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Written statement* submitted by the International Movement against All Forms of Discrimination and Racism (IMADR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Making lawful assembly unlawful: Police seeking judicial intervention to restrict lawful assemblies in Sri Lanka¹

Recently Sri Lankan Police has started to seek court orders to restrain lawful protests and events, although the Article 14 of the Sri Lankan Constitution recognizes the citizen's right to freedom of speech and expression, freedom of peaceful assembly and freedom of association. This right can be only restricted, if a law is passed for a specific purpose such as "in the interest of racial or religious harmony, in the national interest, morality and for the purpose of securing due recognition of the rights and freedoms of others", as stipulated in Article 15 of the Constitution. The Sri Lankan Supreme Court has emphasized that there cannot be a restriction of any such rights without passing a law for that purpose or without acting under an existing law. Presently there is no specific legal provision regulating peaceful meetings, demonstrations and processions in Sri Lanka. In addition, Sri Lanka is a party to the International Covenant on Civil and Political Rights, which ensures access to public space, protection of the rally and protection from hostile audience.

Thus, there is no justification for law enforcement officers to use court orders to restrict such activities.

The case of black January protest²

On 24th January 2012, the Officer in Charge of Fort Police Station (Colombo district) filed a report in the Fort Magistrate's, stating that the OIC (Intelligence) of the police station had received information that an organization called "Platform for Freedom" was organising a rally on 25th January, bringing in over 5000 people and planning to obstruct the road and to walk to the residence of the President. Based on this information, the police had sought orders from court under sections 95 and 98(1) (a) of the Code of Criminal Procedure read with section 106 to prevent the agitation/rally. The Magistrate, having considered submissions by the police, without hearing affected parties, had issued an order that the agitation (protest) be limited to the Fort Railway station premises and the crowd prevented from blocking the road or walking to the President's residence. The Magistrate had also directed that the orders issued by the Court be handed over to three persons, i.e. Brito Fernando, Sunny Jayasekera and Dharmasiri Lankapeli, described in the Report as

¹ Based on an article written by Mr. J. C. Weliamuna, Constitutional Lawyer, Former Executive Director of Transparency International Sri Lanka, Eisenhower Fellow and Senior Ashoka Fellow, published at: <http://groundviews.org/2012/02/12/judicial-intervention-to-control-lawful-rallies-subverting-democratic-rights/>.

² The Alliance of Media Organizations in Sri Lanka organized a campaign titled "Black January", to commemorate killings and abductions of journalists that have taken place in January over the years, and to call for media freedom, the freedom of expression and an end to impunity for attacks on press freedom. A demonstration was scheduled on 25th January at 2 p.m. in front of the main railway station in Colombo, which is a popular venue for public protest actions. Wide publicity was given for this campaign. The Police tried to obstruct the demonstration by requesting a court order. After the court allowed the protest to go ahead with some restrictions, government supporters organized a counter-protest, bringing protesters armed with poles and sticks who chanted slogans against the Free Media Movement (FMM), which took the lead in organizing the campaign, and exiled press freedom activists in particular. They occupied the space where the 'Black January' demonstration was supposed to take place, violating conditions of the court order, while Police watched by. The "Black January" protest was shifted to another venue to avoid any confrontation.

"Conveners of the Platform for Freedom"³. On 27th January 2012, again the OIC of Fort Police Station has filed another report stating that having regard to the order made by the Court, no such crowd convened and no breach of peace was reported. Based on this report, the case was laid by.

Relevant provisions of the Sri Lankan criminal procedure code

Section 95 deals with unlawful assemblies. Where such an assembly is in progress, the Magistrate or a police officer above the rank of an Inspector can command such an assembly to disperse. If the crowd does not obey, then use of force is permitted, but the military cannot be used. The military can be called in only if the crowd cannot still be controlled. And this section can be only invoked when such an assembly is in progress.

Section 98(1) deals with public nuisances. When the Magistrate receives a report or evidence that there is an unlawful obstruction or nuisance to any "way (road), harbor, lake, river or channel [or other specified instances such as construction of buildings or excavations etc.]", a conditional order may be issued by the magistrate requiring person concerned to "remove, suppress or alter" such obstructions. It does not deal with a moving procession or a meeting.

