


**Feature**

## Hybrid court unworkable in 'Sri Lanka' context: K. Sivapalan

[TamilNet, Monday, 21 September 2015, 22:41 GMT]

**Internal investigations on violence against Tamils carried out by Commissions of Inquiry (CoI) with members appointed by Sri Lanka officials in the past have always been a failure. "The main reason for the failures can be traced to the absence of political will in successive Buddhist majority governments in 'Sri Lanka' to ensure accountability for grave violations of Human Rights of Tamil people," says K. Sivapalan, the exiled deputy chairperson of a Tamil rights group, North East Secretariat on Human Rights (NESoHR). Two of the commissions had "international" presence in 1963 and in 2006, in a hybrid context, but failed to deliver justice. As a lawyer who represented several victims from the Eastern Province, Mr Sivapalan says, for any criminal investigations to be successful, hearings of the courts will have to be held outside the island.**



K Sivapalan

The present agreement between the SLFP and UNP is only for two years. If the present government loses grip on governance, even a local mechanism assisted by foreign Experts and UNHRC will not be possible, according to Mr Sivapalan who is an Attorney-at-Law (Ilangkai), Solicitor (England and Wales) and Barrister and Solicitor (Australian Capital Territory).

Mr Sivapalan left the island soon after the Scandinavian ceasefire monitors pulled out, after serving as a local member of the SLMM. He has also been the deputy chairperson of North East Secretariat on Human Rights (NESoHR), which was formed during the internationally mediated peace process as the Human Rights body of the Tamil Nation. The NESoHR functioned in the Tamil homeland from July 2004 till January 2009.

### Full text of the article by Mr Sivapalan follows:

G.L.Peiris, a former SL Minister of Justice has also admitted the inability of the domestic system, referring to the three zonal Commissions of Inquiry appointed in November 1984 to investigate Involuntary removals and Disappearances: "Sri Lanka government owes a duty to the kith and kin of those disappeared to ascertain the fate of their loved ones, and offer some compensatory relief to lighten their misery but it is impossible for them to embark on a futile and impossible task to apportion the blame."

There had been nearly eighteen Commissions of Inquiry in the past from 1963 to 2013 and the latest being the Presidential Commission on Missing Persons chaired by Maxwell Paranagama, mandate of which was later extended to cover war crimes.

Majority of these commissions were associated with violence against Tamils. Two of the commissions had "international" presence.

The first notable one being the Commission appointed in June 1963 by William Gopallawa, Governor General of Ceylon to investigate the killing in 1959 of the then Prime Minister S.W.R.D.Bandaranaike and to determine whether there was a wider political conspiracy in the assassination.

Another Commission of Inquiry was appointed to investigate and inquire into sixteen serious violations of Human Rights since 1st August 2005, including the Trincomalee 5 (students) and Moothoor 17 ACF Humanitarian Workers all of whom were Tamil speaking.

The Bandaranaike Commission of Inquiry had Justice T.S.Fernando, Judge of the Supreme Court of Ceylon and two "international" Judges, Hon. Adel Younis, a Judge from United Arab Emirates and Hon.G.C.Mills-Odoi, Judge of the Court of Appeal of Ghana. Both judges were invited by the SL government to participate in the "hybrid court."

The second Commission did not have foreign Judges but had a body of International Observers, the International Independent Group of Eminent Persons (IIGEP), headed by Justice S.N. Bhagwati, a former Chief Justice of India and a former head of the UN Human Rights Committee. The members of the IIGEP were nominated by the then President of Sri Lanka, Mahinda Rajapaksa.

But, during its tenure, the IIGEP quit half way after the investigations began, citing conflict of interest in the proceedings before the Commission, lack of effective legal framework for victim and witness protection, lack of transparency and timeliness in the proceedings, lack of full co-operation by state bodies, and lack of financial independence of the commission.

The IIGEP recommended that the government of Sri Lanka not allow the Attorney General (AG) to function as Counsel assisting the Commission of Inquiry, as there is a conflict of interest with the AG being the Principal legal Officer of the State.

'Sri Lanka' continued to allow the AG to intervene in IIGEP's functions.

