



ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය }
எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය }
திகதி }
Date }

18.02.2019

01. Ms. F.F. Rameez
166, Moor Street, Trincomalee
02. Ms. S.B.M. Fazal
74/5, CEB Road, Love Lane
Trincomalee
03. Ms. S.M. Safeez
256/32, Jet Road, Trincomalee
04. Ms. R. Roshan
59A, Love Lane, Trincomalee

Petitioners

01. Principal
Tri/Tri Sri Shanmugam Hindu Ladies
College, Trincomalee
02. Zonal Director of Education
Zonal Department of Education
Trincomalee
03. Provincial Director of Education
Department of Provincial Education
(Eastern Province)
Inner Harbour Road, Orr's Hill
Trincomalee
04. Secretary
Ministry of Education, "Isurupaya"
Battaramulla

Complaint No: HRC/TCO/27/18

Respondents

1. FACTS OF THE COMPLAINT

The complaint dated 21st May 2018 was made at the Trincomalee Regional Office of the Human Rights Commission of Sri Lanka and registered under the number HRC/TCO/27/18.

ප්‍රධාන කාර්යාලය }
பிரதான அலுவலகம் }
Head Office }
දුරකථන }
தொலைபேசி }
Telephone }

14, ආර්. ඒ. ද මෙල් මාවත, කොළඹ - 04.
14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

සභාපති }
தவிசாளர் }
Chairperson }
ලේකම් }
செயலாளர் }
Secretary }

011-2505451
011-2505521

ෆැක්ස් }
தொலைநகல் }
Fax }
ක්වේට් }
தூரிக அழைப்பு }
Hotline }

011-2505541/74
011-2505575
1996

විද්‍යුත් තැපෑල }
மின்னஞ்சல் }
e-mail }
වෙබ් }
இணையம் }
Web }

sechrc@sltnet.lk
www.hrcsl.lk

The complainants, Mrs. Fathima Rameez, Ms. Sajana Babu Mohommed Fazal, Ms. Sifana Mohamed Safees and Ms. Rajeena Roshan are assistant teachers at Sri Shanmuga Hindu Ladies College, which is a National School in Trincomalee. The complainants state that they have been prohibited from wearing Abaya (Muslim women's traditional dress) by the Management Committee headed by the Principal of the school.

The complainants also state that the Principal and the Management Committee shared details of this matter with parties not related to the issue, which resulted in creating communal friction between communities that have been co-existing in the area.

The complainants state that at the mediation meeting held on 26th April 2018 at the Zonal Education Office, Trincomalee with the Additional Provincial Director of Education, Eastern Province they were forced to accept an attachment to another school as a temporary solution. At the meeting the officials of the Ministry of Education stated that they would take necessary measures to resolve the issue within a three month period.

2. FIRST RESPONDENT'S RESPONSE TO THE COMPLAINT

The Regional Office of Human Rights Commission, Trincomalee registered this complaint on 21st May 2018 and called for a report with all relevant documents and testimonials from the Principal, T/T/Sri Shanmuga Hindu Ladies College, Trincomalee.

In the report the Principal at the time, Ms. Sulochana Jeyabalan, states that this school was established in 1923 by philanthropist Mrs. Thangamma Shanmugapillai to educate women. Until the school was taken over by the state in 1961, it was administrated by Mrs. Thangamma and her relatives who ran the school according to Hindu practices and cultural observances, while also including those of other religious denominations. In 1996 the school was upgraded to a "National School" and named T/Sri Shanmuga Hindu Ladies College. The respondents state that they have been maintaining Hindu Culture for more than 95 years and there is an unwritten dress code that women teachers should wear "saree". They point out that although teachers of all religious denominations have worn saree in past they have never forced any teacher to follow Hindu practices. They state that teachers are allowed to wear saree in a way in which they can express their individual religious or ethnic identities.

The respondent school further said, the complainants Mrs. S.M.F. Fathima Fawmida, Mrs. Sajana Babu Mohamed Faisal, Mrs. Shifana Mohamed Shafees and Ms. R. Roshan were appointed as teachers in 2013, 2014, 2016 and 2018 respectively, and reportedly wore sarees from the day they assumed duty at the school, at all times, until 22nd April 2018. The Respondents also state that historically Muslim women in Sri Lanka wore saree and even in school text books are depicted wearing saree and that the "Abaya" was introduced only recently in Sri Lanka.

