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To the attention of the Human Rights Committee - Country Report Task Force on Sri Lanka

## *Freedom of Religion or Belief, Freedom of Expression and Discrimination in Sri Lanka*

**Joint report submitted by World Evangelical Alliance and the National Christian Evangelical Alliance of Sri Lanka to the Country Report Task Force on Sri Lanka of the Human Rights Committee, ahead of the consideration of the List of Issues for Sri Lanka during the Committee's 128<sup>th</sup> session in March 2020.**

**The World Evangelical Alliance (WEA)** was founded in 1846 in London. Today, the WEA is a network of churches in 129 nations that have each formed an evangelical alliance and over 100 international organizations joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide.

**The National Christian Evangelical Alliance of Sri Lanka (NCEASL)** is the largest representative body of Evangelical Christians in the Sri Lanka.

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## **Introduction and background**

The past decade has seen a gradual but significant decline in the right to free religious expression and practice and a rise in organized, religiously motivated violence and intimidation against religious minorities.

With the conclusion of the war in 2009, there has been a disturbing trend in anti-minority sentiments in the country. Over the years there has been an evident rise in religious nationalism and extremism. The emergence of the “Sinhala-Buddhist” and “Tamil-Hindu” identities has exacerbated tension between the majority population and minority groups and has served to create animosity towards even those who identify as Sinhalese but not Buddhist, and Tamil but not Hindu.

With the election of a new government in January 2015, there was a marked change in Sri Lanka’s political climate. However, attacks and incidents of persecution against religious minorities continued despite this change. The beginning of 2015 saw a rise in incidents of discrimination and intimidation perpetrated by state/local government authorities. This trend stems from legal restrictions imposed through the use of administrative circulars which restrict the free practice and manifestation of the religious freedom of minorities.

On October 26<sup>th</sup>, 2018, the then Prime Minister Ranil Wickramasinghe was unconstitutionally ousted from his position by former President Maithripala Sirisena. The President then went on to prorogue parliament. This led to 52-days of constitutional turmoil and political uncertainty, resolved only through the intervention of the Supreme Court which eventually held that the said prorogation was unconstitutional. The status-quo was restored but political divides proved deeper than ever.

The Easter Sunday terror attacks of March 2019 led to the deaths of hundreds at the hands of a newly established Islamist terror group known as the National Thowheed Jama’ath. The consequent crack down by law enforcement resulted in several violations of due process and the arbitrary arrests of Muslim individuals.

Furthermore, the Parliamentary Select Committee appointed to probe the circumstances surrounding the Easter Sunday terror attacks, unearthed multiple, glaring failings on the part of the government and law enforcement to act on available intelligence; raising the question of culpability and motivation.

The November 2019 presidential elections and the victory of former Secretary to the Ministry of Defence, Gotabhaya Rajapaksa, ushered in a far more repressive, restrictive, and nationalist government. The administration panders to conservative, majoritarian sentiments, and is demonstrably a threat to independent, democratic institutions. A number of the present Cabinet Ministers (including the sitting Prime Minister, Mahinda Rajapaksa) either orchestrated or allied themselves with the 2018 Constitutional Coup, blatantly violating the fundamental laws of governance.

The current administration is set to roll-back previous reforms established through the enactment of the 19<sup>th</sup> Amendment to the Constitution, effectively trampling on independent commissions and bolstering the powers of the Executive President. For instance, following the investiture of the new president and prime minister, measures were taken to up-end the Criminal Investigations Division by transferring officers who were involved in investigating high-profile crimes of murder, torture, and corruption; including those allegedly involving the Rajapaksa family and its acolytes. All these measures won the approval of an apparently independent Police Commission.

Although this reporting period commenced with welcome steps towards democratisation, promises for accountability for past violations, and a broader scope for the protection and promotion of human rights; the inability to galvanise on the space created due to growing political divides and petty party politics has resulted in democratic backsliding and serious threats to the liberties and freedoms of

minorities and anyone who dares dissent.

### **Freedom of Religion; Cultural and Religious Rights (arts. 18 and 27)**

Sri Lanka has in place existing laws and provisions which guarantee the freedom of religion or belief and protect citizens from discrimination based on religious belief. These range from Constitutional guarantees to criminal offenses outlined in the Penal Code. However, in practice, the freedom of religion and the rights of religious minorities have been subject to opposition and restrictions.

