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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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දිනය } 12.10.2026
திகதி }
Date. }

B Piratheepan
451/A Ananthapuram – East,
Kilinochichi

Complainant

HRCSL Case No: HRC/KIL/031/26

vs

- Director General, Sri Lanka Customs**
Customs Headquarters
Colombo
- Secretary, Ministry of Defence**
Ministry of Defence,
Sri Jayawardenapura Kotte
- Secretary, Ministry of Buddhasasana, Religious and Cultural Affairs**
135, Srimath Anagarika Dharmapala Mawatha,
Colombo 7

Respondents

1. Synopsis of the Complaint

The Complainant submitted a complaint to the Kilinochichi Sub-Office of the Human Rights Commission of Sri Lanka (HRCSL) following Sri Lanka Customs seizing 288 copies (according to the records of Sri Lanka Customs) of four books authored by him. The books 'Ippothum Inge Irandu Thesangalthaan', 'Elluttal Nan Yuttam Ceykiren', 'Bayangaravaathi', and 'Cyanide' are Tamil language books printed in Chennai, India, and were imported to Sri Lanka. The Complainant learnt about the seizure of his books via a letter from the 1st Respondent dated 27 March 2026, wherein the 1st Respondent informed the Complainant that the books had been seized on the basis that they allegedly 'damage national harmony'. The said

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பிரதான அலுவலகம் } இல. 14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு - 04.
Head Office } No. 14, R.A. De Mel Mawatha, Colombo - 04.

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letter also informed the Complainant that the books would only be released upon obtaining approval from the 2nd Respondent and the 3rd Respondent.

The 1st Respondent relied on section 135 read with section 12 and Schedule B of the Customs Ordinance (Chapter 235) to seize the said books. Thereafter, he referred the matter to the Ministry of Defence on 31 March 2026 for its opinion. On 8 April 2026, the 2nd Respondent recommended that the books should not be released, citing national security concerns.

The 1st Respondent had also referred the matter to the 3rd Respondent. At a meeting held on 9 April 2026, the Minister of Buddhasasana, Religious and Cultural Affairs instructed that a meeting be held with the Complainant, representatives of Sri Lanka Customs, and representatives of the Ministry of Defence to discuss the matter. On 17 April 2026, the Complainant attended a meeting chaired by the Minister of Buddhasasana, Religious and Cultural Affairs and was informed that a final decision would be taken after the preparation of an observation report by the Arts Council of Sri Lanka and the State Literary Sub-Panel.

Following the observation report of the Arts Council of Sri Lanka and State Literary Sub-Panel, the 2nd Respondent wrote to the 1st Respondent on 20 April 2026 informing him that the Ministry of Defence had no objection to releasing two of the books, 'Bayangaravaathi' and 'Cyanide' on the basis that the experts on the Council had concluded that these books were works of fiction. However, it maintained that copies of the remaining two books 'Ippothum Inge Irandu Thesangalthaan' (75 copies) and 'Elluttal Nan Yuttam Ceykiren' (147 copies) were not to be released and were to remain under detention.

The 1st Respondent has maintained Sri Lanka Customs is awaiting further approval, recommendations and/or directions from the Ministry of Defence with regard to the remaining books titled 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren'.

The Complainant also complained that, thereafter, certain members of the Arts Council and State Literary Sub-Panel utilized state media platforms to publicly characterize the Complainant and his writings as promoting separatism, glorifying the LTTE and advancing ideas harmful to society, thereby subjecting him to public vilification. The Complainant, however, has not made these persons respondents in the present complaint.

2. HRCSL Inquiry

The Kilinochchi Sub-Office of the HRCSL referred this matter to the Commission's Head Office. An inquiry was held at the Head Office on 18 June 2026 and was attended by the Complainant, his legal representatives, representatives of Sri Lanka Customs, a representative from the Ministry of Defence, representatives of the Ministry of Buddhasasana, Religious and Cultural Affairs, and a member of the Arts Council. The Complainant is represented by attorneys-at-law Mr. Nadarajar Kandeepan, Dr. Viranjan Herath, and H. Thamilaival Kandeepan.

