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July 23, 2004

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c/o Presidential Secretary
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Prime Minister Mahinda Rajapakse
Prime Minister's Office
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Colombo 3 Sri Lanka

Dear President Kumaratunga and Prime Minister Rajapakse:

Last spring, during the 60th Meeting of the United Nations Commission on Human Rights in Geneva, The Becket Fund for Religious Liberty urged the international human rights community to monitor closely the increasing persecution of Sri Lanka's Christian minority, and the proposed laws that would, among other things, criminalize speech or conduct that could lead to religious conversions.

In response to our oral intervention at the Commission, the Honorable Sarala Fernando, Sri Lanka's Permanent UN Representative in Geneva, invited us to join in the "open public debate . . . about the ramifications" of these proposed laws. This letter and the enclosed legal memorandum represent part of The Becket Fund's response to that gracious invitation.

By way of further introduction, The Becket Fund for Religious Liberty is an international, interfaith, public interest law firm dedicated to protecting the free expression of *all* religious traditions. Our past clients have included, among others, Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians.

Our enclosed memorandum provides a detailed legal analysis of whether the anti-proselytization and anti-conversion bills now pending before the Parliament of Sri Lanka are consistent with Sri Lanka's various, enforceable international treaty obligations regarding religious freedom.

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July 23, 2004
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The two bills we analyze are the Jathika Hela Urumaya law, and the law introduced by the Hon. Ratnasiri Wickramanayake, Minister of Buddha Sasana, and approved by the Cabinet of Ministers on 16 June 2004.

As set forth in greater detail in the memorandum, we conclude that the enactment of either proposed law would represent an egregious violation of the freedom of religion, expression, and assembly of the citizens of Sri Lanka – especially religious minorities – under Articles 18, 19, 21, 26, and 27 of the International Covenant on Civil and Political Rights (“ICCPR”) and the First Optional Protocol thereto. Because Sri Lanka freely acceded to the ICCPR on September 11, 1980, and to the First Optional Protocol on January 3, 1998, Sri Lanka is legally bound by those international instruments, which are enforceable by legal action before the United Nations Human Rights Committee.

We therefore urge the Government of Sri Lanka, in the strongest possible terms, to respect its international legal obligations and to reject both proposed laws.

Thank you for your consideration of this urgent and important matter.

Sincerely yours,



Emilie L. Kao, Esq.
Director of International Advocacy

Enclosure

cc: Hon. Ranil Wickramasinghe
Hon. Lakshman Kadirgama
Ms. Radhika Coomaraswamy
His Excellency Mr. Jeff Lundsted
His Excellency Devinda R. Subasinghe

INTRODUCTION

The Becket Fund for Religious Liberty has learned that the Parliament of Sri Lanka is considering two proposed laws, both of which would, among other things, criminalize speech or conduct that could lead to conversions. The two bills are the Jathika Hela Urumaya law tabled on 21 July 2004 (the “JHU Law”), and the law introduced by the Hon. Ratnasiri Wickramanayake, Minister of Buddha Sasana, and approved by the Cabinet of Ministers on 16 June 2004 (the “Cabinet Law”) (collectively the “Proposed Laws”).

The Becket Fund is an international, interfaith, public interest law firm dedicated to protecting the free expression of *all* religious traditions. Our past clients have included, among others, Buddhists, Christians, Hindus, Jews, Muslims, Sikhs, and Zoroastrians. Accordingly, upon learning of the Proposed Laws, The Becket Fund became deeply concerned and decided to undertake a legal analysis to assess their consistency with Sri Lanka’s various international treaty obligations regarding religious freedom.

As detailed below, we conclude that the Proposed Laws would violate Articles 18, 19, 21, 26, and 27 of the International Covenant on Civil and Political Rights (“ICCPR”), a binding treaty which Sri Lanka has freely joined.¹ Because Sri Lanka has also acceded to the First Optional Protocol to the ICCPR (the “Optional Protocol”),² all of those violations would be enforceable by complaints submitted before the United Nations Human Rights Committee. In addition, because the Proposed Laws would violate the most basic principles of international human rights law articulated in the Universal Declaration of Human Rights (“UDHR”),³ passing the Proposed Laws would marginalize Sri Lanka in the international community.

