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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Sri Lanka

Informe del Relator Especial sobre la libertad de religión o de creencias* **

Resumen

El Relator Especial sobre la libertad de religión o de creencias, Ahmed Shaheed, realizó una visita a Sri Lanka del 15 al 26 de agosto de 2019. En su informe, el Relator Especial presenta sus observaciones sobre el contexto general del país y la cooperación de este con los mecanismos internacionales de derechos humanos. Identifica en particular los principales obstáculos al derecho a la libertad de religión o de creencias y analiza las causas fundamentales de la intolerancia religiosa y las tensiones asociadas a ella en Sri Lanka. Por último, formula recomendaciones para superar los obstáculos puestos de relieve.

* Este informe se presentó con retraso para incluir en él la información más reciente.
** El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.

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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 from 15 to 26 August 2019, at the invitation of the Government of Sri Lanka. This was the second visit by a Special Rapporteur on freedom of religion or belief, after the late Asma Jahangir had undertaken 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 Parliament; ministers at the Ministry of Foreign Affairs, Ministry of Buddha Sasana and Wayamba Development, and Ministry of Rehabilitation, Resettlement and Hindu Religious Affairs; the Attorney General; the Secretary for the Ministry of Tourism Development, Wildlife and Christian Religious Affairs; senior officials from the Ministry of Post, Postal Services and Muslim Religious Affairs; and the Director General of the Department of Archaeology. He also attended a government stakeholder meeting chaired by the Secretary for the Ministry of Foreign Affairs that included senior representatives of relevant ministries and agencies. Furthermore, the Special Rapporteur met with the then leader of the opposition, in addition to the Chair of the Office for National Unity and Reconciliation and the Chair of the Human Rights Commission of Sri Lanka.

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

II. General context

A. Religious and ethnic demography

4. According to the census from 2012,[1] Buddhism is the largest religion in Sri Lanka, with Buddhists comprising 70.1 per cent of the population, while Hindus, Muslims, Christians and others account for 12.6 per cent, 9.7 per cent, 6.2 per cent and 1.4 per cent, respectively. The census indicates that most Muslims are Sunni while Christians are mainly Roman Catholic. Smaller religious communities are Baha'is, Shias (Bohra community), Sufis, Ahmadis, Jehovah's Witnesses, Methodists, Pentecostals and Evangelicals. There are also Veddas, an indigenous community, who practise traditional beliefs.

5. The majority of the population in Sri Lanka are Sinhalese (74.9 per cent), who are predominantly Buddhist, with a small number belonging to the minority Christian community. The Tamils (15.3 per cent) are mainly Hindus, with a small number professing Christianity. Most of the Moors (9.3 per cent) are Muslims. Other ethnic groups, namely Burgher, Malay, Sri Lanka Chetty and Bharatha, form 0.5 per cent of the population.

[1] See www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/SriLanka.pdf.

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

6. Buddhism, Islam, Hinduism and Christianity are recognized 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 or her choice. Article 14 (1) (e) further protects the freedom of every citizen, either by himself or herself, or in association with others, and either in public or in private, to manifest his or her religion or belief in worship, observance, practice and teaching. Moreover, article 12 guarantees everyone's right to equality and prohibits discrimination against any citizen or anyone on the grounds of race, religion, language, caste, sex, political opinion or place of birth.

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. In article 14 (1) (a), the Constitution provides for every citizen freedom of speech and expression, including publication; in article 14 (1) (b), freedom of peaceful assembly; and in article 14 (1) (c) freedom of association. Article 15 lays out the restrictions to the exercise and operation of the fundamental rights 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 (Ordinance No. 2 of 1883) also regulates certain offences related to religion. Articles 290 and 290A relate to injuring or defiling, or any 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 relates to uttering words with deliberate intent to wound religious feelings, and article 291B refers to deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs. Article 292 refers to trespassing on burial places.

10. Matters related to family law, including divorce, child custody and property inheritance, are normally resolved according to either the customary law, such as Muslim law, Kandyan law or 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 Buddha Sasana, Cultural and Religious Affairs was formed to oversee all religious and cultural affairs in the country. Consequently, all previous individual ministries responsible for Buddhist, Christian, Hindu and Muslim religious affairs were integrated under one ministry.[2]

C. Engagement with international human rights mechanisms

12. Sri Lanka has ratified all core human rights treaties and is a State party to several optional protocols.[3] It has also accepted some individual complaint procedures and inquiry procedures of the treaty bodies.[4] Apart from fulfilling reporting obligations to treaty bodies[5] and to the Human Rights Council for the universal periodic review, Sri Lanka engaged actively with the Council when it co-sponsored Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, through 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

[2] Gazette of the Democratic Socialist Republic of Sri Lanka, No. 2153/12.

[3] For the ratification status of Sri Lanka for these treaties, see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN.

[4] Ibid.