At the inquiry, the representatives of Sri Lanka Customs confirmed that the two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' remain in their custody, and that no formal inquiry had been initiated with respect to the said books. The Commission inquired about the formal procedure followed by Sri Lanka Customs with respect to seizing publications. The representatives of Sri Lanka Customs stated that there was no separate procedure for such seizure, and that in such circumstances, it sought the views of the

Ministry of Defence. In the written submissions filed on behalf of the 1st Respondent, it was clarified that when Sri Lanka Customs officers inspected the consignment on 18 March 2026 at one 'NNR Warehouse' in Peliyagoda, they noted that the front cover of the book 'Ippothum Inge Irandu Thesangalthaan' depicted a divided map of Sri Lanka, which in their words 'seemed a violation of "Unitary State" of the country ensured by the Article 2 and a violation of "Territorial Integrity" of the country ensured by the Article 5 of the Constitution' [sic.]. Moreover, it was submitted that the approximate English translation of the title, in their view, was 'Even now, still there are two nations here', and that they read such title to be a promotion of separatism.

The Complainant claimed that much of the contents of 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' were in fact articles already published in Tamil language newspapers. Therefore, it was claimed during the inquiry that the contents of these books were already in the public domain.

At the inquiry, the representative of the Ministry of Defence submitted that all four books had content that were prejudicial to national security. When the Commission inquired about the specific contents of the currently detained books that were deemed prejudicial, the following translated contents were cited:

- a. Page 12 in 'Ippothum Inge Irandu Thesangalthaan': The Ministry of Defence claimed that the page contained an allegation that the Sri Lanka Air Force attacked 500,000 displaced civilians in 1995.
- b. Pages 44-48 in 'Ippothum Inge Irandu Thesangalthaan': The Ministry of Defence claimed that the pages contained allegations that the Janatha Vimukthi Peramuna (JVP) was involved in the massacre in Mullivaikkal, certain allegations against the current Foreign Minister, Vijitha Herath, and also an allegation that Sinhalese people supported the massacre.
- c. Page 26 in 'Elluttal Nan Yuttam Ceykiren': The Ministry of Defence cited the sentence, 'Our next generation will restart a more dangerous war, indeed'.
- d. Page 185 in 'Elluttal Nan Yuttam Ceykiren': The Ministry of Defence cited the sentence, 'This Mahaviru cemetery shows how the Sri Lankan Government destroyed the places where our heroes fought and died'.

The Commission inquired from the Ministry of Defence as to why the other two books, 'Bayangaravaathi' and 'Cyanide', were ordered to be released if they too contained similar passages. For example, the Ministry claimed that 'Bayangaravaathi' contained a passage in which Sri Lanka Navy is alleged to have killed Tamil fishermen. The Ministry also claimed that 'Cyanide' contained an author's note that the government fought with Tamil persons with the intention of eradicating them. The representative of the Ministry of Defence clarified that, although the Ministry initially claimed that these books contained passages that were prejudicial to national security, it had deferred to the views of the Art Council that these books were works of fiction and had released these books on that basis. In the written submissions submitted on behalf of the 2nd Respondent, it was further clarified that 'the events, characters, and incidents' depicted in the said books were 'literary creations developed for artistic and narrative purposes rather than as established factual accounts'.

The Commission also inquired from the member of the Art Council whether the Art Council had any expertise with respect to assessing whether a publication could be a threat to national security, and the member answered in the negative. The same question was posed to the representatives of the Ministry of Buddhasasana, Religious and Cultural Affairs, and these

representatives answered in the negative. It also transpired that none of the Respondents had adequate Tamil language competence at their disposal to take an informed decision about the books. While the Ministry of Defence claimed that it relied on Tamil-speaking officers to assess the books, it ultimately deferred to the opinion of the Arts Council on a matter that supposedly impacted national security. Even the Arts Council admitted that it did not possess Tamil language competence and had in fact referred the books to Tamil language scholars who were not part of the Council.

