

**Call for Submissions:
Report to the United Nations General Assembly on Eliminating Intolerance and
Discrimination Based on Religion or Belief and the Achievement of Sustainable
Development Goal 16 (SDG 16)**

**Submission by the Centre for Policy Alternatives (CPA), Sri Lanka
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Introduction

The freedom to have or to adopt a religion or belief of one's choice has been constitutionally recognised¹ and judicially accepted in Sri Lanka. The Constitution has upheld this right by virtue of Articles 10², 14(1)(e)³ and 12⁴. In addition to these constitutional guarantees, there are statutes such as the Penal Code⁵, The ICCPR Act⁶, The Prevention of Terrorism Act⁷ and the Police Ordinance⁸ that ensure this fundamental freedom.

Despite these legal safeguards, certain laws which contravene the freedom of religion/belief are still in force. Reforming these regressive laws have been slow due to pressure from various parties and lack of political will. Moreover there have been reported incidents of acts which infringe upon the freedom of religion perpetrated by the State and other instances where intolerance and discrimination based on religion have been disregarded by the State.

Additionally, in terms of Sustainable Development Goal(SDG) 16, which envisions "Peace, Justice and Strong Institutions" several key targets/indicators have been identified by the

¹ Article 10 of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978

² Article 10 states that , "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice"

³ Article 14(1)(e) provides that "Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching."

⁴ Article 12 protects individuals from discrimination on grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.

⁵ Section 290 of the Penal Code No 2 of 1883, deals with the offense of injuring or defiling a place of worship with the intent to insult the religion of any class. Section 291 deals with the offense of disturbing a religious assembly, Section 291A deals with the offense of uttering words with deliberate intent to wound religious feelings, Section 291B deals with the offense of deliberate and malicious acts intended to outrage religious feelings, Section 292 deals with the trespass in any place of any worship.

⁶ International Covenant of Civil and Political Rights Act No 56 of 2007.

⁷ The Prevention of Terrorism Act(PTA), by virtue of Section 2(h) criminalises any act which cause violence or religious, racial or communal disharmony or feelings of ill will between communities and religious groups.

⁸ Although not specific to religious meetings and processions, the Police Ordinance No 16 of 1865 of criminalises the use of words and behaviour tending to cause a breach of the peace by virtue of section 79(2).

Government⁹ to be achieved by 2030. However, in light of certain State actions in the past few years, questions have arisen pertaining to the status of Rule of Law and Independence of the Judiciary.

In the present submission, the Centre for Policy Alternatives (CPA) expresses its concern over certain developments which can have implications on the elimination of intolerance and discrimination based on religion or belief and the Achievement of Sustainable Goal 16 (SDG16) in Sri Lanka. CPA has over the years commented and litigated on these issues and this note captures key issues.

A. ISSUES PERTAINING TO “DISCRIMINATION BASED ON RELIGION OR BELIEF”

1) Arbitrary Arrests under the PTA, the ICCPR Act and the Penal Code

The Prevention of Terrorism Act of 1978 (PTA)

The PTA has been frequently used to arrest and intimidate minority religious or belief communities. CPA and several others have over the years called for its repeal.¹⁰

Section 2 (1) (h) of the Act states that whoever "by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups ... shall be guilty of an offence under this Act."

International Covenant on Civil and Political Rights (ICCPR) Act of 2007

Section 3 of this Act states that “No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The ICCPR Act embodies international benchmarks on freedom of religion and conscience. Moreover, it has an effective enforcement mechanism. However, the present Act contains very few articles that are contained in the ICCPR and is missing key, vital provisions such as

⁹Sri Lanka, Sustainable Development Goals' (Statistics.gov.lk) <<http://www.statistics.gov.lk/sdg/index.php/sdg/target/16>> accessed 25 May 2020.

