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Human Rights Commission of Sri Lanka

Human Rights Committee 137th session – Review of the 6th Periodic Report HRCSL opening statement

Colombo, 6th March 2023

Sri Lanka ratified the International Covenant on Civil and Political Rights (ICCPR) in 1980 and the first Optional Protocol subsequently. The ratification of the Optional Protocol was not explicitly approved by Parliament and is not therefore legally binding. However, the provisions relating to Fundamental Rights were already included in the 1978 Constitution of Sri Lanka guaranteed and made justiciable and other provisions in the ICCPR were incorporated in statutes, such as the International Covenant on Civil and Political Rights Act No. 56 of 2007. So we can safely state that provisions contained in the ICCPR covenant are part of the law of Sri Lanka.

There have been many positive steps taken by the government in ensuring the civil and political rights of the people in the country.

Sri Lanka suffered a civil war for 30 years which ended in 2009

The commitment of the government to promote reconciliation among victims of armed conflict on the theme that both parties have committed atrocities and it is time to move forward, the government established several internal mechanisms as a means of transitional justice. This mechanism mainly targeted the issues during the armed conflict and ensured the non-occurrence. The GOSL, co-sponsored two resolutions before the United Nations Human Rights Council in 2015 and 2017. This resolution primarily endorses the commitment of the government to transitional justice mechanisms.

For that, the GOSL enacted legislation relating to Transitional Justice Mechanisms such as the Office of Missing Persons Act No. 14 of 2016 (OMP) Office for Reparations Act No. 34 of 2018(OR) and Registration of Deaths (Temporary Provisions) Act, No. 16 of 2016 to issue Certificates of Absence, Enforced Disappearance Act, No. 5 of 2018. The Protection of Victims of Crime and Witnesses Act, No. 4 of 2015. It also established the Office of National Unity and Reconciliation to deal with the Reconciliation process.

In 2015, the government established Secretariat for Coordinating Reconciliation Mechanism (SCRM) **to ensure that the** commitments under UN resolution 30/1 are complied with. The function of SCRM was to facilitate transitional justice mechanisms. It also provided a conduit for National Unity and Reconciliation. (ONUR)

The government is currently completing the Act for the constitution of the Truth and Reconciliation Commission. It will soon begin a dialogue with the stakeholders primarily it will have a dialogue with the families of victims.

In 2018, a draft proposal on the framework of the TRC was submitted to the Cabinet for approval. However, the approval had not been received. Now the Government is considering the establishment of the TRC and the legislation is currently underway probably within the year legislation for the TRC will be passed by Parliament.

Memorialisation and Reconciliation.

Memorization is an important and integral part of the reconciliation process. The Denial of this opportunity will only serve to deepen ethnic divisions and hamper reconciliation efforts. The HRC wrote to His Excellency the President on 07.06.2017 on the following lines;

After a thirty-year armed conflict, Sri Lanka is attempting to deal with the past and work toward reconciliation. In this process, all communities must have the space and ability to mourn the loss of their loved ones and remember them. Therefore, memorialization is a vital and integral part of the reconciliation process. In Sri Lanka, we have built memorials to commemorate the soldiers who have lost their lives during the armed conflict. Likewise, all communities should be provided with the right to commemorate the death of their loved ones appropriately. The fact that they were members of a proscribed group should not be taken as a reason to deny the family to mourn and remember them.

The Commission recommended that they too be treated equally and provided with a space to remember their loved ones. The government has now allowed the victim's families the space to mourn and remember them appropriately.

The strength and efficacy of the HRCSL as a staunch defender of civil and political rights stems from its independent status

The Nineteenth Amendment provided for the establishment of the Constitutional Council which strengthened the appointment process of Independent Commissions including HRCSL. The HRCSL was accredited with "A" status by the SCA OF GANHRI in 2018, and it strives to maintain this status to this very day.

The regime changed in 2019, the CC was replaced by Parliamentary Council allegedly restricting Paris Principles for appointments to Commissions, this primarily resulted in the downgrade of HRCSL. The circumstances which had arisen for the downgrade at that time have now changed with the implementation of the 21st A and the Constitutional Council, establishing compliance with Paris Principles.

However, whatever the appointment process may be, the mandate of the Commission provides the commission with independence in the exercise of its functions. The Commission is completely detached from the executive arm of the government.

In terms of the Act, the Commission has the right to enter any place of detention at any time. (Section 15(2)) and issue summons on any person to appear before the Commission. Equipped with this right the Commission has held inquiries and made recommendations against senior officers of the Police.

