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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Visit to Sri Lanka

### Report of the Special Rapporteur on freedom of religion or belief\* \*\*

#### *Summary*

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, on his country visit to Sri Lanka from 15 to 26 August 2019. In the report, the Rapporteur presents his observations of the general context of the country and its cooperation with international human rights mechanisms. He specifically identifies the main challenges to the right to freedom of religion or belief and analyses the root causes of religious intolerance and associated tensions in Sri Lanka. Lastly, he provides recommendations to overcome the challenges that he has highlighted.

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\* The present report was submitted after the deadline so as to include the most recent information.

\*\* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

## Annex

### Report of the Special Rapporteur on freedom of religion or belief on his visit to Sri Lanka

#### I. Introduction

1. The present report reflects the findings of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, on his visit to Sri Lanka at the invitation of the Government of Sri Lanka from 15 to 26 August 2019. This was a second visit by a UN mandate holder on freedom of religion or belief after the late Asma Jahangir undertook a country visit to Sri Lanka in 2005.

2. The Special Rapporteur appreciated the cooperation of the Government and the opportunity to conduct his country visit. During his visit, in Colombo, he met with the Speaker of the Parliament; the Ministers at the Ministry of Foreign Affairs, Ministry of Buddhasasana and Wayamba Development, and Ministry of Resettlement, Rehabilitation, Northern Development and Hindu Religious Affairs; the Attorney General; the Secretary for Ministry of Tourism Development, Wildlife and Christian Religious Affairs; senior officials of the Ministry of Posts, Postal Services and Muslim Religious Affairs; and the Director General of the Archaeology Department. He also attended a Government's stakeholder meeting chaired by the Secretary to the Ministry of Foreign Affairs that included senior representatives of relevant ministries and agencies. Furthermore, the expert met with the then Leader of the Opposition, in addition to the Chair of the Office for National Unity and Reconciliation and of the Chair of the Human Rights Commission of Sri Lanka.

3. Outside Colombo, the Special Rapporteur met with the Governors of the Northern Province and of the North Western Province. He also visited Vavuniya, Mullaitivu, Jaffna, Trincomalee, Kanniya, Batticaloa, Kattankudy, Kandy, Digana, Kurunegala, Kottamba Pitiya, Puttalam, Negombo, Kottaramulla, Pasyala, Divulapitiya, Minuwangoda and Ja-Ela. In Punthotam and Pasyala, he met with several asylum seekers from third countries who faced religious persecution in their countries of origin. Additionally, he met with representatives from different religious communities, civil society organisations and research institutions.

#### II. General context

##### 1. Religious and ethnic demography

4. According to 2012 census<sup>1</sup>, Buddhism is the largest religion of Sri Lanka comprising 70.1% of the population; while Hindus, Muslims, Christians and others account for 12.6%, 9.7%, 6.2% and 1.4%, respectively. The census indicates that most Muslims are Sunni while the Christians are mainly Roman Catholic. Smaller religious communities are Baha'is, Shia (Bohra community), Sufis, Ahmadis, Jehovah Witnesses, Methodists, Pentecostals and Evangelicals. There are also Veddas, an indigenous community, who practice traditional beliefs.

5. The majority of the population in Sri Lanka are Sinhalese (74.9%) who are predominantly Buddhist, with a small number belonging to the minority Christian community. The Tamils (15.3%) are mainly Hindus, with a small number professing

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<sup>1</sup>

[http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/SriLanka.p](http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/SriLanka.pdf)

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Christianity. Most of Sri Lanka's Moors (9.3%) are Muslims. Other ethnic groups namely Burgher, Malay, Sri Lanka Chetty and Bharatha form 0.5% of the population.

## 2. National legal and institutional framework on freedom of religion or belief

6. Buddhism, Islam, Hinduism, and Christianity are recognised by law. Article 10 of the Constitution of Sri Lanka guarantees to every person the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice; Article 14(1) (e) further protects 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. Moreover, Article 12 guarantees everyone's right to equality and prohibits discrimination against any citizen on the grounds of "race, religion, language, caste, sex, political opinion, place of birth, and etc."

7. Meanwhile, Article 9 of the Constitution states that "The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)".

8. The Constitution also provides for every citizen in Article 14(1)(a) the freedom of speech and expression including publication; (b) the freedom of peaceful assembly; and (c) the freedom of association. Article 15 lays out the restrictions on the exercise and operation of the fundamental right provided in Article 14(1) "in the interests of racial and religious harmony" or "in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence" or "national economy".

9. The Penal Code of 1885 also regulates some "offences related to religion". Articles 290 and 290A relate to "injuring or defiling or act in relation to a place of worship with intent to insult the religion of any class"; while Article 291 covers "disturbing a religious assembly"; Article 291A, "uttering words, with deliberate intent to wound religious feelings"; Article 291B, "deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs"; and Article 292, "trespassing on burial places".

10. Family law related matters, including divorce, child custody, and property inheritance, are normally resolved according to either the customary law such as Muslim Law, Kandyan Law and Thesavalamai Law or the existing civil law. However, the practice varies by region according to different religious communities.

11. On 10 December 2019, the Ministry of Buddhasasana, Cultural and Religious Affairs was formed to oversee all religious and cultural affairs in the country. Consequently, all previous individual Ministries of Buddhist, Christian, Hindu and Muslim Religious Affairs are integrated under one Ministry<sup>2</sup>.

## 3. Engagement with international human rights mechanisms

12. Sri Lanka has ratified<sup>3</sup> seven core human rights treaties and is a State Party to several Optional Protocols. It has also accepted some individual complaint procedures of the treaties and inquiry procedure<sup>4</sup>. Apart from fulfilling reporting obligations<sup>5</sup> to treaty bodies and the universal periodic review, Sri Lanka has engaged actively with the Human Rights Council (HRC) when it co-sponsored HRC Resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka<sup>6</sup> by which it was reaffirmed that 'all Sri Lankans are entitled to the full enjoyment of their human rights regardless of religion, belief or ethnicity...' following the pledge by the incoming Government in 2015 to strengthen fundamental freedoms and the rule of the law that comprises inclusiveness, justice and respect for human rights to all of the people of Sri Lanka.

<sup>2</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, No. 2153/12

<sup>3</sup> See [ratification status](#) of Sri Lanka

<sup>4</sup> Ibid.

<sup>5</sup> See [reporting status](#) of Sri Lanka

<sup>6</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/pdf/G1523638.pdf?OpenElement>

13. Following the adoption of HRC Resolution 30/1, Sri Lanka also extended a standing invitation<sup>7</sup> to Special Procedures on 17 December 2015. Since then, 10 mandate holders have conducted country visits<sup>8</sup> to Sri Lanka to assess the human rights situation in the country.

#### 4. Developments since 2015

14. In May 2015, the Government introduced the Nineteenth Amendment to the Constitution of Sri Lanka that establishes a Constitutional Council which will exercise some executive powers previously held by the Executive Presidency and allows the Constitutional Council to set up Independent Commissions. Furthermore, the Government had also established the Office on Missing Persons (2016) and the Office for Reparations (2018) in line with A/HRC/RES/30/1. The Human Rights Commission of Sri Lanka was granted A-status in 2018 by the Global Alliance of National Human Rights Institutions for its compliance with the ‘Paris Principles’<sup>9</sup>.

