



Human Rights Commission of Sri Lanka

**Recommendations proposed by the
Human Rights Commission of Sri
Lanka for the implementation of its
mandate; protection and promotion
of Human Rights in Sri Lanka**

May 2022

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Introduction

The Human Rights Commission of Sri Lanka (HRCSL) established by virtue of the Human Rights Commission Act of Sri Lanka No.21 of 1996 (HRCSL Act), has over the years discharged its functions within the parameters of the HRCSL Act in order to protect and promote the human rights of the citizens of Sri Lanka.

In pursuant to the powers thus vested upon the HRCSL, during **the year 2021**, the Commission has received a **total of 6322 complaints** which include, **1616 cases pertinent to personal liberty, 1080 pertinent to inaction by Government entities and 317 pertinent to education**, majority of which are complaints regarding school admissions. During the **year 2022** as of 15th February 2022 the Commission has **resolved and disposed a total of 546 cases**.

In addition to the aforementioned core function of conducting inquiries and investigations, during the year 2022 the Commission initiated progressive yet crucial activities, which include conducting preliminary discussions with the Inspector General of Police (IGP) to reiterate the need for Police Officers to ensure the human rights of the people are respected and protected when executing their duties. Discussions were also held with the Civil Society Organizations, following which they agreed to compile and submit a report enumerating grievances pertinent to violations of fundamental rights of the citizens of Sri Lanka.

Furthermore, the Commission decided to invoke its powers under Section 15(3)(b) of the HRCSL Act to initiate fundamental rights actions in the Supreme Court where infringement/imminent infringement of fundamental rights are discovered following the inquiries and investigations process. The Commission also intends to launch the digitalized case management and tracking system of the complaints made to the HRCSL through which the complainant can track the status/progress of their complaints through the online portal without having to visit the Commission in person.

However, it has been increasingly evident over the years that the operational challenges faced by the HRCSL such as lack of financial and human resources and limitations in the existing legal framework, hampers the effective and smooth functioning of the HRCSL, local and international

reputation of the HRCSL and in extension the scope for protection and promotion of human rights in Sri Lanka.

This proposal enumerates the key operational challenges and limitations in the legal framework along with the corresponding recommendations proposed by the HRCSL to enhance the status of human rights in Sri Lanka as per the international human rights obligations acceded by the Government of Sri Lanka.

Accordingly, the recommendations are enumerated under three chapters namely;

- 1. Human Rights Commission of Sri Lanka**
- 2. National Preventive Mechanism**
- 3. Legal Reforms essential to uphold human rights obligations**

All such recommendations are made to the government as per the mandate vested upon the HRCSL under section 10 of the HRCSL Act.

Chapter I: Human Rights Commission of Sri Lanka

1.1 Appointment process and composition of the members of the HRCSL

The composition and the procedure to appoint the members of the Commission is enumerated in Section 3 of the HRCSL Act. Accordingly, the members of the Commission are to be appointed 'by the President, on the recommendation of the Constitutional Council.'

Following the 20th Amendment to the Constitution, the Constitutional Council was replaced with a Parliamentary Council. Thus, as per Article 41A of the Constitution, the selection process will now be carried out by the Parliamentary Council comprising of members of Parliament representing the Government and the opposition.

The above change in the appointment process and the incumbent composition of the HRCSL has resulted in the downgrading of the status of the HRCSL to B status, consequent to the review on Accreditation by the Sub Committee of Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) in October 2021.

Thus, in order to retain the A status of the HRCSL adequately complying with the Paris Principles, the appointment process prescribed by Section 3 of the HRCSL Act should be amended to remedy the;

- a) lack of a transparent and independent appointment process and
- b) lack of pluralism and diversity in the composition of its members.

