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Human Rights Commission of Sri Lanka

The HRCSL's Report relating to Civil and Political  
Rights within the Country for the review of Sri Lanka  
(6<sup>th</sup> Periodic Report) by the Human Rights  
Committee during its 137<sup>th</sup> Session

25<sup>th</sup> January 2023

**The HRCSL's Report relating to Civil and Political Rights within the Country for the review of Sri Lanka (6<sup>th</sup> Periodic Report) by the Human Rights Committee during its 137<sup>th</sup> Session**

1. The Human Rights Commission of Sri Lanka (HRCSL) submits its report relating to protection and promotion of Civil and Political Rights of the people of Sri Lanka for the review of Sri Lanka (6<sup>th</sup> Periodic report) by the Human Rights Committee(HRC) during its 137<sup>th</sup> Session which will be held in 2023. The HRCSL has the mandate which enshrined in the Human Rights Commission of Sri Lanka Act No.21 of 1996 to protect and promote human rights in the country given the mandate the HRCSL, being an independent Commission carries out its functions keeping in line with the Paris Principle.
2. Sri Lanka ratified the International Covenant on Civil and Political Rights (ICCPR) and Optional Protocol - 1 of the ICCPR and henceforth Government of Sri Lanka (GoSL) has been under obligation to ensure the Civil and Political rights of the people of the Country. 1978 Sri Lanka's Constitution guaranteed certain Civil and Political rights and some of those are incorporated in the legal statutes such as International Covenant on Civil and Political Rights Act No. 56 of 2007. Even though implementation of those rights are still challengeable due to various Political, Economic, Social Cultural implications, the HRCSL uses different strategies, interventions, directions, advices and recommendations to overcome those challenges in order to implement HRC's Concluding observation and recommendations.
3. The HRCSL mainly concerns about concluding observations of the 5<sup>th</sup> Periodic Report issued by Human Rights Committee. In this regard HRCSL has observed that there are positive steps that have been taken by the GoSL during the reporting period. The GoSL brought Nineteenth Amendment in to the Constitution in 2015 which ensure the independency of the mechanisms. The GoSL enacted legislations relating to Transitional Justice Mechanism such as Office of Missing Persons Act No. 14 of 2016, Office for Reparations Act No. 34 of 2018, Registration of Deaths (Temporary Provisions) Act, No. 16 of 2016 in order to issue Certificates of Absence and International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018. National Authority for the Protection of Victims of Crime and Witnesses in 2016, the provision of redress and services to victims and witnesses as per the Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 And also established different institutions and Committees such as Office for National Unity and Reconciliation, SCRM under the Prime Minister's Office to ensure that the commitments under UN Human Rights Council Resolution 30/1, Consultation Task Force on processes relating to reconciliation and transitional justice.
4. The GoSL ratified the Optional Protocol of the Convention Against Torture Inhuman Degrading Treatment and Punishment on 5<sup>th</sup> December 2017. The HRCSL was designated as the National Preventive Mechanism under the Protocol.
5. The GoSL formulated NHRAP 2017 – 2021 and established thematic committees. The HRCSL participated in those thematic committee as an Observer.

## **Constitutional, legal framework and independence of judiciary**

6. The Nineteenth Amendment to the Constitution passed by the Parliament in 2015 to repeal Eighteenth Amendment to the Constitution. The Nineteenth Amendment also provided for the establishment of the Constitutional Council which further strengthened the appointment process of Independent Commissions including HRCSL. Freedom of information has been added to the Fundamental Rights Chapter, making it a judicially enforceable right.
7. The HRCSL was accredited with “A” status by the Global Alliance of National Human Rights Institutions (GANHRI) in 2018.

