ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Statement No: HRC/S/i/E/03/02/26

Statement on the Freedom of Expression and Online Safety in Sri Lanka

The Human Rights Commission of Sri Lanka (HRCSL) is deeply concerned about emerging threats to the freedom of expression in Sri Lanka, and particularly the freedom of journalists to engage in their profession without interference. It is particularly disturbed by a trend in which law enforcement officials have launched investigations into allegedly defamatory speech, including by journalists. In a recent egregious example, Mr. Tharindu Jayawardena, a journalist and member of the Commission's Sub-Committee on the Freedom of Expression, was summoned for a police inquiry without proper disclosure of the reasons for such summoning. It later transpired that the summoning was due to a complaint that Mr. Jayawardena had made allegedly defamatory remarks in his publications about corruption in the use of public funds. The Commission also notes that any failure of the police to inform a person of the reasons for summoning such person is a breach of Circular RTM 101/CRTM 61 issued by the Inspector General of Police on 2 July 2025 directing all investigating officers to inform persons of the reasons for summoning them.

The freedom of expression in Sri Lanka is guaranteed by article 14(1)(a) of the Sri Lankan Constitution. It is a fundamental right that is crucial to all citizens for the purpose of expressing their thoughts and opinions, and participating in democracy. The right protects expressions in all forms made through any medium, including online platforms. According to the Supreme Court of Sri Lanka, the right protects 'not only information or ideas that are favourably received or regarded as inoffensive…but also those that offend, shock or disturb the State or any sector of the population'.

The freedom of expression may be subject to certain restrictions, but these must only be by law in accordance with article 15(2) and article 15(7) of the Constitution. The Supreme Court has clearly held that each restriction on the freedom of expression must meet the standards of necessity, proportionality, and reasonableness. The Commission also notes the societal danger in unnecessary, disproportionate, and unreasonable restrictions on the freedom of expression, as such restrictions can lead to public frustration and even unrest.

One of the grounds on which the freedom of expression can be restricted under article 15(2) is defamation. Necessary, proportionate, and reasonable restrictions may, therefore, be imposed to guarantee to every person the right to their reputation and privacy, and to protect persons from defamation. Orders and judgments in this respect by civil courts are examples of such restrictions. Moreover, all persons, including journalists and editors, have 'special duties and responsibilities' with respect to the rights and reputations of others when exercising their

freedom of expression. This norm is clearly articulated in article 19(3) of the International Covenant on Civil and Political Rights. Therefore, journalists and editors should ensure that published content is checked for accuracy and should provide all parties an opportunity to comment on or respond to allegations made against them. Where inaccuracies are found to be published, retractions and apologies should be issued without delay.

However, there is a common misconception that restrictions on the freedom of expression on the grounds of preventing defamation can be in the form of criminal sanctions. On the contrary, any restriction on a person's speech on the grounds that it constitutes defamation remains the exclusive province of civil courts. No offence with respect to defamation currently exists under Sri Lankan criminal law. 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 Police has no jurisdiction whatsoever to investigate complaints with respect to defamation. It should neither entertain nor investigate complaints concerning defamation. Any citizen aggrieved by an alleged act of defamation can only seek a remedy before the civil courts of Sri Lanka and may not file criminal complaints in this regard.

The Commission observes a trend where political actors and influential persons have sought to file complaints with the Criminal Investigation Department or other divisions of Sri Lanka Police, including the Computer Crime Investigation Division, alleging that citizens have made false or defamatory statements about them, often on online platforms. The Commission recalls that international human rights standards require that public figures, such as political leaders and state officials, must tolerate more criticism than private individuals. The reliance on law enforcement officials to launch investigations into allegedly defamatory statements should be especially avoided by such public figures, as they have special responsibilities to respect the freedom of expression of members of the public. Often, inaccurate or unfair statements may be made about such public figures. However, it is their responsibility to respond to such statements through proportionate means, such as issuing official clarifications, rather than reliance on law enforcement officials. The Commission has also recognised in the past that commentary on women in political office, both on social and legacy media, has often been harmful in the country. Addressing this egregious issue, however, requires long term societal interventions, and not the abuse of criminal law.

In this context, the Commission wishes to make several observations with respect to the Online Safety Act, No. 9 of 2024 (OSA). The Commission has previously noted in a letter to the former Speaker that the current Act does not fully comply with the Supreme Court's Determination on the Online Safety Bill, and that the current Act could have been enacted only with a special majority in Parliament. In this context, the use of this Act to suppress the freedom of expression of any citizen, including for the purported purpose of preventing defamation, raises serious questions of constitutionality.

The Commission observes that online safety is a legitimate aim and the regulation of online platforms for the genuine purpose of online safety, particularly of vulnerable users, may be necessary. However, the current OSA does not achieve this aim. Its provisions replicate colonial-era criminal offences found in the Penal Code and fails to appropriately deal with a number of genuine online safety issues, such as phishing, spyware, malware, denial-of-service attacks, and hacking. The Commission recently held a consultation with civil society actors and noted a wide consensus that the OSA should be repealed. Any process of drafting new legal provisions on online safety should be consultative and draw on relevant experience and expertise to ensure that such provisions are fit for purpose.

The Commission recommends that the Government of Sri Lanka and relevant authorities adopt the following measures to ensure the respect for and protection of the freedom of expression in full compliance with the Sri Lankan Constitution and relevant international human rights law:

1. **The Ministry of Justice should declare a moratorium on the use of the Online Safety Act until its repeal and replacement with fit-for-purpose legislative provisions;**
2. **The Inspector General of Police should issue directions to all divisions and police stations of Sri Lanka Police reminding them that defamation is not a criminal offence in Sri Lanka, and to refrain from recording or investigating complaints purely relating to alleged defamation where no other offence is reasonably suspected; and**
3. **Political leaders should refrain from filing complaints with law enforcement officials with regard to any statement that is allegedly false or defamatory, as such a statement does not constitute a criminal offence.**

Chairman
Human Rights Commission of Sri Lanka

03.02.2026