At the conclusion of the inquiry, the Commission noted that none of the Respondents wished to take direct responsibility for the continued seizure of the remaining two books. The Respondents appeared to be passing the proverbial cushion to one another claiming that the ultimate decision to detain or release these books was not within their remit. Sri Lanka Customs deferred to the Ministry of Defence; the Ministry of Defence, having already claimed the books prejudiced national security, were willing to defer to the Ministry of Buddhasasana, Religious and Cultural Affairs; the Ministry of Buddhasasana, Religious and Cultural Affairs maintained that the matter was not within their jurisdiction and referred the matter to the Arts Council, which eventually referred the matter to external Tamil language scholars. Remarkably, the inquiry revealed that it was the opinion of these scholars that determined the release of two of the books, and the absence of any clear opinion by these scholars that determined the continued detention of the remaining two books. The Respondents' handling of this matter was, therefore, marked by indecision and opacity at every stage.

3. Analysis

The Commission notes that the Complainant alleged the violations of his fundamental rights guaranteed under articles 10, 11, 12, 14(1)(a) 14(1)(f) and 14A of the Constitution. The Commission thinks it necessary to focus on the question of whether the Complainant's right to the freedom of expression including publication guaranteed by article 14(1)(a) was infringed by the Respondents. Although Sri Lanka Customs initially seized four of the Complainant's books, the Commission will focus on the seizure of the two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren', as they continue to remain in detention and have not been released.

a. The freedom of expression including publication

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 Brutten 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* (emphasis added).

Therefore, in Sri Lanka, the freedom of expression includes a broad range of expressions, including expressions that may offend, shock, or disturb some people. In the present case, the two detained books constitute ‘publications’ within the meaning of article 14(1)(a) and fall within the scope of the freedom of expression. The books are, at the outset, protected expressions under the Sri Lankan Constitution regardless of any shocking, offensive, or disturbing passages within them.

The freedom of expression is, however, not absolute and may be subject to limitations. A limitation 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 two detained books and the specific passages referenced by the Ministry of Defence require close scrutiny. The passages in the book ‘Ippothum Inge Irandu Thesangalthaan’ that the Ministry took exception to contain an allegation that the Sri Lanka Air Force attacked 500,000 displaced civilians in 1995, an allegation that the JVP was involved in the massacre in Mullivaikkal, certain allegations against the current Foreign Minister, and the allegation that Sinhalese people supported the massacre. Sri Lanka Customs maintained that it would only release the book upon the approval of the Ministry of Defence. Likewise, the passages in the book ‘Elluttal Nan Yuttam Ceykiren’ that the Ministry of Defence took exception to include the sentence ‘Our next generation will restart a more dangerous war, indeed’ and ‘This Mahaviru cemetery shows how the Sri Lankan Government destroyed the places where our heroes fought and died’. Once again, Sri Lanka Customs maintained that it would only release the book upon the approval of the Ministry of Defence. Therefore, the Commission concludes that the detention of the two books rests on these specific passages and allegations. It is also observed that such detention amounts to a limitation on the Complainant’s freedom of expression including publication.

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

With respect to the standard of legality, article 15(7) of the Constitution very clearly requires that the limitation must be prescribed by law. In the present case, the relevant legal provisions relied upon by the 1st Respondent to detain the two books is section 135 read with section 12 and Schedule B of the Customs Ordinance (Chapter 235).

Section 135 provides for the seizure of certain goods, while section 12 provides that 'goods enumerated in the table of prohibitions and restrictions in Schedule B shall not be imported or brought into or exported or taken out of Sri Lanka save in accordance with the conditions expressed in the said Schedule'. Therefore, it is the contents of Schedule B that is determinative. Schedule B, which is titled 'Table of Prohibitions and Restrictions Inwards' contains the following prohibited item: 'Any newspaper, pamphlet, leaflet, book or picture containing matter calculated to lead to acts made punishable under section 120 of the Penal Code'. Section 120 of the Penal Code (Chapter 19) provides:

Whoever, by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise excites or attempts to excite feelings of disaffection to the President or to the Government of the Republic, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the People of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished with simple imprisonment for a term which may extend to two years.

Therefore, the books in question must contain matters calculated to lead to acts falling within the ambit of section 120 of the Penal Code, such as exciting disaffection towards the state or promoting feelings of ill-will or hostility between different classes of people.

