

2.11. Sri Lanka: The Human Rights Commission of Sri Lanka (HRCSL)

Recommendation: The SCA recommends that the HRCSL be re-accredited with “A” status.

The SCA commends the efforts of the HRCSL to address the SCA’s previous recommendations on the selection and appointment process of its members and to address key human rights violations.

The SCA highlights that NHRIs that have been accredited with A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

The HRCSL is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional and national levels, in particular, in order to continue strengthening their institutional framework and working methods.

The SCA notes:

1. Visiting places of deprivation of liberty

Section 11(d) of the HRCSL Act empowers the HRCSL to visit all places of deprivation of liberty, however it is silent on whether these visits are announced or unannounced. The HRCSL notes that, in practice, it conducts unannounced visits to places of deprivation of liberty. The HRCSL also reports that it regularly monitors police stations, prisons, child detention centres and women’s detention centres.

The SCA is of the view that an NHRI should be mandated to conduct ‘unannounced’ visits to all places of detention within its jurisdiction, as this limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny.

While the SCA notes that the HRCSL carries out unannounced visits in practice, it recommends the HRCSL to advocate for amendments to the HRCSL Act to provide it with the express power to conduct such visits without providing prior notice to authorities. The SCA also encourages the HRCSL to continue to access all places of deprivation of liberty to effectively monitor, investigate and report on the human rights situation in a timely manner.

The SCA refers to Paris Principles A.3 and D(d) and to its General Observation 1.2 on the ‘Human rights mandate’.

2. Interaction with the international human rights system

The HRCSL Act is silent on the institution’s engagement with the international human rights system. The SCA acknowledges that the HRCSL has engaged with the international human rights system to a substantial degree, and has established an international affairs division to coordinate interactions with international human rights mechanisms. The HRCSL further indicates that it is reviewing various treaties to assess the potential for the State to accede to additional instruments, considering that the State has ratified all core human rights treaties.

The SCA recognizes that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically.

The SCA highlights that effective engagement with the international human rights system may include monitoring and promoting the implementation of relevant recommendations originating

from the human rights system. The SCA encourages the HRCSL to continue its engagement with the international human rights system and to advocate for amendments to the HRCSL Act to provide it with the explicit mandate to interact with the international human rights system.

The SCA refers to Paris Principles A.3(d) and (e) and to its General Observation 1.4 on 'Interaction with the international human rights system'.

3. Cooperation with other human rights bodies and civil society organizations

The HRCSL informed the SCA that it interacts and engages with civil society organizations using its mandate to receive complaints and petitions from individuals.

The SCA is of the view that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandate. NHRIs should develop, formalize and maintain working relationships with human rights defenders, as well as a wide range of civil society organizations.

The SCA encourages the HRCSL to continue engaging with civil society organizations and human rights defenders. The SCA recommends that the HRCSL strengthen and formalize these relationships.

The SCA refers to Paris Principles C(f) and (g) and to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

4. Financial autonomy

Section 29(1) of the HRCSL Act 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 reports that it enjoys financial autonomy in practice, including through a separate budget line item within the State budget which it controls. However, the SCA considers that the current statutory arrangements do not provide the HRCSL with sufficient financial autonomy.

The SCA notes that NHRIs should have complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the NHRI is allocated and should ensure this is a separate budget line over which the NHRI has absolute management and control. The NHRI has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

The SCA therefore recommends that the HRCSL advocates for appropriate modifications to applicable administrative procedures to ensure that its functional independence and financial autonomy are guaranteed.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding.'

5. Pluralism and diversity of staff

The HRCSL informed the SCA of the gender balance within its staff complement, with 48% of the staff being women. The SCA notes that 77% of the HRCSL staff are from the Sinhala ethnic group. The HRCSL reported that it is formulating a comprehensive gender inclusion policy to guide pluralism and diversity within its staff.

The SCA notes that the HRCSL Act is silent on the requirement for a pluralistic and diverse composition of the HRCSL staff, including linguistic and ethnic representation.

The SCA emphasizes that a diverse decision-making and staff body facilitates an NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates and promotes the accessibility of the NHRI for all citizens. The SCA encourages the HRCSL to continue to establish measures to support pluralism and diversity.

The SCA refers to Paris Principles B.1 and to its General Observation 1.7 on 'Ensuring pluralism of the NHRI'.

6. Term of office

Section 5 of the HRCSL Act provides that '[a]ny member who vacates his office, otherwise than by removal under Section 4, shall be eligible for re-appointment', although it is silent on the number of times a member can be reappointed, which leaves open the possibility of unlimited tenure. The SCA acknowledges information from the HRCSL that in practice the members serve a maximum of two terms.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. As a proven practice, the SCA encourages that a term of between 3 and 7 years with an option to renew once be provided for in the NHRI's enabling legislation.

The SCA recommends that the HRCSL advocates for amendments to its enabling legislation to provide for the term of office of its members to be limited to one re-appointment.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

7. Selection and appointment

The SCA acknowledges the passage of the 21st Amendment to the Constitution of Sri Lanka, which re-established the Constitutional Council as the body that oversees the appointment of members of the HRCSL, as well as other independent state institutions.

The members of the HRCSL are appointed by the President based on the recommendations of the Constitutional Council. The Constitutional Council comprises the Prime Minister, the Speaker of the Parliament, the Leader of Opposition in Parliament, four members of Parliament and three persons nominated by the Speaker in agreement with the Prime Minister and Leader of the Opposition.

The HRCSL reports that, in practice, the three members of the Constitutional Council who are not members of Parliament are essentially representatives of civil society.

However, the SCA is of the view that the current process is not sufficiently broad and transparent and does not formalise the participation of civil society. In particular, it does not formally:

- require the advertisement of vacancies; and
- promote broad consultation and / or participation of civil society in the application, screening, selection and appointment process.

The SCA is of the view that it is critically important to ensure the formalization of a clear, transparent, and participatory selection and appointment process of the NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA recommends that the HRCSL advocates for the formalization of the selection process to include requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- c) Promote broad consultation and / or participation, including of civil society, in the application, screening, selection and appointment process; and
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

8. Addressing human rights violations

The HRCSL reports it has undertaken various activities to address human rights concerns around civil and political rights particularly regarding enforced disappearances, torture, arbitrary detention, harassment, and disproportionate use of force by the Police and other security personnel.

The SCA acknowledges these efforts and recommends that the HRCSL continue to strengthen its work to address all human rights violations including violence and discrimination, custodial deaths, torture and enforced disappearance. The HRCSL is also encouraged to develop and strengthen mechanisms for the protection of victims and witnesses.

The SCA also recommends that the HRCSL takes proactive steps to ensure it is accessible to the wider community, including regions in the North and East of the country. The SCA highlights that to promote independence and accessibility, an NHRI should establish a permanent regional presence, where possible.

NHRIs are required to promote and ensure respect for all human rights, democratic principles, and the strengthening of the rule of law in all circumstances, and without exception. Where serious violations of human rights are imminent, NHRIs are expected to conduct themselves with vigilance and independence. In fulfilling its protection mandate, an NHRI must not only monitor, investigate, and report on the human rights situation in the country, it should also undertake rigorous and systematic follow-up activities to promote and advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to be violated.

The SCA refers to Paris Principles A.1, A.2, A.3, B.2 and D(d) and to its General Observations 1.6 on 'Recommendations by NHRIs' and 1.10 on 'Adequate funding of NHRIs'.