

**SUBMISSION OF THE HUMAN RIGHTS COMMISSION OF SRI
LANKA TO THE THIRD UNIVERSAL PERIODIC REVIEW OF SRI
LANKA**

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Overview of the Human Rights Commission (581 words - not part of the word limit)

Recommendations 127.30 (Venezuela (Bolivarian Republic of)), 127.31 (Angola), 127.32 (Germany), 127.33 (Maldives) 127.34, (Mexico), 127.36 (Nepal), 127.37 (Malaysia), 127.38 (Norway), 127.39 (Republic of Korea), , 127.41 (Australia), 128.26 (New Zealand) of 2nd cycle review.

1. Following the nineteenth amendment to the Constitution in 2015, which established the Constitutional Council constituting members of political parties as well as civil society mandated to appoint members to the independent commissions, new members were appointed to the Human Rights Commission of Sri Lanka (HRCSL) in late October 2015.
2. In 2007 the HRCSL, which was established by Act No 21 of 1996, was downgraded to B status by the International Co-ordinating Committee of National Human Rights Institutions (ICC) for failure to adhere to the Paris Principles. Since the independence of the Commission was enhanced following the 19th Amendment to the Constitution, and the reasons for the downgrading are being addressed, the Commission is in the process of applying for A status.
3. The functions of the Commission are laid down in Section 10 of the Act and are as follows:
 - a. Inquire into and investigate complaints regarding procedures with a view to ensuring compliance with the provisions of the Constitution relating to fundamental rights and to promoting respect for, and observance of, fundamental rights,
 - b. Inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights, and to provide for resolution thereof by conciliation and mediation in accordance with the provisions hereinafter provided,
 - c. Advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental rights,
 - d. Make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards,
 - e. Make recommendations to the Government on the need to subscribe or accede to treaties and other international instruments in the field of human rights and,
 - f. Promote awareness and education of human rights.
4. In order to discharge its functions, the Commission is vested with a wide range of powers. These are laid down in Section 11 of the Act. They include power to:
 - a. Investigate any infringement or imminent infringement of fundamental rights,

- b. Intervene in any proceedings relating to the infringement or imminent infringement of fundamental rights, pending before any court, with the permission of such court,
- c. Monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention,
- d. Take such steps as it may be directed to take by the Supreme Court, in respect of any matter referred to it by the Supreme Court,
- e. Undertake research and promote awareness of human rights by conducting programmes, seminars, workshops and to disseminate and distribute the results of such research,
- f. Award an aggrieved person or a person acting on behalf of an aggrieved person, such sum of money as is sufficient to meet the expenses that may have been reasonably incurred by him in making a complaint to the Commission under section 14 of the Act,
- g. Do all such other things as are necessary or conducive to the discharge of its functions.

It is our view that consequent to the adoption of the nineteenth Amendment to the Constitution, the HRCSL is compliant with Paris Principles.

(2778 words)

1. Overview of the Current Human Rights Situationⁱ

(a) Improvements:

1. The re-establishment of an independent judiciary as well as independent oversight commissions-- including the HRCSL--by the Nineteenth Amendment to the 1978 Constitution of Sri Lanka marks a critically important development in improving promotion and protection of human rights in the country. Judges of superior courts can be appointed by the President only after obtaining approval of the newly established Constitutional Council (CC). Members of independent commissions can be appointed by the President only upon recommendation of the CC. The CC consists of parliamentarians from varied political parties and three representatives of civil society.
2. Currently, the HRCSL observes a significant improvement in general in regard to the exercise of freedom of expression (including media freedom), freedom of association and freedom of assembly. The easing up of space for free expression could be observed after the Presidential Election held in January 2015. A variety of views and opinions are published/broadcast in the printed and electronic media across State-run and privately owned newspapers and radio/television channels in all language media (Sinhala, Tamil, English). Similarly, political demonstrations are regularly staged in Colombo and elsewhere. Violence against media personnel has vastly reduced.
3. The HRCSL has not received complaints of alleged enforced disappearances in 2015 and 2016.
4. The enactment of the Right to Information Act, No. 12 of 2016 is viewed by the HRCSL as a turning point in strengthening human rights protection in Sri Lanka.
5. There is expanded space for civil society activities at present, with improved enjoyment of freedom of expression, association and assembly. It is no longer necessary for civil society organizations to obtain special permission to work in the conflict-affected areas.
6. The HRCSL observes that Sri Lanka's ratification record of human rights treaties has improved since 2015 and at present there is greater openness of the government to engage with international human rights mechanisms, including special procedures. In August 2015 Sri Lanka ratified the Protocol to Prevent and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the Convention on the Rights of Persons with Disabilities in February 2016 and the Convention for the Protection of All Persons from Enforced Disappearances in May 2016. 127.1 (Egypt, Turkey); 127.2 (Philippines); 127.3 (Cambodia); 127.4 (Kenya); 128.1 (Tunisia); 128.2 (Uruguay); 128.3 (Costa Rica,

