

briefing

Sri Lanka

Religious freedom in the post-conflict situation

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I. Executive summary

Sri Lanka has been riven by conflict during the past decades. With the end of the long-running civil war between the government and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, Sri Lanka entered a new era with fresh challenges: the most immediate are the resettlement of internally displaced persons (IDPs), a process which is currently underway, and finding a long-term political settlement (see section 6). Although the conflict was ethnic and political in nature, its end has repercussions that will shape all of Sri Lankan society.

The main driver of religious antagonism, manifested in violence, discrimination and disinformation usually carried out against Christians (see section 7), is this ideology of Sinhalese Buddhist nationalism, which locates mainstream Sri Lankan identity in the nexus of Sinhalese ethnicity and Theravada Buddhist culture. There have been signs of a revival of Sinhala Buddhist nationalism in public discourse which, if it should become more entrenched, could pose a growing danger to ethnic and religious groups outside the Sinhala Buddhist national mainstream, including not only Tamils, but also Muslims and Christians (whether Sinhalese or Tamil by ethnicity).

Antagonism towards Christians typically centres on accusations of their conversion of Buddhists by illegitimate or unethical means. Violence, threats of violence, and discrimination are common techniques for restricting Christian activities at a local level. After a lull in the number of violent attacks from late 2008 to early 2009, there has been a marked rise since the end of the conflict; this is a trend which must be watched carefully. Institutional and localised forms of discrimination against Christians are widespread, and disinformation and hate propaganda have been widely used by extremist Buddhist nationalists to incite religious hatred and violence against Christians.

In 2004, the Jathika Hela Urumaya (JHU) put forward a private member's bill, entitled "A Bill on Prohibition of Forcible Conversions of Religion", which is expected to be brought for a final reading before the parliamentary elections slated for early 2010 (section 8). The bill is backed by the All Ceylon Buddhist Congress (ACBC) which, in January 2009, launched a long-awaited report to bolster the case for such legislation, using inflammatory language to claim the existence of a plot to undermine Buddhism, and alleging that Christian groups were engaged not only in unethical conversions, but also in support of terrorism.

The main areas of concern over the bill are that its very existence would have a damaging normative effect; that it is unnecessary; that it would impose illegitimate and ill-defined restrictions on the right to freedom of religion and belief; and that it proposes grossly disproportionate penalties.

Several Christian groups have recognised a need to address Buddhist and Hindu concerns about methods of proselytisation employed by some Christians. They have rejected 'anti-conversion legislation' in its current form, on the basis that it impairs the right to freedom of religion, and proposed an alternative mechanism for discussing and tackling grievances or allegations of illegitimate and insensitive behaviour, through inter-faith dialogue and cooperation. In addition, the National Council of Churches (NCC) has developed a "Code of Ethics for Mission", and the National Christian Evangelical Alliance of Sri Lanka (NCEASL) has produced a document, "Good Practices in Ministry".

2. Recommendations

2.1. To the government of Sri Lanka

It is recommended that the government of Sri Lanka should ensure the implementation of all the recommendations of the UN Special Rapporteur on freedom of religion or belief given in her report of her 2005 mission to Sri Lanka.

In particular, CSW recommends that the government of Sri Lanka should:

1. Oppose the “Bill on Prohibition of Forcible Conversion of Religion” and support measures to enhance and promote inter-religious dialogue and harmony;
2. Take measures to ensure the full and effective implementation of the Penal Code in order to protect religious minorities from religiously-motivated violence, and bring the perpetrators and inciters of religiously-motivated violence to justice swiftly under the provisions of the law;
3. Take measures to tackle impunity in cases of religiously-motivated violence, including bringing appropriate disciplinary action against police who fail to investigate cases properly and conducting training to ensure that law enforcement officials are well-equipped to protect religious minorities from violence;
4. Clarify the legal status of places of worship, in line with international standards on freedom of religion and belief;
5. Ensure that children from religious minorities enjoy equal access to education without fear of discrimination;
6. Ensure that cases of discrimination on the grounds of religion are fully investigated and prevented;
7. Investigate allegations against media accused of stirring grievances against religious minorities and bring prosecutions where appropriate.

