

8th January 2024

To: Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr. Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ms. Ana Brian Nougrères, Special Rapporteur on the right to privacy

Dear Ms. Khan, Mr. Voule and Ms. Nougrères,

Urgent Appeal - Follow up Intervention Against the Passage of the Online Safety Bill in Sri Lanka

On 20th November 2023, you wrote to the Sri Lankan government expressing concern about the proposed Online Safety Act (known as Online Safety Bill) and proposed Broadcasting Regulatory Commission Actⁱ. Despite this, and numerous oppositions about its potential infringement on human rights of people in Sri Lanka, the Bill is scheduled to be presented in the Sri Lankan Parliament on 23rd January 2024ⁱⁱ.

The proposed Act was gazette on 15th September 2023, and placed on the order paper of the Parliament on 3rd October 2023. It was met with strong opposition, including in the Supreme Court of Sri Lanka and concerned groups nationally and internationally.

Opposition by national and international organizations

The Human Rights Commission of Sri Lanka, in its recommendations to the Ministry of Public Security on 2nd October 2023, emphasized the importance of strengthening the institutional capacity of law enforcement authorities before introducing legislation related to criminal offenses in online activityⁱⁱⁱ. The Bar Association of Sri Lanka expressed concern that the Online Safety Bill (and the proposed Anti-Terrorism Bill) could significantly impact liberty, freedom, democracy, and the rule of law in the country^{iv}. The Sri Lanka Press Institute warned that the proposed Online Safety Bill threatens constitutionally guaranteed fundamental rights, specifically freedom of speech and expression^v.

The UN Office of the High Commissioner for Human Rights (OHCHR) expressed concerns about the Online Safety Bill on 13th October 2023^{vi}. OHCHR stated that the Bill gives authorities a range of expansive powers and can impose restrictions on human rights, not in line with international human rights law and that many sections of the Bill contain vaguely-defined terms and definitions of offences which leave significant room for arbitrary and subjective interpretation, and could potentially criminalize nearly all forms of legitimate expression, creating an environment that has a chilling effect on freedom of expression. OHCHR also said that the Bill will severely regulate and restrict online communication, including by the general public and will give authorities unfettered discretion to label and restrict expressions they disagree with as “false statements”.

The International Commission of Jurists highlighted the need to evaluate the Online Safety Bill in conjunction with existing and proposed legislation that poses threats to human rights. This includes laws such as the ICCPR Act of 2005, the Prevention of Terrorism Act (PTA), the Bureau of Rehabilitation Act, and the proposed Anti-Terrorism Act, which, collectively, could impede fundamental freedoms, restrict civil society, and unduly expand the reach of the security state^{vii}. The Asia Internet Coalition

stressed the importance of legislation not hindering innovation or restricting public debate^{viii}. The International Federation of Journalists had also expressed concern about the bill^{ix}.

Opposition through the Supreme Court

45 petitions challenging the constitutionality of the bill were filed in the Supreme Court and a three-member bench examined these petitions on 18th and 19th October 2023 and submitted the determination to the parliament^x. The final determination of the Supreme Court was that 31 clauses in the draft bill were inconsistent with the constitution, but if these would be amended as indicated in the determination of Court, it could be passed by simple majority in parliament. The Court also stated that the bill could be passed without amending the 31 clauses through a special majority (two third) in parliament.

During the court hearing, the Attorney General submitted about 62 amendments which he had stated was approved by the Ministry of Law and Order^{xi}. Counsel for three petitions argued that the scope and nature of the amendments makes them deviate from “merits and principles” of the bill, and thus, would violate article 78 (3) of the constitution, but the Supreme Court rejected this. Separately, The Centre for Policy Alternatives (CPA) presented a commentary on several of the amendments arguing that the amendments deviated from “merits and principles” of the initially gazette bill and thus, had violated article 78 (3) of the constitution, and hence, a new bill had to be gazette before it could be considered further^{xii}.

Concerns

- i. The Supreme Court’s role is limited to examining the constitutionality of the Bill and to point out provisions which are inconsistent with the constitution. Even when the Supreme Court determines certain articles are inconsistent with the constitution, the parliament may pass it using special majority of two thirds.
- ii. Parliament may introduce new amendments to the Bill (in addition to ones presented to the Supreme Court) on or after 23rd January 2024, unless it deviates from “merits and principles”, as per article 78(3) of the constitution. If problematic amendments that will violate human rights are introduced, it will be difficult to challenge these legally and socially.
- iii. Once passed by parliament, there is no judicial review within Sri Lankan legal system

Conclusion and request

While recognizing the need for protective frameworks for vulnerable groups, particularly children and women facing online threats, we are concerned that the government is attempting to compromise the constitutional and international rights obligations, specifically the freedom of expression and opinion, of people in Sri Lanka, through this and other bills to be tabled in parliament.