At a meeting held on 26th April 2018 at the Zonal Education office the respondent school stated that their action should not be construed as against Muslims or Islam and their only aim is to protect Hindu tradition at the school, which has been followed for decades. They stated that it was decided to issue a temporary transfer to the Complainants until the Education Ministry makes a decision regarding this issue. Accordingly, the complainants were transferred to T/Zahira College with effect from 27th April 2018 to 26th July 2018.

3. ACTION TAKEN BY THE COMMISSION AND OUTCOMES

The Human Rights Commission scheduled an inquiry at the Head Office on 09th October 2018, which the complainant attended but the fourth Respondent, Secretary – Ministry of Education, did not attend, and did not inform the Commission of the reason for his absence.

At the inquiry the complainants stated their position as mentioned above in their initial submissions. In addition to reiterating their right to wear the Abaya, the complainants stated that even though they informed the school they were willing to wear an Abaya in a colour of the school's choice their request was denied by the school. Due to the absence of the Respondents the inquiry was adjourned to 23rd October 2018 and it was decided to call the Principal of the particular school, the Zonal Director of Education, Trincomalee, Provincial Director of Education, Trincomalee and Secretary Ministry of Education. The Secretary, Ministry of Education sent a letter dated 16th October 2018, saying that he received the summons late and requested another date.

The inquiry was again held on 23rd October 2018, which the complainants and the Zonal Director of Education, Trincomalee attended. The Secretary, Ministry of Education and the Principal of the Respondent school once again did not attend or send reasons for their absence

On behalf of the Complainants, their legal representative stated that the temporary transfer of the complainants to T/Zahira College would come to end on 26th October 2018, and since there was no further arrangement of extension of the transfer period the complainants have to report to duty at T/Sri Shanmugam Hindu College where he said the Complainants must be allowed to work in their traditional dress without any hindrance from the Principal. The legal representative requested the Ministry of Education to provide a permanent solution to the problem.

The Zonal Director of Education pointed out that the Complainants had in the past attended school in saree with a scarf to cover their neck and head, and he has no objection to them wearing the same again. The Zonal Director of Education also stated that he has no authority with regard to the transfer of the complainants or to take any other measures regarding this school since it is a "National School" supervised by the Ministry of Education.

After hearing both parties' arguments, the Commission directed the Provincial Director of Education, Eastern Province, to make necessary arrangements for the complainants to report to duty at T/Sri Shanmuga Hindu Ladies College as the Complainants' temporary transfer period was coming to an end on 26 October 2018.

With the aim of ensuring that the complainants were not subjected to any discrimination or violation of rights while the inquiry was on-going, and until the recommendation is issued, the Commission issued an interim recommendation dated 26 October 2018 addressed to the Provincial Director of Education – Provincial Education Department – Trincomalee to the effect that the Complainants should be allowed to report to duty at T/ Sri Shanmuga Hindu Ladies College once their temporary transfer period came to an end at T/Zahira College on 26th October 2018. The Commission further requested the Provincial Director of Education, Trincomalee to take necessary action in this regard and report back to the Commission within three days.

Following the issuance of the interim recommendation the Additional Provincial Director of Education S. Manoharan extended the temporary transfer of the complainants at T/ Zahira College itself until 31st December 2018. Since the respondents did not implement the interim recommendation issued by the Commission dated 26.10.2018, the Commission issued summons to all parties to appear before the Commission on 01st November 2018, but once again only the complainants attended. None of the respondents attended the inquiry nor informed the Commission of the reason for their absence. Due to the repeated absence of the respondents without giving prior notice or providing justifiable reasons the Commission decided to take action against them by virtue of the powers vested in the Commission.

The Commission issued summons to the parties to appear on 07 November 2018. The Complainants, the Principal – T/ Sri Shanmuga Hindu Ladies College and the Provincial Director of Education attended while Secretary of Ministry of Education was absent.