Therefore, it is proposed to

- a) **Amend Section 3 (1)* of the HRCSL Act to include seven members instead of five members***
- b) **Direct the Minister to make regulations** by virtue of the powers vested on him by Section 30 to stipulate the criteria for the appointments of the members under sections 3(1), 3(2) and 3(3). The regulations shall require;
 - i. The composition of the members of the HRCSL to include individuals representative of diverse religions and ethnicities to ensure diversity and pluralism

- ii. Publication of the names of the nominees shortlisted in consultation with the Advisory Committee to ensure transparency
- iii. Composition of such Advisory Committee to include representatives from all ethnic and religious groups to ensure independence in the selection process
- iv. Publication of the selection criteria in the gazette and presented before Parliament to ensure further transparency and standardization

*See Annex 1 for the composite list of Amendments proposed to the HRCSL Act.

**The current composition of the members include four Sinhalese, one Tamil with no Muslim Representative. Therefore, it is essential to increase the number of members to ensure individuals representing the unrepresented/underrepresented ethnic groups are included.

1.2 Powers to effectively provide and implement recommendations of the HRCSL

During the last five years ranging from the years 2015 – 2017, the HRCSL under its lawful mandate issued four hundred and six (406) recommendations. However, it is observed only eighty one (81) recommendations have been implemented by the relevant parties, evidencing an average implementation rate of 20%.

Therefore, in order to ensure the effective implementation of the recommendations of the HRCSL and due protection of the human rights of the petitioners, the Commission has decided to file writ applications similar to writ of Mandamus to ensure the implementation of the recommendations made by the Commission.

In addition to the above remedy, it is proposed to include a provision in the HRCSL Act* to vest upon the Commission the powers to award adequate compensation to the victims or their families for the violation of their human rights.

Furthermore, it is proposed to empower the Commission with all the powers of a civil court to prevent and remedy all human rights violations effectively.

*See Annex 1 for the composite list of Amendments to the HRCSL Act.

1.3 Resources required to effectively execute the mandated functions of the HRCSL

The following proposals are made in pursuant to Section 29(1) of the HRCSL Act, which prescribes the State to provide the Commission with adequate funds to enable the Commission to discharge its legally mandated functions.

1.3.1 Office Building of the Head Office and Regional Offices of the HRCSL

All the Offices of the HRCSL which include the Head Office in Colombo and the ten regional offices located in Anuradhapura, Batticaloa, Jaffna, Kandy, Trincomalee, Matara, Vavuniya, Kalmunai, Badulla, and Nuwara-Eliya are currently being occupied on an annual lease basis. Accordingly, a total annual expense of LKR 39 Million is incurred on rentals which could be otherwise saved or spent on other useful purposes of the HRCSL.

Furthermore, the Commission is compelled to either renew the agreements, most of the times at appreciated prices or relocate from time to time at the expiration of the lease periods. This adversely affects the smooth functioning of the Commission and in extension causes further inconvenience to the public.

Therefore, it is proposed to **provide the Commission with permanent office buildings** in order to prevent any inconvenience caused to the Commission officers or public.

1.3.2 Vehicles required to deploy officers for monitoring and investigative functions of the HRCSL

The current vehicle fleet of the HRCSL include 08 vehicles attached to the Head Office in Colombo and 07 vehicles attached to the regional offices, most of which are 20 years old. Although 90% of the current vehicle fleet of the HRCSL are being used for field duties, none of them are in a sound condition for long distance travel and field inspections.

Therefore, it is proposed to **provide the Commission a minimum addition of three vehicles including a van and two jeeps** to the current vehicle fleet of the Commission to facilitate the transportation of officers for official duties.

1.3.3 Finances required to recruit officers' essential to execute the functions of the HRCSL

Out of the total approved cadre* required for the smooth and effective execution of the mandated functions of the HRCSL, 67 vacancies have not yet been fulfilled mostly due to the lack of finances to recruit such personnel. In particular, the inability to recruit the proposed 13 legal officers who are crucial in executing one of the core functions of the Commission, is greatly hampering the effective and efficient discharge of its functions.

