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Human Rights Commission of Sri Lanka

HUMAN RIGHTS COMMISSION OF SRI LANKA

General Guidelines and Recommendations

[Draft] General Guidelines and Recommendations on the Protection of Human Rights Defenders

11 December 2023

Introduction

On 9 December 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

Article 1 of this Declaration provides: ‘Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.’

Human Rights Defenders (HRDs) are defined as persons who individually or in association with others, act to promote or protect human rights peacefully. They are key agents who advocate for human rights, including the rights of marginalised and vulnerable groups, including women, children, ethnic and religious minorities, persons with disabilities, internally displaced persons, migrant workers, and the LGBTIQ+ community. They act in their individual capacity or as part of civil society groups and non-governmental organisations (NGOs) concerned with human rights.

Sri Lanka has experienced periods of violent conflict due to grievances among communities and due to cultivated animosities between ethnic and religious groups. During and in the aftermath of violent conflict, Sri Lanka witnessed serious human rights violations, including extra-judicial killings, enforced disappearances, torture, arbitrary arrests and detention, and displacement. The effects of such violations continue to be felt today. Meanwhile, different sexual and gender minorities have been subjected to discrimination and harassment. Only recently has legislative reform to protect their rights been considered. Similarly, legislation to promote and protect the rights of persons with disabilities remains long overdue. Sri Lanka has also experienced an economic crisis that has rendered the poor vulnerable to the violation of their rights, including their socioeconomic rights. In this overarching context, the crucial role played by HRDs in raising awareness about human rights, documenting violations, challenging laws and policies that infringe rights, and advocating for reforms must be recognised.

However, HRDs in Sri Lanka face significant challenges. They often complain to the Human Rights Commission of Sri Lanka with regard to their arrest, detention, and prosecution for their legitimate activities. They complain that they face violence, threats, retaliation, intimidation, de facto or de jure adverse discrimination, harassment, and other arbitrary action, and that they are frequently stigmatised in the media.

The state has specific duties with respect to the rights of HRDs. First, it has the duty to respect the rights of HRDs and to refrain from violating or unnecessarily restricting these rights. Second, it has the positive duty to protect the rights of HRDs from being violated by private actors. Where violations occur, the state has the duty to provide effective remedies to HRDs.

In this overarching context, there is an urgent need to set out certain general guidelines and recommendations to ensure that the rights of HRDs are meaningfully respected and protected in Sri Lanka.

1. The Right to be Protected

- 1.1 The state should actively promote the legitimacy of the activities carried out by HRDs towards the promotion and protection of human rights. It should create all conditions necessary in the social, economic, political, and other spheres for HRDs to engage in their activities. Measures that may be taken in this regard include publicly acknowledging the need to protect HRDs and the importance of their work, giving recognition to individual HRDs, constructively engaging HRDs on human rights issues, and consulting HRDs on proposed laws and policies concerning human rights.
- 1.2 The state should consider the particular challenges faced by HRDs from or representing marginalised and vulnerable groups including women, children, ethnic and religious minorities, persons with disabilities, internally displaced persons, migrant workers, and the LGBTIQ+ community and adopt special measures to promote the legitimacy of their activities. For example, the violence, threats, retaliation, intimidation, de facto or de jure adverse discrimination, harassment, or other arbitrary action encountered by an HRD may be gendered and may target the gender identity of the HRD. Women HRDs currently face forms of gendered and sexualised harassment that includes physical or sexual violence, threats of physical or sexual violence, intimidation and humiliation. Such harassment may also take place in digital spaces. Moreover, HRDs may face heightened risks on account of their ethnic or religious identity.
- 1.3 State authorities should refrain from engaging in violence, threats, intimidation, retaliation or de facto or de jure adverse discrimination against HRDs or their families. They should refrain from subjecting HRDs or their families to any form of arbitrary action or harassment, including the unreasonable or unnecessary physical or digital surveillance of HRDs, the searching of premises or vehicles used by HRDs, or the seizing of equipment used by HRDs. State authorities should also refrain from engaging in smear campaigns, negative portrayals, or the stigmatisation of HRDs and their legitimate activities.
- 1.4 The state should take all necessary measures to ensure the protection of HRDs and their families against violence, threats, retaliation, intimidation, de facto or de jure adverse discrimination, harassment, or any other arbitrary action by private actor as a consequence of the legitimate activities of HRDs. State authorities should publicly condemn such action by private actors and ensure the accountability of such actors.
- 1.5 The state should refrain from enacting laws or instituting policies or procedures that criminalise or have the effect of criminalising the legitimate activities of HRDs. State authorities should not subject HRDs to unwarranted legal and administrative proceedings or any other forms of misuse of legal authority, including arbitrary arrest and detention, as well as other sanctions for their legitimate activities. Where criminal proceedings are instituted against HRDs, the state should ensure that all components of the right to a fair trial, including (but not limited to) the right not to self-incriminate, the right to access legal counsel, and the right to a full and fair hearing by an independent court are afforded to HRDs who stand accused.
- 1.6 The state should refrain from imposing any restrictions on any rights of HRDs guaranteed by the Sri Lankan Constitution except where the restriction is permitted by Article 15 of the Constitution. Such a restriction must be by an Act of Parliament, or an Emergency