2.2. To states and regional actors

It is recommended that states and regional actors should use appropriate means of dialogue with the government of Sri Lanka to encourage the implementation of each of the recommendations given in section 2.1.

3. Introduction

Sri Lanka has been riven by conflict during the past decades. With the end of the long-running civil war between the government and the Liberation Tigers of Tamil Eelam (LTTE) in May 2009, Sri Lanka entered a new era with fresh challenges: the most immediate are the resettlement of internally displaced persons (IDPs), a process which is currently underway, and finding a long-term political settlement (see section 6). Although the conflict was ethnic and political in nature, its end has repercussions that will shape all of Sri Lankan society.

Religious tensions involving Christians, which form the main focus of this briefing, were relatively low during the final months of the conflict. However, there are indications of a resurgence of attacks on Christian targets since its end. With regard to other religious communities, Muslims have allegedly faced some recent problems over land entitlements in the east of the island.

The main driver of religious antagonism, manifested in violence, discrimination and disinformation usually carried out against Christians (see section 7), is the ideology of Sinhalese Buddhist nationalism, which locates mainstream Sri Lankan identity in the nexus of Sinhalese ethnicity and Theravada Buddhist culture. This movement has its roots in the Buddhist revivalism of the late nineteenth century. According to a study by Neil DeVotta, its ideologue Dharmapala's rhetoric had four main characteristics: "praise" for Buddhism and the Sinhalese culture; "blame" cast on the British, Tamils and Christians; "fear" that Buddhism in Sri Lanka was threatened with extinction, and "hope" for a rejuvenated Sinhalese Buddhist ascendancy. Dharmapala "imposed a religious nationalism steeped in Buddhism's virtues that allowed the Sinhalese Buddhists to distinguish themselves from the British, the Tamils, and even Sinhalese Christians".¹ Another significant factor is the history of colonial entanglement with Christianity: from the early sixteenth century onwards, three successive European colonial powers imposed Catholicism, the Dutch Reformed Church and Anglicanism upon the island. The perception of Christianity as a foreign religion, which is a common feature of extremist Buddhist rhetoric, has never gone away. The phenomenon of an extremist, militant Buddhism is not readily understood in the West, but must be taken seriously as a threat to religious pluralism in Sri Lanka.

At the time of independence, the 1947 Ceylon (Constitution) Order enshrined neutrality among members of all religions. Buddhist monks were continually politically active after independence and played an important role in the 1956 election, when the issue of establishing Sinhala as the national language came to the fore. In 1978, a new constitution was promulgated, which accorded Buddhism "the foremost place", although it also guaranteed freedom of religion for all citizens. However, this did not placate hard-line Buddhist nationalists, who have continued to campaign for Buddhist supremacy, holding to a nostalgic myth of a glorious pre-colonial history in which the island was entirely Buddhist.

The Jathika Hela Urumaya (JHU), a party of Buddhist monks, was established in 2003 and contested its first parliamentary elections in 2004, winning nine out of 225 seats. It is now a main driver of opposition to Christians. After the death of high-profile Buddhist monk, the Venerable Gangodawila Soma Thero, in 2003, it launched a major campaign for the introduction of 'anti-conversion legislation', which constituted a key election campaign pledge and led to the proposal of its private member's bill the following year (see section 8). The JHU joined the government of President Mahendra Rajapakse in 2007; however, its support has gradually waned, even among its core urban voters in Colombo, and is widely seen as being likely to lose all its seats during the next parliamentary election, scheduled to

¹ DeVotta, Neil, "The Utilisation of Religio-Linguistic Identities by the Sinhalese and Bengalis: Towards a General Explanation", *Commonwealth & Comparative Politics*, Vol. 39 (1), March 2001, p. 78.

take place before April 2010. This would probably bring an end to the short phase of Buddhist monks participating in the parliamentary process, but it would not signal an end to religious extremism. The onus will remain on the government to ensure the equal treatment of all religious communities under the law, and to guard against and tackle or prosecute cases of religiously-motivated discrimination and violence. This is particularly important in this pre-election phase, as the JHU appears to have stepped up its campaign to pass the 'anti-conversion bill', and to vilify Christians and attack their places of worship.

