

**A Commentary on the Presidential
Commission of Inquiry and the
Special Presidential Commission of
Inquiry on Political Victimization**

CENTRE FOR POLICY ALTERNATIVES

APRIL 2021



CENTRE FOR POLICY ALTERNATIVES

විකල්ප ප්‍රතිපත්ති කේන්ද්‍රය

மாற்றுக் கொள்கைகளுக்கான நிலையம்

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

No. 6/5, Layards Road, Colombo 5, Sri Lanka

Tel: +9411 2081384, +94112081385, +94112081386

Fax: +9411 2081388 Email: info@cpalanka.org

Web: www.cpalanka.org

Email: info@cpalanka.org

Facebook: www.facebook.com/cpasl

Twitter: [@cpasl](https://twitter.com/cpasl)

Acknowledgments

This report was researched and written by Bhavani Fonseka, Kushmila Ranasinghe and Charya Samarakoon. Comments on earlier drafts were provided by Dr Paikiasothy Saravanamuttu, Luwie Ganeshathasan, Nivedha Jeyaseelan and Shalem Sumanthiran. The report was formatted by Ayudhya Gajanayake. CPA is grateful to all the individuals who supported the research by sharing information and insights.

Contents

| | |
|--|----|
| Introduction..... | 4 |
| Section I - The CoI on Political Victimization | 7 |
| Background..... | 7 |
| Legal framework and related issues..... | 14 |
| Commissions of Inquiry Act No 17 of 1948..... | 14 |
| Mandate | 16 |
| Key recommendations of the CoI and implications..... | 19 |
| Implications and concerns regarding the recommendations of the CoI..... | 76 |
| Section II - The SPCoI to implement recommendations of the CoI on Political Victimization..... | 78 |
| Legal Framework and related issues..... | 78 |
| Special Presidential Commissions of Inquiry Act No. 4 of 1978..... | 78 |
| Past initiatives related to SPCoI..... | 81 |
| Mandate of the Special Presidential Commission of Inquiry into Political Victimization..... | 84 |
| Conclusion..... | 87 |

Introduction

The Commission of Inquiry to Investigate Allegations of Political Victimization During the Period Commencing 08th January 2015 and Ending 16th November 2019 (The CoI) was appointed by Gazette (Extraordinary) No. 2157/44 of 9th January 2020. The CoI was appointed in terms of Section 2 of the Commission of Inquiry Act.¹ By Gazette (Extraordinary) No. 2159/16 of 22nd January 2020, the original mandate was amended, granting the CoI broader powers.²

The Commission consisted of Hon. Upali Abeyrathne Esquire (Retired Judge of the Supreme Court), Hon. Daya Chandrasiri Jayathilaka Esquire (Retired Judge of the Court of Appeal) and Chandra Fernando Esquire (Retired Inspector-General of Police). At the outset, the CoI was appointed for a period of six months, with proceedings commencing on 17th February 2020. However, the term of the CoI was extended by four months in July 2020,³ and by an additional period of sixteen days in November 2020.⁴ The final report was handed over to the President on 8th December 2020.⁵

Several objections were made to the proceedings and the recommendations of the CoI by various parties, foremost is that the process of inquiry followed by the CoI was neither fair nor just; that parties against whom the proceedings were undertaken were not

¹ Extraordinary Gazette No. 2157/44 of 9th January 2020 available at < http://documents.gov.lk/files/egz/2020/1/2157-44_E.pdf >

² *Centre for Policy Alternatives v Attorney General* (SC FR 32 /2020) available at <<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fr-32-2020/>> accessed 15 February 2021

³ Extraordinary Gazette No. No. 2183/26 of 8 July 2020 available at < http://www.documents.gov.lk/files/egz/2020/7/2183-26_E.pdf>

⁴ Extraordinary Gazette No. 2201/05 of 9 November 2020 available at < http://www.documents.gov.lk/files/egz/2020/11/2201-05_E.pdf>

⁵ 'Final report of PCoI on political victimization handed over to President' (*Daily News*, 8 December 2020) < <http://www.dailynews.lk/2020/12/08/local/235555/final-report-pcoi-political-victimization-handed-over-president>> accessed 12 February 2021

afforded due process guarantees; and that certain complaints entertained by the CoI exceeded its remit, including complaints made by private parties.⁶

Following the submission of its final report to the President, the CoI set in motion a Special Presidential Commission of Inquiry (SPCoI) to implement several recommendations of the CoI, the on-going proceedings of which are not open to the public. The SPCoI is empowered to recommend the imposition of civic disability on persons found guilty of political victimization listed in Item No. 08 of the final report of the CoI, with the effect of bypassing established judicial institutions and mechanisms in the implementation of recommendations of a CoI.⁷

Prime Minister Mahinda Rajapakse tabled a Resolution in Parliament on 9th April 2021, seeking approval to implement the recommendations related to complaints mentioned in Item No. 09 and 10 in the final report of the CoI. The motion is listed to be moved in Parliament by the Prime Minister this week. The Resolution seeks approval to institute criminal proceedings against investigators, lawyers, officers of the Attorney General's Department, witnesses, and others involved in these complaints. It also seeks approval for the dismissal of several cases currently pending in court, with the effect of undermining the independence of the judiciary and the rule of law.⁸

The present commentary by the Centre for Policy Alternatives (CPA) aims to provide a brief analysis of the CoI on political victimization and the subsequent establishment of the SPCoI. CPA notes with concern that the concluded proceedings of the CoI and the

⁶Kishali Pinto-Jayawardene, 'A hard rain' destined to fall on Sri Lanka's institutions of justice' (*The Sunday Times*, 7 February 2021) available at <<http://www.sundaytimes.lk/210207/columns/a-hard-rain-destined-to-fall-on-sri-lankas-institutions-of-justice-431716.html>> accessed 12 February 2021

⁷ Centre for Policy Alternatives, 'Initial Concerns with the Commission of Inquiry to Investigate Allegations of Political Victimization and Subsequent Action' available at <<https://www.cpalanka.org/initial-concerns-with-the-report-of-the-commission-of-inquiry-to-investigate-allegations-of-political-victimization-and-subsequent-action/>> accessed 28 March 2021

⁸ Centre for Policy Alternatives, 'Short Note on the Resolution Seeking Parliamentary Approval to Implement the Recommendations of the Commission of Inquiry on Political Victimization' available at <<https://www.cpalanka.org/short-note-on-the-resolution-seeking-parliamentary-approval-to-implement-the-recommendations-of-the-coi-on-political-victimization/>> accessed 19 April 2021

on-going proceedings of the SPCoI are both politicized and problematic, and may have grave implications on the rights of citizens as well as the independence of the judiciary, rule of law and democracy in Sri Lanka. It is to be noted, however, that the commentary is not an exhaustive analysis of the CoI and the SPCoI. CPA hopes that the commentary may facilitate critical engagement with the proceedings and outcomes of the CoI and the SPCoI.

The commentary consists of two sections. The first section of the commentary provides a brief overview of the background and the legal framework of the CoI on political victimization, followed by a timeline flagging key dates and developments of its proceedings, and a table listing key recommendations and their implications. The second section of the commentary examines the SPCoI to implement the recommendations of the CoI, which includes an outline of the legal framework of SPCoIs with reference to several past SPCoI initiatives, and the mandate of the on-going SPCoI proceedings.

Section I - The CoI on Political Victimization

Section I examines the background of the CoI and provides a timeline of important developments related to its proceedings. The section also includes a brief overview of the legal framework, mandate and key recommendations of the CoI to highlight issues with the concluded proceedings, including its broad mandate, lack of independence and implications for on-going legal proceedings and investigations.

Background

Presidential Commissions of Inquiry have been used in the past to target political opponents, distract from calls for accountability, and even distort evidence. They have also caused delays in judicial proceedings and police investigations, and increased risks to victims and witnesses.⁹ Recommendations of previous Commissions of Inquiries have not resulted in prosecutions of those accountable for human rights abuses and corruption.¹⁰ Previous PCoIs¹¹ have also been criticized for their lack of independence by various actors including parliamentarians and members of the international community.

For instance, the International Independent Group of Eminent Persons (IIGEP) which was set up to monitor the Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights established in 2006, noted its “apprehension

⁹ Amnesty International, ‘Twenty Years of Make-believe: Sri Lanka’s Commissions of Inquiry’ (2009) available at <<https://www.amnesty.org/download/Documents/48000/asa370052009eng.pdf>> accessed 12 February 2021

¹⁰ Amnesty International, ‘Old Ghosts in New Garb: Sri Lanka’s Return to Fear’ page 21 available at <<https://www.amnesty.org/download/Documents/ASA3736592021ENGLISH.PDF>> accessed 26 March 2021

¹¹ See Centre for Policy Alternatives, ‘The Presidential Commission to Investigate into Complaints Regarding Missing Persons: Trends, Practices and Implications’ (December 2014) available at <<https://www.cpalanka.org/the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons-trends-practices-and-implications/>>; Centre for Policy Alternatives, ‘A Commentary on the Presidential Commission to Investigate Missing Persons’ (March 2014) available at <<https://www.cpalanka.org/a-commentary-onthe-presidential-commission-to-investigate-missing-persons/>>

regarding the absence of political will and the institutional inability of Sri Lanka to conduct human rights inquiries in accordance with international norms and standards.”¹²

Moreover, the 2015 report of the United Nations High Commissioner for Human Rights on the human rights situation in Sri Lanka¹³ states, “in the course of its investigation, OHCHR obtained access to the unpublished reports of several domestic investigations, including the 2006 Udalgama Commission and the 2012 Army Court of Inquiry. These reports confirm OHCHR’s concerns about their lack of independence...”. OHCHR’s concerns were highlighted by MP Mahinda Samarasinghe during the parliamentary debates on the report. He further stated that the same reference was made to the Paranagama Commission.¹⁴

Since its establishment, the CoI on political victimization had on several occasions attempted to interfere with on-going judicial proceedings, resulting in clashes with the Attorney General’s Department. The Attorney General had informed the Commission that issuing of summons on Attorney General’s Department officials was beyond its mandate as a fact-finding body¹⁵ and is therefore invalid.¹⁶

The proceedings of the CoI were also criticized for circumventing due process and fair trial rights guaranteed by the Constitution. Raising a privilege issue regarding the CoI, parliamentarian M.A. Sumanthiran stated,

¹² International Independent Group of Eminent Persons, ‘The Final Report of the IIGEP’ available at <<http://www.humanrights.asia/wp-content/uploads/2018/07/The-Final-Report-of-the-IIGEP.pdf>> accessed 5 April 2021

¹³ At pg 11 para 57

¹⁴ Parliament of Sri Lanka, Hansard (22.10.2015) available at <<https://www.parliament.lk/uploads/documents/hansard/1446089031089971.pdf>> at pg 1014.

¹⁵ Zulfick Farzan, ‘COI not a judicial tribunal but a fact-finding body; AG’ (*Newsfirst*, 23 June 2020) available at <<https://www.newsfirst.lk/2020/06/23/coi-not-a-judicial-tribunal-but-a-fact-finding-body-ag-complete-letter-to-coi/>> accessed 12 February 2021

¹⁶ Daily Post LK, ‘AG tells COI on political victimisation it has no mandate to summon AG Dept officials’ (*Daily Post LK*, 23 June 2020) available at <<https://www.dailypost.lk/ag-tells-coi-on-political-victimisation-it-has-no-mandate-to-summon-ag-dept-officials/>> accessed 12 February 2021

“I have received from time to time summons from the commission to attend before the commissions. I have been named a respondent in that summons. Since they were in the Sinhala language I wrote to the commission that I be provided with the material to respond and to send an English to Tamil translations of those matters. I appeared twice before the said commission and made the same request. There the Commissioner ordered that I be provided with material and their translations. Nothing of the sort happened.”¹⁷

The opposition raised concerns about the delay in tabling the final report of the CoI in Parliament. Chief Opposition Whip and Kandy District MP Lakshman Kiriella stated that, “another Presidential Commission has been appointed to determine punishments on the basis of recommendations of the commission of inquiry on political victimization. It has been given only three months. We need to debate it in Parliament by that time and to know the content of those reports. It is unfair to delay the process by not tabling them.”¹⁸

Following numerous requests by the opposition to nominate a date to debate the matter in Parliament,¹⁹ the final report of the CoI was tabled on 9th March 2021.²⁰

¹⁷ Saman Indrajith, ‘Sumanthiran’s privilege issue referred to Parliamentary Ethics and Privileges Committee’ (*The Island*, 11 February 2021) available at <<https://island.lk/sumanthirans-privilege-issue-referred-to-parliamentary-ethics-and-privileges-committee/>> accessed 15 February 2021

¹⁸ Saman Indrajith, ‘Opposition urges govt to table PCoI reports on Easter carnage and political victimisation’ (*The Island*, 11 February 2021) available at <<https://island.lk/opposition-urges-govt-to-table-pcoi-reports-on-easter-carnage-and-political-victimisation/>> accessed 15 February 2021

¹⁹ Opposition questions failure to table report on political victimisation’ (*Colombo Gazette*, 18 February, 2021) available at <<https://colombogazette.com/2021/02/18/opposition-questions-failure-to-table-report-on-political-victimisation/>> accessed 15 February 2021

²⁰ Sandasen Marasinghe, ‘Political Victimization Commission Report tabled’ (*Daily News*, 10 March 2021) available at <<http://dailynews.lk/2021/03/10/political/243600/political-victimisation-commission-report-tabled>> accessed 28 March 2021

The Presidential Commission of Inquiry to Investigate Allegations of Political Victimization 2015-2019



TIMELINE

9 JANUARY 2020

The Commission of Inquiry to Investigate Allegations of Political Victimization 2015-2019 (Col) appointed.

22 JANUARY 2020

The original mandate of the Col was amended granting broader powers. The first complaint received by the Col.



27 JANUARY 2020

The Col issued an order preventing the Permanent High Court at bar from proceeding in the case filed against the former Navy Commander Wasantha Karannagoda and others and informed the Attorney General (AG) to halt the investigations and prosecution in the cases being probed by the Col, including the trial of several Navy officers accused of abductions, the trial of army officers accused of abducting Prageeth Eknaligoda, and the trial of Niraj Roshan, alias "Ali Roshan", for elephant racketeering.



29 JANUARY 2020

The AG informed the Col in writing that the Col has no statutory or legal authority to order the AG to refrain from performing his statutory functions in the above case.

7 FEBRUARY 2020



The Centre for Policy Alternatives (CPA) and its Executive Director filed a Fundamental Rights application challenging the broad powers granted to the Col.

17 FEBRUARY 2020

The sittings of the Col commence.



3 MARCH 2020

Trial-at-Bar on elephant racketeering against "Ali Roshan" and seven others issued an order to the Secretary of the Col, Pearl Weerasinghe to be present in court on 6 March 2020 to account for the investigation files relevant to the trial.

6 MARCH 2020

When Weerasinghe was not present in court on Friday, the Court issued a bench warrant for her arrest. The three-member bench noted that Court would not be able to function if commissions of this nature called for documentation, thus crippling the work of the courts.

In an immediate response, the Col summoned AG to appear on March 11. The Col stated that the Court order is a deliberate attempt by the AG to 'cross the line' at a point when the Commission had ordered the AG against proceeding with this case until the Col investigations are completed.

11 MARCH 2020

Senior Additional Solicitor General (ASG) Sarath Jayamanne PC, who represented AG before the COI, handed over a written response saying the COI had no judicial power or authority to question the AG's functions before the trial at bar.