- Estonia); 128.4 (Latvia); 128.5 (Slovakia); 128.6 (Austria); 128.7 (Brazil); 128.8 (Maldives); 128.9 (Czech Republic); 128.10 (Turkey); 128.11 (Argentina); 128.12 (Belgium, Iraq); 128.13 (France); 128.14 (Spain); 128.15 (Sweden); 128.16 (Slovenia); 128.17 Philippines); 128.18 (Philippines); 128.71 (Sweden).
7. Sri Lanka increased its cooperation with UN Special Procedures by issuing a standing invitation in December 2015. A number of special mandate holders visited Sri Lanka during the review period- Special Rapporteur on the Rights of Internally Displaced Persons (December 2013), Special Rapporteur on the Human Rights of Migrants (May 2014), Working Group on Enforced and Involuntary Disappearances (November 2015), Special Rapporteurs on Torture, and the Independence of Judges and Lawyers undertook a joint mission (April-May 2016), and the Special Rapporteur on Minority Issues (October 2016). The Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence undertook two advisory visits - in April 2015 and January 2016. (128.50 (Belgium); 128.51 (Latvia); 128.46 (France, Uruguay); 128.48 (Chile)).
 8. Since 2015 Sri Lanka began engaging with the Human Rights Council in a more constructive and non-confrontational manner. (127.44 (Angola); 128.43 (Burkina Faso))
 9. In January 2016, HRCSL recommended the abolition of the death penalty (Annexure 1). In December 2016 Sri Lanka voted in favour of a global moratorium on executions.
 10. In general, the HRCSL observes the existence of a more tolerant and receptive political environment to advocate gender justice and rights of marginalized communities. The HRCSL views the adoption of the Local Authorities Elections (Amendment) Act, No. 1 of 2016 reserving 1/3 additional seats exclusively for nominated female candidates in all local authorities as an important first step in ensuring greater representation for women in elected bodies.

(b) Concerns:

1. HRCSL continues to observe a widespread incidence of custodial violations, including torture. It documented its concerns in a report submitted to the UN Committee Against Torture in November 2016 when Sri Lanka's fifth periodic report was reviewed (Annexure 2).
2. The continued operation of the Prevention of Terrorism Act (PTA) has had a very negative impact on human rights. It allows prolonged administrative detention without judicial review and the admissibility of confessions, which creates space for torture. Based on statistics provided to the HRCSL by the Department of Prisons as of November 2016, of the one hundred and eleven (111) persons who

still remain in remand custody under the PTA, twenty-nine have not been indicted. The longest period a person has been on remand without indictment is fifteen years. The longest period a trial has been on-going is since 2002, i.e. fourteen years. Forty-one persons are appealing their sentences under the PTA with the longest period the person has been awaiting a decision being fourteen years.

3. HRCSL called for the revision of proposed amendments to the Code of Criminal Procedure Code, which would, in effect, limit access to detainees by lawyers (Annexures 3 & 4).
4. In general legal aid is limited. It is recommended that legal aid be expanded and greater financial and human resources be provided.
5. HRCSL has observed a growing phenomenon of hate speech, especially targeting religious minorities. Messages that incite hatred, and possibly violence against certain groups, openly circulate on the internet and social media with impunity. Some perpetrators are religious figures who openly advocate religious hatred and intolerance with impunity. Similarly, hate speech has targeted sexual minorities.
6. HRCSL has received some complaints from persons and civil society organisations in the North and East regarding individuals who have stated they are intelligence officers or members of CID/TID who have requested information about the complainants' organisations and activities, in particular after their participation in public demonstrations or events. Further, HRCSL received similar complaints from persons who appeared before the Consultation Task Force on Reconciliation Mechanisms.

2. Recommendations for Reform

(a) Constitutional Reform

7. The current constitutional reform process has presented a unique opportunity to adopt a comprehensive constitutional Bill of Rights which incorporates Sri Lanka's international human rights obligations and recognizes the principle of indivisibility of rights. The Report on Public Consultations on Constitutional Reform (2016) confirms public demands in that regard. HRCSL has presented its proposals for constitutional reform (Annexure 5) in which, *inter alia*, it calls for the recognition of supremacy of the constitution as a fundamental constitutional principle and also judicial review of legislation. The Commission endorses the framework of the Draft Bill of Rights recently presented by the Sub-Committee on Fundamental Rights of the Steering Committee of the Constitutional Assembly.

