

PETITION

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under Article 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Bill titled "Commission for Truth, Unity and Reconciliation in Sri Lanka".

S. C. (S. D.) Application No:

1. Dr. Gunadasa Amarasekera,
31/14/C, 2nd Lane, Koswatta,
Nawala
2. Ballanthudawa Achchige Nuwan
Chamara Indunil,
No. 415/34, Off High Level Road,
Gangodawilla

Petitioner

Vs.

Attorney- General
Attorney General's Department
Colombo 12

Respondent

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

On this 13th of September 2024

The Petition of the Petitioner above named appearing by their Registered Attorney-at-Law, Sawani Rajakaruna state as follows:

Petitioners

1. The Petitioners are Citizens of Sri Lanka.
2. The 1st Petitioner is the President of the "Desha Hithishi Jathika Viyaparaya", a patriotic national movement which is campaigning to preserve and foster the Unitary State of Sri

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Lanka. Further he is the convener of the “Solidarity of National Organizations” He has written over 25 books and published over 60 articles on politics and philosophy.

3. The 2nd Petitioner is the General Secretary of the “Patriotic National Front’, a political movement which is campaigning to preserve and foster the Unitary State of Sri Lanka based on Sinhalese Buddhist values and principles. The 2nd Petitioner is also an Attorney-at-Law by profession.

This Application

4. The Petitioners state that they have fundamental duties in terms of Article 28 of the Constitution, as persons in Sri Lanka, inter-alia to-
 - a. Uphold and defend the Constitution and Law;
 - b. Further the National Interest and to foster National Unity;
 - c. To respect the Rights and Freedoms of others.
5. In the circumstances the Petitioners have sufficient public interest with regard to the grievances stated in this application and to seek reliefs as prayed for the benefit of and to safeguard substantive rights of themselves and the People of Sri Lanka. The matters complained herein have a serious and direct impact on the Public, moral and cultural stability, psychological-physical health of the people, national security, national economy and Buddha Sasana in Sri Lanka.

Respondent

6. The Petitioners state that the Attorney General is made a Respondent to this application under and in terms of Article 134(1) of the Constitution.

The Bill

7. The Petitioners state that the Bill titled “**Commission for Truth, Unity and Reconciliation in Sri Lanka**” was gazetted on 05-08-2024 and has been placed on the Order Paper of Parliament on 03-09-2024.

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A copy of the Sinhala text of the said Bill is annexed marked as X1 and the relevant pages of the order paper are annexed marked as X2 and pleaded as part and parcel of the Petition.

8. The Petitioners state that the Bill in its long title states *“An Act to provide for the establishment of The Commission for Truth, Unity and Reconciliation in Sri Lanka; to set out the powers and functions of such commission; to provide for the establishment of The Monitoring Committee of The Commission for the purpose of monitoring the implementation of the recommendations of the truth, unity and reconciliation in Sri Lanka and to provide for matters connected therewith or incidental thereto”.*
9. In the preamble of the Bill states inter alia that *“AND WHEREAS a truth-seeking mechanism, anchored in the right of all Sri Lankans to know the truth concerning the matters provided herein, which is an integral part of their right to an effective remedy, will contribute to the promotion of national unity, peace, rule of law, co-existence, equality with tolerance and respect for diversity, and reconciliation among the people of Sri Lanka and non-recurrence of disharmony and violence for the wellbeing and security of all Sri Lankans including future generations:”*
10. The Petitioners state that the Bill proposes to establish a Commission called and known as “Commission for Truth, Unity and Reconciliation in Sri Lanka” as a corporate and autonomous institution comprising of not less than seven and not more than twenty-one members, all of whom are citizens of Sri Lanka and functional for a term of five years from the appointed date.
11. Clause 12 of the Bill describes the **objectives and mandate** of the commission, which includes **“to investigate, inquire, and make recommendations in respect of complaints or allegations or reports submitted in context with any written law relating to damage or harm caused to persons or property, loss of life or alleged violation of fundamental rights anywhere in Sri Lanka, which were caused in the course of, or reasonably connected to, or consequent to the conflict which took place in the Northern and Eastern Provinces during the period 1983 to 2009, or its aftermath”.**
12. The Petitioners state that in terms of clause 3 (4) members of the commission are appointed by the president on the recommendation of the Constitutional Council. However, in terms of Clause 4(7) once a member becomes temporally unable to perform the president has powers to appoint any other person to act in his place without obtaining concurrence of the Constitutional Council. In the circumstances such appointment is prima facie arbitrary and violates Article 12(1) read with Article 3 and 4 of the Constitution.