The 1st Respondent, the Principal T/ Sri Shanmuga Hindu Ladies College stated she reported to the duty as Principal on 23rd April 2018 and narrated the history of the school as was stated by the report dated 12TH June 2018 submitted by the Principal and the Management Committee. The Principal stated that initially only one teacher wore the Abaya to which the school objected since it is not in conformity with Hindu culture. Thereafter, according to the Principal gradually five Muslim teachers started wearing Abaya. The Principal also said that as the Principal of a school that follows certain cultural practices she cannot act against the school Management Committee.

In response, one of the complainants Mrs. Rameez, stated at the inquiry that in 2013 she reported to work wearing Abaya but after constant requests of the principal she changed her dress to saree, but was not satisfied wearing saree and hence continuously requested from the principal to allow her to wear Abaya. Her request was not granted by the Principal who she stated warned her not to speak of the matter. Mrs. Rameez also stated that the Management Committee along with the Principal had a discussion with the Complainants and in that discussion too they tried to find an amicable solution for this problem but the Management Committee strongly opposed the complainants wearing Abaya. She further said that she is a trained teacher of Sinhala as second language and she never had a problem with staff or students and was on good term with all and even participated and assisted in the Saraswathie Pooja.

The Provincial Director of Education in his statement said that they have a mandate to make decision to schools which are within the purview of the provincial Education Ministry and since this is a National School it is the Ministry of Education that has the power to make a decision in relation to this issue. He also stated that all government educational institutions are established based on ethnicity, and when there are student over 51 percent of a particular ethnic group that particular school is considered to belong to that particular ethnic group. He stated the solution is to transfer the complainant teachers to a Muslim school.

The Commission inquired from the Provincial Director of Education whether any circulars or laws which stipulate that only saree can be worn in National Schools existed to which the Director stated that there were no such rules. The Provincial Director of Education also said that children become frightened when they see teachers wearing black as they view them as devils.

The Commission inquired from the respondents how the “Abaya” adversely impacts the education and cultural/religious practices of students at said school, to which the Principal stated that they do not like teachers to wear black dress as they will be differentiated and stand out amongst others.

The Commission pointed out public officers are paid by the government and subject to follow the rules set out by the state and the Constitution. Further, every single person has the right to follow his/her own religious practices as enshrined in the Constitution. In that context the Commission further questioned how a certain dress code can have an adverse impact on the education of students and the traditions which they follow to which no satisfactory response was received.

3. THE USE OF SOCIAL MEDIA AND ITS IMPACT ON INCITING ETHNIC AND RELIGIOUS INTOLERANCE AND HATRED

During the Commission’s inquiry process both parties alleged the other party had shared information pertaining to the case with external parties who shared and misrepresented the information on social media platforms, such as Facebook. Both parties stated this was done with the intention of intimidating them into taking certain positions where the case was concerned. The Facebook posts used intemperate language and were communal in nature, whereby they incited intolerance, which both parties feared would result in violence. Due to these posts, both parties stated they were being subjected to social censure and harassment within their communities as well.

The Commission reiterated the need to maintain confidentiality and respect the integrity of the inquiry process and warned the parties that if any evidence came to the notice of the Commission that any of the parties to the case had shared information with external parties who then posted it on social media platforms, the Commission would take serious action against them.

Given this context, on the inquiry held on 7 November 2018 the Commission requested the Zonal Director to hold awareness programmes for the Principal, teachers, students, parents and Management Committee members of the respondent school on pluralism, diversity and peaceful means of resolving inter-community tensions. The Commission was of the view this would diffuse tensions surrounding this issue within the community. However, this has not been done.

