

**United Nations Human Rights Council  
Universal Periodic Review  
Sri Lanka**

**Submission of The Becket Fund for Religious Liberty**

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*The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.*

## United Nations Human Rights Council Universal Periodic Review of Member-State Sri Lanka

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Sri Lanka as a contribution to the Universal Period Review of UNHRC member-state Sri Lanka.

### **1. Constitutional Framework**

#### *Constitutional Guarantees of Religious Freedom*

At the outset, the Sri Lankan Constitution establishes the “foremost place” of Buddhism in the preamble and Article 9.<sup>1</sup> Meanwhile, Article 10 guarantees freedom of religion for all:

“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.”<sup>2</sup>

Additionally, Article 12 prohibits discrimination on the grounds of religion, and Article 14 ensures “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 or teaching.”<sup>3</sup> The Constitution even states in Article 27 that the state will create “the necessary economic and social environment” for all religious people to practice their religious principles.<sup>4</sup> Although the right to religious freedom is guaranteed by the Constitution, the implementation of this protection falls short of international standards, judging by the UDHR and the ICCPR.

### **2. Prohibitions on the Propagation of Non-Buddhist Faiths**

Starting in 2001, the Sri Lankan Supreme Court issued a series of precedents aimed at severely restricting the rights of non-Buddhist religions under law. This effort culminated in 2003 with the issuance of *In re Teaching Sisters of the Holy Cross in*

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<sup>1</sup> The Human Rights Committee held in General Comment No. 22 to the International Covenant on Civil and Political Rights that:

“The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the [ICCPR], including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.” CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments)

<sup>2</sup> Article 10.

<sup>3</sup> Article 14.

<sup>4</sup> Chapter VI, Article 27, Section 11.

*Menzingen*.<sup>5</sup> In the *Menzingen* decision, Sri Lanka denied incorporation to an order of Catholic nuns seeking recognition in order to legally build a religiously-oriented school and to provide for social services to the general public. The Supreme Court blocked the incorporation as unconstitutional because, allegedly, incorporating an order dedicated to “spread[ing] the knowledge of the Catholic religion” would “impair the very existence of Buddhism.”<sup>6</sup> The court further held that “the constitution does not recognize a fundamental right to propagate a religion.”

On October 21, 2005, the United Nations Human Rights Committee overruled the Sri Lankan Supreme Court’s *Menzingen* decision as flatly contrary to international law:

the Supreme Court’s determination of the Bill’s unconstitutionality restricted the author’s rights to freedom of religious practice and to freedom of expression [without justification] . . . therefore there has been a breach of article 18, paragraph 1, of the Covenant.

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As to the claim under article 26, . . . differential treatment in the conferral of a benefit by the State must be provided without discrimination on the basis of religious belief. The failure to do so in the present case thus amounts to a violation of the right in Article 26 (ICCPR) to be free from discrimination on the basis of religious belief.<sup>7</sup>

In light of these violations, the Committee ordered Sri Lanka to provide an “effective remedy giving full recognition to the [victims’] rights under the Covenant.” In response to this rebuke, Sri Lanka did nothing. It still refuses to recognize the sisters’ right to incorporate and be free from discrimination and the prospects of Sri Lanka’s compliance with international law are dim. Although Sri Lanka ratified the Optional Protocol granting UNHRC explicit jurisdiction to adjudicate claims under the ICCPR, Sri Lanka’s Supreme Court ruled, in a shocking 2006 decision, that UNHRC decisions are “not binding” on Sri Lanka as a matter of state sovereignty and never were.<sup>8</sup>

### **3. Anti-Conversion Legislation**

As the litigation over the right to incorporate non-Buddhist religious organizations worked its way through the courts, the government of Sri Lanka embarked on a parallel effort to create a crime of “attempted conversion” specifically designed to protect and preserve the Buddhist majority. In 2002, the President of Sri Lanka established the “Presidential Commission on Buddha Sasana” in reaction to allegations of insensitive

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<sup>5</sup> *In re Sisters of the Holy Cross in Menzingen*, S.C. Special Determination No. 19 (25 July 2003). See also *In re Christian Sahanaye Prayer Centre*, S.C. Special Determination No.2 (24 May 2001); *In re New Wine Harvest Ministries*, S.C. Special Determination No.2 (3 January 2003).