4. Demographics

Sri Lanka's population is just in excess of 20 million.² The Sinhalese ethnic community constitutes the majority, at approximately 74 per cent, and dominates the government; 8.5 per cent of the population is Sri Lankan or Indian Tamil. The Muslim community is regarded as a separate ethnic group, and constitutes 7.6 per cent of the population. The Sinhalese are a majority Buddhist population, while the Tamils are primarily Hindu. Christians, the smallest religious minority at around 6.2 per cent, are found in both main ethnic groups.³ More than 80 per cent of the Christians are thought to be Catholics, with Protestants forming a tiny minority.

5. Legislative provisions for religious freedom

5.1. International law

Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR) on 11 June 1980, and is therefore bound by its provisions. Article 18 provides that:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *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.*
4. *The States Parties to the present Covenant undertake to have respect for 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.*

UN Human Rights Committee General Comment 22 interprets the right to "have or to adopt a religion" as necessarily including the right "to replace one's current religion or belief with another or adopt atheistic views" (clause 5).

Sri Lanka also acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 11 June 1980, and is bound by its provisions. Article 2 guarantees that the rights enunciated in this covenant must be exercised without discrimination as to religion; these include the right to education (article 13).

Sri Lanka ratified the Convention on the Rights of the Child (CRC) on 12 July 1991, and is also bound by its provisions. Article 2 guarantees that the rights enunciated in this covenant

² Central Bank of Sri Lanka, 'Annual Report 2008'.

³ Source: CIA World Factbook (the 2001 census was carried out in only eighteen out of 25 districts in Sri Lanka, and provides only provisional data).

must be exercised without discrimination as to religion; again, these include the right to education (article 28). Article 30 specifically protects the rights of children belonging to religious minorities to profess and practise their religion.

5.2. Constitution

The present constitution, promulgated in 1978, accords Buddhism “the foremost place” and has made it “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)” (article 9). Article 10 provides that, “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”. Article 14(1)(e) guarantees that, “Every citizen is entitled to 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”.

6. Post-conflict situation

In May 2009, the long-running conflict between the government and the LTTE came to an end, marking a highly significant moment in the nation’s history. The end of the conflict generated significant and complex challenges for Sri Lanka, particularly with respect to the need for reconciliation and the establishment of a fair political settlement.

The grave humanitarian situation and restrictions on freedom of movement faced by IDPs, numbering at least 250,000 in camps around Vavuniya, gave major cause for concern, although their rehabilitation is now underway on a significant scale and many have left the camps. Their plight evoked strong feelings among many Tamils, many of whom have had relatives and friends among the IDPS.

The conflict has left its mark on society at large. It had a polarising effect between the Sinhalese and Tamil ethnic groups, increasing the sense of estrangement between these communities. In its last stages and its aftermath, there has been a fresh revival of Sinhala Buddhist nationalism in public discourse. If this should become more entrenched, political and Christian commentators warn that it could pose a growing danger to ethnic and religious groups outside the Sinhala Buddhist national mainstream, including not only Tamils, but also Muslims and Christians (whether Sinhalese or Tamil by ethnicity).

This revival is manifested in several ways, including in the Sinhala- and English-language media and in the overwhelmingly Sinhala Buddhist make-up of the civil task force, which is being established in many villages with the objective of preventing the LTTE from regrouping. Perhaps a greater concern still is the formation of informal, less accountable groupings, centred around temples or village *grama niladhari* committees, for the loosely-defined purpose of defending national security. There are concerns that such ethno-religiously partisan groups could be capable of collectively enforcing restrictions on the activities of those outside the Sinhala Buddhist mainstream.

There has been an increasing number of attacks on Christians at the hands of Buddhist extremists since the end of the conflict, as well as persisting disinformation and discrimination (see sections 7.2 and 7.3). These developments have given some validity to fears of a Sinhala Buddhist nationalist revival.

However, some analysts have stressed that religious tensions were at a low by the end of the conflict, and that an escalation in these tensions would only be in the interest of a small minority. Meanwhile, the Christian vote sought after by the main political parties during the campaigns for presidential elections slated for January 2010 and the subsequent

parliamentary elections, could contribute towards safeguarding Christians from violent attacks.