Section 106 gives the Magistrate the power to issue "absolute orders in urgent cases of nuisance". This provisions is used when the "Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance, or injury to any person ... or dangers to human life safety or a riot or an affray." The judicial decisions in this regard suggest that these provisions are used in certain generic and standard activities involving public nuisance, not involving civil liberties. For example, continuous publication of defamatory articles in newspapers might cause annoyance to a person or a group of persons but that does not attract this legal provision.

Existence of police ordinance and police departmental orders

If there is an unlawful assembly, the police could intervene and even arrest the participants based on following sections of the Police Ordinance and the Police Departmental Orders:

Section 56 of the Police Ordinance states that "Every police officer ... shall have the powers of a police officer in every part of Sri Lanka. It shall be his duty, among others:

- to use his best endeavors and ability to prevent all crimes, offences and, public nuisance;
- to preserve the peace;
- to apprehend disorderly and suspicious characters".

Section 77 of the Police Ordinance requires the organizer of a procession to give notice of a meeting to the police. The purpose of this notice, as understood correctly and articulated in the Police Departmental Order E-5, is as follows:

"There is no requirement in law that a person or persons taking out a public procession should obtain a permit from the police to do so ... this provision is made in order to enable the Superintendent or Assistant Superintendent in charge of the area ... to consider whether the provision is likely to occasion a breach of the peace or disturbance of public order."

³ In fact, only Brito Fernando was one of the Conveners of the Platform for Freedom. Furthermore, Platform for Freedom had not organized the event. It was organized by the Alliance of Media Organizations, as widely known through public notices and invitations issued.

Section 77(3) also permits a police officer above the rank of Assistant Superintendent of Police (ASP), if he/she thinks it is expedient to do so in the preservation of public order, may give directions prohibiting the taking out of any procession and imposing upon the organizers such conditions as appear to him to be necessary. Again, as elaborated in the Police Departmental Order E-5, “the only reason which will justify a police officer in prohibiting a procession will be the consideration that it is necessary to do so in the interest of the preservation of public order”. There are no provisions in the Departmental orders or the Police Ordinance that require the police officer to obtain orders from Magistrate to prohibit processions or meetings. Furthermore, in law the decision of the ASP cannot be substituted with that of a Magistrate.

Police Departmental Order A-19 guides the police how to disperse the crowds and use of force including use of firearms. It also recognizes that an unlawful assembly which is not actually committing or attempting to commit any crimes laid down in “Police Firing Orders”, can only be dispersed by special orders, which can be given both by a Magistrate and a police officer in the rank of Inspector and above. However these powers cannot be used in respect of peaceful rallies.

These provisions amply demonstrate that police do not require a Magistrate’s direction or orders to perform their duties. It must also be remembered that the police cannot intervene in a peaceful or lawful assembly under these provisions. However, the above provisions of the Police Ordinance read with Article 4(d) of the Constitution places a duty on the police to intervene and prevent when armed thugs and hostile crowds disturbs lawful meeting, rallies and demonstrations.

The behavior of the Police and (non-)application of existing provisions towards lawful assembly indicates how politicized the police in Sri Lanka is today.

A similar incident took place in Mannar district. The Courts summoned five Catholic Priests on 25th May 2012 based on a police report that an event they were planning to show solidarity with the Catholic Bishop of Mannar on 27th May 2012⁴ would disturb traffic and that a Minister’s effigy may be burned and amity between the Muslims and Tamils may be harmed. In fact, the event was to be held inside Church premises, but no marches on streets, no burning of effigies was planned. In this case, the Courts ruled that no processions should be held on the road, while the Courts had no authority to ban an event inside the Church premises.

A disturbing trend is that the Police appear to be selectively seeking judicial intervention on peaceful assemblies that criticize the government or individuals in the government, while they do not intervene at all in the pro-government assemblies being held in public places, obstructing roads, inconveniencing the public and even burning effigies of various individuals.

⁴ The invitation to the event stated that this was being organized to express solidarity and support to the Catholic Bishop of Mannar, in view of the adverse comments about the Bishop by some Government Ministers, media owned or controlled by, or sympathetic to the Government. False accusations were made that the Bishop of Mannar aspires to be the Cardinal of “Tamil Eelam”, that he is involved in a conspiracy against the government supported by the INGOs and that he is disturbing Muslim – Tamil harmony. Government Ministers claimed that he should be arrested and prosecuted over a letter he wrote to the President and members of the UN Human Rights Council (together with others) and more than 16 months after a detailed submission to the Presidential Commission of Inquiry (LLRC), he was recently questioned by the Criminal Investigation Department.