8. HRCSL is deeply concerned about opposition to incorporating economic and social rights as fully recognized justiciable constitutional rights. Such arguments negate public demands, the principle of indivisibility of rights and reverse progressive developments on human rights by decades. The position of HRCSL on this issue is articulated in a public statement (Annexure 6).

(b) Acceptance of International Norms

9. Sri Lanka should improve its ratification record by ratifying all outstanding human rights treaties.

(c) Legislative Reform & Related Matters

(i) National Security Legislation

10. In a statement the HRCSL called for the repeal of PTA and for the new security legislation being drafted to adhere to international human rights standards. (Annexure 7). There must be wide consultations on the proposed legislation, including with HRCSL, before the finalization of the draft law.

(ii) Rights of Detainees

11. The HRCSL reiterates that the government must guarantee the right of all persons deprived of liberty to access legal representation from the commencement of detention in a future constitutional Bill of Rights. Such a step should be accompanied by investing in improving police investigation methods.

(iii) Death penalty

12. Although from 1976, successive governments have not implemented the death penalty, courts continue to impose the death penalty under several statutes. Sri Lanka should ratify the Second Optional Protocol to the ICCPR and abolish the death penalty (Annexure 1).

(iv) Torture

128.60 (Australia), 128.61 (Czech Republic), 128.62 (Poland), 128.63 (Poland)

13. The HRCSL calls for the amendment of the definition of torture in Section 12 of the Convention Against Torture Act No 22 of 1994 to expand the definition of torture to include those acts causing severe suffering, in accordance with article 1 of the Convention Against Torture.

14. While the HRCSL notes continued human rights education programs for the police, which are also supported by the HRCSL, it recommends steps be taken to provide thorough training in modern methods of interrogation and investigation as a means of reducing custodial violations. The government should issue a strong and clear message to law enforcement authorities of its zero tolerance policy on torture, establish an independent unit to investigate complaints of torture against the police, and initiate timely prosecutions to stem impunity.

(v) Enforced Disappearances

128.65 (Australia), 128.73 (Belgium), 128.69 (Thailand), 128.66 (Germany), 128.68 (Mexico)

15. The government gazetted the International Convention for the Protection of All Persons from Enforced Disappearances Bill in February 2017. Although the Bill appears to be largely in line with the Convention, there are a number of elements of the Convention which have been excluded, such as Article 8 on statute of limitations which states it should be of long duration, and commences from the moment the offence ends taking into account the continuous nature of the offence.
16. It is important to view enforced disappearance as a continuous act, as stated in the General Comment issued by the UN Working Group on Enforced Disappearances (WGEID). The ‘continuance’ aspect gives institutions jurisdiction to consider the offence as a whole and not merely state omissions or acts that took place after acceptance by the state of the jurisdiction of the Convention.

(vi) Victim and Witness Protection

17. The Assistance to the Protection of Victims of Crime and Witness Act No 4 of 2015 was enacted in February 2015. The main shortcoming in the Act is that the Police itself is tasked with providing protection. Also, since there are limited internal relocation options within the country, feasible alternatives that foster public trust and ensure protection to victims and witnesses, such the establishment of a unit that is independent of the police have to be formulated. For that, support from government authorities at the highest levels is required.

(vii) Rights of Women

18. Despite very high social indicators relating to education and health, women are seriously under represented in parliament (5.8%)ⁱⁱ, and other elected assemblies; the Cabinet of Ministers (4%) and senior management positions (e.g. 18% of Ministry Secretaries). There is low participation in the labour force (35.9 %)ⁱⁱⁱ and in technical education (20% in engineering schools as opposed to 60% female

university entrants)^{iv}. HRCSL agrees with CEDAW Concluding Observations on Lanka's eighth periodic report, in particular with recommendations that temporary special measures be adopted in such areas to achieve substantive equality between men and women and also non-discrimination in personal laws.^v HRCSL welcomes the decision to establish a National Commission on Women and recommends that the Commission consist only of independent members and could supervise compliance with international human rights obligations.

19. Sri Lanka should take action to criminalise all forms of violence against women. (127.68 South Africa)

(d) Ending impunity

20. There are current efforts to bring to account those responsible for the murder of and attacks on journalists such as Prageeth Ekneligoda and Lasantha Wickrematunge; and in the case of disappearance of five students from the suburbs of Colombo in 2008. Political will to end impunity must be accompanied by well-resourced, strong and independent democratic structures that can undertake investigations and prosecutions along with a strong victim and witness protection mechanism. To date, a number of cases, such as the killing of ACF employees and 5 students in Trincomalee, remain unresolved.