## **Constitutional Reform Process**

8. The GoSL started the Constitutional Reforms process and the Six Sub-Committees were appointed under the Steering Committee to deliberate on the areas of Fundamental Rights, Judiciary, Law and Order, Public Finance, Public service and Centre-Periphery Relations.
9. The HRCSL submitted its submission to the Committee on Law and Order in August 2016. In this submission the HRCSL highlighted that the Public Security Regime should be in line with Sri Lanka’s Human Rights obligations, in particular with the Article 4 of the ICCPR, Judicial review of a declaration of state emergency, Emergency Regulations and orders, must be guaranteed. Further the HRCSL endorses the provisions in the draft Charter of the Rights (2009) on derogation of rights during the periods of emergency. Also the HRCSL recommends the review of the public security ordinance for purposes of reforming the legislative regime applicable to public security.
10. The HRCSL submitted the Proposals for Constitutional Reforms to the Public Representations Committee in 2016. The HRCSL is of the view that the deepening constitutional protection of human rights requires much more than incorporation of a substantively rich constitutional bill of rights into a future Constitution. Two critically important dimensions that require attention in reform process are the guaranteeing of a sound system of separation of powers and checks and balances and strong regulations of Public Security Regime
11. The HRCSL endorses that the bill of rights should give primary protection of human dignity and equal rights should necessary take into account the spirit and objectives of international Human rights law and Directive Principles of State Policy.
12. The HRCSL further emphasize that that needs to incorporate Economic, Social and cultural rights in the future Constitution of Sri Lanka.
13. The HRCSL informed the Sub Committee on Fundamental Rights that the HRCSL position on reform of Article 16 of the 1978 Constitution of Sri Lanka. The HRCSL is of the view that the future constitution of Sri Lanka must recognize the principle of supremacy of the Constitution. All other written and customary laws will be invalid to the extent of inconsistency with constitution of Sri Lanka.

## **Views under the Optional Protocol**

14. Sri Lanka is a party to the First Optional Protocol to the ICCPR as such it has been made possible for the public in Sri Lanka to communicate any violation coming under civil and political rights to the human rights committee. In the case of Nallaratnam Singarasa having exerted all domestic avenues communicated his case to the Human Rights Committee. After the review the Human Rights Committee sent the recommendation to the state in this regard for the state to implement the recommendations within the Sri Lanka Legal context.

## **Non-discrimination**

15. The HRCSL views that the non discrimination clause in the Constitution should be strengthened by adding the ground of Sexual Orientation, Gender Identity and disability in Constitution of Sri Lanka. The clause should be articulated in an open manner as required by the International Human Rights obligations.
16. Further there are laws contained in the discriminatory clause. These clauses should repeal or amend specially the Land Development Ordinance, No. 19 of 1935 (LDO) and the Muslim Marriage and Divorce Act (MMDA), No. 13 of 1951 and Thesawalamai Law.

## **Violence against women**

17. The HRCSL has published its Policy against the Sexual harassment at work places in 2006. There are governmental institutions that has established committees on this. The HRCSL conducts training for those committee members on sexual harassment at work place.
18. The HRCSL has given special attention to those women working in informal industries sector and has issued in this regard in 2017. The HRCSL pointed out that the Steps should be taken to ensure the participation of women representing such specific fields when making policy decisions and compiling policies relevant to the women. Taking policy decisions to grant credit facilities without any discrimination to those women serving in agricultural sectors and women who are engaged in informal economic sectors. The Central Bank of Sri Lanka and Financial Institutions including Lending State Banks and Private Sector Banks should take action to compile a National Credit Policy to grant loans to women without any discrimination, ensure participation of women's representation in the process of compiling such National Credit Policy, creation of awareness on the proper credit management; and regulation of micro credit schemes and such lending institutions.

## **Abortion and maternal mortality**

19. In the revision of abortion laws of the country the HRCSL advocated stressing the public policy on health matters should be made on the basis of strong medical and secular grounds and not on religious beliefs etc. The HRCSL also observed that abortion is a public health issue that affects the reproductive rights of women.

## **Counter-terrorism**

20. The HRCSL views that the PTA should be repealed. Having held that views the HRCSL proposes the National Security Legislation which is to replace PTA should adhere to international human rights standards. The HRCSL reiterates the need to be guided by the principle that any limitation on rights should adhere to the tests of necessity and proportionality and should be subject to judicial review when drafting national security legislation.

## **Internally displaced persons**

21. Internal Displaced person(IDP) are in welfare centres because their lands are still not released specially in Jaffna District due to High Security Zone and Airport expansion project. Anyhow the GoSL takes necessary steps to find out alternative lands to relocate the IDPs. The GoSL upto 2017, 33540 Tamil families, 610 Muslim families and 236 Sinhala families resettled in Jaffna District. The IDPs in the welfare centres are facing difficulties because they have been living more than three decades and expansion of family.

