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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය / எனது இல. / My No.

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දිනය / திகதி / Date. 2025.06.12

Mohamed Hanifa Badhurnisa,
13/3, Orchard Watta,
Nittabuwa
Complainant

Mohamad Liyaudeen Mohamed Rusdi
13/3, Orchard Watta,
Nittabuwa
Victim

vs

SUO MOTU-08-25
HRCSL Case No: HRC/1072/25

The Director (1st Respondent) & Five Others
Counter Terrorism and
Investigation Division,
Old Police Headquarters Building,
Colombo
Respondents

1. Synopsis of the Complaint

The Human Rights Commission of Sri Lanka (HRCSL) initiated a *suo motu* investigation (SUO-MOTU-08-25) with regard to the arrest and detention of Mohamad Liyaudeen Mohamed Rusdi on 22 March 2025 under the Prevention of Terrorism Act, No. 48 of 1979 (PTA) and held an inquiry into the matter on 10 April 2025 and 21 May 2025.

Separately, Mohamed Hanifa Badhurnisa, the mother of the Victim, also lodged a complaint with the HRCSL (HRC/1072/25) alleging that her son was unlawfully arrested under the PTA on 22 March 2025. She claimed that she believed that the arrest and subsequent detention of her son was erroneous, and that she was concerned that state authorities were attempting to frame false charges against him.

The relief requested by the Complainant included urging the Commission to intervene and ensure the immediate release of the Victim. Additionally, the Complainant requested that a representative of the Commission visit the Victim to assess his well-being and speak with him directly, so that his condition can be thoroughly evaluated.

2. Action taken by the Commission

a. Visit to the Counter Terrorism and Investigation Division

Th Commission visited the Counter Terrorism and Investigation Division (CTID) of Sri Lanka Police on 27 March 2025 and inquired and recorded a formal statement from the Victim. Representatives of the Commission visited the place of detention to assess his well-being. During the visit, the Victim did not make any allegations of ill-treatment and there were no visible signs of any ill-treatment. The Commission also observed that the Victim had access to basic necessities.

b. Report from the Counter Terrorism and Investigation Division

The Commission called for a report from the CTID with respect to the complaint made by the Complainant.

The 1st Respondent, the Director, CTID, submitted a report dated 9 April 2025 and informed the Commission that on the 21 March 2025, the Slave Island Police Station received information regarding two stickers displayed at the shopping centre Colombo City Centre, containing the phrase 'Fuck Israel. End Apartheid'. The case was subsequently handed over to the CTID for further investigation under the direction of the Inspector General of Police (IGP).

Following an investigation, including review of CCTV camera footage of the victim pasting the impugned stickers, an officer of the CTID had visited the Victim's place of employment on 22 March 2025 and had arrested the Victim.

Following his arrest, the Victim was initially kept in custody under section 6 of the PTA. On 24 March 2025, the Respondents sought a detention order against the Victim under section 9 of the PTA, and the Minister of Defence issued the said detention order against him. In his report to the Commission, the 1st Respondent claimed that the Victim's detention was based on information gathered with respect to the pasting of the above-mentioned stickers, the discovery of a decorative sword at the home of the Victim, and the 'extremist' views allegedly held by him.

The detention order was later suspended on 7 April 2025, and the Victim was released subject to a restriction order issued under section 11(1) of the PTA. It is noted that the release of the Victim and the issuance of the restriction order were pursuant to an executive decision and not a court order. The restriction order required him to, *inter alia*, inform the CTID if he planned to change his place of residence, seek the prior permission of the CTID if traveling overseas, and report to the CTID every week.

c. Inquiry

The Commission held an official inquiry into this matter on 10 April 2025 and 21 May 2025.

On 10 April, the Complainant and Victim were represented by an attorney-at-law and the Victim's father. According to the submissions made by counsel, the Complainant and Victim were unable to be present at the inquiry due to a court hearing at which they were to report to the Learned Magistrate with respect to an evaluation of the Victim by a Judicial Medical Officer (JMO). The Complainant and Victim were present during the inquiry on 21 May.

Five officers from the CTID appeared as Respondents on both days of the inquiry. The 1st Respondent did not attend the inquiry but sent a senior officer to represent him. The Respondents submitted that at no point did they intentionally violate the law and that their actions were primarily motivated in a context where the CTID (including the 'Terrorism Investigation Division' as it was known then) came under heavy criticism for failing to act on intelligence to prevent the Easter Sunday Bombings of April 2019. The Respondents stated that they needed to act decisively and were compelled to err on the side of caution, as they had previously received intelligence reports of possible attacks on tourists.

During the said inquiry, counsel for the Complainant and Victim submitted that the arrest and detention of the Victim lacked a legal basis and that there were no reasonable grounds for suspecting that he had committed an offence under the PTA. It was further submitted that the Victim was made to sign a lengthy document in Sinhala purportedly containing his statement made to the Respondents but was not given adequate time to review the said statement or consult a lawyer prior to signing the statement.

It was also submitted that the officers of the CTID had sought a written undertaking from the Complainant that she would take responsibility for the Victim upon his release and that such officers had sought such undertaking at a venue that was not a police station or other official place.

The Respondents acknowledged that the specific words found in the stickers, i.e., 'Fuck Israel. End Apartheid', did not in and of themselves constitute an offence under the PTA. When the Commission inquired as to whether the Respondents were aware of the meaning of the term 'apartheid', the Respondents claimed that they had conducted research on the internet and had discovered it is a reference to a 'racist policy'. The Respondents acknowledged that they had not obtained any further advice or opinion on the meaning of the term.

During the inquiry held on 21 May 2025, the Respondents claimed that, had the identical stickers been displayed in front of the Israeli Embassy, they would not have arrested the Victim, and that the only reason to investigate the actions of the Victim was the manner in which he had 'secretly' pasted the stickers, and had attempted to delete his social media content when he realised that law enforcement officials were looking for him. The officer who arrested the Victim was present at the inquiry and claimed that when he had first visited the Victim's place of employment, the Victim was not present, and he had requested one of the Victim's colleagues to contact the Victim. During the said conversation, the Victim had allegedly asked the said colleague to delete their conversation.

Notably, during the inquiry, no reference was made to the discovery of a decorative sword at the Victim's home. The Respondents claimed that upon interrogating the Victim and evaluating the views he allegedly held with respect to the events taking place in Gaza in Palestine, they had reason to believe he could commit an offence in the future. They also claimed that they evaluated the online content that the victim had been consuming with respect to events in Gaza

and the practice of Islam and had estimated that he was 'radicalised' and posed a threat to national security.

The Respondents further acknowledged that the decision to suspend the detention order was taken due to the absence of any evidence linking the Victim to any specific offence under the PTA, but that they sought a restriction order under the PTA due to the fact that they estimated that he could commit an offence in the future and needed to be monitored.

During the inquiry held on 21 May 2025, the Complainant made a short statement to the Commission reiterating the contents of her complaint. Thereafter, the Victim made submissions to the Commission. The Victim acknowledged that, on 20 March 2025, he had printed out the slogan 'Fuck Israel. End Apartheid' using the printer at his place of employment and had used double-sided sticking tape to convert the two printouts into stickers. Then, on the same day, when leaving his place of employment at around 8.00 PM, he had pasted the stickers at visible locations at the shopping centre. He stated that the sole motivation for pasting the stickers was to display his outrage at events taking place in Gaza, and his desire to express some form of solidarity with the people of Palestine. The Victim refuted the claims by the Respondent that he wished to paste the stickers 'in secret', as he was well aware of the CCTV cameras installed at the premises, being an employee within the said shopping centre.

The Victim stated that he held strong views against Western governments and the State of Israel due to his opinion that such regimes propagated violent conflict. He also emphasised that he did not advocate for violence against any Israeli tourists and his expressions were a matter of political advocacy against injustice.

The Victim confirmed that he had signed a lengthy document in Sinhala purportedly containing his statement made to the Respondents. He confirmed that he could read Sinhala but claimed that he was not given adequate time to review the said statement. It was also communicated to the Commission that a Receipt of Arrest with respect to the Victim was only issued on 5 April 2025, more than ten days after the initial arrest.

When the Commission inquired about whether the Victim had been subject to torture or other cruel, inhuman, or degrading treatment, the Victim claimed that he had been struck on the face by certain interrogating officers. He clarified that these acts did not result in any injury and that he could not recall who the officers were. It is recalled that the Victim did not make such allegations during the Commission's visit on 27 March 2025, although it remains unclear as to whether any incident of assault took place after 27 March. Moreover, the JMO's report on the Victim does not make any observations with respect to ill-treatment. The Commission observes that the Victim may not have been willing to share any further details during an inquiry at which the Respondents were present. It accordingly informed the Victim and his counsel that they may submit further information to the Commission with respect to the alleged assault.

3. Analysis

This case involves the detention of Mohamad Liyaudeen Mohamed Rusdi under the PTA. The facts presented by the parties indicate that the Victim was initially arrested primarily due to the fact that he had pasted two stickers containing the phrase 'Fuck Israel. End Apartheid' at the Colombo City Centre. The Respondents claimed that the Victim's detention under the PTA thereafter was due to further evidence being gathered with respect to his 'state of mind' and 'third party contacts' (explained below) to suspects related to the Easter Sunday Bombings.

a. The freedom of expression and the freedom of thought and conscience

Article 14(1)(a) of the Sri Lankan Constitution provides that every citizen has the freedom of speech and expression including publication.