[5] For the reporting status of Sri Lanka, see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=LKA&Lang=EN.

comprises inclusiveness, justice and respect for human rights to all of the people of Sri Lanka.

13. Following the adoption of Human Rights Council resolution 30/1, Sri Lanka also extended a standing invitation[6] to special procedures on 17 December 2015. Since then, 10 mandate holders have conducted country visits[7] to Sri Lanka to assess the human rights situation in the country.

D. Developments since 2015

14. In May 2015, the Government introduced the nineteenth amendment to the Constitution of Sri Lanka. The amendment established the Constitutional Council, which would exercise certain executive powers previously held by the Executive Presidency, and which would be permitted to set up independent commissions. Furthermore, the Government established the Office on Missing Persons in 2016 and the Office for Reparations in 2018, in line with Human Rights Council resolution 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 principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

15. The Special Rapporteur received reports that various initiatives to promote reconciliation and peaceful coexistence were under way in the country. He noted the establishment of the Select Committee of Parliament on 4 September 2018 to study and report on "communal and religious harmony" in Sri Lanka (CCPR/C/LKA/6, para. 123). By August 2019, the Committee had identified existing challenges to religious harmony, provided a list of recommendations to overcome some of those challenges[8] and drawn up an implementation plan for the proposed recommendations. Moreover, at the Special All-Faith and All-Party Conference in April 2019, the Committee launched the Diyawanna Declaration, which, among other recommendations, stated that there was "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".[9]

16. The Special Rapporteur was also encouraged by the programmes and activities undertaken by the Office for National Unity and Reconciliation.[10] In 2017, the Office published the Cabinet-approved National Policy on Reconciliation and Coexistence in Sri Lanka, which provides stakeholders working on reconciliation and coexistence with a guiding framework to achieve coherence in peace and national unity initiatives. It has also been reported that the Office conducts programmes, targeting and training students, to promote religious coexistence and to identify geographic locations with particular vulnerabilities to interreligious violence, as well as interactive training in conflict transformation in these areas (see A/HRC/WG.6/28/LKA/1). In addition, district reconciliation committees[11] were established to tackle inter-ethnic and interreligious tensions through conflict resolution, mediation and amicable settlement. Furthermore, the Office recently launched a project known as "Heal the past, build the future", which is aimed at bringing together religious leaders, young people, government representatives and civil society actors to raise awareness about how to transform conflict.

[6] In the context of the present report, the term "standing invitation" refers to an open invitation extended by a Government to all thematic special procedures.

[7] See https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=LKA&Lang=en.

[8] See Select Committee of Parliament, "Interim report". Available at www.parliament.lk/uploads/comreports/1554456616036598.pdf#page=51.

[9] See www.parliament.lk/en/committee-news/view/1701.

[10] See http://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=46&Itemid=172&lang=en.

[11] Seehttp://nirmin.gov.lk/web/index.php?option=com_content&view=article&id=118:district-reconciliation-committees-drcs&catid=9:projects&lang=en&Itemid=208.

17. Additionally, the Special Rapporteur learned about a number of district-level interreligious committees that bring together religious leaders and actors from different religions to promote interreligious harmony. These committees are supported by the National Peace Council of Sri Lanka and the Interreligious Forum of Caritas Sri Lanka. Civil society has been active in monitoring and reporting incidents of the violation of freedom of religion or belief.

18. Despite the positive developments mentioned above, tensions among ethnic and religious communities persist and significant gaps exist, particularly in upholding accountability and access to justice, as well as ensuring the non-recurrence of human rights violations. The evolution of the conflict and the implementation of Human Rights Council resolution 30/1 are detailed in various reports of the Office of the United Nations High Commissioner for Human Rights (see A/HRC/30/61, A/HRC/34/20 and A/HRC/37/23)[12] and reports by researchers.[13]

19. During the presidential election held in November 2019, many were concerned by a statement made by the President, Mahinda Rajapaksa, during his election campaign, in which he rejected pledges made by past Governments to the United Nations and stated that he would not honour the country's commitments to the Human Rights Council on post-war accountability and reconciliation.[14] He stated that Sri Lanka ought to look ahead without hanging on to "old allegations" and he questioned the credibility of "foreign investigators".[15] The President's statement left many feeling exasperated that the culture of impunity and repeated cycles of mass violence in Sri Lanka would 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 in 2019 (known as the "Easter bombings"). These attacks killed more than 250 people and injured approximately twice as many and were the deadliest attacks since the end of the internal conflict.

21. The Special Rapporteur observed a serious deficit of trust and an increase in tensions among ethno-religious communities, particularly following the Easter bombings and the 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[16] 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 to freedom of religion or belief include both negative obligations to respect the rights of individuals to

[12] See also the conference room papers on the situation of human rights in Sri Lanka, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx and www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ListReports.aspx.

[13] See, for example, www.veriteresearch.org/wp-content/uploads/2019/03/Verite-Research_UNHRC-Monitor-No4-March-2019.pdf.