Prior to 2015, a large number of incidents reported included incidents of violence led by Buddhist fundamentalist groups. However, in the recent past, there has been a gradual decline in such incidents and an increase in discriminatory incidents perpetrated by government officials, and incidents of threats and intimidation by local communities.

Since 2015, 183 out of 436 incidents reported involved incidents of threats and intimidation (42%). Additionally, during the same period, 186 incidents have involved state officials, either explicitly or implicitly (43%). A majority of the incidents also involved demands to stop prayer meetings or church gatherings on the basis of registration. (Note- even though there is no legal requirement to register places of worship in Sri Lanka).

Furthermore, over 500 incidents of violence, intimidation, and discrimination have been recorded in relation to Sri Lanka's Muslim community since 2013<sup>1</sup>. 2017 and 2018 saw systematic hate campaigns, both online and offline, targeting Muslim and Evangelical Christian communities which resulted in sporadic incidents of violence.

Furthermore, pursuant to General Comment No. 22 of the ICCPR, State parties cannot restrict the manifestation of the freedom of religion or belief on the grounds of national security. However, Article 15(7) of Sri Lanka's Constitution contravenes this requirement and establishes national security as a legitimate circumstance under which the manifestation of the freedom of religion or belief can be restricted.

Articles 18 and 19 of the Sri Lankan Constitution provide that Sinhala and Tamil are the Official and National Languages of Sri Lanka. However, these provisions are often not adhered to in practice by state institutions.

For instance, when a victim seeks to lodge a police complaint, the complaint/statement is most often taken down in Sinhala, even when the complainant is not conversant in Sinhala. The complainant is thereafter required to sign the statement and is often not accurately briefed concerning the contents of the statement prior to signing.

Further, correspondence such as letters and notices from state institutions are also mostly sent only in the Sinhala Language, and helplines or hotlines at state institutions are also mostly answered in Sinhala, even if the recipient/caller is not conversant in Sinhala.

### **Freedom of Expression; Incitement to Violence (arts. 19 and 20)**

Sri Lanka enacted the ICCPR Act in 2007, enabling some of the provisions of the ICCPR in the national legislative framework. The Act contains a section<sup>2</sup> on the prohibition of incitement to violence and is lauded by many as being one of the most progressive laws in Sri Lanka intended to protect minorities and promote their civil liberties. Offences committed under this Act are non-bailable and only the High Court has jurisdiction to hear these cases.

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<sup>1</sup> Secretariat for Muslims.

<sup>2</sup> Section 3 of ICCPR Act No. 56 of 2007

However, this piece of legislation which was enacted with the intention of protecting minorities from violence, harassment and discrimination is routinely used as a tool of oppression, to stifle the freedom of expression and make baseless arrests to appease majoritarian will. Religious policing has become increasingly prevalent, with law enforcement and state officials bending to the will of majoritarian groups and religious leaders, to the detriment of minorities and liberal voices.

For instance, celebrated Sri Lankan author, Shakthika Sathkumara, was arrested under this law for writing a story—a work of fiction—about homosexuality and child abuse among the Buddhist clergy. Sathkumara was arrested on April 1<sup>st</sup> following a complaint made by Buddhist monks claiming his story was derogatory to Buddhism.<sup>3</sup> Sathkumara was granted bail on August 5th by the Kurunegala High Court, after languishing in remand prison for four months. Charges against Sathkumara are still pending. If found guilty, he could face up to ten years in prison.

Furthermore, subsequent to the Easter Sunday tragedy, a Muslim woman in Hasalaka was placed under arrest on the 17<sup>th</sup> of May for wearing a dress with a symbol that resembled the *Dharmachakraya* (a Buddhist religious symbol)<sup>4</sup>. However, images of the dress carried on the media clearly show that the picture on the dress is not a *Dharmachakraya* but a ship's wheel. The police alleged that her intention was to insult Buddhism in the run-up to Vesak celebrations. It must be further pointed out that, even if she had been wearing an image of the *Dharmachakraya*, there is no law which prohibits this. The Mahiyangana Magistrate ordered Hasalaka Police to amend the charge sheet and she was finally granted bail by the Magistrates Court on 03<sup>rd</sup> June.

Conversely, this piece of legislation is rarely used to prosecute demonstrably inciteful speech targeting minorities. Leading up to the anti-Muslim riots in Ampara and Digana in 2018, several individuals, including far-right extremist groups, engaged in spreading alternative facts and calling for mobilisation and violence against the Muslim community. These broadcasts occurred primarily across social media platforms and online chat applications, leading to a government-imposed ban on social media for over a week.