15. The Rapporteur received reports of various initiatives for promoting reconciliation and peaceful coexistence underway in the country. He noted the establishment of the Select Committee of Parliament (SCP) on 4 September 2018 to study and report on “communal and religious harmony” in Sri Lanka<sup>10</sup>. By August 2019, the SCP had identified existing challenges to the religious harmony, provided a list of recommendations to overcome some of the challenges<sup>11</sup> and drawn up with an implementation plan for the proposed recommendations. Moreover, the SCP launched a “Diyawanna Declaration”<sup>12</sup> at the Special All-Faith and All-Party Conference in April 2019, which among others recommendations, stated “the need for all party leaders including the President, the Prime Minister and the Leader of the Opposition to work in cooperation with each other regardless of narrow political, religious or party differences in order to ensure all citizens are able to exist without fear or suspicion and to ensure the security of the country and its people”.

16. The Rapporteur was also encouraged by the programmes and activities undertaken<sup>13</sup> by the Office for National Unity and Reconciliation (ONUR). It published the 2017 Cabinet-approved National Policy on Reconciliation and Coexistence in Sri Lanka<sup>14</sup> that provides a guiding framework to all stakeholders working on reconciliation and coexistence in order to achieve coherence in peace and national unity initiatives. ONUR has also been reported<sup>15</sup> to conduct programmes for students to promote religious coexistence, identify geographic locations with particular vulnerabilities to inter-religious violence and conduct interactive training in conflict transformation in these areas. Besides, district reconciliation committees<sup>16</sup> were established to tackle inter-ethnic and inter-religious tensions caused through conflict resolution, mediation and amicable settlement. Furthermore, ONUR recently launched a project known as “Heal the past, build the future” that aims to bring together the religious leaders, youth, government representatives and civil society actors to raise awareness in transforming conflict.

17. Additionally, the Rapporteur learned about quite a number of district-level interreligious committees that bring together religious leaders and actors across different religions to promote interreligious harmony. These Committees are supported by National Peace Council of Sri Lanka and Interreligious Forum of Caritas Sri Lanka. The civil society

<sup>7</sup> It is an open invitation extended by a Government to all thematic special procedures.

<sup>8</sup> [https://spinternet.ohchr.org/\\_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=LKA](https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=LKA)

<sup>9</sup> A/RES/48/134

<sup>10</sup> CCPR/C/LKA/6, para 123

<sup>11</sup> [Interim report](#) of the Select Committee of Parliament to study and report to Parliament its recommendations to ensure Communal and Religious Harmony in Sri Lanka.

<sup>12</sup> <https://www.parliament.lk/en/committee-news/view/1701>

<sup>13</sup> [http://nirmin.gov.lk/web/index.php?option=com\\_content&view=article&id=46&Itemid=172&lang=en](http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=46&Itemid=172&lang=en)

<sup>14</sup> <http://nirmin.gov.lk/web/images/pdf/national-policy-english.pdf>

<sup>15</sup> A/HRC/WG.6/28/LKA/1.

<sup>16</sup> [http://nirmin.gov.lk/web/index.php?option=com\\_content&view=article&id=118:district-reconciliation-committees-drcs&catid=9:projects&lang=en&Itemid=208](http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=118:district-reconciliation-committees-drcs&catid=9:projects&lang=en&Itemid=208)

has been active in monitoring and reporting incidents of violation of freedom of religion or belief.

18. Despite the positive developments mentioned above, the tensions among ethnic and religious communities persist and significant gaps exist particularly in upholding accountability and access to justice as well as ensuring non-recurrence of human rights violations. The evolution of the conflict and the implementation of A/HRC/RES/30/1 are detailed in various reports presented to the HRC by OHCHR<sup>17</sup> and civil society organisations<sup>18</sup>.

19. During the November 2019 Presidential election, many were concerned by the open statement of President Rajapaksa during his election campaign that rejected the pledges of the past governments with the UN and that he would not honour the country's commitments to the HRC on post-war accountability and reconciliation<sup>19</sup>. He said that Sri Lanka ought to look ahead without hanging to "old allegations" and he also questioned the credibility of "foreign investigators"<sup>20</sup>. The President's statement has left many feeling exasperated that the culture of impunity and repeated cycles of mass violence in Sri Lanka will unlikely be tackled.

### III. Main challenges to the enjoyment of the right to freedom of religion or belief

20. Although Sri Lanka emerged from a long internal conflict in 2009, reverberations of the ethnic conflict remain apparent in the political, social and economic life of the country and impact the enjoyment of human rights, including the right to freedom of religion or belief. While there have been numerous sporadic episodes of violence based on religion or belief in the post-conflict period, the situation in the country was further exacerbated with the terrorist attacks that targeted several churches and public places on Easter Sunday 2019 ("Easter bombings"). These attacks killed more than 250 people and injured around twice as many, and were the deadliest ones since the end of the internal conflict.

21. The Rapporteur has observed a serious deficit of trust and tensions among ethno-religious communities particularly following the Easter bombings and subsequent mob violence targeting Muslim communities. Religious minorities also face restrictions in the manifestation of their religion or belief such as proselytization, conversion, and building of places of worship in addition to numerous incidents of violent attacks.

22. The right to freedom of thought, conscience and religion or belief is enshrined in various international human rights instruments<sup>21</sup> and broadly encompasses the freedom to adopt, change or renounce a religion or belief, the freedom from coercion and the right to manifest one's religion or belief. State obligations in the protection of the right freedom of religion or belief include both negative obligations to respect the rights of individuals to exercise their freedom of religion or belief within the law, and positive obligations to protect these rights against infringement by third parties or non-state actors.

#### 1. Anti-Muslim hate propaganda

23. The aftermath of the Easter bombings has seen an intensification of discrimination, hostility and violence against Muslim communities, boycotts of Muslim businesses, vigilante attacks on Muslim women's dress codes and media hate campaigns. Despite the rejection of the extremist ideology of those involved in the attacks by the Muslim political, religious and civil society leaders, members of the Muslim community have been subject to

<sup>17</sup> [A/HRC/30/61; A/HRC/30/CRP.2; A/HRC/32/CRP.4; A/HRC/34/20; A/HRC/37/23](#)

<sup>18</sup> [https://www.veriteresearch.org/wp-content/uploads/2019/03/Verite-Research\\_UNHRC-Monitor-No4-March-2019.pdf](https://www.veriteresearch.org/wp-content/uploads/2019/03/Verite-Research_UNHRC-Monitor-No4-March-2019.pdf)

<sup>19</sup> <https://www.thehindu.com/news/international/will-not-honour-un-deal-on-accountability-says-gotabaya/article29693188.ece>

<sup>20</sup> Ibid.

<sup>21</sup> <https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>

widespread stigmatisation and racist attacks. Hatred that appears to ride on conspiracy theories about Muslims and racist stereotypes have raised fears amongst the Muslim community for their safety and for their future in the country.

24. According to the police, after the Easter bombings, 2289 people (mostly Muslims) were arrested under Emergency Regulations on suspicion of involvement with terrorism and subsequently charged under the Prevention of Terrorism Act (PTA) 1979 or the International Covenant on Civil and Political Rights Act (ICCPR Act) 2007 (see paragraphs 67-70)<sup>22</sup>. As of July 2019, 1655 have been granted bail, 423 remanded and 211 were in detention. Families of Muslims arrested under the PTA claimed that they had a hard time to secure legal representation in their areas and had undergone significant financial hardship to hire lawyers from other areas. Most of the Muslim lawyers have been reluctant to appear for those arrestees in fear of reprisals. Moreover, the Rapporteur received reports that there were often refusals by non-Muslim lawyers to defend those detained due to 'extraneous considerations'. The Human Rights Commission of Sri Lanka, in its communication to the Bar Association of Sri Lanka, expressed concern over the refusal of lawyers to appear in these cases due to such considerations.