¹ International Covenant on Civil and Political Rights Article 7, G.A. Res. 2200A, U.N. GAOR, 31st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), *entered into force* 23 March 1976. Sri Lanka acceded to the ICCPR on September 11, 1980.

² Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976. Sri Lanka acceded to the Optional Protocol on Jan. 3, 1998. *See* (available at <http://www.hri.ca/fortherecord1997/documentation/reservations/optionall1.htm>)

³ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 at 73 (1948).

LEGAL ANALYSIS

I. SRI LANKA IS LEGALLY BOUND BY ENFORCEABLE, INTERNATIONAL TREATY OBLIGATIONS TO RESPECT RELIGIOUS LIBERTY AND INDIVIDUAL RIGHTS OF CONSCIENCE.

Sri Lanka is a member of the United Nations and is a signatory to the UDHR and the ICCPR, treaties that specifically protect the freedoms of belief, speech, worship, and assembly. Under the Vienna Convention on the Law of Treaties (the “Vienna Convention”),⁴ Sri Lanka is bound to adhere to the terms of these treaties. Article 26 of the Vienna Convention states that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”⁵ Article 27 of the Vienna Convention specifically prohibits governments from violating their treaty obligations based on asserted requirements of domestic law.⁶

Sri Lanka has also acceded to the Optional Protocol to the ICCPR. In accordance with Article 1 of the Optional Protocol, Sri Lanka has recognized the authority and competence of the United Nations Human Rights Committee (“the Human Rights Committee”) to enforce the ICCPR in the event that Sri Lanka violates any of its provisions.⁷ Article 1 also authorizes individuals to submit a communication to the Committee if they believe their rights under the ICCPR have been violated.⁸

If the Human Rights Committee finds a violation on such a complaint, remedies include release of those imprisoned under the offending law, compensation for the victim of the violation, and monitoring to assure compliance with the Committee’s decision.

II. THE PROPOSED LAWS VIOLATE THE ICCPR’S SPECIFIC GUARANTEES OF FREEDOM OF BELIEF, EXPRESSION, AND PEACEFUL ASSEMBLY, AS WELL AS EQUAL PROTECTION OF THE LAWS AND THE RIGHT TO PRACTICE A MINORITY RELIGION.

A. The Proposed Laws Would Violate ICCPR Article 18, Which Protects the Freedom of Religion.

Article 18 of the ICCPR provides that:

(1) Everyone has the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with

⁴ Vienna Convention on the Law of Treaties, May 23, 1969, 8 I.L.M. 679, 1155 U.N.T.S. 331, *entered into force* January 27, 1980 (Sri Lanka).

⁵ *Id.* art. 26.

⁶ *Id.* art. 27.

⁷ *See supra*, n. 2, art. 1.

⁸ *Id.*

others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ICCPR art. 18(1)-(4). Thus, ICCPR Article 18 protects two distinct aspects of religious freedom: 1) the freedom to *adopt* a religion or belief of one's own choosing; and 2) the freedom to *manifest* that religion in public or private.

As set forth below, if enacted, the Proposed Laws would egregiously violate the rights protected by Article 18 by: (1) infringing upon the freedom of the religious seeker to choose a belief by obstructing his or her access to religious ideas; and (2) by extinguishing the freedom of the religious believer to manifest his or her beliefs, regardless of intent to convert (even if there is no intent to proselytize).