The Commission recalls that according to the United Nations (UN) Human Rights Committee in its ***General Comment No. 34 on Article 19: Freedoms of Opinion and Expression***, the freedom of expression is an indispensable condition for the full development of the person, remains essential for any society, and constitutes the foundation stone for every free and democratic society.

The Supreme Court in ***Sunila Abeysekera v. Ariya Rupasinghe, Competent Authority and Others*** **[2000] 1 Sri.L.R. 314** (at p. 340), citing ***Channa Pieris and Others v. Attorney-General and Others (the 'Ratawesi Peramuna' Case)*** **[1994] 1 Sri.L.R. 1** (at p. 134) opined that 'the freedom of speech and expression protects not only information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that *offend, shock or disturb the State or any sector of the population*' (emphasis added). Moreover, in ***Joseph Perera Alias Bruten Perera v. The Attorney-General and Others*** **[1992] 1 Sri.L.R. 199** (at p. 225), the Supreme Court opined:

> One of the basic values of a free society to which we are pledged under our Constitution is founded on the conviction that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. All ideas having even the slightest social importance, unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion have the protection of the constitutional guarantee of free speech and expression.

Therefore, in Sri Lanka, the freedom of expression includes a broad range of expressions, including expressions that may offend, shock, or disturb some people.

The Commission observes that a restriction on the freedom of expression must meet the criteria set out in articles 15(2) and 15(7) of the Constitution. Article 15(2) provides that the freedom of expression shall be subject to 'such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.' Article 15(7) provides:

> The exercise and operation of all the fundamental rights declared and recognized by [Article 14] shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

Given this legal framework, the impugned words 'Fuck Israel. End Apartheid' found in the stickers pasted by the Victim requires close scrutiny. The first part of the statement, i.e., 'Fuck Israel', is clearly a use of expletive terms to express outrage against a particular state, i.e., Israel. These words do not target any particular national, racial, or religious group and can only be interpreted as a verbal attack on a particular state. While citizens of that state may be offended, shocked, or disturbed by these words, the Commission is of the view that the words do not constitute any offence under Sri Lankan law.

Section 3(1) of the International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007 prohibits the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. In 2019, the Commission issued specific guidelines on the scope and application of this section based on The Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence. In November 2023, the Supreme Court endorsed the Commission's 2019 guidelines in the case of ***Mohamed Razik Mohamed Ramzy v. Officer-in-Charge, Criminal Investigation Department & Others*** **SC (F.R) No. 135/2020**. The Court held that, for any form of expression to constitute an offence under section 3(1) of the ICCPR Act, several factors must be considered by law enforcement authorities. The most crucial of these factors is whether the impugned expression amounts to 'incitement' to discrimination, hostility, or violence. This feature of the offence requires law enforcement authorities to consider whether there is an 'imminent danger' that the impugned expression would cause actual harm.

By applying these standards to the present case, the Commission concludes that the impugned expression of the Victim does not amount to an offence under section 3(1) of the ICCPR Act.

Moreover, section 2(1)(h) of the PTA provides that any person who 'by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups' commits an offence. The Respondents stated that the initial arrest of the Victim was in relation to this particular offence, although the Respondents subsequently determined that no offence under section 2(1)(h) had been committed by the Victim. It was also clarified that the Respondents did not consider the actual words in the stickers to constitute an offence and that, had the Victim pasted the stickers openly (e.g., in front of the Israeli Embassy), they would not have considered arresting the Victim. They claimed that the Victim's decision to paste them 'in secret' was the primary basis for their initial suspicion under section 2(1)(h). Moreover, they stated that they were aware of an intelligence report by the IGP dated 20 December 2024 referring to the possible targeting of tourists in Sri Lanka during days of religious significance, and that the contents of this report also prompted them to investigate the Victim's actions further.

The Commission is of the view that the impugned words 'Fuck Israel' cannot reasonably be construed to constitute an offence under section 2(1)(h), as they do not target any particular community, but instead expresses outrage against a particular state.

The second part of the statement, i.e., "End Apartheid", is self-explanatory. These words are a call to end the policy of apartheid, which is a reference to a system of institutionalised racial segregation and discrimination. The etymology of the term can be traced to Dutch and Afrikaans – a reference to 'separation'. It is a term often used to describe the official policy practiced in South Africa from 1948 to 1994.

The crime of 'apartheid' is also a crime against humanity prohibited by article 7(1) of the 1998 Rome Statute of the International Criminal Court. This crime is committed 'in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime'.

In the present case, the Victim's use of the words 'End Apartheid' appears to be an expression of outrage with respect to events taking place in Gaza in Palestine and a call to end policies that, in the opinion of the Victim, amount to 'apartheid'.

The Commission notes that the Victim's views are not in any way uncommon. In fact, a number of experts, including the United Nations Special Rapporteur for the situation of Human Rights in the Palestinian Territory Occupied Since 1967 have concluded in a report in March 2022 that 'apartheid' is being practiced by Israel in the occupied Palestinian territory.

The allegation that a policy of apartheid is being enforced in Israel may offend, shock, or disturb some persons, including Israeli citizens. However, the words used by the Victim, i.e., a call to 'end' apartheid, do not amount to an offence under any legal provision in Sri Lanka, and are protected under article 14(1)(a) of the Sri Lankan Constitution. For instance, these words cannot be considered incitement to discrimination, hostility or violence against any particular community as prohibited by article 3(1) of the ICCPR Act. Notably, the Victim's words are a call to end an impugned policy that amounts to a form of systemic discrimination, hostility and violence. In this sense, the Victim's words are an expression of opposition to discrimination, hostility and violence, rather than an act of incitement. Moreover, the Commission is of the view that the words 'End Apartheid' cannot reasonably be construed as constituting an offence under section 2(1)(h) of the PTA.

The Supreme Court of Sri Lanka has clarified that any restriction on a fundamental right must meet the criteria of rationality, necessity and proportionality, and reasonableness.

With respect to the criterion of rationality, the Supreme Court in ***Joseph Perera Alias Bruten Perera v. The Attorney-General and Others*** **[1992] 1 Sri.L.R. 199** (at p. 217) observed that there must be a proximate or rational nexus between the restriction on a citizen's fundamental right and the object that is ought to be achieved by the restriction.

With respect to the criteria of necessity and proportionality, the Supreme Court in ***Sunila Abeysekera v. Ariya Rupasinghe, Competent Authority and Others*** **[2000] 1 Sri.L.R. 314** (at p. 375) found that this criterion 'involves a review of whether the restrictions are proportionate to the legitimate aim pursued'. It was also held that 'the sweeping nature of the restriction can make it over-broad and disproportionate' (at p. 374).

In terms of the criterion of reasonableness, the Supreme Court in ***Wickramabandu v. Herath and Others*** **[1990] 2 Sri.L.R. 2 348** (at p. 359) held: 'If this Court is satisfied that the restrictions are clearly unreasonable, they cannot be regarded as being within the intended scope of the power under Article 15(7)'.

These standards were recently endorsed by the Supreme Court in the ***Local Authorities Elections (Special Provisions) Bill Determination*** **S.C.S.D No. 01/2025-04/2025**. Therefore, each restriction on the freedom of expression, must be: (1) provided by law; (2) have a rational nexus to a legitimate aim; (3) necessary and proportionate in terms of meeting that aim; and (4) reasonable.

A restriction on the freedom of expression takes place when a legal consequence is imposed on a person as a direct result of their expression, thereby preventing the person from repeating such expression. Such restrctions can come in various forms, including censorship, the denial of a license or platform to speak, the deprivation of liberty, or criminal sanctions, such as fines

or imprisonment. Therefore, the arrest of a person due to an expression made by such person may be considered a restriction within the meaning of article 15(7) of the Constitution.

In the present case, the arrest of the Victim, i.e., the deprivation of the Victim's liberty, more fully analysed below, amounted to a restriction on the Victim's fundamental right to the freedom of expression. Undoubtedly, the Victim would be prevented from expressing similar sentiments in the future owing to his arrest. Leaving aside the legality of the arrest, which is analysed below, the Commission is of the view that the deprivation of liberty of a person for statements that express outrage towards the policies of another state do not meet the criteria of necessity, proportionality or reasonableness.

The Commission notes that the Respondents claimed that the subsequent detention of the Victim was not based on the Victim's impugned expressions but based on subsequent findings with respect to the Victim's alleged 'state of mind'. Therefore, the Commission will confine its analysis of the restriction of the Victim's freedom of expression to the initial arrest. The legality of the arrest and the legality of the subsequent detention are considered separately below.

Based on the information provided by the Respondents and the documentation presented to the Commission, it appears that the restriction on the Victim's freedom of expression was on the grounds of 'racial and religious harmony' and 'national security'. The Commission observes that 'the interests of racial and religious harmony' and 'the interests of national security' are legitimate aims for which the freedom of expression may be restricted under articles 15(2) and 15(7) of the Constitution. However, the rational nexus between the restriction in the present case and these interests has not been satisfactorily established by the Respondents. It is not apparent as to precisely why the impugned words that are critical of another state and calling for an end to its alleged policies might pose a threat to racial and religious harmony or national security in Sri Lanka. For instance, the nexus between such expressions and any threat Israeli tourists may face was not established. In a context of intense public debate and discourse on the events taking place in Gaza, it is difficult to accept that this particular expression among many such similar expressions would uniquely pose a threat to racial and religious harmony or national security.