(e) Structural reforms

127.31 (Angola), 127.32 (Germany), 127.33 (Maldives), 127.34 (Mexico), 127.36 (Nepal), 127.37 (Malaysia), 127.38 (Norway), 127.39 (Republic of Korea), 127.30 (Venezuela (Bolivarian Republic of)), 127.41 (Australia), 128.26 (New Zealand)

21. All positive changes need to be consolidated through structural reform so that they are not contingent on political vagaries.
22. The independent commissions must be provided with adequate staff and facilities and should not be subject to dilatory bureaucratic procedures.
23. It is observed that the role of independent commissions in governance is yet to be fully recognised by authorities. The HRCSL is empowered by law to advise the Government on compliance with international human rights standards in passing legislation. However, this function cannot be discharged if draft legislation is not made available to HRCSL to ascertain compliance with human rights standards.
24. The authorities must take cognisance of the right of the Commissions to express their independent views on matters that fall within their jurisdiction, and also the fact that such independence contributes to greater democracy and good governance.

25. It is imperative that the Constitutional Council under the 19th amendment be strengthened so it could facilitate the proper functioning of independent commissions. There has to be clarity about its mandate and it should be provided with adequate human and other resources.
26. Although the nineteenth Amendment has bolstered independence of the judiciary, the stipulated appointment process must be transparent and be based on objective criteria. Similarly, the judicial impeachment process must be clearly stipulated providing for an inquiry to be conducted by an independent panel of experts, subject to appeal to an appropriate forum.
27. The independence of the Attorney-General's Department should be ensured and it should be provided required human resources to expedite cases and end the culture of impunity.

(f) Conditions of detention

127.74 (Thailand) & 128.76 (Spain)

28. The overcrowded condition of prisons and detention centres noted by HRCSL during its monitoring visits should be addressed to bring them in line with international standards. Medical facilities at prisons require considerable improvement, as do facilities available to those with severe psychological disorders. Prison Hospitals need to be provided adequate facilities in respect of emergency care and serious illnesses, and administrative delays in transferring patients to the National Hospital, especially beyond normal office hours, should be rectified. The government's modern prison built in Angunakolapelessa is a welcome step in the correct direction. It is also important to train prison officials on international norms and standards.

(g) Human rights and transitional justice

29. Although the government enacted the Office of Missing Persons (Establishment, Administration and Discharge of Functions) Act No 14 of 2016 in August 2016 as a transitional justice mechanism it is not yet operational. The HRCSL issued a statement on the elements to be incorporated when the OMP is established (Annexure 8).
30. It is important that victims be consistently consulted about their concerns and needs and the government undertake a sustained public education campaign to create public awareness on transitional justice issues and dispel prevailing fears and myths in this regard.

31. The government should fulfil its obligations vis-à-vis Human Rights Council Resolution A/HRC/RES/34/1 and A/HRC/RES/30/1.^{vi}

(h) Human rights defenders

128.89 (Slovakia)

32. Through policy and practice that recognise and guarantee the rights of human rights defenders, the government should ensure civil society and human rights defenders are able to function without any surveillance, intimidation or harassment, especially by state security actors and law enforcement officers.

(i) Hate speech (127.56 (Holy See))

33. HRCSL recommends that reform of existing law on hate speech should be in line with ICCPR standards (Annex 9). The government should send a strong and immediate message that hate speech and crimes will not be tolerated by arresting and prosecuting those responsible for such violations under existing laws pending law reform.

(j) Rights of Persons with Disabilities

34. There have been numerous drafts of enabling legislation to give effect to the Convention on the Rights of Persons with Disabilities. The HRCSL wrote in March 2017 to the Minister of Social Empowerment and Welfare requesting a copy of the draft to ensure it is in line with the Convention.

(k) Sexual orientation and gender identity

128.53 (Argentina) & 128.24 (Canada)

35. Consensual sex between adults should not be criminalised. Therefore, sections 365 and 365A of the Penal Code, which criminalise same sex relations should be repealed. In its proposals on Constitutional Reform the HRCSL recommended that the non-discrimination clause be strengthened through the addition of, among others, the grounds of sexual orientation and gender identity. (Annexure 5).

36. HRCSL welcomes the establishment of the National Police Commission. The Police has to be professional and function in a non-political, non-partisan manner. In this regard, HRCSL welcomes plans to establish a Police University.

ENDNOTES

- ⁱ All recommendations mentioned in the report are those issued during the 2nd cycle review of Sri Lanka (14th session).
- ⁱⁱ Sri Lanka National Human Development Report 2014 on Youth and Development)
- ⁱⁱⁱ Sri Lanka Labour Force Survey, Annual Report 2015, page 4.
- ^{iv} Sri Lanka University Statistics 2015 – UGC, page 22.
- ^v CEDAW/C/LKA/CO8, paras 20 -21.
- ^{vi} <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/058/26/PDF/G1705826.pdf?OpenElement>;
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf?OpenElement>