¹⁰ 'The Need To Repeal And Replace The Prevention Of Terrorism Act (PTA)' (Centre for Policy Alternatives, 2013) <<https://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/>> accessed 25 May 2020., See also, 'EU Reiterates Need For Sri Lanka To Repeal And Replace PTA | Colombo Gazette' (Colombo Gazette, 2019) <<https://colombogazette.com/2019/02/15/eu-reiterates-need-for-sri-lanka-to-repeal-and-replace-pta/>> accessed 25 May 2020; 'Sri Lanka: Repeal Abusive Counterterrorism Law' (Human Rights Watch, 2020) <<https://www.hrw.org/news/2020/01/10/sri-lanka-repeal-abusive-counterterrorism-law>> accessed 25 May 2020.

Article 19 on the freedom of expression as well as the right to privacy. This has resulted in the Act being used to curtail freedom of expression, especially of minorities and those expressing dissenting views.

Penal Code

Chapter XV of the Penal Code titled “of offences relating to religion” contains section 291A and section 291B concerning the “uttering of words with the intent to wound religious feelings” and “deliberate and malicious acts intended to outrage religious feelings”. Moreover Section 120 of the Penal Code has also been used in certain instances to prosecute offenders of hate speech. As observed in a report published by CPA which analyses the legal framework governing the prosecution of hate speech, ‘the language in these provisions (penal code) is vague and overbroad and violates Sri Lanka’s obligations under international law, especially under the ICCPR which prohibits the restriction on freedom of expression unless they are necessary and proportionate’.¹¹

These sections have been used by governments to target political opponents and those critical of government policy, as demonstrated by past experience.

Recently, the Sectoral Oversight Committee on National Security has recommended adding a new chapter to the Penal Code, defining the crimes against social reconciliation, amending Sections 120 and 291 of the Penal Code as proposed by the Ministry of Justice in order to define incitement to violence, making hateful statements and propagating harmful and false information, as criminal offences.

The following are a few instances where the above laws were used to restrict freedom of speech and expression and other fundamental rights-

Conviction of *Tissainayagam*

Section 2(1) (h) of the PTA was used in 2009 to convict journalist J. S. Tissainayagam for his journalistic writing on alleged war crimes committed by Sri Lankan government forces. He had accused the army of withholding food and other supplies from areas populated by Sri Lanka’s minority Tamil population as a tool of war. The Government said that the allegations were false and aimed at sparking communal unrest.

¹¹Centre for Policy Alternatives, 'Confronting Accountability For Hate Speech In Sri Lanka: A Critique Of The Legal Framework' (Centre for Policy Alternatives, 2018) <<https://www.cpalanka.org/wp-content/uploads/2018/09/Confronting-Accountability-for-Hate-Speech-in-Sri-Lanka-2018.pdf>> accessed 27 May 2020.

Arrest of Hejaaz Hizbullah, Attorney-at-law

Hejaaz Hizbullah, a prominent Sri Lankan lawyer, was arrested on 14 April 2020 and has since been detained under the PTA without meaningful access to a lawyer.¹² His family believes he has been targeted for his work, including fighting for the rights of Muslim minorities.

Arrest of Shakthika Sathkumara, an award-winning writer and poet was arrested under the ICCPR Act and held in detention for over four months before being released on bail. He was arrested following the publication of his short story "Ardha (partial)" on Facebook and in local Sinhalese language publications. His story alludes to child sexual abuse involving members of the Buddhist clergy. The case against him is ongoing.¹³

Arrest of Ramzy Razeek

Ramzy Razeek was arrested on 9 April 2020 at his home by CID officers and was produced before the Colombo Magistrate where the CID claimed that he had violated the ICCPR Act and Cyber Crimes Legislation. His arrest was based on a Facebook post which advocated for an 'ideological Jihad' to arrest the sliding of justice and democracy around him.¹⁴

Arrest of Azath Saly

Mr. Saly was arrested on 2nd May 2013 and placed under detention for further interrogation by the Criminal Investigations Department for 3 months under Section 2(1)(h) of the PTA. Mr. Saly had been a vocal critic of the activities of Bodu Bala Sena (BBS) and the Jathika Hela Urumaya (JHU) who were active in incitement against Muslims.