[14] See www.thehindu.com/news/international/will-not-honour-un-deal-on-accountability-says-gotabaya/article29693188.ece.

[15] Ibid.

[16] See www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf.

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.

A. 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 Muslim political, religious and civil society leaders, members of the Muslim community have been subjected to widespread stigmatization and racist attacks. Hatred that appears to ride on conspiracy theories about Muslims and racist stereotypes has raised fears among the Muslim community, who fear for their safety and for their future in the country.

24. After the Easter bombings, 2,289 people (mostly Muslims) were reportedly arrested under emergency regulations on suspicion of involvement with terrorism and subsequently charged under the Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979) or the International Covenant on Civil and Political Rights Act (No. 56 of 2007). As of July 2019, 1,655 had been granted bail, 423 had been remanded and 211 were in detention. Families of Muslims arrested under the Prevention of Terrorism Act claimed that they had had a hard time securing legal representation in their areas and that they had undergone significant financial hardship to hire lawyers from other areas. Most Muslim lawyers have been reluctant to appear for those arrestees in fear of reprisals. Moreover, the Special Rapporteur received reports that non-Muslim lawyers often refused 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 those 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 Qur'anic and other Islamic texts that are mainly in Arabic and therefore deemed "radical" material. The army and police also allowed the media to accompany them on the searches, which were allegedly often misreported and sensationalized. 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. During and at the end of Ramadan, the Muslim holy month, in 2019, many mosques had to conduct prayers in a discreet manner in fear of attacks. Hundreds of Muslim-owned places of worship, shops and houses were destroyed in a series of attacks that took place between 12 and 14 May in Kurunegala District and in other areas.[17] 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 Islamic terrorists, this has become the pretext for anti-Muslim groups to intensify incitement to hatred and violence against Muslim communities. The lack of response from the authorities against this violence appears to empower the potential perpetrators to continue with their acts of hate.

28. Such anti-Muslim attacks, however, are not new.[18] In 2013, the Masjid Deenul Islam, a Muslim prayer centre in Grandpass, a suburb of Colombo, was attacked during Maghrib, or sunset prayers, by mobs reportedly led by Buddhist monks. Unable to contain the violence, the police imposed a curfew in the area. Among the most atrocious anti-Muslim violence that has taken place in recent years occurred during the Aluthgama riots in

[17] See communication LKA 3/2019. Communications referenced in the present report are available at https://spcommreports.ohchr.org/TmSearch/Results.

[18] See, for example, www.csw.org.uk/2018/10/24/report/4144/article.htm.

2014,[19] which broke out after the Bodu Bala Sena held a rally that expressed strong anti-Muslim sentiment. Four people were reportedly killed and about 80 were seriously injured. Scores of Muslim-owned homes and shops were set ablaze, looted or destroyed during several days of mob attacks, during which 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 of 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.[20] In November 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.[21] One person was killed, several were injured and over 400 properties, places of worship and vehicles were destroyed in four days of attacks. The authorities made a few arrests but those who were political figures were later released on bail.

30. The Special Rapporteur would like to stress that, as provided by article 2 (1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, "no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief". Each State party to the International Covenant on Civil and Political Rights is required by article 2 (1) 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 Covenant 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 to uphold article 12 of the Constitution, which stresses the right to equality and non-discrimination.

B. Rights to proselytize and to conversion

31. The right to proselytize is not fully protected in Sri Lanka. In its Special Determination No. 19 of 2003, the Supreme Court decided 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 2018, it was held that the right "to propagate" one's religion was not protected by the Constitution.[22] However, the decision of 2003 seems to suggest that it would be acceptable if one were to propagate Buddhism. This would also contradict the Constitution of Sri Lanka, which assures all religions the rights granted by articles 10 and 14 (1) (e).

32. In addition, the right to proselytize is protected as part of the freedom of expression and manifestation of religion or belief under international law. Further, article 6 (d) and (e) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides for the right to write, issue or disseminate relevant publications on one's religion or to teach in places suitable for these purposes. Everyone should be free to share his or her religion or belief with others as long as he or she does not attempt to forcibly convert others. Article 18 (2) of the International Covenant on Civil and Political Rights explicitly bars coercion that would impair one's freedom to have or to adopt a religion or belief of one's choice. In its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, the Human Rights Committee explains that coercion includes the use of threat of physical force or penal sanctions or discriminative

[19] See communication LKA 6/2014.
[20] See communication LKA 3/2017.
[21] See communication LKA 1/2018.
[22] Supreme Court of Sri Lanka, *Manjula and Rosaliya v. Pushpakumara and others*, Fundamental Rights Case No. 241/2014, Decision, 18 July 2018.