Even if an oblique nexus between the impugned expression and the interests of racial and religious harmony or national security were to be established in a context of alleged past events concerning threats against Israeli tourists in Sri Lanka, the Commission is not satisfied that the Victim's arrest on the basis of his impugned expressions was necessary or proportionate.

The Commission wishes to recall the Human Rights Committee's ***General Comment No. 34***, which states that any restrictions on the freedom of expression must be 'necessary' for a legitimate purpose. To meet this standard, when a state invokes a legitimate ground for a restriction on the freedom of expression, it must demonstrate 'in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.'

In terms of the standards of necessity and proportionality, it is apparent that depriving a person of their liberty owing to the fact that they used an expletive term targeting a state and called for an end to a policy of apartheid alleged to be enforced by that state was both unnecessary and disproportionate. The Respondents have failed to demonstrate in a specific and individualised fashion how precisely the impugned expression of the Victim might cause a threat to any

person, and why depriving him of liberty was necessary and proportionate in terms of the interests of racial and religious harmony or national security. In fact, no evidence was furnished with respect to the fact that his expressions or conduct amounted to an offence or were preparatory to the commission of an actual planned offence.

Finally, the Commission also wishes to note the patent unreasonableness of arresting the Victim for the impugned expression. The standard of reasonableness essentially asks what a reasonable person would do in a particular context. The Commission finds it difficult to accept that depriving a person of their liberty was a reasonable response to an expression featuring an expletive term against another state and a call to end a particular policy allegedly enforced by that state.

In this context, the Commission concludes that the restriction on the Victim's freedom of expression, i.e., his arrest in response to his expression, amounted to an unlawful restriction on his freedom of expression in violation of article 15(7) of the Constitution. Accordingly, the Commission finds that the Respondents have collectively violated the Victim's fundamental right guaranteed by article 14(1)(a) of the Constitution.

In the context of a violation of the Victim's right to the freedom of expression, the Commisssion thinks it fit to also consider whether the Victim's right to the freedom of thought, conscience, and religion, which may be intrinsincally linked to his expression, was also violated. Article 10 of the Constitution provides: Every person is entitled to freedom of thought, conscience and religion…' This freedom is not confined to matters of religion alone, but also encapsulates the liberty to think about and engage issues that one considers important and to hold views and convictions with respect to such issues. Moreover, holding a particular view based on one's religious ideology is clearly protected under article 10 of the Constitution.

The Supreme Court in ***Centre for Policy Alternatives & Others v. The Attorney General & Others*** **SC (F.R.) 91, 106 and 107/2021** (at p. 11) held:

> The freedom of thought, as enshrined in our fundamental rights, stands out as a cornerstone of democracy. The freedom of thought ensures that a person's mind remains beyond scrutiny. To infringe upon the freedom of thought is to undermine the very essence of a democratic society, for it is within the realm of individual thought that the roots of self-expression, personal liberty, human dignity and the flourishing of all other fundamental rights are nurtured.

It is noted that, unlike the freedom of expression, which may be restricted under certain circumstances, the freedom of thought, conscience and religion is an absolute right and cannot be subject to any restriction. The Supreme Court has clarified this position in the above-mentioned case by observing (at p. 11):

> According to Article 10, the State cannot prevent a person from thinking or believing in some religious ideology on the basis that such thinking or belief is irrational or extreme…Article 10 sets an absolute bar against such infringements.

In ***Premalal Perera v. Weerasuriya*** **[1985] 2 Sri.L.R. 177** (at p. 192) the Supreme Court held:

> A religious belief need not be logical, acceptable, consistent or comprehensible in order to be protected that unless where the claim is so bizarre, so clearly non-religious in motivation,

> it is not within the judicial function and judicial competence to inquire whether the person seeking protection has correctly perceived the commands of his particular faith.

Applying this standard, the Court in ***Centre for Policy Alternatives & Others v. The Attorney General & Others*** **SC (F.R.) 91, 106 and 107/2021** further clarified (at p. 14):

> People cannot be prosecuted, nay persecuted, for merely "holding religious ideology" which the State thinks to be "violent and extremist".

In the present case, the Victim's expressions stemmed from his views with respect to what he perceived as injustice taking place in the world. It is also apparent that his views were informed by his religious convictions and his personal ideology. During the inquiry, it was clarified to the satisfaction of the Commission that the Victim had acted according to his conscience informed by his religious beliefs and personal ideology.

The Commission is of the view that such religious convictions and personal ideology cannot be reasonably regarded as 'bizarre' so as to exclude them from the protection of article 10. The Victim's views, convictions, and ideology – although they may not be shared by everyone in society – fall within the ambit of his freedom of thought, conscience, and religion. Moreover, the mere fact that the Respondents classified the Victim's views, convictions, and ideology as 'extremist' cannot form a basis for excluding such views, convictions, and ideology from the protection of article 10.

The Commission observes that the arrest of the Victim was a legal consequence the Victim suffered as a direct result of the exercise of his freedom of thought, conscience, and religion. Therefore, his arrest amounted to a restriction on this freedom of thought, conscience, and religion.

Given that no restriction on the fundamental right to the freedom of thought, conscience, and religion is permissible under the Constitution, the Commission concludes that the Victim's right was in fact violated by the Respondents when they arrested him for an expression stemming from his views, convictions, and ideology. Accordingly, the Commission finds that the Respondents have collectively violated the Victim's fundamental right guaranteed by article 10 of the Constitution.

b. Legality of the arrest

Article 13(1) of the Constitution provides that 'no person shall be arrested except according to procedure established by law.'

The Commission recalls the Human Rights Committee's ***General Comment No. 35: Article 9 (Liberty and Security of Person)***, which emphasises that personal liberty is of 'profound importance both for individuals and for society as a whole'. Crucially, the Committee clarifies (at para. 12):

> An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

In the present case, the Commission first wishes to focus on whether the initial arrest of the Victim was according to procedure established by law. Where such procedure was not followed, the Commission sees no reason to separately consider whether the arrest was arbitrary. It is evident that any arrest that is outside the bounds of the law is also arbitrary. At the outset, the Commission observes that the Receipt of Arrest issued by the Respondents is dated 5 April 2025.

Section 6(1) of the PTA authorises the police to arrest any person without a warrant if the person is 'connected with or concerned in or *reasonably suspected* of being connected with or concerned in any unlawful activity' (emphasis added). Section 31 of the PTA defines 'unlawful activity' to mean:

> [A]ny action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act in the commission or in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act.

The Commission recalls the salutary legal standards with respect to reasonable suspicion set out by the Supreme Court of Sri Lanka. In the case of ***Joseph Perera Alias Bruten Perera v. The Attorney-General and Others*** **[1992] 1 Sri.L.R. 199**, the Court held that the detention of the petitioners was unlawful. The Court held that, following a completed investigation, it transpired that the posters and pamphlets distributed by the petitioners with respect to a public lecture on the topic 'popular frontism and free education' did not constitute an offence under emergency regulations promulgated at the time, i.e., during the Janatha Vimukthi Peramuna insurrection. Notably, the concurring opinion of Sharvananda C.J. also found that the initial arrest was unlawful, as it failed to meet the objective standard of reasonable suspicion. It was held that the impugned documents did not contain 'any objectionable matter from which it would be possible for any reasonable man to draw the conclusion that the petitioners had committed or attempted to commit offences under [emergency regulations] and that it was necessary to arrest or keep them in detention.'

In ***Weerawansa v. The Attorney-General*** **[2000] 1 Sri.L.R. 387**, the Supreme Court considered the lawfulness of an arrest made under section 6 of the PTA. Having reviewed the evidence before Court, Fernando J. concluded that none of the evidence gave rise to a reasonable suspicion of 'unlawful activity', and that the arrest was, therefore, unlawful and violated article 13(2) of the Constitution.

Moreover, in ***Senaratne v. Punya De Silva and Others*** **[1995] 1 Sri.L.R. 272** (at p. 284) the Supreme Court held:

> Although the...respondent was not required to have proof of the commission of the offences and could have made the arrest on the basis of suspicion, the suspicion must not have been of an uncertain and vague nature, but of *a positive and definite character* providing reasonable grounds for concluding that the petitioner was concerned in the commission of the offences (emphasis added).

Applying these standards to the present case, the Commission requested the Respondents to explain precisely what evidence against the Victim was in their possession at the time of the Victim's arrest. It was clarified that the basis for their 'reasonable suspicion' was *inter alia* that

the Victim had acted suspiciously by pasting the impugned stickers 'in secret', had attempted to delete his social media content upon learning of his possible arrest, and had 'third party contacts' with certain persons accused of offences under the PTA.

On the question of 'third party contacts', the Commission sought further clarity on what precisely is meant by the term. The Respondents clarified that this term referred to the fact that a person (e.g., A) had a mutual contact (e.g., B) with a person accused of offences under the PTA (e.g., C). Therefore, A need not have any direct contact with C, but only has a mutual contact, i.e., B. In the present case, the Respondents had discovered that the Victim had been in contact with a person who was separately in contact with a person accused of offences under the PTA. This fact was established through an analysis of telephone records. However, it was acknowledged that the Victim was never directly in touch with any persons accused of offences under the PTA.

The Commission observes that, based on the above explanation of 'third party contacts', any person in Sri Lanka could inadvertently be a 'third party contact' of a person accused of an offence under the PTA. The Commission is deeply concerned that the CTID considers such indirect and tangential contacts between persons a basis to form a 'reasonable suspicion' that a person may have committed an offence under the PTA. If that were to be the applicable standard, a large portion of the country could be treated as falling within some general category of reasonable suspicion.

