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My No.

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Date.

14.03.2017



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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

Hon. Ranil Wickremasinghe
Prime Minister of the Democratic Socialist Republic of Sri Lanka
Temple Trees
Colombo 3

Hon. Prime Minister,

Proposed Amendment to the Code of Criminal Procedure (Special Provisions) Act, No. 2 of 2013

We write to express the deep concern of the Human Rights Commission of Sri Lanka regarding proposed legislation that in effect whittles down the rights of detainees in police custody to have unimpeded access to lawyers.

01. Previously, by letter dated 21 September, 2016 we urged the government to withdraw a legislative Bill that sought to amend the Code of Criminal Procedure Act (gazetted on 12 August, 2016) to provide for the right of a detainee in police custody to access his/her lawyer on condition that such access could be had only **after** the first statement is recorded. The recommendation was made as such a limitation would have serious implications for the detainee's right to be free from torture and also the right to a fair trial, both under the Constitution of Sri Lanka and the ICCPR (letter attached for easy reference).
02. We were pleased that the said Bill was not proceeded with. We anticipated that a future Bill that sought to guarantee the right of detainees to legal representation would take into consideration the concerns expressed by the HRCSL and other stakeholders such as the Bar Association of Sri Lanka. It would have been ideal if the government consulted the HRCSL in formulating legislation on this matter thereby enabling the Commission to fulfill its mandate as per sections 10 (c) and (d) of the Human Rights Commission Act, No. 21 of 1996 to advise the government on ensuring legislative compliance with fundamental rights standards and Sri Lanka's international legal obligations.
03. By letter dated 27.01.2017 we wrote to the Minister of Justice requesting a copy of draft legislation replacing the previous Bill so that we may make necessary recommendations. However, we did not receive a response.
04. We are now in possession of a Bill gazetted on 03 March, 2017, the stated aim of which is to amend the Code of Criminal Procedure (Special Provisions) Act, No. 2 of 2013. We find some provisions in the Bill to be as problematic as the impugned provisions in the previous Bill.

05. While stating that the objective of the amendment is to provide for the right of an Attorney-at-Law to access a person in police custody (not the right of a detainee to access a lawyer), the proposed s. 6 (A) (6) introduced by the Bill nevertheless limits the right of a lawyer to access a detainee held in a police station as such a right is granted "unless such access is prejudicial to the investigation being conducted". It is not stipulated who decides on the matter nor does it set out objective criteria upon which such a determination would be made. There is also no right to appeal to a higher authority if access is refused. Similarly, we take exception to proposed s. 6 (A) (2) of the Bill which declares that "the right of an Attorney-at-Law, to have access to the police station, and to make representations, shall not affect the investigations that may be conducted in respect of the person being represented".
06. The right of a lawyer to access a detainee determines the right of the latter to obtain adequate legal representation. The rights of a detainee, both under the Constitution of Sri Lanka and international law, are based on the presumption of innocence of a suspect. Hence, in some jurisdictions those arrested have the right to remain silent (e.g. Miranda Rule in the USA). Such a guarantee is made in order to ensure justice regardless of the level of crime in a country. In a fair system, justice must be guaranteed both to the victim as well as to the suspect. Natural justice requires that both parties be given an equal hearing.
07. If the proposed amendment is premised on police entertaining suspicions about lawyers changing the course of investigations through advice given to their clients, such suspicions cannot be resolved at the expense of the right of a detainee to have access to legal representation. We are of the opinion that long term investments must necessarily be made by the government in providing better facilities and training to the police to carry out effective investigations in a manner that does not undermine the rights of detainees. Currently, the police appear to rely heavily on the first statement of a suspect in order to investigate crimes. The Commission's observation is that torture is often used from the point of arrest until the first statement is obtained.
08. We recommend that the proposed s. 6 (A)(2), and the phrase "unless such access is prejudicial to the investigation being conducted" contained in proposed s. 6 (A) (6) of the Bill be removed if the Bill is to proceed further.
09. The government must guarantee the right of all persons deprived of liberty to access legal representation from the commencement of detention in a future constitutional Bill of Rights. Such a step should be accompanied by investing in improving police investigation methods. Such combined measures would go a long way in improving Sri Lanka's human rights record.

Further, we urge the government to provide the Commission access to draft legislation on a regular basis in order to ensure legislative compliance with human rights standards (s. 10 (c) and (d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996).

Thank you.



Dr. D. Udagama
Chairperson

Human Rights Commission of Sri Lanka

Dr. N. D. Udagama
Chairperson
Human Rights Commission of Sri Lanka