

Universal Periodic Review – 14th Session
CSW – Stakeholder Submission
SRI LANKA

Introduction

1. Christian Solidarity Worldwide (CSW), a human rights NGO specialising in freedom of religion or belief (FORB) for all people, wishes to draw attention to Sri Lanka's domestic human rights situation over the period 2008-2012 with respect to its international obligations.
2. CSW wishes to focus specifically on the right to FORB. However, both in general terms and in the specific context of Sri Lanka, this particular right intersects with numerous other rights, and is affected by the wider culture of impunity and fear, and the restrictive climate in which civil society organisations operate.

Scope of International Obligations

3. Sri Lanka is a state party to several international human rights treaties. Among others, it has acceded to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of Racial Discrimination (ICERD) and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and has ratified the Convention on the Elimination of Discrimination against Women (CEDAW).

Constitutional and Legislative Framework

4. Article 9 of the constitution accords Buddhism “the foremost place” and has made it “the duty of State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)”. This has, at times, proved a difficult balance to strike, and the question as to the nature, extent and limitations of the supremacy of Buddhism continues to be relevant.
5. 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”. In Supreme Court Determination No. 2/2001, it was stated that this “does not guarantee a fundamental right to ‘propagate’ religion as in Article 25(1) of the Indian Constitution”.
6. Within the Christian community, there are three main apex bodies: the Catholic Church, the National Christian Council (NCC) and the National Christian Evangelical Alliance of Sri Lanka (NCEASL). The Catholic Church and NCC are recognised by the government in practice, whereas the NCEASL is not. Although there is no formal system for the legal recognition of these umbrella bodies, a distinction is increasingly being made between those whose members are viewed by the state as legitimate, and those which are not. This is despite the fact that several NCEASL member churches have been incorporated by acts of parliament, such as the Assemblies of God and the Church of the Foursquare Gospel, and have legal status accordingly. It creates a situation whereby state actors are able to determine the legitimacy or illegitimacy of religious institutions or activities on the arbitrary basis of whether or not they come under the authority of a recognised body.

7. In practice, churches belonging to denominations which are members of NCEASL face increasing difficulties in obtaining permission for their activities, due to the discriminatory exercise of this arbitrary authority against them.
8. The Executive issued a circular in September 2008, which instructed the Ministry of Buddha Sasana and Religious Affairs to draft legislation requiring that the future construction of places of worship be made subject to permission from the Ministry. The Ministry circulated this document to local government bodies, instructing them to seek prior approval from the Ministry before giving approval for applications to construct places of worship.
9. The 2008 circular exempted “traditional religions” from fulfilling certain requirements, but did not define which religions are included in this category. This awarded local authorities and Ministry the freedom to determine the stringency of the application process, and to grant or deny permission, based on their own arbitrary determination of the legitimacy of each religious group.
10. In 2011, a new circular was issued by the Ministry (reference BSRA/BRA/03/Con./Gen/2011), stipulating in addition that permission would be required for conducting religious activities. According to an unofficial translation of the circular, “any construction of a place of worship, continuation of a place of worship or any activity conducted by a religious leader in the guise of religion is deemed illegal unless it has been duly approved by the Ministry”. The circular gives instructions for police to intervene to prevent unapproved construction or activity, and requires that the application should include observations by the regional divisional secretary and chair of the provincial council, paying special attention to the views of members of other religious communities and the preservation of inter-communal peace and harmony.
11. Although inter-communal harmony is important, the circular prioritises this over the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly.
12. These circulars do not have the status of law. In practice, they have provided tools for local officials to cause harassment to certain religious groups. They provide a loophole whereby the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association can be abrogated for affiliates of minority religions if the competent authorities are prejudiced against them.
13. In the context of Sri Lanka, where there is a strong Sinhala Buddhist nationalist movement which is opposed to certain religious minorities, this amounts to a significant obstruction to the universal enjoyment of these rights.
14. Churches belonging to NCEASL in particular have experienced particular difficulties in obtaining permission for constructing places of worship. In addition, the circular has been applied retrospectively in some cases.
15. In May 2010, Prime Minister D M Jayaratne (also the Minister for Buddha Sasana and Religious Affairs) stated that five acts of Parliament would be introduced for the protection of Buddhism, which would include measures to prevent forced religious conversion. With the end of the conflict a year earlier, there was a popular expectation that the government should complement its victory with measures to strengthen Sinhalese culture, including the position of Buddhism, throughout the country.