4. FINDINGS OF THE COMMISSION

1. The school was founded in 1923 by a Hindu patron and managed by the funds provided by the founder, her family and the Hindu community until it was taken over by the government in 1961. Even following government acquisition, according to the Principal, the school has followed Hindu traditions and has an unwritten rule that female teachers wear saree. Regardless of the history of the school it is a national school that receives funds from the state and is hence bound by all state rules and regulations, and most importantly the Constitution. The Constitution in Article 12 (2) protects the rights of persons not to be discriminated against on the basis of their religion and in Article 10 protects the rights of persons to have or adopt a religion or belief of his/her choice. Further, Article 14 (1) (e) stipulates that ‘Every Citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching’ subject to a number of restrictions. These restrictions are national security, public

order and the protection of public health or morality, securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. Yet, these restrictions are not applicable in the current context, since the only element that could be argued to be relevant to the complaint, i.e. securing due recognition and respect for the rights and freedoms of others, in this context the ability of the First Respondent to enjoy their religious rights, does not require barring the complainants from wearing Abaya to school. The right enshrined in Article 10, i.e. the right to freedom of religion, provides a legal assurance, which cannot be violated under any circumstances, and hence this right is absolute.

2. To justify their opposition to the complainants wearing Abaya the respondent school states that Mrs. Sajana Banu Mohammed Faisel wore saree when she first assumed duty on 9 July 2014 at Sri Shanmuga Hindu Ladies College, and as an old student of the same school had prior knowledge about the cultural practices of the school. In this regard, the right which is protected by Article 10 of the 1978 Constitution of Sri Lanka does not stipulate a time period within which one has the freedom to adopt or follow a religion or belief of one's choice. Hence, the complainants' right to wear the Abaya as a form of giving expression to their religious belief cannot be curtailed merely because the complainant for a period of time wore a saree to school.
3. Further, the respondent school's argument that teachers wearing Abaya in school would distinguish them from the other teachers and students and would frighten the students does not stand up to scrutiny in a multi-ethnic society such as Sri Lanka in which every day children come across persons of different ethnicities and religions wearing different forms of dress in public places, including the Abaya.
4. In several instances, the Supreme Court of Sri Lanka has recognized the right of Muslim women to wear their traditional dress. For instance, in the case of *Fathima Sabira Shiam v Principal Yatiyantota Siriwardena Maha Vidyalaya and others* (FR) Application 688/12 where a Muslim girl was prevented from wearing Muslim tradition dress because it conflicted with the Buddhist culture of the school, the Court instructed the Secretary, the Ministry of Education to make the public aware of Circular dated No: 37/95 dated December 12/12/1995 which permits 'female Muslims to attend school in their cultural attire.' Similarly, the Supreme Court in *Fathima Hishana & Mohamed Hirzi Shahul Hameed vs Nayana Thakshila Perera, Janadhipathi Balika Vidyalaya & others* SC FR 97/14 found that traditional Muslim attire is well within the identity of Sri Lankan culture and that Muslim women have a right to wear such attire, as long as the identity of the person can be ascertained and it causes harm to none.
5. The respondent school further stated that teachers wearing Abaya would adversely impact upon the culture and traditions of the school and the ability of the students to be provided an education in line with Hindu traditions and culture. The state curriculum is secular, except for the subject of religion, which each student is free to follow according to his/her belief. While the respondent school follows Hindu traditions and culture, i.e. celebrates Hindu religious festivals, has Hindu prayers etc., which the respondent school argues is adversely affected teachers wearing Abaya, i.e. a dress, the Commission finds that teachers wearing Abaya does not in any substantive way impinge upon the right or ability of students to practice Hindu traditions in the aforementioned manner. This is particularly so given the complainants state they have always participated in several festivals at the school and have never behaved in a

manner that showed disrespect to Hindu traditions nor in any way sought to force their religious beliefs upon the students. It should be noted the respondents did not at any point challenge this statement by the complainants.