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 the "exploitation" of vulnerable persons. The common complaint of both the Bodu Bala Sena and Siva Senai is that Buddhists and Hindus are being converted to Christianity through insults to existing religious practices and material inducement by Western-funded non-governmental organizations in Sri Lanka. They assert that, during the course of the civil war, many such exploitative religious conversions took place in the conflict-affected Eastern and Northern provinces in particular.[23]

34. However, in 2005, the former Special Rapporteur on freedom of religion or belief during her visit found that the allegations of "unethical" conversions had rarely been precise and had largely been overestimated (see E/CN.4/2006/5/Add.3). She also criticized the attempts to criminalize acts that were aimed at converting someone to another religion as an inappropriate response to the religious tensions (ibid.).

C. 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 that prior approval be obtained for the construction of all new places of worship. In the circular it is stated that, with regard to the submission of the documentary evidence required by the Ministry to prove credibility, there are exemptions for "traditional religions", but "traditional religions" is not defined. The authorities have the discretion to grant or deny permission based on their own interpretation or biases.[24]

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, and their prayer meetings and worship activities are also routinely denied permission to take place.[25] Moreover, intimidation and attacks against clergy and church members, and the desecration of Evangelical churches and interference with religious activities are also perpetrated by local villagers and Buddhist monks.[26]

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 upon through the use of the circular, the Supreme Court held that the circular had to be complied with and could be defined as law.[27] In this case, a 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, religious minorities pointed to the fact that the State had allowed Buddhist monks to erect shrines or Buddhist statues in areas where there was little Buddhist presence or when there was strong objection from local residents. There are also competing claims to historic religious sites, such as the Kanniya case[28] and the Neeraviyadi

[23] See www.dailynews.lk/2016/11/04/features/97989.
[24] See www.worldevangelicals.org/un/pdf/HRC39%20Sri%20Lanka.pdf.
[25] Ibid.
[26] See communication LKA 4/2017.
[27] Supreme Court of Sri Lanka, Application No. SCFR 92/2016, 28 June 2017.
[28] See www.eyesrilanka.com/2019/07/21/end-the-row-in-kanniya/.

case[29]. In the Neeraviyadi case, the Mullaitivu District Court ordered an interim injunction against the construction of a disputed Buddha statue in a Tamil Hindu temple. However, the Buddhist community disregarded the judgment and went ahead with the construction work allegedly with the help of the military and police. During the ongoing dispute, Buddhist monks also disrupted *Thai Pongal* rituals at the Hindu temple.

39. Attacks on places of worship and the disruption of prayer sessions of religious minorities are not recent phenomena, as in the case of the desecration of an Islamic Sufi shrine in Anuradhapura in 2011, the removal of the Hindu Shivan shrine in Illangaithurai Muhathuwaram (also known as Lanka Patuna) and the construction of a Buddhist statue in its place, the relocation of Jumma Mosque in Dambulla in 2012, and the disruption of prayer services at the Church of the Foursquare Gospel in Kalutara in 2011.[30] In addition, in 2016, the Special Rapporteur on minority issues and the Committee on the Elimination of Racial Discrimination expressed concern about the cases of desecration of places of worship, disruptions to religious services, denials of building permits to construct religious buildings and denials of burials in public cemeteries of members of ethnic or religious minorities (see A/HRC/34/53/Add.3 and CERD/C/LKA/CO/10–17).

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 the International Covenant on Civil and Political Rights and in article 6 (a) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In paragraph 4 of general comment No. 22, the Human Rights Committee further elaborates 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 Special Rapporteur would like to underline the fact 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.

D. Religious education

41. The education system in Sri Lanka remains divided by ethnicity or language. In terms of the medium of instruction, there are 6,332 Sinhala-only schools and 3,009 Tamil-only schools. A further 558 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 mixed Sinhala and Tamil schools, and 47 mixed Sinhala, Tamil and English schools.[31] The Select Committee of Parliament noted in its interim report that the current ethnicity-based school identification system created divisions in society and did not facilitate interaction among children of different ethnic groups, and perpetuated 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 schools, and no student may receive an 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

[29] See www.tamilguardian.com/content/more-tensions-opening-illegal-buddha-statue-mullaitivu-rushed-through.

[30] See communication LKA 2/2012.

[31] See www.statistics.gov.lk/education/School%20Census%20Report_2017.pdf.

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.[32]

44. The Special 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 (A/70/286, paras. 47–70). The 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 the International Covenant on Civil and Political Rights. This includes respecting those who do not profess a religion or belief.

45. The Office for National Unity and Reconciliation, the Select Committee of Parliament and other stakeholders have made similar recommendations on the urgent need to review and reform the current curriculum and education system in order to develop a more inclusive system. The Special Rapporteur is of the opinion that serious investment in the education of young people is essential, and the school curriculum should be designed to include human rights education and information on various religions and beliefs to promote respect for the right to freedom of religion or belief and other human rights.

E. 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 levels due to the patriarchal structure of the society and in policies.

