

INTERNATIONAL
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PROJECT

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Press Release: Sri Lanka creates 'reading group' on war crimes.

Johannesburg: The President of Sri Lanka, Gotabaya Rajapaksa, has appointed another Commission of Inquiry that will spend six months finding out if past inquiries and commissions revealed any human rights violations were actually committed in the country¹. This in anticipation of the review of Sri Lanka's implementation of the joint commitments made to promote reconciliation and accountability under Resolution 30/1 next month at the Human Rights Council in Geneva.

EXECUTIVE DIRECTOR:
YASMIN SOOKA

"The notion of another Commission to probe whether serious international crimes were perpetrated in Sri Lanka is so ridiculous and insulting to victims that one could be forgiven for wondering if this is a spoof," said South African transitional justice practitioner, Yasmin Sooka, the executive director of the International Truth and Justice Project.

"Already a UN Human Rights Council-mandated investigation in 2015, established a threshold sufficient to frame criminal charges, and clearly made the case for war crimes and crimes against humanity and the government's role in perpetrating them. Sri Lanka is on the agenda of the Council precisely because the Government itself acknowledged the serious nature of the violations and crimes committed which have not been addressed."

¹ Available at <https://colombogazette.com/2021/01/22/three-member-panel-appointed-to-probe-findings-of-former-war-commissions/>

"(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 the 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..."

The President also requires the new Commission to identify what the findings are of past commissions and whether they've been implemented.

"It's ludicrous that a Commission should be established to identify the findings of past Commissions as it's a simple matter of reviewing the 4 pages of the OHCHR Investigation's (A/HRC/30.CRP.2) recommendations," said Ms Sooka. *As to implementation - it's abundantly clear that this has not happened. Successive Governments of Sri Lanka reneged on the commitment to justice and accountability including to its people and to the Council. Resolution 30/1 and subsequent resolutions established with the Government of Sri Lanka's agreement, a comprehensive holistic framework for transitional justice to promote accountability, national healing and reconciliation."*

The terms of the new Sri Lankan Commission are vaguely drafted without giving any time frame for the violations to be reviewed.

"This is little better than a reading group on war crimes allegations against Sri Lanka, appointed by a man who himself is alleged to have played a key role as secretary of defence, when the crimes were allegedly committed," said Ms. Sooka.

The new Commission is headed by a judge who is perceived to have numerous conflict of interest issues given the role he played in the past, defending the Government of Sri Lanka at the United Nations, on at least 4 occasions (November 2010², June 2011³, September 2011 and 2013⁴). On one occasion when A H M D Nawaz was part of the Sri Lankan delegation⁵ to Geneva, the Foreign Ministry said this delegation went there to counter a move to table the "flawed" UN Panel of Experts Report at the Council.

The UN Panel was established by Secretary General Ban Ki moon to report to him on the issue of accountability with regard to any alleged violations of international human rights and humanitarian law during the final stages of the Sri Lankan war⁶. The Panel concluded that "the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace". The Panel's report led ultimately to the OHCHR investigation which underpinned Resolution 30/1 which now requires review of Sri Lanka by the Council.

"The head of this Commission cannot impartially investigate UN reports that he has openly advocated against. In addition he has been part of the Attorney General's department⁷ which has been roundly criticized for the dual role it plays as lawyer defending the Government as well as prosecutors," said Ms. Sooka.

² https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_LOP_LKA_45_10705_E.pdf

³ <https://www.lankamission.org/images/pdf/Statement%20by%20Deputy%20Solicitor%20General%20during%20the%20interactive%20dialogue%20with%20the%20OSR%20on%20Trafficking%20in%20Persons%20especially%20Women%20and%20Children%201%20June%202011.pdf>

⁴ <https://www.lankamission.org/human-rights-humanitarian-affairs/167-sri-lanka-empathetic-to-the-many-challenges-faced-by-sudan-in-its-progression-towards-normalcy.html>

https://www.lankamission.org/images/Statement_Sudan%20-sep%202013.pdf

⁵ <https://mfa.gov.lk/many-states-flay-flawed-darusman-report/>

⁶ One of the members of the Panel was Yasmin Sooka.

⁷ <http://www.attorneygeneral.gov.lk/index.php/history>

Another appointee to the new Commission, retired Inspector General of Police Chandra Fernando, was until recently a member of the highly politicised Presidential Commission on Political Victimization whose report on the alleged politicisation of cases brought under the last government has not yet been made public⁸. As a member of this new Commission, Mr. Fernando too will have a conflict of interest as he will be investigating numerous cases which came before the Commission on Political Victimization. Fernando was also the head of the police from 2004-6 which hardly qualifies him to be objective and independent in investigating allegations against the police force during this period⁹. Sri Lankan activists have in the past raised questions about his failure in leading investigations while he was in office¹⁰.

"This Commission is just obfuscation and time wasting and if it's afforded any credibility that will undermine the entire UN process," Ms. Sooka added.

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⁸ <https://www.presidentsoffice.gov.lk/index.php/2020/12/08/report-of-the-commission-to-investigate-political-victimization-handed-over-to-president/>

⁹ <http://www.humanrights.asia/news/ahrc-news/AS-241-2006/>
<https://www.police.lk/index.php/library/item/180-inspector-general-of-police>

¹⁰ https://www.bbc.com/sinhala/news/story/2005/05/printable/050530_bindunuwewa_ahrc
<https://www.wsws.org/en/articles/2006/10/sril-o07.html>

https://www.bbc.com/sinhala/news/story/2006/10/printable/061001_tamil_abductions

