



CPA Statement on the Proposed Bans on Burqas and Madrasas

March 18 2021, Colombo, Sri Lanka: The Centre for Policy Alternatives (CPA) is concerned by [news reports](#) of public statements made by the Minister for Public Security, Sarath Weerasekera MP, to the effect that the government intends taking measures to ban the wearing of the burqa, and to ban madrasas that do not conform to the national education policy. The Minister has stated that the underlying rationale for this policy is the protection of national security. CPA believes that the Minister's representation of government policy begs more questions than answers, if policy in relation to both burqas and madrasas is to be made and implemented consistently with democratic values and the express rights guaranteed by the Constitution and the International Covenant on Civil and Political Rights (ICCPR).

We recognise that the protection of national security is a key responsibility of the government as well as a legitimate aim for which fundamental rights may be restricted under national and international human rights law. Nevertheless, in terms of our Constitution and our international obligations under the ICCPR, any restriction of fundamental rights in the pursuit of legitimate national security aims must be prescribed by law, and be proportionate when assessed against the harm sought to be averted.

The Minister's reported remarks do not specify the legal means through which the bans are to be prescribed by law. The Minister signing a draft Cabinet Paper yet to be submitted for Cabinet approval, or the Cabinet approving such a Paper, is not law for the purpose of imposing restrictions on fundamental rights.

The treaty body of the ICCPR, the Human Rights Committee, in two key decisions in 2018 (*Yaker v. France* and *Hebbadj v. France*) has determined that general bans on items of Muslim clothing are not consistent with the standard of protection afforded by the ICCPR. The following extract from the [summary](#) of these cases by the Office of the United Nations High Commissioner for Human Rights explains the relevant issues facing Sri Lanka:

The Committee found that the general criminal ban on the wearing of the niqab in public introduced by the French law disproportionately harmed the petitioners' right to manifest their religious beliefs, and that France had not adequately explained why it was necessary to prohibit this clothing. In particular, the Committee was not persuaded by France's claim that a ban on face covering was necessary and proportionate from a security standpoint or for attaining the goal of "living together" in society. The Committee acknowledged that States could require that individuals show their faces in specific circumstances for identification purposes, but considered that a general ban on the niqab was too sweeping for this purpose. The Committee also concluded that the ban, rather than protecting fully veiled women, could have the opposite effect of confining them to their homes, impeding their access to public services and marginalizing them.

From this it would appear that a policy in respect of burqas in terms articulated by the Minister for Public Security would be *prima facie* in breach of Sri Lanka's treaty obligations under the ICCPR. National security cannot be adduced as a blanket justification for measures that would, without more precision in the policy, serve to discriminate against a religious community. Moreover, it is not clear how existing official requirements concerning face-coverings as a safety measure against the Covid-19 virus are to be squared against the proposed prohibition of burqas. This would create a manifest legal absurdity, in addition to religious discrimination and the violation of the fundamental right to equality.

Likewise in relation madrasas, CPA recognises the competing considerations involved in permitting religious education to be conducted by madrasas but within a regulatory framework established by the national education policy. However, education policy including in relation to madrasas is more properly addressed by the Ministry of Education rather than ministries and agencies responsible for national security. To the extent there are national security implications, those considerations should be accommodated as special exceptions to the ordinary norms of national education policy, and then only to the extent that is necessary and proportionate to those aims. Any policy that places, or has the potential of placing, national security agencies as the arbiters of education policy would be inconsistent with a democratic society that values its freedom and diversity as much as its security. In particular we stress that decision-makers in the Ministries of Defence or Public Security are not the appropriate authorities to be making judgements about matters that require specialist knowledge such as the interpretation of Islamic texts.

CPA further notes that issues surrounding the prohibition, restriction, or regulation of burqas and madrasas are complex, and the subject of legitimate disagreement in a democratic society. In Sri Lanka, such disagreement and debate exist as much within the Muslim community as in broader society. As a long-standing democracy, we should be able to navigate such disagreements peacefully and respectfully, through political institutions and civil society, in a manner that safeguards both security and freedom.

A policy that pays appropriate regard to all these competing democratic considerations would be consistent with constitutional rights and international law, and be based on the widest possible consultation of all relevant interests in our plural society. Such a policy would not simplistically prioritise coercive measures enforced through the national security agencies of the state as the first or the only response to this multifaceted challenge.