Regulation issued by the President under the Public Security Ordinance, No. 25 of 1947. Restrictions cannot be imposed through any other regulations or administrative circulars. When imposing a restriction on the rights of HRDs, the state must demonstrate the necessity of the restriction and only take such measures as are proportionate to the pursuance of legitimate aims set out in Article 15 of the Constitution.

- 1.7 The state should meaningfully consult HRDs on any new laws, policies or procedures designed to regulate the activities of HRDs.

2. The Right to Liberty and Security

- 2.1 The state should respect and protect the right of HRDs to liberty and security as guaranteed by Articles 11 and 13(1) of the Constitution.
- 2.2 Such right includes the right of HRDs to be free from extrajudicial killing, torture or cruel, inhuman or degrading treatment, enforced disappearance, and arbitrary arrest and detention on account of their legitimate activities.

3. The Right to Equality and Non-Discrimination

- 3.1 The state should respect the right of HRDs to equality and the equal protection of the law as guaranteed by Article 12(1) of the Constitution.
- 3.2 The state should not discriminate HRDs on the basis of their race, religion, language, caste, sex, gender, sexual orientation, political opinion, place of birth or any one of such grounds as explicitly or implicitly guaranteed by Article 12(2) of the Constitution.

4. The Freedom of Expression and the Right to Information

- 4.1 The state should respect and protect the right of HRDs, individually and in association with others, at the national and international levels, to the freedom of expression for the purpose of promoting and protecting human rights, as guaranteed by Article 14(1)(a) of the Constitution. Such rights may be exercised via any medium, including social media platforms.
- 4.2 Such rights include:
 - (a) The freedom to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights, and to develop and discuss new human rights ideas and principles;
 - (b) The freedom to freely publish, impart or disseminate to others views, information and knowledge on all human rights, and to advocate the acceptance of new human rights ideas and principles; and
 - (c) The freedom to communicate with non-governmental or intergovernmental bodies, organisations, and mechanisms, including United Nations Charter-based and treaty-based human rights mechanisms.
- 4.3 The state should refrain from censoring or unreasonably or unnecessarily regulating print, electronic or social media in a manner that impedes the legitimate activities of HRDs who rely on such media.

- 4.4 The state should respect and protect the right of HRDs, individually and in association with others, at the national and international levels, to seek, obtain, receive, and hold information about all human rights, including having access to information as to how those rights are given effect in domestic legislative, judicial or administrative systems.

5. The Right to Peaceful Assembly

- 5.1 The state should respect and protect the right of HRDs, individually and in association with others, at the domestic and international levels, to meet or assemble peacefully for the purpose of promoting and protecting human rights, as guaranteed by Article 14(1)(b) of the Constitution.
- 5.2 Such right to peaceful assembly includes the right to be protected effectively under national law when protesting, reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to the state that result in violations of human rights, as well as human rights violations committed by private actors.

6. The Freedom of Association

- 6.1 The state should respect and protect the right of HRDs, individually and in association with others, at the domestic and international levels, to form, join and participate in NGOs, associations or groups for the purpose of promoting and protecting human rights, as guaranteed by Article 14(1)(c) of the Constitution.
- 6.2 Such right to the freedom of association includes the freedom to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights through peaceful means.
- 6.3 The state should refrain from enacting laws or instituting policies or procedures that impose undue administrative or regulatory burdens on HRDs in the formation, operation and financial management of NGOs, associations, or groups for the purpose of promoting and protecting human rights.