When Dr. Manoharan father of Rajiharan, one of the 5 students murdered by the STF in the Trincomalee beach on 02 January 2006, started to give evidence via Satellite from a European country, the testimony presented damaging details implicating the security forces. The SL government promptly withdrew the funding and stopped any video evidence. Dr. Manoharan has recently said that he will not go to 'Sri Lanka' to give evidence if the Hybrid court sits in the island.

Tamil National Alliance (TNA) Member of Parliament (MP) Mr. Sumanthiran has gone on record stating that there are more than 80 witnesses in Sri Lanka who could give evidence.

However, Mr. Muthurasa, the father of Dilrukshan, who was beaten and tortured by prison officers in Vavuniyaa, Anuradhapura and Mahara Prisons, said in a recent radio interview that he would not give evidence if the sittings take place in 'Sri Lanka' as he knows how his son was treated. His son died in Mahara hospital in July 2012 as a result of the injuries after being in coma for weeks.

As an attorney who participated in several cases, I think the same will be true for the other potential witnesses.

With the lack of proper victim and witness protection, and the climate of impunity enjoyed by the perpetrators of violence against Tamils, potential witnesses will fear for their lives if asked to give evidence in 'Sri Lanka' against members of the SL State Armed Forces.

For any criminal investigations to be successful hearings of the courts will have to be held outside the island and arrangements have to be made for the witnesses to settle in a country away from 'Sri Lanka' if the local climate continued to be hostile.

Lawyers like me who have appeared even in Courts in matters of Habeas Corpus Applications and in Inquest proceedings of innocent youths killed by the members of SL Armed forces have firsthand knowledge of how witnesses and relatives of the deceased are threatened, if they are prepared to give evidence against them.

In the Trincomalee Gandhinagar 3 murder case, where there was a 'Hartal' (General shut down of shops, working places, protest rally and sit ins) in Trincomalee on 11

October, 2002, observed by Tamil people condemning the killing of 7 Tamils on 9 October 2002 at Kaanchirankudaa in Amparai district within the Eastern Province by the Special Task Force (STF).

The STF is a division of the SL Police, originally trained by the Mossad of Israel at the request of the then SL president J.R.Jayawardene, who was from the UNP and the uncle of the present SL Prime Minister Ranil Wickramasinghe, who is also from the UNP. J.R.Jayawardene's son Ravi Jayawardene was the first Commander of the STF.

The three Tamil youths, namely, S. Konalingam and S. Mayooran from Gandhinagar, and N. Sasitharan from Palaiyoothu, were killed in the attack by the SL Police from Uppuveli Police Station.

I watched the interest of the victims and Ajith Rohana who was the Police Spokesperson in the Rajapakse Government lead evidence.

The only witness who could identify the policemen believed to be the murderers, was threatened by the SL police so that he left the town and later left the island and went to the Middle East without attending the identification parade and the case collapsed.

The stability of the present Srisena/Wickremasinghe government is questionable given the presence of extreme Sinhala nationalism nurtured by the predecessor Government.

There are about 54 members from the UPFA including the former SL President who was the Defence Minister and the Supreme Commander of the Armed Forces and who according to the chain of command likely bear responsibility for the crimes of the SL Armed Forces. They sit in the opposition benches.

SL President Maithripala Srisena was the acting Minister of defence during the last days of the war. One can hardly expect full cooperation for a Hybrid mechanism, the mission of which is to determine culpability to crimes.

The agreement between the SLFP and UNP is only for two years. If the present government loses grip on governance, even a local mechanism assisted by foreign Experts and UNHRC will not be possible.

#### **Related Articles:**

- 17.09.15 [Hybrid Mechanism saves State lacking political will, fools T..](#)
- 10.02.15 [NESoHR welcomes genocide resolution by Northern Provincial C..](#)
- 20.10.14 [NESoHR releases collated reports 2005-2009](#)

---

#### **Find this article at:**

<http://www.tamilnet.com/art.html?catid=79&artid=37940>

Reproduction of this news item is allowed when used without any alterations to the contents and the source, TamilNet, is mentioned

[News](#) | [Features](#) | [Opinion](#) | [Palaka'ni](#) | [Photo Features](#) | [TN Transcription](#)  
[Web feeds](#) | [Feedback](#) | [Home](#) | [About us](#)