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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
Human Rights Commission of Sri Lanka

Press Notice No: HRC/P/i/E/21/05/24

## Press Notice

### Misapplication of Section 3 of the ICCPR Act in relation to Commemoration Event in Trincomalee

The Human Rights Commission of Sri Lanka (HRCSL) wrote to the Inspector General of Police (IGP) with reference to the recent arrest of persons in Trincomalee, Eastern Province in relation to acts of commemoration.

On 13 May 2024, the HRCSL launched a *suo motu* investigation with respect to the alleged arbitrary arrest and detention of four persons on 12 May 2024 in Trincomalee. These persons were arrested for allegedly violating a temporary order of the Learned Magistrate by holding a commemoration event at the Bhuvanewari Amman Temple in Chenaiyoor, Muttur at which *kanji* was served to the public, and for allegedly assaulting a police officer.

The HRCSL was disturbed to observe that Sri Lanka Police was investigating the possible commission of an offence under section 3 of the International Covenant on Civil and Political Rights Act, No. 56 of 2007 (ICCPR Act). It emphasised that section 3(1) of the ICCPR Act criminalises the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. It recalled that, according to the HRCSL guidelines on the scope of section 3 of the ICCPR Act, for there to be ‘incitement’, there must be a ‘reasonable probability’ that the expression would cause imminent harm.

The HRCSL was of the view that peaceful acts of commemoration, and the distribution of food items, (not dissimilar to the distribution of food and drink at a *dansala* (alms stall) during Buddhist festivals) cannot be considered forms of incitement to discrimination, hostility, or violence. The use of section 3 of the ICCPR Act in such instances amounts to a gross misapplication of the section and could result in the harassment of suspects including the unreasonable denial of bail. It further recalled its recommendation to HE the President in 2017, in which it emphasised that all communities should ‘have the space and ability to mourn the loss of their loved ones and remember them...irrespective of their status or political beliefs’. It also cited the Office for Reparations Act, No. 34 of 2018 which defines ‘collective reparations’ to mean, ‘such measures as are intended to recognise the right to an effective remedy and benefits to the communities or groups of aggrieved persons and shall include – (a) means of remembrance of deceased persons...’.

The HRCSL accordingly observed that under Sri Lankan law, aggrieved persons within the Tamil community are entitled to the respect and protection of their right to collective reparations through means of remembrance of deceased persons.

In its letter to the IGP, the HRCSL included the following key recommendations:

- 1. Re-circulate, in all three languages, among all divisions of Sri Lanka Police, copies of the HRCSL’s guidelines on the scope of section 3 of the ICCPR Act. Include the said guidelines and Circular No. RTM 541 as part of a compulsory training and awareness programme for all police officers.**

- 2. Issue clear guidance, in all three languages, to all divisions of Sri Lanka Police, that peaceful acts of commemoration (i.e., remembrance of deceased persons), are recognised in the law as a part of what aggrieved persons within the Tamil community are entitled to as collective reparations. Furthermore, emphasise that acts that do not amount to advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence, (i.e., where there is no ‘reasonable probability’ that the act would cause imminent harm) should be respected and protected. The said guidance should also direct OICs in relevant administrative divisions to refrain from seeking magisterial orders preventing any peaceful acts of commemoration.**

The Commission also indicated that it is prepared to assist and advise Sri Lanka Police in fulfilling these recommendations and anticipated the IGP’s fullest cooperation in this regard.

Media Spokesperson  
Human Rights Commission of Sri Lanka

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