In these circumstances, the Commission observes that, at the time of his arrest, the Respondents did not possess sufficient evidence that the Victim was involved in any offence under the PTA. Moreover, it remains unclear as to why Sri Lanka Police confined its investigation to potential offences under the PTA and did not consider any potential offences under the Penal Code Ordinance, No. 2 of 1883.

As explained above, the specific words contained in the stickers pasted by the Victim would not have led a reasonable person to draw the conclusion that the Victim had committed or attempted to commit any offence under the PTA. Moreover, the fact that the Victim had a tangential connection to some person accused of offences under the PTA did not offer a reasonable basis for suspicion either. It is observed that the basis for invoking the PTA appears to have been the political content of the stickers and the concerns that there was a prevailing risk posed to Israeli tourists, rather than actual evidence that the Victim was involved in any offence under the PTA.

During the inquiry, it became apparent that the Respondents did not consider the words contained in the stickers as constituting any offence but instead treated these words as some kind of indication of the Victim's 'state of mind'. It was also claimed that the Respondents did not want to publicly justify the grounds for the arrest by revealing details of the Victim's 'state of mind', as they did not want to cause prejudice to the Victim. However, the Commission observes that a media statement was issued by the Sri Lanka Police Media Division on 30 March 2025 claiming *inter alia* that the Victim had, due to the use of the Internet and other means, become mentally 'motivated' to act in a particular manner, and that further investigations were required to be conducted into the possibility that he could commit an act of 'religious extremism' due to his 'mental state'. The Commission is of the view that such statement was prejudicial to the interests of the Victim.

The Commission notes that section 6(1) of the PTA authorises the arrest of a person 'connected with' or 'concerned in' or 'reasonably suspected of being connected with or concerned in any unlawful activity'. The parameters of the section clearly and unambiguously refer to a *past act*. Nothing in section 6(1) specifically empowers any officer of Sri Lanka Police to arrest a person on suspicion that they may commit an unlawful act in the future. Such 'preventive' arrests, despite the title of the Act (i.e., 'The Prevention of Terrorism Act'), do not fall within the scope of the Act. The only provision in the Act that relates to future acts is section 3(1) of the Act, which makes any 'act preparatory to the commission of an offence' also an offence.

The submissions of the Respondents, alongside the official media statement issued by the Sri Lanka Police Media Division, fail to reveal any evidence of any act by the Victim, preparatory or otherwise, that amounts to an offence under the PTA. The submissions and media statement instead starkly reveal the primary intention behind the arrest of the Victim, i.e., the evaluation of the Victim's 'state of mind' in terms of the potential for him to commit an offence in the future.

The Commission finds that the arrest of the Victim was carried out without sufficient evidence to form a reasonable suspicion that the Victim was connected with or concerned in any unlawful activity under the PTA.

It accordingly finds that the arrest of the Victim on 22 March 2025 did not take place according to procedure established by law, and that the Respondents collectively violated the Victim's rights under article 13(1) of the Constitution.

c. Legality of the detention

Article 13(2) of the Constitution provides:

> Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.

According to the Human Rights Committee in ***General Comment No. 35***, the term 'detention' refers to 'the deprivation of liberty that begins with the arrest and continues in time from apprehension until release.'

It is noted that some countries permit administrative or preventive detention or internment, where a person is kept in custody not necessarily in contemplation of prosecution on a criminal charge, but to prevent the commission of an offence in the future. The Commission observes that the PTA does not permit such detention, and the detention of any suspect under the PTA would exclusively be in the context of reasonable suspicion of an offence under the PTA and the intention to bring criminal charges against the suspect. This characterisation of detention under the PTA is affirmed by the Supreme Court in ***Senthilnayagam v. Seneviratne*** **[1981] 2 Sri.L.R. 187** (at p. 205) and ***Dissanayaka v. Superintendent Mahara Prison*** **[1991] 2 Sri.L.R. 247** (at p. 260).

The distinction between investigative detention and preventive detention may also be explained through a comparison between section 9(1) of the PTA and equivalent provisions found in past

emergency regulations promulgated under the Public Security Ordinance, No. 25 of 1947. For example, Regulation 19(1) under the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005 provides:

> Where the Secretary to the Ministry of Defence is of the opinion with respect to any person that, with a view to *preventing such person* – (a) from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services…it is necessary so to do, the Secretary may order that such person be taken into custody and detained in custody (emphasis added).

It may be clarified at this juncture that the Commission does not in any manner endorse the practice of issuing preventive detention orders. Yet, it remains clear that in the past, during times of public emergency, the relevant authorities did possess the power to issue detention orders under emergency regulations to 'prevent' persons from acting in a manner prejudicial to national security. Such detention was not meant to facilitate investigations into an offence that had already been committed, but instead was designed to prevent future acts that may constitute offences under the law. By contrast, section 9(1) of the PTA does not authorise detention for the sole purpose of preventing an offence in the future. Detention under this provision is lawful only when there is reasonable suspicion that an act, including a preparatory act, which constitutes an offence under the PTA has already taken place. Therefore, at the outset, the Commission notes that detention under the PTA in the absence of sufficient evidence to form a reasonable suspicion of an offence is unlawful.

When the Commission inquired from the Respondents as to whether they were aware of the distinction between investigative detention and preventive detention, it became apparent that the distinction, including the precise scope of section 9(1) of the PTA in contrast to previous emergency regulations was not fully comprehended by the Respondents.

The Human Rights Committee in ***General Comment No. 35*** defines the concept of 'arbitrariness' as fundamentally lacking reasonableness, necessity, and proportionality. In this context, the Commission notes that if the detention of the Victim was unreasonable, unnecessary, or disproportionate, it may be considered arbitrary and in violation of article 13(2) of the Constitution.

In the present case, subsequent to the arrest and interrogation of the Victim, the Respondents sought a detention order on 24 March 2025 from H.E. the President in his capacity as Minister of Defence. The detention order (MOD/LEG/PTA/21/2025) dated 25 March 2025 issued by the Minister mentions that the Victim is to be detained due to the fact that he is:

> Connected with or concerned in unlawful activity to wit:
> Associating with members of extremist or terrorist organisations, motivated by extremist ideologies and acting in a manner detrimental to peace and harmony among communities and knowingly concealing such information from security forces.

It is recalled that the Respondents' method for establishing that the Victim was 'associating with members of extremist or terrorist organisations' was merely to rely on the Victim's 'third party contacts' based on his telephone records. As mentioned above, the Commission is disturbed to learn that a person's 'third party contacts' is merely a reference to the fact that they may share a mutual telephone contact with a person who is accused of an offence under the PTA, and not to the fact that the person actually has a direct association with such an accused

person. The reference in the detention order to the Victim's alleged 'association' was, therefore, merely a reference to these 'third party contacts'.

It is noted that seeking a detention order was not the only option available to the Respondents. The Commission observes that one of the serious dangers of the PTA is the inordinate amount of discretion it affords investigating officers of the CTID in determining a specific course of action. Yet, with increased discretion comes increased accountability, warranting a careful scrutiny of the Respondents' decisions in the present case.

Section 7(1) of the PTA provides: 'Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period…' The Respondents, therefore, had the option of producing the Victim before a judicial officer who would then be able to make a preliminary assessment as to whether the PTA had any relevance to the Victim's actions. It is the Commission's view that if the Magistrate reaches the conclusion that the PTA has been wantonly abused, i.e., where the matter has no relevance whatsoever to the PTA, they are empowered to discharge the suspect. The Commission recalls that, in 2023, the Learned Magistrate Prasanna Alwis in fact released the suspect Wasantha Mudalige from all charges under the PTA on the premise that there was no evidence whatsoever that Mudalige had committed an offence under the PTA.

Moreover, if the Magistrate is satisfied that the PTA has been invoked in good faith and a suspect is brought before the Magistrate, section 7(1) goes on to state that 'the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person.' The proviso to the section then permits the Attorney-General to consent to the release of the suspect.

The Commission notes that section 7 of the Act offers two important opportunities for checks and balances to be imposed on the actions of the Respondents in invoking the PTA to detain the Victim.

First, by producing the Victim before a Magistrate, the Respondents' actions would have been subject to the scrutiny of an independent judicial officer who is empowered to order the immediate release of the Victim on the basis that there was no evidence of any offence under the PTA. Such production before a Magistrate is precisely what is contemplated in article 13(2) of the Constitution when it stipulates that a person held in custody must 'be brought before the judge of the nearest competent court…and shall not be further held in custody…except upon and in terms of the order of such judge made in accordance with procedure established by law.'

Second, even in the event that the Magistrate decides not to intervene, the Attorney-General is provided with an opportunity to evaluate the case and consent to the release of a suspect. An officer of the Attorney-General's Department is often well-placed to impartially review a case file and determine whether the necessary elements of an offence can be met through continued investigations. Where continued investigations with respect to the suspect are determined to be appropriate, such officer may also be well-placed to determine whether releasing the suspect on bail pending further investigations would be appropriate.

The Commission observes that the Respondents sought to circumvent both these safeguards by seeking a detention order to be issued by the Minister of Defence.