Arrests Linked to the Easter Sunday Attacks in 2019

Following the series of coordinated terrorist bombings targeting churches and hotels on 21 April 2019, Muslims across Sri Lanka faced discrimination and violence from organised mobs in several parts of the country.

Several Muslims were arrested on suspicion after the attacks with no due process provided. On 4th May 2019, Dilshan Mohamed, a researcher and activist campaigning against violent

¹²'185 Lawyers Write To BASL Chief With Fresh Appeal | Daily FT' (*Ft.lk*, 2020) <<http://www.ft.lk/news/185-lawyers-write-to-BASL-Chief-with-fresh-appeal/56-700528>> accessed 27 May 2020.

¹³'Misuse Of ICCPR Act And Judicial System To Stifle Freedom Of Expression In Sri Lanka - CIVICUS - Tracking Conditions For Citizen Action' (*Monitor.civicus.org*, 2019) <<https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>> accessed 26 May 2020.

¹⁴ Z.L. Mohamed, 'Ramzy Razeek: An Extraordinary Struggle For An Ordinary Life Of Service Upended By A Police Arrest | Daily FT' (*Ft.lk*, 2020) <<http://www.ft.lk/opinion/Ramzy-Razeek-An-extraordinary-struggle-for-an-ordinary-life-of-service-upended-by-a-Police-arrest/14-699917>> accessed 25 May 2020.

Islamic militancy was arrested. He was accused of supporting the group known as Islamic State on Facebook. Mohamed was charged under the PTA and section 3(1) of the ICCPR Act.

Arrests over clothing with religious imagery

On 18th May 2019, 47-year-old M. R Mazahima was arrested by police who described the printed motif on her Kaftan as the 'Dharmachakra' wheel symbolising Buddhist teachings which later transpired to be a ships wheel.¹⁵ Police charged her under the ICCPR Act.

Similarly, On 30 August 2019 a woman allegedly wearing a saree with prints of lord Buddha's face was confronted by a mob led by a monk in Trincomalee in the East of Sri Lanka. The monk had demanded the area police to arrest her and the Police had taken the woman to the police station. They had issued a verbal warning before sending her home.¹⁶

2) Muslim Marriage and Divorce Act

As per the Muslim Marriage and Divorce Act (MMDA) of 1951 Muslims cannot marry out of the MMDA, as their marriage would be annulled or considered illegal if they did. The MMDA condones child marriage (minimum age of marriage is stipulated as 12), the conditions of divorce for men and women are not equal with the divorce proceedings made exceedingly easy for the husband but complicated for the wife seeking the annulment, the husband can commit polygamy without consent, or even knowledge, of his first wife, the bride's signature and thereby consent is not required on the marriage contract and women are completely excluded from being a Quazi, a marriage registrar, or a juror.

Despite decades of struggle to reform this archaic Act by Muslim women, the reform process has been delayed and disrupted by various groups. Article 16 of the Constitution makes it impossible for Muslim women and children to seek a remedy under Article 12 of the Constitution (right to equality) like other Sri Lankan citizens.

3) Hate Speech/incitement to violence

Meanwhile, incitement directed at minority groups have gone unchecked. A number of fundamental rights cases were filed against the Police for their inaction during the anti-

¹⁵Arjuna Ranawana, 'Police Detaining Women Wearing Clothes With "Buddha" Imagery | Economynext' (*EconomyNext*, 2019) <<https://economynext.com/police-detaining-women-wearing-clothes-with-buddha-imagery-44137/>> accessed 25 May 2020.