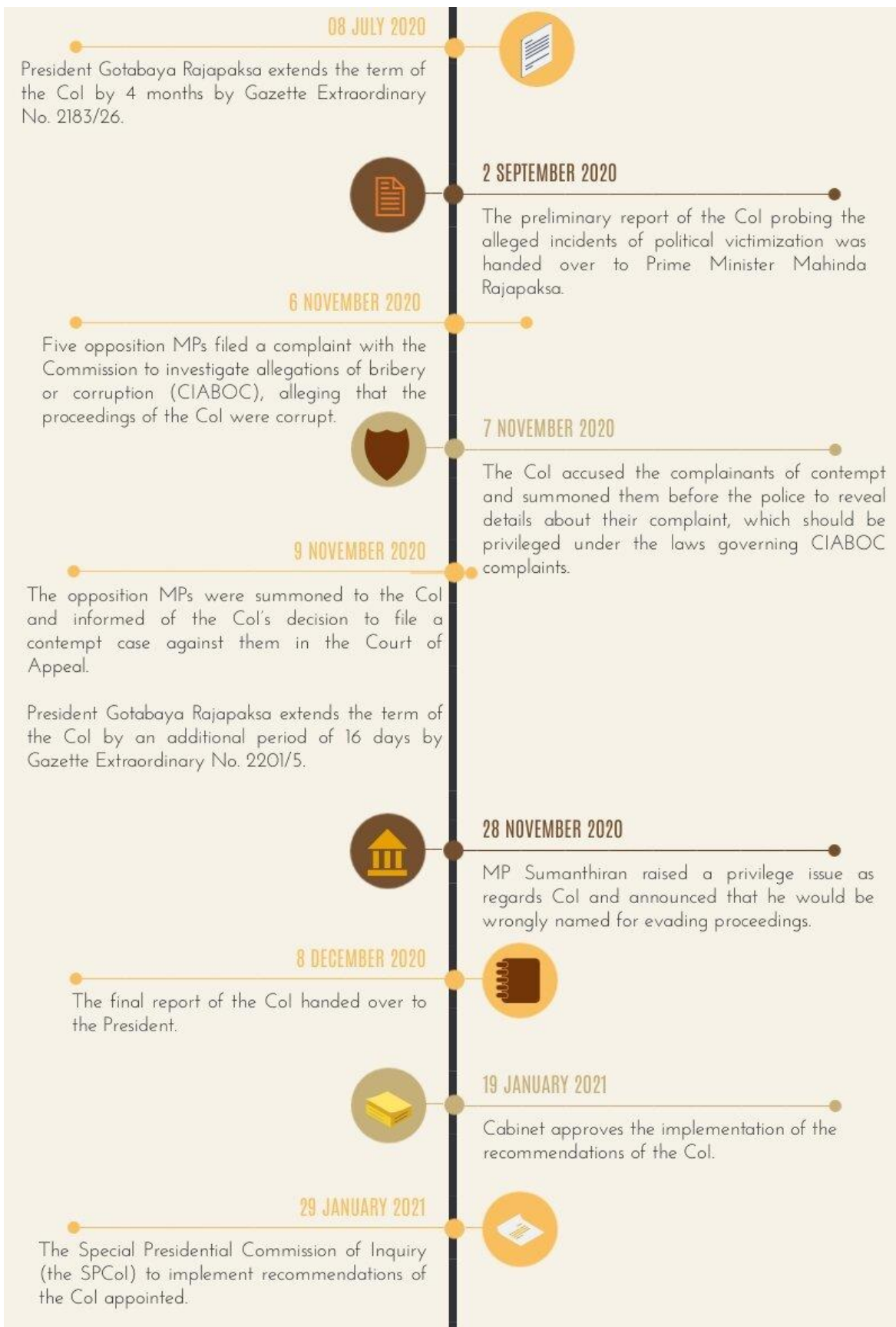
17 JUNE 2020

Col serves summons and notice on Senior State Counsel Janaka Bandara on his functions in the Avant Garde Arms Trafficking case.

22 JUNE 2020

AG informed the COI that it has no mandate to issue summons or notice on officials of the AG's Department and such action is unlawful and invalid.







Legal framework and related issues

Commissions of Inquiry Act No 17 of 1948

The Commission of Inquiry was established under the Commissions of Inquiry Act No 17 of 1948 (as amended).²¹ Under section 2 of the Act, the President has the power to appoint a Commission of Inquiry whenever it appears to the President to be necessary that an investigation or inquiry or both where appropriate should be held and information obtained as to-

- the administration, management and functions of any department of Government, any statutory body, any public or local authority or any other institution
- the conduct of any public officer, an employee of a statutory body, any public or local authority or any institution
- any matter or incident which will, in his opinion, be in the national interest or for public safety or wellbeing

The powers of a Commission of Inquiry appointed under the Act are set out in section 7 of the Act.

1. To procure and receive evidence, and to examine witnesses.
2. To require the evidence of any witness to be given on oath or affirmation
3. To make an application to any Court of law or any tribunal to obtain any material filed or recorded in such court of law or tribunal
4. To require any person to produce any document, or any other material in his possession
5. To require any person to provide any information in writing which he is likely to possess

²¹ Commissions of Inquiry Act No. 17 of 1948 available at
<<https://www.lawlanka.com/lal/consolidationFullView?selectedAct=1981Y1V8C&searchPage=false>>

6. To summon any person residing in Sri Lanka to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness
7. Notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, which might be inadmissible in civil or criminal proceedings
8. To admit or exclude the public from the inquiry and to admit or exclude the press from the inquiry
9. To recommend that any person whose conduct is the subject of inquiry or who is in any way implicated or concerned in the matter under inquiry be awarded such sum of money which may have been reasonably incurred by such person as costs and expenses in connexion with the inquiry.
10. Make recommendations to the relevant disciplinary authority with regard to the action that it considers necessary to be taken in respect of any person whose conduct is the subject of the inquiry or investigation or who is in any way implicated or concerned in the matter which such Commission was warranted to investigate.

Under section 8 of the Act, the following powers may be conferred by the President on a commission appointed under this Act if the commission so requests.

1. Power to require by written notice the manager of any bank in Sri Lanka to produce any documents of the bank containing entries relating to the account of any person whose conduct is being inquired into by the commission or of the spouse or child of such person.
2. Power to require by written notice the Commissioner-General of Inland Revenue to furnish information available to such Commissioner-General relating to the affairs of any person whose conduct is being inquired into by the commission or of the spouse or a child of such person.

Under sections 10, 11 and 12 contempt against the Commission, or summons issued by the Commission and failure to obey summons by commission shall be punishable by the Court of Appeal under Article 105(3) of the Constitution. As per section 18 no civil or criminal proceedings shall be instituted against any member of a commission in respect of any act bona fide done or omitted to be done by him as such member.

Mandate

The CoI on political victimization was appointed by Gazette (Extraordinary) No. 2157/44 of 9th January 2020. The original mandate was amended by Gazette (Extraordinary) No. 2159/16 of 22nd January 2020.

The mandate of the Commission of Inquiry is as follows,

Inquire into and obtain information regarding the alleged political victimization during the period from 8th January 2015 to 16th November 2019, particularly,

- a) whether there has been malpractice, irregularity or non-compliance with or disregard of proper prudence, norms, guidelines, procedures and best practices applicable in relation to the administration of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Financial Investigations Division (FCID) and the Special Investigations Unit (SIU) of the Sri Lanka Police,
- b) whether any investigations by the CIABOC, FCID or SIU had been influenced, obstructed or prevented in any manner, resulting in loss, damage, injury or detriment, either direct or imputed to any persons,
- c) whether any officer tasked with conduct of investigations by CIABOC, FCID or SIU have acted under undue influence by third parties, including the Anti-Corruption unit,
- d) whether any person had committed any act of political victimization, misuse or abuse of power, corruption or any fraudulent act in relation to the functions of the Anti-Corruption unit, CIABOC, FCID or SIU, or in relation to the administration of any law or

administration of justice and make recommendations regarding any matters thus inquired into.²²

By Gazette (Extraordinary) No. 2159/16 of 22nd January 2020, the original Mandate of the said CoI was amended. In addition to the power to inquire into alleged acts of political victimization and misuse or abuse of power by the above-mentioned agencies, the CoI was also given the power to inquire into the actions of the Criminal Investigation Department.

The CoI was also mandated to take immediate necessary measures to prevent prejudice being caused in inquiries, investigations and legal proceedings held in relation to the Tri-forces and Sri Lanka Police and the Public Service adversely affecting the National Security and /or the Public Services.²³ Clause (e) which was introduced through the amended mandate of the CoI provides the aforementioned agencies the power,

“[T]o ascertain all complaints the investigation of which was first allegedly decided upon by the Investigation Unit referred to in the Warrant and thereafter investigation thereon initiated and those complaints made in relation to officers of the Tri-forces and Sri Lanka Police that affect the national security and in the case of inquiries, investigations *and legal proceedings held* causing prejudice to some person in the administration of laws or administration of Justice due to pressure being exerted by a third party and in the case of inquiries, investigations and legal proceedings held in relation to the Tri-forces and Sri Lanka Police and the Public Service affecting the National Security and /or *where prejudice was deemed to have been caused in any manner whatsoever and take immediate necessary measures to prevent prejudice being caused* and National Security and Public Services being adversely affected.”²⁴

²² Extraordinary Gazette No 2157/44 of 9th January 2021 available at <http://www.documents.gov.lk/files/egz/2020/1/2157-44_E.pdf>

²³ Gazette (Extraordinary) No. 2159/16 of 22nd January 2020 available at <http://documents.gov.lk/files/egz/2020/1/2159-16_E.pdf>

²⁴ *ibid*

These far reaching and broad powers granted to the CoI are beyond the scope of the powers that can be legally granted to a Commissions of Inquiry as provided by the Commissions of Inquiry Act (as amended). The Centre for Policy Alternatives (CPA) and its Executive Director, Dr. Paikiasothy Saravanamuttu filed a Fundamental Rights application challenging these powers.²⁵ CPA noted in its Petition that the law already provides safeguards to protect any person from being unfairly prosecuted and investigated and that the powers granted to the CoI would operate outside the established legal structures and would cause serious prejudice to victims of crimes and could potentially further delay cases which have been on-going for several years. The wide powers granted to the CoI violate the separation of powers and the rule of law guaranteed in the Constitution and violate the fundamental rights guaranteed under Article 12(1) of the Constitution.²⁶

²⁵ *Centre for Policy Alternatives v Attorney General* (SC FR 32 /2020) available at <<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fr-32-2020/>> accessed 15 February 2021

²⁶ *Centre for Policy Alternatives v Attorney General* (SC FR 32 /2020)

Key recommendations of the CoI and implications

| Background | Key recommendations of the CoI | Implications |
|---|---|--|
| <p>1. Complaint against the Anti-Corruption Committee</p> <p>Witness: Wijeyadasa Rajapakse</p> | | |
| <p>Several Members of Parliament, public officers and police officers have been named as respondents in this complaint. On 28 November 2020, MP Sumanthiran raised a privilege issue as regards the Commission's inquiry into political victimization.²⁷ He stated that he had received summons from the CoI in Sinhala and repeated requests for translations had been ignored. He also</p> | <p>The CoI recommends the establishment of a Special Presidential Commission of Inquiry to investigate and impose penalties on respondents of the complaints against the Anti-Corruption Committee.</p> | <p>The appointment of a Special Presidential Commission of Inquiry to implement recommendations of the Presidential Commission of Inquiry into Political Victimization,²⁹ established on 29th January 2021 under Special Presidential Commission of Inquiry Act No. 07 of 1978.</p> <p>The Commission has power to recommend the imposing of civil disability on those found guilty.³⁰</p> |

²⁷ Saman Indrajith 'Sumanthiran's privilege issue referred to Parliamentary Ethics and Privileges Committee' available at <<https://island.lk/sumanthirans-privilege-issue-referred-to-parliamentary-ethics-and-privileges-committee/>>

²⁹ Extraordinary Gazette No 2212/53 of 29th January 2021 available at < http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf >

³⁰ Chandani Kirinde, 'Members of previous Govt. may face civil disability if found guilty by newly appointed Special Presidential CoI' (*DailyFT*, 1st February 2021) available at < <http://www.ft.lk/front-page/Members-of-previous-Govt-may-face-civil-disability-if-found-guilty-by-newly-appointed-Special-Presidential-CoI/44-712430> > accessed 1st February 2021.

| | | |
|--|--|--|
| <p>stated that, since he is referred to as "respondent", to furnish him with material relevant to any allegation made against him. However, he has not received any material from the Commission to respond to the allegations.²⁸</p> | | <p>This is the first time that a SPCoI has been established to 'implement' the recommendations of a COI. The usual method has been to refer recommendations of a COI to the Attorney General to take steps under the penal law. This may result in bypassing the normal prosecutorial and judicial institutions in implementing the recommendations of the CoI.</p> <p>This is a cause for concern given that the Attorney General himself objected to his own officers being summoned to the CoI and questioned as to ongoing prosecutions. The Attorney General resisted such questioning on the basis that a fact-finding Commission of Inquiry had no powers to interfere with ongoing court cases.³¹</p> |
|--|--|--|

²⁸ Parliament of Sri Lanka, Hansard 28.11.2020 available at <https://www.parliament.lk/uploads/documents/hansard/11736_english_2020-11-28.pdf>

³¹ Kishali Pinto-Jayawardene, 'A hard rain' destined to fall on Sri Lanka's institutions of justice' (*The Sunday Times*, 7 February 2021) available at <<http://www.sundaytimes.lk/210207/columns/a-hard-rain-destined-to-fall-on-sri-lankas-institutions-of-justice-431716.html>> accessed 12 February 2021

2. Complaint against investigations in the case of ‘The Missing Eleven’ - complaints no. 01/2020, 02/2020, 03/2020 and 05/2020

Complainants:

Admiral Wasantha Karannagoda
 Rear Admiral D.K.P. Dassanayake
 Commander Sumith Ranasinghe

This complaint concerns the investigations into the abduction of 11 persons from Kotahena and suburbs between 25 August 2008 and 21 March 2009. After prolonged investigations, a case was finally filed at the Permanent High Court Trial-at-Bar. The investigations have been marked by intimidation of witnesses, and the promotion of Navy officers charged with being involved in the abduction.

In his evidence, Admiral Wasantha Karannagoda stated that he had taken

The CoI recommends that Admiral Wasantha Karannagoda, Rear Admiral D.K.P. Dassanayake and other accused should be acquitted of all charges in the case filed against them in the Fort Magistrate’s Court relating to the abduction and disappearance of 11 persons. Similarly, it also recommends the withdrawal of the indictment filed against them in the case no. 1448/2020 filed in the permanent High Court Trial at Bar held in Colombo, by the Attorney General.

Additionally, the CoI recommends that the investigators, lawyers and others involved in the investigation and prosecution be charged for the

These recommendations, if implemented, would undermine the independence of the judiciary and the rule of law. It also compromises the independence of the investigators who have conducted the investigation and would in future deter impartial action by investigating officers in cases which are politically sensitive.