16. **Recommendations: Sri Lanka should ensure that all religious denominations which act in a lawful and peaceful manner are granted equal treatment under the law, and should ensure that all citizens are able to enjoy the right to FORB irrespective of their religious affiliation.**
17. **Sri Lanka should either set out through legislation a clear framework for the construction of places of worship and the conduct of religious activities, which robustly enshrines the equal treatment of all religious communities, or it should withdraw the 2008 and 2011 circulars and notify local officials accordingly.**
18. **Sri Lanka should desist from introducing restrictions on conversion, the propagation of religion, or any other aspect of the right to FORB, whether in the announced package of measures for the protection of Buddhism or in any other form.**
19. **Sri Lanka should establish a statutory inter-religious council with representation from all religious communities, with a remit to investigate complaints against particular religious activities, to promote inter-religious harmony, and to make recommendations to the government.**

Interaction with International Human Rights Mechanisms

20. A visit organised for the Special Rapporteur on the right to freedom of opinion and expression in 2006 was postponed and is yet to be rescheduled. The Special Rapporteurs on the independence of judges and lawyers, on torture, on human rights defenders, on enforced, summary or arbitrary executions, and on freedom of association and assembly, and the Independent Expert on minority issues and the Working Group on enforced or involuntary disappearances have all requested invitations to visit.
21. **Recommendation: Sri Lanka should issue a standing invitation to all Special Procedures mandates, including accepting all outstanding requests from Special Procedures.**

Impact of Wider Human Rights Concerns

22. In May 2009, the long-running conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE) came to an end. Both sides have been subject to strong and sustained criticism from the international community, and particularly to calls for accountability over events during the final stages of the war, which resulted in large-scale civilian casualties.
23. In May 2010, the President established the Lessons Learnt and Reconciliation Commission (LLRC) after refusing entry into the country for the UN Secretary General's panel of experts on accountability in Sri Lanka, to inquire into events between February 2002 and May 2009. The LLRC made public its report on 16 December 2011, although it was only published in English, which limited its potential readership within Sri Lanka. The LLRC has been heavily criticised for the limited scope of its inquiry and for its failure to address the question of accountability. A number of its conclusions were welcomed, including by the Tamil National Alliance (TNA) political party, but there has been little evidence of their implementation.
24. The period since the end of the war has been characterised by a state-sponsored Sinhala Buddhist triumphalism, the weakening of democratic institutions, the constriction of civil and political rights (including particularly freedom of opinion and expression, and freedom of peaceful assembly and

association), a shrinking space for civil society, and a widespread climate of fear among human rights defenders and journalists.

25. Abductions or forcible disappearances have contributed both to the climate of fear among those holding the state to account or promoting human rights, and to the increasingly widespread practice of self-censorship. Forcible disappearances occurred frequently during the conflict itself, and have continued since. Those targeted have varied, and include political activists, journalists, ex-LTTE cadre who had been detained and released, and those with grievances against the security forces. According to civil society sources within Sri Lanka, 29 abductions are known to have taken place in February and March 2012 alone, most of them in Colombo or the Northern Province. Some of those abducted have been found dead; others have simply disappeared. There have been repeated, strong and credible allegations that many abductions have occurred with the collusion of the government or security forces.
26. Numerous human rights defenders and journalists have also been detained or harassed by security forces during the period since Sri Lanka's previous UPR, usually with impunity.
27. In the Northern Province, although most of the 300,000 internally displaced persons (IDPs) have now left the camps in which they were being held, their current circumstances remain very poor. Many still do not have permanent housing, and the allocation of land has been haphazard. There is a strong and entrenched military presence throughout the Northern Province, which exercises considerable control over humanitarian operations and the access of civilians to livelihood. This contributes to a sense of aggravation among many Tamils in the region, and there are widespread ongoing allegations of abuse by members of the military.
28. The government interpreted the end of the conflict as a decisive victory over terrorism, and has paid little attention to the underlying issues and to the legitimate aspirations of the Tamil community. Accordingly, it has appropriated and made effective usage of Sinhalese Buddhist triumphalism in its official discourse about the war.
29. Although threats to FORB in Sri Lanka are less egregious than other issues confronting the country at present, the promotion of Sinhala Buddhism as culturally normative leads to the creation of a narrow ideal of Sri Lankan citizenship, to the detriment of an inclusive national identity involving all ethnic and religious minorities. There is a clear mandate for promoting inclusive citizenship: in a 2004 Supreme Court ruling against a proposed constitutional amendment which would have established Buddhism as the state religion, Justice Tilakawardane stated that, "The essence of being a secular state, as Sri Lanka is the recognition and preservation of the different types of people, with diverse language and different belief, and placing them together so as to form a whole and united nation".¹
30. Although there is no civilian Buddhist population in the Northern Province, the government has erected a large number of Buddhist monuments or temples, many of them commemorating victory in the war and many accompanied by plaques only in the Sinhalese language. These are viewed with resentment by the local Tamil population, and the Buddhist religious imagery is interpreted as symbolising the imposition of an alien culture, which is closely associated with the overwhelmingly Sinhalese military. This is a contributory factor to the ongoing sense of alienation between the two ethnic groups.
31. **Recommendations: Sri Lanka should implement the constructive recommendations of the LLRC report.**