6. Further, the letter to the Human Rights Commission by the complainant dated 08/01/2019 clearly shows that the respondent school continuously violated the complainants' right because even though the complainants assumed their duties from 01/01/2019 at Sri Shanmuga Hindu Ladies College after the completion of their temporary transfer, they were not provided time tables and were not allowed to teach any classes. It was brought to the notice of the Commission that one of the complainants Ms. Shifana Safees is a special needs teacher who until 24-4-2018 was teaching fourteen special needs children. Since Ms. Safees was sent on temporary transfer to T/ Zahira College the special needs children have not been receiving the benefit of the services of said teacher. Given the paucity of special needs teachers in the country and the challenges faced by children with special needs in accessing education, preventing Ms. Safees from teaching has a severe adverse impact on the right to education of these children.
7. The complainants informed the Commission through a fax message that they have been transferred to a provincial school of Kuchcheveli, T/An Noorya, against their consent by letter 18-01-2019 of the Provincial Director of education No, EP/20/01/02/01(01)-2. The provincial Director of education in his transfer letter states that this transfer is made upon the directions given by the Secretary, Ministry of Education in his letter No ED/01/6/13/Tr/NS/33 and dated 02nd 01 2019. Para 5 of the said letter says that if these complainants do not express their consent to the transfer, the Provincial Director of Education has authority to place the complainants on attachment basis to a suitable provincial school. In this instance, although the complainants are teachers of a national school they were transferred to a provincial school.

Section 1.3. of the National Transfer Policy of circular No 2007/20 dated 13 December 2007 states that the purpose of the Transfer Policy is for the teachers to "be freed from undue fear for (sic) unreasonable transfers and whereby they could derive maximum job satisfaction". Section 1.4. states that "maintaining the student based learning teaching process continuously and without any interruption should be a basic objective of the Teacher Transfer Policy". Moreover, Section 1.8 states the Transfer Policy has to be implemented "systematically and with transparency". Section 2.4 (1) says that 'Performance of the transfer board in the implementation of national teacher transfer policy should be in accordance with sections 3.1 and 3.2 in chapter 111 of the Establishment Code. However, in the case of a transfer to be made owing to any disciplinary action against a teacher or very urgent and specific instances based on exigencies of service or for health reasons upon a request by a teacher (to be established by a medical board report) such transfers should be decided and implemented by the respective authorities. However, the transfers of teachers made on exigencies of services too should be brought to the transfer board concerned within a period of two weeks. Section 3:1 of 3 of chapter 3 of Establishment Code says clearly that authorized officer of transfer should act on the instruction of the transfer board.

Based on the facts stated above, the Commission finds that the transfers of the complainants did not adhere to the National Transfer Policy, and the complainants were not transferred on any grounds mentioned in the National Transfer Policy nor the Establishment Code. Rather,

they have been transferred capriciously in an arbitrary manner by the respondents in a non-transparent manner.

8. The Commission observed that the actions of the respondents have resulted in the violation of the rights of the complainants. The Constitution is the Supreme law of Sri Lanka and all citizens are entitled to the rights ensured by Chapter III of Constitution. Even though the aforesaid school was established by an individual in 1932 it was taken over by the government in 1961 and its teachers are now paid by the government. Hence, Sri Shanmuga Hindu Ladies College and the staff are duty bound to abide by state rules and regulations, in particular Article 10 and 14 (e) of the Constitution and circular No: 37/95 dated 12/12/1995 in relation to Muslim women's dress code. Further, there is no stipulated dress code for teachers and hence the complainants cannot be compelled to wear or prevented from wearing a certain type of dress.
9. Further Article 12 (1) of the Constitution says that all persons are equal before the law and are entitled to the equal protection of the law and 12 (2) guarantees that no citizen shall be discriminated against on the grounds of race, religion, language caste, sex, political opinion, and place of birth or any one such grounds. In this instance, the denial of the right of the complainants to wear their traditional dress as well as the arbitrary nature of the transfers were done on the basis the religion of the complainants. Hence, the rights to which the complainants are entitled as per Article 12 (1) and 12 (2) of the Constitution have been violated.
10. Moreover, Sri Lanka is a party to the International Covenant on Economic Social and Cultural Rights, and hence has an obligation to ensure the cultural rights of its citizens. Sri Lanka is a multi ethnic and multi religious country and every ethnic group the right to follow their cultural practices including dress code.
11. The Commission finds that social media has been used in an irresponsible manner to share factually incorrect information regarding this case which has been used to incite ethnic and religious intolerance and hatred within the community. While it is unclear who shared the information the Commission reiterates the need for all parties to a complaint to respect confidentiality and the integrity of the Commission's inquiry process and to act in an ethical and responsible manner in sharing information about inquiries as well as using social media.