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13. Clause 7 of the Bill provides for undertaking to conduct investigations and inquiries by panels consisting of not less than 3 members and since the maximum number of members per panel is not fixed there is no consistency with regard to the number of members engaged in such activities. Therefore, there is no guarantee or mechanism provided in the Bill to assure equal treatment in conducting investigations and inquiries by such panels. In the circumstances clause 7 is inconsistent with Article 12(1) read with Articles 3 and 4 of the Constitution.
14. Similarly, Clause 8(3) provides that the quorum for meetings or sittings of the Commission shall be **the majority of the total number of members** appointed for the time being and, in any event, shall not be less than 5 members. Such composition also leads to inconsistencies especially when giving recommendations on serious matters where the quorum may vary from 5 to 10 members. Therefore, Clause 8 is inconsistent with Article 12(1) read with Articles 3 and 4 of the Constitution.
15. Clause 11 provides that the Commission to be considered as an **autonomous institution** which shall not be subject to the control and direction of any person or authority. Such autonomous status is irrational and has no nexus to the objectives expected to be achieved by the commission and therefore violates Article 12(1) read with Article 3 and 4 of the Constitution.
16. Clause 12(1) is arbitrary and irrational as it discriminates between the Northern and Eastern Provinces and the remaining provinces of the country. Further, there is no rationality to select a period from 1983 to 2009 in reference to a purported conflict, which is not clearly and precisely defined in the Bill. The nature of the conflict, the parties thereto and the remedies to aggrieved parties are decisions that could be taken by any Panel or the Commission by applying their own criterion as there are no specific guidelines provided in the Bill. Therefore Clause 12(1) is vague and arbitrarily schemed to target a specific predetermined class of persons and therefore the several clauses in the bill dealing with the objective and mandate are in violation of Articles 1, 2, 3, 4, 12(1), 12(2), 14, 14A, 15, 27 and 28 of the Constitution.
17. Further, Clauses 12(2) which deals with powers of the Commission to investigate, hold inquiries, decide remedial measures, record evidence, make recommendations to the president are amounting to usurpation of powers of the judiciary and established institutions to carry out investigations and inquiries and therefore the said clause and the sub clauses thereto are inconsistent with Articles 12(1) and 13 read with Articles 3, 4 of the Constitution.

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18. Clause 13 of the Bill which deals with **powers, duties and functions** of the commission which includes formulation of Gender Sensitive policies, to raise funds internally and externally, seek technical assistance from any person or institution or organization with no limitation to the citizens of Sri Lanka, investigate into complaints from persons or groups of persons, summon persons, take evidence on oath, admit evidence disregarding the provisions of the Evidence Ordinance, make applications to Magistrates' Courts to issue search warrants executable through the police, to excavate sites of suspected graves and to execute several other powers. These powers position the Commission at an autonomous and powerful status which is capable of functioning as an independent judicial body in parallel with the existing judiciary and investigation mechanisms operating throughout the island.

19. Further the following powers to be given to the Commission, i.e.:-

- a. to obtain assistance from the Government of Sri Lanka to secure cooperation from authorities of foreign states in terms of the Mutual Legal Assistance in Criminal Matters Act, No. 25 of 2002 to access information available overseas;
- b. to seek assistance from community leaders and organisations to facilitate its public sessions and in resolving local conflicts in support of reconciliation and non-recurrence as the Commission may deem necessary;

place the independence and sovereignty of Sri Lanka and thus inconsistent with Articles 1, 2, 3, 4, 12(1), 13 of the Constitution.