During the inquiry, the Commission asked the Respondents whether, given the nature of the alleged offence relating to the use of specific words requiring interpretation, they sought the advice of the Director (Legal), Sri Lanka Police or any officer of the Attorney-General's Department. The Commission also inquired whether an expert in criminal psychology or psychiatric expert was consulted in reaching any conclusions about the Victim's 'state of mind'. The Respondents stated that they had not sought any such advice or consultation and had themselves reached the conclusion that the Victim's 'state of mind' warranted a detention order being issued against him. They claimed that they possessed the relevant experience to identify persons who are 'radicalised'. They also referred to an internal set of guidelines that aid them in determining whether a suspect is radicalised or holds 'extremist' views. It was confirmed that one of the senior officers present at the inquiry was the author of the guidelines and had based its content on past experience. However, no expert on criminal psychology or other relevant field had been consulted in preparing these guidelines.

The Commission is unable to accept that a person's 'state of mind' or level of 'radicalisation' can be ascertained in this manner, particularly without relevant expertise. In this context, the Commission concludes that the Respondents were not acting on the basis of reasonable suspicion when selecting the option of seeking a detention order instead of producing the Victim before a Magistrate.

The Commission notes that once the said detention order was requested by the Respondents on 24 March 2025, the Minister of Defence appears to have issued such detention order under section 9(1) of the PTA as a matter of course.

The question arises whether the detention of the suspect was necessary to gather further evidence with respect to the commission of an offence under the PTA. In the absence of *prima facie* evidence of an offence at the time of the arrest, the Commission is unable to accept the Respondents' position that the subsequent detention of the Victim was necessary. The fact remains that at no point prior to the detention of the Victim or during his detention did the Respondents succeed in discovering any evidence of an offence under the PTA.

This sequence of events reveals the PTA's extreme vulnerability to abuse, where arresting officers can circumvent any independent review and engage in a voyage of discovery to retrospectively justify the arrest and detention of a suspect. In the present case, it is apparent that the Respondents lacked concrete evidence to warrant the arrest of the Victim in the first place, and also lacked concrete evidence to seek a detention order against the Victim. But such is the nature of the PTA that the Respondents were able to evade scrutiny and secure the detention of the victim to provide further time to conduct investigations.

The Commission observes that the Victim was held in detention for fourteen days before the Respondents decided that no evidence was forthcoming, and the Victim could no longer be held in detention.

The Commission also recalls that section 16 of the PTA makes confessions made to an officer not below the rank of Assistant Superintendent of Police admissible. When the Commission inquired from the Respondents as to whether they attempted to obtain a confession from the Victim, the Respondents claimed that they did not, as they did not intend to press charges against the Victim. The Commission, however, observes that the Respondents' failure to give the Victim adequate time to review his recorded statement prior to being required to sign it could potentially violate his right to a fair trial guaranteed under article 13(3) of the

Constitution should such statement ever be used as evidence against him. It is noted that, in the absence of due process being followed, such a statement cannot be considered to be a voluntary statement given by the Victim.

It is noteworthy that the Commission's inquiry was fixed for 10 April 2025, and three days prior to the inquiry, the detention order issued against the Victim was suspended by the Minister of Defence on the request and recommendation of the Respondents. During the inquiry, the Respondents were asked why they made such a request instead of seeking a remand order from a Magistrate, and the Respondents clarified that they had decided not to charge the Victim with any offence. Upon reviewing the documentation submitted by the Respondents, the Commission observes that the Respondents' formal recommendation to suspend the detention order had been drafted on 1 April 2025 and, thereafter, sent to the Minister of Defence on 4 April 2025. The Respondents also recommended that the release of the Victim be subject to restrictions under section 11 of the PTA – a matter examined further below.

The Commission observes that the Respondents' decision to not charge the Victim under the PTA revealed the lack of evidence that the Victim had committed, attempted to commit, or was preparing to commit, an offence under the PTA. Following fourteen days of interrogations and investigations, the Respondents were unable to gather any evidence of any offence. Notably, in the report submitted to the Commission, the Respondents thought it fit to include photographs of a decorative sword as evidence of a weapon found in the Victim's home. The Commission observes that such decorative swords are common ornaments in homes and cannot merely by its presence in a home be considered a weapon intended to be used in an offence. It is reiterated that the Respondents did not refer to the said sword during the inquiry.

The Commission notes that if, at the end of the fourteen days of detention, the Respondents themselves were unconvinced that any offence had been committed by the Victim, serious doubts may be raised as to whether they had any reasonable suspicion that the Victim had committed an offence at the time they initially sought the detention order from the Minister of Defence. If there was a doubt as to whether the evidence was sufficient to charge the Victim with an offence, it would have been more reasonable for the Respondents to produce the Victim before a Magistrate and permit the Magistrate to assess the evidence against the Victim. Instead, it appears that the Respondents sought a detention order from the Minister of Defence to secure further time to discover new evidence against the Victim.

The Commission is compelled to consider this course of action by the Respondents as amounting to the misuse of section 9(1) of the PTA. While under this section the Minister of Defence is responsible for satisfying themselves that there is 'reason to believe or suspect that [the] person is connected with or concerned in any unlawful activity', in practical reality, the Minister is likely to rely on officers of the CTID to come to any conclusion about the appropriateness of a detention order.

As held by the Court of Appeal in the case of ***Dhammika Siriyalatha v. Baskaralingam*** **C.A. (H.C.) 7/88, Court of Appeal Minutes, 7 July 1988**, which considered a detention order issued under section 9(1) of the PTA, 'an objective state of facts' should prevail upon the authority before they are satisfied that issuing a detention order was necessary. Moreover, in ***Dissanayaka v. Superintendent Mahara Prison*** **[1991] 2 Sri.L.R. 247** (at p. 260), the Supreme Court emphasised that detention under the PTA in aid of investigation would be 'strictly adjudged by the application of an objective test'. In the absence of clear information that a good faith investigation had taken place, the Court held that the Minister had exercised his

power under section 9(1) of the PTA merely to impose 'a negative form of preventive detention' or as a matter of expediency (p. 262). It found that the detention of the petitioner violated his fundamental rights guaranteed under article 13(2) of the Constitution.

In the present case, the Commission notes that the Minister can only objectively consider the issuing of a detention order based on the information provided to the Minister by the CTID. In fact, at the inquiry, the Respondents explained that the Minister's decision is based on a report and request submitted by the CTID. The Minister has no practical opportunity to assess the facts directly and arrive at a subjective opinion on whether the suspect is connected with or concerned in any unlawful activity. Therefore, in the present case, the Respondents are crucial in terms of shaping the mind of the Minister to issue a detention order against the Victim. In the context of high levels of administrative discretion to either produce the Victim before a Magistrate or seek a detention order, and in a context where the Respondents deliberately chose to request a detention order with the knowledge that they lacked sufficient evidence of an offence at the time, the Respondents remain collectively responsible for the arbitrary detention of the victim.

The Commission recalls that the Supreme Court has on occasion invalidated detention orders issued under section 9(1) of the PTA. For instance, in ***Weerawansa v. The Attorney-General* [2000] 1 Sri.L.R. 387**, the Court invalidated the detention order on the basis that it was issued without reasonable cause.

The Commission is empowered under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 to review the administrative act of the Respondents in seeking a detention order among the alternative courses of action available to them. The Commission is of the view that, given the facts and circumstances of the case, as revealed in the report of the Respondents and the submissions of parties during the inquiry, the Respondents' administrative act of seeking a detention order against the Victim was unreasonable and unnecessary, and therefore, arbitrary.

In these circumstances, the Commission concludes that the detention order issued against the Victim was sought by the Respondents without sufficient evidence. Therefore, the Respondents collectively violated the Victim's fundamental rights guaranteed under article 13(2) of the Constitution.

d. Presumption of innocence

Article 13(5) of the Constitution provides: 'Every person shall be presumed innocent until he is proved guilty'. The presumption of innocence is a foundational principle of Sri Lankan criminal law. Scores of decided cases, including ***Nandana v. Attorney General* [2008] 1 Sri.L.R. 51**, and ***Liyanarachchi and Others v. Officer-In-Charge Police Station, Hunnasgiriya* [1985] 2 Sri.L.R. 256** have upheld this foundational principle.

The Commission recalls the Human Rights Committee's views in ***General Comment No. 32 – Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial***:

> The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. *It is a duty for all public authorities to refrain*

from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused (emphasis added).

In the absence of any charge or trial against the Victim, or any continued legal proceeding, the Commission observes that the Victim's right to be presumed innocent under article 13(5) may not be affected in the context of a specific criminal trial or proceeding. However, prejudicial media statements can nullify the right to be presumed innocent even in the absence of legal proceedings. The Supreme Court in recent cases such as ***Susil Priyankar Seneviratne v. Prasanna Karunajeewa & Others*** **SC FR Application No: 690/2012** has found infringements of article 13(5) of the Constitution even where no legal proceedings have been instituted against the petitioner. Therefore, the Commission finds that the fundamental right to be presumed innocent until proven guilty is not confined to a context of an ongoing trial or legal proceeding but extends to prejudicial treatment of a person in the lead up to a decision on whether to institute legal proceedings against such person.

In the present case, the Commission observes that the official media statement issued by the Sri Lanka Police Media Division on 30 March 2025 referring to the Victim's alleged 'mental state' and the possibility that he could commit an act of 'religious extremism' due to his 'mental state' were extremely prejudicial to the interests of the Victim. This statement was issued during a time when the Respondents were in the process of gathering and evaluating evidence and determining whether to institute legal proceedings against the Victim. Regardless of whether legal proceedings where eventually instituted, the actions of the Respondents are still relevant to the question of whether a violation of article 13(5) took place during the course of investigations.

During the inquiry on 21 May 2025, the Respondents clarified that the information contained in the official media statement was provided verbally by CTID. In this context, the Commission recognises the Respondents' direct responsibility for the prejudice caused to the Victim by the contents of the said statement.