Therefore, it is proposed to **allocate a sum of LKR 10,674,970.3 to the Commission to effect the recruitment of 13 legal officers.**

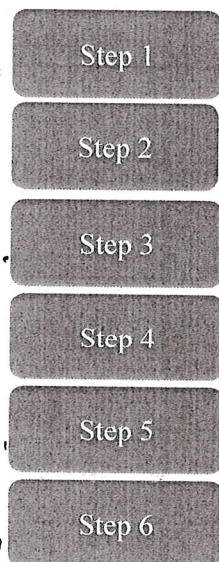
*See Annex 2 for full list of vacant positions

Chapter II: National Preventive Mechanism

Pursuant to Sri Lanka's obligations upon accession to the Optional Protocol to the Convention against Torture & other cruel inhuman or degrading treatment or punishment (OPCAT), the Human Rights Commission of Sri Lanka was designated as the National Preventive Mechanism (NPM) by the Government of Sri Lanka.

Accordingly, the NPM was established as a separate unit of the HRCSL on 15th February 2022 with the primary objective of establishing a monitoring system through which regular visits can be made to places where people are kept or detained, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, if any. Such places to which the NPM officers will visit to execute its mandated functions as per the powers entrusted on the NPM* include but not limited to Prisons, Remand Prisons, Police Stations, TID, CID, CCD detention centers, Children's homes, Women homes, Foreign National Holding Centers, Elders homes, Beggar homes, Drug rehabilitation centers.

To ensure the establishment of a smooth and progressive mechanism to execute the functions of the NPM a six step activity plan has been developed as follows.



Since the inception of the NPM, the staff officers of the NPM made visits to the TID Head Office, TID Center at Chaithiya Road, CID detention center at Dematagoda, Detention Center at Tangalle and Female Section of the Welikada Prison.

Upon conclusion of the visits it was observed that **there are suspects who have been in custody for nearly three years without trial which is an outright violation of their rights.**

Summary of the detainees, detained in the detention centers visited thus far as follows.

S/ N	Name of Detention Center	Date of visit by the NPM Officers	Period of detention since 1 st arrest (months)	No. of detainees
1	TID Head Office	18 Feb 2022	16	1
			12	1
			11	4
			08	1
			5	1
			3	1
			02	3
2	TID Detention Centre in Chaithya Road	18 Feb 2022	33	6
3	CID Detention Centre in Dematagoda	18 Feb 2022	1	1
4	TID Detention Centre Tangalle	22 Feb 2022	35	1
			33	3
			09	1
			08	1
			07	2
			05	1
5	Welikada Prison Female Section	25 Feb 2022	34	1
			33	2
			14	7
		16 Mar 2022	34.5	1
			34	2
			33	2
			14	7

Furthermore, it was made to understand that the TID officers are inconsistent regarding the statements made by the detainees and also provide false reports, making the records to be in line with the legally required period of detention.

A similar pattern was observed in the conduct of the Police Officers as well in which they circumvent the law concerning detention to ensure the total period of incarceration will not exceed eighteen months on documents.

Therefore, it is proposed to **direct the Minister to formulate regulations for the Advisory Board to refer the matter to the Court of Appeal** to either release or bail out the suspect in circumstances where there are deliberate inconsistencies regarding the date of arrest or any other matter where it seems fit.

Furthermore, it is proposed to **appoint a member of the HRCSL to the Prison Parole Board** to ensure that fundamental rights of the convicted prisoners are protected during the process of granting parole.

*See Annex 3 for detailed list of powers and functions of the NPM

Chapter III: Legal Reforms essential to uphold human rights obligations

3.1 Repeal of the Prevention of Terrorism Act No. 48 of 1979

The Commission opines that the current draconian system employed by the Act and the numerous fundamental rights violations facilitated by it cannot be sufficiently negated by the recommended amendments under the Prevention of Terrorism (Temporary Provisions) (Amendments) Act No.48 of 1979 issued on 27th January 2022.