## **Land Release**

22. Access to land in the North and East remains a complicated issue in the post conflict Sri Lanka. Against the backdrop of conflict related displacement and forced migration, the return and resettlement of people in the North and East encounter numerous challenges such as difficulties in distinguishing property boundaries, and damage or destroyed documents, which are critical to prove both ownership and control of the land. Continuous military occupation of certain private as well as state land in the North is also a matter of concern. The security forces have gradually been realising lands in the Northern Province. In year 2015, 2016 and 2017 Total 1739.87 acres, 1252.53 acres and 120.11 acres lands were released respectively in Jaffna District according to the Jaffna District Secretariat Data.

## **Right to life**

23. The HRCSL recommended that the right to life should be included as a fundamental right in the new Constitution. Further in 2016, HRCSL also recommended that 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 more humane society consonant with human rights principles and values. Whilst appreciating that successive governments in Sri Lanka from 1976 have not implemented the death penalty.

## **Enforced disappearances**

24. The HRCSL is of the view that enforced disappearances of persons is one of the most serious human rights violations bringing untold sorrow to loved ones. It cannot be denied that these disappearances have had a devastating impact on families, sometimes resulting in families being torn apart following the enforced of the sole breadwinner. Further

enforced disappearances have created thousands of women headed households in Sri Lanka. The fact that thousands of individuals endure such trauma should not desensitise us to their individual experiences, nor devalue their individual stories. The mothers of enforced disappeared persons' protests are going on. They face challenges to seek truth. They do not trust the existing mechanisms established by the law. A mechanism that could win the trust of those affected should be established to address this issues. Enabling families to find the truth about their disappeared loved ones is an important aspect. Courageous steps should be taking to re-affirm values of humanity, empathy and respect for the rule of law as a country.

### **Prohibition of torture and ill-treatment**

25. The HRCSL adheres to Zero Tolerance Policy. It has fast track complaint handling system to conduct inquiries relating to torture, around the clock hot line facilities and routine and unannounced, night visits to the Police stations and detentions centres. The HRCSL also introduces "Stop Torture" campaigns all over the Island and providing training to police officers. HRCSL however mindful that torture to be of routine nature that is practised all over the country mainly under police detentions.
26. The HRCSL received approximately 400 complaints each years during years 2015,2016 and 2017<sup>1</sup>. The HRCSL highlighted this issue to Inspector General of Police (IGP) from time to time. The Commission recognises that law alone is not adequate to end impunity and reiterates the need for qualitative and effective training for the police.
27. The HRCSL issued directives on Arrests and Detention under the Prevention of Terrorism (Temporary provisions) Act No.48 of 1979 to ensure the fundamental rights of persons arrested or detained are respected and protected, and such persons are treated humanely. The PTA should be construed narrowly and used in very specific circumstances and should not be used to arrest persons for ordinary crimes. These directives mainly emphasise that the arrest process should be followed and special measures should be taken on arrests of women and person under 18 years.
28. The HRCSL is designated as the National Preventive Mechanism(NPM) under the Protocol. This mechanism further strengthens the HRCSL to protect and promote rights of detainees

### **Detention**

29. The HRCSL has taken several measures to ensure the safety and rights of detainees. A poster informing the rights of the suspects is display in every police station.
30. The HRCSL has written to Honourable Attorney General conveying to him its grave concerns about rights of detainees and remandees under PTA in 2015. The HRCSL called for immediate release of those who are held in detention or in remand for a long period of time without framing charges and against whom there is no credible evidence. The HRCSL further called upon the honorable Attorney General to review the cases of those indicted

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<sup>1</sup> HRCSL's Annual Reports 2015,2016 and 2017

and withdraw those cases which are solely based on confessions made to Police officers, cases where no credible evidence exist and cases which are relatively minor.