¹⁶Sarah Hannan, 'Police Insist No Complaint Against Monk' *The Sunday Morning* (2019) <<http://themorning.lk/police-insist-no-complaint-against-monk/>> accessed 25 May 2020.

Muslim violence in Aluthgama, Gintota and Digana. However, as demonstrated by mob violence following the Easter attacks, continuing inaction by the Police contributes to the growing culture of impunity. CPA has over the years raised this publicly and written to the authorities urging action.¹⁷

Arrest of Dr. Shafi

On 23 May 2019, the Divaina Sinhala language newspaper published a story accusing a doctor of the Muslim ethnicity of carrying out illegal sterilisation of 4000 Sinhalese women. On 25 May, Dr. Seigu Siyabdeen Mohamed Shafi — Senior House Officer, Gynaecology and Obstetrics at the Kurunegala Teaching Hospital was arrested for earning assets in a suspicious manner and handed over to the CID. Over the following weeks a widespread campaign against Dr Shafi was launched, including protests, and hate speech over social media, print and electronic media. Complaints were made by several women who were allegedly illegally sterilised and evidence presented which was later found to be fabricated. The CID also reported that upon investigation it had been found that Dr.Shafi had no connection to extremist Islamic groups or terrorism and his assets and liabilities also were legally acquired. The CID also reported that there were “irregularities” in the way he was arrested and in the investigation process.¹⁸ Additionally, it came to light that the hospital's Director had given false information to the police and obstructed the police from obtaining statements from other doctors and staff of the hospital.¹⁹

4) COVID-19 related issues

Amidst the COVID-19 pandemic, CPA and several others raised concern on the Government decision to cremate Muslims who passed away due to the virus which is against the

¹⁷ See, Centre for Policy Alternatives, 'CPA Press Statement On Incidents Of Communal Violence In May 2019' (2019) <<https://www.cpalanka.org/cpa-press-statement-on-incidentsof-communal-violence-in-may-2019/>> accessed 26 May 2020; 'CPA Calls Authorities To Take Swift Action To Prevent Further Violence And To Arrest And Prosecute Individuals Advocating National, Racial And Religious Hatred' (*Centre for Policy Alternatives*, 2018) <<https://www.cpalanka.org/cpa-calls-authorities-to-take-swift-action-to-prevent-further-violence-and-to-arrest-and-prosecute-individuals-advocating-national-racial-and-religious-hatred/>> accessed 26 May 2020.; See also, Dharisha Bastians, 'Arrest Persons Advocating Racial And Religious Hatred: CPA Tells IGP' *Daily FT* (2020) <<http://www.ft.lk/article/581307/Arrest-persons-advocating-racial-and-religious-hatred--CPA-tells-IGP>> accessed 27 May 2020.

¹⁸ Rajitha Jagodaarachchi, 'Dr Shafi Case, CID To Report Facts To Court' *Sunday Observer* (2019) <<http://www.sundayobserver.lk/2019/06/16/news/dr-shafi-case-cid-report-facts-court>> accessed 26 May 2020.

¹⁹Aanya Wipulasena and Maneska Borham, 'Dr Shafi Case: CID Reveals Hospital Director Falsified Complaints' *Sunday Observer* (2019) <<http://www.sundayobserver.lk/2019/07/14/news-features/dr-shafi-case-cid-reveals-hospital-director-falsified-complaints>> accessed 27 May 2020.

religious practices of the community.²⁰ Several cases have now been filed challenging the decision to cremate.²¹

On 11 April 2020, Minister of Health and Indigenous Medical Services promulgated new regulations under the Quarantine and Prevention of Diseases Ordinance making it mandatory for the body of a person who dies or is suspected to having died of COVID-19 to be cremated.²² This is despite the fact the World Health Organization (WHO) Guidelines provide for individuals and communities to make choices in respect to burial and cremation in keeping with a person's faith. The new regulations were promulgated amidst growing calls from members of the Muslim community to allow burials for people of the Islamic faith who succumb to COVID-19.