1. The Proposed Laws Would Violate the Freedom to Choose a Religious Belief.

The freedom of every human being to believe in the religion of his or her choice is absolute. The Human Rights Committee has stated that *there are no circumstances* under which a government may “derogate” from this provision, “even in time of public emergency.”⁹ Furthermore, the Committee has stated that freedom “to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including, *inter alia*, the right to *replace* one's current religion or belief with another”¹⁰ and this freedom may not be “impair[ed by the] threat of . . . penal sanctions to compel . . . adhere[nce] to . . . religious beliefs and congregations”¹¹

However, if either of the Laws is enacted, the freedom to choose a religious belief will be violated. The Cabinet Law and the JHU Law extend far beyond alleged “unethical conversions” to inhibit *all* conversions. The Cabinet Law explicitly states that “no person shall convert or attempt to convert another person.” Cabinet Law at §2. Although, the JHU states that its purpose is to “prohibit . . . conversion . . . by use of

⁹ See General Comment 22, U.N. Human Rights Committee, Article 18, 48th Sess., U.N. Doc. HR/GEN/1/Rev.1 at 35 (1993) at 1 [hereinafter Article 18 GC] (available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm>).

¹⁰ Article 18 GC at 4.

¹¹ Article 18 GC at 5.

force or allurements or by fraudulent means,” its terms are so broad that it will outlaw *all* proselytization and inhibit all conversions. *See infra* Section II. A. 2.

Religious expression and religious conversion are inseparable. In a society where no individual is permitted to express religious ideas, those who seek understanding of other religions will find no source for it. The effect of either law will be to silence religious expression. By imposing enormous fines of up to nearly US \$5000 – almost double the average annual salary in Sri Lanka¹² – and up to seven years of imprisonment, those who otherwise would communicate their religious beliefs will be legally prohibited from doing so.¹³ Religious seekers will only be able to gain understanding of other religions by asking their adherents to break the law.

By silencing religious expression, the Proposed Laws will severely infringe upon the individual’s freedom to adopt a religious belief of his or her choice in violation of the absolute guarantee of ICCPR Article 18.

Advocates of the Proposed Laws state that they are necessary to guarantee Buddhism’s “foremost place” in Sri Lanka. *See* JHU, pmb. (ll. 1-2). Though the Proposed Laws also profess to treat all religious traditions equally pursuant to Articles 10 and 14(e) of the Constitution,¹⁴ the JHU Law unmistakably discriminates against persons who do not accept Buddhism as their religion.

Under international law, the right to choose a religious belief cannot be overridden in order to preserve a state religion. *See* ICCPR art. 18; Vienna Convention Article 27. The Human Rights Committee has stated unequivocally that:

¹² The mean per capita income for Sri Lanka in 2002 was \$3,056. *See* http://www.statistics.gov.lk/poverty/HIES2002_DistrictLevel.pdf.

¹³ Under the Cabinet Law, an individual who has disseminated information regarding one’s faith and – as a consequence – prompted another to convert may be sentenced to 5 years of imprisonment and / or fined up to Rs. 100,000. And if a minor is influenced to convert, the penalty is increased to 7 years of imprisonment and a fine of Rs. 500,000. *See* Cabinet Law, § 5(i). Violation of the JHU Law carries a penalty of five years of imprisonment and a fine of Rs. 150,000. The JHU Law also imposes imprisonment of up to 7 years and a fine of up to Rs. 500,000 for actions that lead to the conversion of a minor, a woman or a “beneficiary.” *See* JHU Law, § 4.

¹⁴ Article 10 of the Sri Lanka Constitution 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) of the Sri Lanka Constitution provides in relevant part that, “Every citizen is entitled to – (a) the freedom of speech and expression including publication; (b) the freedom of peaceful assembly; (c) the freedom of association; ... (e) 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; (f) the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language; (g) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.”

The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as . . . *imposing special restrictions on the practice of other faiths*, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.

Article 18 GC at 9 (emphasis added).

The freedom to express religious beliefs and to change religious beliefs does not cause the inevitable extinction of traditional beliefs. The history of mankind demonstrates that some individuals may leave behind the religious beliefs in which they were raised, and yet those religions continue to flourish and to attract new believers. Siddhartha himself, the founder of Buddhism, converted from Hinduism, yet Hinduism continues to exist and to attract new converts. The Apostle Paul, an early Christian leader, was a convert from Judaism, which continues to thrive. Martin Luther led a Reformation out of Catholic Christianity, yet the Catholic Church still flourishes and attracts new converts. Thus, the conversion of a religious adherent to another religion is by no means an indicator that the original religion will cease to exist.