25. Mosques and madrasas across the country were raided by security forces and many arrests were made. Mosques have also been searched by security forces with little or no respect paid to religious practices, including by taking sniffer dogs (considered impure by Muslims) into mosques and confiscating Quranic and other Islamic texts mainly in Arabic, deemed 'radical' material. The army and police also allowed the media to accompany them on the searches which were allegedly often misreported and sensationalised. Several mosques have also come under scrutiny by local vigilante groups. Sections of the local media, both print and electronic, continued to repeat anti-Muslim narratives, without carrying rebuttals or clarifications from individuals or groups in the targeted community.

26. In the Muslim holy month and the end of Ramadan in 2019, many mosques had to conduct prayers on a low key in fear of attacks. Hundreds of Muslim-owned places of worship, shops and houses were destroyed in two days of anti-Muslim violent attacks on 13 May 2019 in Kurunegala District and other areas<sup>23</sup>. The Government imposed a curfew to bring the situation under control, but serious concerns were raised after footage and eyewitness accounts emerged of Sri Lankan security forces colluding with mobs and not acting to prevent or stop the violence.

27. As the Easter bombings were perpetrated by Islamist terrorists, this has become the pretext for the anti-Muslim groups to intensify incitement to hatred and violence against the Muslim communities lately. The lack of response from the authorities against this violence appears to empower the potential perpetrators to continue with their acts of hate crime.

28. Such anti-Muslim attacks, however, are not new<sup>24</sup>. In 2013, a Muslim prayer centre, the Masjid Deenul Islam in Grandpass was attacked during Maghrib or sunset prayers, by mobs reportedly led by Buddhist monks. Unable to contain the violence, police imposed a curfew in the area. The most prominent anti-Muslim violence is the 2014 Aluthgama riots<sup>25</sup> that broke out after the Bodu Bala Sena (BBS) held a rally that expressed strong anti-Muslim sentiment. Four people were reportedly killed and around 80 seriously injured. Scores of Muslim owned homes and shops set ablaze, looted or destroyed during several days of mob attacks where the police and army allegedly stood by watching. The violence left hundreds of families and thousands of people displaced and, as estimated by the Government hundreds of millions rupees of damage.

29. From April to June 2017, a series of incidents of violence and intimidation against Muslims continued to be reported in different parts of Sri Lanka where Muslim-owned businesses, places of worship, property and homes were targeted<sup>26</sup>. In November 2017,

<sup>22</sup> Sri Lanka's Muslims: New levels of threats, December 2019

<sup>23</sup> Special Procedures communication LKA 3/2019

<sup>24</sup> <https://www.csw.org.uk/2018/10/24/report/4144/article.htm>

<sup>25</sup> Special Procedures communication LKA 6/2014

<sup>26</sup> Special Procedures communication LKA 3/2017

violence erupted in Gintota where dozens of Muslim properties were damaged. Subsequently in March 2018, a state of emergency was declared and hundreds of security forces were deployed to stop the mob violence in Digana, Kandy, Ampara and other areas in the Central and Eastern provinces<sup>27</sup>. One person was killed, several injured and over 400 properties, places of worship and vehicles were destroyed in 3 days of attacks. The authorities made a few arrests but those who were political figures were later released on bail.

30. The Rapporteur would like to stress that “no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief” as provided by Article 2(1) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief<sup>28</sup> (1981 Declaration). States are required by Article 2(1) of ICCPR to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as religion. Article 26 of the ICCPR further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as religion. Sri Lanka should step up its efforts upholding Article 12 of the Constitution that stresses the right to equality and non-discrimination.

## 2. The right to proselytise and conversion

31. The right to proselytise is not fully protected in Sri Lanka. The Supreme Court decided in 2003<sup>29</sup> that the propagation and spreading of a religion other than Buddhism “would not be permissible as it would impair the very existence of Buddhism or the Buddha Sasana”; while in 2017<sup>30</sup>, it was held that the right ‘to propagate’ one’s religion is not protected by the Constitution. However, the decision of 2003 seems to suggest that it would be acceptable if one was to propagate Buddhism. This would also contradict with the Constitution of Sri Lanka that stipulated “[...] to assure all religions the rights granted by Articles 10 and 14(1) (e)”.

32. Besides, the right to proselytise is protected as part of freedom of expression and manifestation of religion or belief under international law. Further, articles 6(d) and (e) of the 1981 Declaration provides for the right to write, issue or disseminate relevant publications on one’s religion or teach in places suitable for these purposes. Everyone should be free to share their religion or belief with others for as long as they do not attempt to forcibly convert others. Article 18(2) of ICCPR explicitly bars coercion that would impair one’s freedom to have or to adopt a religion or belief of one’s choice. The Human Rights Committee’s General Comment 22 (GC22)<sup>31</sup> explains that coercion includes the use of threat of physical force or penal sanctions or discriminative policies to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.

33. Reported hostilities towards Jehovah’s Witnesses, Evangelicals and Muslims appear to be grounded in the perception that religious conversions threaten established hegemonies or “insult” the doctrines and beliefs of the dominant religion in a given area. Often, these religious conversions are allegedly claimed to be ‘unethical’ and involve ‘exploitation’ of vulnerable persons. The common complaint of both the BBS and Siva Senai is that Buddhists and Hindus are being converted to Christianity through insults to the existing religious practices and material inducement by western-funded non-governmental organisations in Sri Lanka. They assert that during the course of the civil war, many such

<sup>27</sup> Special Procedures communication [LKA 1/2018](#)

<sup>28</sup> [A/RES/36/55](#)

<sup>29</sup> Supreme Court Special Determination No. 19/2003

<sup>30</sup> Fundamental Rights case SCFR 241/2014

<sup>31</sup> CCPR/C/21/Rev.1/Add.4, para. 5

exploitative religious conversions took place in the conflict-affected Eastern and Northern Provinces in particular<sup>32</sup>.

34. However, in 2005, the former Special Rapporteur on freedom of religion or belief during her visit found that the allegations of “unethical” conversions have rarely been precise and were largely overestimated<sup>33</sup>. She also criticized the attempts to criminalize acts that aimed at converting someone to another religion as an inappropriate response to the religious tensions<sup>34</sup>.

### 3. Freedom of worship and places of worship

35. In Sri Lanka, there is no law requiring the registration of places of worship or any religious institution. However, on 16 October 2008, the then Ministry of Buddha Sasana and Religious Affairs issued a circular demanding all new constructions of places of worship to obtain prior approval. The Circular exempts “traditional religions” from submitting documentary evidence required by the Ministry to prove their credibility but does not define “traditional religions”. The authorities have the discretion to grant or deny permission based on their own interpretation or biases<sup>35</sup>.