The Commission observes that, to justifiably impose a limitation on the Complainant's freedom of expression, the 1st Respondent was required by law to form a reasonable opinion that the books included content that were calculated to lead to acts punishable under section 120 of the Penal Code. It is not adequate for him to merely form a suspicion or concern that the books fall within the scope of section 120. The Commission notes that, even if some latitude was to be offered to the 1st Respondent where a consignment is initially seized pending a full inquiry, in the present case, two of the Complainant's books have remained in detention for more than six months. At no point whatsoever in the proceedings before the Commission has the 1st Respondent sought to establish that he had in fact reached a reasonable opinion that the books in question contained matter calculated to lead to acts made punishable under section 120 of the Penal Code. Instead, submissions made during the inquiry as well as the written submissions tendered on behalf of the 1st Respondent only make vague references to the claim that the books promoted separatism. It is also pertinent to note that the 1st Respondent has maintained to date that he would defer to the opinion of the Ministry of Defence, thereby indicating that he himself has not arrived at a reasonable opinion.

Nevertheless, the Commission is dutybound to consider whether the 1st Respondent *could have* formed a reasonable opinion that the impugned content in the two books was calculated to lead to acts made punishable under section 120 of the Penal Code.

The Supreme Court in *Mohamed Razik Mohamed Ramzy v. Officer-in-Charge, Criminal Investigation Department & Others* SC (F.R) No. 135/2020 carefully examined the elements of the offence contained in section 120 of the Penal Code. It was first observed that the element

of *actus reus* should be met, and in the case of section 120, that element would entail conduct 'by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise'. This conduct should have a direct causal nexus to one or more of the five harmful outcomes listed in the section, i.e., (a) feelings of disaffection to the president or to the government of the Republic; (b) hatred to or contempt of the administration of justice; (c) People of Sri Lanka procuring, otherwise than by lawful means, the alteration of any matter by law established; (d) discontent or disaffection amongst the People of Sri Lanka; or (e) feelings of ill-will and hostility between different classes of People. The Court opined that, despite its colonial origins, where the legislative intention was to prohibit 'sedition', section 120 must now be 'enforced bearing in mind that Sri Lanka is a Republic, and it is the People who are sovereign, and fundamental rights is an inalienable ingredient of such sovereignty' (p. 30). Crucially, the Court held that:

unless there is reliable and clear evidence that the impugned utterances of the alleged offender... (i) were *unequivocally intended* at causing one of the outcomes contained in section 120, or (ii) had given rise to one or more of the outcomes referred to in section 120 (in which event the intention may be reasonably inferred), no person can be arrested or prosecuted in terms of the law for having allegedly committed the offence contained in section 120 of the Penal Code (emphasis added).

Therefore, intent remains an indispensable element of section 120 of the Penal Code. This mental element is reinforced in Schedule B to the Customs Ordinance by the inclusion of the term 'calculated'. The Commission accordingly observes that *both* causation and intent, which are necessary features of individual culpability must be established for a person to face legal consequences in terms of section 120 of the Penal Code. The criterion of legality, when limiting the freedom of expression by reference to section 120, thus includes individual culpability as a constituent feature. An individual should not encounter a limitation on their speech the legal basis for which is section 120, unless such person had either committed an act prohibited in section 120 and had intended for such act to lead to one of the five harmful outcomes listed in section 120, or had *calculated* for one of the harmful outcomes to occur. The Commission concludes that the 1st Respondent must be of the reasonable opinion that these elements of individual culpability, causation and intent, are present in a given case to justify the permanent seizure of any publication.

With respect to the criterion of rationality, the Supreme Court in ***Joseph Perera alias Bruton 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. In the present case, there is a notional nexus between the stated reason for detaining the two books, i.e., the prevention of acts that constitute offences under section 120 of the Penal Code, and certain legitimate aims found in articles 15(2) and 15(7) of the Constitution, i.e., the interests of racial and religious harmony, preventing incitement to an offence, national security, and public order.