47. The Special Rapporteur heard an account of a Tamil Hindu woman married to a Sinhalese Buddhist man. Her husband insisted on her converting to 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 great 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 convert, either willingly or not, to another religion. Meanwhile, Muslim women are excluded from the Marriage Registration Ordinance,[33] which means that there is no option for Muslims to opt in or out of the Muslim Marriage and Divorce Act of 1951. The Act allows for polygamy, and with regard to claiming maintenance and asking for a divorce, it places the burden of proof upon the wife to provide a "valid and sufficient reason" and "grounds for divorce". By contrast, a Muslim man is not required to give a reason to divorce a woman. Furthermore, these matters are addressed in Quazi courts, where women are not permitted to be judges. However, some of these challenges are addressed in the amendments of 2019 to the Act, negotiated between the Government and the Muslim Ulema Council.[34] Polygamy was restricted by providing the first wife the option of divorce and the legal marriage age was raised to 18 years. However, there was no agreement to appoint women as judges in the Quazi courts. Rulings of the Quazi courts may be appealed in the secular appellate system but there are serious issues about access to justice. Moreover, the Marriage Registration Ordinance and the Muslim Marriage and Divorce Act, which cannot be challenged in court as per the provisions of the Constitution of 1978, need updating to ensure gender equality.

49. After the Easter bombings, the Government proclaimed under emergency regulations a ban on face covering in public places. This has led to a rise in intolerance towards those who observe religious dress codes, especially Muslim women in public

[32] See www.state.gov/wp-content/uploads/2019/05/SRI-LANKA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf.

[33] See www.commonlii.org/lk/legis/consol_act/m131146.pdf.

[34] For a list of amendments, see https://mplreformsdotcom.files.wordpress.com/2019/11/joint-cabinet-memorandum-on-mmda-2019.pdf.

institutions such as hospitals, schools and public transport. Some people stop Muslim women and girls with the hijab or abaya that do not include facial covering from entering hospitals or exam halls, or make verbal insults in workplaces.

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.[35] The Ministry of Public Administration and Disaster Management 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 that 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.[36] 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 Special Rapporteur would like to point to the fact that restrictions imposed on religious dress codes may constitute a violation of freedom of religion, as the Human Rights Committee explains in paragraph 4 of its general comment No. 22 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 coverings. Article 18 (3) of the International Covenant on Civil and Political Rights clearly provides that freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. Such limitations must further not have a discriminatory intent or effect.

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

53. The Special Rapporteur received reports that the Government refuses to legally acknowledge the order of Bhikkhuni nuns. Bhikkhunis are not permitted to have their ordination name on their national identity card, whereas Bhikkhus (males) are allowed to do so.

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

54. The Special 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.

A. Politicization of ethnic and religious identity

55. In most of the conversations the Special Rapporteur had during his visit, people often identified themselves as Muslim, Sinhalese or Tamil. Otherwise, they identified themselves as Buddhist, Christian, Hindu or Muslim. Indicating one's identity by ethnicity or by religion seems also to 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

[35] See www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence.

[36] Ibid.

of social status or political affiliation. A rise in identity-based perspectives within various political parties further reinforces ethno-religious fragmentation.[37]

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 recognized religions in Sri Lanka face discrimination. Even among those who are recognized, the communities who are outnumbered by others in different areas claim that they are marginalized or at risk of being "colonized" by the 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 they use the pretext that the new religious groups have undermined religious harmony in certain areas or hurt religious feelings of the majority people or that they 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 emphasized 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 the inclusivity, equality and non-discrimination of all citizens, giving priority or prominence to the given majority or dominant group in a specific area, thereby marginalizing the rights of minorities or those perceived as not fitting into the recognized identities from the traditional mosaic of a society.

58. One of the challenges the country faces is the lack of equality among 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 the State. The Beirut Declaration on Faith for Rights and its 18 commitments[38] explicitly refer to preventing the use of the notion of "State religion" to discriminate against individuals or groups or to reduce the space for religious or belief pluralism in practice (A/HRC/40/58, annex II, commitment IV).[39] The Special Rapporteur reiterates that the extent to which the State supports a religion and the degree to which it enforces that religion could have far-reaching implications for how the State protects freedom of religion or belief for everyone (see A/HRC/37/49).

59. Even though article 9 assures persons of all religions 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 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 its protected status and perceived privilege accorded by the Constitution as it also seems to interpret or at least understand that it has "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 Special 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 politicizing ethnic and religious identity. Similarly, political parties have used ethno-nationalistic rhetoric in Sri Lanka, using the popularity of the "Sinha Le" campaign (see para. 66 of the present report) as a powerful tool to mobilize the public.[40] For as long as the tension of identity among religious and ethnic groups exists, this will continue to undermine all of the peacebuilding, coexistence and religious tolerance

[37] Select Committee of Parliament, "Interim report", para. 2.3.

[38] See www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx.

[39] See also www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf.