5. RECOMMENDATIONS

As the Commission finds that First, Second, Third and Fourth Respondents have violated Articles 10, 12 (1), 12 (2) and 14 (e) of the 1978 Constitution of Sri Lanka, the following recommendations are issued to remedy the violation:

First Respondent

1. Considering the facts before the Commission, the Commission finds that the complainants' rights guaranteed under Article 10, 12 (1), 12 (2), and 14 (e) of the Constitution have been violated by the First Respondent Sri Shanmuga Hindu Ladies College. The Commission directs the Respondent school to ensure the Complainants are able to wear the dress of their

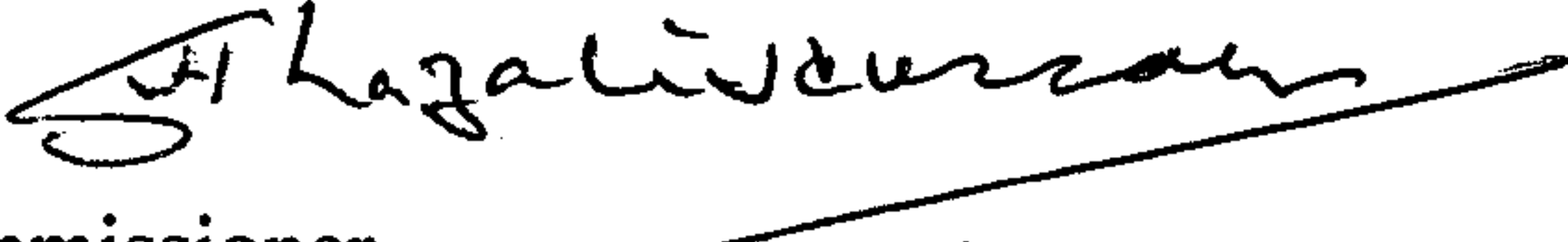
choice, the Abaya, to perform their duties at their assigned school Sri Shanmuga Hindu Ladies College, Trincomalee where they should be allowed to work without hindrance or harassment.

Second, Third and Fourth Respondents

1. The Commission finds that the rights of the complainants enshrined in Article 12 (1) and (2) have been infringed by the actions of the Third and Fourth Respondents who transferred the complainants who are teachers of a national school to a provincial school without following due process. Further, since respondents two, three and four, who are the supervisory authorities, did not take remedial action to address the violation of Articles 10 and 14 (e) experienced by the complainants, they too are responsible for the said violations due to their inaction. The Commission calls upon the Second, Third and Fourth Respondents to ensure the complainants are able to wear the dress of their choice the Abaya to perform their functions at their assigned school Sri Shanmuga Hindu Ladies College, where they should be allowed to work without harassment or hindrance.
2. The Commission reiterates the need for respect for diversity and pluralism in a multi-ethnic and multi-religious country such as Sri Lanka, and calls upon the Ministry of Education and the Zonal Education Director to conduct awareness raising programmes on diversity and pluralism for school principals, teachers, students and parents.
3. The Commission recommends that when such conflicts arise the respective zonal and provincial authorities convene a group/committee of multi-ethnic senior and respected officials and community leaders to mediate and resolve the conflict while ensuring the rights of all are protected.

General recommendation

1. The Commission also notes with deep concern that the use of social media, such as Facebook to share information related to the case in the public domain without any regard for the confidentiality of the proceedings and without the permission of the parties concerned or the Commission is a breach of ethical responsibilities. In this case, such acts only served to incite religious and ethnic hatred and intolerance within the community and led to the harassment and intimidation of the complainants and respondents. The Commission reminds the public that expressions of hate and violence targeting a specific community amount to crimes under the ICCPR Act, No 56 of 2007 and the Penal Code of Sri Lanka. Since such acts can even lead to inter community violence, the Commission calls upon all citizens to be mindful of the misuse of social media as weapons in campaigns to incite religious and ethnic hatred and violence and use social media responsibly as a tool to promote inter-ethnic and inter-religious understanding and harmony.


Commissioner
Human Rights Commission of Sri Lanka

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.


Commissioner
Human Rights Commission of Sri Lanka

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.