Furthermore, the sheltering of Buddhists from diverse religious beliefs runs counter to traditional Buddhist spiritual and social philosophy. Not only does Buddhism not prohibit proselytization, the Sinhalese traditional history of Buddhism in Sri Lanka begins with the arrival from India in the 3rd Century BCE of Mahinda and six missionary companions sent by the Mauryan emperor to proselytize and convert King Devanampiya Tissa and the nobility. The current language of the Proposed Laws would equally prevent non-Buddhists from converting to Buddhism by denying a guru's guidance in a non-Buddhist's journey towards spiritual enlightenment. The Laws will create an environment of religious intolerance and fear of religious expression. Not only will this fail to ensure the primacy of Buddhism, it may dissuade those seeking religious truth from undertaking that journey altogether, including to the detriment of Buddhism.

In sum, the desire to promote Buddhism cannot justify the repression of religious expression and infringement of the right to religious conversion.

2. The Proposed Laws Would Violate the Freedom to Manifest a Religious Belief.

Article 18 broadly protects the freedom to manifest religious beliefs which encompasses “worship, observance, practice and teaching”; either “in public or private”; “either individually or in community.” ICCPR, art. 18. Both Proposed Laws, however, use overbroad, vague, and malleable terms that would criminalize religious manifestation in virtually all its forms.

Individuals routinely engage in a wide variety of activities that constitute religious expression. In some situations, a religious believer may *intentionally and explicitly* proselytize (as is his or her right). However, in some instances, a religious adherent may manifest religious belief in a manner that *unintentionally or implicitly* influences another. Article 18 of the ICCPR broadly protects this manifestation whether or not there is intent to influence, including, *inter alia*:

ritual and ceremonial acts . . . as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as . . . the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and *the freedom to prepare and distribute religious texts or publications.*

art. 18 GC at 4 (emphasis added).

Charitable acts – such as giving money and medical aid to those in need – are similarly protected forms of religious observance pursuant to ICCPR Article 18.

- a. *The Proposed Laws will criminalize manifestation of religious belief in the form of charitable work and giving.*

The Proposed Laws prohibit charitable giving and charitable acts by creating definitions of “allurement” and “inducement” to conversion which encompass any act that is a “gift” or a “benefit.” The Cabinet Law states that “‘inducement’ includes any gift or gratification bestowed in the form of any benefit or privilege in cash or kind, and also includes the grant of any financial or other benefit.” *See* Cabinet Law § 8(a). The JHU Law defines “allurement” as an “offer of any temptation in the form of—(i) any gift or gratification whether in cash or kind; (ii) grant of any material benefit, whether monetary or otherwise; (iii) grant of employment or grant of promotion.” *See* JHU Law, § 8(a)(i)-(iii).

For example, if Mother Teresa’s Missionaries of Charity had offered their services to the terminally ill in Sri Lanka, they could have been prosecuted under the Proposed Laws. If the Good Samaritan had offered aid to an injured traveler on the road, he could have been imprisoned and fined under the Proposed Laws. Muslims who donate

money to the poor, known as *zakat*, could also be punished under the Proposed Laws. Even if no individual actually converts after receiving aid, the individual who offers charity may be prosecuted for “attempt[ing] to convert another person to another religion.” Cabinet Law § 2; JHU Law § 2.

In addition, the Cabinet Law criminalizes the financing of offending activities, such as religiously-motivated charitable activity. *See* Cabinet Law § 4 (“No person shall remit, hold, be in charge of, exchange or use funds or resources for the purpose of engaging in any act that is declared an offence under this act.”). Thus, the Government could prosecute any individual who gives money to a religious institution that aids people of other faiths.

b. The Proposed Laws will criminalize manifestation of religious beliefs in the form of discussing and disseminating controversial religious ideas.

