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Human Rights Commission of Sri Lanka

**The Submission of the Human Rights
Commission of Sri Lanka on Draft General
Comments No. 1 on Places of Deprivation of
Liberty (Article 4)**

April 2023

The Submission of the Human Rights Commission of Sri Lanka on Draft General Comments No. 1 on Places of Deprivation of Liberty (Article 4)

Introduction:

The Human Rights Commission of Sri Lanka (HRCSL) was designated as the National Prevention Mechanism (NPM) by the Ministry of Foreign Affairs, Sri Lanka in 2017. Due to logistical difficulties such as the recruitment of additional staff, there was a delay in establishing the National Prevention Mechanism. However, in February 2022, the HRCSL established the National Prevention Mechanism.

The HRCSL wishes to submit its opinions for the Draft General Comments No. 1 on places of deprivation of liberty (Article 4 of the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment)

The existing mandate of HRCSL is for visiting places of deprivation of liberty.

The HRCSL was established in 1997 by the Human Rights Commission Act No. 21 of 1996 (hereinafter referred to as the HRCSL Act). It gave a powerful mandate to the staff of the HRCSL to work for the persons in places of deprivation of their liberty. In section 11(d), it has been mentioned that the HRCSL has the power to monitor the welfare of the detainees¹. According to section 14 of the HRCSL Act, 'the Commission may investigate on own motion or complaint². Section 28(2) of the HRCSL Act, has given to Commissions may enter at any time, any place of detention³.

The HRCSL exercised this power since 1997, long before the establishment of the NPM. Therefore, the government of Sri Lanka did not need to enact new laws to provide additional powers to the HRCSL to cover the need of NPM.

Additional Monitoring Power to the HRCSL with the new enactments.

Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 12 of 2022 has given additional monitoring power to the HRCSL. According to section 9A(2), arrests of any persons under this Act shall be communicated to the HRCSL, and persons authorized by the HRCSL shall visit the place of detention in terms of the HRCSL Act⁴. International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018⁵ enacted in 2018 and

¹ <https://hrctl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

² <https://hrctl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

³ <https://hrctl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

⁴ http://www.documents.gov.lk/files/act/2022/3/12-2022_E.pdf

⁵ http://www.documents.gov.lk/files/act/2018/3/05-2018_E.pdf

in section 15(3) of this Act has mentioned the HRCSL shall have access to the places where persons are deprived of liberty.

Section 22(7) of the Bureau of Rehabilitation Act, No. 2 of 2023 has empowered the HRCSL of its own motion, or on a complaint received, to visit every Centre and make appropriate recommendations⁶.

Section 28(2) of the Human Rights Commission of Sri Lanka Act 21 of 1996

According to section 28(2) “Any person authorized by the Commission in writing may enter at any time, any place of detention, police station, prison or any other place in which any person is detained by a judicial order or otherwise, and make such examinations therein or make such inquiries from any person found therein, as may be necessary to ascertain the condition of detention of the persons detained therein”. In this section, there are four important criteria as follows;

1. Any person authorized by the Commission may enter at any time, any place of detention;
2. visit any person detained by a judicial order or otherwise;
3. make such examinations therein;
4. make such inquiries from any person found therein, as may be necessary to ascertain the condition of detention of the persons detained therein

Article 4.2 of the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment⁷ has very clearly defined deprivation of liberty as follows;

“deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.

The HRCSL Act has prescribed places of detention as being ‘any place of detention, police station, prison or any other place and it will cover all types of places of detention.’ The HRCSL is authorized to visit detainees being detained by way of judicial order or otherwise, which emphasizes the broad mandate of the HRCSL.

The Bureau of Rehabilitation Act, No. 2 of 2023 further empowers the HRCSL to visit non-traditional places of detention such as drug rehabilitation centers, to examine them, and to make inquiries of those residing within to ascertain the conditions of their stay.

⁶ http://www.documents.gov.lk/files/act/2023/1/02-2023_E.pdf

⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

Powerful Mandate and Adequate Funding?

A National Human Rights Institution (NHRI) the HRCSL possesses a powerful mandate. This is very useful in conducting needful interventions. However, in practice, the effectiveness of this mandate would be diminished in the face of inadequate funding provided by the government.

It is for this exact reason that Section 2 of Composition and guarantees of independence and pluralism **of the** Principles relating to the Status of National Institutions (*The Paris Principles*⁸) highlights very important themes on NHRI as follows;

‘The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its staff and premises, to be independent of the Government, and not be subject to financial control which might affect its independence’.

Further, section 29(1) of the HRCSL Act similarly provides that,

‘the State shall provide the Commission with adequate funds to enable the Commission to discharge the functions assigned to it by this Act.’

The HRCSL was nominated to be the NPM in 2017, but the government did not provide sufficient funding and adequate to staff to function as a NPM, despite repeated requests by the HRCSL to do so. Further, the HRCSL communicated with Foreign Ministry regarding additional financial and human resources.

However, the present Commission decided to establish a NPM using the limited funding and resources available to it. It has been a very difficult endeavor to conduct the smooth functioning of the NPM with minimum staff, minimum training, and minimum capacity to visit places that carry out the deprivation of liberty.

Conclusion

The main objective of this Optional Protocol is the establishment of a system that would enable regular visits to be undertaken by independent, international and national bodies to places where people are deprived of their liberty, and to prevent torture and other cruel, inhuman, or degrading treatment or punishment.

To that end, is crucial to nominate NHRIs as NPM. If the mandate of NHRIs is not powerful enough to realize the objective of this Optional Protocol, it is necessary to amend existing law or

⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

to formulate new law to give full effect to the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Even if the mandate of NHRIs is adequate, as it is with the HRCSL in this regard, its effectiveness will be severely affected by the lack of sufficient funding and resources from the government. This issue needs to be addressed as soon as possible if the HRCSL is to function to its fullest potential as a NPM fully realizing its role and obligations under the Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.



Justice Rohini Marasinghe
Chairperson,
Human Rights Commission of Sri Lanka

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Judge of the Supreme Court (Retired)
Chairperson
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