The indispensable role of the HRCSL in safeguarding civil and political rights is starkly apparent when considering its participation in the constitutional reform process

The HRCSL made its submission to **the Committee on Law and Order in August 2016**. In that report, the Commission emphasized that the Public Security Laws should be aligned with Sri Lanka's human rights obligations, in particular Article 4 of the ICCPR.

The HRC in that statement emphasized that the predominantly public security laws should be to protect the people and their democratic rights. Sections 2 and 5 of the Public Security Ordinance and section 12 entrust the power to the Head of State to make regulations for public security, and promulgate a state of emergency. The HRCSL recommended the review of the Public Security Ordinance to reform the legislative regime applicable to public security

The HRCSL has submitted the **draft Charter of Rights** (2009) to be included in the Constitution which refers to a list of rights.

The HRCSL submitted the Proposals for Constitutional Reforms to the Public Representations Committee in 2016.

The statement of the Commission encapsulated the view that an emergency should be imminent and lifted as soon as the danger to the public had ceased. In the statement, the HRC explained 6 bullet points.

The HRCSL further emphasizes the need to incorporate Economic, Social, and cultural rights in the future Constitution of Sri Lanka. The HRCSL informed the Sub Committee on Fundamental Rights of its position on the reform of Article 16 of the 1978 Constitution of Sri Lanka. It was stated that **"The HRCSL is of the view that the Future Constitution of Sri Lanka must recognize the principle of supremacy of the Constitution. All written and customary laws will be invalid to the extent of inconsistency with the Constitution of Sri Lanka."**

The government attempts to address this issue by establishing many commissions. It is a very sensitive matter as it involves specific ethnic, religious and personal laws of the people.

Freedom of information has been added to the Fundamental Rights Chapter, making it a judicially enforceable right

DEATH PENALTY

The HRCSL also is firm in the belief that the right to life should be enshrined as a fundamental right in the Constitution, although it is accepted as a right by judicial precedence.

In 2016, HRCSL also recommended ratifying the ICCPR Second Optional Protocol which calls for the abolition of the Death Penalty. The abolition of the death penalty in Sri Lanka is in keeping with Sri Lanka's commitment to a more humane society consonant with human rights principles and values. Although the death penalty is not implemented in Sri Lanka after 1976, it remains an enforceable punishment in the Statute books. So much so that in 2015, the Head of State imported the ropes and advertised for the post of the executioner. The complete erasure of the death penalty from the Statutes remains a political issue today. Article 13(4) of the Constitution acknowledges the death penalty as a legal punishment.

The HRCSL stands firm against discrimination and violence against women.

Recognizing the prevention of sexual violence in conflict is critical to building peace and stability in 2016, the GOSL endorsed the Declaration of the Commitment to end sexual violence in conflict. It also reiterated the commitment to ending impunity for such crimes. On 7th October 2015, Jaffna High Court convicted four members of the military for the rape of a woman. Due to the seriousness of the crime, the trial was heard in the High Court by three judges. The conviction was affirmed by the Supreme Court.

The Country report dated 25.04.2019 in paras 31 to 47 deals comprehensively with the steps taken by the government to prevent violence against women and to prevent discrimination. The HRC endorses those statements and further states that, the commission has already informed the public that any violence or discrimination against women must be brought to the notice of the Commission immediately.

The HRCSL views that the non-discrimination clause in the Constitution should include the ground of Sexual Orientation, Gender Identity, and Disability. The clause should be articulated as required by International Human Rights obligations to include 'sexual orientation' sexual identity' and 'disability' as prohibited grounds for discrimination.

The Commission in 2016, prepared a list of constitutional reforms and submitted it to Prime Minister, Speaker, and the Public Representation Committee. The proposal included that State should take steps to amend Article 12(2) to include explicitly the words gender, sex, and sexual orientation in the Constitution. However, the Attorney General has informed by way of an opinion that such explicit words may not be needed as Article 12(1) equality clause in the Constitution could conveniently deal with the entire issue. "All persons are equal before the law and are entitled to the equal protection of the Law."

The HRCSL while being in support of countering terrorism is fully against draconian pieces of legislation

The Prevention of Terrorism Act can be interpreted to give effect to arbitrary arrest and detention. Thus, the HRCSL emphasizes that the PTA must be repealed.

The Directives issued by the Commission on arrest and Detention under the PTA are dated 18.05.2016. Those directives included inter alia advice to police on the rights of detainees to be informed of the reason for the arrest and the right to have legal assistance. It also contained special measures related to the arrest of women and persons under 18 years of age.

The government amended the PTA with Act No 12/2022 which prescribed provisions for bail. After one year if the ‘trial has not commenced the Court of Appeal may grant bail

The period of full detention was limited to 12 months from 18 months by amendment section 9 of the principal Act with section 2 of the amended Act.