¹ Statement by Justice Shiranee Tilakawardane, attached to Supreme Court Determination No. 32/2004.

32. **Sri Lanka should make the LLRC report available in both Sinhala and Tamil languages, and ensure that all citizens have access to it.**
33. **Sri Lanka should make a strong and concerted effort to end abductions or forcible disappearances, to ensure that perpetrators are brought to justice, and to foster a climate free from fear and conducive to open debate.**
34. **Sri Lanka should take significant steps to bring an end to the climate of impunity within the state.**
35. **Sri Lanka should ensure the swift and thorough rehabilitation of all IDPs still without proper homes, allocate land in a manner that is fair and equitable, and ensure the access of all IDPs to a livelihood.**
36. **Sri Lanka should ensure that the process of promoting national reconciliation should take into account how to protect Sri Lanka's ethnic and religious pluralism.**

Freedom of Thought, Conscience and Religion

37. The right to freedom of thought, conscience and religion is closely related to other rights, including the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.
38. As discussed in detail in paragraphs 6-14, the construction of religious buildings and conduct of religious activities are subject to two non-legislative circulars, one issued by the Executive and the other by the Ministry of Buddha Sasana and Religious Affairs. These circulars grant considerable discretionary authority to the Ministry and to local officials to determine on an arbitrary basis the legitimacy or illegitimacy of religious activities, and they are implemented in a manner which is discriminatory against evangelical Christian churches.
39. The state-sponsored imposition of Sinhalese Buddhist symbolism in the Northern Province, including the construction of monuments and temples, is damaging for the establishment of ethnic reconciliation. It is also at odds with the previously cited requirement in the 2011 circular issued by the Ministry of Buddha Sasana and Religious Affairs that special attention must be paid to the "ideas of the people in the region belonging to other religious beliefs giving first preference to the protection and advancement of peaceful, harmonious and religious co-existence" (unofficial translation) before granting permission to the construction of religious sites. This inconsistency points to the strong government preference for the promotion of Buddhism, as a symbol of Sinhalese culture.
40. Muslims are regarded as an ethnic grouping in Sri Lanka, rather than a religious one. Most are Tamil-speaking, and the largest concentrations of Muslims are in the east of the country, where they were caught up in the actions of both sides during the conflict. There are concerns among Muslim communities affected by the war that they have had a limited voice in discussions over a post-war settlement, including issues of land allocation.
41. Targeted violence against Christian churches, which was a severe problem in 2003-04, has abated, although periodic episodes continue to occur, and impunity or the slow delivery of justice is common.

42. There have been several recent cases of schools refusing admission to Protestant children on the grounds of religion. Although public schools require children to receive education about their own religion, very few schools have provision for religious education in Christianity, and there have been numerous cases of Christian children facing ridicule from teachers in the context of Buddhist or Hindu education, or being compelled to engage in Buddhist acts of worship.
43. **Recommendations: Sri Lanka should ensure that all religious denominations which act in a lawful and peaceful manner are granted equal treatment under the law.**
44. **Sri Lanka should ensure that the perpetrators of all acts of targeted violence against religious communities are brought to justice, and should be commended for training police officers about protecting the right to FORB.**
45. **Sri Lanka should ensure that representatives of Muslim communities in the Eastern Province are included in post-war settlement discussions which pertain to these communities.**
46. **Sri Lanka should provide for children belonging to minority religions to receive religious education from volunteer teachers or local places of worship, and should foster an environment in schools whereby children belonging to minority religions are treated equally and fairly.**