[40] See www.cpalanka.org/wp-content/uploads/2016/04/Dynamics-of-Sinhala-Buddhist-Ethno-Nationalism-in-Post-War-Sri-Lanka.pdf.

and harmony projects, as each group of people will remain in their own boxes, rejecting and alienating the "others".

B. Religious extremism

61. Following the Easter bombings, media in Sri Lanka projected the country as a victim of the global trend of Islamic extremism, which made the Muslim community the scapegoat for other underlying problems in the country, such as simmering ethno-religious tensions and religious extremism. Many interlocutors with whom the Special Rapporteur spoke, however, indicated that they had already been highly concerned by the influence of extremist views of different religious figures, including Buddhist 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 Islamic extremists or terrorists. Moreover, when Zaharan, a radical Salafi preacher, led his faction to attack the followers of a moderate Sufi Muslim cleric in 2017, he was repeatedly rejected by 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 further identified rising Islamic extremism in the Kattankudy area.[41]

63. In 2012, Bodu Bala Sena, a Sinhalese Buddhist organization was created. It became influential within a short time and received much media attention. It claimed to have been created to protect the Sinhalese and Buddhism and to draw attention to the threats allegedly faced by the Sinhalese race in the face of globalization, flagging that they might become a "global minority". The organization alleged that there was a growing international Islamic presence in the country and that the Muslim population's expansion posed a threat to the Sinhalese community's status as the country's majority. It also instilled fear among the Sinhalese population by referring to the possible domination by some 60 million Tamils in southern India. Bodu Bala Sena managed to heighten the polarization of the communities through identity politics, as discussed earlier.

64. Moreover, Bodu Bala Sena launched a vigorous anti-Muslim campaign and spread inaccurate information to incite hatred against Muslims. For example, at a public meeting in Kandy on 17 March 2013, a spokesperson for the organization stated that the Qur'an ordered Muslims to spit three times on meals offered to non-Muslims.[42] While on 12 April 2014, the General Secretary of Bodu Bala Sena falsely attributed to the Qur'an the concept that "Thaqiya" allowed Muslims to defraud people of other faiths and acquire properties and wealth of non-Muslims by cheating them.[43]

65. The National Shura Council, an umbrella body of national-level Muslim organizations, submitted an appeal with 196,000 signatures from the general public to the President of Sri Lanka in November 2013, calling for action to be taken to ensure security for religious minorities and their places of worship and to stop all hate campaigns. In 2014, the Secretary-General of the United Nations expressed his alarm and concern about "the rising level of attacks in Sri Lanka against religious minorities."[44] He noted that "Buddhist communities are being swept up by a rising tide of extremist sentiment against other groups".[45] However, hundreds of hate-related incidents were reportedly committed by Bodu Bala Sena and other Buddhist extremist groups with impunity. The Government was

[41] See www.parliament.lk/uploads/comreports/sc-april-attacks-report-en.pdf#page=1.

[42] See www.colombotelegraph.com/index.php/national-shoora-council-urges-govt-to-protect-watareka-vijitha-thero-and-stop-bbs-unlawful-acts/.

[43] Ibid.

[44] See www.un.org/press/en/2014/sgsm16108.doc.htm.

[45] Ibid.

reluctant to take action against them even though there were extensive grounds for criminal prosecution.

66. In 2015, the "Sinha Le" campaign started with a poster campaign that 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 Muslims and minority communities. These posters and stickers appeared in social media, public spaces and on 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 later, Sinhale Jathika Balamuluwa 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".[46] Some observers noted that the "Sinha Le" campaign and a few other extremist groups, such as Mahasen Balakaya, the Nawa Sinhale National Organization and Sinhala Ravaya,[47] were closely aligned with what was being promoted on similar pages and websites of Bodu Bala Sena groups.

C. Hate speech or campaigns and the application of the 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. 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 since the multiple traumas from the violence in Aluthgama in 2014, in Gintota in 2017, and in Ampara and Digana in 2018. In the cases of Aluthgama and Digana, these instances of violence include property damage, grievous injury and death.[48] These are clear contemporary examples of hate speech and hate violence, the politicization of ethnic and religious identities and the targeting of 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 has been committed against Tamils and Christians at various points in time.

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

69. Many also complained about the role of the media in promoting hateful narratives towards Muslims and inciting hostility and discrimination against them. While some blamed journalistic sensationalism, others noted that the privatized and politicized electronic media played a large role in demonizing individuals and groups. Some highlighted the negative role of the media in, for example, perpetuating the narrative that Muslim medical professionals had been secretly carrying out large-scale sterilization of Buddhist women. The role of social media in generating fear through fake news and incitement to violence was noted with serious concern by many interlocutors. Christians have been the target of fake news and online hate speech as well. For instance, in its

[46] See www.dailymirror.lk/102081/new-party-aims-to-safeguard-sinhala-identity.