20. Further Clauses 13 (a) and (b) of the said Bill empowers the Commission to legislate "notwithstanding anything to the contrary in any written law". The said clause is therefore in violation of articles 3, 4, 75, 76, 154G (1) of the Constitution.

21. In the circumstances, the commission created by the Bill treats in a discriminated manner to a predetermined class of people engaged in undefined activities in the Northern and Eastern Provinces, by applying ad hoc procedures which are not exercised by the institutions established by law to administer justice and execute investigations and inquiries. Therefore clause 13 of the Bill is inconsistent with Article 12(1) read with Articles 3 and 4 of the Constitution.

22. Clause 15 and 16 of the Bill empower the commission to submit the final report and interim reports to the President without taking any precautionary measures for the safety and privacy of the persons alleged to have committed any purported wrongful acts as deemed

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by the Commissioners. Disclosure of their names to the general public and international institutions classifying them as wrongdoers without any judicial finding place them at the risk of being prosecuted before international courts and tribunals by application of the “universal jurisdiction”, a principle recognized by the other related statutes relating to referral of matters such as the Office for Reparations, Office on Missing Persons, Office for National Unity and Reconciliation and the National, Authority for the Protection of Victims of Crime and Witnesses.

23. Further, the facts disclosed against the members of armed forces, the police and civil defence personnel identified in the recommendations and reports of the Commission [which finally acquires the sanction of the parliament] may be used by the international forums to prosecute them and impose sanctions and/or punishments against them. Accordingly, these patriotic officers who risked and sacrificed their lives for the country and the people would be subjected to incrimination on ex-parte hearing without granting any opportunity to place their defences before the respective forums and institutions which carry out such investigations and inquiries. Further, Clauses 39, 40 also give the status of a judicial finding to the recommendations of the commission. In the circumstances, Clauses 12, 13 read with 14, 15, 16, 39 and 40 place the National Security of the country at danger and deprive the independence and the sovereign status of the country. Therefore, the said clauses are inconsistent with Articles 1, 2, 3, 4, 12(1) and 13 of the Constitution.
24. Clauses 17, 18, 19, 20, 21, 22, 23 and 24 deals with providing remedial measures to aggrieved persons whereas the status of the aggrieved persons is a finding that the commissioner arrives at by following an informal inquiries and investigations provided in the aforementioned Clauses of the Bill. Therefore, said clauses from 17 to 24 are arbitrary and violative of Articles 12(1), 13, 3 and 4 of the Constitution.
25. Clause 32 which deals with advisory panel is also authorised to give recommendations without being participated in the inquiry or investigation process. Further reading through the scheme of the bill there is no restriction to appoint members of the panel from non-citizens of the country. Accordingly, the said clause violates articles 1, 2, 3, 4 of the Constitution.
26. The scheme of the proposed law embodied into the Bill and the intended objectives of the bill violates the independence and sovereignty of Sri Lanka and therefore the entire bill comprising of clauses 1-54 are inconsistent with Articles 1, 2, 3 and 4 of the Constitution.

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27. A copy of this application has been served to the Speaker of the Parliament in compliance with Article 121 of the Constitution of Sri Lanka.
28. The Petitioners reserve the right and seeks permission of Court to tender additional documents and authorities if required to do so.
29. The Petitioners have not invoked jurisdiction of Your Lordships Court hereinbefore pertaining to this matter.

WHEREFORE, the Petitioners pray that Your Lordships' Court be pleased to,

- a) Hear the Petitioners;
- b) Declare that clauses 1 to 54 of the Commission for the Truth, Unity and Reconciliation in Sri Lanka Bill are inconsistent with articles 1, 2, 3, 4, 12(1), 12(2), 14, 14A, 15, 27, 28, 75, 76, 154G(1) of the Constitution of Sri Lanka and therefore require to be passed by 2/3 majority in Parliament and with the approval of the people at a referendum;
- c) For Costs;
- d) Such other and further relief as Your Lordships' Court shall seem meet.

Attorney-at-Law for the Petitioners