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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Press Notice No: HRC/P/i/E/17/01/24

Press Notice

Observations and Recommendations on the Commission for Truth, Unity and Reconciliation in Sri Lanka Bill

The Human Rights Commission of Sri Lanka wrote to H.E. the President, sharing its observations and recommendations on the Bill titled ‘Commission for Truth, Unity and Reconciliation in Sri Lanka’, which was published in the Official Gazette of 29 December 2023. The Commission acknowledged that the right to truth is a well-established human right under international law and remains a key pillar of transitional justice. However, it stated that this right must be promoted in conjunction with the advancement of other pillars of transitional justice: accountability, reparations, and non-recurrence. In view of strengthening the promotion of transitional justice in Sri Lanka, the Commission presented several observations and recommendations with respect to the proposed Bill. The key recommendations included the following:

1. A high-level committee should be immediately established under the Presidential Secretariat, with the participation of relevant experts and representatives of victim groups and civil society, to monitor the implementation of all constructive recommendations of previous truth-seeking mechanisms, including the Lessons Learnt and Reconciliation Commission.
2. Programmes that inform the country as a whole about the findings of previous truth-seeking mechanisms should be carried out.
3. An effective and independent mechanism for investigation and prosecution of gross violations of human rights and grave crimes should be established as a matter of priority. Such a mechanism should be adequately resourced and should have access to relevant expertise including, where relevant, international expertise.
4. The scope of transitional justice mechanisms in Sri Lanka should include both the armed conflict and civil disturbances, including insurrections. The political and socioeconomic conditions that underlie and connect the latter to the former must be part of the truth that the country as a whole reckons with.
5. Any transitional justice mechanism in Sri Lanka should be housed under the Presidential Secretariat, thereby according to it the highest status and importance.

Media Spokesperson

Human Rights Commission of Sri Lanka

17.01.2024

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

H.E. Ranil Wickremesinghe
President of the Republic of Sri Lanka,
Presidential Secretariat,
Colombo 01

Your Excellency,

Observations and Recommendations on the Commission for Truth, Unity and Reconciliation in Sri Lanka Bill

We write to you with reference to the Bill titled 'Commission for Truth, Unity and Reconciliation in Sri Lanka' (CTUR) shared with the Human Rights Commission of Sri Lanka by the Ministry of Foreign Affairs on 18 December 2023 and published in the Official Gazette of 29 December 2023.

We write to you in terms of the Commission's mandate under section 10(c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. The said provision empowers the Commission to 'advise and assist the government in formulating legislation...in furtherance of the promotion and protection of fundamental rights'.

The proposed Bill's preamble acknowledges that 'a truth-seeking mechanism, anchored in the right of all Sri Lankans to know the truth as an integral part of their right to an effective remedy, will contribute to the promotion of national unity, peace, rule of law, coexistence, equality with tolerance and respect for diversity, and reconciliation among the people of Sri Lanka and nonrecurrence of disharmony and violence...'

The Commission acknowledges that the right to truth is a well-established human right under international law and remains a key pillar of transitional justice. This right may be exercised both individually and collectively. The Commission accordingly welcomes any initiative that genuinely and meaningfully seeks to promote such a right. The right to truth, however, must be promoted in conjunction with the advancement of other pillars of transitional justice: accountability, reparations, and non-recurrence. Accordingly, and in conjunction with any proposal for a new truth-seeking mechanism, existing mechanisms, including the Office on Missing Persons and the Office for Reparations, must be adequately empowered and resourced to fulfil their mandates. We see that the current Bill makes reference to these institutions and mandates the CTUR to engage with both as necessary.

In view of strengthening the promotion of transitional justice in Sri Lanka, the Commission presents the following five observations and recommendations with respect to the proposed Bill.

1. The proposed CTUR, as comprehensive as it may be, is yet another mechanism among many such mechanisms previously designed to ascertain the truth concerning serious violations of human rights committed during the armed conflict in Sri Lanka. We note that victims of such violations have repeatedly engaged state mechanisms and presented their experiences on a number of occasions.

For instance, we recall that one such mechanism, the Lessons Learnt and Reconciliation Commission (LLRC), established in 2010, presented numerous constructive recommendations in its final report published in November 2011. These recommendations were based on the evidence of hundreds of victims and witnesses of human rights violations, who came before the LLRC. These victims and witnesses shared their harrowing experiences with the LLRC and expected that the LLRC's recommendations based on their complaints would be implemented. Yet, many of these recommendations are yet to be implemented. It is imperative, therefore, that the constructive recommendations of past truth-seeking mechanisms be fully implemented prior to allocating resources towards yet another truth-seeking mechanism that compels victims and witnesses to recount their traumatic experiences once again.

While observing that implementation of recommendations is prioritised in the Bill, it is recommended that a high-level committee, similar to that envisaged by Clauses 39 and 40 of the Bill, be immediately established under the Presidential Secretariat, with the participation of relevant experts and representatives of victim groups and civil society, to monitor the implementation of all constructive recommendations of previous truth-seeking mechanisms, including the LLRC. This committee should publish regular progress reports on the implementation of such recommendations.

