

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

HUMAN RIGHTS COMMISSION OF SRI LANKA ACT, NO. 21 OF 1996

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AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION OF SRI LANKA; TO SET OUT THE POWERS AND FUNCTIONS OF SUCH COMMISSION; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette (hereafter referred to as the “appointed date”).

PART I

ESTABLISHMENT OF THE HUMAN RIGHTS COMMISSION OF SRI LANKA

2. (1) There shall be established a Commission which shall be called and known as the Human Rights Commission of Sri Lanka (hereafter in this Act referred to as “the Commission”).

(2) The Commission shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The seal of the Commission shall be in the custody of the Secretary to the Commission and may be altered in such manner as may be determined by the Commission..
3. (1) The Commission shall consist of five members, chosen from among persons having knowledge of, or practical experience in, matters relating to human rights.

(2) The members of the Commission shall be appointed by the President, on the recommendation of the Constitutional Council:

Provided however, that during the period commencing on the appointed date and ending on the date when the Constitutional Council is established, members of the Commission shall be appointed by the President on the recommendation of the Prime Minister in consultation with the Speaker and the Leader of the Opposition.

- (3) In making recommendations, under subsection (2), the Constitutional council and the Prime Minister shall have regard to the necessity of the minorities being represented of the Commission.
- (4) One of the members so appointed shall be nominated by the President to be the Chairman of the Commission.
- (5) Every member of the Commission shall hold office for period of three years.
- (6) Office of the members shall become vacant –
- (a) upon the death of such member;
 - (b) upon such member resigning such office by writing addressed to the President;
 - (c) upon such member being removed from office on any ground specified in section 4; or
 - (d) on the expiration of his term of office.
4. (1) A member of the Commission may be removed from office –
- (a) by the President, if he –
 - (i) is adjudged an insolvent by a court of competent jurisdiction;
 - (ii) engage in any paid employment outside the duties of his office, which in the opinion of the President, formed on the recommendation of the Prime Minister, in consultation with the Speaker and the Leader of the Opposition, conflicts with his duties as a member of the Commission;
 - (iii) is unfit to continue in office by reason of infirmity of mind and body;
 - (iv) is declared to be of unsound mind by a court of competent jurisdiction;
 - (v) is convicted of an offence involving moral turpitude; or
 - (vi) absents himself from three consecutive meetings without obtaining leave of the Commission; or
 - (b) by an order of the President made after an address of Parliament, supported by a majority of the total number of members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehavior or incapacity:

Provided however, that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of members of Parliament and sets out full particulars of the alleged misbehavior or incapacity.

- (2) The procedure for the presentation and passing on an address of Parliament for the removal of a Judge of the Supreme Court or the Court of Appeal, shall apply in all respects to the presentation and passing of an address of parliament for the removal of a member of the Commission.
5. Any member who vacates his office, otherwise than by removal under section 4, shall be eligible for re-appointment.
6. (1) The Chairman may resign from the office of Chairman by letter addressed to the President.
- (2) Subject to the provisions of subsection (1), the term of office of the Chairman shall be his period of membership of the Commission.
- (3) If the Chairman of the Commission becomes by reason of illness or other infirmity, or absence from Sri Lanka temporarily unable to perform the duties of his office, the President may appoint any other member of the Commission to act in his place.
7. No act or proceeding of the Commission shall be deemed to be invalid by reason only of the existence of any vacancy among its members, or defect in the appointment of any member thereof.
8. The salaries of the members of the Commission shall be determined by Parliament and shall be charged on the Consolidated Fund and shall not be diminished during their terms of office.
9. (1) The Chairman of the Commission shall be its Chief Executive officer and shall preside at all meetings of the Commission. In the event of his absence from any meeting, the members of the Commission present at such meeting shall elect one from amongst themselves to preside at such meeting.
- (2) The Chairman of any meeting of the Commission shall, in addition to his own vote, have a casting vote.
- (3) Subject to the other provisions of this Act, the Commission may regulate the procedure in regard to the conduct of meetings of the Commission, and the transaction of business at such meetings.

10. The functions of the Commission shall be –

- (a) to 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) to 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) to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental rights;
- (d) to 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) to 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) to promote awareness of, and provide education in relation to, human rights.