It would also adversely affect the independence of the Attorney General and prosecuting officers of the Attorney General’s Department, and deter impartial action in cases which are politically sensitive.

| | | |
|--|--|---|
| <p>all possible steps at that time to investigate into the information he received of the detention of youths in the Trincomalee Navy Camp and established that the abductions were in fact carried out by Lieutenant Commander Sampath Munasinghe and others under his command. He had reported this information to the Police and sent Munasinghe on compulsory leave.</p> <p>Several of the accused giving evidence stated that they had been arrested as a result of a conspiracy by the CID who fabricated evidence to please members</p> | <p>offences of fabricating false evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>Soon after the appointment of the CoI, it advised the Attorney General to suspend the examination of this case. The Commission prevented the Attorney General or AG's department officials from taking evidence or prosecuting the complainants until the Commission's recommendations with regard to the complaints made by these officers are handed over to the President. The AG has told the commission it has no legal powers to instruct the AG on cases before court.³²</p> |
|--|--|---|

³² 'AG told to halt abduction cases against Karannagoda, Dasanayake' (*Daily News*, 28 January 2020) available at <<http://www.dailynews.lk/2020/01/28/local/209735/%E2%80%98ag-told-halt-abduction-cases-against-karannagoda-dasanayake%E2%80%99?page=6>> accessed 16 February 2021;

'AG refuses to bow down to PCoI instructions' (*Colombo Gazette*, 28 January 2020) available at <<https://colombogazette.com/2020/01/28/ag-refuses-to-bow-down-to-pcoi-instructions/>> accessed 16 February 2021;

'Commission has no right to give orders, AG notifies!' (*Sri Lanka Mirror*, 29 January 2020) available at <<https://srilankamirror.com/news/16927-commission-has-no-right-to-give-orders-ag-notifies>> accessed 16 February 2021

| | | |
|--|---|---|
| <p>of the former government.</p> <p>The report states that Admiral Karannagoda and others have been framed in this case to “fulfil the political ambitions of the members of the former government and satisfy the Diaspora and other international actors.”</p> | | |
| <p>3. Complaint against investigations in the assassination of MP Nadaraja Raviraj - complaints no. 80/2020, 55/2020 and 107/2020</p> <p>Complainants:</p> <p>Lt.Col. Prasad Hettiarachchi</p> <p>Naval Intelligence officer Gamini Seneviratne</p> <p>Intelligence Officer Pradeep Chaminda</p> | | |
| <p>This case concerns the assassination of MP Nadaraja Raviraj and his security officer in 2006. His death was seen as a setback for moderates in Sri Lanka and led to thousands of people marching in Colombo in protest at the murder.</p> | <p>The CoI recommends that the accused in the case of the assassination of MP Nadaraja Raviraj be acquitted of all charges. It also recommends that the indictment in the case filed in the High Court of Colombo be withdrawn by the Attorney General.</p> | <p>These recommendations if implemented would result in the intimidation and harassment of witnesses of the case.</p> <p>It would also result in gravely undermining the independence of the judiciary and the investigators.</p> |

| | | |
|--|---|---|
| <p>At the time of the trial in 2016, then President Sirisena expressed his concern that naval and military commanders had been summoned before the courts. The jury's verdict was delivered at midnight following a unanimous decision in the month-long trial, acquitting all the accused. This decision has been appealed.</p> | <p>Additionally, the CoI recommends that the investigators and witnesses involved in the investigation of the case be charged for the offences of fabricating false evidence, and wrongful confinement and corruption under the Penal Code and the Bribery Act.</p> | |
| <p>4. Complaint against investigation of alleged financial irregularities various projects under the Divi Neguma Department-complaints no. 344/2020, 205/2020, 289/2020 and 316/2020</p> <p>Complainants:</p> <p>Dhammika Anil Mapa</p> <p>Nihal Jayatilleke</p> <p>Amith Kithsiri Ranawaka</p> <p>Bandula Thilakasiri</p> | | |
| <p>The investigations into these alleged financial irregularities was carried out based on a complaint lodged by the anti-corruption secretariat. Chairman of the COI retired Supreme Court Judge, Upali Abeyratne said</p> | <p>The CoI recommends that the accused in the case of alleged financial irregularities in various projects under the Divi Neguma Department filed in the Kaduwela Magistrate's Court be acquitted of all charges.</p> | <p>The accused in the Divi Neguma case were acquitted of all charges by the Colombo High Court on 30th November, 2020. The order was made upon the request of the defense as the prosecution evidence has failed to</p> |

| | | |
|---|---|--|
| <p>that former Prime Minister Ranil Wickremesinghe had established an anti-corruption committee in contravention of the provisions of the Constitution.³³</p> <p>Testifying before the PCoI, former PM Ranil Wickremesinghe said that the ‘Anti-Corruption Committee’ was set up not to lodge complaints but only to receive complaints and refer them to the relevant authorities.</p> <p>Wickremesinghe said that the ‘National Executive Council’ that decided to set up the ‘Anti-Corruption Committee’ on a Cabinet memorandum was a political alliance and included members from political</p> | <p>It also recommends that the indictment in the case filed in the High Court of Colombo be withdrawn by the Attorney General.</p> <p>Additionally, the CoI recommends that the investigators, lawyers, activists and witnesses involved in the case be charged for the offences of fabricating false evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>establish the commission of the offences.³⁶</p> <p>The CoI recommends the establishment of a Special Presidential Commission of Inquiry to investigate and impose penalties on respondents of the complaints against the Anti-Corruption Committee.</p> <p>Accordingly, a Special Presidential Commission of Inquiry was established by Gazette No. 2212/53 of 29 January 2021. The SPCoI is mandated to further investigate and report on the respondents in the complaints before the CoI who were members of the Anti - Corruption Committee and to recommend whether a person should be subjected to a community disability according to the</p> |
|---|---|--|

³³ Faadhila Thassim, ‘Political Victimisation during previous regime: Ranil’s Anti-corruption Secretariat unconstitutional – PCoI Chair’ (*Ceylon Today*, 14 July 2020) available at <https://ceylontoday.lk/news/political-victimisation-during-previous-regime-ranil-s-anti-corruption-secretariat-unconstitutional-pcoi-chair> accessed 16 February 2021

³⁶ Lakmal Sooriyagoda, ‘Basil, three others acquitted from Divi Neguma case’ (*DailyNews*, 1 December 2020) available at <http://dailynews.lk/2020/12/01/law-order/234916/basil-three-others-acquitted-divi-neguma-case> accessed 3 February 2021

| | | |
|--|--|---|
| <p>organizations.³⁴</p> <p>Following the statement, the CoI issued a notice to Secretary to the Prime Minister, Gamini Sedara Senarath to testify before the Commission regarding whether wages had been paid to office bearers of the 'Anti-Corruption Committee' which was set up by former Prime Minister Ranil Wickremesinghe. The Commission requested him to submit the documents and the names of the persons who have been paid.³⁵</p> | | <p>provisions of Article 81 of the Constitution.</p> <p>Speaking to the media after appearing before the CoI, former Minister Mangala Samaraweera said those who were noticed to appear at the Presidential Commission are the victims of political victimization. He said that in 2015, the government was given the mandate to probe fraud and corruption during the Rajapaksa administration and impose necessary punishment.³⁷</p> |
|--|--|---|

³⁴ Roshan Thushara and Dilshan Tharaka, 'Ranil testifies before PCoI on political victimization' (*Daily News*, 4 September 2020) available at <<http://www.dailynews.lk/2020/09/04/local/227861/ranil-testifies-pcoi-political-victimization>> accessed 16 February 2021

³⁵ Roshan Thushara and Dilshan Tharaka, 'Ranil testifies before PCoI on political victimization' (*Daily News*, 4 September 2020) available at <<http://www.dailynews.lk/2020/09/04/local/227861/ranil-testifies-pcoi-political-victimization>> accessed 16 February 2021

³⁷ Zulfick Farzan, 'Mangala says those noticed by PCoI are the victims of political victimization' (*NewsFirst*, September 2020) available at <<https://www.newsfirst.lk/2020/08/21/mangala-says-those-noticed-by-pcoi-are-the-victims-of-political-victimization/amp/>> accessed 16 February 2021

5. Complaint against investigation of alleged financial irregularities in the Tourism Development Authority - complaints no. 88/2020, 319/2020 and 816/2020

Complainants:

Satharasingheage Jayaweera

W. Wimalasena

Gunaratne Bashwara Senanka

Former Chairman of the Sri Lanka Tourism Development Authority (SLTDA) Bhashwara Gunaratne and former Director General Dr. D.S. Jayaweera were remanded in 2016 by the Colombo Fort Magistrate's Court.

They were ordered to be remanded after appearing before the court in connection with a case filed regarding financial irregularities amounting to Rs 5.8 million during tourism promotion activities during the former government.

The CoI recommends that several persons accused of alleged financial irregularities and misappropriation of public property in relation to various projects and other activities within the Tourism Development Authority should be acquitted of all charges filed against them in the Fort Magistrate's Court. Moreover, the indictments in the cases filed in the High Court of Colombo against them should also be withdrawn. The accused include the Director General, Chairman and the acting Financial Director of the Tourism Development Authority.

The CoI also recommends that the Members of Parliament, investigators, government officials and lawyers (in the list of respondents) be charged

These recommendations if implemented would undermine the independence of the judiciary and the investigators.

| | | |
|---|--|--|
| | for the offences of fabricating false evidence and corruption under the Penal Code and the Bribery Act respectively. | |
| 6. Complaint against the investigation of allegations against MP Udaya Gammanpila - complaint no. 545/2020 | | |
| Complainant: Udaya Prabhath Gammanpila | | |
| <p>In 2016, Minister Gammanpila was alleged to have cheated LKR20 million and misappropriated another LKR21 million along with Sydney Jayasinghe, the second accused when selling shares of Digital Nominees to a businessman called Dhammika Perera.</p> <p>The Former Attorney General Jayantha Jayasuriya charged that the alleged business transaction had taken place using a fraudulent power of attorney to sell shares belonging to Australian businessman Brian Shaddick.³⁸</p> | <p>The CoI recommends that MP Udaya Gammanpila be acquitted of all charges filed against him in the Fort Magistrate’s Court. Similarly, the indictment in the case in the High Court of Colombo should also be withdrawn.</p> <p>Additionally, the CoI recommends that the Members of Parliament, investigators and witnesses (including the said investor and his spouse) involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>These recommendations if implemented would undermine the independence of the judiciary and the investigators.</p> |

³⁸ Imesh Ranasinghe, ‘Political victimisation commission releasing criminals - Vijitha Herath’ (*Economy Next*, 27 January 2021) available at <https://economynext.com/political-victimization-commission-releasing-criminals-vijitha-herath-78257/> accessed 17 February 2021

7. Complaint against the investigation into misappropriation of public property in launching the Carlton Sports Network (CSN)- complaint no. 1963/2020 and 1964/2020

Complainant:

Yoshitha Rajapakse

Rohan Welivita

The complainant said that he was arrested and remanded for 45 days based on the false charges that financial irregularities and misappropriation of public property have been committed by the Carlton Sports Network. He said that he was arrested illegally by the FCID based on a complaint made by the Anti-Corruption Committee even though he was not involved in CSN activities.

Testifying before the CoI, Former MP Wijeyadasa Rajapakshe PC, alleged that former Minister Patali Champika Ranawaka and a few others exerted pressure on the Police Department to

The CoI recommends that several persons charged in relation to allegations of financial fraud and misappropriation of public property in launching the Carlton Sports Network (CSN) channel be acquitted of all charges filed against them.

Accordingly, the CoI recommends that Yoshitha Rajapakse should be acquitted of charges filed against him in the Kaduwela and Mount Lavinia Magistrate's Courts. Similarly, the indictment in the case in the High Court of Colombo should also be withdrawn.

Similarly, the CoI recommends that the former Presidential Media Secretary (who was briefly a director at the CSN channel) be acquitted of all charges filed against him in the Kaduwela Magistrate's Court and that the indictment in the

These recommendations, if implemented, would undermine the independence of the judiciary, the rule of law and the impartiality of the investigators.

| | | |
|---|---|---|
| <p>apprehend the second son of Prime Minister Mahinda Rajapaksa, Yoshitha Rajapaksa, before the Independence Day of 2016 with the concerted aim of derailing the political journey of Mahinda Rajapaksa.³⁹</p> | <p>case in the High Court of Colombo should be withdrawn.</p> <p>The CoI also recommends that the respondents should be charged for offences of fabricating evidence and corruption under the Penal Code and the Bribery Act. The police officers involved in the case should also be charged for wrongful confinement.</p> | |
| <p>8. Complaint against the investigation into the alleged misappropriation of funds allocated for the Tharunyata Hetak Organisation - complaints no. 432/2020 and 433/2020</p> <p>Complainant:</p> <p>Nalaka Godahewa</p> <p>Dhammika Perera</p> | | |
| <p>The complaint concerned the case against the complainants for misappropriation of Rs. 5 million granted as a sponsorship to the Tharunyata Hetak Organisation by the Securities and Exchange Commission.</p> | <p>The CoI recommends the acquittal of the two persons of the charges filed against them in Colombo Chief Magistrate’s Court and the withdrawal of indictment in the case filed against them in the High Court of Colombo.</p> | <p>These recommendations, if implemented, would undermine the independence of the judiciary, the rule of law and the impartiality of the investigators.</p> |

³⁹ WK Prasad Manju, ‘Chompika conspired to get Yoshitha arrested – Wijeyadasa’ (*Ceylon Today*, 11 June 2020) available at <<https://ceylontoday.lk/news/chompika-conspired-to-get-yoshitha-arrested-wijeyadasa>> accessed 17 February 2021

| | | |
|---|---|---|
| | <p>CoI recommends that the Members of Parliament and police/FCID officers involved in the case be charged for the offences of false charges of offence with intent to injure and corruption under the Penal Code and the Bribery Act respectively.</p> | |
| <p>9. Complaint against the investigation into import of sports equipment by the Co-operative Establishment (Sathosa)-complaints no. 619/2020 and 375/2020 Complainants: Nishantha Asiri Fernando Kaminda Harshajith</p> | | |
| <p>The charges relate to financial fraud during the import of sporting goods by the Co-operative Establishment.</p> | <p>The CoI recommends the acquittal of two complainants of the charges filed against them in Colombo Chief Magistrate’s Court. The CoI also recommends withdrawal of indictment in the case filed in the High Court of Colombo against Mahindananda Aluthgamage and Nalin Fernando.</p> <p>Additionally, the CoI recommends that the public officers and investigators involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the</p> | <p>These recommendations, if implemented, would undermine the independence of the judiciary, the rule of law and the impartiality of the investigators.</p> |

| | | |
|---|--|--|
| | <p>Bribery Act. Former Director of the Criminal Investigation Department and related officers are guilty of the offence of harboring an offender under the Penal Code.</p> | |
| <p>10. Complaint against the investigation into the alleged deceitful registration of an elephant- complaint no. 04/2020 Complainant: Thilina Gamage</p> | | |
| <p>The complainant was charged with the illegal possession of an elephant calf named “Sakura”, under 25 counts including possession of an elephant calf without a license, conspiracy to tender false documents and registration of the concerned elephant calf by producing forged documents.</p> <p>The charges were filed for violating the provisions of Fauna and Flora Ordinance and Public Property Act.</p> <p>The case was taken up on a complaint</p> | <p>The CoI recommends that the complainant (former Magistrate) be acquitted of all charges filed against him in the Nugegoda Magistrate’s Court. Similarly, the indictment in the case in the High Court of Colombo should also be withdrawn.</p> <p>Additionally, the CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>These recommendations, if implemented, would interfere with on-going legal proceedings and undermine the independence of the judiciary and the rule of law.</p> |

| | | |
|---|---|---|
| <p>made by the then subject Minister Wasantha Senanayake. The elephant calf was then seized from the Magistrate's possession by the CID.⁴⁰</p> | | |
| <p>11. Complaint against the imprisonment of Duminda Silva- complaint no. 1969/2020 Complainant: Vincent Premalal Silva for Duminda Silva</p> | | |
| <p>The complainant was charged with the murder of former Presidential Advisor Bharatha Lakshman Premachandra. The President issued a special gazette notification extending the term of the Commission by 16 days specially to hear a complaint brought on behalf of former MP Duminda Silva.</p> | <p>The CoI recommends that the Attorney-General should request a larger bench of the Supreme Court to review the guilty verdict and the death penalty in relation to the case filed in High Court of Colombo against the complainant Mr. Duminda Silva; in light of the new evidence presented before the CoI.</p> <p>Additionally, the CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act. The</p> | <p>The case on the assassination of Bharatha Lakshman Premachandra was decided and determined by a High Court Trial at Bar⁴¹ and the decision affirmed by the Supreme Court, the highest court in Sri Lanka, on 11 October 2018. It is doubtful whether it can be referred to a Presidential Commission of Inquiry under these circumstances.</p> <p>There is no precedent for a Presidential Commission of Inquiry to investigate, vacate or overturn judgments made by Sri Lanka's</p> |

⁴⁰ 'Indictments filed against Magistrate Thilina Gamage and four others' (*NewsFirst*, 20 July 2019) available at <<https://www.newsfirst.lk/2019/07/20/indictments-filed-against-magistrate-thilina-gamage-and-four-others/>> accessed 16 February 2021

