication *Sri Lanka’s Assault on Dissent* how Peiris was called to testify regarding his statement in the magistrate’s court in 2012 but appealed the summons in vain¹⁹. When he did appear, he reportedly told the court:

“I don’t know if he is alive or dead, only god would know if the information that I received about him is true. I don’t think even the government knows where he lives,” and said he did not remember where he heard that Prageeth had gone into exile”²⁰.

Journalist J S Tissainayagam

Another well-known case involves the Tamil journalist J. S. Tissainayagam²¹ who was given the Peter MacKler award for Courageous and Ethical Journalism²². Tissainayagam was arrested in March 2008 and charged under the Prevention of Terrorism Act (PTA) with inciting ethnic and racial tensions through two articles he wrote in 2006 in the magazine he edited, *The Northeastern Monthly*. V. Jasikaran, publisher of the magazine, and his partner were also detained arbitrarily and brutally tortured, although released without being indicted in October 2009. Tissainayagam wrote the articles in 2006 when there was a ceasefire, and the PTA was suspended. Legally, charging the journalist in 2008 for an article he wrote in 2006 was unlawfully applying the law retroactively. After being arbitrarily detained for five months, the indictment served by the Attorney General was allegedly based on a forced confession. *“Tissainayagam maintains that he was psychologically tortured by the police and the confession was forced,”²³* observed Amnesty International. Despite this, the Colombo high court accepted the confession as admissible and sentenced the journalist to 20 years in prison. He was pardoned in 2010 by Rajapaksa due to international pressure and fled the country.

Peiris as Attorney General was instrumental in refusing bail while Tissainayagam was arbitrarily detained and tortured, and was allegedly responsible for drawing up the indictment based on the confession obtained under duress.

¹⁶ <https://www.dailynews.lk/2017/03/29/local/111890/sandya-ekneligoda-recipient-international-women-courage-award>

¹⁷ <https://cpj.org/2011/11/sri-lankas-savage-smokescreen/>

¹⁸ <https://www.scoop.co.nz/stories/WO1112/S00158/sri-lanka-letter-to-un-cat-over-mohan-peiris-claim.htm> accessed Nov. 13, 2020

¹⁹ <https://www.bbc.co.uk/news/world-south-asia-18332987>

²⁰ “Under cross-examination, he said he could not recall which government department gave him the information that Mr Ekneligoda was alive”.

²¹ <https://www.scoop.co.nz/stories/WO1112/S00158/sri-lanka-letter-to-un-cat-over-mohan-peiris-claim.htm> accessed Nov. 13, 2020, “Peiris had told the U.N.

Committee Against Torture that Eknelygoda took refuge in a foreign country and that the campaign to solve his disappearance is a hoax—although he failed, then and ever since, to provide information about where Eknelygoda has supposedly fled. The government’s attorney, appearing before the magistrate, argued that because Peiris had been speaking on behalf of the government at the U.N., he cannot be held responsible for his remarks and need not appear in court. The attorney said officials are not required to disclose communications where “the public interest would suffer,” according to a person monitoring the court’s hearings”.

<https://cpj.org/2013/01/in-sri-lanka-justice-for-ekneligoda-is-a-waiting-g/>

²² <https://www.amnestyusa.org/files/asa370032013en.pdf> accessed Nov. 13, 2020

²³ <https://rsf.org/en/news/j-s-tissainayagam-named-first-winner-peter-mackler-award-courageous-and-ethical-journalism>

<https://blog.amnestyusa.org/asia/obama-salutes-tissainayagam/>

²⁴ Ibid.

In the UNCAT session Peiris also defended the government's conduct on the arrest, detention and sentencing of journalist Tissainayagam. Peiris claimed that Tissainayagam had in a letter to Rajapaksa expressed "remorse" for his actions. He said, "*He had been convicted and sentenced, but his complicity in what he did was confirmed by his letter, which was sent through his lawyers. He did receive a pardon.*" This was fiercely rebutted by Tissainayagam in a letter to the UN Committee Against Torture, which denied complicity or remorse:

"I wish to state that any allusion to my admitting complicity is completely false."

He added that he did write to the President to receive a pardon, but only to apologise in the event his writing had caused personal embarrassment to anyone, adding:

"I am unaware that embarrassing the President or the Government of Sri Lanka is a crime and that was not the crime I was accused of."²⁴

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²⁴ <http://idsrilanka.blogspot.com/2011/11/tissainayagam-denies-former-attorney.html> accessed Nov. 13, 2020

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