The Respondents also clarified that the primary purpose of the official media statement was to counter 'disinformation' in the media that the Victim was arrested solely due to the contents of the two stickers. However, it is noted that in their haste to counter disinformation, the Respondents caused grave prejudice to the Victim. Given the content and timing of the statement, i.e., at a time when no concrete evidence against the Victim whatsoever had been gathered by the Respondents, the Commission is compelled to conclude that the statement served no purpose other than to colour the mind of the public with respect to the Victim's alleged 'mental state' and alleged proclivity to commit acts of 'religious extremism'.

The Commission recalls the IGP's Circular RTM CRTM – 231 dated 14 February 2022, which specifically refers to the fundamental rights of a suspect under article 13(5) of the Constitution. The said circular directs police officers to refrain from publishing prejudicial content with respect to suspects and ongoing investigations in the media, including on social media. The Commission also recalls Sri Lanka Police's Departmental Order No. D5 on the Use of and Providing Information to Newspapers and Radio. Having reviewed this circular and departmental order, the Commission is of the view that the official media statement dated 30 March 2025 also violates Sri Lanka Police's own protocols designed to protect a suspect's fundamental rights under article 13(5) of the Constitution.

In these circumstances, the Commission concludes that the Respondents have collectively violated the Victim's fundamental right to be presumed innocent until proven guilty guaranteed by article 13(5) of the Constitution.

e. The freedom of movement

Article 14(1)(h) of the Constitution guarantees to a citizen 'the freedom of movement and of choosing his residence within Sri Lanka'. This right may be subject to restrictions in terms of articles 15(6) and 15(7) of the Constitution, and the 'interests of national security' is a ground for legitimately restricting a citizen's freedom of movement.

The Human Rights Commitee in ***General Comment No. 27: Freedom of Movement (Article 12)***, observes that the '[l]iberty of movement is an indispensable condition for the free development of a person'. It notes that 'the right to move freely relates to the whole territory of a State' and such right 'precludes preventing the entry or stay of persons in a defined part of the territory'. The Committee also opines that 'any restriction on the freedom of movement must be based on clear legal grounds and be necessary and proportionate in a democratic society for the protection of national security, public order, public health or morals, or the rights and freedoms of others, and must also be consistent with the other rights contained in the ICCPR' (at para. 11).

The Supreme Court of Sri Lanka has, on a number of occasions, including in the case of ***Vadivelu v. Officer in Charge, Sithambarapuram Regional Camp Police Post, Vavuniya and Others*** **SC (F.R.) No. 44/2002**, upheld the freedom of movement and specified that any restriction on this right must be according to the law.

In the present case, following the suspension of the detention order issued against the Victim, the Minister of Defence issued a restriction order on 7 April 2025 in terms of section 11(1) of the PTA. The schedule to the restriction order stipulates that the Victim:

1) Is required to permanently reside at his proposed address in Nittambuwaa;
2) If he wishes to depart from the above address, he should inform the CTID of his departure and return;
3) Should inform the CTID in writing if changing his permanent address;
4) Should obtain prior permission from the Director, CTID if he wishes to travel overseas;
5) Is required to report to the CTID Headquarters every week on Sunday between 0900-1200 hours;
6) Should report to the CTID within 72 hours if notified;
7) Should appear before a court of law when summons are received or a notification is sent to him; and
8) Should refrain from holding a position or participating in activities of any 'extremist' or 'terrorist' organisations.

It is noted that the Respondents did not provide any reasons as to why the specific restrictions (1) to (8) found in the schedule to the restriction order dated 7 April 2025 were necessary to be imposed on the Victim. The Commission notes that items (7) and (8) may be considered, in any event, obligations that are imposed on citizens by law. It will, therefore, focus on items (1) to (6), which are extraordinary restrictions imposed on a citizen in terms of section 11(1) of the PTA. The section provides:

> Where the Minister has *reason to believe or suspect that any person is connected with or concerned in the commission of any unlawful activity* referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of:
> (a) his movement outside such place of residence as may be specified; or
> (b) the places of residence and of employment of such person; or
> (c) his travel within or outside Sri Lanka; or
> (d) his activities whether in relation to any organization, association or body of persons of which such person is a member, or otherwise; or
> (e) such person addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organization, association or body of persons, or from taking part in any political activities,
> and he may require such person to notify his movements to such authority, in such manner and at such times as may be specified in the order (emphasis added).

It is observed that a precondition for issuing a restriction order under section 11(1) is that the Minister must have 'reason to believe or suspect that [the] person is connected with or concerned in the commission of any unlawful activity'. Notably, the section cross-references section 9(1) of the PTA, which sets out the same criteria for the issuance of a detention order. Therefore, the objective state of facts that should prevail prior to the issuance of a restriction order is that the person concerned, in the reasonable opinion of the Minister, should be 'connected with or concerned in the commission of any unlawful activity'.

Once again, the scope of restriction orders issued under section 11(1) of the PTA should be contrasted with restriction orders issued in the past under emergency regulations. For instance, Regulation 18(1) of the under the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 2005 provides:

> Where the Secretary to the Ministry of the Minister in charge of the subject of Defence is of opinion with respect to any particular person that, with a view to *preventing that person* — (a) from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services...it is necessary so to do, the Secretary may make an order...[*inter alia*] for requiring that person to notify his movements in such manner, at such times, and to such authority or person as may be specified in that order; for prohibiting that person from leaving his residence without the permission of such authority or person as may be specified in that order...(emphasis added).

It is clarified that the Commission does not in any manner endorse the practice of issuing preventive restriction orders. Yet it is clear that previous emergency regulations authorised restriction orders even when no specific offence had been committed by the person concern and for preventive purposes alone. By contrast, section 11(1) of the PTA only contemplates restriction orders where there is reasonable suspicion of an offence being committed.

In the present case, the Respondents have acknowledged on numerous occasions that they lacked sufficient evidence to charge the Victim with any offence under the PTA. It is in this context that the detention order issued under section 9(1) of the PTA was suspended on the recommendation of the Respondents. Accordingly, if no evidence of an offence was found to justify a detention order, the basis for a restriction order is automatically extinguished.

The Commission acknowledges that the PTA may contemplate instances where the Minister does not wish to continue with a detention order against a person but wishes to impose certain

restrictions on the person under section 11(1) of the PTA. However, in such instances, the basic precondition for a restriction order should still be met, i.e., that the person is reasonably suspected of an offence under the PTA.

By contrast, by the Respondents' own admission, there was no evidence that the Victim was connected with or concerned in the commission of any unlawful activity under the PTA, and the Respondents sought a restriction order *solely* for the purpose of monitoring the Victim in case his 'state of mind', in their estimation, leads him to commit an offence in the future. In essence, the Commission observes that the restriction order issued against the Victim is purely for preventive and surveillance purposes and not due to the fact that he is reasonably suspected of committing an offence.

The restriction order issued against the Victim, and specifically items (1) to (6) in the schedule to the order, restricts the Victim's freedom of movement. Recalling the criteria to be met when restricting the freedom of expression, any restriction on a fundamental right, including the freedom of movement, must meet the criteria of legality, (i.e., it should be according to law), rationality, necessity and proportionality, and reasonableness.

The Commission reiterates the practical reality in which such restriction orders would be issued by the Minister. It is apparent that a restriction order of this nature would only be issued on the request and recommendation of the CTID, and accordingly, the Respondents would play a crucial role in shaping the mind of the Minister. The Commission is well empowered to review and scrutinise the administrative act of the Respondents in requesting and recommending such a restriction order, which appears to have been issued by the Minister as a matter of expediency.

The Commission concludes that, as the Respondents' request for and recommendation of a restriction order was made without reasonable suspicion that the Victim has committed an offence under the PTA, and purely to enable the monitoring and surveillance of the Victim, such restriction order remains *ultra vires* section 11(1) of the PTA. The Commission finds no reason to evaluate the restriction order in terms of its rationality, necessity and proportionality, or reasonableness, as a restriction order that is *ultra vires* the legal provision under which it is purportedly issued would fail the test of legality.

In these circumstances, the Commission finds that, by requesting and recommending an unlawful restriction order, the Respondents collectively violated the Victim's right to the freedom of movement guaranteed under article 14(1)(h) of the Constitution.

f. The freedom to engage in a lawful occupation

Article 14(1)(g) of the Constitution guarantees to every citizen 'the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise'.

The scope of this right has been clarified by the Supreme Court of Sri Lanka in a number of cases. Notably, in ***Elmore Perera v. Major Montague Jayawickrama*** **[1985] 1 Sri L.R. 285,** (at p. 323) it was clarified that article 14(1)(g) 'recognizes a general right in every citizen to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice'.

In the present case, the counsel for the Complainant and Victim submitted that, at the time of his arrest, the victim was employed as an accountant at a private sector company selling Ayurvedic products. Following his arrest, the Victim had lost his employment. The Victim also submitted that he had, upon his release, attempted to apply for several positions, but had not been successful. He claimed that details of the allegations against him being spread over the media and the restriction order currently in force against him presented unassailable barriers to securing any form of employment.

The Commission notes that an act of dismissal by a company in the private sector does not constitute executive and administrative action within the meaning of section 14(a) of the HRCSL Act. It is nevertheless acknowledged that the circumstances of his unlawful arrest directly contributed towards such dismissal, and such act of unlawful arrest by the Respondents constitutes executive and administrative action.