⁴¹ Case No. HC 8331/16

| | | |
|--|---|--|
| | <p>police officers involved in the case should also be charged for wrongful confinement.</p> | <p>highest courts. If implemented, the recommendations of the CoI in this regard would gravely challenge the independence of the judiciary and the rule of law.</p> <p>Furthermore, the scope of the Commission's mandate extends only to complaints made by members of the tri-forces or public officials – namely government servants and members of the armed forces. Duminda Silva is neither a member of the armed forces nor a public servant. (Silva's complaint was filed by his father Lal Silva.)⁴²</p> |
| <p>12. Complaint against the suspension of DIG of the Northern Province for the charge of aiding the escape the prime suspect in the Vidya murder case- complaint no. 115/2020</p> <p>Complainant: DIG Lalith Jayasinghe</p> | | |
| <p>This complaint was filed by former DIG of the Northern Province Lalith Anuruddha Jayasinghe that he had been</p> | <p>The CoI recommends that the complainant Lalith Anuruddha Jayasinghe be acquitted of all charges filed against him in the Pelmadulla Magistrate's</p> | <p>Chairman of the Presidential Commission of Inquiry Retired Supreme Court Judge Upali Abeyratne said that it appears that there is no</p> |

⁴² Medialk.com, 'Freedom to Duminda Silva : Presidential Commission dismisses a seven-judge ruling' available at <<https://medialk.com/english/2021/01/07/freedom-to-duminda-silva-presidential-commission-dismisses-a-seven-judge-ruling/>>

| | | |
|---|---|---|
| <p>suspended for political revenge. He had been suspended on charges of harbouring and aiding and abetting the escape of Mahalingam Sashikumar alias Swisskumar, the prime suspect in the abduction, rape and murder of a Jaffna school girl Vidya.</p> <p>He was also suspended for allegations of biased and corrupt conduct during his office as the Senior DIG in charge of the Sabaragamuwa Province. The allegations pertain to several incidents related to the 2015 election, and the arrest of MP Premalal Jayasekara (who is a suspect in the Kahawatte shooting incident).</p> | <p>Court. Similarly, the indictment in the case in the High Court of Colombo filed against him should also be withdrawn.</p> <p>Additionally, the CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> <p>The CoI recommends the immediate reinstatement of DIG Jayasinghe with payment of arrears salary.</p> | <p>impediment to the reinstatement of Lalith Anuruddha Jayasinghe.⁴³ The Chairman made this observation in August 2020, prior to concluding the proceedings of the CoI. The Attorney General's Department was also instructed to consider the matter and state its legitimacy on the same day.</p> <p>However, Additional Solicitor General Rohantha Abeysuriya said there were legal impediments to his reinstatement. The Chairman of the Commission stated that considering the request of Mr. Neomal Rangajeeva who was suspended, and his reinstatement, not taking such action on Mr. Lalith Jayasinghe is problematic.</p> <p>These statements by the Chairman exceed the already broad mandate of the CoI. The</p> |
|---|---|---|

⁴³ Zulfick Farzan, 'No issue in re-instating interdicted SDIG Lalith Anuruddha; says PCoI on Political Victimization' (*NewsFirst.lk*, 29 August 2020) available at < <https://www.newsfirst.lk/2020/08/29/no-issue-in-re-instating-interdicted-sdig-lalith-anuruddha-says-pcoi-on-political-victimization/>> accessed 2 April 2021

| | | |
|---|---|---|
| | | recommendations, if implemented, would undermine the independence of the judiciary and the Attorney General's Department. |
| <p>13. Complaint against the investigation into the abduction of journalist Lasantha Wickrematunge's driver- complaint no. 238/2020</p> <p>Complainant: Military Intelligence Officer Prema Ananda Udalgama</p> | | |
| <p>The charges against the complainant are related to the abduction of Lasantha Wickrematunge's driver, who is a witness in the Lasantha Wickrematunge murder case.</p> <p>The complainant further claimed that during the investigation, IP Nishatha Silva suggested to him to admit that 'The Intelligence Units assaulted journalists on the instructions of Gotabaya Rajapaksa.'⁴⁴</p> | <p>The CoI recommends that the complainant (military intelligence officer Udalgama) be acquitted of all charges filed against him in the Mount Lavinia and Gampaha Magistrate's Courts. Similarly, the indictment in the case in the High Court of Gampaha filed against him should also be withdrawn.</p> <p>The CoI further recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>These recommendations, if implemented, would result in setbacks to a long-delayed investigation and legal proceedings and would deter police and legal officers from pursuing action in the future regarding cases which are considered to be politically sensitive.</p> |

⁴⁴ Zulfick Farzan, 'CID misled court over Lasantha Wickrematunge killing; Ex-Intelligence Officer' (*NewsFirst*, 28 October 2020) available at <<https://www.newsfirst.lk/2020/10/28/cid-misled-court-over-lasantha-wickrematunge-killing-ex-intelligence-officer/>> accessed 17 February 2021

14. Complaint against the investigation into the assassination of former MP Joseph Pararajasingam- complaint no. 885/2020

Complainant:

Sivanesathurai Chandrakanthan alias Pillayan

The charges against the complainant - Parliamentarian Sivanesathurai Chandrakanthan alias Pillayan - relate to the assassination of former parliamentarian Joseph Pararajasingam.

On an appeal from the Batticaloa High Court, the Court of Appeal ruled that the confessions of the two main suspects were inadmissible. The Attorney General's Department (AG) decided to drop the case against Pillayan and all suspects were acquitted and released.

The CoI recommends that the complainant be acquitted of all charges filed against him in the Batticaloa Magistrate's Court. Similarly, the indictment in the case in the High Court of Batticaloa filed against him should also be withdrawn.

Additionally, the CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act. The police officers involved in the case should also be charged for wrongful confinement.

A previous Presidential Commission of Inquiry into the assassination said that police investigations into the murder of the MP are 'unsatisfactory.' It said that "Police filed charges against two soldiers but later said they did not have evidence."⁴⁵

Political influence on the police in investigations into politically sensitive matters is frequent in Sri Lanka. The targeting of investigators for engaging in their duties and filing criminal charges against them would further compromise the independence of the investigators.

⁴⁵ 'MP murder probe 'inadequate' (BBC Sinhala, 16 June 2009) available at <https://www.bbc.com/sinhala/news/story/2009/06/090616_probe_pararajasingham> accessed 18 February 2021

15. Complaint against the investigation into the alleged misappropriation of funds allocated to the Sri Lankan Embassy in the United States- complaint no. 1116/2020

Complainant:

Jaliya Wickramasuriya

The charges against the complainant are related to misappropriation of public funds allocated for purchasing a building for the Sri Lankan embassy in the United States.

The CoI recommends that the complainant (Mr. Jaliya Wickramasuriya) be acquitted of all charges filed against him in the Fort Magistrate's Court.

Additionally, the CoI recommends that the state take necessary measures to request the removal of the travel ban imposed on the complainant by the United States.

The CoI also recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.

These recommendations, if implemented, would interfere with on-going legal proceedings and undermine the independence of the judiciary and the rule of law.

| | | |
|--|---|--|
| <p>16. Complaint against the investigation into alleged financial irregularities of the Federation of Self-Employed- complaint no. 28/2020</p> <p>Complainant: Mahinda Kahandagamage</p> | | |
| <p>The charges against the complainant Mahinda Kahandagamage relate to alleged financial irregularities of the Federation of Self-Employed.</p> | <p>The CoI recommends that the complainant, Mahinda Kahandagamage, be acquitted of all charges filed against him in the Colombo Chief Magistrate’s Court.</p> <p>The CoI also recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>These recommendations, if implemented, would interfere with on-going legal proceedings and undermine the independence of the judiciary and the rule of law.</p> |
| <p>17. Complaints against the actions taken against several employees of Sri Lanka Broadcasting Corporation (SLBC)/ Rupavahini Corporation (SLRC)- complaints no. 1091/2020, 1092/2020, 1131/2020, 141/2020</p> <p>Complainants: Chandrapala Liyanage Sanath Priyantha Daluwatte Wimalasena Rubasinghe</p> | | |
| <p>Complainants include the Director General of the SLBC Mr. Chandrapala Liyanage, SLRC Chairman Wimalasena</p> | <p>With regards to complaints made by several persons linked with the Sri Lanka Broadcasting Corporation (SLBC)/ Rupavahini Corporation, the</p> | <p>These recommendations, if implemented, may have the effect of intimidating those who were involved in filing complaints at the</p> |

| | | |
|--|--|--|
| Rubasinghe and several employees. Complainants have been accused of financial and other offences. | CoI has recommended that the respondents involved in the case be charged for the offence of corruption under the Bribery Act. | Commission to Investigate Bribery or Corruption against the complainants. |
| <p>18. Complaint against the investigation into the Avant Garde controversy- complaints no. 402/2020, 206/2020 and 50/2020</p> <p>Complainants: Samanasiri Dissanayke Damayanthi Jayaratne Nissanka Senadhipathi</p> | | |
| This complaint was filed by Avant Garde Maritime Services Ltd. Chairman Maj. (Rtd.) Nissanka Senadhipathi claiming that his group of companies had incurred heavy losses due to arbitrary and politically motivated decisions taken by the Yahapalana Government. ⁴⁶ CoI Chair Upali Abeyratne asserted that | The CoI established that the Navy Commander Ravindra Wijegunawardena should be charged for the offence of abetting mutiny in relation to the incident of taking over MV Avant Garde vessel. The CoI recommends that several complainants - including Nissanka Senadhipathi (Chairman of Avant Garde) be acquitted of all charges against them in cases filed in the Galle Magistrate's Court. Similarly, the indictments in the cases in the High | MP Anura Kumara Dissanayake and SSP Shani Abeysekara filed two writ petitions in the Court of Appeal seeking notice of COI on Political Victimization be invalidated. They claim that COI is only vested with powers to investigate complaints made by public servants on incidents of political victimization during the former |

⁴⁶ Skandha Gunasekara, 'Presidential Commission on political victimisation: Wijeyadasa exposes Yahapalana ministers' (*The Morning*, 18 June 2020) available at < <http://www.themorning.lk/presidential-commission-on-political-victimisation-wijeyadasa-exposes-yahapalana-ministers/> > accessed 18 February 2021

| | | |
|--|---|--|
| <p>COI has decided that the complaint of Avant Garde Chairman is within its mandate, despite Chairman Maj. (Rtd.) Nissanka Senadhipathi not being a public officer.⁴⁷</p> <p>Testifying before the CoI, MP Wijeyadasa Rajapakse alleged that officials of the Attorney General (AG)'s Department had been part of 'this collusion to settle political scores with the Rajapakses' as well.⁴⁸</p> <p>Senior State Counsel Janaka Bandara was named as a respondent in the</p> | <p>Court of Colombo should also be withdrawn.</p> <p>The CoI also recommends that the respondents involved in the case (including former Admiral Ravindra Wijegunaratne, SSP Shani Abeysekara, MP Anura Kumara Dissanayake and others) be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act. The police officers involved in the case should also be charged for wrongful confinement.</p> | <p>government.⁵⁰</p> <p>COI gave undertaking to the Court of Appeal not to summon MP Anura Kumara Dissanayake and SSP Shani Abeysekara before the Commission re complaint made by Avant Garde Chairman. This undertaking is effective until the Court of Appeal makes an appropriate order regarding writ petitions.⁵¹ The CoI may have acted outside its legal mandate in considering this complaint. The Attorney General has previously noted that since the CoI was appointed to look into alleged political victimization of public</p> |
|--|---|--|

⁴⁷ Skandha Gunasekara, 'PCoI on political victimisation says Nissanka's complaint within mandate' (*The Morning*, 24 June 2020) available at <<http://www.themorning.lk/pcoi-on-political-victimisation-says-nissankas-complaint-within-mandate/>> accessed 18 February 2021

⁴⁸ Skandha Gunasekara, 'Presidential Commission on political victimisation: Wijeyadasa exposes Yahapalana ministers' (*The Morning*, 18 June 2020) available at <<http://www.themorning.lk/presidential-commission-on-political-victimisation-wijeyadasa-exposes-yahapalana-ministers/>> accessed 19 February 2021

⁵⁰ Zulfick Farzan, 'PCoI has no power to examine Avant-Garde Complaint, says AKD and Shani A.' (*News First*, 13 July 2020) available at <<http://www.newsfirst.lk/2020/07/13/pcoi-has-no-power-to-examine-avant-garde-complaint-says-akd-and-shani-a/>> accessed 18 February 2021

⁵¹ Zulfick Farzan, 'PCoI agrees not to summon three witnesses until petitions are heard' (*News First*, 27 July 2020) available at <<https://www.newsfirst.lk/2020/07/27/pcoi-agrees-not-to-summon-three-witnesses-until-petitions-are-heard/>>

| | | |
|--|--|--|
| <p>complaint. AG raised these objections in terms of Section 16 of the Commissions of Inquiry Act and stated that PCoI is not empowered to review any decision of the AG and it is also contrary to the law to issue summons to his officers to appear before the PCoI.</p> <p>In his letter, the AG said that the PCoI was appointed to look into alleged political victimization of public officers, employees of state corporations, members of armed forces and police. AG further said that Avant Garde Chairman Nissanka Yapa Senadhipathi who led a complaint has no legal standing.⁴⁹</p> | | <p>officers, employees of state corporations, members of armed forces and the police, Chairman Maj. (Rtd.) Nissanka Senadhipathi has no legal standing before the CoI.⁵²</p> <p>The recommendations of the CoI, if implemented, would undermine the independence of the officers of the Attorney General's Department as well as the investigators.</p> |
|--|--|--|

⁴⁹ Dilshan Tharaka, 'AG's officials will not participate' (*Daily News*, 23 June 2020) available at

<<http://www.dailynews.lk/2020/06/23/local/221355/ag%E2%80%99s-officials-will-not-participate>> accessed 19 February 2021

⁵² Zulfick Farzan, 'PCoI cannot investigate Attorney General or his officers: AG's Department' (*News First*, 22 June 2020) available at <

<https://www.newsfirst.lk/2020/06/22/pcoi-cannot-investigate-attorney-general-or-his-officers-ags-department/>> accessed 2 April 2021

| 19. Complaint against the investigation into the Rakna Araksha Lanka company- complaints no. 1807/2020 and 431/2020 Complainants: Rtd. Major General Palitha Piyasiri Fernando Victor Samaraweera | | |
|--|--|---|
| <p>The complainants were investigated in relation to the Rakna Araksha Lanka Ltd. The investigation revealed that Avant Garde Maritime Services Ltd has misused resources of the Rakna Araksha Lanka Ltd. In September 2019, the High Court of Colombo later recalled the warrant issued against retired Major General Fernando and released the passports to the sureties.⁵³</p> | <p>With regards to the complaints by several persons linked to Rakna Lanka, including the former Chairmen Retired Major General Palitha Piyasiri Fernando and Victor Samaraweera, the CoI recommends that the respondents involved in these cases be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> <p>The CoI further recommends that complainant Victor Samraweera be acquitted of all charges filed against him in the Galle Magistrate’s Court.</p> | <p>The Permanent High Court of Colombo released retired Major General Fernando and four others from the charges against them in relation to the Avant Garde case in January 2020. The Attorney General was informed to consider if he would proceed with the case against 8 accused, including Victor Samaraweera.⁵⁴</p> |

⁵³ T Farook Thajudeen, ‘High Court recalls the warrant issued to arrest Palitha Fernando’ (*Daily Mirror*, 5 September 2019) available at <<http://www.dailymirror.lk/news/High-Court-recalls-the-warrant-issued-to-arrest-Palitha-Fernando/239-174037>> accessed 19 February 2021

⁵⁴ ‘5 released from the Avant Garde case’ (*News First*, 17 January 2020) available at <<https://www.newsfirst.lk/2020/01/17/5-released-from-the-avant-garde-case/>> accessed 19 February 2021

20. Complaint against the investigation into alleged misappropriation of public funds by former Minister Rohitha Bogollagama-complaint no. 184/2020

Complainant:

Rohitha Bogollagama

The Bribery Commission filed indictments against former Enterprise Development and Investment Promotion Minister Rohitha Bogollagama in the Colombo High Court over corruption charges relating to excessive spending in 2006. The charges against him concerns illegally giving approval to release Rs.1,170,444 as hotel accommodation costs for an investment promotion exhibition held in London and influencing the BOI Chairman to release Rs. 414,000 for the exhibition.⁵⁵

The CoI recommends that the indictment filed against former Minister Rohitha Bogollagama be withdrawn and the facts of the case be reconsidered by an independent commission. Moreover, the CoI recommends that necessary disciplinary action should be taken against former Solicitor General Dilrukshi Dias Wickramasinghe by the Public Service Commission.