11. For the purposes of discharging its functions the Commission may exercise any or all of the following powers: -

- (a) investigate, any infringement or imminent infringement of fundamental rights in accordance with the succeeding provisions of this Act;
- (b) appoint such member of sub-committees at Provincial level, as it considers necessary to exercise such powers of the Commission as may be delegated to them, by the Commission, under this Act;
- (c) intervene in any proceeding relating to the infringement or imminent infringement of fundamental rights, pending before any court, with the permission of such court;
- (d) 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;

- (e) 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;
- (f) undertake research into, and promote awareness of, human rights, by conducting seminars and workshops and to disseminate and distribute the results of such research;
- (g) award in its absolute discretion to 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.
- (h) do all such other things as are necessary or conducive to the discharge of its functions.

PART II POWERS OF INVESTIGATION OF THE COMMISSION

12. (1) The Supreme Court may refer any matter arising in the course of a hearing of an application made to the Supreme Court under Article 126 of the Constitution to the Commission for inquiry and report.
- (2) The Commission shall inquire and report to the Supreme Court on the matters referred to it under subsection (1), within the period, if any, specified in such reference.
13. (1) Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126 (2) of the Constitution.
- (2) Where the Supreme Court makes a reference in terms of section 12 (1) to the Commission for inquiry or report, the period commencing from the date of such reference and ending on the date of the report of the Commission, shall not be taken into account in computing the period of two months referred to in Article 126 (5) of the Constitution.
14. The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or group of persons caused –

(a) by executive or administrative action; or

(b) as a result of an act which constitutes an offence under the Prevention of Terrorism Act, No. 48 of 1979, committed by any person.

15. (1) Where an investigation conducted by the Commission under section 14 does not disclose the infringement or imminent infringement of a fundamental right by executive or administrative action or by any person referred to in paragraph (b) of section 14, the Commission shall, record the fact, and shall accordingly inform the person making the complaint within thirty days.

(2) Where an investigation conducted by the Commission under section 14 discloses the infringement or imminent infringement of a fundamental right by executive or administrative action, or by any person referred to in paragraph (b) of section 14, the Commission shall have the power to refer the matter, where appropriate, for conciliation or mediation.

(3) Where an investigation conducted by the Commission under section 14 discloses the infringement or imminent infringement of a fundamental right by executive or administrative action, or by any person referred to in paragraph (b) of section 14, the Commission may where it appears to the Commission that it is not appropriate to refer such matter for conciliation or mediation, but all or any of the parties object or object to conciliation or mediation, or where the attempt at conciliation or mediation is not successful –

(a) recommend to the appropriate authorities, that prosecution or other proceedings be instituted against the person or persons infringing such fundamental right;

(b) refer the matter to any court having jurisdiction to hear and determine such matter in accordance with such rules of court as may be prescribed therefor, and within such time as is provided for invoking the jurisdiction of such court by any person;

(c) make such recommendations as it may think fit to the appropriate authority or person or persons concerned, with a view to preventing or remedying such infringement or the continuation of such infringement.

(4) Without prejudice to the generality of the recommendations that may be made under paragraph (c) of subsection (3), the Commission may –

(a) recommend that the act or omission giving rise to the infringement or imminent infringement of a fundamental right be reconsidered or rectified;

- (b) recommend that the decision giving rise to the infringement or imminent infringement of a fundamental right be reconsidered or rectified;
- (c) recommend that the practice on which the decision, recommendation, act or omission giving rise to the infringement or imminent infringement of a fundamental right was based, be altered; and
- (d) recommend that reasons may be given for the decision, recommendation, act or omission giving rise to the infringement or imminent infringement of a fundamental right.

(5) No recommendation shall be made by the Commission under the preceding provisions of this section in respect of the infringement or imminent infringement of a fundamental right except after affording and opportunity of being heard to the person alleged to be about to infringe or to have infringed such fundamental right.

(6) A copy of a recommendation made by the Commission under the preceding provisions of this section in respect of the infringement or imminent infringement of a fundamental right shall be sent by the Commission to the person aggrieved, the head of the institution concerned and the Minister to whom the institution concerned has been assigned.