36. Law enforcement and local Government officials allegedly use the Circular to discriminate against religious minority groups and curtail their right to worship. It is also used retroactively to close non-mainline churches. Since 2015, at least 57 Protestant Christian churches have been instructed to obtain registration. Evangelical Christian churches in particular continue to report pressure and harassment by local authorities to close down places of worship because they were not registered, their prayer meetings and worship activities are also routinely denied permission to take place<sup>36</sup>. Moreover, intimidation and attacks against clergy and church members; desecration of Evangelical churches and interference with religious activities are also perpetrated by local villagers and Buddhist monks<sup>37</sup>.

37. When the Circular was challenged in the Supreme Court of Sri Lanka in 2017 on the basis that freedom of religion and the right to equality had been infringed by the use of the Circular, the Supreme Court held that the Circular had to be complied with, and could be defined as law<sup>38</sup>. In this case, Supreme Court judge took into consideration the need to avoid a breach of peace when there were protests from the residents and Buddhist monks regarding the alleged construction of a mosque instead of a school.

38. However, in the north, the religious minorities pointed to the fact that the State has allowed Buddhist monks to erect shrines or Buddhist statues in areas where there is little Buddhist presence or when there is strong objection from local residents. There are also competing claims to historic religious sites, such as the Kanniya case<sup>39</sup> and the Neeraviyadi<sup>40</sup> case. The Mullaitivu court ordered an interim injunction for the construction of a disputed Buddha statue in a Tamil Hindu temple in Neeraviyadi. However, the Buddhist community disregarded the judgment and went ahead with their construction work allegedly with the help of the military and police. During the ongoing dispute, the Buddhist monks had also disrupted *Thai Pongal* rituals at the Hindu temple.

39. Attacks on places of worship and disruption of prayer sessions of the religious minorities are not recent phenomena, as in the case of the desecration of an Islamic Sufi shrine in Anuradhapura (2011), the removal of the Hindu Shivan shrine in Illangaithurai Muhathuwaram (Lanka Patuna) and the construction of a Buddhist statue in its place, the

<sup>32</sup> <http://www.dailynews.lk/2016/11/04/features/97989>

<sup>33</sup> E/CN.4/2006/5/Add.3

<sup>34</sup> Ibid.

<sup>35</sup> <http://www.worldevangelicals.org/un/pdf/HRC39%20Sri%20Lanka.pdf>

<sup>36</sup> Ibid.

<sup>37</sup> Special Procedures communication LKA 4/2017

<sup>38</sup> Fundamental Rights case SCFR 92/2016

<sup>39</sup> <http://www.eyesrilanka.com/2019/07/21/end-the-row-in-kanniya/>

<sup>40</sup> <https://www.tamilguardian.com/content/more-tensions-opening-illegal-buddha-statue-mullaitivu-rushed-through>

relocation of Jumma Mosque in Dambulla (2012), and the disruption of prayer services at the Church of the Four Square Gospel in Kalutara (2011)<sup>41</sup>. In addition, in 2016, the UN Special Rapporteur on Minority Issues and the UN Committee on the Elimination of Racial Discrimination expressed concern about the cases of desecration of places of worship, disruptions of religious services, denials of building permits to construct religious buildings and denials of burials in public cemeteries of members of ethnic or religious minorities<sup>42</sup>.

40. The right to manifest one's religion or belief includes the right to worship in public and in community with others, and the right to construct and maintain places of worship for this purpose, as provided in Article 18(1) of ICCPR and Article 6(a) of 1981 Declaration. Paragraph 4 of GC22 further elaborated that "the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship [...]." The Rapporteur would like to underline that registration is not a prerequisite for the exercise of the right to worship but an offer by the State to enable any religious community to acquire legal personality for various operational and functional purposes. The right to practise and manifest one's religion or belief in worship and in maintaining places of worship is not subject to permission by any State.

#### 4. Religious education

41. The education system in Sri Lanka remains divided by ethnicity or language. In terms of the medium of instruction, there are 6332 Sinhala-only schools, 3009 Tamil-only schools. A further 558 primary schools use Sinhala and English, and 173 schools use Tamil and English. Schools of mixed ethnicities and religions are much fewer in comparison; there are only 75 Sinhala and Tamil schools, and 47 Sinhala, Tamil and English schools<sup>43</sup>. The SCP noted in its interim report that the current ethnicity-based school identification system creates divisions in society and does not facilitate interaction among children of different ethnic groups and perpetuates misunderstanding among communities.

42. Religious communities are free to run schools and classes to teach their religions. The Government funds and supports religious schools by the Buddhist community while those run by other religious communities are privately funded.

43. Religious instruction is compulsory in both public and private school, no student can get exemption. While parents may choose to have their children study Buddhism, Islam, Hinduism, or Christianity, there must be at least 15 students within the school for the chosen subject. All schools teaching the Sri Lankan Ordinary Level syllabus must use the Ministry of Education curriculum on religion, which covers the four main religions and is compulsory for the General Certificate Education Ordinary Level exams<sup>44</sup>.

44. The Rapporteur would like to stress that religious education in schools must be provided in an objective and neutral manner, and the Government must offer the option of exemption in a non-discriminatory manner<sup>45</sup>. State should respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions as provided by Article 18(4) of ICCPR. This includes respecting those who do not profess a religion or belief.

45. ONUR, SCP and other stakeholders have made similar recommendations on the urgent need to review and reform the current curriculum and educational system, to develop a more inclusive system. The Rapporteur is of the opinion that serious investment in the education of the youth is essential, and the school curriculum should be designed to include human rights education and information on various religions and beliefs to promote the respect for the right to freedom of religion or belief and other human rights.

<sup>41</sup> Special Procedures communication LKA 2/2012

<sup>41</sup> A/HRC/34/53/Add.3 and CERD/C/LKA/CO/10-17

<sup>43</sup> [http://www.statistics.gov.lk/education/School%20Census%20Report\\_2017.pdf](http://www.statistics.gov.lk/education/School%20Census%20Report_2017.pdf)

<sup>44</sup> <https://www.state.gov/wp-content/uploads/2019/05/SRI-LANKA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

<sup>45</sup> A/70/286, paragraphs 47-50.

## 5. Rights of Women and Gender-based Discrimination

46. In Sri Lanka, women's experiences of ethno-religious hostilities are no less than those experienced by men. Religious minority women risk double victimization at community and personal level due to patriarchal structure in the society and in policies.

47. The Rapporteur heard of an account of a Tamil Hindu woman married with a Sinhala Buddhist man. Her husband insisted on her converting into Buddhism and threatened to kill their daughter if she did not comply with his demand. She reported her case to the police but she received no support and remained in much fear of her life. He also heard about an attack against four girls from the Assemblies of God community by a mob of 60 men with the professed intention to rape them. This further illustrates the additional vulnerability of religious minority women and girls.

48. Widows face challenges of getting remarried especially when community members worry that they may get converted into another religion. Meanwhile, Muslim women are excluded from the General Marriage Ordinance i.e. there is no option for Muslims to opt in or out of the Muslim Marriage and Divorce Act of 1951 (MMDA). The MMDA allows for polygamy, and when claiming maintenance and asking for a divorce, places the burden of proof upon wife to provide a 'valid and sufficient reason' and 'grounds for divorce'. By contrast, a Muslim man is not required to give a reason for divorce. Furthermore, these matters are addressed in Qazi Courts where women are not permitted to be judges. However, some of these challenges are addressed in the 2019 amendments to the MMDA, negotiated between the government and the Muslim Ulema Council.<sup>46</sup> Polygamy is restricted by providing the first wife the option of divorce and the legal marriage age is raised to 18 years. However, there was no agreement to appoint women as judges in the Qazi courts. Rulings of the Qazi Courts may be appealed in the secular appellate system but there are serious issues about access to justice. Moreover, the General Ordinance<sup>47</sup> itself, which cannot be challenged in the court as per the provisions of the Constitution of 1978, itself needs updating to ensure gender equality.