[47] For more information on these groups, see Neil Devotta, "Religious intolerance in post-civil war Sri Lanka", *Asian Affairs*, vol. 49, No. 2 (June 2018), pp. 278–300; and John Holt, ed., *Buddhist Extremists and Muslim Minorities: Religious Conflict in Contemporary Sri Lanka* (New York City, Oxford University Press, 2016).

[48] See www.cpalanka.org/wp-content/uploads/2018/09/Confronting-Accountability-for-Hate-Speech-in-Sri-Lanka-2018.pdf.

incident report for 2019, the National Christian Evangelical Alliance of Sri Lanka referred to false rumours and violence in January 2019 against a Christian community in Batticaloa, which had been called for through Facebook.

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 temporarily shut down some social media platforms during the riots in March 2018 and following the Easter bombings, a measure whose effectiveness, however, is not self-evident and which invariably fails to meet the standard of necessity under international law (A/HRC/35/22, para. 14).

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

(a) Section 3 (1) of the International Covenant on Civil and Political Rights Act provides that "no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence";

(b) Section 120 of the Penal Code refers to "whoever by words … or by signs or by visible representations … attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished";

(c) Section 2 (1) (h) of the Prevention of Terrorism Act provides that any person, by words either spoken or intended to be read, or by signs or by visible representations or otherwise causes or intends to cause the 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 concluded under the International Covenant on Civil and Political Rights 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 Act to restrict freedom of expression and crush dissent. Although incitement to discrimination, hostility and violence is criminalized under the Act, many argued that the Act was not applied in a manner that would protect minorities against incitement; rather, it was invoked to protect religions or beliefs against criticism or perceived insult.[49] The Act has ironically become a repressive tool used for curtailing freedom of thought or opinion, conscience, and religion or belief.

73. It is also worth noting that the present International Covenant on Civil and Political Rights Act is not fully compatible with article 19 of the International Covenant on Civil and Political Rights as it does not guarantee freedom of expression. Moreover, when determining cases of hate speech, current provisions of the Act do not include the three-part test of legality, proportionality and necessity or the threshold of "incitement" under article 20 of the Covenant.

74. Similarly, under the Penal Code, there is a lack of reported judgments under the provisions contained in sections 120, 291A and 291B. Moreover, these provisions lack clarity and leave room for misinterpretation. Meanwhile, the Prevention of Terrorism Act has been criticized by many for being used to target minorities, critics of longstanding Governments, journalists and political opponents. This was demonstrated in a prominent case involving a journalist in 2008,[50] a case involving a politician in 2013[51] and a case involving a Muslim doctor in 2019.[52] The Act was also used to target Muslims arrested under suspicion of terrorism after the Easter bombings. The offences described in section 2 (1) (h) of the Act are overly broad and ambiguous, leaving no legal certainty as to how an offence is interpreted. While the Penal Code would require revision to bring it into line with

[49] See, for example, the Sathkumara case at www.ft.lk/news/UN-human-rights-petition-filed-for-author-Shakthika-Sathkumara/56-691332.

[50] See https://rsf.org/en/news/international-press-freedom-groups-call-justice-jailed-sri-lankan-journalist.

[51] See www.thesundayleader.lk/2013/05/05/azath-salleys-arrest/.

[52] See www.republicnext.com/series/dr-shafi-case/.

international human rights standards, the Prevention of Terrorism Act should be repealed as recommended by various human rights mechanisms and United Nations experts.

75. Section 79 (2) of the 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 the Ordinance 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, the police were accused of not taking action to prevent the hate campaigns. Moreover, there were reports of the active participation by police officers in having aided 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, the Code of Professional Practice (Code of Ethics) of the Editors Guild of Sri Lanka of 2008,[53] which is meant both to protect the right of the individual and to 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 prejudicial or pejorative reference to, and publishing details of, a person's race, colour, religion, sex, sexual orientation 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 were many good examples of inclusive speech following the Easter bombings, some of the measures taken appear to have increased the stigmatization 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.

D. Impunity and a lack of the rule of law and accountability

78. The culture of impunity in Sri Lanka has been repeatedly pointed out as one of the main reasons why religious extremism and hate speech thrive in the country, undermining the rule of law and human rights. Many interlocutors complained about how acts of violence were "indulged" by the silence and inaction of the authorities, as illustrated by some of the 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, that some of the police participated in those violent incidents or that the authorities failed to adequately protect those under attack even when some of the violence continued for several days. In some cases, the attacks took place during curfew hours, such as during the riots in Kandy District in 2018 and in several locations in the Western and North Western provinces in May 2019.

79. Some interlocutors also expressed concern about perceived bias in the way the police addressed complaints. This was particularly the case when the assailants were members of the majority community. Many complained that either the police failed to register and investigate complaints they had raised, or the police would act in a punitive manner for complaints raised against them, while failing to take similar measures when they were the target of attacks. Many also complained that the police were generally unsure about 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

[53] See www.tamilnet.com/img/publish/2019/03/PCCSL_Code_in_English.pdf.

allegedly involved in pressuring the police to release persons arrested following violent attacks.