(7) The Commission shall require any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed to report to the Commission, within such period as may be specified in such recommendation the action which such authority or person has taken, or proposes to take, to give effect to such recommendation and it shall be the duty of every such person to report to the Commission accordingly.

(8) Where any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed, fails to report to the Commission within the period specified in such recommendation or where such person report to the Commission and the action taken, or proposed to be taken by him to give effect to the recommendations of the Commission, is in the view of the Commission inadequate, the Commission shall make a full report of the facts to the President who shall, cause a copy of such report to be placed before Parliament.

16. (1) Where the Commission refers a matter for conciliation or mediation under section 15 it shall appoint one or more persons to conciliate or mediate between the parties.

(2) The manner of appointment and the powers and functions of conciliators or mediators shall be as prescribed.

(3) The Commission may direct the parties to appear before the conciliators or mediators for the purpose of conciliation or mediation. Sittings of the conciliators or mediators may be held in camera.

(4) In the event of the conciliation or mediation not being successful, or where one party objects to conciliation or mediation, the conciliator or mediator shall report to the Commission accordingly.

(5) Where the conciliators or mediators are successful in resolving the matter by conciliation or mediation they shall inform the Commission of the settlement arrived at.

(6) Where the matter is referred to for conciliation or mediation under this section and a settlement is arrived at, the Commission shall make such directions (including directions as to the payment of compensation) as may be necessary to give effect to such settlement.

17. Where in the course of an inquiry or investigation conducted by the Commission a question arises as to the scope or ambit of a fundamental right, the Commission may refer such question to the Supreme Court under Article 125 of the Constitution, for the determination of the Supreme Court.

18. (1) The Commission shall, for the purpose of an inquiry or investigations under this Act, have the power -

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission may think it necessary or desirable to procure or examine:

(b) to require the evidence (whether written or oral) of any witness, to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if here giving evidence in a court of law, and to administer and cause to be administered by an officer authorized in that behalf by the Commission an oath or affirmation to every such witness;

(c) to summon any person residing in Sri Lanka, to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

(d) to admit notwithstanding any of the provisions of the Evidence Ordinance, any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;

(e) to admit or exclude the public from such inquiry or investigation or any part thereof.

19. (1) A person who gives evidence before the Commission shall in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(2) No person shall in respect of any evidence written or oral, given by that person to, or before the Commission be liable to any action, prosecution or other proceeding, civil or criminal in any court.

(3) Subject as hereafter provided, no evidence of any statement made or given by any person to, or before, the Commission shall be admissible against that person in any action, prosecution or other proceeding, civil or criminal in any court:

Provided that, nothing in the preceding provisions of this subsection shall -

(a) affect, or be deemed or construed to affect, any prosecution or penalty for any offence under Chapter XI of the Penal Code read with section 23 of this Act;

(b) prohibit, or be deemed or construed to prohibit the publication or disclosure of the name, or of the evidence or any part of the evidence of any witness who gives evidence before the Commission for the purposes of the prosecution of that witness for any offence under Chapter XI of the Penal Code.

20. (1) Every summons shall be under the hand of the Chairman of the Commission.

(2) Any summons may be served by delivering it to the person named therein, or where that is not practicable, by leaving it at the last known place of abode of the person, or by registered post.

(3) Every person to whom a summons is served shall attend before the Commission at the time and place mentioned therein, and shall answer the questions put to him by the Commission or produce such documents or other things as are required of him and are in his possession or power, according to the tenor of the summons.

21. (1) Every offence of contempt committed against, or in disrespect of, the authority of the Commission shall be punishable by the Supreme Court as though it were an offence of contempt committed against, or in disrespect of, the authority of that Court, and the Supreme Court is hereby vested with jurisdiction to try every such offence.

(2) An act done or omitted to be done in relation to the Commission, whether in the presence of the Commission or otherwise, shall constitute an offence of contempt against, or in disrespect of, the authority of the Commission, if such act would, if done or omitted to be done in relation to the Supreme Court, have constituted an offence of contempt against, or in respect of, the authority of such Court.

