

## Annex 1

### Observations and Recommendations on the Draft National Women's Commission Bill

Pursuant to the mandate of the Human Rights Commission of Sri Lanka under section 10(c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, the Commission submits the following observations and recommendations with respect to the draft Bill.

#### Clause 2

1. Clause 2(d) of the Bill provides that one of the objects of the Bill is 'to prevent and protect women from all forms of discrimination based on gender, sexual orientation, marginalisation, sexual harassment, and violence...' At the outset, it is observed that the syntax of the Clause is unclear, as the term 'women' does not logically follow the term 'prevent'. It is also unclear as to whether 'marginalisation', 'sexual harassment and 'violence' are categories of discrimination or separate categories of harm from which women should be protected.
2. **It is recommended that Clause 2(d) be revised to clarify the syntax and ensure that the categories of harm from which women should be protected are clearly specified.**
3. The Commission observes that Article 12(2) of the Sri Lankan Constitution guarantees the right to non-discrimination on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.
4. While the phrase 'any one of such grounds' has not been explicitly defined, we note that the Government of Sri Lanka has, in the past, clarified its own interpretation of the phrase. For instance, in the State Party Report submitted by Sri Lanka in the Third Universal Periodic Review cycle in 2017, the State acknowledged that prohibited grounds of discrimination expressly included in Article 12(2) of the Constitution are not exhaustive, and that the guarantee of equality and equal protection of the law under Article 12(1) of the Constitution is not subject to any exception. Moreover, in 2019, in its Periodic Report with respect to the International Covenant on Civil and Political Rights, the Sri Lankan State clarified that 'the prohibited grounds of discrimination under article 12(2) of the Constitution are non-exhaustive, and discrimination on the grounds of sexual orientation is implicitly prohibited.'
5. It is, therefore, reasonable to maintain that a statutory objective that refers to non-discrimination on the grounds of gender or sexual orientation is compatible with Article 12(2) of the Constitution. In line with this interpretation, it is observed that the inclusion of grounds of non-discrimination such as gender identity and sexual orientation in the Bill will not be inconsistent with Article 12(2) of the Constitution.
6. It is also noted that the Supreme Court of Sri Lanka, in its determination in SC (Special Determination) No. 13 of 2023 *et al* on the constitutionality of a proposed amendment to the Penal Code to decriminalise certain sexual acts, determined that the amendment was consistent with the Sri Lankan Constitution. Although the relevant sections of the Penal Code, i.e., sections 365 and 365A, have not been repealed or amended to date, the

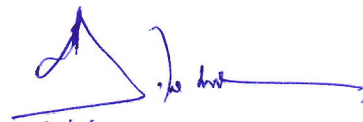
Commission is of the view that necessary action must be taken to do so in view of the Supreme Court's determination. In this context, the broad purpose of the Bill in advancing non-discrimination on the grounds of gender and sexual orientation is in line with the Supreme Court's endorsement of the amendments to the Penal Code.

7. Clause 2(4) of the Bill provides that one of the objects of the Bill is to ensure 'women's participation in all measures and mechanisms connected with transitional justice'. While the Commission commends the Bill's recognition of 'transitional justice' as an important area, there are no further references to the term 'transitional justice' in the Bill, nor have any powers or functions been allocated to the National Women's Commission ('NWC') with respect to transitional justice.

#### Clause 4

8. Clause 4 of the Bill concerns the composition of the NWC. Clause 4(2)(a) provides for the appointment of five members to the Commission on the recommendation of the Constitutional Council. However, Clause 4(2)(b) of the Bill read together with Clause 4(4) provides for the appointment of two members by 'a select committee of Parliament to look into and report to Parliament...'
9. Clause 4(1) provides that appointments to the Commission shall be made from 'persons who have distinguished themselves in the advancement of women's rights and freedoms'. Clause 4(1) further provides that 'diversity of background, experience and expertise of the proposed members' should be taken into consideration. This provision can be further strengthened to specify the types of experience and expertise that should be taken into consideration. For example, in India, section 3(2) of The National Commission for Women Act (1990) requires the members to be, 'persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare'.
10. Clause 4(3) of the Bill specifies that five members of the Commission shall be women. To avoid doubt, this Clause can be strengthened to ensure that the requirement is that 'at least' five members of the Commission be women.
11. **It is recommended that Clause 4 be strengthened to ensure that all members of the NWC be appointed on the recommendation of the Constitutional Council. It is also recommended that the types of experience and expertise that should be taken into consideration when making appointments to the Commission be specified. It is further recommended that it be clarified that the minimum requirement of women's participation in the Commission is five members.**