The Commission recalls, however, that the scope of article 14(1)(g) of the Constitution does not grant a citizen the right to be employed in a particular place of employment, but only confers a general right. Therefore, article 14(1)(g) does not grant the Victim the right to be occupied in a particular place of employment, i.e., at the particular place he was employed at the time of his arrest, and his dismissal from employment cannot be reviewed by the Commission. He does, however, have recourse to other remedies under the law with respect to wrongful termination and is free to pursue such remedies.

The Commission next wishes to examine whether the actions of the Respondents infringed upon his general right to engage in a lawful occupation. In this regard, it considers the nature and content of the official media statement issued by the Sri Lanka Police Media Division on 30 March 2025 referring to the Victim's alleged 'mental state' and the fact that further investigations were required to be conducted into the possibility that he could commit an act of 'religious extremism' due to his 'mental state'. It is reiterated that the contents of the statement were extremely prejudicial to the Victim, and no doubt continues to contribute towards a negative impression of the Victim among members of the public including prospective employers.

The Commission recalls that the Respondents clarified that the information contained in the statement by the Police Media Division was provided verbally by CTID. Therefore, the Respondents remain directly responsible for the prejudice caused to the Victim by the contents of the said statement.

The Commission is of the view that the statement dated 30 March 2025 negatively impacts the general employment prospects of the Victim. It is reasonable to conclude that a statement issued by Sri Lanka Police on a person's alleged 'mental state' and alleged proclivity toward 'religious extremism' would amount to a deathblow to such person's freedom to engage in a lawful occupation. The negative impact of the statement is likely to continue despite the fact that the Victim has been now released from custody without any charges being brought against him.

Moreover, news that a restriction order has been issued against the Victim would also negatively impact the Victim's general ability to secure employment. It is reiterated that, given the scope of section 11(1) of the PTA, the Commission finds that the legal requirements of reasonable suspicion have not been met with respect to the said restriction order. Nevertheless, the restriction order negatively impacts the Victim's standing in society and his ability to secure lawful employment.

The Commission concludes that the Respondents in providing prejudicial content to be carried in an official media statement by Sri Lanka Police have infringed the Victim's right to the freedom to engage in a lawful occupation. The Respondents' decision to request for and recommend a restriction order under section 11(1) of the PTA despite the absence of reasonable suspicion that the Victim had committed any offence has also infringed the Victim's right to the freedom to engage in a lawful occupation. Accordingly, the Commission finds that the Respondents have collectively violated the Victim's fundamental right guaranteed under article 14(1)(g) of the Constitution.

g. The rights to equality and non-discrimination

Article 12(1) of the Constitution provides: 'All persons are equal before the law and are entitled to the equal protection of the law', and article 12(2) provides: 'No citizen shall be discriminated against on the grounds of race, religion…'.

The Commission reiterates that the official media statement issued by the Sri Lanka Police Media Division on 30 March 2025 referring to the Victim's alleged 'mental state' and the possibility that he could commit an act of 'religious extremism' due to his 'mental state' were extremely prejudicial to the interests of the Victim. Moreover, the Commission notes that the said statement appears to be in violation of the IGP's Circular RTM CRTM – 231 dated 14 February 2022 and the Sri Lanka Police Departmental Order No. D5 on the Use of and Providing Information to Newspapers and Radio. It is reiterated that a prejudicial statement of this nature was wholly arbitrary and unreasonable and served no purpose other than to colour the mind of the public with respect to the Victim's alleged 'mental state' and alleged proclivity to commit acts of 'religious extremism'.

The Supreme Court in ***Ariyawansa & Others v. The People's Bank & Others*** **[2006] 2 Sri.L.R. 145** (at p. 152) has held: 'The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.' The Commission accordingly finds that the media statement of 30 March 2025 violated the Victim's right to equality before the law and the equal protection of the law.

Therefore, the Respondents in arbitrarily and unreasonably providing prejudicial content to be carried in the official media statement issued by Sri Lanka Police have collectively violated the Victim's fundamental rights guaranteed under article 12(1) of the Constitution.

The Human Rights Committee in ***General Comment No. 18: Non-Discrimination*** observes that '[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute[s] a basic and general principle relating to the protection of human rights.' The concept of discrimination is not explicitly defined in the Sri Lankan Constitution nor in the ICCPR. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term 'racial discrimination' shall mean 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'

The Commission notes that the practice of 'racial profiling' has been consistently recognised as violating the right to non-discrimination. In ***Williams Lecraft v. Spain* CCPR/C/96/D/1493/2006**, the Human Rights Committee opined that racial profiling is a form of unlawful discrimination. Additionally, the Committee on the Elimination of Racial Discrimination in ***General Recommendation No. 36 (2020) on Preventing and Combating Racial Profiling by Law Enforcement Officials*** elaborates on how racial profiling is a form of discrimination prohibited by international human rights law. The Committee also offers a definition for racial profiling:

> Racial profiling is: (a) committed by law enforcement authorities; (b) is not motivated by objective criteria or reasonable justification; (c) is based on grounds of race, colour, descent, national or ethnic origin…; (d) is used in specific contexts, such as…combating criminal activity, terrorism or other activities that allegedly violate or may result in the violation of the law.

The Commission notes that Sri Lanka is party to both the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination. Therefore, the above normative and conceptual framework may be applied by the Commission to evaluate whether the Victim was subjected to racial profiling and was discriminated against on the basis of his race and religion during his arrest and detention.

The Victim in this case, Mohamad Liyaudeen Mohamed Rusdi, is a Sri Lankan Muslim citizen. The foregoing analysis reveals that the specific words the Victim displayed through stickers did not in and of themselves constitute any offence under any law in Sri Lanka. Yet, the language he used was deemed to be sufficient to warrant an investigation into his activities and his eventual arrest. Next, the views he allegedly expressed during his interrogation were deemed to be sufficient to warrant his detention, and eventually, restrictions being imposed on him. The Commission observes that at no point during the Victim's ordeal did the Respondents discover actual evidence of an offence. Instead, their suspicions were forward-looking in terms of the alleged likelihood that the Victim could commit some offence in the future.

During the inquiry, the Respondents referred to certain types of 'terrorist' attacks, such as 'lone wolf' attacks, where a 'radicalised' individual might randomly attack civilians to make a political statement. The Respondents claimed that the Victim fit the 'profile' of a person who is 'radicalised' and who may commit a violent act of 'religious extremism'. This profiling was also clearly evident in the official media statement of the Sri Lanka Police Media Division dated 30 March 2025, the contents of which were supplied by the Respondents. The thrust of the Respondents' investigation, and their request for and recommendation of a detention order, and eventually, a restriction order, were based on this type of evaluation of the Victim's profile.

With respect to the allegation that the Victim harboured some form of 'extremist religious ideology', the Commission recalls that the Supreme Court in ***Centre for Policy Alternatives & Others v. The Attorney General & Others* SC (F.R.) 91, 106 and 107/2021** examined the lawfulness of the Prevention of Terrorism (De-radicalization from Holding Violent Extremist Religious Ideology) Regulations No. 01 of 2021 issued under the PTA. The Court observed (at p. 11):

> The definition of "extremist religious ideology" presents inherent difficulties as religious beliefs may vary widely among individuals, with one person's religious ideology potentially appearing extreme to another. In the absence of clarity, there is a risk of arbitrary

> decisions being made where certain attitudes, behaviors, attire etc. can also be deemed as signs of extremist religious ideologies.

Notably, the Court found that the impugned regulations violated articles 10, 12(1) and 13 of the Constitution and declared the regulations null and void.

The Respondents appear to be relying on notions of 'religious extremism' that the Supreme Court has already identified as deeply problematic and prone to arbitrariness. In the victim's case, his attitudes, such as being 'anti-West', and behaviour, such as pasting stickers in protest of events taking place in Gaza, which would ordinarily be considered common among many passionate young persons, were arbitrarily taken to be signs of 'radicalisation'. The Respondents' suspicion that the Victim is 'radicalised' and capable of violent acts of 'religious extremism' appears to have been based solely on his racial and religious profile. It is reiterated that such racial profiling is a form of unlawful discrimination.

The Commission recalls that article 13(5) of the Constitution provides: 'Every person shall be presumed innocent until he is proved guilty.' The Commission is of the view that racial profiling in the context of counterterrorism can nullify the right to be presumed innocent until proven guilty, as law enforcement authorities begin their investigation from a perspective of presuming guilt solely on the basis of a person's identity. For a person to be 'presumed' innocent, they must not be subject to prejudice. In the present case, it appears that the Victim was subjected to such prejudice, as a range of unnecessary, disproportionate, and unreasonable measures were imposed against him under the PTA without any evidentiary basis. All these measures rested on the Respondents' estimation that his 'state of mind', i.e., his views on and outrage towards the events taking place in Gaza, could lead him to commit an act of violence in the future. The Victim's racial and religious profile undoubtedly shaped this estimation.

The Commission recalls that, during the inquiry, the Respondents made reference to periods of religious observance, including Jewish festivals and the fasting month, when citing reasons for the restriction order. They mentioned that 'ISIS', the international armed group known for acts of terrorism, is known to incite persons to commit acts of terrorism during the month of the fast. They also referenced 'social isolation' as a feature of becoming 'radicalised' and claimed that the Victim's parents were not acting on his alleged admission that he was troubled by developments in Gaza. The Respondents claimed that the Victim was taking medication for depression (which upon further inquiry transpired to be incorrect and based solely on hearsay), and that the Victim's parents were not aware of such medication. In these alleged circumstances, the Respondents estimated that the Victim was socially isolated, possibly leading to his 'radicalisation'. The Respondents also claimed that the Victim was previously not particularly 'religious' but that he became more 'religious' due to struggles in his personal life and the developments in Gaza. These factors were also relied on in their estimation that the Victim was possibly 'radicalised'.