B. ISSUES PERTAINING TO ACHIEVEMENT OF SUSTAINABLE GOAL 16 (SDG16)

Despite SDG 16, certain acts of the State threaten to impede the realisation of this goal. For instance, there are indications by the Government that the Nineteenth Amendment to the Constitution will be abolished²³. The Nineteenth Amendment curbed the excessive powers of the Executive President and facilitated independent institutions, and strengthened the Separation of Powers and the Rule of Law²⁴. Attempts to abolish the amendment will take away the independent appointments to the judiciary and other independent institutions and remove a critical check on executive power.

Further, at present Sri Lanka is without a functioning Parliament. President Gotabaya Rajapaksa dissolved Parliament on 2nd March with Parliamentary elections due on 20th April and the new Parliament meant to commence by 14th March. With COVID-19, elections were postponed. With the Constitution only providing a three month gap as per Article 70(5), several petitions are now before the Supreme Court on the need to reconvene

²⁰'Disposal Of Bodies Of Deceased Persons Who Were Infected With And Suspected Of Being Infected With COVID-19' (*Centre for Policy Alternatives*, 2020) <<https://www.cpalanka.org/disposal-of-bodies-of-deceased-persons-who-were-infected-with-and-suspected-of-being-infected-with-covid-19/>> accessed 27 May 2020.

²¹Meera Srinivasan, 'Petitions Challenge Sri Lankan Government'S Compulsory Cremation Rule' (*The Hindu*, 2020) <<https://www.thehindu.com/news/international/petitions-challenge-sri-lankan-governments-compulsory-cremation-rule/article31585459.ece>> accessed 27 May 2020.

²² Extraordinary Gazette of the Democratic Socialist Republic of Sri Lanka No. 2170/8 11 April 2020 <https://documents.gov.lk/files/egz/2020/4/2170-08_E.pdf> accessed 27 May 2020.

²³See, Sugeeswara Senadhira, 'Confusion And Instability Due To 19Th Amendment' *Daily News* (2020) <https://www.dailynews.lk/2019/12/27/features/206742/confusion-and-instability-due-19th-amendment> accessed 25 May 2020. See also, the SLPP manifesto which states "The adoption of the 19th Constitutional Amendment has resulted in the disruption of the smooth functioning of the government. (*Gota.lk*) <<https://gota.lk/sri-lanka-podujana-peramuna-manifesto-english.pdf>> accessed 25 May 2020.

²⁴See, *A Brief Guide To The Nineteenth Amendment To The Constitution* (Centre for Policy Alternatives(CPA) 2015)<<https://www.cpalanka.org/wp-content/uploads/2015/05/A-Brief-Guide-to-the-Nineteenth-Amendment.pdf>> accessed 25 May 2020.

Parliament.²⁵ In the absence of effective checks and oversight on the executive arm of government²⁶, concerns are raised on increasing trends of authoritarianism in Sri Lanka.

Moreover, in February 2020 the Government decided to withdraw from the process of implementing UN Human Rights Council Resolution 30/1 which provided a framework for reconciliation and human rights protection in Sri Lanka. Withdrawing from such commitments raises serious concerns whether there will be a backtracking of the limited progress made since 2015 with human rights and reconciliation.

²⁵Zulfick Farzan, 'CPA Files FR Application Challenging Dissolution Of Parliament & Rescheduling Elections' (*Sri Lanka News - Newsfirst*, 2020) <<https://www.newsfirst.lk/2020/05/06/cpa-files-fr-application-challenging-dissolution-of-parliament-rescheduling-elections/>> accessed 26 May 2020.

²⁶'Brief Guide I: Evolving Legal Issues In The Context Of COVID-19' (*Centre for Policy Alternatives*, 2020) <<https://www.cpalanka.org/brief-guide-i-evolving-legal-issues-in-the-context-of-covid-19/>> accessed 24 May 2020.