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Your No. }



දිනය } 16.05.2025  
திகதி }  
Date. }

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**கிலங்கை மனித உரிமைகள் ஆணைக்குழு**  
**Human Rights Commission of Sri Lanka**

Mr. Priyantha Weerasooriya,  
Acting Inspector General of Police,  
Sri Lanka Police Headquarters,  
Colombo 02.

Dear Mr. Weerasooriya,

**Misapplication of Section 3 of the ICCPR Act and Other Legal Provisions in relation to  
Commemoration Events**

The Human Rights Commission of Sri Lanka (HRCSL) writes to you in terms of its mandate under section 10(d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. The said provision empowers the Commission 'to make recommendations to the government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards'.

The Commission wishes to recall that in May 2024, we wrote to your predecessor regarding the practice of Sri Lanka Police with respect to commemoration events held in the North and East of Sri Lanka. The Commission was concerned by the misapplication of section 3 of **the International Covenant on Civil and Political Rights Act, No. 56 of 2007** (ICCPR Act) to arrest persons who engaged in peaceful acts of remembrance including the staging of peaceful protests. It was also brought to the Commission's notice that Sri Lanka Police endeavours to obtain temporary orders from magistrates in terms of section 106(1) of the **Code of Criminal Procedure (Chapter 26)** to prevent persons from engaging in the commemoration of Tamil deceased who perished during the armed conflict in 2009. On some occasions, peaceful commemorative acts, such as the distribution of *kanji*, have been prevented on grounds of public health. Moreover, in November 2024, the newly elected government announced that it would not interfere with peaceful commemoration events. Despite this public announcement, the HRCSL recalls that Sri Lanka Police applied for court orders to prevent certain commemoration events, and some of these applications were dismissed.

Section 3(1) of the ICCPR Act criminalises the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. This complex offence has several elements and has come to be routinely misapplied in practice. In August 2019, in view of its observation that section 3 of the Act was not being applied in a 'consistent and even-handed manner', the HRCSL issued **guidelines on the scope of section 3 of the ICCPR Act** (Annex A). The Supreme Court of Sri Lanka, in **SC (F.R.) Application No. 135/2020**, endorsed these guidelines. The Supreme Court held that, for any form of expression to constitute an offence under section 3 of the ICCPR Act, several factors must be considered by law enforcement authorities. The most crucial of these factors is whether the impugned expression amounts to 'incitement' to discrimination, hostility, or violence. This feature of the offence requires law enforcement authorities to carefully consider whether there is an 'imminent danger' that the impugned expression would cause actual harm.

The HRCSL also recalls that, pursuant to its recommendation, in May 2022, the then Inspector General of Police issued **Circular No. RTM 541** with respect to investigations concerning section 3 of the ICCPR Act. The said Circular directs all officers-in-charge of police stations to conduct investigations under the said

provision only on the advice of the Director/Legal Division of Sri Lanka Police. It also states that any police officer who misuses the provisions of the Act would be subject to disciplinary procedure.

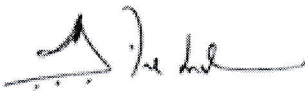
The HRCSL is of the view that peaceful acts of commemoration and the distribution of food items cannot be considered forms of incitement to discrimination, hostility, or violence, and are protected under the right to the freedom of speech and expression guaranteed under **article 14(1)(a) of the Sri Lankan Constitution**. The use of section 3 of the ICCPR Act in such instances amounts to a gross misapplication of the section and could result in the harassment of persons, including the unreasonable denial of bail, and the violation of the right to the freedom of speech and expression.

Moreover, acts of commemoration form part of 'collective reparations', and the Sri Lankan state has a statutory duty to respect and protect the right to collective reparations. The HRCSL observes that the Office for **Reparations Act, No. 34 of 2018** defines 'collective reparations' to mean, 'such measures as are intended to recognise the right to an effective remedy and benefits to the communities or groups of aggrieved persons and shall include – (a) means of remembrance of deceased persons...' (emphasis added). Therefore, aggrieved persons within the Tamil community are entitled to the respect and protection of their right to collective reparations through means of remembrance of deceased persons.

The HRCSL also recalls its recommendation to HE the President in 2017 recognising the right to commemoration (Annex B). It emphasised that all communities should 'have the space and ability to mourn the loss of their loved ones and remember them...irrespective of their status or political beliefs'.

**In this overarching context, the HRCSL recommends that clear guidance, in all three languages, be issued to all divisions of Sri Lanka Police, that peaceful acts of commemoration (i.e., remembrance of deceased persons), are recognised in the law as a part of what aggrieved persons within the Tamil community are entitled to as collective reparations. Furthermore, emphasise that acts that do not amount to advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence, (i.e., where there is no 'reasonable probability' that the act would cause imminent harm) should be respected and protected. The said guidance should also direct officers-in-charge of police stations in relevant administrative divisions to refrain from seeking court orders preventing any peaceful acts of commemoration.**

The Commission is grateful to you for your constructive engagement on this issue and is prepared to assist and advise Sri Lanka Police in fulfilling the above recommendations.



Justice L.T.B. Dehideniya,  
Chairman,  
Human Rights Commission of Sri Lanka.

Justice L.T.B. Dehideniya  
Judge of the Supreme Court (Retired)  
Chairman  
Human Rights Commission of Sri Lanka

- Cc: 1. H.E. Anura Kumara Dissanayake  
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