Retaining a person in remand custody until the conclusion of the trial is an outright violation of the presumption of innocence and is against the principles of natural justice. Furthermore, imposing a special procedure to conduct trial under the Prevention of Terrorism Act (PTA) violates the person's fundamental right to equal protection of the law guaranteed by Article 12 of the Constitution. In extension, trying an offence under the PTA via trial at bar violates the individual's right to appeal.

Therefore, notwithstanding the proposed amendments by the Government of Sri Lanka, it is proposed by the HRCSL to **completely repeal the Prevention of Terrorism Act No. 48 of 1979 and deal with the offence of terrorism under the general law and procedure of the country, with amendments to the general law.**

To give effect to the above, it is proposed to **formulate a specific definition of terrorism** as suggested below;

“Any person by the use of threat or use of force and violence by unlawfully targeting the civilian population or a segment of the civilian population with the intent to spread fear thereof in furtherance of a political, ideological or religious cause commits terrorism.”

3.2 Amendment to the Presidential Pardon

The incumbent legal system of Sri Lanka provides no remedy for a petitioner who has exhausted all his appeals thereby warranting a glaring miscarriage of justice. The only remedy available for such person is to obtain a presidential pardon by invoking Article 34(1) (a) of the Constitution of

Sri Lanka in which the President is vested with the powers to grant pardon either free or subject to lawful conditions.

As the aforementioned remedy is not available for all persons and is dependent on the discretion of the President despite the constitutionally guaranteed fundamental rights for all persons to be equal before the law by virtue of Article 12(1), the Commission opines the lack of a remedy in the face of miscarriage of justice is a violation of human rights of such persons.

Therefore, it is proposed to **amend Article 34 of the Constitution** in order to vest upon the President a **referral power** to direct the Chief justice to;

1. Formulate rules to rehear the appeal when it deems necessary in the interest of justice
2. Formulate rules to allow the court to correct its original judgment upon discovering a fundamental error.

ANNEX 1: Composite list of Amendments proposed to the HRCSL Act

An Act to Amend the Human Rights Commission of Sri Lanka Act, No. 21 of 1996

1. Section 3 of the principal enactment is hereby amended as follows: -

Amendment of
Section 3 of Act No.
21 of 1996

3(1) The removal of “five members” and substitution thereof as “seven members”.

3(3) The removal of the “In making recommendations, under subsection (2), the Constitutional Council and the Prime Minister shall have regard to the necessity of the minorities being represented of the Commission” and substituted thereof “In making recommendations, under subsection (2), the Constitutional Council and the Prime Minister shall have at least one Commissioner from each minority group, up to a minimum of three Commissioners being represented of the Commission”

3(5) The removal of “Every member of the Commission shall hold office for a period of three years” and substitution thereof as “Every member of the Commission shall hold office for a period of five years”.

2. The following new section is hereby inserted immediately after section 3 of the principal enactment and shall have effect as section 3(2A) of that enactment:

Insertion of Section
3(2A) of Act No. 21
of 1996

3(2A) “Following observations from the Parliamentary Council obtained by the President on the nominees, the appointment and selection by the President must be conducted according to the regulations set forth by the President.”

3. The following new section is hereby inserted immediately after section 3 of the principal enactment and shall have effect as section 3(4A) of that enactment

Insertion of Section
3(4A) of Act No. 21
of 1996

3(4A) "The Chairman of the Commission shall be a person with judicial experience in superior courts."

4. The following new section is hereby inserted immediately after section 3 of the principal enactment and shall have effect as section 3(6) of that enactment:

Insertion of Section
3(6) of Act No. 21 of
1996

3(6) "The decision of the forum shall be by at least 3 members"

5. Section 11 of the principal enactment is hereby amended as follows: -

Amendment of
Section 11 of the
principal enactment

11(b) The removal of "appoint such number of sub-committees at Provincial level..." and substitution thereof "appoint Special Rapporteurs and thematic subcommittees..."