These recommendations, if implemented, would interfere with on-going legal proceedings and undermine the independence of the judiciary and the public service. CPA finds that the appointment of yet another CoI is a delaying tactic, as it is unlikely to lead to an independent process and outcomes in light of the criticisms against previous CoIs.

In February 2021, former Solicitor General Dilrukshi Dias Wickremasinghe filed a writ petition in the Court of Appeal seeking an order directing the Public Service Commission to reinstate her in service.⁵⁶

⁵⁵Lakmal Sooriyagoda, 'Bogollagama indicted for excessive spending in 2006' (*Daily News*, 26 February 2020) available at <<https://www.dailynews.lk/2020/02/26/law-order/212615/bogollagama-indicted-excessive-spending-2006>> accessed 19 February 2021

⁵⁶ Lakmal Sooriyagoda, 'Dilrukshi Dias files writ petition calling for reinstatement as Solicitor General' (*Daily News*, 25 February 2021) available at < <http://www.dailynews.lk/2021/02/25/law-order/242518/dilrukshi-dias-files-writ-petition-calling-reinstatement-solicitor>> accessed 6 April 2021

21. Complaint against the investigation into Welikada prison massacre- complaints no. 07/2020 and 12/2020

Complainants:

Moses Neomal Rangajeewa

Lamahewage Emil Ranjan

This case concerns the violence at the Welikada prison which killed 27 prisoners while 43 were injured. It later came to light that this was a coordinated operation to eliminate certain identified prisoners. Previous investigations into the massacre were obstructed due to political influence. Investigation by the Human Rights Commission of Sri Lanka. In 2012, then Chairman of the Human Rights Commission of Sri Lanka told the media that the HRCSL's investigation was put on hold based on a request by the Commissioner General of Prisons.

The CoI asserts that the charges against Moses Neomal Rangajeewa and Emil Ranjan filed in the High Court in relation to the 2012 Welikada prison massacre are a result of political revenge. The CoI recommends that the Attorney General should therefore consider the findings of the Commission report and make a decision regarding the on-going case.

The CoI recommends that the complainants be reinstated with all promotions due to them. It also recommends legal action to be taken against the respondents for fabricating evidence.

IP Rangajeewa had been reinstated in 2018 following an order by then IGP during the constitutional crisis in late 2018. Following his reinstatement, he has posted threatening messages on social media targeting the witnesses of the Welikada prison massacre case. The Committee to Protect Rights of Prisoners stated its intention to file a petition with the National Police Commission against the reinstatement of IP Rangajeewa.⁵⁸

This case has been marked by extensive intimidation of victims and witnesses, including the imprisonment on false charges of relatives of victims. The recommendations

⁵⁸ Maneshka Borham, 'Reinstatement of IP Rangajeewa: Committee to Protect Rights of Prisoners to file petition' (*Sunday Observer*, 25 November 2018)

| | | |
|--|---|--|
| <p>Commissions were appointed by then Minister of Rehabilitation and Prison Reforms Chandrasiri Gajadeera and then Commissioner General of Prisons, P.W. Kodippili. The reports of these Commissions have not been made public. Opposition MPs raised concerns about the independence of these investigations in Parliament, saying that while the police and HRCSL were under executive influence no independent investigation into the matter could be conducted.⁵⁷</p> | | <p>of the CoI, if implemented, could potentially endanger these victims and witnesses further.</p> <p>It would also undermine the rule of law and independence of the judiciary and obstruct the only chance for an independent investigation and prosecution into the massacre.</p> |
| <p>22. Complaint against the investigation regarding a container belonging to the former Ambassador to Russia- complaint no.1081/2020</p> <p>Complainants: Udayanga Weeratunga</p> | | |
| <p>A container of goods belonging to former Russian Ambassador Udayanga Weeratunga was handed over to the</p> | <p>The CoI recommends holding of inquiries on the former Secretary of the Ministry on Foreign Affairs Chitrangani Wagiswara and the former Senior</p> | <p>These recommendations, if implemented, would interfere with an on-going</p> |

⁵⁷ Parliament of Sri Lanka, Hansard 19.12.2012 https://www.parliament.lk/uploads/documents/hansard/PUBDOC4234_document.pdf at pg 104

| | | |
|---|--|--|
| <p>FCID for investigation. Spokesperson for the Ministry of Foreign Affairs stated that the container was not claimed by the former Ambassador and no one has been authorized to claim it on his behalf.⁵⁹ She further stated that the goods cannot be released until the former Ambassador hands over his diplomatic passport to the Ministry.⁶⁰</p> <p>The former Ambassador had submitted evidence to the Commission claiming that the documentation authorizing his spouse to receive the container was sent to the Ministry. Moreover, upon the cancellation of his diplomatic passport, he had received a new passport.</p> | <p>Executive General C. A. H. M. Wijeratne with regards to the transportation of furniture belonging to the family of the former Ambassador to Russia and presenting false information to the Fort Magistrate's Court respectively.</p> <p>The CoI further recommends that the container in the Colombo port should be released.</p> | <p>investigation conducted⁶⁴ by the Financial Crimes Investigation Division (FCID).</p> |
|---|--|--|

⁵⁹ 'Update: A court order to inspect container belonging to former Russian Ambassador Udayanga Weerathunga' (*HiruNews.lk*, 6 July 2015) available at <<https://www.hirunews.lk/english/112724/update-court-order-to-inspect-container-belonging-former-russian-ambassador-udayanga-weerathunga>> accessed 19 February 2021

⁶⁰ Lakna Paranamanna, 'Udayanga's container stuck without passport: MFA' (*Daily Mirror*, 6 July 2015) available at <<http://www.dailymirror.lk/Breaking-News/udayanga-s-container-stuck-without-passport-mfa/108-78533>> accessed 19 February 2021

⁶⁴ 'Update: A court order to inspect container belonging to former Russian Ambassador Udayanga Weerathunga' (*HiruNews.lk*, 6 July 2015) available at <<https://www.hirunews.lk/english/112724/update-court-order-to-inspect-container-belonging-former-russian-ambassador-udayanga-weerathunga>> accessed 19 February 2021

| | | |
|---|--|--|
| <p>In June 2017, the Fort Magistrate’s court ordered the suspension of his diplomatic passport and another passport, as he was under investigation for allegations of money laundering over the MiG deal.⁶¹ He was later arrested in Dubai, extradited and remanded upon his return to Sri Lanka. In April 2020, he was granted bail by the Fort Magistrate’s Court.⁶² He also denied involvement in the death of Mr. Noel Ranaweera, a staffer at the Sri Lankan embassy in Russia. During a media conference held at the new Russian Embassy, Alexander Karchava, the Russian Ambassador to Sri Lanka, stated that a Russian citizen was convicted of the murder and is currently</p> | | |
|---|--|--|

⁶¹ ‘Udayanga Weeratunga’s passports suspended’ (*Sri Lanka Mirror*, 30 June 2017) available at <<https://srilankamirror.com/news/3719-udayanga-weeratunga-s-passports-suspended>> accessed 19 February 2021

⁶² ‘Udayanga Weerathunga granted bail’ (*News First*, 3 April 2020) available at <<https://www.newsfirst.lk/2020/04/03/udayanga-weerathunga-granted-bail/>> accessed 19 February 2021

| | | |
|---|---|---|
| serving a jail term. ⁶³ | | |
| <p align="center">23. Complaint against the investigation regarding the MiG aircraft deal with Ukraine- complaint no.1080/2020</p> <p>Complainants: Udayanga Weeratunga</p> | | |
| <p>The former Ambassador was investigated by the FCID. He was later arrested in Dubai, extradited and remanded following his return to Sri Lanka due to allegations of financial fraud in the purchase of MiG aircrafts from Ukraine. An INTERPOL red notice was issued for his arrest and the bank accounts under his name were frozen.</p> <p>In April 2020, he was granted bail by the Fort Magistrate’s Court.⁶⁵</p> | <p>The CoI recommends that the Attorney General intervene and discontinue pursuing the case filed in the Fort Magistrate’s Court in relation to the financial irregularities in the MiG deal (purchase of MiG aircrafts for the Air Force). The CoI further recommends withdrawing the court order to freeze bank accounts of former Ambassador Udayanga Weeratunga.</p> <p>The CoI also recommends taking disciplinary action against Police Inspector Nihal Francis for his role in obtaining the INTERPOL red notice by allegedly presenting false claims against the former Ambassador.</p> | <p>These recommendations, if implemented, would undermine the independence of the judiciary, the Attorney’s General Department and the investigators.</p> |

⁶³ Chathuri Dissanayake, ‘Russia looking to strengthen relations with Sri Lanka’ (*DailyFT*, 6 December 2016) available at <<http://www.ft.lk/article/584251/Russia-looking-to-strengthen-relations-with-Sri-Lanka>> accessed 2 April 2021

⁶⁵ ‘Udayanga Weerathunga granted bail’ (*News First*, 3 April 2020) available at <<https://www.newsfirst.lk/2020/04/03/udayanga-weerathunga-granted-bail/>> accessed 19 February 2021

24. Complaint against the investigation regarding the death of a suspect in Chunnakam Police custody- complaints no. 650/2020, 34/2020,269/2020 and 403/2020

Complainants:

Gnanalingam Dhaneshvari (on behalf of Gnanalingam Mayuran) and others

| | | |
|--|---|--|
| <p>Constable Gnanalingam Mayuran and several other police officers of the Chunnakam police were imprisoned for 10 years for charges of torture of suspects under the Convention of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment Act No 22 of 1994, following a conviction by the High Court of Jaffna in 2017. Mayuran was arrested in connection with an investigation into the drowning of an individual who had been arrested by the Chunnakam Police for a robbery, and had drowned in his attempt to flee.⁶⁶</p> | <p>The CoI recommends that the proceedings of the appeal filed at the Court of Appeal with regards to the guilty verdict of the High Court of Jaffna should be expedited.</p> <p>The CoI also recommends reconsidering the legal status of the case or transferring the case to another High Court. The CoI notes that there could be possibility of bias since charges were filed with regards to the same incident for the second time after a significant delay.</p> | <p>These recommendations, if implemented, would undermine the independence of the judiciary and the investigators.</p> |
|--|---|--|

⁶⁶ Faadhila Thassim, 'Video on Vijayakala assisting Swiss Kumar played at PCoI hearing' (*Ceylon Today*, 18 September 2020) available at <<https://ceylontoday.lk/news/video-on-vijayakala-assisting-swiss-kumar-played-at-pcoi-hearing>> accessed 2 April 2021

| | | |
|--|--|--|
| <p>The Chairman of the CoI Upali Abeyratne asserted that, although the Mallakam Magistrate’s Court held that the death of the arrestee was a result of inhumane assault by Police officers, the post-mortem revealed that the death took place due to drowning and only minor injuries were sustained by the arrestee. The Chairman further asserted that the Attorney General had the responsibility to investigate into these contradictions.⁶⁷</p> <p>The complainant claimed that the charges are a result of political revenge against Police Inspector Chinthaka Bandara and Constable Mayuran by the former State Minister Vijayakala Maheswaran and Kumaran Sarvananda.</p> | | |
|--|--|--|

⁶⁷ Faadhila Thassim, ‘Video on Vijayakala assisting Swiss Kumar played at PCoI hearing’ (*Ceylon Today*, 18 September 2020) available at <<https://ceylontoday.lk/news/video-on-vijayakala-assisting-swiss-kumar-played-at-pcoi-hearing>> accessed 2 April 2021

25. Complaint against the investigation into Mr. Lalith Sepala Ratnayake- complaint no.1842/2020

Complainants:

Lalith Sepala Ratnayake

Mr. Sepala Ratnayake held a Minister post at the Sri Lanka High Commission in London, was a Senior State Counsel and held the post of Senior Assistant Secretary to the President. He has submitted evidence claiming that the term of his diplomatic post was prematurely concluded by a letter issued by the Ministry of Foreign Affairs, without citing reasons.

He further claims that an act of political victimization has been committed against him by linking him to an incident of a domestic dispute in Polonnaruwa, which has been investigated by the Children and Women Bureau. The case filed with regards to this incident in the Colombo

The CoI recommends taking disciplinary action against retired Senior DIG S.M. Wickramasinghe and his team for their involvement in allegedly reporting false facts to the Colombo Magistrate's Court in order to exact political revenge from Sepala Ratnayake and others.

The CoI also recommends that Sepala Ratnayake should be instated as a senior state counsel according to the provisions in Article 41 of the Constitution.

These recommendations, if implemented, would undermine the police investigations and impact such processes in the future.

| | | |
|---|---|--|
| Magistrate's Court was later withdrawn, in addition to the travel ban and the arrest warrant issued against Mr. Ratnayake. | | |
| <p align="center">26. Complaint against the investigation into an employee at the Ceylon Fishery Harbours Corporation- complaint no.427/2020</p> <p>Complainants: Kumudumal Pelpitiya</p> | | |
| A complaint was filed at the CID against Mr. Kumudumal Pelpitiya (who was an employee at the Ceylon Fishery Harbours Corporation) with regards to issues with the Negombo lagoon development project and the printing of diaries. | Since the indictment was based on an investigation directed by a Commission of Inquiry appointed by the former President, the present CoI has decided that making recommendations related to the said commission is unauthorized. | CPA has no further comments as the CoI has not made recommendations regarding this complaint. |
| <p align="center">27. Complaint against the investigation into the death of Wasim Thajudeen and misuse of state vehicles- complaint no.1070/2020</p> <p>Complainants: Captain Tissa Wimalasena</p> | | |
| Captain Wimalasena was a security officer for the former President Mahinda Rajapaksa and his family members. He had been questioned and | The CoI recommends that the Attorney General intervene and report to the Colombo Magistrate's Court that proceedings of the case filed against Tissa Wimalasena should no longer be continued. | These recommendations, if implemented, would interfere with the investigations and legal proceedings of an on-going case. It would therefore undermine the |

| | | |
|--|--|--|
| <p>investigated by the CID on various occasions in relation to the investigation of the murder of Wasim Thajudeen and the misuse of state vehicles. He was arrested in June, 2017 by the FCID.⁶⁸</p> | <p>The CoI further recommends that disciplinary actions should be taken by the Police Service Commission against Police Inspector Premathilake and another police officer for allegedly attempting to obtain false statements to fabricate evidence against the complainant.</p> | <p>independence of the judiciary and impact investigations.</p> |
| <p align="center">28. Complaint against the investigation into Adcore Creative Pvt Ltd Director Kumara Jayakantha- complaint no.1940/2020</p> <p>Complainants: Kumara Jayakantha</p> | | |
| <p>Kumara Jayakantha has rendered advertising services in relation to the Co-operative Wholesale Establishment, Polgolla Project and the Mahapola project. His complaint claimed that the government appointed in 2015 has not compensated him for his services. A case has been filed against the complainant and his spouse in the Colombo Magistrate's Court by the</p> | <p>The CoI recommends that action should be taken by the Treasury to compensate Adcore Creative Pvt. Ltd. Director Kumara Jayakantha for the advertising services rendered in relation to Co-operative Wholesale Establishment, Polgolla Project and the Mahapola project.</p> | <p>The CoI has interpreted its mandate loosely to include the complainant, who is a private citizen.</p> |