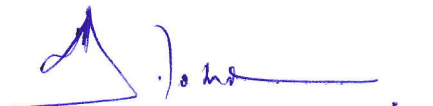
#### Clauses 5 and 43



12. Clause 5(1)(a) empowers the NWC to 'inquire into and investigate the infringement or imminent infringement of women's rights'. The Commission notes that 'women's rights' is defined in Clause 43 to mean *inter alia* the rights contained in [the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)] and other international conventions, treaties and instruments on women's rights ratified and endorsed by the Government of Sri Lanka'.
13. While the Commission endorses a broad definition of 'women's rights' to include international human rights specified in international conventions, treaties and instruments including CEDAW, it is also cognisant of the fact that Sri Lanka is a dualist country. Therefore, the specification of the nature and scope of all rights in domestic legislation is preferable to avoid doubt, particularly in a context where the NWC is expected to inquire into and investigate the infringement or imminent infringement of such rights.
14. **In this context, it is recommended that the list of rights constituting 'women's rights' be included in the Bill itself so as to avoid ambiguity as to the nature and scope of rights contained in international conventions, treaties and instruments ratified by Sri Lanka.**
15. Clause 5(1)(f) and (g) refer to 'any government body or other authority'. It is recommended that the term 'other authority' be clarified to mean other 'government' authority so as to ensure non-interference with the mandates of any independent commissions.
16. It is observed that under functions and duties of the Commission that there is no explicit provision for engaging civil society actors. Such a provision would be invaluable to the Commission in order to obtain a holistic view of the issues faced by women in society.
17. **It is recommended that Clause 5(1)(f) and (g) be revised to clarify that authorities required to report to or appear before the NWC are 'government' authorities. It is also recommended that the Commission be specifically empowered to engage civil society actors.**

#### **Clauses 16 and 42**

18. Clause 16(1) of the Bill confers powers of investigation and inquiry upon the NWC in relation to the infringement or imminent infringement of 'women's rights by any person or a body of persons'. Such investigation and inquiry, however, is to be conducted via a Committee appointed in terms of Clause 42 of the Bill. Clause 42 provides that the Minister in consultation with the NWC may issue Regulations prescribing the manner in which the NWC shall appoint the Committee, the eligibility required of the persons appointed to the Committee, and the procedure to be followed by the Committee.
19. **It is recommended that the manner in which the NWC shall appoint the Committee, the eligibility required of the persons appointed to the Committee, and the procedure to be followed by the Committee be specified in the Bill itself or left to the NWC to determine as opposed to being regulated by the Minister.**

  
Justice L.T.B. Dehideniya  
Judge of the Supreme Court (Retired)  
Chairman

### Clause 17

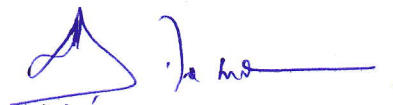
20. Clause 17(1)(b) of the Bill provides a time period for making a complaint to the NWC, i.e., within one month of becoming aware of the infringement in the case of a violation by state administrative or executive action, and within two years if the violation is by a private person.
21. The Commission observes that no time bar is currently in place in terms of making a complaint under the Human Rights Commission of Sri Lanka Act, No.10 of 1996. Therefore, in any event, if the women's right in question is also guaranteed by the Constitution of Sri Lanka, the complainant would be able to complain to the Human Rights Commission without the application of a time bar, thereby creating an incongruence between the Bill and the Human Rights Commission of Sri Lanka Act.
22. **It is recommended that the imposition of a time bar under Clause 17 of the Bill be revisited.**

### Part III

23. Part III establishes the post of 'Ombuds for Women's Rights' to entertain in the first instance complaints connected to gender-based inequality or complaints concerning the infringement or imminent infringement of women's rights. It is understood that this institutional actor will process all complaints in the first instance. The Commission is of the view that one institutional actor may not be able to feasibly handle a large volume of complaints. Therefore, it may be more appropriate to establish a division or department within the NWC to handle complaints.
24. **It is recommended that the establishment of the post of 'Ombuds for Women's Rights' be revisited and a division or department within the NWC to handle complaints in the first instance be considered as an alternative model.**

### Clause 28

25. Clause 28(1) of the Bill provides that the 'Executive Director' of the NWC is appointed by the President on the recommendation of the Minister. Clause 28(4) provides that the President may for reasons assigned remove the 'Executive Director'. These provisions do not include adequate safeguards with respect to ensuring the independence of the 'Executive Director', who is intended to act on the instructions of and be subject to, the general direction and control of the NWC and be responsible to, the NWC.



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26. It is recommended that this provision be revisited to authorise the NWC to appoint a suitable person to the post of Executive Director in a manner that ensures the political independence of the Executive Director.

**Clause 36**

27. It is recommended that the reference to the 'Bribery Act (Chapter 26)' be revised to 'Anti-Corruption Act, No. 9 of 2023', given that the Bribery Act (Chapter 26) has been repealed.

**Clause 38**

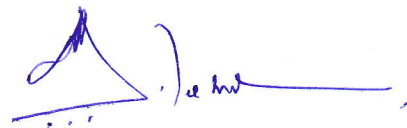
28. Clause 38 of the Bill contains offences under the Bill. However, it is observed that there is significant overlap between Clause 38 and Clause 26, which relates to the offence of contempt against the NWC.
29. It is recommended that Clause 38 be removed and all offences be contained in Clause 26.

**Clause 42**

30. Clause 42 empowers the Minister to make regulations in consultation with the Commission.
31. It is also recommended that the NWC be clearly established as an independent commission similar to the Human Rights Commission of Sri Lanka, and not be assigned to a particular Ministry. Therefore, a Minister should not be vested with the power to make regulations.

**General Observations and Recommendations**

32. It is recommended that gender neutral language be used throughout the Bill. For example, in Clause 7 of the Bill, the Chairperson, although required to be a woman, is referred to using a male gender pronoun (i.e., 'his').



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