It is now proposed by the government to repeal the PTA and introduce a “National Security Act” to deal with the offense of terrorism. The HRCSL proposes the National Security Legislation which is to replace PTA should adhere to international human rights standards, specifically concerning the definition of a ‘terrorist.’

At present, there are 6 persons in detention. But several are in judicial custody. Some have been in custody for nearly 14 years to end the trial.

The HRCSL has written to the Attorney General conveying to him its grave concerns about the rights of detainees, and those remanded under PTA in 2015. The HRCSL called for the immediate release of those who are being held in detention or remand for extensive periods, without charges being framed against them, and where there is no credible evidence to support their detention.

In the letter to AG, the commission expressed concern that prolonged administrative detention or remand of a person is a serious violation of the fundamental rights guaranteed to them under Art. 12 and 13 of the Constitution as well as the country’s obligations under international law.

All persons arrested or detained in the PTA must be informed to the commission forthwith with particulars as to the place of detention and that officer must inform the commission of any release or transfer made of that person subsequently with the name of the new location of the detention. (Section 28)

The HRCSL had issued Directives to Prison Authorities and Police that at times the fundamental rights of the detainees/prisoners must be ensured. On 17th June 2016, then Head of State and Commander in Chief of security forces and Minister of Defense, Mathripala Sirisena issued directions to the security force and the police to ensure that the fundamental rights of persons arrested or detained under PTA are respected and to assist and facilitate the HRCSL to exercise and perform its functions, powers, and duties.

Also, of particular interest to the HRCSL is addressing the effects of the civil war, among which are internally displaced persons, enforced disappearances, and land issues.

Internal Displaced Persons (IDP) are in welfare centres because their lands have still not been released to them, especially in Jaffna. There is ongoing distress due to the continuation of High-Security Zones and the Airport expansion project. Against the backdrop of conflict-related displacement and forced migration, the returnees and resettlement of people in the North and East are mired in numerous challenges, such as difficulties in distinguishing property boundaries, and damaged or destroyed documents, which are critical to proving both ownership and control of the land. The continuous military occupation of certain private as well as state lands in the North is also a matter of concern.

The current regime appears to be taking meaningful steps to release the lands to their rightful owners. The government is in the process of preparing a plan with proper superimpositions to identify the State and Private Land. It may take a while to complete the process.

A major challenge faced by the IDP was the loss of their land to due absence from the land for more than 10 years as prescribed in the Prescription Ordinance. Therefore, the law was amended and the Prescription Special Provision Act No. 05/ 2016 came into force on 26th April 2016 which provided legal provisions to address the land issue in respect of persons who had abandoned their lands due to armed conflict.

According to the amendment, any “displaced person” or “disadvantage person” had the right to sue for the recovery of the land. Such a “displaced person” meant a person who was forced to flee the land as a result or to avoid the effects of armed conflict and a “disadvantaged person” included a person who was unable to pursue his rights as a result of armed conflict.

The HRCSL adheres to a Zero Tolerance Policy against torture and inhuman or degrading treatment.

The GOSL ratified the Optional Protocol of the Convention against Torture Inhuman Degrading Treatment and Punishment on 5th December 2017.

Upon a cabinet decision made on 14th November 2017, the HRCSL was designated as the National Preventive Mechanism under the Optional Protocol. It has carried out many investigations on cases of torture and made recommendations to appropriate authorities highlighting the gross violation.

The HRC has written to the Attorney General on 27.11.2015, calling for the immediate release of those held in detention and against whom there was no credible evidence despite the long detention. The Commission expressed its views in that statement that prolonged administrative detention or remand is a gross violation of fundamental rights, guaranteed under Articles 12 and 13 of the Constitution of Sri Lanka as well as under Sri Lanka’s obligations under international law.

The Directives issued by the HRCSL to the security forces and police in May and June 2016 reinforced the political will to investigate and punish offenders under the Torture Act 22 of 1994.

The GoSL formulated National Human Rights Action Plan 2017 – 2021 and established thematic committees.

The HRCSL receives quite several complaints relating to torture, and inhuman and degrading treatment. Torture is a crime of opportunity. The first step in this regard was taken in **2019** when the walls around police stations were pulled down. The Police stations are now not in cover. The HRCSL has spoken with HE to have CCTV at police stations to minimize torture at police stations, and minimize the opportunity for torture at police stations. In 2015, the complaints of torture were 415. In 2016 and 2017 there were 400 cases. Deaths in custody were reported as 05.