2. The Commission appreciates the emphasis placed on the need to know the truth and any effort towards the goals of unity and reconciliation. However, it is of the opinion that yet another mechanism that re-victimises affected communities is unlikely to achieve its intended objectives. It is time for the government to acknowledge the truths that have already been established by previous mechanisms and facilitate and support the sharing of such truths with a broader population in fulfilment of the collective right to truth. It is advised, therefore, that the government begin by accepting the findings and recommendations of previous truth-seeking mechanisms.

It is recommended that the government carry out programmes that inform the country as a whole about the findings of previous truth-seeking mechanisms. For instance, these programmes can feature the integration of such findings into the current education curriculum and can support writers and artists who engage such findings. Such programmes can be carried out through already established institutions, such as the Office for National Unity and Reconciliation.

3. Accountability is an important and indispensable corollary of any truth-seeking mechanism. The discovery and acknowledgment of the truth must not be viewed as an alternative to accountability for violations and crimes that are revealed through a truth-seeking mechanism. It is, therefore, imperative that the recommendations of past truth-seeking mechanisms,

relating to accountability, are fully implemented. For example, the LLRC, having received numerous complaints about enforced disappearances, recommended the investigation of specific cases where persons who surrendered to state officials during the final stages of the armed conflict subsequently disappeared, and recommended the prosecution of those responsible for such disappearances. We note that this recommendation is yet to be implemented despite the enactment of the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018.

Clause 13(zd) of the Bill empowers the CTUR ‘to refer matters to the relevant law enforcement or prosecuting authorities of Sri Lanka for further investigation and necessary action, where it appears to the Commission that an offence or offences punishable under the Penal Code (Chapter 19) or any other law of Sri Lanka has been committed’. However, the Bill does not contain any specific duty or obligation of the CTUR to identify suspects or recommend investigations and prosecution of gross human rights violations and grave crimes in its final report. It is also observed that the proposed CTUR does not include a standing Investigation Unit with relevant competent, experienced, and qualified investigators, including those with relevant technical and forensic expertise.

It is recommended that the interdependence of truth and accountability be meaningfully integrated into the current transitional justice agenda in Sri Lanka. Given that previous mechanisms, including the LLRC, have already recommended the investigation and prosecution of gross violations of human rights and grave crimes, it is recommended that an effective and independent mechanism for investigation and prosecution of such violations and crimes be established as a matter of priority. Such a mechanism should be adequately resourced and should have access to relevant expertise including, where relevant, international expertise.

4. According to Clause 12 of the Bill, the mandate of the proposed CTUR is to ‘investigate, inquire, and make recommendations in respect of complaints or allegations or reports relating to damage or harm caused to persons or property, loss of life or alleged violation of human rights anywhere in Sri Lanka, which were caused in the course of, or reasonably connected to, or consequent to the conflict which took place in the Northern and Eastern Provinces during the period 1983 to 2009, or its aftermath.’ We note that the scope of this mandate is limited and excludes civil disturbances, including insurrections, and gross human rights violations and grave crimes, which took place during this period. A large part of Sri Lanka’s population—especially young persons—were deeply affected by such events. Therefore, such events ought not to be excluded from the scope of any transitional justice mechanism. Moreover, the prevailing culture of impunity in Sri Lanka, which the Commission has repeatedly raised as a major concern, stems from the lack of accountability for gross human rights violations and grave crimes committed during the armed conflict as well as during such civil disturbances and insurrections. The commitment to non-recurrence of violence—a key pillar of transitional justice—cannot be fulfilled unless a more holistic understanding of impunity is gained, and non-recurrence is ensured through sufficient deterrents.

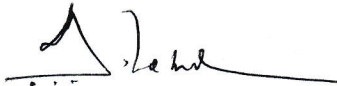
It is recommended that the scope of transitional justice mechanisms in Sri Lanka includes both the armed conflict and civil disturbances, including insurrections. The political and socioeconomic conditions that underlie and connect the latter to the former must be part of the truth that the country as a whole reckons with. One of the key objectives of such mechanisms should be to generate a better understanding of Sri Lanka's culture of impunity, and to ensure non-recurrence of violence by holding perpetrators of gross human rights violations and grave crimes to account. As contemplated in the Bill with regard to the CTUR's recommendations, conditions such as social and economic deprivation, in addition to the violation of civil and political rights, which have led to past violence, must also be part of the collective truth regarding such violence.

5. The promotion of the right to truth should not be understood as a matter of 'foreign affairs', but instead a matter of domestic justice. While acknowledging the important work carried out by the Ministry of Foreign Affairs in this regard, the continued association of transitional justice mechanisms with this Ministry could signal to the citizens of Sri Lanka that these mechanisms are, by design, primarily connected to Sri Lanka's foreign relations and engagement of international mechanisms.

It is recommended that any transitional justice mechanism in Sri Lanka be housed under the Presidential Secretariat, thereby according to it the highest status and importance.

Thank you.

Yours Sincerely,



Justice L T B Dehideniya
Chairman

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

Human Rights Commission of Sri Lanka

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