(3) If any person -

(a) fails without cause, which in the opinion of the Commission is reasonable, to appear before the Commission at the time and place mentioned in the summons served under this Act; or

(b) refuses to be sworn or affirmed, or having been duly sworn or affirmed refused or fails without cause, which in the opinion of the Commission is reasonable, to answer any question put to him touching the matters being inquired into, or investigated by, the Commission; or

(c) refuses or fails without cause which in the opinion of the Commission is reasonable, to comply with the requirements of a notice or written order or direction issued or made to him, by the Commission; or

(d) upon whom a summons served under this Act, refuses or fails without cause, which in the opinion of the Commission is reasonable, to produce and show to the Commission any document or other thing, which is in his possession or control and which is in the opinion of the Commission necessary for arriving at the truth of the matter being inquired into, or investigated,

such person shall be guilty of the offence of contempt against, or in disrespect of the authority of the Commission.

(4) Where the Commission determines that a person is guilty of an offence of contempt under subsection (2) or subsection (3), against, or in disrespect of, its authority the Commission may transmit to the Supreme Court, a Certificate setting out such determination; every such Certificate shall be signed by the Chairman of the Commission.

(5) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of, as provided in this section, any document purporting to be a Certificate signed and transmitted to the Court under subsection (4) shall -

(a) be received in evidence, and be deemed to be such a certificate without further proof, unless the contrary is proved, and

(b) be evidence that the determination set out in the Certificate was made by the Commission and of the fact stated in the determination.

(6) In any proceeding taken as provided in this section for the punishment of any alleged offence of contempt against, or in disrespect of, the authority of the Commission, no member of the Commission shall, except with his own consent, and

notwithstanding anything to the contrary in this Act, be summoned or examined as a witness.

PART III STAFF OF THE COMMISSION

22. (1) There shall be appointed a Secretary to the Commission.

(2) There may be appointed such officers and servants as may be necessary to assist the Commission in the discharge of its functions under this Act.

23. The members of the Commission and the officers and servants appointed to assist the Commission shall be deemed to be public servants within the meaning of the Penal Code and every inquiry or investigation conducted under this Act, shall be deemed to be a judicial proceeding within the meaning of that Code.

24. The Commission may delegate to any officer appointed to assist the Commission any of its powers, and the person to whom such powers are so delegated may exercise those powers subject to the direction of the Commission.

25. (1) At the request of the Commission, any officer in the public service may, with the consent of that officers and the Secretary to the Ministry of the Minister in charge of the subject of the Public Administration, be temporarily appointed to the staff of the Commission, for such period as may be determined by the Commission, with like consent, or with like consent be permanently appointed to such staff.

(2) Where any officer in the Public service is temporarily appointed to the staff of the Commission, the provisions of subsection (2) of section 14 of the National Transport Commission Act, NO. 37 of 1991 shall, mutatis mutandis, apply to, and in relation to, such officer.

(3) Where any officer in the Public service is permanently appointed to the staff of the Commission, the provisions of subsection (3) of section 14 of the National Transportation Commission Act, No. 37 of 1981 shall, mutatis mutandis, apply to, and in relation to, such officer.

(4) Where the Commission employs a person who has agreed to serve to the Government for a specific period, any period of service to the Commission, shall be regarded as service to the Government for the purpose of discharging the obligations of that person under such agreement.

26. (1) No proceedings civil or criminal, shall be instituted against any member of the Commission or any officer or servant appointed to assist the Commission, other than for contempt, or against any other person assisting the Commission in any other way, for any act which in good faith is done or omitted to be done, by him, as such member or officer or servant or other person.

(2) A member of the Commission or an officer or servant appointed to assist the Commission shall not be required to produce in any court, any document received by, or to disclose to any court, any matter or thing coming to the notice of the Commission in the course of any inquiry or investigation conducted by the Commission under this Act, except or for an offence under this Act.

(3) No proceedings civil or criminal, shall be instituted in any court against any member of the Commission in respect of a ny report made by the Commission under this Act or against any other person in respect of the publication by such person of a substantially true account of such report.

(4) Any expenses incurred by the Commission in any suit or prosecution brought by, or against, the Commission before any court, shall be paid out of the funds of the Commission and any costs paid to, or recovered by, the Commission in any such suit or prosecution, shall be credited to the fund of the Commission.