As you may observe torture case numbers are high. The Commission is equipped with a mandate to go to any court having jurisdiction to hear and determine as the case may be. Most of the cases that come before the commission are not cases where the victims have suffered severe physical or mental pain as the torture Act dictates. Most assaults have been by police officers using their hands and pushing and shoving the alleged victims. More severe cases of torture victims are being filed in the SC straight by the victims. The commission in the year 2015 to 2017 awarded monetary reliefs as compensation to the victims.

Deaths in custody cases are inquired into by the Commission. The report is sent to Attorney General for instituting criminal action.

Since May 2017, there have been five fundamental cases in which State was found to have violated the Petitioner's rights under Art. 11.

In May 2017, the High Court of Jaffna convicted 6 police officers in charge of the Chunnakam police station and sentenced them to 10 years imprisonment.

Currently, for many severe allegations of torture by the police and deaths in custody, the AG declines to appear for the police and defend. Then the police will inevitably have to find a private counsel. Due to this trend, the police are careful not to cause serious injuries. And, after conviction, the damages are recovered from the private funds of the individual police officer.

The HRCSL has a fast-track complaint-handling system to conduct inquiries relating to torture, round-the-clock hotline facilities, and routine and unannounced night visits to Police stations and detention centres. The HRCSL also introduced "Stop Torture" campaigns all island-wide, and provided training to police officers.

The HRC has a "rapid response team" to make unscheduled visits to places of involuntary detention and call for reports from the State authorities. And, currently, the HRC has a list of the names and the date of arrest of the detainees.

The HRCSL also adheres to a zero-tolerance policy of corporal punishment

The HRCSL emphasized the need to ensure discipline within schools while protecting the well-being of the children. The HRCSL urged authorities to find alternative means of disciplining students without resorting to corporal punishment. To ensure alternative means of discipline the Commission invited principles of National schools into the ministry of education, Doctors, and psychiatrists. The discussion and the statement were issued in 2016. The circular was issued by the Ministry of education in 2016 to all schools preventing corporal punishment and such is an offence under the Penal Law of the Country. The punishment is now within Act No.22 of 1995.

(Circular No.12/2016)

In 2023, the Commission summoned the principal of a leading school and stated that any corporal punishment would be a violation of the Penal code.

The HRCSL ensures and monitors the safety of detainees.

The HRCSL has also found that numerous shortcomings in the functioning of the criminal justice process contributed to extended incarceration of persons, particularly pre-trial detention, which in turn, contributed to the creation of adverse living conditions and harsh treatment in prisons. This became apparent upon the HRCSL's survey of twenty prisons situated throughout nationwide

Freedom of expression, freedom of assembly, and freedom of association are critical parts of the democratic process and the HRCSL has taken efforts robustly to safeguard them.

The HRCSL noted in the 2015 election period when reserving public places for holding meetings within the purview of local authorities that certain political parties were given favourable treatment, while others were deprived of these rights, on the basis that places in question were reserved for other activities not related to the election process. The HRCSL has taken up this issue and conducted a seminar for representatives of local governments. HRCSL also formulated guidelines to ensure fair play devoid of favouritism to ensure a first come first served basis. Those guidelines are enumerated in the Commission's 2017 annual report.

A set of guidelines for the police in civilian protests control protests have been formulated by the Commission.

The HRCSL is fully committed to ensuring that the right of minorities in Sri Lanka are given adequate protection

The HRCSL is gravely concerned about the acts of violence and aggression targeting the Muslim Community in 2017.

A statement was issued by the Commission to the President on 31st May 2017. In the said letter, the HRC expressed its dissatisfaction with the hate speech conveyed on social media targeting the Muslim Community and Islam, which may instigate people to commit violence against the Muslim people, their religious institutions, and businesses. The Commission also brought to the attention of the President the spate of attacks on places of Christian worships in the recent past. It was brought to the notice that such expressions of hate and violence targeting a specific community is an offence under ICCPR Act No. 56 of 2007 and the Penal Code.

The recommendation was made to His Excellency the President to make an urgent direction to the Minister of Law and Order and the IGP to take action against such perpetrators.

LGBTIQ persons face severe harassment by the Police through the operation of section 365, 365A of the Penal Code and the Vagrants Ordinance. The HRCSL also supports the repeal of sections 365 and 365A of the Penal code, and the amendment of the Vagrants Ordinance.

The HRCSL reaffirms its commitment to work for the people of Sri Lanka to protect and promote civil and political rights which are enshrined in the ICCPR, as it has always done in the past.

The further monitoring and implementation of the Human Rights Committee's concluding observations, recommendations, and advice to GoSL dated 20.10.2014 (5th Review) will unequivocally serve to ensure the Civil and Political Rights of the People in Sri Lanka.

Justice Rohini Marasinghe
Chairperson
Human Rights Commission of Sri Lanka