

Brief Submission

Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the ICCPR

Centre for Policy Alternatives (CPA)

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The Centre for Policy Alternatives (CPA) makes this submission in response to a call for comments on the draft General Comment on Article 21 of the ICCPR (Freedom of Assembly). The following are brief comments based on CPA's work in Sri Lanka.

The right of Peaceful Assembly is recognized as a fundamental right of all Sri Lankan citizens by virtue of the Article 14(1) (b) of the Constitution of Sri Lanka¹. The ICCPR Act² in Sri Lanka further reinforces the domestic validity of the right. As established by the Supreme Court, "*the provisions of the Constitution and of other Law, including decisions of the Superior Courts in Sri Lanka, give adequate recognition to the Civil and Political Rights contained in the International Covenant on Civil and Political Rights....and the aforesaid rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka*"³. The rich history of protests in Sri Lanka stands testament to the consistent and active exercise of this right by the citizenry on many occasions. Rooting from diverse causes such as public protests against constitutional violations⁴, yearlong sit-ins by the mothers of the disappeared after the Civil War⁵, displaced families demanding the release of their homelands in the North⁶ to trade union demands⁷, protests have been a customary method of airing public grievances in Sri Lanka. Nevertheless, the exercise of this right has been subject to various statutory restrictions in view of objectives such as national security, public tranquility, racial and religious harmony⁸. There

¹ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978. Hereinafter referred to as 'the Constitution'.

² International Covenant on Civil and Political Rights (ICCPR) Act, No. 56 of 2007.

³ See the determination by the Supreme Court of the Democratic Socialist Republic of Sri Lanka in the matter of a reference under Article 129(1) of the Constitution. SC Ref. No. 01/2008

⁴ 'Thousands Protest In Sri Lanka After Prime Minister's Ouster' (*Voice of America*, 2018) <<https://www.voanews.com/south-central-asia/thousands-protest-sri-lanka-after-prime-ministers-ouster>> accessed 15 February 2020.

⁵ Ruki Fernando, '366 Days - Roadside Protests In Kilinochchi' (*Groundviews*, 2018) <<https://groundviews.org/2018/02/22/366-days-roadside-protests-in-kilinochchi/>> accessed 15 February 2020.

⁶ Rina Chandran, 'A Decade After War Ends, Sri Lankan Tamils To 'Occupy' Land Held By Army' (*U.S.*, 2019) <<https://www.reuters.com/article/us-sri-lanka-landrights-protests/a-decade-after-war-ends-sri-lankan-tamils-to-occupy-land-held-by-army-idUSKCN1PJ0QV>> accessed 15 February 2020.

⁷ K. Ratnayake, 'Growing Strike Wave Challenges Sri Lankan Government' (*Wsws.org*, 2019) <<https://www.wsws.org/en/articles/2019/09/28/sril-s28.html>> accessed 16 February 2020.

⁸ See the End of Mission Statement by United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Mr. Clément Nyaletsossi Voulé, on his visit to Sri Lanka (18-26 July

are also documented incidents of how the government has used force and intimidation to suppress the free exercise of the right for peaceful assembly⁹. Incidents involving the deployment of tear-gas and water cannons against protesters, intimidation by the security forces including disproportionate surveillance measures¹⁰ and the use of extreme physical violence resulting in casualties and deaths¹¹ has not been uncommon. In such a context, the CPA would like to express its concern on a recent development in the country that can have implications on the free exercise of the Right of Peaceful Assembly.

Designated areas for protests: Government imposed "Agitation sites" and their validity

Earlier in February 2020, the Sri Lankan government decided to demarcate a separate location called the 'Agitation Site' (which is a patch of bare land opposite the Presidential Secretariat in the Galle Face Green, Colombo) to accommodate public protests and demonstrations¹². While certain parties welcomed the initiative due to its immediate benefits of easing traffic and non-disruption of the day to day life by protests¹³, deeper thought must be given to the potential

2019), which observes that various legislations including the Prevention of Terrorism Act (PTA), the Penal Code, the Police Ordinance and Department Order No. 19 have placed restrictions on the free exercise of this right. The Rapporteur also observes that the declaration of a State of Emergency in the country (following the Easter Sunday Attacks 2019), which activates Emergency Regulations by the President can restrict the Freedom of Assembly in situations such as curfews.

(*Ohchr.org*, 2020)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24818&LangID=E>> accessed 12 February 2020.