(5) Any expense incurred by any member of the Commission or any officer or servant thereof or any person appointed to assist the Commission, in any suit or prosecution brought against him in any court in respect of any act which is done, or purported to be done, by him under this Act or on the direction of the Commission shall, if the court holds that the act was done in good faith, be paid out of the funds of the Commission, unless such expense is recovered by him in such suit or prosecution.

27. The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

PART IV GENERAL

28. (1) Where a person is arrested or detained under the Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979 or a regulation made under the Public Security Ordinance, (Chapter 40), it shall be the duty of the person making such arrest or order of detention, as the case may be, to forthwith and in any case, not later than forty-eight hours from the time of such arrest or detention, inform the Commission of such arrest or detention as the case may be and the place at which the person so arrested or detained is being held in custody or detention. Where a person so held in custody or detention is release or transferred to another place of detention, it shall be the duty of the person making the order for such release or transfer, as the case may be, to inform the commission of such release or transfer, as the case may be, and in the case of a transfer, to inform the Commission of the location of the new place of detention.

(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 conditions of detention of the persons detained therein.

(3) Any person on whom a duty is imposed by subsection (1), and who willfully omits to inform the Commission as required by subsection (1), or who resists or obstructs an officer authorized under subsection (1) in the exercise by that officer of the powers conferred on him by that subsection, shall be guilty of an offence and shall on conviction after summary trial by a Magistrate, be liable to imprisonment for a period not exceeding one year or to a fine not exceeding five thousand rupees, or to both such fine and imprisonment.

29. (1) The State shall provide the Commission with adequate funds to enable the Commission to discharge the functions assigned to it by this Act.

(2) The Commission shall cause proper accounts to be kept of its income and expenditure, and assets and liabilities.

(3) The financial year of the Commission shall be the calendar year.

(4) Article 154 of the Constitution shall apply to the audit and accounts of the Commission.

30. The Commission shall submit an annual report to Parliament of all its activities during the year to which the report relates. Such report shall contain a list of all matters referred to it, and the action taken in respect of them along with the recommendations of the Commission in respect of each matter. The Commission may, whenever it considers it necessary to do so, submit periodic or special reports to Parliament in respect of any particular matter or matters referred to it, and the action taken in respect thereof.

31. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, or in respect of any matter which is required by this Act, or in respect of any matter which is required by this Act to be prescribed, or in respect of which regulations are required to be made.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations prescribing the procedure to be followed in the conduct of investigations under this Act.

(3) Every regulation made by the Minister shall be published in the Gazette, and shall come into operation on the date of such publication, or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval. Any regulation

which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date of which any regulation is so deemed to be rescinded shall be published in the Gazette.

32. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

33. In this Act, unless the context otherwise requires –

“fundamental right” means a fundamental right declared and recognized by the Constitution;

“head of the institution” in relation to –

- (a) a public officer serving in a Government department, means the head of that department, or where such public officer is the head of that department means the Secretary to the Ministry to which that department has been assigned;
- (b) a public officer who is serving in a Ministry means the Secretary to the Ministry, or where such public officer is the Secretary means the Minister in charge of that Ministry;
- (c) a scheduled public officer, means the Judicial Service Commission, appointed under Article 112 of the Constitution;
- (d) any other public officer, means the principal executive officer under whose general direction and control that public officer is serving;
- (e) an officer of a public corporation, local authority or other like institution, means the principal executive officer of that public corporation, local authority or other like institution, or where such officer is the principal executive officer of that public corporation, local authority or institution, means the Secretary to the Ministry under which such public corporation, local authority or institution functions;

“human right” means a right declared and recognized by the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights;

“ institution” includes a Government department, public corporation, statutory board or commission, local authority, Government owned business undertaking and a company, the majority of shares of which are held by the Government;

“local authority” means any Municipal Council, Urban Council, or Pradeshiya Sabha and includes any authority created or established by or under any law, to exercise, perform and discharge powers, duties and functions corresponding or similar to, the

powers, duties, and functions exercised, performed and discharged by any such Council or Sabha;

“public corporation” means any corporation, board or other body which was, or is established by or under any written law other than that Companies Act, No. 17 of 1982, with funds or capital wholly or partly provided by the Government, by way of grant, loan or otherwise.