There is also a strong sense among some sections of the Christian community, that it is uniquely placed for a reconciliation role, given its position straddling the two main ethnic groups.

7. Religiously-motivated violence and discrimination against Christians

Antagonism towards Christians typically centres on accusations of their conversion of Buddhists by illegitimate or unethical means. In rural settings, there may be a conflation of different anti-Christian interests, including vendors of liquor, practitioners of the occult (often doing so for financial remuneration), and Buddhist monks, all of whom see the presence of Christians as a threat, but for different reasons. Violence, threats of violence, and discrimination are common techniques for restricting Christian activities at a local level.

In light of the accusations made over conversions, Christian umbrella groups are aware of the need to encourage churches to behave sensitively and appropriately in their evangelistic activities; the National Council of Churches (NCC) has developed a “Code of Ethics for Mission”, and the National Christian Evangelical Alliance of Sri Lanka (NCEASL) has produced a document, “Good Practices in Ministry”, towards this end.

7.1. Escalating anti-Christian violence

A discernible pattern of religiously-motivated violence against Christians emerged in 2000, and reached a high in 2003-04, although regular incidents of violence have continued to the present. In many cases, attacks are preceded by disinformation campaigns against the victims, and may also be compounded by administrative or localised discrimination. After a lull in the number of violent attacks from late 2008 to early 2009, there has been a marked rise since the end of the conflict, which may be a consequence of the post-conflict rise of triumphalist Buddhist nationalism; this is a trend which must be watched carefully.

Police and judicial responses have varied. In some cases, police have dealt quickly and satisfactorily with incidents; in other cases, they have failed to take any appropriate action, or have released perpetrators of violence without taking any action against them. There is a very clear need to tackle impunity, and to foster consistent police responses to religiously-motivated threats and attacks.

The following incidents of violence and threats against the Christian community in 2009 have been verified by the NCEASL.

- Bulathkohupitiya, Kegalle district, January-March: the Assemblies of God church faced a sustained three-month campaign of verbal abuse and threats by mobs, which made it very difficult for the Christians to meet for worship. The instigators of threats and local Buddhist monks sent a petition to the Ministry of Religious Affairs to protest against the church, and they held meetings in the village to discuss closing it down. The church has continued to face harassment.
- Werahara village, Piliyandala, Colombo district, 8 March: a petition calling for Christians to stop meeting for worship, signed by around 100 persons and two Buddhist monks claiming to be the ‘civil defence committee’, was submitted to local police. The police summoned the owner of the house in which the meetings took place, and asked him, in the presence of two monks, to stop the meeting.
- Udugampola, Gampaha district, 21-22 March: posters were displayed in the town, promoting false allegations against the Calvary Prayer Centre, including that they

were involved in kidnapping youth. The pastor requested protection from police, who dispatched a patrol to deter any possible violence.