The Proposed Laws prohibit the discussion of claims to absolute religious truth through definitions of “force” that include the threat of “divine curse or ridicule” or “religious displeasure.” *See* Cabinet Law § 8(c) (defining “use of force” to “include[] any form of threat or harassment or hurt, or any threat of divine curse or ridicule of any religion or religious belief or social ostracization”); JHU Law § 8(c) (defining “force” to “include a show of force including a threat of harm of injury of any kind or threat of religious displeasure or condemnation of any religion or religious faith”).

By definition, different religious traditions teach distinctive and, at times, incompatible views on fundamental matters such as the identity of deities and rules of conduct. Monotheistic faiths, for example, often contradict one another and teach that failure to believe in the one, true God will result in some form of religious or social disapproval. Although these beliefs may be unsettling to some, the freedom to discuss and disseminate such controversial beliefs – orally or in writing, privately or in public, individually or in community – is firmly embedded in the freedom to manifest religious belief.

Article 18 guarantees the freedom to express one’s religious beliefs, no matter how controversial. The history of religion is a history of conflict between differing claims of truth and falsehood. Because the pursuit of religious truth is dynamic and not static, human beings constantly develop new religious theories and challenge preexisting beliefs. The perpetual emergence of new religious beliefs and the development of variations within existing religious traditions – such as Buddhism, Christianity, Hinduism and Islam – demonstrates both the persistence of religious change and the endurance of traditional religions.

c. The Proposed Laws will criminalize manifestation of religious beliefs that the government deems false.

Similarly, the Proposed Laws criminalize expression of religious beliefs that

prosecutors consider to be “false,” a “contrivance,” a “misinterpretation,” or otherwise “fraudulent.” See Cabinet Law § 8(d) (defining “fraudulently” to include “the submission of false information and the use of any dishonest means”); JHU Law § 8(d) (defining “fraudulent” to include “misinterpretation or any other fraudulent contrivance.”).

The Laws provide no means for distinguishing between what is religiously true or or “false,” or between what is religiously correct interpretation or “misinterpretation” – nor could they. These terms have no objective standards and invite abuse.

As a consequence, any conversion *at all* could be viewed as having occurred “fraudulently.” Religious conversions are routinely opposed by adherents of the converting person’s former faith, who, almost by definition, view the people of the competing faith to have persuaded the convert based on claims that are “false,” or “misinterpretations,” or “contrivances.”

As a practical matter, however, conversions away from Buddhism are the ones most likely to be considered “false” or based on “misinterpretation.” This is not only because one express purpose of these laws is to protect the dominance of Buddhism, but also because most of the prosecutors assessing whether the conversions are based on “misinterpretation” will make that assessment from the perspective of a person committed to Buddhist religious precepts. This squarely violates Article 18, because restrictions on religious manifestation “may not be imposed for discriminatory purposes or applied in a discriminatory manner.” See Article 18 GC at 8.

d. The Proposed Laws will criminalize manifestation of religious beliefs in the form of the religious education of children.

As noted above, the right to communicate religious ideas to one’s own children receives heightened protection under Article 18. See ICCPR art. 18(4). But the JHU Law specially deters dissemination of religious ideas to children and “beneficiaries” by imposing heightened penalties for proselytizing to them.¹⁵ Specifically, JHU Law §4(a) imposes a heightened penalty of up to seven years in jail and a fine of roughly \$5000

¹⁵ The JHU Law provides a list of “beneficiaries” for purposes of the law:

Those persons classified as samurdy beneficiaries

1. Prison inmates
2. Inmates of rehabilitation centers
3. Inmates of detention centers
4. Physically or mentally disabled
5. Employees of an organization
6. Members of the armed forces or police
7. Students
8. Inmates of hospitals and or places of healing
9. Inmates of refugee camps
10. Any other category as may be prescribed by the minister by regulations.