⁶⁸FCID Arrests Mahinda Rajapaksa's Driver Captain Tissa' (*Colombo Telegraph*, 14 June 2017) available at <<https://www.colombotelegraph.com/index.php/fcid-arrests-mahinda-rajapaksas-driver-captain-tissa/>> accessed 19 February 2021

| | | |
|--|---|---|
| <p>Inland Revenue Department due to their failure to pay VAT and NBT.</p> <p>The complainant also alleges that he was called in to give statements to the FCID and the Bribery Commission, where he had been asked to make false statements.</p> | | |
| <p align="center">29. Complaint against the transfer of Chief Inspector Thissa Pilapitiya from the Bribery Commission- complaint no.77/2020</p> <p>Complainants: Chief Inspector Thissa Pilapitiya</p> | | |
| <p>The Chief Inspector alleges that the reason for his transfer from the Commission to Investigate Allegations of Bribery and Corruption was because he did not cooperate in fabricating evidence against President Gotabaya Rajapaksa during the investigation into the Avant Garde case.</p> | <p>The CoI recommends that the Inspector General of Police should consider recommending to the Police Service Commission the promotion of the complainant Chief Inspector Pilapitiya, with due regard given to his period of service.</p> <p>The CoI also recommends that disciplinary action be taken by the Public Service Commission against Mrs. Dilrukshi Dias Wickramasinghe (Director General of the Commission to Investigate</p> | <p>These recommendations, if implemented, would undermine the independence of the investigators.</p> <p>In February 2021, former Solicitor General Dilrukshi Dias Wickremasinghe filed a writ petition in the Court of Appeal seeking an order directing the Public Service</p> |

| | | |
|---|--|--|
| | Allegations of Bribery and Corruption) for allegations of abetting police officers to fabricate evidence in order to bring corruption charges against President Gotabaya Rajapaksa. | Commission to reinstate her in service. ⁶⁹ |
| <p>30. Complaint against the investigation into a former employee of the Employees Trust Fund Board- complaint no.18/2020</p> <p>Complainants: Malani Kumari</p> | | |
| The complainant was an employee of the Employees Trust Fund Board and later became a part of the President's staff (from late 2013 - 2015) under Article 41 of the Constitution. The charges against her are related to dishonest misappropriation of property/funds from the Employees Trust Fund Board. | <p>The CoI recommends the Attorney General consider whether to continue the proceedings of the indictment against the complainant. The CoI further recommends the appointment and promotion of Malani Kumari at the Employees Trust Fund Board.</p> <p>The CoI recommends taking disciplinary action against Deputy Police Inspector Bandara for undue influence during the investigation regarding the complainant.</p> | These recommendations, if implemented, would undermine the independence of the judiciary and the public service. |

⁶⁹ Lakmal Sooriyagoda, 'Dilrukshi Dias files writ petition calling for reinstatement as Solicitor General' (*Daily News*, 25 February 2021) available at < <http://www.dailynews.lk/2021/02/25/law-order/242518/dilrukshi-dias-files-writ-petition-calling-reinstatement-solicitor>> accessed 6 April 2021

31. Complaint against the investigation into the National Lottery Board (NLB) Chairman- complaint no.1941/2020

Complainants:

Chaminda Pushpakumara Athuluwage

The allegations against the NLB Chairman are concerned with criminal misuse of funds and breach of trust regarding his decision to set up billboards (for sales promotion) which were beneficial to a Presidential candidate. The CoI asserted that this allegation was motivated by political victimization.

The CoI recommends that the Attorney General intervene to consider not taking further action in the Magistrate's Court case filed against National Lottery Board Chairman Chaminda Pushpakumara Athuluwage.

These recommendations, if implemented, would undermine the independence of the judiciary and cause undue influence on the functions of the Attorney General.

32. Complaint against the suspension of a Ceylon Petroleum Corporation employee- complaint no.317/2020

Complainants:

Chaminda Samarakoon

The complainant stated that he was suspended from his post of 2/3 grade (Retail) Sales Manager of the Petroleum Corporation, after the new government came into power in 2015. He had been

The CoI recommends reinstating the complainant in the 2/3 grade (Retail) Sales Manager post of the Petroleum Corporation. He should also be eligible for the promotions he was entitled to during the period between suspension and reinstatement.

These recommendations, if implemented, would undermine the independence of the public service.

| | | |
|--|--|---|
| <p>accused of corruption, misuse of Petroleum Corporation funds on the presidential election campaign and giving advertisements to a super motor cross tournament.⁷⁰</p> <p>He also made several allegations of irregularities against Minister Patali Champika Ranawaka and several Petroleum Corporation officials.</p> | | |
| <p align="center">33. Complaint by former School Principal Upali Gunasekara regarding his transfer and retirement- complaint no. 856/2020</p> <p>Complainants: Upali Gunasekera</p> | | |
| <p>Retired Principal Upali Gunasekara alleges that his transfer from the post of Principal of Royal College was a result of political victimization against him. He has named former Education Minister Akila Viraj Kariyawasam as the respondent.</p> | <p>As his early retirement at age 55 was a result of political victimization, the CoI recommends that Upali Gunasekara should be reinstated into the position of the Principal of Royal College for a minimum of two years on a contractual basis.</p> | <p>These recommendations, if implemented, would undermine the independence of the public service.</p> |

⁷⁰ 'CPC suspends its sales manager' (*Sri Lanka Mirror*, 11 January 2017) available at <<https://srilankamirror.com/news/1369-cpc-suspends-its-sales-manager>> accessed 19 February 2021

34. Complaint against the accusation of carrying a firearm into SLFP Hambantota Committee meeting- complaint no. 893/2020

Complainants:

M.S.P. Mallawage

| | | |
|--|---|--|
| <p>The accusation against the complainant is allowing Corporal Ruwan Senaka, who was part of MP Namal Rajapaksa's security team, to enter the premises of a SLFP Hambantota Committee meeting carrying a firearm. The meeting was attended by former President Maithripala Sirisena.</p> | <p>The Additional Solicitor General has informed the Commission that proceedings against the complainant filed in the Angunakolapelessa Magistrate's Court had been concluded. The CoI notes that its recommendation requesting the Attorney General to re-consider continuing with the case has already been followed.</p> <p>The CoI also asserts that the accusation is baseless and is a result of political victimization since the Corporal was not carrying a firearm.</p> <p>Additionally, the CoI recommends that the investigators involved in the case be charged for the offence of fabricating evidence.</p> | <p>These recommendations, if implemented, would undermine the independence of the investigators.</p> |
|--|---|--|

35. Complaint against the transfer of Department of Government Information official- complaint no. 22/2020

Complainants:

Kapila Ariyawansa

Kapila Ariyawansa alleges that his transfer from the Department of Government Information was politically motivated as he was involved in the printing of documents on the Divi Neguma project, and due to his refusal to fabricate evidence against Mr. Basil Rajapaksa during an investigation by the FCID.

The CoI recommends reinstating Mr. Kapila Ariyawansa in the position of Media Director of the Department of Government Information and be given the entitlements that are due to him.

These recommendations, if implemented, would undermine the independence of the public service. The CoI recommendations may bypass established mechanisms by the Public Service Commission in relation to transferring public servants.

36. Complaint against dismissal of OIC Sumith Perera, linked to the investigation into the death of Wasim Thajudeen- complaint no. 615/2020

Complainants:

Sumith Perera

OIC Perera had been in custody for allegedly concealing evidence during the investigation into the murder of Wasim Thajudeen. He was

The CoI asserts that the investigation into the alleged murder of Wasim Thajudeen is a result of an act of political victimization by the previous government against family members of former President Mahinda Rajapaksa. The death of

These recommendations, if implemented, would interfere with the investigations and legal proceedings of an on-going case. It would therefore undermine the independence of the judiciary and the

| | | |
|--|---|---|
| <p>subsequently cleared of all charges.⁷¹</p> <p>He alleges that during the CID investigation, he was asked by several officers to make false statements implicating the former Defence Secretary Gotabaya Rajapaksa and MP Namal Rajapaksa for interfering with the investigation.</p> | <p>Wasim Thajudeen is said to have been caused by a traffic accident due to driving under the influence of alcohol.</p> <p>The CoI recommends reinstating OIC Sumith Perera who was arrested and remanded (and dismissed from service), as he was linked to the investigation into the alleged murder. CoI further recommends taking necessary legal action against respondents (former Inspector of Police Pujith Jayasundara and former CID Director Nagahamulla) for allegedly fabricating evidence.</p> | <p>investigators. The findings of the CoI are also incompatible with the findings of the second post mortem, which revealed that Thajudeen had succumbed to injuries during a brutal assault.⁷² The recommendations may also have the chilling effect of deterring investigators from taking necessary action due to fear of reprisal.</p> |
| <p align="center">37. Complaint against dismissal of Prison Officer Indika Sampath linked to Welikada prison riot in 2012- complaint no. 43/2020</p> <p>Complainants: Indika Sampath</p> | | |
| <p>The Welikada prison riot in 2012 led to 27 prisoners being killed while 43 were injured. It later came to light that this</p> | <p>CoI recommends the reinstatement of prison officer Indika Sampath.</p> | <p>This case has been marked by extensive intimidation of victims and witnesses, including the imprisonment on false charges</p> |

⁷¹ Auragi Singh and Aanya Wipulasena, 'The Thajudeen saga: Murder cover-up trial set to begin in October' available at <<http://www.sundayobserver.lk/2019/07/21/thajudeen-saga-murder-cover-trial-set-begin-october>>

⁷² Verite Research, 'The Thajudeen saga: Murder cover-up trial set to begin in October' available at <<https://www.veriteresearch.org/2019/07/22/wasim-thajudeen-murder/>>

| | | |
|---|--|---|
| <p>was a coordinated operation to eliminate certain identified prisoners. Previous investigations into the massacre were obstructed due to political influence.</p> <p>The Attorney General filed indictments against Moses Rangajeewa, Lamaheewage Emil Rajan and Indika Sampath. Prison officer Indika Sampath absconded during the court proceedings,⁷³ and was later acquitted by the High Court of Colombo due to insufficient evidence.⁷⁴</p> | | <p>of relatives of victims. The recommendations of the CoI, if implemented, could potentially endanger these victims and witnesses further.</p> <p>It would also undermine the rule of law and obstruct the only chance for an independent investigation and prosecution into the massacre.</p> |
|---|--|---|

⁷³ Farook Thajudeen, 'Welikada Prison Massacre Indictment served and accused released on bail' (*DailyFT*, 19 July 2019) available at <<http://www.ft.lk/News/Welikada-Prison-Massacre-Indictment-served-and-accused-released-on-bail/56-682259>> accessed 19 February 2021

⁷⁴ Dilshan Tharaka, 'Colombo HC Trial-at-Bar acquits third accused in Welikada Prison riots' (*Daily News*, 16 July 2020) available at <<http://www.dailynews.lk/2020/07/16/law-order/223448/colombo-hc-trial-bar-acquits-third-accused-welikada-prison-riots>> accessed 19 February 2021

| 38. Complaint against investigation into smuggled gold released to the Navy- complaint no. 325/2020 and 326/2020 Complainants: Jagath Premalal Wijeweera Tharaka Seneviratne | | |
|---|--|--|
| <p>The complainants (former Customs Director General Jagath Wijeweera and former Customs Additional Director General Tharaka Seneviratne) are accused of criminal breach of trust regarding the unlawful release of 8 kilograms of smuggled gold to the Navy to construct a golden statue as part of a war memorial (Sandahiru Maha Seya).⁷⁵</p> | <p>CoI recommends that the complainants Tharaka Seneviratne and Jagath Premalal Wijeweera be cleared of charges filed against them in the Colombo Magistrate’s Court. Additionally, the CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act. The police officers involved in the case should also be charged for wrongful confinement. CoI further recommends an inquiry into relevant politicians and officials of the Anti-Corruption Committee against whom civic disabilities may be recommended.</p> | <p>These recommendations, if implemented, would undermine the independence of the judiciary and investigations. The appointment of a Special Presidential Commission of Inquiry to implement recommendations of the Presidential Commission of Inquiry into Political Victimization,⁷⁶ established on 29th January 2021 under Special Presidential Commission of Inquiry Act No. 07 of 1978. The Commission has power to recommend the imposing of civil disability on those found guilty.⁷⁷</p> |

⁷⁵ ‘Former Customs DG, ADG further remanded’ (*Daily News*, 9 October 2019) available at <<http://www.dailynews.lk/2019/10/09/local/199338/former-customs-dg-adg-further-remanded>> accessed 19 February 2021

⁷⁶ Extraordinary Gazette No 2212/53 available at < http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf >

⁷⁷ Chandani Kirinde, ‘Members of previous Govt. may face civil disability if found guilty by newly appointed Special Presidential CoI’ (*DailyFT*, 1st February 2021) available at < <http://www.ft.lk/front-page/Members-of-previous-Govt-may-face-civil-disability-if-found-guilty-by-newly-appointed-Special-Presidential-CoI/44-712430> > accessed 1st February 2021.

39. Complaint against allegations of misappropriation of public funds in the Litro Gas case- complaint no. 414/2020

Complainants:

Piyadasa Kudabalage

| | | |
|---|--|--|
| <p>Piyadasa Kudabalage, who was the former Managing Director of the Sri Lanka Insurance Corporation, was investigated for the misappropriation of public funds and criminal breach of trust, on the recommendation of the Anti-Corruption Committee.</p> <p>The complainant, (along with Gamini Senarath and Neil Hapuhinna) was charged with misappropriating Rs 500 million from Litro Gas and was later acquitted of charges by the Colombo Permanent High Court.⁷⁸</p> | <p>The CoI recommends that a Special PCoI be appointed to inquire into the Anti-Corruption Committee established by the respondents, in order to recommend imposing 7 years of civic disabilities or other measures on those found guilty of acts of political victimization.</p> <p>CoI further recommends that complainant Piyadasa Kudabalage (former Managing Director of Sri Lanka Insurance Corporation) be instated as a Management Consultant in a local or international position. Similarly, the CoI recommends that Mr. Lasantha Bandara should be appointed to a position in Sri Lanka Insurance</p> | <p>The appointment of a Special Presidential Commission of Inquiry to implement recommendations of the Presidential Commission of Inquiry into Political Victimization,⁷⁹ established on 29th January 2021 under Special Presidential Commission of Inquiry Act No. 07 of 1978.</p> <p>The Commission has power to recommend the imposing of civil disability on those found guilty.⁸⁰</p> |
|---|--|--|

⁷⁸ 'Gamini Senarath acquitted in Litro Gas case' (*Economy Next*, 8 August 2019) available at <<https://economynext.com/gamini-senarath-acquitted-in-litro-gas-case-43987/>> accessed 19 February 2021

⁷⁹ Extraordinary Gazette No 2212/53 available at <http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf>

⁸⁰ Chandani Kirinde, 'Members of previous Govt. may face civil disability if found guilty by newly appointed Special Presidential CoI' (*DailyFT*, 1st February 2021) available at <<http://www.ft.lk/front-page/Members-of-previous-Govt-may-face-civil-disability-if-found-guilty-by-newly-appointed-Special-Presidential-CoI/44-712430>> accessed 1st February 2021

| | | |
|--|---|--|
| | <p>Corporation befitting his experience.</p> <p>Additionally, the CoI recommends that the respondents (members of the Anti-Corruption Committee) involved in the complaint be charged for the offences of fabricating evidence under the Penal Code.</p> | |
| <p>40. Complaint against abetting allegations of misappropriation of public funds in the Litro Gas case- complaint no. 416/2020</p> <p>Complainants: Lasantha Bandara</p> | | |
| <p>The complainant was arrested and investigated for accusations of abetting the misappropriating Rs 500 million from the Litro Gas funds. He was acquitted of charges by the Permanent High Court-at-Bar in August 2019.⁸¹</p> | <p>The CoI recommends that the respondent politicians and lawyers (members of the Anti-Corruption Committee, J.C. Weliamuna, Jayampathy Wickramaratne and others) involved in the investigation be charged for the offences of fabricating false evidence.</p> <p>The CoI recommends that a Special PCoI be</p> | <p>The appointment of a Special Presidential Commission of Inquiry to implement recommendations of the Presidential Commission of Inquiry into Political Victimization,⁸² established on 29th January 2021 under Special Presidential Commission of Inquiry Act No. 07 of 1978.</p> |