- Makandura village, Kurunegala district, 25 March: an influential former government employee named Mahinda carried out a knife attack on the associate pastor and another member of the Vineyard Community Church. This was the latest in a series of attacks carried out by Mahinda, and the pastor of the church suspected that his ulterior motive was to remove potential opposition from the church to turning his home into a public house with a liquor licence. Mahinda also disseminated a petition against the church, which used typical Buddhist nationalist rhetoric and allegations, such as the alleged conversion of Buddhists. Police filed a case against Mahinda and remanded him in custody, but he was released on bail.
- Pepiliyana, Dehiwela, Colombo district, 5 April: an unidentified gang forcibly entered the Methodist church and stole a number of items, including church records. This led to suspicions that the incident was not a simple robbery. The Boralasgamuwa police investigated the case, but it was left unresolved.
- Nagoda, Kalutara district, 30 April: a mob attacked a group of Christians from a drug rehabilitation centre, as they walked to the police station to register a case about an assault on two Christians from the centre earlier that day. An offer of protection made by the police superintendent in Galle was not fulfilled, and a mob attacked the centre itself that evening. No police action is known to have been taken against the assailants, and the local divisional secretary has since refused to provide the statutory monthly ratification for the activities of the rehabilitation centre.
- Kommatalamaduru and Amanthaveli, Vakari, Batticaloa district, April: Hindu villagers threatened Christians from several congregations, including a pastoral worker visiting Christian families, resulting in difficulties for them to gather for worship.
- Weeraketiya village, Hambanthota district, April: an influential occult practitioner and two monks issued threats to the pastor in this village, who had previously faced significant antagonism, trying to eject him from the village. He was forced to leave his house in order to protect his landlord, who had been threatened that the house would be destroyed. Police responded well to this situation, and encouraged the pastor to file a police entry against the main aggressor.
- Minneriya, Polonnaruwa district, June: two Catholic statues at the Ayurveda junction were smashed.
- Mannar, 7 June: a mob entered a church during a service of dedication for the building and destroyed the structure, throwing bricks and roofing sheets onto an adjacent piece of land. Seven people were arrested for the attack, and the case is continuing. In the meantime, Christians have continued to face threats and intimidation.
- Polonnaruwa, 23 June: the pastor of the Foursquare Gospel Church was driving home at approximately 10.30pm, when he was stopped by a group of men on motorcycles, calling out, "Pastor, pastor!" When he stopped to roll down the window, the men attacked him with knives, attempting to cut his neck. The pastor sustained injuries to his arm, and the car was also damaged. Police in Polonnaruwa inquired into the case and provided the pastor with an escort. No further action has been taken.
- Dickwella, Matara district, 5 July: a mob comprising around 100 people and 50 Buddhist monks forcibly entered the premises of the Assemblies of God church, causing damage to property in the process. They failed to enter the church itself, but posted threats on the external walls to the effect that any Christian worship here was prohibited. One poster said, "If you destroy this notice, you will be destroyed". Threats on the wall stated that praying was banned, and Christianity prohibited. A complaint was lodged with the Dickwella police, but no action is known to have been taken. The church has continued to face harassment, and was attacked again on 7 November.

- Kirindiwela, Gampaha district, 6-14 July: on 6 July, a young Christian invited his pastor and friends to pray for his home, which was under construction. A mob of around 30 people entered forcibly and demanded they stop praying and threatened to kill the house owner. Police did not register this case. On 8 July, a shed storing building materials near the house under construction was forcibly entered, and tools were stolen. A traditional Buddhist message, “Budhu Saranai”, was written on the walls of the shed and the house, in black tar. On 14 July, the partially-constructed house was torn down by a mob, and damaged beyond repair. Further attempts to register a case with the police were unsuccessful, until two weeks later, with the intervention of a lawyer. The attacks were accompanied by a local disinformation campaign, claiming that the building under construction was a church, and, initially, even local lawyers refused to provide legal services. Eight suspects were produced in court on 28 July, but released on bail.
- Pannaladi, Norachcholia, Puttalam district, 29 July: the temporary meeting hall of the Assemblies of God church was burnt down by unidentified assailants; the church building had been destroyed in a previous arson attack on 17 August 2008. The police investigated, but did not make any arrests.
- Radawana, Gampaha district, late July (precise date unknown): the pastor of the Foursquare Gospel Church and his wife were verbally abused and threatened by a mob comprising around 50 people, when visiting a church member. The mob shouted, “We will not tolerate any Christian activity to continue in this village”, struck the pastor with a rod and threw a bucket of cow dung over him. Police arrived two hours after being called and arrested three people, who were later released.
- Mawathawewa, Eppawela, Anuradhapura district, 25 October: a mob of around 200 people from nearby Nallamudawa village, led by a Buddhist monk, attacked a newly-built Methodist community centre. Using rods, they destroyed the roof and damaged windows and doors, before the police arrived and dispersed the assailants. The community centre had been built with full official approval and the support of local villagers. Police provided security after the attack, but are not known to have made any arrests.
- Kowatte, Colombo district, 5 November: a mob of around 200 people attacked the ‘Jesus Never Fails’ prayer centre, throwing stones at the building, accusing the pastor of “unethical conversions” and threatening to kill him. The attack is believed to have been a reaction to an open-air prayer event on 31 October; it was attended by two sick women, who had received prayer but later died in hospital of natural causes. Police came to the scene, but were unable to prevent damage to the building, and made no arrests. The JHU parliamentarian, the Venerable Athureliya Rathana Thero, denied any JHU involvement in the attack in a speech the following day, but called for the arrest of the pastor and the implementation of the ‘anti-conversion bill’.