11(d) The removal of "monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention;" and substitution thereof "monitor the welfare and rights of persons detained either by a judicial order or otherwise, by regular inspection of all places of detention, and to make such recommendations as may be necessary for improving their conditions of detention;"

11(h) The removal of "do all such other things as are necessary or conducive to the discharge of its functions" and substitution thereof "monitor the human rights situation in Sri Lanka and make necessary recommendations to the Government to develop human rights."

4. The following new section is hereby inserted immediately after section 11 of the principal enactment and shall have effect as section 11(i) of that enactment: -

Insertion of section
11(i) in the principal
enactment

11(i) "do all such other things as are necessary or conducive to the discharge of its functions."

6. The following new sections are hereby inserted immediately after section 15 of the principal enactment and shall have effect as section 15(3)(d) of that enactment: -

Insertion of sections
15(3)(d), 15(3)(e) and
15(3)(f)

15(3)(d) "The Commission where necessary will order compensation not exceeding Rs..... from the party against whom a complaint is made as a preventive measure, and if the compensation is not paid, the Commission has the authority to write to the Supreme Court."

15(3)(e) "The appropriate authority shall ensure that recommendations in terms of (d) shall be complied with."

15(3)(f) "The Commission shall issue interim recommendations pending the final recommendation on the complaint, to prevent an imminent infringement of a fundamental right."

7. The following new sections are hereby inserted immediately after section 15 of the principal enactment and shall have effect as section 15(9) of that enactment:-

Insertion of section
15(9)

15(9) "Where the Respondent has failed to implement the recommendations set forth by the Commission, he must inform the Supreme Court as to the reasons for his failure to do so by way of a submission."

8. Section 21 of the principal enactment is hereby amended as follows:

Amendment of
Section 21 of the
principal enactment

21(3)(c): The removal of "refuses or fails without cause which in the opinion of the Commission is reasonable, to comply with the requirements of a

notice or written order or direction issued or made to him, by the Commission” and substitution thereof as “refuses or fails without cause which in the opinion of the Commission is reasonable, to comply with the requirements of a notice or written order or direction or recommendation issued or made to him, by the Commission”

9. The following new interpretation clause is hereby inserted immediately after section 33 of the principal enactment as follows;

Insertion of
interpretation
clause

“Minister” means the presiding Minister of Justice

Annex 2: Vacant positions at the HRCSL

Designation	Salary Scale	No. of Posts		
		Approved Cadre	Actual Cadre as at 30.06.2021	Vacant positions
Director	HM 1-1	5	1	-4
Deputy Director	MM 1-1	3	0	-3
Legal Officer	MM 1-1	22	9	-13
Internal Auditor	MM 1-1	1	0	-1
Senior Investigating Officer	JM 1-1	5	0	-5
Translator	JM 1-1	2	0	-2
Training & Education Officer	JM 1-1	1	0	-1
Human Rights Officer	MA - 5-1	47	17	-30
Documentation Officer	MA - 3	1	0	-1
Program Assistant	MA - 3	1	0	-1
Research Assistant	MA - 3	1	0	-1
Hardware/ Software Technician	MA 2-1	2	0	-2
Driver	PL -3	14	11	-3
				-67

Annex 3: Powers and functions of the NPM

Powers and functions of the National Preventive Mechanism Unit

1. Conducting scheduled and unscheduled visits to places of detention and other sites where torture or cruel, inhuman/degrading treatment or punishment is occurring and to make observations
2. Advise the police officers or any person in charge of the detainees on the rights of the detainees
3. Conduct regular visits to all detention centers to prevent torture. The unit must take a list of names of the detainees currently in custody, the reason for their detention, whether the detainee is indicted/unindicted, the period of detention and their living conditions
4. Ensure that an effective, transparent, independent investigative mechanism that adheres to international standards is developed and put into force to ensure compliance with Article 12 of the OPCAT
5. Address the continued failure to conduct prompt, impartial and effective investigation into alleged human rights violations by law enforcement officials