### **Equal Treatment (art. 26)**

Article 12(1) of the Sri Lanka Constitution provides that “All persons are equal before the law and are entitled to the equal protection of the law”. However, this is not true in practice at times, especially with regards to minority groups.

For instance, when a minority religious place of worship or a group of worshippers belonging to a minority religious group is attacked, the police often file Court proceedings in the Magistrate's Court (the Criminal Court of first instance) as ‘breach of peace’ under Section 81 of the Code of Criminal Procedure Act No. 15 of 1979. When a ‘breach of peace’ case is filed, both victim and perpetrator are named as respondents and considered equally to blame. Thus, victims are denied the full protection of the law.

Similarly, when a place of worship is attacked, the police and lower level state officials such as the Divisional Secretary or the *Grama Niladhari* (representatives of the government at the village/divisional/district level) question the place of worship regarding their legality and registration (or lack thereof), instead of reprimanding and taking action against the perpetrators.

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<sup>3</sup> <http://www.ft.lk/columns/Truth-and-half-truths/4-675960>

<sup>4</sup> <http://www.dailymirror.lk/plus/A-%E2%80%98symbolic%E2%80%99-arrest/352-167764>

The Sri Lankan judiciary has been increasingly biased when adjudicating matters concerning religious freedom and the rights of religious minorities.

In 2016, a Fundamental Rights case numbered SCFR 92/2016 was filed in the Supreme Court of Sri Lanka, on the basis that the freedom of religion and the right to equality had been infringed. As per the facts of the case, an application was made for a development plan to construct a two-storeyed school building.<sup>5</sup> A development permit to construct a two-storeyed building for a school was subsequently issued.

However, the school was prohibited from continuing with the construction on the grounds that (1) what was in fact being built was a Mosque, for which permission had not been obtained, (2) a breach of peace should be avoided as there were protests from the residents in the area and from Buddhist Monks and (3) as per the 2008 Circular, approval of the Ministry of Religious Affairs should be obtained to construct the proposed Dhamma School. All three grounds were accepted by the judges of the Supreme Court, who on this basis held that religious freedom and the right to equality as provided for in the Fundamental Rights chapter of the Constitution have not been infringed. Further, the judges of the Supreme Court stated that the 2008 Circular had to be complied with, as it fell within the definition of law.

Furthermore, on 18<sup>th</sup> July 2018 the Supreme Court delivered a determination<sup>6</sup> concerning a petition filed in 2014 numbered SCFR 241/2014, wherein two Jehovah's Witnesses were arrested on the grounds of criminal trespass while engaging in house-to-house visits. The judges of the Supreme Court found that there were no "reasonable grounds for suspecting" the petitioners had committed the offense of criminal trespass and that the petitioners were "unnecessarily, unreasonably, and unlawfully detained overnight". They, therefore, held that the petitioners' fundamental rights as guaranteed under Articles 12(1) and 13(1) had indeed been violated.

However, the judges of the Supreme Court further went on to conclude that the petitioners' rights under Article 14(1)(e) had not been violated since the right to *propagate* one's religion is not explicitly protected by the Sri Lankan Constitution and went on to stress that "the citizens of this country do not possess a constitutionally protected freedom to propagate their religion or belief".

Based on recent trends it is apparent that the Supreme Court tends to use a procedural approach when determining outcomes that protect minority religious rights. This approach fails to substantively contribute to the expansion of jurisprudence on the State's role to protect, promote and fulfil an individual's freedom of religion.<sup>7</sup>

In cases concerning Evangelical Christians in particular, judges of the lower courts have been known to compel victims of religious freedom violations to settle the matter at hand, refraining from issuing judgement or orders which hold that such a violation has occurred.

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<sup>5</sup> [http://www.supremecourt.lk/images/documents/sc\\_fr\\_application\\_92\\_2016.pdf](http://www.supremecourt.lk/images/documents/sc_fr_application_92_2016.pdf)

<sup>6</sup> [http://www.supremecourt.lk/images/documents/sc\\_fr\\_241\\_2014.pdf](http://www.supremecourt.lk/images/documents/sc_fr_241_2014.pdf)

<sup>7</sup> Esufally, S: "Judicial Responses to Religious Freedom: A Case Analysis", May 2016, Colombo, NCEASL and Verite Research, pg 18.