7.2. Discrimination

Institutional and localised forms of discrimination against Christians are widespread.

Land regulations and entitlements are areas in which there exists a significant degree of discrimination against religious minorities. Muslims face the threat of displacement in the east of the island, where large areas around locations of Buddhist interest have been designated as archaeological sites and cordoned off. A common problem for Christians is the lack of clarity over whether permission is required for places of worship. In September 2008, the Ministry of Religious Affairs was instructed by the executive to draft legislation whereby the future construction of any place of worship is subject to the prior permission of the ministry. The current situation is one of legal ambiguity, in which churches are left

vulnerable to administrative harassment, particularly in situations where they have been targeted by violent antagonists and where there is local opposition to the church.

Another area of discrimination is that which affects the entry of Christians into government schools: there have been several cases of individual schools refusing admission to Protestants on the grounds of their religion, and of Christian children facing ridicule from teachers or being compelled to engage in Buddhist acts of worship.

Religious tensions or anti-Christian attacks may also precipitate localised instances of discrimination and ostracism. In Chilaw and Puttalam districts, some Buddhist monks have attempted to restrict the access of Christians to burial grounds to which they are legally entitled. In other cases, church members struggle to gain daily labour, are excluded from traditional 'death donation' schemes, or suffer similar forms of social ostracism.

7.3. Disinformation

Disinformation and hate propaganda have been widely used by extremist Buddhist nationalists to incite religious hatred and violence against Christians. Among the most inflammatory allegations in recent years was the claim that Christians were responsible for the death of the high-profile Buddhist monk, the Venerable Gangodawila Soma Thero, in St Petersburg, Russia, in December 2003.

In the aftermath of the conflict, as part of the broader growth of resentment against NGOs or any institutions with foreign links, and a significant degree of self-censorship within the press, Christian activities are subject to campaigns of disinformation, which typically casts suspicion on their loyalty as citizens of Sri Lanka. Any groups outside the Sinhala Buddhist national mainstream, and any groups with foreign links, are susceptible to accusations of supporting the LTTE, and Christians are no exception. Numerous articles in the English and vernacular media have alleged that the Christian Church and Western powers allied themselves with the LTTE and its now-deceased leader, Prabhakaran.

The disinformation also concerns the portrayal of Christian activities, particularly religious propagation, as unethical and anti-national. In particular, newer churches are sometimes described as NGOs, a term with disparaging connotations in Sri Lanka.

A government commission investigating NGO activities in the early 1990s, which was chaired by a retired judge, came to focus on churches on the pretext of investigating NGOs. This fuelled disinformation and allegations in the press.

8. Anti-conversion bill

Legislation to prohibit "forcible" or "unethical" conversions was first proposed by the Minister of Hindu Cultural Affairs after he made a visit to the Indian state of Tamil Nadu, in November 2002. At that time, Tamil Nadu was one of five states in India which had introduced 'anti-conversion legislation'.⁴ The government's Freedom of Religion Bill appeared to go further than any other proposal in banning conversions altogether, but since 2004 the government has not attempted to introduce the bill to parliament, and it appears to have been shelved.

However, in 2004, the JHU put forward a private member's bill, entitled "A Bill on Prohibition of Forcible Conversions of Religion".⁵ Once the bill was gazetted, its opponents were given seven days to initiate a legal challenge on constitutional grounds. Over twenty

⁴ The "Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance, 2002" was formally repealed in 2006.