See JHU Law Schedule 1.

U.S. dollars on those who proselytize to minors, women, or any other “beneficiary.” Cabinet Law §3 prohibits communication of religious thoughts and beliefs to a groups similar to those defined as “beneficiaries” in the JHU Law.

Parents who convert and adopt a new religion will ordinarily discuss their newly adopted faith with their own children. However, under the JHU Law, parents could be prosecuted for teaching their children about a religion to which the children later convert. Thus, the JHU Law’s scope extends into the home of religious practitioners to interfere with the private expression of religion from a parent to a child.

e. The JHU Law will criminalize keeping private manifestations of religious beliefs private.

The Human Rights Committee has stated that the right to freedom of thought, conscience and religion entails that “no one can be compelled to reveal his thoughts or adherence to a religion or belief,” thus recognizing the right to keep private religious beliefs and commitments private. Article 18 GC at 3.

Notably, there are legitimate reasons why individuals may wish to keep their religious beliefs private. Two examples are particularly relevant here: fear of employment discrimination, and reluctance to engage in constant confrontation with dominant cultural mores.

The JHU Law, however, imposes a reporting requirement that directly violates the right of Sri Lankans to keep their religious choices private. JHU Law § 3(a) requires a religious convert to “send an intimation to that effect to the Divisional Secretary of the area in which such adoption took place.” If an individual fails to report his or her religious conversion to the government, he or she will face imprisonment of up to five years and a fine of up to Rs. 150.000. *See* JHU Law § 4(b). JHU Law § 3(b) imposes the same burden on anyone who “converts any person from one religion to another either by performing any ceremony by himself for such conversion as a facilitator or by taking part directly or indirectly in such ceremony.” This represents still another way that the JHU Law violates ICCPR Article 18.

B. The Proposed Laws Would Violate ICCPR Article 19, Which Protects the Freedom of Expression.

Article 19 of the ICCPR provides:

Everyone shall have the right to freedom of expression; this right shall include freedom to *seek, receive and impart* information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (emphasis added).

ICCPR art. 19.

This provision forbids governments from imposing laws against the expression of disfavored or minority views, whether they are religious or political. In the 2003 case of *Yong-Joo Kang v. Republic of Korea*, Mr. Kang petitioned the Human Rights Committee when the North Korean government accused him of “espionage” for distributing pamphlets and other materials that criticized the government. The Committee found that North Korea had violated Mr. Kang’s right to freedom of expression under Article 19, because it had punished him for the expression of peaceful – though disfavored – political views. *See id.*

If enacted, the Laws will violate the right of persons both to *disseminate* disfavored views, and to *receive* them. As described at length above, the Proposed Laws restrict the freedom to *disseminate* religious ideas – whether as verbal expressions or other manifestations – because they may cause people to depart from the dominant religious faith in Sri Lanka. *See supra* Section II.A. Moreover, by employing such severe criminal and financial penalties – regardless of whether there is intent to proselytize – the Proposed Laws would virtually cut off the supply of competing religious ideas within the culture. Thus, the laws would also hamper the ability to *receive* ideas freely.

Both effects of the Proposed Laws represent violations of ICCPR Article 19.

C. The Proposed Laws Would Violate ICCPR Article 21, Which Protects the Freedom of Assembly.

Article 21 of the ICCPR provides:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

ICCPR art. 21. *See also* UDHR art. 20(1) (“Everyone has the right to freedom of peaceful assembly and association.”).

The Proposed Laws would criminalize all peaceful religious assemblies that have the effect of converting individuals away from their current religions, whether or not the conversion was intended. The Cabinet Law prohibits even “indirect” action that leads a “person to embrace a religion or religious practice . . . to which he does not subscribe.” Cabinet Law § 8(1). The JHU Law similarly prohibits any activity that “directly or otherwise” prompts a religious conversion. JHU Law § 2.