⁸¹ 'Gamini Senarath and 2 others acquitted over Litro Gas case' (*Ada Derana*, 8 August 2019) available at <<http://adaderana.lk/news/56947/gamini-senarath-and-2-others-acquitted-over-litro-gas-case>> accessed 1 February 2021

⁸² Extraordinary Gazette No 2212/53 available at < http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf >

| | | |
|---|--|---|
| | <p>appointed to inquire into the Anti-Corruption Committee established by the respondents, in order to recommend imposing 7 years of civic disabilities or other measures on those found guilty of acts of political victimization.</p> <p>Since the termination of the respondent was politically motivated, the CoI recommends appointing him to a position befitting his experience in the Sri Lanka Insurance Corporation.</p> | <p>The Commission has power to recommend the imposing of civil disability on those found guilty.⁸³</p> |
| <p>41. Complaint against the investigation into the murder of Lasantha Wickrematunge- complaint no. 415/2020</p> | | |
| <p>Complainants: Prasanna Nanayakkara</p> | | |
| <p>Former Senior DIG Prasanna Nanayakkara was arrested for allegations of concealing evidence related to the Lasantha Wickrematunge</p> | <p>The CoI recommends that complainant Prasanna Nanayakkara be acquitted of all charges filed against him in the Mount Lavinia Magistrate's Court.</p> | <p>These recommendations, if implemented, would cause setbacks to a long-delayed investigation and legal proceedings and would deter police and legal officers from</p> |

⁸³ Chandani Kirinde, 'Members of previous Govt. may face civil disability if found guilty by newly appointed Special Presidential CoI' (*DailyFT*, 1st February 2021) available at < <http://www.ft.lk/front-page/Members-of-previous-Govt-may-face-civil-disability-if-found-guilty-by-newly-appointed-Special-Presidential-CoI/44-712430> > accessed 1 February 2021.

| | | |
|---|---|--|
| <p>murder investigation, and was later granted bail.⁸⁴</p> | <p>An inquiry against the respondents should be conducted to determine disciplinary action and punishment for offences committed by them. The CoI recommends that the respondents involved in the case be charged for the offences of fabricating evidence and corruption under the Penal Code and the Bribery Act.</p> | <p>pursuing action in the future regarding cases which are considered to be politically sensitive.</p> <p>The family of the journalist Lasantha Wickrematunge filed a complaint with the United Nations Human Rights Committee in January 2021.⁸⁵ The complaint asserts that law enforcement agencies in Sri Lanka has either failed or interfered with attempts to conduct a credible investigation into the murder of the late journalist.⁸⁶</p> |
|---|---|--|

⁸⁴ Asian Mirror, 'Lasantha Wickramatunga Murder Case: Former DIG Prasanna Nanayakkara And SI Sugathadasa Released On Bail' available at <<https://asianmirror.com/news/item/27825-lasantha-wickramatunga-murder-case-former-dig-prasanna-nanayakkara-and-si-sugathadasa-released-on-bail>>

⁸⁵ The Globe and Mail, 'Daughter of slain Sri Lankan journalist files complaint with UN rights committee' available at <<http://theglobeandmail.com/world/article-daughter-of-slain-sri-lankan-journalist-files-complaint-with-un-rights/>>

⁸⁶ 'Slain Sri Lankan journalist Lasantha Wickrematunge's daughter files U.N. complaint' (*The Hindu*, 8 January 2021) available at <<https://www.thehindu.com/news/international/slain-sri-lankan-journalist-lasantha-wickrematunges-daughter-files-un-complaint/article33530770.ece>> accessed 6 April 2021

42. Complaint against accusation of fraudulent transfer of funds related to the Hyatt Regency case- complaint no. 352/2020

Complainants:

Neil Hapuhinna

The complaint Neil Hapuhinna was accused of fraudulent transfer of funds in the sale of Hyatt Regency property to Sinolanka Pvt. Ltd and misappropriation of funds from Litro Gas Company.

A formal award was delivered by an arbitration tribunal in Singapore on October 6, 2017 against Sinolanka, ordering the company to pay 7,432,062.72 Euros to Interna Contract Spa (who filed for arbitration) for the unlawful termination of the contract.⁸⁷

The CoI recommends that the respondents should be charged for the offence of fabricating evidence under the Penal Code. Appropriate disciplinary action should also be taken against police officers named as respondents, after holding inquiries.

This recommendation, if implemented, would undermine the independence of the investigators and indicate impunity for acts of large-scale corruption.

⁸⁷ Daily Mirror, 'Grand Hyatt Hotel Project Govt. suffers mammoth loss due to termination of contract' available at <<http://www.dailymirror.lk/expose/Grant-Hyatt-Hotel-Project-Govt-suffers-mammoth-loss-due-to-termination-of-contract/333-150691>>

43. Complaint against the investigation into the abduction of journalist Prageeth Ekneligoda- complaints no. 24/2020, 200/2020, 198/2020, 196/2020, 194/2020, 197/2020, 199/2020, 195/2020, 104/2020, 239/2020, 31/2020, 231/2020, 1052/2020 and 347/2020

Complainants:

Colonel Shammi Arjuna Kumararatne
 Priyantha Kumara Rajapaksa alias Nadan
 Vinie Priyantha Dilanjan Upasena alias Suresh
 Ravindra Rupasena alias Ranji
 Chaminda Kumara Abeyratne
 Kanishka Gunaratne
 Aiya Sami Balasubramaniam
 Tharanga Prasad Gamage
 TER Peiris
 Colonel Prabodha Siriwardena and others

| | | |
|---|---|---|
| <p>The complainants include several persons who were indicted for the abduction of and conspiracy to murder⁸⁸ journalist Prageeth Ekneligoda. The investigation had been delayed due to attempts at withholding evidence and the intimidation of witnesses.⁸⁹</p> | <p>The CoI recommends that several respondents (including former Minister Mangala Samaraweera, former Director of CID Shani Abeysekara and others) to the complaint be charged for offences of fabricating evidence, forgery and wrongful confinement.</p> <p>The CoI further recommends that complainants be</p> | <p>These recommendations, if implemented, would cause setbacks to a long-delayed investigation and legal proceedings and undermine the independence of the judiciary and the investigators. The investigation was marked by attempts at withholding evidence and the intimidation of victims and witnesses.</p> |
|---|---|---|

⁸⁸ Daily Mirror, 'Prageeth Ekneligoda case: Nine army officials indicted' available at <http://www.dailymirror.lk/breaking_news/Prageeth-Ekneligoda-case-Nine-army-officials-indicted/108-178597>

⁸⁹ Sunday Observer, 'Prageeth: "A politically motivated crime' available at <<http://www.sundayobserver.lk/2019/01/20/news-features/prageeth-%E2%80%9Cpolitically-motivated-crime%E2%80%9D>>

| | | |
|---|---|--|
| <p>Appearing before the CoI, Colonel Siriwardena alleged that the officers of the CID pressured him to state the abduction of journalist Prageeth Ekneligoda was carried out on the instructions of the former Defence Secretary Gotabaya Rajapaksa.⁹⁰</p> | <p>acquitted of all charges filed against them in the Homagama Magistrate’s Court. Similarly, the indictment in the case filed in the High Court against several complainants should be withdrawn.</p> <p>The CoI recommends that Colonel Shammi Arjun Kumararatne be given the post in the foreign service which was denied to him.</p> <p>The CoI recommends that an inquiry should be held and disciplinary action should be taken against several respondents in the police service.</p> <p>The CoI asserts that the Anti-Corruption Committee was targeting a particular group of people. Therefore, the CoI recommends the introduction of legal provisions to ensure the non-recurrence of similar mechanisms.</p> | |
|---|---|--|

⁹⁰ Zulfick Farzan, ‘PCoI witness claims CID officers pressured him to make statement on Ekneligoda’ available at <https://www.newsfirst.lk/2020/08/25/pcoi-witness-claims-cid-officers-pressured-him-to-make-statement-on-ekneligoda/>

| | | |
|---|---|---|
| | <p>Action should be taken against the FCID and related divisions for allegations of disregarding fundamental rights and ethics. The IGP should also consider the allegations of politicisation of the CID.</p> | |
| <p>44. Complaint against the investigation into the abduction of Keith Noayhr- complaints no. 232/2020, 353/2020, 297/2020, 257/2020, 253/2020, 241/2020, 242/2020, 204/2020, 239/2020, 203/2020 and 296/2020</p> <p>Complainants: Retired Major General Amal Karunasekara Bandara Dissanayake Bulathwatte Nishantha Jayathilake Chamika Sumith Corporal Nishantha Kumara and others</p> | | |
| <p>The complainants are linked with the investigation into the abduction of Keith Noayhr. The investigation was marked with long delays in arresting the suspects.⁹¹ Several persons linked with the investigation testified before the CoI claiming that they were coerced by CID</p> | <p>The CoI recommends that the complainants be acquitted of all charges filed against them in the Mount Lavinia Magistrate’s Court.</p> <p>Additionally, the CoI recommends that the respondents (including former Director of CID Shani Abeysekara, CID Inspector Nishantha Silva,</p> | <p>These recommendations, if implemented, would cause setbacks to a long-delayed investigation and legal proceedings and deter officials involved in the investigations from pursuing further action.</p> <p>Recommended action against investigators</p> |

⁹¹ Maneshka Bohram, ‘Phone records lead CID to big arrest in Keith Noyahr abduction case’ available at <<http://www.sundayobserver.lk/2018/04/15/news-feature/phone-records-lead-cid-big-arrest-keith-noyahr-abduction-case>>

| | | |
|---|--|---|
| <p>officials to give false statements⁹² and appear as witnesses.⁹³</p> | <p>MP Ranjan Ramanayake and others) involved in the case be charged for the offences of fabricating evidence under the Penal Code.</p> <p>CID officials involved in the investigation should also be charged with wrongful confinement under Section 338 of the Penal Code. A disciplinary inquiry should be held and action be taken against respondents in the police service. Similarly, the IGP should inquire whether misuse of public funds occurred during the course of the investigation.</p> | <p>performing their duties may also set in motion a chilling trend where fear of reprisal may deter such officials from taking necessary actions.</p> |
| <p>45. Complaint against the investigation into the purchase of a land by the D.A. Rajapaksa Foundation- complaint no. 1885/2020</p> <p>Complainants: William Wijesinghe Gamage</p> | | |
| <p>This case is related to the complainant's involvement in the purchase of a land in the Gampaha District by the D. A.</p> | <p>The CoI recommends that the complainant William Wijesinghe Gamage (who was part of the 2010 Parliamentary election campaign of former</p> | <p>These recommendations, if implemented, would cause setbacks to a long-delayed investigation and legal proceedings and deter</p> |

⁹² Zulfick Farzan, 'CID misled court over Lasantha Wickrematunge killing; Ex-Intelligence Officer' available at <<https://www.newsfirst.lk/2020/10/28/cid-misled-court-over-lasantha-wickrematunge-killing-ex-intelligence-officer/>>

⁹³ Ceylon Today, 'Journalist Keith Noyahr abduction case: Was coerced into appearing as State witness - Rtd Sgt Somasuriya' available at <<https://ceylontoday.lk/news/journalist-keith-noyahr-abduction-case-was-coerced-into-appearing-as-state-witness-rtd-sgt-somasuriya>>

| | | |
|--|---|---|
| <p>Rajapaksa Foundation. The FCID investigated how the funds were obtained by former Economic Development Minister Basil Rajapaksa to purchase the land.⁹⁴ The Gampaha Magistrate’s Court ordered to stop the sale and transfer of the land.⁹⁵</p> | <p>Minister Basil Rajapaksa) be acquitted of all charges filed against him in the Gampaha Magistrate’s Court and disciplinary action be taken against police officers of the investigation.</p> | <p>officials involved in the investigations from pursuing further action.</p> |
| <p align="center">46. Complaint against the investigation into the 16 acre land in Malwana- complaint no. 1968/2020</p> <p>Complainants: Thirukumar Nadesan</p> | | |
| <p>The complainant was arrested in relation to the investigation into the 16 acre land in Malwana and was later released on bail.⁹⁶ The land was believed to have been bought by the former Economic Development Minister Basil Rajapaksa</p> | <p>The CoI recommends actions be taken against Upul Kumara Ramawickrama for filing a false complaint against Basil Rajapaksa at the FCID. Disciplinary action should also be taken against the two police officers who filed charges at the Pugoda Magistrate’s Court based on the alleged false complaint.</p> | <p>These recommendations, if implemented, would interfere with proceedings of the judiciary, the Attorney General’s Department and undermine the independence of investigators.</p> |

⁹⁴ Daily Mirror, ‘FCID obtains order on Basil’s office’ available at <<https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20151125/281500750162135>>

⁹⁵ ibid

⁹⁶ Mahanama Vithanage, ‘Thirukumar Nadesan arrested, granted bail’ (*Daily News*, 18 October 2016) available at <<http://www.dailynews.lk/2016/10/18/local/96297>> accessed 19 February 2021

| | | |
|--|--|---|
| <p>using public funds. The former Minister had denied the ownership of the land. Pugoda Magistrate and Additional District Judge ordered that the land be auctioned in the case filed against the former Minister by the FCID under the Money Laundering Act.⁹⁷</p> | <p>The CoI further recommends the withdrawal of the indictment filed in the High Court of Gampaha.</p> | |
| <p align="center">47. Complaint against allegations of misuse of public funds against Commissioner of the Colombo Municipal Council- complaint no. 956/2020</p> <p>Complainants: Badrani Jayawardene</p> | | |
| <p>The complainant had been previously required to refrain from reporting to work due to allegations of misuse of public resources for election campaigns while she was the Commissioner of the Colombo Municipal Council (CMC). Colombo Mayor A. J. M. Muzzammil has also claimed that the Commissioner</p> | <p>The CoI recommends that the complainant Badhrani Jayawardene be allowed to report to work in the Colombo Municipal Council and her retirement benefits be restored.</p> | <p>This recommendation, if implemented, would undermine the independence of the public service.</p> |

⁹⁷ 'FCID arrests Nirupama Rajapaksa's husband' (*Daily Mirror*, 17 October 2016) available at <<http://www.dailymirror.lk/117555/www.hsbc.lk>> accessed 18 February 2021

| | | |
|---|---|---|
| <p>had violated elections laws by transferring CMC employees from department to department.⁹⁸</p> | | |
| <p>48. Complaints against removals of several public officers due to various allegations- complaints no. 571/2020, 434/2020, 1871/2020, 950/2020, 1140/2020, 1141/2020, 60/2020, 555/2020, 551/2020, 554/2020, 274/2020, 1320/2020, 610/2020 and 567/2020</p> <p>Complainants: Rohana Pradeep Jayasuriya Nimalsiri Lakshman Ajith Pushpakumara Priyantha Gunathilake Bandara and others</p> | | |
| <p>The complainants include several officers of the Public or Police Service who had previously been removed from service due to allegations of misuse of public resources, politically motivated actions and allegations of financial irregularities.</p> | <p>The CoI also recommends the reinstatement and compensation of several officers of the Public or Police Service who had previously been removed from service due to allegations of misuse of public resources, politically motivated actions and allegations of financial irregularities.</p> | <p>These recommendations, if implemented, would undermine the independence of the public service and the investigators.</p> |

⁹⁸ Yohan Perera and Jehan Gunasekera, 'Muzzammil on pre-election war path' (*Daily Mirror*, 23 December 2014) available at <https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20141223/281672548296648>> accessed 19 February 2021

Implications and concerns regarding the recommendations of the CoI

The recommendations of the CoI, if implemented, would lead to the derogation of due process and fair trial rights guaranteed by the Constitution and undermine the independence of several institutions such as the judiciary, the Attorney General's Department and others. Furthermore, the recommendations may set a precedence for deterring officials from taking necessary action in investigating and prosecuting cases considered politically sensitive, in addition to discouraging witnesses from coming forward due to fear of reprisal. The outcomes of the CoI may also have long-term implications for the on-going accountability processes and cause further setbacks to long-delayed investigations and legal proceedings and thus further entrenching impunity in Sri Lanka.