⁵ See the appendix to this briefing for the text of the current draft of this bill.

organisations and individuals, including the NCC, NCEASL, the Centre for Police Alternatives (CPA) and the Catholic bishop of Chilaw, petitioned the Supreme Court against the bill, on the grounds that it was a violation of Article 10 of the constitution. On 10 August 2004, the Supreme Court ruled that sections 3 and 4(b) of the bill were unconstitutional, and made several other recommendations. The JHU was given two options by the court: either it could amend the bill in accordance with the ruling and seek a simple majority in parliament, or they could present the bill in its original form, which would require a two-thirds majority and a referendum. The JHU opted to amend the bill, which must now be brought to parliament for a third, final reading and a vote. Despite having been expected on several occasions, this has not yet taken place.

The current weak political state of the JHU suggests two things for the future of the proposed 'anti-conversion legislation'. Firstly, in the short-term, since it was a key campaign pledge for the party, its successful implementation is a matter of political survival, and therefore a final attempt to pass the bill into law is likely before the 2010 parliamentary elections. No date has yet been set for the final reading of the bill, and it is not clear whether or not it would receive the necessary support of President Rajapakse's Sri Lanka Freedom Party. Secondly, in the longer-term, if this attempt at passing the law is averted, and if the JHU performs as poorly as predicted during the next parliamentary elections, then 'anti-conversion legislation' may feature less prominently on the political agenda of Sri Lanka, at least for a time. However, any MP could propose an identical or similar private member's bill, with the backing of the JHU or another group.

The bill is backed by the All Ceylon Buddhist Congress (ACBC) which, on 6 January 2009, launched a long-awaited report by a commission it had appointed in 2006, to bolster the case for such legislation. The report used inflammatory language to claim the existence of a plot to undermine Buddhism, and alleged that Christian groups were engaged not only in unethical conversions, but also in support of terrorism. It advocated that the government should pass legislation against conversions, as formulated by Buddhist and Hindu organisations. The launch of the report coincided with fresh efforts to pass the anti-conversion bill, but it was not brought to a vote in February 2008, as had been expected.

8.1. Main areas of concern

The main areas of concern over the JHU private member's bill are as follows:

1. The very existence of an 'anti-conversion law' would have a damaging normative effect; even if nobody were convicted under the law, it would lend legitimacy to threats and intimidation of religious minorities, and worsen religious tensions. The UN Special Rapporteur on freedom of religion or belief has expressed the view that the "very principle" of such a bill "could engender widespread persecution of certain religious minorities". During this post-conflict period, when Sinhala Buddhist nationalism is undergoing resurgence, an 'anti-conversion law' could be expected to fuel prejudices against religious minorities.
2. The necessity for an 'anti-conversion law' is highly questionable: the ostensible "serious threat from forcible conversions", which is described in the preamble of the bill, could be addressed under existing provisions in Sri Lankan law, such as the Penal Code and the Prevention of Frauds Ordinance. Legislation targeted specifically at religious conversions is therefore unnecessary.
3. In its current form, the bill seeks to impose illegitimate and ill-defined restrictions on the right to freedom of religion and belief, as defined in international law and the constitution. International law protects the right to change religion: UN Human Rights Committee General Comment 22 interprets the right to "have or to adopt" a

religion as necessarily including the right “to replace one’s current religion or belief with another or adopt atheistic views” (clause 5), and the bill would restrict this right. The conditions under which the conversion of another person would be made illegal are still defined too vaguely and are open to abuse. “Allurement” is defined as “the offer of any temptation” in the form of “a gift or gratification”, “a grant of any material benefit” or “the grant of employment”; there is clear potential for charitable or educational services to be construed as illegitimate, as the recent ACBC report implied. “Force” is defined as “a show of force”, including “a threat or harm or injury or any kind of religious disgrace or condemnation”. “Fraudulent” is defined as “any wilful representation or any other fraudulent contrivance”.

4. The bill proposes grossly disproportionate penalties for the commission of an offence: imprisonment for up to a five-year term, and a fine up to 150,000 rupees (approximately £800/€885/\$1300). These penalties exceed those for rioting armed with a deadly weapon.

8.2. Alternatives proposed by Christians

Several Christian groups have recognised a need to address Buddhist and Hindu concerns about methods of proselytisation employed by some Christians. They have rejected ‘anti-conversion legislation’ in its current form, on the basis that it impairs the right to freedom of religion.