Thus, if a person were inspired to convert to Islam upon witnessing the beginning of a *hajj*, the traditional Muslim pilgrimage to Mecca, the pilgrims could face criminal prosecution for their otherwise lawful religious assembly. Even more common, everyday

practices that communicate religious meaning that others may find attractive – such as eating and drinking on Ramadan or Passover, or the Catholic Mass – could similarly trigger liability under the Proposed Laws. Along the same lines, celebrations of major life events that communicate religious beliefs – such as those surrounding births, marriages, and deaths – could subject a religious assembly to liability. *See also* Article 18 GC (“rituals associated with certain stages of life” are protected forms of religious manifestation). Furthermore, even if no individual changed their religion as a result of witnessing a religious assembly, the participants in a religious assembly could be prosecuted for “attempt[ing] to convert another person to another religion.” Cabinet Law § 2; JHU Law § 2.

For these reasons, the Proposed Laws violate the right to peaceable assembly contained in ICCPR Article 21.

D. The Proposed Laws Would Violate ICCPR Article 26, Which Guarantees Equal Protection of the Laws.

Article 26 of the ICCPR 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 grounds such as . . . religion.

ICCPR art. 26. *See also* UDHR art. 7 (“All are equal before the Law and are entitled without any discrimination to equal protection of the Law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

Every human being is guaranteed equal treatment under the law regardless of his or her religion. The Human Rights Committee has warned that “If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedom under article 18 or *any other rights* recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.” *See* Article 18 GC at 8 (emphasis added).

The Proposed Laws discriminate on the basis of religion by specially restricting activity which is motivated by religious belief, while broadly permitting equivalent activity that is motivated by political, social, and cultural beliefs. Individuals who are inspired by secular ideas may freely engage in political or philosophical discourse, campaign for a particular candidate or platform, or promote a particular social or cultural trend without fearing criminal prosecution. However, an individual who is inspired by religious ideas will be prohibited from expressing his or her belief through activities such as public speech, teaching, or social service - regardless of his or her objectives.

The Laws, in fact, equate religious expression with fraudulent expression. Whereas there is nothing “fraudulent” about refuting political ideologies, the Laws assume that religious thought is inherently fraudulent and thus the communication of religious beliefs is rightfully criminalized. Therefore, a Christian pastor or a Muslim imam who communicates the fundamental tenets of the respective faiths may be censored because of the “inherent” harm in expressing religious beliefs. This is blatant discrimination against religious people and groups which contradicts ICCPR Article 26.

E. The Proposed Laws Would Violate ICCPR Article 27, Which Protects the Exercise of Minority Religions.

Article 27 of the ICCPR provides in relevant part that:

In those States in which . . . religious . . . minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group . . . to profess and practise their own religion . . .

ICCPR art. 27.

Under international law, every person has the right to profess and practice a minority religious belief. Throughout the world, minority religions are particularly vulnerable to disfavor and discrimination because their beliefs are less widely understood and bear less influence in society. Over the past year and a half, the minority Christian community in Sri Lanka has been specially targeted for violence because it is perceived to pose a threat to Buddhism.¹⁶ In 2003, the Sri Lankan Supreme Court established a precedent for discriminatory treatment of Christians by prohibiting Christian groups from offering social services that equivalent Buddhist groups are permitted to offer.¹⁷

¹⁶ “Armed guards for Sri Lanka church” *BBC News*, 27 January 2004 http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/3434145.stm (“The attackers have stoned pastors’ houses at night, assaulted church workers, issued death threats and pressured several churches to close down.”) See also “Geneva Report 2004: A Perspective on Global Religious Freedom: Challenges Facing Christian Communities,” World Evangelical Alliance at 10 (reporting attacks on sixty-five churches in 2003 and five to ten incidents of churches being mobbed or set on fire per week in January 2004); “Conspiracy, Christmas and banning Conversion” *Concern*, Religious Liberty Commission of the National Christian Evangelical Alliance of Sri Lanka, September-December 2003 at 3 (“2003 marked a record number of 91 incidents” of violence against Christian churches). “Approximately 70 percent of the population are Buddhist, 15 percent are Hindu, 8 percent are Christian, and 7 percent are Muslim.” U.S. State Department, International Religious Freedom Report, “Sri Lanka, Section 1: Religious Demography.” (2003) (available at <http://www.state.gov/g/drl/rls/irf/2003/24474.htm>).