49. After the Easter bombings, the ban on face-covering in public places was proclaimed by the Government under the emergency regulations. This has led to a rise in intolerance towards those who observe religious dress codes, especially among the Muslim women in public institutions such as hospital, schools and public transport. Some people stop Muslim women and girls with hijab or abaya which do not include facial covering from entering hospitals or exam halls, or make verbal insults at work places.

50. Many Muslim women reported being harassed on the street and refused service at government agencies and private businesses when wearing a headscarf, even with their faces visible<sup>48</sup>. The Ministry of Public Administration issued a circular entitled "Ensuring Security in the Office Premises of the Government" establishing a restrictive dress code for public sector employees and for visitors to government offices. The code requires women to wear one of two types of *sari*, in effect banning forms of dress typically worn by Muslim and Tamil women. The Human Rights Commission of Sri Lanka ruled the circular violated a range of fundamental rights, having established no rational relation between the banned forms of dress and security issues, and requested it be withdrawn.<sup>49</sup> Many Muslim women whose religious beliefs, or families, require them to wear a veil in public found themselves forced to stay home. Even though the ban is no longer in effect, many choose not to wear the veil while some continue to be harassed based on their religious dress codes.

51. The Rapporteur would like to point to the fact that restrictions imposed on religious dress codes may constitute a violation of freedom of religion as paragraph 4 of GC22 explains that "the observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head

<sup>46</sup> <https://mplreformsdotcom.files.wordpress.com/2019/11/joint-cabinet-memorandum-on-mmda-2019.pdf>

<sup>47</sup> [http://www.commonlii.org/lk/legis/consol\\_act/m131146.pdf](http://www.commonlii.org/lk/legis/consol_act/m131146.pdf)

<sup>48</sup> <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>

<sup>49</sup> Ibid

coverings". Article 18(3) of the ICCPR clearly provides that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Such limitations must further not have a discriminatory intent or effect.

52. Members of LGBT+ community also reported that religious teaching is a significant factor in the marginalization of the LGBT+ communities and leads to deep personal struggles for those who attempt to reconcile their religious identity with their sexuality. Often, the perspectives of LGBT+ and women are excluded from inter-religious dialogues and processes of reconciliation. Efforts for reconciliation, refracted through ethnic and religious lenses, without considering gendered impacts, are not inclusive.

53. The Rapporteur received reports that the Government refuses to legally acknowledge the order of Bhikkhuni nuns. Bhikkunis are not permitted to have their ordination name on their National Identity Card whereas Bhikkus (male) are allowed.

#### **IV. Root causes of religious intolerance and tensions in Sri Lanka**

54. The Rapporteur notes the importance of analysing and identifying the root causes of religious intolerance and tensions that lead to the violation of freedom of religion or belief in order to better address these challenges.

##### **1. Politicisation of ethnic and religious identity**

55. In most of the Rapporteur's conversations during his visit, people often identified themselves as Muslim, Sinhala or Tamil. Otherwise, they identified themselves as Buddhist, Christian, Hindu or Muslim. Indicating one's identity by ethnicity or by religion seems to also imply the marking of a territory whether by a street, a plot of land, a village, a town or a province and in some cases, perhaps it is also an identification of social status or political affiliation. A rise in identity-based perspectives within various political parties further reinforces ethno-religious fragmentation<sup>50</sup>.

56. While there is recognition that the Sri Lankan national identity represents some diversity, including ethnic, religious and linguistic diversity, those who are members of a religious community that does not constitute one of the four main recognised religions in Sri Lanka face discrimination. Even among those who are recognised, the communities who are outnumbered by others in different areas claim that they are marginalised or at risk of being 'colonised' by the other religious or ethnic majority. Similarly, the majority would argue that the 'invasion' of new religious communities in certain areas is not welcomed as they do not fit, or use the pretext that the new religious groups have undermined religious harmony in certain areas or hurt religious feelings of the majority people or try to convert others unethically.

57. Although the Constitution frames freedom of religion or belief as a fundamental human right, the collective dimension of the right appears to be more emphasised in practice than the individual rights dimension, especially in the societal understanding of the right. This is likely the result of the strong links between ethnicity and religion, and a reliance on a 'toleration' model of freedom of religion or belief, whereby individuals are seen as part of a community on whom both the state and the individual rely to negotiate rights and duties. A toleration model, however, might not embrace inclusivity, equality and non-discrimination of all citizens, giving priority or prominence to the given majority or dominant group in a specific area, hence, marginalising the rights of minorities or those perceived not fitting into the recognised identities from the traditional mosaic of a society.

58. One of the challenges the country faces is the lack of equality amongst religious communities especially when Article 9 of the Constitution explicitly guarantees Buddhism the foremost place and mandates the State with the duty to protect and foster the Buddha Sasana. The provision is almost equivalent to Buddhism being made the official religion of

<sup>50</sup>

Paragraph 2.3 of SCP interim report on Communal and Religious Harmony.

the State. The Beirut Declaration and its 18 commitments on “Faith for Rights”<sup>51</sup> explicitly refer to preventing the use of the notion of “State religion” to discriminate against individuals or groups, and to “reducing the space for religious or belief pluralism in practice”<sup>52</sup>. The Rapporteur reiterates that the extent to which the State supports a religion and the degree to which they enforce that religion could have far-reaching implications on how the State protects freedom of religion or belief for everyone.<sup>53</sup>

59. Even though Article 9 says that all religions shall be assured of the rights as provided in Articles 10 and 14(1)(e), most people not only see that Buddhism is granted “supremacy” over other religions or beliefs but they have actually experienced discrimination based on their religion or belief. There is clear resentment against perceived majoritarian privilege. In practice, the majority Sinhalese Buddhist community asserts their protected status and perceived privilege by the Constitution as they seem to also interpret or at least understand that they have a “supreme” status. Hence, whenever the majority community itself feels insecure due to the changing religious landscape in the country or the economic and numerical growth of another community, it asserts itself more stridently as the majority community representing the nation.

60. The Rapporteur has also observed the tendency of some Buddhist religious leaders to instigate hatred and division among the population in Sri Lanka by invoking nationalist sentiments among people by politicising ethnic and religious identity. Similarly, political parties have invoked ethno-nationalistic rhetoric in Sri Lanka using the popularity of “Sinha-Le” campaign (see paragraph 71 below) as a powerful tool to mobilise the public.<sup>54</sup> For as long as the tension of identity among religious and ethnic groups exists, this will continue to undermine all the peace building, coexistence and religious tolerance or harmony projects as each group of people will remain in their own boxes, rejecting and alienating the ‘others’.

## 2. Religious extremism

61. Following the Easter bombings, media in Sri Lanka projected the country as a victim of the global trend of Islamist extremism that made the Muslim community the scapegoat of other underlying problems in the country such as simmering ethno-religious tensions and religious extremism. Many interlocutors with whom the Rapporteur spoke to however indicated that many were already highly concerned by the influence of extremist views of different religious figures, including Buddhists monks, from earlier on. However, certain politicians allegedly instrumentalize religions, possibly for political gain, and neglect the inherent risks of the incitement to hatred or violence by extremists.