<sup>6</sup> Christians comprise 7-8% of the population of Sri Lanka, a figure which has remained stable for decades.

<sup>7</sup> *Sister Immaculate Joseph and 80 Teaching Sisters in Menzingen v. Sri Lanka*. (21 October 2005).

<sup>8</sup> *Nallaratnam Singarasa v. Attorney General*, S.C. (Spl)(LA) No. 182/99 (15 September 2006).

conversion efforts by Christians in Sri Lanka. But according to Asma Jahangir, the Special Rapporteur on Freedom of Religion and Belief, “instead of easing the religious tensions, [the Presidential Commission] provided more justification for religious intolerance.”<sup>9</sup> Although Ms. Jahangir acknowledged the presence of some disrespectful and misleading evangelization techniques, she found that they did not constitute any violations of the freedom of religion of others and found no evidence of forced conversions by Christians.<sup>10</sup>

The inflammatory report from the Presidential Commission was followed by agitation from radical Buddhists for anti-conversion laws, including holding “fasts-unto-death.” And after the discriminatory *Menzingen* decision, radical elements naturally felt confident that they could now employ violence against Christians without fear of government retaliation. They were right. Rampant church burnings and violence against Christians soon followed over the next two years with almost no arrests or convictions.<sup>11</sup>

The unrest led to the rise of the JHU, the political arm of the radical Buddhist movement, composed entirely of monks, which is dedicated to passing broad anti-conversion laws as a means of preserving Sri Lanka’s Sinhala Buddhist identity. The penalty for violating this proposed law includes a prison sentence up to five years and a large fine.<sup>12</sup> Not to be outdone, the government itself drafted another anti-conversion bill in 2005 that had an even broader reach than the JHU bill.<sup>13</sup>

The most troubling aspect of the anti-conversion legislation, as recognized by Special Rapporteur in her Sri Lanka report, is that it would criminalize a central principle of religious liberty—the ability to freely choose and change one’s religion.<sup>14</sup>

Sri Lanka’s anti-conversion efforts exhibit a true lack of understanding of the inherency of religious freedom and the concept of conversion. Conversion should be understood as an internal, individual transformation of the heart, conscience, and belief system, not simply the external registration with a congregation. Indeed, the Universal Declaration of Human Rights states that the right to freedom of thought, conscience and religion includes the ability to change one’s religion.

Moreover, the Human Rights Committee has established in General Comment No. 22 that “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts.”<sup>15</sup> The fact that religious organizations are motivated by faith to provide acts of social services *and* retain their religious identity

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<sup>9</sup> “Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, on her Mission to Sri Lanka,” E/CN.4/2006/5/Add.3 (12 December 2005) at paragraph 36.

<sup>10</sup> Jahangir report paragraph 50.

<sup>11</sup> See U.S. State Department International Religious Freedom Reports (Sri Lanka) of 2004 and 2005. Thankfully, violence against religious minorities has diminished significantly since that time.

<sup>12</sup> These penalties are increased if the subject of the conversion is a woman, child, or other “vulnerable” person. For copies of the JHU’s anti-conversion bill see [www.lankaliberty.org/legislation](http://www.lankaliberty.org/legislation).

<sup>13</sup> For copies of the Government’s anti-conversion bill see [www.lankaliberty.org/legislation](http://www.lankaliberty.org/legislation).

<sup>14</sup> Jahangir report paragraph 72-75.

<sup>15</sup> General Comment No. 22, Human Rights Commission

cannot justify depriving them of the right to engage in charitable works. It is even less of a justification for government incarceration or condoning of violence.

#### **4. Recommendations**

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Sri Lanka. We respectfully recommend that the UNHRC not only base its evaluation of Sri Lanka on constitutional assurances of religious freedom, but also on the enforcement, or lack thereof, of these assurances.

The UNHRC should address the fact that the government of Sri Lanka has refused to comply with the UN decision in the *Menzingen* case to stop discriminating against Christians and to allow the Order's incorporation.

Finally, we encourage the UNHRC to seek assurance from the government of Sri Lanka that an anti-conversion law will not be passed, considering the major infractions it would entail with the ICCPR and the UDHR.