¹⁷ Although the Supreme Court regularly permitted 178 organizations of other religions to combine religious and charitable activities, it prohibited three Christian organizations from doing the same. See Frederica Jansz, “Conversion Confusion,” *The Sunday Leader*, 7 September 2003, v. 10, issue 8. In January 2003 and 2002 respectively, the Supreme Court held that New Wine Harvest Ministries and the Sahanaya Doratuwa Prayer Center could not incorporate because a

The Human Rights Committee explained that ICCPR Article 27 imposes a positive obligation on the State to “ensure that the existence and the exercise of [the rights of religious minorities] are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.” Human Rights Committee General Comment 23. Thus, Article 27 creates a positive obligation upon states to protect religious minorities from discrimination. *See also* Article 18 GC at 2 (stating disapproval of any tendency to discriminate against religious minorities that may be “the subject of hostility by a predominant religious community”).

If enacted the Proposed Laws will violate the rights of religious minorities under Article 27 by curtailing all expression of religious belief, except Buddhist belief. The Proposed Laws will specifically impinge upon the practices of the minority Christian and Muslim communities which are instructed to publicly profess their beliefs to others. *A fortiori*, the Proposed Laws fall far short of Article 27’s requirement to actively protect minority religious exercise.

III. THE PROPOSED LAWS FAIL TO RESPECT THE INVIOABILITY OF THE HUMAN CONSCIENCE, A BEDROCK PRINCIPLE OF HUMAN RIGHTS LAW.

The Proposed Laws offend one of the most basic principles of human rights: the inviolability of the human conscience. The very first article of the UDHR affirms that “[a]ll human beings are born free and equal in dignity and rights ... [and] endowed with reason and conscience....” UDHR art. 1. By the exercise of our reason and our consciences we search for the truth, including religious truth. This pursuit is sacrosanct, and international human rights instruments recognize that no government may lawfully intrude upon this endeavor.

As detailed above, the Proposed Laws criminalize the communication of religious ideas, and the adoption of those ideas, if they differ from ideas previously held. This represents a direct attack on the capacity to reason and to exercise conscience of both religious believers and religious seekers. If either of the Proposed Laws is enacted, the Government of Sri Lanka will be in material breach of this most fundamental principle of human rights law, in addition to the enforceable breaches of the various Articles of the ICCPR detailed above.

Violation of UDHR Article 1 bears an additional set of grave consequences. To

Christian organization cannot couple religious instruction with charitable deeds. Then, in the summer of 2003, it held that it was unconstitutional for an order of Franciscan nuns to offer social services and teach their beliefs. *See In the matter of a petition under Article 121 of the Constitution, A Bill titled “Provincial of the Teaching Sisters of the Holy Cross of the Third Order of St. Francis in Menzingen of Sri Lanka (Incorporation),”* S.C. Special Determination No. 19/2003 (25 July 2003).

offend so basic a right would immediately diminish Sri Lanka's standing in the international community, and would heighten already severe tensions among the country's many and varied faith communities. Thus, for example, India has recently rejected similar anti-proselytization and anti-conversion laws, in order to preserve religious tolerance and to respect the rights of its citizens, especially its religious minorities.

By contrast, if Sri Lanka were to reject the Proposed Laws, it would demonstrate its respect for international law and for the equal dignity of all human beings. That action, in turn, would establish Sri Lanka as a defender of human rights in the region, would reinforce strong relations with trading partners and other members of the international community, and would assure the long-term stability of interfaith relations within its borders.

IV. CONCLUSION

For the aforementioned reasons, Sri Lanka should reject both the Cabinet Law and the JHU Law in order to avoid violating its binding international treaty obligations to protect religious liberty.

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