7. The Freedom of Movement

- 7.1 The state should respect and protect the right of HRDs, individually and in association with others, at the national and international levels, to the freedom of movement for the purpose of promoting and protecting human rights, as guaranteed by Article 14(1)(h) of the Constitution.
- 7.2 Such right includes the ability to move freely throughout the whole territory of Sri Lanka and to travel overseas for the purpose of promoting and protecting human rights.
- 7.3 State authorities should refrain from imposing requirements for HRDs to seek prior permission to enter any part of the territory of Sri Lanka, or leave Sri Lanka, for the purpose of gathering information, documenting violations of human rights, assisting victims of human rights violations, and raising awareness about human rights.

8. The Right to an Effective Remedy

- 8.1 The state should respect and protect the right of HRDs, individually and in association with others, to benefit from an effective remedy when their rights are allegedly violated. The state should accordingly ensure that there is no culture of impunity with respect to the violation of the rights of HRDs, and that those who violate such rights face appropriate legal consequences.
- 8.2 The state should guarantee to all HRDs, whose rights are allegedly violated, the right, either in person or through legally authorised representation, to complain to law enforcement authorities, and such authorities should not refuse to record or process such complaint. Every such complaint should be promptly reviewed in a public hearing before an independent, impartial, and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of the HRD's rights, as well as enforcement of the eventual decision and award, all without undue delay.
- 8.3 The state should provide effective and adequate security to HRDs and their families when HRDs face violence, threats, retaliation, intimidation, de facto or de jure adverse discrimination, harassment, or any other arbitrary action by private actors.
- 8.4 The state should also guarantee to all HRDs the right, individually and in association with others to:
 - (a) Complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights, by petition or other appropriate means, to competent judicial, administrative or legislative authorities;
 - (b) Attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
 - (c) Offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights.
- 8.5 The state should also respect and protect the right of HRDs, individually and in association with others, to access and communicate with international bodies with general or special competence to receive and consider communications on matters of human rights.

Recommendations

In view of fully implementing the above guidelines, the Government of Sri Lanka is encouraged to implement the following recommendations:

- 1. Establish a focal point within the government to ensure that all measures to protect the rights of HRDs are monitored and evaluated, and to ensure coordination between the various state institutions that are tasked with such measures.**
- 2. Develop, in consultation with relevant experts, appropriate gender-sensitive protection policies, programmes and mechanisms to ensure the safety and security of HRDs (and their families) at risk. These may include, where relevant, the provision**

of physical protection, temporary relocation and other protection measures and support services under the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023.

- 3. Develop, in consultation with relevant experts, a comprehensive training and awareness programme for state authorities, including law enforcement authorities, security forces, local authorities and regulators on the protection of HRDs including on the engagement with special categories of HRDs. The programme may feature a training manual with practical illustrations. It may also be integrated into the current curricula used for the training of law enforcement officers and security forces personnel.**
- 4. Review, in consultation with relevant experts, all laws and policies, including the Police Ordinance, No. 16 of 1865, the Penal Code Ordinance, No. 2 of 1883, the Quarantine and Prevention of Diseases Ordinance, No. 3 of 1897, the Public Security Ordinance, No. 25 of 1947, the Prevention of Terrorism Act, No. 48 of 1979, the Computer Crimes Act, No. 24 of 2007, and the International Covenant on Civil and Political Rights Act, No. 56 of 2007, which have been misapplied to hinder the legitimate activities of HRDs. Legal provisions with vague and ambiguous definitions that lend themselves to broad interpretation and could be abused to prosecute HRDs for their legitimate activities should be amended or repealed.**
- 5. Review, in consultation with relevant experts, all current laws, policies and procedures, including the Voluntary Social Service Organisations (Registration and Supervision) Act, No. 31 of 1980, used for the purpose of registering NGOs and for the administrative and financial regulation of NGOs. Ensure that the registration process is clear, simple and non-discriminatory. Ensure that administrative and financial reporting requirements are reasonable and clearly provided for in law, and that any inspections of NGO offices and financial records are carried out only on a clear legal basis and in a fair and transparent manner.**
- 6. Designate sufficient funds in the regular budget for the protection of HRDs at risk, emergency relief and other support services to HRDs.**