Although the aim of preventing 'defamation' is found in article 15(2), it should be noted that the legal basis for the limitation in question is not related to this aim. Section 120 of the Penal Code should not be confused with criminal defamation, which is no longer an offence in Sri Lanka. In fact, the Penal Code (Amendment) Act, No. 12 of 2002, completely repealed Chapter XIX of the Penal Code of Sri Lanka, i.e., the Chapter on Defamation. Therefore, Sri Lanka Customs has no jurisdiction whatsoever to seize any publications on the pretext that they may contain defamatory statements against any specific natural persons or legal persons. For instance, if the impugned passages in the two books are alleged to contain any defamatory

statements against a military institution, political party, or government minister, the remedy for the aggrieved party lies in instituting action in the District Court. The Respondents are not authorized to seize or recommend the seizing of any books based on an assessment that they contain defamatory content.

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).

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.’

The Commission observes that, while the impugned content in the Complainant’s two books may be classified as ‘shocking’, even ‘offensive’ to some, or ‘disturbing’, there is no evidence to suggest that the impugned passages were *calculated* to excite disaffection against the state, promote feelings of ill-will between communities or bring about any other harmful outcome listed in section 120 of the Penal Code. Such a far-reaching interpretation would lead to an absurdity, where any allegation against a military institution, political party, government minister, or community, whether substantiated or unsubstantiated, could be prohibited on the grounds that it may cause disaffection. The Commission reiterates that section 120 of the Penal Code concerns expressions that are directly inciteful and have the capacity to influence large portions of the population—either specific communities, or the ‘People of Sri Lanka’ as a whole—to act in a harmful manner. The impugned passages in the two books merely contain sentences that make allegations, which may prompt reflection among some readers, and which may be dismissed by other readers. They, in the opinion of the Commission, lack the potency expected of content that has any likelihood of ‘exciting disaffection’ or ‘promoting ill-will’. In fact, as rightly pointed out by learned counsel for the Complainant, there are scores of publications that may be found in the public domain in Sri Lanka with similar sentiments against the military, political parties, government ministers, and indeed the majority community. To uphold the permanent seizure of the two impugned books would be to invite mass-scale censorship of expressions across Sri Lanka, making the freedom of expression in the country a mere illusion. In this context, the 1st Respondent has failed to demonstrate in specific and individualised fashion the precise nature of the threat posed by the two books to the legislative aims found in section 120 of the Penal Code. Therefore, the continued seizure of the two books, which acts as a form of prior censorship of its contents, is both unnecessary and disproportionate in terms of meeting the legislative aims found in section 120.

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)’.

The Commission recalls that the contents of these two books are already in the public domain and have previously featured in Tamil language newspapers. If this is indeed the case, the Respondents have not demonstrated how such content has thus far contributed to disaffection or promoted feelings of ill-will between communities. In this context, the Commission is unconvinced that the limitation in question is reasonable.

The Commission concludes that the 1st Respondent's continued seizure of the two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' authored by the Complainant has violated his right to the freedom of expression including publication guaranteed by article 14(1)(a) of the Constitution.

b. Consequent violations of other fundamental rights

The Commission remains deeply concerned that the sequence of events, and the explanations provided by the Respondents, indicate that the language of the Complainant's books, i.e., the Tamil language, were pivotal to their seizure. It is apparent that the several state institutions that encountered these books treated them with prejudice and suspicion, which would not have been afforded to books of another language. This prejudice and suspicion are governed by deeply embedded phobias within the state with respect to the reemergence of separatism. They are also shaped by a general failure on the part of the state to ensure that its institutions have adequate levels of Tamil language competence so as to understand context and nuances. The Commission observes that there is a tendency for human beings to fear what they do not understand. In the present case, the visual of a Sri Lankan map with a division coupled with a title in the Tamil language prompted the officers of Sri Lanka Customs to determine, arbitrarily and unreasonably, that the publication should be seized due to a potential violation of section 120 of the Penal Code.

The Commission also notes that the Complainant's two books have remained in detention for a prolonged period, i.e. more than six months, with no formal procedure being adopted to determine whether any matter contained therein is 'calculated to lead to acts made punishable under section 120 of the Penal Code'.