62. There is no evidence to suggest that the Muslim population at large in Sri Lanka is linked with Islamist extremists or terrorists. However, when Zaharan, a radical Salafi preacher led his fraction to attack the followers of a moderate Sufi Muslim cleric in 2017, he was repeatedly rejected by the Muslim community leaders and some politicians. They also warned the Government and the police on several occasions of the growing threat posed by Zaharan’s preaching. However, such warnings and information shared with the Government have not been given much attention. The report of the Select Committee of Parliament to look into and report to Parliament on the Terrorist Attacks that took place in different places in Sri Lanka on 21 April 2019<sup>55</sup> further identified rising Islamic extremism in Kattankudy area.

63. In 2012, the Bodu Bala Sena (BBS), a Sinhala-Buddhist organisation was created. The BBS became influential within short time and received much media attention. BBS claimed to be created to protect the Sinhalese and Buddhism and to draw attention to the

<sup>51</sup> [www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx](http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx)

<sup>52</sup> A/HRC/40/58, annex II, Commitment IV; <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>.

<sup>53</sup> A/HRC/37/49

<sup>54</sup> <https://www.cpalanka.org/wp-content/uploads/2016/04/Dynamics-of-Sinhala-Buddhist-Ethno-Nationalism-in-Post-War-Sri-Lanka.pdf>

<sup>55</sup> <https://www.parliament.lk/uploads/comreports/sc-april-attacks-report-en.pdf#page=1>

threats allegedly faced by the Sinhala race in the face of globalisation, flagging that they may become “global minority”. They alleged that there is a growing international Islamic presence in the country and the Muslim population’s expansion posing a threat to the Sinhala community’s status as the country’s majority; they also instilled fear among the Sinhalese population by referring to the possible domination by some 60 million Tamils in southern India. BBS managed to heighten the polarisation of the communities through identity politics as discussed earlier.

64. Moreover, BBS launched vigorous anti-Muslim campaign and spread inaccurate information to incite hatred against the Muslims. For example, on 17 March 2013, a BBS spokesman at a public meeting in Kandy stated that the Quran orders Muslims to spit three times on meals offered to non-Muslims<sup>56</sup>. While on 12 April 2014, the General Secretary of the BBS falsely attributed to the Holy Quran that the concept of ‘Thaqiya’ allows Muslims to defraud people of other faiths and acquire properties and wealth of non-Muslims by cheating them<sup>57</sup>.

65. National Shura Council, an umbrella body of national-level Muslim organisations, submitted an appeal with 196,000 signatures from the general public to the President in November 2013, calling for action to be taken to ensure security for minority religions and their places of worship and to stop all hate campaigns. In 2014, Ban Ki-moon, then UN Secretary-General, expressed his alarm and concern by “the rising level of attacks in Sri Lanka against religious minorities.”<sup>58</sup> He noted that “Buddhist communities are being swept up by a rising tide of extremist sentiment against other groups.”<sup>59</sup> However, hundreds of hate-related incidents were reportedly committed by the BBS and other Buddhist extremist groups with impunity. The Government was reluctant to take action against them even though there were extensive grounds for criminal prosecution.

66. In 2015, “Sinha Le” campaign started with a poster campaign which carried an image of the lion taken from the national flag along with the words ‘Sinha’ (lion) in yellow and ‘Le’ (blood) in red. This was a reinterpretation of the national flag by removing the two coloured strips - saffron and green- representing the Tamil and Muslim communities. It became apparent that the campaign was designed to provoke ethnic tensions, notably targeting at the Muslims and minority communities. These posters and stickers appeared in social media, public spaces and in three wheelers and other private vehicles. On 2 January 2016, the words ‘Sinha Le’ were sprayed across several gates and walls of Muslim-owned houses in Nugegoda. A few days after, the “Sinhale Jathika Balamuluwa” (SJB) announced its formation at a media briefing to “safeguard the identity of the Sinhala people and to regenerate the supremacy and pride of the Sinhala people”.<sup>60</sup> Some observers noted that “Sinha Le” campaign and a few other extremist groups such as Mahasen Balakaya, Nawa Sinhale National Organisation and Sinhala Ravaya<sup>61</sup>, are closely aligned with what was promoted by similar pages, groups and sites of the BBS.

### 3. Hate speech or campaigns and the application of existing legal framework

67. There is a general perception by the victims that perpetrators of hate speech are free to continue their campaigns and cause harm without any legal repercussions. The minority communities are feeling extremely vulnerable with the constant threat of hate speech and hate crimes while they have no recourse for justice. Most of them have lost their faith in the State and law enforcement agencies after multiple traumas from the violence in Aluthgama in 2014, in Gintota in 2017 as well as in Ampara and Digana in 2018. These instances of violence include property damage, grievous injury, and death in the cases of Aluthgama and

<sup>56</sup> <https://www.colombotelegraph.com/index.php/national-shoora-council-urges-govt-to-protect-watareka-vijitha-thero-and-stop-bbs-unlawful-acts/>

<sup>57</sup> Ibid.

<sup>58</sup> <https://www.un.org/press/en/2014/sgsm16108.doc.htm>

<sup>59</sup> Ibid.

<sup>60</sup> <http://www.dailymirror.lk/102081/new-party-aims-to-safeguard-sinhala-identity>

<sup>61</sup> For more information on these groups see: Devotta, Neil. “Religious intolerance in post-civil war Sri Lanka.” *Asian Studies*, 49:2 (2018): 278-300; and Holt, John. *Buddhist extremists and Muslim minorities: Religious conflict in contemporary Sri Lanka*. New York City: Oxford University

Digana.<sup>62</sup> These are clear contemporary examples of hate speech and hate violence, politicising the ethnic and religious identities, targeting minority communities, in particular the Muslim community. Despite sufficient evidence available at each incident, even years after the fact, not one perpetrator has been held accountable even though the Government made a few arrests and some victims have been compensated. It is also worth noting that such violence did not exclusively target Muslims; similar violence had been committed also against the Tamils and Christians at various points in time.

68. Most interlocutors who spoke with the Rapporteur pointed out that perpetrators of hate speech are not prosecuted not because of inadequacy of existing legal framework on hate speech, however, the implementation of these legislation is rather poor. The lack of accountability in these incidents illustrates an absence of political will, weak implementation of rule of law, low awareness of the available legal provisions, and possibly fears of public backlash.

69. Many also complained about the role of the media in promoting hateful narratives towards Muslims and inciting to hostility and discrimination against them. While some blamed journalistic sensationalism, others noted that the privatised and politicised electronic media play a large role in demonising individuals and groups. Some highlighted the negative role of the media in perpetuating for example the narrative that Muslim medical professionals have been secretly carrying out large-scale sterilisation of Buddhist women. The role of social media in generating fear through fake news and incitement to violence was noted by many with serious concern. Christians have been the target of fake news and online hate speech as well. For instance, National Christian Evangelical Alliance of Sri Lanka Incident Report 2019 referred to false rumours and violence against a Christian community in Batticaloa called for through Facebook in January 2019.