However, the three major Christian representative bodies, the CBC, NCC and NCEASL, have offered two sets of proposals for alternative ways of addressing these concerns. The first is to establish a mechanism for discussing and tackling grievances or allegations of illegitimate and insensitive behaviour, through inter-faith dialogue and cooperation. The second main proposal has been to amend the text of the proposed legislation, including for example an equal penalty for giving false witness. However, discussions in this direction did not reach a mutually acceptable compromise.

9. Appendix: Bill on Prohibition of Forcible Conversion of Religion

BILL NO: L.D.O/INC./7/2004

AN ACT TO PROVIDE MEASURES TO PREVENT THE CONVERSION OF PERSONS BELONGING TO ONE RELIGION TO ANOTHER RELIGION BY THE USE OF FORCE, ALLUREMENT OR BY FRAUDULENT MEANS; AND PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS, Buddhism is the religion professed and practiced by the majority of people of Sri Lanka. Buddhism was introduced to Sri Lanka by the great Tathagatha, the Sambuddha during his visit to Mahiyangana, in Sri Lanka in the Eight Month after he had attained Buddhahood and it come to complete realisation after the arrival of Arahat Mahinda Thero in the 3rd Century B.C.:

AND WHEREAS the state has a duty to protect and foster the Buddha Sasana whilst assuring to all other religions the rights guaranteed by Article 10 and 14(1)(e) of the Constitution of the Republic of the Democratic Socialist Republic Sri Lanka:

AND WHEREAS the both Buddhists and other religious [sic] are now faced with a serious threat from forcible conversions and prosilytising [sic] by force, allurement or by fraudulent means:

AND WHEREAS the Maha Sanga and other religious leaders have realized the need to protect, promote and foster the religious harmony historically enjoyed by the people of all religions in Sri Lanka:

NOW THEREFORE, BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Prohibition of Forcible Conversion of Religion Act No. ___ of 2008.
2. (1) No person shall, either directly or indirectly, convert or attempt to convert any person professing one religion to another religion by the use of force, by allurement or by any fraudulent means.
(2) No person shall aid or abet the commission of any act prohibited by subsection (1).
3. Whoever contravenes the provisions of section 2 shall be guilty of an offence and on conviction after summary trial before a Magistrate be liable to be punished with imprisonment for a term not exceeding five years and also be liable to a fine not exceeding rupees one hundred and fifty thousand:

Provided that whoever commits any of the acts specified in section 2 in relation to a minor, a woman or a person referred to in the Schedule hereto, shall on conviction after summary trial before a Magistrate be punished with imprisonment for a term not exceeding seven years and also be liable to a fine not exceeding rupees five hundred thousand.

4. Proceedings for the prosecution of an offence under this Act shall be instituted in terms of Section 136 of the Code of Criminal Procedure Act, No. 15 of 1979, upon

a complaint made to the Police. The prior written sanction of the Attorney General should be obtained for the institution of proceedings under the Act.

5. In the event of any inconsistency between the Sinhala and Tamil text of this Act, the Sinhala text shall prevail.

6. In this Act, unless the context otherwise requires –

“allurement” means the offer of any temptation for the purpose of converting a person professing one religion to another religion, in the form of –

- (i) any gift or gratification whether in cash or kind;
- (ii) a grant of any material benefit, whether monetary or otherwise;
- (iii) the grant of employment or grant of promotion in any employment presently engaged in;

“convert” means to make one person to renounce one religion and profess another religion;

“force” means a show of force and includes a threat of harm or injury of any kind of threat of religious disgrace or condemnation of any religion or religious faith for the purpose of converting a person from one religion to another religion;

“fraudulent” means any wilful misinterpretation or any other fraudulent contrivance used for the purpose of converting a person from one religion to another religion;

“minor” means a person under eighteen years of age.

SCHEDULE

1. Persons classified as samurdi beneficiaries
2. Prison inmates
3. Inmates of rehabilitation centres
4. Inmates of detention centres
5. Physically or mentally disabled persons
6. Employees of an organization
7. Members of the armed forces or police force
8. Students
9. Inmates of hospitals and or places of healing
10. Inmates of refugee camps