In this context, the Commission concludes that the 1st Respondent has also violated several of the Complainant's other fundamental rights.

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...language'.

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 1st Respondent's continued seizure of the Complainant's two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' with no formal inquiry process violated his right to equality before the law and the equal protection of the law guaranteed by article 12(1) of the Constitution.

The Commission also finds that the actions of the 1st Respondent were discriminatory on the basis of language, as it is apparent that Sri Lanka Customs acted prejudicially due to the fact that the Complainant's two books were in the Tamil language. **Therefore, the continued seizure of the Complainant's two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' also violated his right to non-discrimination on the grounds of language guaranteed by article 12(2) of the Constitution.**

Related to the violation of article 12(2) is the provisions of article 14(1)(f) of the Constitution, which guarantees to every citizen 'the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language.'

The Commission recalls that article 27 of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a party, provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The Human Rights Committee has also opined in its ***General Comment No. 23: Article 27 (Rights of Minorities)*** that article 27 not only requires the state to respect the rights of linguistic minorities but also imposes a positive obligation on the state to protect such minorities.

There is little doubt that the Tamil-speaking peoples are a linguistic minority in Sri Lanka who enjoy the protection of both article 14(1)(f) of the Constitution and article 27 of the ICCPR. The Commission recalls that the marginalization of Tamil-speakers throughout Sri Lanka's post-independence period has been one of the root causes of the country's ethnic conflict. Therefore, state functionaries should be particularly sensitive to the implications of treating Tamil language publications with prejudice. Such prejudice reopens old wounds and perpetuates the discrimination of Tamil-speaking peoples.

Learned counsel for the Complainant submitted that the seizure of the Complainant's two books impinged upon his 'ability to contribute to Tamil literary expression; the ability of Tamil-speaking citizens to access cultural material in their own language; and the participation of a linguistic community in public discourse'. Given the overarching context in which the Complainant's two books have been seized arbitrarily and unreasonably, in flagrant violation of his fundamental right to the freedom of expression including publication, the Commission is inclined to agree with this submission.

The specific nature of the two books in question, being works that discuss difficult but important themes, such as war, militancy, and victimhood, suggests that they stand to contribute to Tamil language discourse. It is not for the Commission to determine the quality or value of such contribution. The essence of the freedom to promote one's own culture and to use one's own language is that citizens should have autonomy over the cultural and literary content they wish to produce or consume. The state should not interfere with this freedom except in very limited circumstances governed by article 15 of the Constitution.

The Commission accordingly finds that the 1st Respondent, through the continued seizure of the Complainant's two books 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal

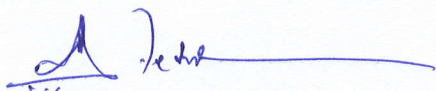
Nan Yuttam Ceykiren' has violated his fundamental right to the freedom to enjoy and promote his own culture and to use his own language.

Recommendations

The Commission reiterates that the 1st Respondent has violated the Complainant's fundamental rights to the freedom of expression including publication, the rights to equality and non-discrimination, and the freedom to enjoy and promote his own culture and to use his own language, respectively guaranteed by articles 14(1)(a), 12(1), 12(2), and 14(1)(f) of the Constitution.

In terms of section 15(3)(c) and (4) of the HRCSL Act, **it is recommended that the 1st Respondent forthwith release from detention all copies of the two books titled 'Ippothum Inge Irandu Thesangalthaan' and 'Elluttal Nan Yuttam Ceykiren' authored by the Complainant.**

The 1st Respondent is hereby directed to forward to the Commission a report on compliance with these recommendations on or before 02. December 2026 of receiving this recommendation.



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

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



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

Nimal G. Punchihewa
Senior Counsel
Commissioner
Human Rights Commission of Sri Lanka

- Copies : 1. Hon. Minister, - For your information pl.
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The Secretariat,
Colombo 01.
2. Hon. Minister, - For your information pl.
Ministry of Defence,
Defence Headquarters Complex,
Sri Jayawardenepura, Kotte.
3. Hon. Minister, - For your information pl.
Ministry of Buddhasasana, Religious and Cultural Affairs,
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Colombo 07.