⁹ See the Written statement submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), non-governmental organization in special consultative status to the Human Rights Committee 19 February 2016, A/HRC/31/NGO/73, which states that "the practices adopted by the Government, in conjunction with a lack of accountability for past violations, contribute to the continued existence of a climate of intimidation and fear, which, in turn, has a chilling effect on the full enjoyment of freedom of assembly." See also, 'Freedom Of Assembly In Sri Lanka[1] | Sri Lanka Brief' (*Srilankabrief.org*, 2013) <<https://srilankabrief.org/2013/05/freedom-of-assembly-in-sri-lanka1/>> accessed 12 February 2020.

¹⁰ It is reported that, in the North and East, intelligence officers harassed Tamils in their homes and threatened those travelling to events to discourage participation. Ibid n10,

¹¹ Some infamous incidents include the 'Rathupaswala Killings' (where 3 people were killed and hundreds assaulted in a protest demanding clean water on the basis that drinking water was made unclean due to activities of a factory. The deployment of armed forces instead of the police to control a situation and the blatant abuse of military powers over peaceful protesters and the lack of accountability for such action has been highly condemned both locally and internationally. See Gamini Keerawella, 'Strong In Appearance But Weak In Conduct: The Post-War Sri Lankan State And The Nemesis Of Rajapaksa Regime' *The Island* (2015) <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=117808> accessed 15 February 2020.) and the "Chilaw Fishermen Incident" where One fisherman was killed and three others were wounded, when police deployed by the Sri Lankan government fired at protesting fishermen at Chilaw-Wella in 2012, 'Fisherman Killed As Sri Lankan Police Fire On Protest' (*Wsws.org*, 2012) <<https://www.wsws.org/en/articles/2012/02/sril-f16.html>> accessed 15 February 2020.

¹² 'Designated Site At Galle Face To Stage Protests' (*Colombo Gazette*, 2020)

<<https://colombogazette.com/2020/02/05/designated-site-at-galle-face-to-stage-protests/>> accessed 12 February 2020.

¹³ 'Agitation Site To Ease Traffic' (*Sunday Observer*, 2020)

<<https://www.sundayobserver.lk/2020/02/09/news/agitation-site-ease-traffic?page=1>> accessed 12 February 2020.

implications it may have on the Right for Peaceful Assembly. It is also reported that a Cabinet Spokesperson has stated, “For the time being, till people get used to this new agitation site protesting outside (the agitation site) will not be considered as an immediate offence.”¹⁴. This is indicative of how the Government *may* impose restrictions on protests taking place outside the ‘Agitation Site’ in the future.

The right of peaceful assembly is often exercised in public places in order to attract the attention of the State, and also of the general public, which in turn has the effect of facilitating dialogue, pluralism, tolerance and broadmindedness¹⁵. Therefore restricting protests on the grounds that “protests are an “inconvenience to the general public¹⁶” goes against the very objective of a protest and thereby, is against democratic values. Moreover the Human Rights Committee has noted that legislation specifying a single remote area in which assemblies can be conducted unduly limits the right to freedom of expression and assembly¹⁷.

However it has to be noted that when the previous government mooted the idea of demarcating special areas for protest, many parties opposed the proposition on the grounds that it is a violation of Peoples’ rights¹⁸.

CPA notes that this is an issue worthy of consideration for the present exercise and look forward to engaging if further information is required.

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¹⁴ *ibid*

¹⁵ See 'Issues For Consideration During A Half-Day General Discussion In Preparation For A General Comment On Article 21 (Right To Peaceful Assembly) Of The International Covenant On Civil And Political Rights - Submission On Behalf Of The International Service For Human Rights' (Ohchr.org, 2019) <https://www.ohchr.org/Documents/HRBodies/CCPR/GC37/InternationalService_for_HumanRights_ISHR.pdf> accessed 12 February 2020.

¹⁶ Saman Gunadasa, 'Police Crackdown On Sacked Workers After Sri Lankan President’S “Independence Day” Speech' (Wsws.org, 2020) <<https://www.wsws.org/en/articles/2020/02/10/sril-f10.html>> accessed 12 February 2020, See also, the news articles which claim “Police have warned that necessary action would be taken against those defying this arrangement and causing hindrance to the public by disrupting day-to-day activities.” 'Dedicated Protest Zones' (Daily News, 2020) <<http://www.dailynews.lk/2020/02/11/editorial/211038/dedicated-protest-zones>> accessed 12 February 2020

¹⁷ *Ibid* n9, See also, Zinaida Shumilina v. Belarus, CCPR/C/120/D/2142/2012, 28 July 2017

¹⁸ Yohan Perera, 'New Laws Allocating Separate Areas For Protests' Daily Mirror (2017) <<http://www.dailymirror.lk/article/New-laws-allocating-separate-areas-for-protests-123454.html>> accessed 11 February 2020.