On 9th April 2021, Prime Minister Mahinda Rajapakse tabled a Resolution in Parliament seeking approval to implement the recommendations mentioned in Item No. 09 and 10 in the final report of the CoI. Item No. 09 and 10 include recommendations on several emblematic cases and on-going investigations related to corruption and financial irregularities flagged in the table above. The motion is listed to be moved in Parliament by the Prime Minister this week.

The Resolution seeks the approval of the Parliament to refer the decisions and recommendations made by the CoI on the complaints in Item No. 09 to the relevant authorities, including the Commission to Investigate Allegations of Bribery or Corruption, the Public Service Commission, the Inspector General of Police, the Minister in-charge of the relevant Ministries and the Secretaries to the Ministries, for implementation. It also seeks approval to institute criminal proceedings against investigators, lawyers, officers of the Attorney General's Department, witnesses and others involved in the cases, and to dismiss several cases currently pending in court. If

the Resolution were to be passed in Parliament, it would undermine the independence of the judiciary and the rule of law.

These concerns are exacerbated by the establishment of the SPCoI, which provides the institutional framework for a mechanism geared towards targeting individuals and institutions, undermining the ability of such individuals and institutions to uphold the rule of law. The SPCoI is empowered to recommend the imposition of civic disability on persons found guilty of political victimization listed in Item No. 08 of the final report of the CoI. Whilst a CoI is only a fact-finding body, the powers of the SPCoI has a far-reaching impact on the basic rights of citizens. CPA briefly discusses concerns with the SPCoI below.

Section II- The SPCoI to implement recommendations of the CoI on Political Victimization

Section II outlines the legal framework of Special Presidential Commissions of Inquiry and includes a brief account of several past SPCoI initiatives to demonstrate the implications of their recommendations for the basic rights of citizens. The section also includes an overview of the mandate of the current SPCoI, which was extended in April 2021.

Legal Framework and related issues

Special Presidential Commissions of Inquiry Act No. 4 of 1978

The Special Presidential Commissions of Inquiry Bill was presented to the National State Assembly on 30th January 1978 and passed on 2nd February 1978. The Bill was categorized as “urgent in the national interest” and passed with undue haste, circumventing the constitutional requirement for it to be on the agenda paper of the Parliament for seven days, and precluding public engagement.⁹⁹

According to Section 2 of the Act, a Special Presidential Commission of Inquiry can be appointed whenever the President thinks it is necessary to inquire and obtain information pertaining to the administration of any public or local body, any law or administration of justice or any matter in respect of which an inquiry will, in his opinion, be in the public interest, safety or welfare.

The powers of a Commission of Inquiry appointed under the Act are set out in section 7 of the Act.

⁹⁹ Civil Rights Movement of Sri Lanka, Statement on Hasty Legislation & the Rights of the People (19th February 1978)

- (1) (a) to procure and receive evidence and examine persons as witnesses, as the commission may think it necessary
- (b) to require the evidence of any witness to be given on an oath or affirmation and to administer or to be administered by an officer authorised by the commission an oath or affirmation to every such witness
- (c) to summon any persons to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce a document or other thing in his possession
- (d) notwithstanding any of the provisions of the Evidence Ordinance, or of any other written law, to admit any evidence which may be inadmissible in any court in civil or criminal proceedings
- (e) subject to any direction contained in the warrant, to admit or exclude the public and press to or from the inquiry
- (f) to recommend that any person whose conduct is the subject of inquiry under this Law or who is implicated or concerned in a matter under inquiry, be awarded such sum of money as in the opinion of the commission) may have been reasonably incurred by such persons as costs and expenses.
- (2) All or any of the following powers may by an amendment to the warrant be conferred by the President on a commission established under this Law, if the commission so requests,
- (a) To require by written notice the manager of any bank or lending institution or any officer to produce any book or document of the bank or institution containing entries relating to any transaction with any person whose conduct is being inquired into by the commission
- (b) To require by written notice the Commissioner General of Inland Revenue or the Controller of Exchange or any other related officer to furnish all

information available to such official relating to the affairs of any person whose conduct is being inquired into by the commission

- (c) To prohibit by written order, the manager of any bank from permitting or allowing the withdrawal of any funds standing to the credit of any account in that bank of any such person specified in the order as the commission considers necessary, except any such reasonable withdrawal approved by writing
- (d) To require by written order the Controller of Immigration and Emigration to impound the passport and other travel documents of any such person as shall be specified in the order, being a person whose evidence or presence may be necessary at any inquiry, until such time as such order is revoked.
- (e) To require by written order any such police officer as shall be specified in that order to take all such steps as may be necessary to prevent the departure from Sri Lanka of any such persons so specified, being a person whose evidence or presence may be necessary until such time as the order is revoked.
- (f) To require by written order any such telecommunication authority or officer to produce as so specified any book or document containing entries relating to any message which is in possession of any such authority as the commission considers necessary.

(3) The commission shall have the power to call for representations from the public relating to matters within the scope of its terms of reference and to inquire into and report upon such representations.

(4) A commission established under this Law may exercise any power conferred on the commission under subsection (1) and any person to whom the commission issues any direction in the exercise of such power shall carry out direction notwithstanding anything to the contrary in any other law.

Under Section 9 of the Act, the commission is authorized to recommend civic disabilities where it finds at the inquiry and reports to the President that any person has been guilty of any act of political victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court, tribunal or public body, or in relation to the administration of any law. The President shall therefore cause such findings to be published in the Gazette and direct that such report be published.

Civic disability thus entails the disqualification of a person from being an elector and from voting, or from being nominated as a candidate at elections (Presidential, Parliamentary and local government); and from being employed or holding office as a public officer.¹⁰⁰

It is also important to note that in terms of the act, any report, finding or recommendation by a commission shall be final and conclusive, and cannot be questioned in any court or tribunal.¹⁰¹ However, recommendations of several past initiatives related to SPCoIs have been reviewed by courts.

Past initiatives related to SPCoI

1. Special Presidential Commission of Inquiry depriving civic rights of Mrs. S. Bandaranaike

Mrs. Sirimavo Bandaranaike was charged with allegations of abuse and misuse of power and corruption, and was summoned before a Special Presidential Commission of Inquiry established in 1978.¹⁰²

¹⁰⁰ Section 9(3)

¹⁰¹ Section 9(2)

¹⁰² Daily News, 'Sirimavo's enforced exile', available at <https://www.dailynews.lk/2017/12/13/features/137180/sirimavo%E2%80%99s-enforced-exile>

The Court of Appeal granted a Writ of Prohibition against the Special PCoI, stating that the Special Presidential Commission of Inquiry Law was not retrospective in its function and therefore an inquiry of a period before its enactment was beyond its jurisdiction. However, this was circumvented by two amendments with retrospective effect, and the unprecedented steps taken by Parliament to declare that the verdict of the Court of Appeal was null and void. Mrs. Bandaranaike was subsequently found guilty of the aforementioned allegations by the SPCoI, resulting in the imposition of civic disability and her expulsion from the Parliament in 1980.¹⁰³

The day after her expulsion, two sudden amendments were made to the Parliamentary Elections Act and the Presidential Elections Act. The amendments prohibit "...any person who is disqualified by a resolution from in any way participating during the period of disability at a parliamentary (and presidential) election..." and acting in contravention to the prohibition is an offence punishable with imprisonment of up to six months or a fine of up to one thousand rupees or both.¹⁰⁴

Dr. Colvin R. de Silva stated that "to subject the citizen to civic disabilities, that is to say, to the loss of his civic right, is to sentence him to political death" and that the act of political interference with the judiciary is a "shameful episode in our legislative history whose adverse impact on the independence of the judiciary and on judicial independence is incalculable."¹⁰⁵

In a letter to then President J.R. Jayawardena, Bishop Lakshman Wickremesinghe, Chairman of the Civil Rights Movement of Sri Lanka, wrote that "to make Mrs. Sirimavo R.D. Bandaranaike subject to disability, on the recommendation of the Special

¹⁰³ *ibid*

¹⁰⁴ Civil Rights Movement of Sri Lanka, 'Surprise amendments restricting participation in Presidential and Parliamentary Elections' (2nd November 1980)

¹⁰⁵ Sunday Observer, 'Imposition of civic disability on Sirimavo Bandaranaike: A monumental political mistake' available at <http://archives.sundayobserver.lk/2004/10/10/fea26.html>>

Presidential Commission of Inquiry” would “undermine one of the basic foundations of a vibrant democracy. He also wrote that “the proceedings of the Special Presidential Commission of Inquiry cannot be described as a fair and impartial judicial process.”¹⁰⁶

2. Special Presidential Commission of Inquiry appointed in 1995 to inquire into alleged malpractices in certain government bodies

The Special Presidential Commission of Inquiry appointed in 1995 to inquire into alleged malpractices in certain government bodies held that the Respondent Tenahandi Wijayapala Hector Mendis is guilty of misuse or abuse of power under Section 9(1) of the Special Presidential Commissions of Inquiry Law and recommended that he be made subject to civic disability under the aforementioned provision.¹⁰⁷ The Supreme Court in *Wijayapala Mendis v P.R.P. Perera* found that the recommendation by the Special PCoI to impose civic disability was arbitrary and unreasonable.

3. Special Presidential Commissions of Inquiry into the assassinations of Lalith Athulathmudali and Vijaya Kumaratunga

The rules of fair trial were ignored and the Commission took the evidence of persons who acted on personal animosities as concluding the guilt of others. Statements repeated to second and even third persons were treated as ‘unassailable evidence.’ Former Supreme Court justice A.C. Alles rejected the conclusions of the Commissioners that a prima facie case had been established against those ‘implicated’ because they ‘may’ have had a ‘motive.’ As Justice Alles pointed out, ‘guilt by motive’ was ‘completely alien to established principles of criminal law.’

¹⁰⁶ Letter to President JR Jayawardene by Bishop Lakshman Wickremesinghe 14 October 1980 from A selection of writings by the late Right Reverend Bishop Lakshman Wickremesinghe, Bishop of Kurunegala, Chairman of the Civil Rights Movement of Sri Lanka, published by CRM on Human Rights Day 10 December 1983.

¹⁰⁷ *Wijayapala Mendis v P.R.P. Perera* [1999] 2 SriLR 110, page 119 available at < <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/014-SLLR-SLLR-1999-V-2-WIJAYAPALA-MENDIS-v.-P.-R.-P.-PERERA-AND-OTHERS.pdf> >

Reflecting on the findings of the SPCoI, author of ‘Sri Lanka: Arrogance of Power – Myth, Decadence and Murder’, academic Rajan Hoole observed that, ‘the legal process has become debased to a point where its function is more to suppress the truth about major national calamities than to bring it out and make the guilty accountable.’¹⁰⁸

Mandate of the Special Presidential Commission of Inquiry into Political Victimization

The Special Presidential Commission of Inquiry to implement recommendations of the Presidential Commission of Inquiry into Political Victimization (the SPCoI) was appointed by Gazette (Extraordinary) No. 2212/53 on 29th January 2021.¹⁰⁹ The SPCoI initially consisted of Hon. Dhammika Priyantha Samarakoon Jayawardena Esquire (Judge of the Supreme Court), Hon. Khema Kumudini Wickremasinghe (Judge of the Supreme Court) and Hon. Rathnapriya Gurusinghe (Judge of the Court of Appeal). Following the resignation of Justice Rathnapriya Gurusinghe, Justice Sobhitha Rajakaruna was appointed as a commissioner.¹¹⁰

The mandate of the SPCoI to implement recommendations of the Presidential Commission of Inquiry into Political Victimization is as follows.

The SPCoI is mandated to investigate if the respondents mentioned in the item No. 08 [relating to the Anti-Corruption Committee] of the Commission of Inquiry into Political Victimization report was,

¹⁰⁸ ‘Real risks of a special presidential commission of inquiry’ (*Sunday Times*, 8 Dec 2019) available at <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20191208/281994674365356>

¹⁰⁹ Gazette Extraordinary No. 2212/53 of 29th January 2021 available at <http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf>

¹¹⁰ Gazette Extraordinary No. 22215/59 of 19th February 2021 available at <http://www.documents.gov.lk/files/egz/2021/2/2215-59_E.pdf>

I. Violating the provisions of the Constitution of Democratic Socialist Republic of Sri Lanka, while destructing the oath which has been given in accordance with the provision of the said Constitution

II. Abuse or misuse of power, interference, fraud, corruption, criminal misuse, criminal breach of trust or nepotism

III. Political retaliation against someone

IV. When,

- (a) Making any appointment or transfer,
- (b) Granting a promotion,
- (c) Terminating the service of someone due to any type of disorder
- (d) Violating of any written law.¹¹¹

If the respondents have engaged in the above malpractices to recommend whether such person should be subjected to a community disability according to the provisions of Article 81 of the Constitution of the Democratic Socialist Republic of Sri Lanka and Section 9 of the Special Presidential Commission of Inquiry Act No. 7 of 1978, as amended by the Special Presidential Commission of Inquiry (Special Provisions) Act No. 4 of 1978.

The SPCoI is authorized to conduct the necessary investigations and transmit to the President the Final Report or Interim Reports within three months of the date of appointment of the Commission. The SPCoI is directed to hold any inquiry or investigation without public awareness. All Government Officers, Officers of the Statutory Boards and other persons from whom the SPCoI may request assistance or information are directed to give all possible assistance and provide all possible information.

¹¹¹ Extraordinary Gazette No. 2212/53 of 29th January 2021 available at http://www.documents.gov.lk/files/egz/2021/1/2212-53_E.pdf >

All witnesses before the SPCoI are given immunity from prosecution as per Section 14 of the Special Presidential Commission of Inquiry Act.

The mandate of the SPCoI was amended to include item No. 2 by Gazette (Extraordinary) No. 2221/54 of 1st April 2021, which states,

“[W]ithout prejudice to the particular specificity of the matters to be inquired into and reported upon by you (the Commissioners), in terms of item No. 1 of the original Terms of Reference, issued to you, as contained in the Gazette (Extraordinary) No. 2212/53 published on 29th January, 2021, in addition thereto, to also inquire into and report whether all or any of the findings, decisions and recommendations contained in the aforesaid report of the Presidential Commission of Inquiry, made in respect of all the persons identified therein, are justified and whether any or all of the same, should be implemented or caused to be implemented, or otherwise pursued and if you, in your discretion deem so necessary, to cause any limited or general investigation or further investigation, into any matter arising from and within the terms of this amended terms of reference, or in the alternative thereto, limiting your inquiry to the detailed consideration and comprehensive scrutiny of the contents of the aforesaid Report Per Se, either in general, or in particular, as you may deem fit.”¹¹²

¹¹² Extraordinary Gazette No. 2221/54 of 1 April 2021 available at <
http://www.documents.gov.lk/files/egz/2021/4/2221-54_E.pdf>

Conclusion

In this commentary, CPA has outlined the background and the legal framework of the CoI and the SPCoI with reference to past initiatives, to briefly illustrate the underlying issues and implications of CoI and SPCoI mechanisms in relation to political victimization. While acknowledging the importance of access to legal safeguards for individuals who claim to be subjected to political victimization, it is evident that the existing legal framework is in need of structural reforms to ensure that such safeguards are not instrumentalized to impede attempts to seek accountability and justice. CPA further notes that the mandate and findings of the CoI have been challenged in court by various parties including parliamentarians, public officials and the civil society.

CPA continues to monitor developments related to the SPCoI. However, there is limited information available in the public domain with regards to the on-going proceedings of the SPCoI. The proceedings have been criticized due to allegations of politicization and lack of transparency. Considering its mandate and significant implications it may carry, CPA stresses the importance of transparency and accountability of such mechanisms.

Finally, CPA reiterates its concerns with the processes discussed in the present commentary and its implications for the rule of law in Sri Lanka. The commentary flags the potential impact the recommendations of the CoI may have and attention must be on next steps including the Resolution presently before Parliament and subsequent steps that maybe taken. All these measures may have significant implications to strengthen an already powerful executive, undermine investigations and judicial proceedings and result in a trust deficit in institutions and processes in Sri Lanka. It is thus incumbent to have greater scrutiny, debate and challenge any action that may contribute to the democratic backsliding in Sri Lanka.