70. According to information presented to the Special Rapporteur, in many instances of hate speech, the authorities appear not to have taken appropriate action. The Government shut down some social media platforms temporarily during the riots in March 2018 and following the Easter bombings, a measure, however, whose effectiveness is not self-evident and which ‘invariably fail to meet the standard of necessity’ under international law.<sup>63</sup>

71. In Sri Lanka, the legal framework to address hate speech constitute the following:

- **ICCPR Act 56 of 2007-** Section 3(1) provides that “No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”;
- **Penal Code Ordinance No. 2 of 1883-** Section 120 refers to “whoever by words, signs or by visible representations, [...] attempts to raise discontent or disaffection among the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished...” and Sections 291A and 291B;
- **Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979-** Section 2(1)(h) provides that 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.

72. There have been no reported judgments or trials that have been concluded under the ICCPR Act while there have been several instances of hate speech and incitement to violence that could have been dealt with under the Act. More controversially, civil society has observed that certain actors have attempted to misuse the ICCPR Act to restrict freedom of expression and crush dissent. Although inciting to discrimination, hostility and

<sup>62</sup> <https://www.cpalanka.org/wp-content/uploads/2018/09/Confronting-Accountability-for-Hate-Speech-in-Sri-Lanka-2018.pdf>

<sup>63</sup> A/HRC/35/22, para 14

violence is criminalised under the ICCPR Act, many argued that the Act was not applied in a manner that would protect minorities against incitement; rather, it is invoked to protect religions or beliefs against criticism or perceived insult.<sup>64</sup> ICCPR Act has ironically become a repressive tool curtailing freedom of thought or opinion, conscience and religion or belief.

73. It is also worth noting that the present ICCPR Act is not fully compatible with Article 19 of the ICCPR as it does not guarantee freedom of expression. Moreover, when determining hate speech cases, its current provisions do not include the three-part test of legality, proportionality and necessity as well as the threshold of “incitement” under Article 20 of the ICCPR.

74. Similarly, under the Penal Code, there is a lack of reported judgments under these particular provisions. Moreover, these provisions lack clarity and leave room for misinterpretation. Meanwhile PTA has been criticised by many that it is used to target minorities, critics of successive Governments, journalists and political opponents. This has been demonstrated in a prominent 2008 journalist case<sup>65</sup>, a 2013 politician case<sup>66</sup> and a 2019 Muslim doctor, Shafi case.<sup>67</sup> This also affects those Muslims arrested under suspicion of terrorism after the Easter bombings. The offences described in Section 2(1)(h) of the PTA are overly broad and ambiguous, leaving no legal certainty how an offence is interpreted. While the Penal Code would require serious revision to be compatible with international human rights standards, the PTA should be repealed as recommended by various human rights mechanisms and UN experts.

75. Section 79(2) of Police Ordinance No. 16 of 1865 provides that the Police have the power to arrest a person without a warrant when any person in a public place or meeting uses “threatening, abusive or insulting words or behaviour intending to provoke a breach of the peace or where the breach of the peace is likely to be occasioned”. Although it does not deal with hate speech directly, the Police are granted the power to control and contain situations in which they see threats of incitement to violence. In the instances of Aluthgama and Digana, police were accused of not taking action to prevent the hate campaigns. Moreover, there were also reports of active participation by police officers in aiding the anti-Muslim riots in the past, though these reports have not been investigated.

76. There is no legislation in Sri Lanka regulating the media and its role. There is however a Code of Professional Practice of the Editors Guild of Sri Lanka (2008)<sup>68</sup> that is meant to protect both the right of the individual and uphold the public’s right to know. In particular, Article 6(3) states that a journalist shall not knowingly or wilfully promote communal or religious discord or violence. Article 6(4) also stresses that the press must avoid (i) prejudicial or pejorative reference to and (ii) publishing details of a person’s race, colour, religion, sex or any physical or mental illness or disability.

77. While all hate speech should be rejected, the likelihood of such speech causing actual violence can depend on various contexts. A combination of impunity, privilege, scapegoating and exclusion can form a tinderbox of hatred. Any speech that reaches the high threshold of incitement to discrimination, hostility and violence must be prohibited, while positive measures that seek to counter hate speech through positive and inclusive speech are equally important. Although there have been many good examples of inclusive speech following Easter bombings, some of the measures taken appear to have increased stigmatisation of the Muslim community and there is certainly room for more firm actions to be taken against the perpetrators of incitement to hatred or violence as discussed above.

<sup>64</sup> For example, Sathkumara case, <http://www.ft.lk/news/UN-human-rights-petition-filed-for-author-Shakthika-Sathkumara/56-691332>

<sup>65</sup> <https://rsf.org/en/news/international-press-freedom-groups-call-justice-jailed-sri-lankan-journalist>

<sup>66</sup> <http://www.thesundayleader.lk/2013/05/05/azath-salleys-arrest/>

<sup>67</sup> <https://www.republicnext.com/series/dr-shafi-case/>

<sup>68</sup> [https://www.tamilnet.com/img/publish/2019/03/PCCSL\\_Code\\_in\\_English.pdf](https://www.tamilnet.com/img/publish/2019/03/PCCSL_Code_in_English.pdf)

#### 4. Impunity and lack of rule of law and accountability

78. The culture of impunity in Sri Lanka has been repeatedly pointed out as one of the main reasons for which religious extremism and hate speech thrive in the country, undermining the rule of law and human rights. Many complained about how acts of violence are “indulged” by the silence and inaction from the authorities illustrated by some examples discussed above. Some expressed surprise and dismay that large mobs could openly and for several hours rampage through minority community neighbourhoods without hindrance or reaction from law enforcement authorities, or that some of the police participated in those violent incidents or that authorities fail to adequately protect those under attacks even when some of violence continued for several days. In some cases, the attacks took place during curfew hours. These happened during the riots in Kandy district in 2018 and in May 2019 in several locations in the Western and North Western provinces for example.

79. Some also expressed concern about perceived bias in the way the police addressed complaints. This was particularly the case where the assailants were members of the majority community. Many complained that either police failed to register and investigate complaints raised by them or that they would act in a punitive manner on complaints raised against them while failing to take similar measures when they were the target of attacks, or that generally the police were unsure on how to act in responding to infringements of the law by Buddhist monks. Some blamed politicians for influencing law enforcement citing examples where politicians were allegedly involved in pressuring the police to release persons arrested following violent attacks.

80. The Rapporteur received reports from the National Christian Evangelical Alliance of about 87 cases of recorded physical attacks at places of worship, residential area, pastors or members of the Evangelical churches (2015-2019); while only 50 cases were reported to the police, and 8 cases went to the courts, there has been not a single conviction of perpetrator even though in some cases, compensation has been granted to the victims. Similarly, the Evangelical Christians communities have documented over 11 cases of incitement to hatred and violence against them, and about 300 instances of harassment or discrimination based on their religious identity. Among those cases that were taken to the police or courts, the result was the same, there was not a single conviction.

81. The Jehovah’s Witnesses also reported at least 58 cases were referred to the police 2017-2019 of physical assaults, harassments and intimidation, disruption of their worship meetings, vandalism on the places of worship, and refusal of permit for building places of worship. 33 cases have been taken to the court, only 5 cases have been decided in favour of them where perpetrators agreed to stop harassing them but there is still not a single conviction.

82. Many described problems of double standards in law enforcement depending on which community offends or finds itself targeted by the actions of other. For instance, the Rapporteur heard of cases of violence against minorities perpetrated by the majority community where perpetrators are clearly identified in video recordings but remain unaccountable for years after the incident. Reversely, many complained, that when a complaint is brought forward by members of the Buddhist community, action is swift and, at times, disproportionate and lacks legal impartiality.