31. The HRCSL conducted a survey in twenty prisons around the country. The survey revealed that the treatment and detention conditions of prisoners fall far below the threshold of basic living standards. The provision of services to which prisoners are entitled, including access to healthcare and opportunities for rehabilitation, are poor because the level of occupancy of the prisons is manifold its capacity. Due to the severe shortage of staff prison officers are overworked and experience job dissatisfaction and mental distress. The inadequate remuneration that is not commensurate with the difficult and even dangerous conditions of their working environment exacerbates the challenges they face discharging their functions effectively. Thus, prisons are found to be overcrowded and dysfunctional, where the risk of breeding criminality, corruption and recidivism was high as the opportunities for rehabilitation were minimal. Hence, there is the absence of conditions conducive to the effective social re-integration of reformed prisoners.
32. 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 treatment in prisons. The manner in which bail is awarded, the administrative inefficiencies of state institutions, the lack of legal aid and the poor utilization of alternatives to incarceration all contribute to more prisoners spending longer periods of time in prison. Not only is this a huge burden on the taxpayer, but it also results in diminishing returns because those prisoners do not leave prison with proper mind set to reintegrate into society and live as productive citizens. Instead, the system, as it currently exists, could potentially result in released prisoners resorting to further criminality after release in order to survive.

### **Prison overcrowding**

33. The HRCSL survey highlighted the overcrowding of wards resulting in many new remandees standing all night-long as they do not have space to sleep, or being forced to sleep near or inside the toilets. Prisoners frequently complained of, which the Commission observed as well, a large number of mosquitoes and bedbugs as well as rats and pigeons inside the wards, which contributed to their distress and adversely affected their health as well. Conditions of the wards and other facilities are not regularly monitored by medical officers or public health inspectors, despite legal requirements. The lack of external and independent monitoring of prisons and the resultant action taken by the Ministry indicates a serious disregard for prisoners' health and living conditions. Such conditions are conducive to the spread of illnesses among prisoners, which, in turn, impact the overburdened prison healthcare and transport system.

### **Corporal punishment**

34. The HRCSL is seriously concerned on corporal punishment being employed by school authorities as a disciplinary measure. The HRCSL convened a meeting in 2017 with education authorities including some national school principals in Colombo district to discuss and find solutions to the issue of Corporal Punishment. The HRCSL emphasized the need to ensure discipline within schools while protecting wellbeing of the children as

well the HRCSL urged authorities to find alternative means of disciplining students without resort to corporal punishment.

### **Freedom of expression and participation in the political process**

35. The HRCSL noted in 2015 election period reservation of public places for holding meetings where within purview of local authorities' certain political parties were given favoured treatment and others were deprived of this rights on the basis that places were reserved for other activities not related to the election process. The HRCSL taken up this issue and conducted seminar for representatives of local governments. HRCSL also formulated guidelines to ensure fair play devoid of favouritism to ensue first come first served basis.

### **Freedom of assembly and freedom of association**

36. The HRCSL views that the authorities should be allowed peaceful protesters to claim their rights. And also law enforcement authorities adhere the law and procedures to control the crowd according to the international human rights standards.

### **Rights of persons belonging to minorities**

37. The HRCSL is gravely concerned about the acts of violence and aggression targeting the Muslim Community in 2017. The HRCSL notes that previously similar conducts led to the violence at Aluthgama in June 2014, resulting in the loss of lives and destruction of property. The HRCSL is alarmed at the hate speech conveyed over social media as well as some mainstream media targeting the Muslim and Islam, which seek to instigate people to commit violence against the Muslim people, their religious institutions and businesses. The HRCSL requested the head of state to give directions to Ministry of Law and Order and IGP to take all necessary action against the instigators and perpetrators of violence and hate speech targeting the Muslim community as well as other religious minorities.
38. After the thirty years of armed conflict Sri Lanka is at present attempting to rebuild ethnic harmony and work towards reconciliation. In this process it is important that all communities have the space and ability to mourn the loss of their loved ones and remember them. Hence, memorialization is an important and integral part of the reconciliation process. The HRCSL view that allowing the space to do so would enable them to feel they too have and are able to exercise their rights as citizen of Sri Lanka. Denial of such an opportunity will only serve to deepen ethnic divisions and hamper reconciliation efforts.

39. The HRCSL conducts awareness programmes on Minority Rights for Police Officers and Security forces.
40. The language issue is in Plantation workers in the Central, Sabragamuwa and Uva provinces to obtain services at Government Departments. Even though language policy is available, people unable get their service in their own languages. Specially lack of Tamil speaking officer are in Government Departments including Police Department.
41. The HRCSL received complaints related to arrest, detention and harassment to the LGBTIQ persons by the Police under the section 365, 365A of the penal code and vagrant ordinance. The HRCSL view on that repeal the section 365 and 365A of the Penal code and amend the vagrant ordinance.