The Commission notes that it seems unlikely that distance from one's parents, challenges in one's personal life, and outrage towards global politics and events would be seen as indicative of 'radicalisation' had the Victim not been a Muslim. In this context, the Commission observes that the Respondents' estimation that these factors are indicative of 'radicalisation' is primarily due to the Victim being subject to racial profiling.

The Commission accordingly concludes that, by subjecting the Victim to racial profiling, the Respondents have collectively violated his rights to equality and non-discrimination on the basis of race and religion respectively guaranteed under articles 12(1) and 12(2) of the Constitution.

h. Other observations

The Commission notes with concern the submission made by the Complainant's and Victim's counsel that the Respondents had instructed the Complainant to meet an officer of the CTID at a location other than a police station or official place. The relevant officer was present at the inquiry and explained that the instruction was made in good faith for the convenience of the Complainant. The meeting was for the purpose of obtaining a written undertaking from the Complainant that she would 'take responsibility' for the Victim once he is released.

The Commission observes that the Victim in this case is 22 years old and has reached an age of majority. In any event, no evidence was presented to the Commission that the Victim was physically or mentally incapacitated in any manner requiring him to be handed over to a responsible adult. The Commission also reviewed the JMO's evaluation of the Victim, and notes that the said officer had stated that they were not in a position to make any psychological evaluation of the Victim and a clinical practitioner would be required to do so. The Commission notes that an evaluation of the Victim by a JMO was in any event required under section 11(1A) of the PTA, as amended by Act No. 12 of 2022. When the said report was submitted to the Learned Magistrate on 10 April 2025, the Learned Magistrate had directed the Victim to privately seek a psychological evaluation if necessary and had terminated proceedings. The Commission observes that the Learned Magistrate did not think it fit to order any further evaluation of the Victim. In this context, the Commission is at a loss to comprehend as to why the Respondents sought such a written undertaking from the Complainant. When the Respondents were asked whether this written undertaking was of any value to their investigation, they confirmed that the undertaking had no formal value, and that they had sought it merely to ensure that the Victim's parents took some responsibility for the welfare of the Victim.

The Commission also observes that a request to meet an officer at a place other than an official place, for the express purpose of obtaining some kind of written undertaking, was highly inappropriate. Law enforcement officers should at all times follow proper procedure and such procedure includes meeting the next of kin of a suspect only at official places, such as police stations, and maintaining proper records of such meetings.

The Commission would be remiss not to comment on the fact that the present case is emblematic of the oppressive nature of the PTA and the ease in which law enforcement authorities could abuse its provisions.

The PTA remains a serious blight on Sri Lanka's statute book and the time for its repeal cannot be more appropriate. While the PTA is in many ways incompatible with the fundamental rights chapter in the Constitution, five features of the PTA are particularly egregious. First, the PTA contains vague and open-ended terrorism offences, such as the offence found in section 2(1)(h). Second, it permits long term detention – up to twelve months – without trial. Third, it dispenses with the requirement to produce a suspect before a Magistrate within a stipulated period of time. Fourth, it denies bail to the accused once an indictment is served in the High Court. Fifth,

it makes confessions to police officers admissible as evidence, thereby incentivising the abuse of suspects in custody.

While the PTA should be repealed for the above-mentioned reasons, the present case raises a serious concern with respect to any law that may be enacted to replace the PTA. As the foregoing analysis would reveal, the Respondents acted in a manner that was in fact *ultra vires* the provisions of the PTA. In essence, seeking a detention order in the nature of a 'preventive' order, whereby the purpose of detention was primarily to evaluate the Victim's 'state of mind' in terms of his capability of committing an offence in the future, fell wholly outside the scope of section 9(1) of the PTA. Similarly, in the absence of any evidence of an offence under the PTA being committed, the restriction order sought under section 11(1) of the PTA to subject the Victim to monitoring and surveillance also fell outside the scope of the PTA. Therefore, the present case is a stark example of how law enforcement authorities may venture even beyond the draconian walls of the PTA. As in the present case, measures of this kind may be deemed unlawful and would constitute violations of fundamental rights. Yet the institutional demand for such measures may drive the law reform process whereby Sri Lanka is ultimately left with a new counterterrorism law that provides legal cover for such measures. While preventive detention and racial profiling in the absence of any evidence of an offence are not permitted under the PTA, a new law could very well legitimise such measures. **It is, therefore, crucial that present efforts to repeal the PTA not be hijacked by institutional actors who wish to enhance the powers of law enforcement authorities to 'detect', 'monitor' and potentially 'rehabilitate' persons who are not reasonably suspected of any offence, but are, based on racial profiling, estimated to be 'radicalised' or prone to 'religious extremism' and capable of offences in the future.**

Recommendations

The Commission reiterates that the Respondents, through their administrative acts, have violated the Victim's fundamental rights to the freedom of expression, the freedom of thought, conscience and religion, the freedom from arbitrary arrest and detention, the right to be presumed innocent, the freedom of movement, the freedom to engage in a lawful occupation, and the rights to equality and non-discrimination respectively guaranteed by articles 14(1)(a), 10, 13(1), 13(2), 13(5), 14(1)(h), 14(1)(g), 12(1), and 12(2) of the Constitution.

Having considered the facts and circumstances of this case, the Commission is of the view that the Respondents and the CTID as an institution bear collective responsibility for the violations of the Victim's fundamental rights. In the opinion of the Commission, the said violations may not be attributed to the acts of individual officers, but instead directly emanate from the CTID's institutional and policy shortcomings, and incorrect interpretations of the PTA.

In terms of section 15(3)(c) and (4) of the HRCSL Act, the following recommendations are made to the 1st Respondent, the Director, CTID:

1. **Take immediate measures to recommend to the Minister of Defence the discontinuation of the restriction order against the Victim dated 7 April 2025 in view of the fact that section 11(1) of the PTA does not authorise the said restriction order.**

2. **Establish a procedure to obtain the advice of the Director (Legal), Sri Lanka Police and the Attorney-General's Department prior to arresting any suspect in any matter**

concerning an offence under section 2(1)(h) of the PTA or any similar offence concerning expressions.

3. **In compliance with article 13(2) of the Sri Lankan Constitution, establish a standard practice of producing suspects before a Magistrate within 72 hours of arrest.**

4. **Provide a copy of the Commission's findings and recommendations in the present case to all officers of the CTID with instructions to read and comprehend these findings and recommendations.**

5. **Issue clear instructions in writing to all officers of the CTID to issue a Receipt of Arrest to a suspect's next of kin on the date of the arrest.**

6. **Issue clear instructions in writing to all officers of the CTID to refrain from meeting or engaging a suspect's next of kin in a place other than an official place, such as a police station.**

7. **Re-circulate the IGP's Circular RTM CRTM – 231 dated 14 February 2022 and the Sri Lanka Police Departmental Order No. D5 on the Use of and Providing Information to Newspapers and Radio among officers of the CTID and direct all officers to refrain from supplying prejudicial content about a suspect or investigations to the media.**

8. **Issue clear instructions in writing to all officers of the CTID to refrain from 'racial profiling' and to conduct investigations on objective factors alone without undue consideration of a suspect's racial or religious background.**

9. **Issue clear instructions in writing to all officers of the CTID that, where a suspect's 'state of mind' or other psychological factor becomes relevant to an investigation, a report from a trained independent professional in criminal psychology, psychiatry, or similar field, should be obtained prior to proceeding with the investigation. Where any mental health issue is identified, the suspect should immediately be examined by a JMO, and if the JMO recommends so, the suspect should be placed in the care of a relevant institution to receive necessary treatment.**

Furthermore, the Commission issues the following recommendations to the IGP:

1. **In consultation with the Hon. Attorney-General, establish clear guidelines with respect to the standard of 'reasonable suspicion' when conducting investigations concerning terrorism-related offences. The said guidelines should fully comply with the Commission's guidelines issued to the then IGP on 2 July 2019. Take immediate measures to provide necessary training to the CTID on the said guidelines.**

2. **Provide necessary advice to the 1st Respondent to fully implement the recommendations listed above.**

The Commission also issues the following recommendation to the Secretary, Ministry of Public Security:

To address the prejudice suffered by the Victim with respect to his freedom to engage in a lawful occupation, and the collective responsibility of Sri Lanka Police in this regard, it is recommended that the Ministry of Public Security pays the Victim a sum of Rupees Two Hundred Thousand (Rs. 200,000/-).

In accordance with section 15(7) of the HRCSL Act, the 1st Respondent, IGP, and Secretary, Ministry of Public Security are directed to implement these recommendations on or before 15 July 2025 and submit a report to the Commission on progress with respect to implementing these recommendations.

A copy of these findings and recommendations will be forwarded to the Minister of Defence, Minister of Public Security, the Hon. Attorney-General, and the IGP for appropriate action, including the discontinuation of the restriction order issued on 7 April 2025.

Justice L.T.B. Dehideniya,
Chairperson,
Human Rights Commission of Sri Lanka

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

Mr. Nimal G. Punchihewa,
Commissioner,
Human Rights Commission of Sri Lanka

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CC: Minister, Ministry of Public Security

Secretary, Ministry of Public Security

Acting Inspector General of Police