If the bill is enacted with the amendments presented to the Supreme Court, grave harm will be done to freedom of expression of people in Sri Lanka, especially dissenting voices, such as human rights defenders and journalists.

Thus, we kindly ask you to urgently follow up on your previous intervention, well before 23rd January 2024 presentation of the bill in parliament.

We look forward to a prompt response.

Sincerely,

1. **Anuruddha Bandara,**
Social activist, petitioner to the Supreme Court.
2. **Basil fernando,**
Attorney-At-Law,
Director Policy & Programmes,
Asian Human Rights Commission.
3. **Chathuranga M Pradeep Kumara,**
Journalist, Human Rights Defender.
4. **Dr. Sakuntala Kadirgamar,**
Executive Director,
Law & Society Trust (LST), Sri Lanka.
5. **Fr. Rohan silva,**
Executive Director,
Centre for Society & Religion,
Sri Lanka.
6. **Duminda Sampath,**
President- Sri Lanka working journalists Association, petitioner to the Supreme Court.
7. **Heleshika Ekanayake.**
8. **Inoma Karunatilake,**
Executive Director,
Rule Of Law Forum,
Sri Lanka.
9. **Jayantha Dehiaththage,**
Attorney-at-Law, petitioner to the Supreme Court.
10. **Lasantha De Silva,**
General Secretary - Free Media Movement, No 96, Bernard Soysa Mawatta, Colombo
05, Sri Lanka.
11. **Melani Gunathilaka,**
Climate Activist
12. **Migara Doss,**
Attorney-at-Law, petitioner to the Supreme Court.
13. **Nalaka Gunawardene,**
Media Analyst.
14. **Rasika Gunawardana,**
Journalist, Human Rights Defender.
15. **Ruki Fernando,**
Human Rights Activist, Petitioner to the Supreme Court.

16. **Sakuna Gamage,**
Researcher & Coordinator,
Law & Society Trust, Sri Lanka
17. **Sandun Thudugala,**
Human Rights Activist.
18. **Saroj Pathirana,**
Senior journalist.
19. **Shabeer Mohomad,**
Independent journalist
20. **Shan Wijethunga,**
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21. **Tharindu Jayawardhana,**
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ⁱ <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=28608>

ⁱⁱ <https://www.dailynews.lk/2024/01/05/admin-catagories/breaking-news/331867/online-safety-bill-to-be-submitted-to-parliament-on-january-23/>

ⁱⁱⁱ <https://www.hrcsl.lk/wp-content/uploads/2023/10/HRCSL-Preliminary-Observation-and-Recommendatoion-on-the-Online-Safety-Bill.pdf>

^{iv} <https://basl.lk/anti-terrorism-bill-and-the-online-safety-bill/>

^v <https://slpi.lk/2023/09/30/slpi-concerned-over-the-proposed-online-safety-bill-and-its-implications-on-freedom-of-expression/>

^{vi} <https://www.ohchr.org/en/press-briefing-notes/2023/10/human-rights-concerns-over-two-draft-laws-sri-lanka>

^{vii} <https://www.icj.org/sri-lanka-proposed-online-safety-bill-would-be-an-assault-on-freedom-of-expression-opinion-and-information/>

^{viii} <file:///C:/Users/Acer/Downloads/aic-statement-sri-lanka-online-safety-bill-gazettal-28-sept.pdf> and <file:///C:/Users/Acer/Downloads/asia-internet-coalition-aic-industry-submission-on-the-draft-online-safety-bill-sri-lanka.pdf>

^{ix} <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sri-lanka-controversial-online-safety-bill-tabled>

^x <https://srilankabrief.org/wp-content/uploads/2023/11/Online-safety-bill-SC-determination-Hansard-01.11.23.pdf> (See also Annex)

^{xi} Ibid, pages 12 – 29

^{xii} <https://www.cpalanka.org/wp-content/uploads/2023/10/Online-Safety-Bill-Proposals-letter.pdf>