83. The Rapporteur would like to point out that Section 2.4 of SCP’s interim report on Communal and Religious Harmony clearly reported the challenges of the law enforcement, indicating that “[...] The recent incidents of serious violence in Kalutara, Galle, Ampara and Kandy districts have exposed the Police Department’s inexcusable delays to enforce the law and the Attorney-General’s failure in most instances to prosecute the perpetrators of violence.”<sup>69</sup>

84. Special Rapporteur on the promotion and protection of human rights while countering terrorism who visited Sri Lanka in July 2017 in his report<sup>70</sup> noted that “the

<sup>69</sup> See footnote 10.

<sup>70</sup> [A/HRC/40/52/Add.3](#)

absence of reaction from the Government to incitement to hate speech and racism, and attacks on minorities, including Muslim places of worship, in what is perceived by Tamils and Muslims as ‘Buddhist extremism’, increases the deeply-engrained sense of injustice felt by these minority communities, and increases Tamils’ national sentiments”.

85. Despite the pledges by the Government to strengthen fundamental freedoms and the rule of the law, it has so far failed to undertake the following critical steps:

- the establishment of a commission for truth, justice and reconciliation as well as a judicial mechanism with a special counsel;
- initiation of a judicial process to look into the accountability for abuses by all sides of the internal conflict;
- the full restoration of land to its rightful civilian owners;
- the cease of military involvement in civilian activities;
- an effective security sector reforms to vet and remove known human rights violators from the military;
- a review of witness and victim protection law including investigators, prosecutors and judges;
- a review and repeal of various legal provisions or legislations, such as the PTA, that are incompatible with international human rights standards;
- domestic law reform to prohibit and try serious human rights violations;
- investigation of hate speech, incitement to violence (including by religious leaders) and any attacks on civil society.

86. The list above shows that the authorities have not yet demonstrated the capacity or willingness to address impunity for gross violations and abuses of international human rights law and serious violations of international humanitarian law. The State must recognise that without the truth and justice, without the restoration of trust in the people by demilitarizing boundaries and prosecuting perpetrators of the conflict; without the appropriate mechanism and legislation that are compatible with international human rights standards, there will be no reconciliation and peace in the country.

87. Moreover, Government should not allow the influence of religious clerics to determine public policy in secular matters. On 3 June 2019, a Buddhist monk commenced to fast unto death, demanding the resignation of three Muslim politicians whom he claimed were linked to the Easter Sunday attackers. The leader of the BBS paid him a visit and issued a statement warning of mass mobilisation if the Muslim politicians did not comply with the demand. Large mobs gathered in central Kandy in support of the monk and threatened to get onto the streets to attack Muslims. Without any formal investigation, two Governors had to resign on the same day. Many worry that this incident sets a dangerous precedent of recognising the authority of religious leaders in political matters.

88. It is essential for the Government to not ignore the simmering tensions and intolerance and the damaging consequences of incitement to hatred and violence in a country that has gone through a long period of internal conflict. Inaction by the authorities could aggravate the simmering tensions and if these were left unattended, Sri Lanka may risk being locked in a vicious cycle of ethno-religious violence. Building societal resilience against violent extremism and incitement to hatred requires a broad-based approach that relies on good governance, rule of law as well as respect for human rights and equality for all. This requires strong political will and strengthened State institutions to tackle the root causes of the religious tensions and intolerance analysed above urgently in order to achieve a sustainable peace and economic growth in the country.

## V. Conclusions and recommendations

89. **Ten years after the end of the lengthy ethnic conflict, there has been no closure on a number of issues arising from that conflict and which the Government had**

pledged to address at the UN Human Rights Council. While there have been some elementary steps taken, lack of accountability and impunity remains a widespread concern, perpetuating a sense of insecurity among all religious communities. The transitional period has been marked by simmering tensions between the ethno-religious communities. These challenges appear to be related primarily to the state-religion relationship which offers majoritarian privileges, undermining equal protection of the law for minorities. Moreover, there have been recurrent intercommunal violence and religious extremism in the past years before the Easter bombings in 2019.

90. While the legal framework in Sri Lanka guarantees the right to freedom of religion or belief for everyone, in practice there are several challenges to the enjoyment of this right. Religious minorities face restrictions in the manifestation of their religion or belief, their places of worship are desecrated while their religious activities such as worship sessions are disrupted by locals and the authorities. There is difficulty for the minority religious communities to build new places of worship while some places were forced to close down due to arbitrary registration requirements. Non-Roman Catholic Christians are also exposed to numerous incidents of violent attack due to a suspicion of ‘unethical conversion’ and limitations on their right to proselytize. Aggressive campaigns by militant nationalist and religious groups against ethnic, religious and other minorities, particularly Muslims, are particularly concerning.

91. The Rapporteur notes that the current education system deepens the division among different religious and ethnic groups and needs urgent reform with a new curriculum that promotes the values of tolerance, embraces diversity, and fosters a common or unifying “Sri Lankan identity”. Women and girls as well as the LGBT+ persons are rendered more vulnerable in their positions when some religious teachings tend to marginalise them in their rights to equal treatment. Patriarchy and religious marriage laws discriminate against women and disadvantage them in many personal status related matters. It would be vital to ensure a comprehensive reform of both the MMDA and the General Ordinance on Marriage to comply with international law standards on gender equality.

92. Against this background, the Special Rapporteur recommends the Government of Sri Lanka to:

(a) Take concrete steps to address all the identified root causes of religious intolerance and tensions and to promote trust among different ethnic and religious communities in Sri Lanka. He recommends drawing on the action plan in Human Rights Council Resolution 16/18, and Beirut Declaration and its 18 Commitments on “Faith for Rights”, in activities designed to promote inter-religious dialogue and foster pluralism;

(b) Address impunity and the lack of accountability urgently by fulfilling the pledges to various international human rights mechanisms and set up relevant mechanisms accordingly; investigate all incidents of violence, and prosecute all perpetrators of incitement to violence, including the Easter bombings, subsequent violence and other human rights violations;

(c) Combat violent extremism while ensuring that any strategies to prevent violent extremism or counter terrorism are in compliance with international human rights law;

(d) Develop monitoring mechanisms to establish early warning systems and respond to hate speech and incitement to violence in conformity with international human rights standards using existing tools such as the Rabat Plan of Action and the Fez Plan of Action;

(e) Repeal the Prevention of Terrorism Act 1979 and revise the provisions of the Penal Code that relate to various offences on religion-related matter;

(f) Reform the education system to foster inclusive identities to prepare children for responsible life in a free society, in the spirit of understanding, peace,

**tolerance, gender equality, and friendship among all peoples, ethnic, and religious groups and persons of indigenous origin;**

**(g) Encourage voices of moderate religious leaders, and support local interfaith initiatives;**

**(h) Empower women to have more roles in inter-religious dialogues and ensure that their rights are not restricted under religious marriage laws.**

**93. The Special Rapporteur would like to urge:**

**(a) The media and social media platforms to enforce community standards and invest more resources to monitor and respond to incitement to hatred or violence while protecting freedom of expression and access to information.**

**(b) Religious leaders to speak out against hateful narratives and reject efforts to ostracise and stigmatise minority communities and persons in vulnerable situations; promote moderate voices and stress the need for sustainable intercommunal and interreligious dialogue for trust and peacebuilding as well as reconciliation.**

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