80. The Special Rapporteur received reports from the National Christian Evangelical Alliance of Sri Lanka of about 87 cases of recorded physical attacks at places of worship, in residential areas, or on pastors or members of Evangelical churches between 2015 and 2019. Only 50 cases were reported to the police, and 8 of those were brought before the courts, and there was not a single conviction of a perpetrator even though in some cases compensation had been granted to the victims. Similarly, Evangelical Christian 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. Of those cases that were reported to the police or brought before the courts, the result was the same, that is, there was not a single conviction.

81. Jehovah's Witnesses also reported that, between 2017 and 2019, they had referred to the police at least 58 cases of physical assaults, harassment and intimidation, the disruption of their worship meetings, the vandalism of their places of worship, and the refusal of permits to build places of worship. Of the 33 cases that had been brought before the courts, only 5 cases were decided in their favour and the perpetrators agreed to stop harassing them, but there has still not been a single conviction.

82. Many interlocutors described problems of double standards in law enforcement, depending on which community offended or found itself targeted by the actions of others. For instance, the Special Rapporteur heard about cases of violence perpetrated by the majority community against minorities where the perpetrators were clearly identified in video recordings but remained unaccountable for years after the incident. Conversely, many complained that, when a complaint was brought forward by members of the Buddhist community, action was swift, at times disproportionate and lacked legal impartiality.

83. The Special Rapporteur would like to point out that, in section 2.4 of the interim report of the Select Committee of Parliament, the challenges of law enforcement are clearly reported; it is stated 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".

84. In his report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who visited Sri Lanka in July 2017, noted that "the lack of reaction from the Government to incidences of 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 Tamil national sentiments" (see A/HRC/40/52/Add.3).

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

(a) The establishment of a commission for truth, justice and reconciliation, as well as a judicial mechanism with a special counsel;

(b) The initiation of a judicial process to look into accountability for abuses by all sides of the internal conflict;

(c) The full restoration of land to its rightful civilian owners;

(d) The cessation of military involvement in civilian activities;

(e) Effective security sector reforms to vet and remove known human rights violators from the military;

(f) The review of witness and victim protection law and individuals involved in that sector, including investigators, prosecutors and judges;

(g) The review and repeal of various legal provisions or legislation, such as the Prevention of Terrorism Act, that are incompatible with international human rights standards;

(h) Domestic law reform to prohibit and try serious human rights violations;

(i) The investigation of hate speech, incitement to violence (including by religious leaders) and any attacks on civil society.

86. The above list 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 recognize that, without truth and justice, without the restoration of the trust of 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, the 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 until death, demanding the resignation of three Muslim politicians whom he claimed were linked to the Easter Sunday attackers. The leader of Bodu Bala Sena visited the monk and issued a statement warning of the mass mobilization of Bodu Bala Sena supporters if the Muslim politicians did not comply with the demand. Large mobs gathered in central Kandy in support of the monk and threatened to attack Muslims. Without a formal investigation, two governors had to resign the same day. Many worry that this incident sets a dangerous precedent of recognizing the authority of religious leaders in political matters.

88. It is essential that the Government 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, the rule of law, and respect for human rights and equality for all. This requires urgent and strong political will and strengthened State institutions to tackle the root causes of the religious tensions and intolerance analysed above in order to achieve 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, which the Government had pledged to address at the Human Rights Council. While some elementary steps have been taken, impunity and a lack of accountability remain 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 the equal protection of the law for minorities. Moreover, there were recurrent intercommunal violence and religious extremism in the 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, and their religious activities, such as worship sessions, are disrupted by locals and the authorities. There is difficulty for 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 continue to be 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 especially concerning.**

91. **The Special 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 and LGBT+ persons are rendered more vulnerable in their positions when some religious teachings tend to marginalize them in their rights to equal treatment. Patriarchy and religious marriage laws discriminate against women and disadvantage them in many personal status related matters. In order to comply with international law standards on gender equality, it is vital to ensure a comprehensive reform of both the Muslim Marriage and Divorce Act and the Marriage Registration Ordinance.**

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

(a) **Take concrete steps to address all of 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 described in Human Rights Council resolution 16/18, and the Beirut Declaration on Faith for Rights and its 18 commitments, in activities designed to promote interreligious dialogue and foster pluralism;**

(b) **Urgently address impunity and the lack of accountability by fulfilling the pledges to various international human rights mechanisms, and set up relevant mechanisms accordingly; and 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 on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence That Could Lead to Atrocity Crimes;**

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

(f) **Reform the education system to foster inclusive identities to prepare children for a 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 interreligious 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 in monitoring and responding 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 ostracize and stigmatize minority communities and persons in vulnerable situations, and to promote moderate voices and stress the need for sustainable intercommunal and interreligious dialogue for trust, peacebuilding and reconciliation.**