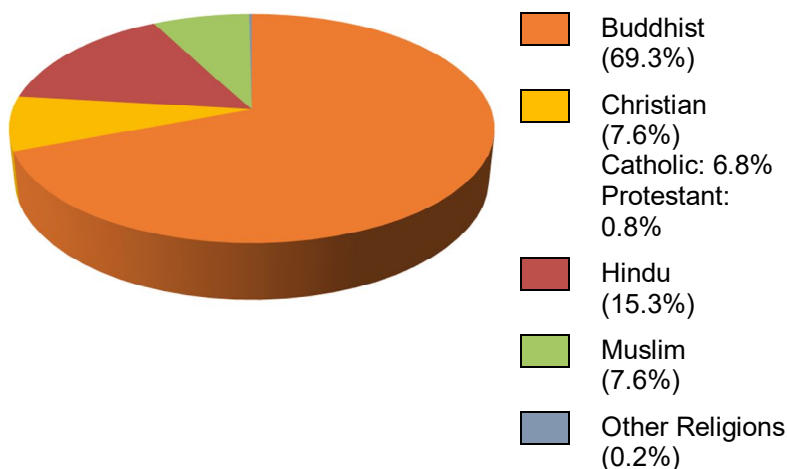


SRI LANKA



Area: 65,610 km ²	Population: 21.3 million	Political system: Democracy	Major Language(s): Sinhalese, Tamil, English
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Legal Background on Freedom of Religion and actual application

Among the events of the last two years, there is one crucial date to note: 8th January 2015. This is when the leader of the New Democratic Front (NDF) – a coalition of political parties, united in their common opposition to the ruling United People’s Freedom Alliance (UPFA) – emerged victorious in the presidential elections. With 51.28 percent of the vote, Maithripala Sirisena beat the outgoing president, Mahinda Rajapaksa, who conceded victory that very evening after having secured only 47.58 percent of the vote.¹

And yet, despite all expectations, the political transition has taken place in an atmosphere of calm and the new president has announced an era of “national reconciliation” – in contrast to the slide into authoritarianism witnessed under President Rajapaksa, who seemed unable or unwilling to transform the military defeat of the Tamil Tigers – who were definitively crushed in May 2009 after a quarter of a century of bloody civil war – into an opportunity to redefine the “national pact”.² As head of state, Mahinda Rajapaksa looked to the support of the nationalist fringe of the Buddhist clergy and the Buddhist majority within the Sri Lankan population in order to reaffirm a national identity characterised by the domination of the Sinhalese and Buddhist majority of the country over the minority Tamil population, who are mainly Hindu and Muslim.³

A conspicuous sign of this new climate, brought about by the change of leadership, was visible during the visit of Pope Francis to the country.⁴ The visit that took place just four days after the elections, from 12th to 15th January 2015. Large crowds welcomed the head of a Church which, although it represents only seven percent of the population, has the distinguishing characteristic of including among its faithful not only members of the Sinhalese – and mainly Buddhist – majority, but also of the Tamil minority.⁵

Nonetheless, the return to civil peace and genuine freedom of expression has not marked the end of all the difficulties. The parliamentary elections of 17th August 2015 did not result in a clear majority in the parliamentary chamber (Sri Lanka has a single chamber parliament) and among its 225 deputies. With 106 deputies, the United National Party (UNP) – the party of the Prime Minister Ranil Wickremesinghe – just failed to gain an absolute majority, while the party of President Sirisena, the Sri Lanka Freedom Party (SLFP) gained 95 seats. The principal Tamil party, the Tamil National Alliance (TNA) gained 16 seats and the Marxist party, the JVP (*Janatha Vimukthi*

Peramuna) gained six. On 20th August 2015 a historic accord between the UNP and the SLFP enabled Wickremesinghe to be confirmed as head of the government.⁶

It was in this context that on 9th January 2016 the Prime Minister submitted a resolution to Parliament to form itself as a constitutive assembly and promulgate a new constitution to replace the present basic law which dates from 1978. On 15th January 2016, in an address broadcast on national television, the Prime Minister declared: “We are ready to grant a genuine devolution of power (i.e. in favour of the Tamil minority) and to protect democracy. The constitutive assembly will address all these issues, including the functioning of provincial councils, in order to draw up a new constitution. We will act with full transparency.” The date chosen by the Prime Minister to make this announcement was also significant: the day of *pongal*, a festival of harvest thanksgiving in the Hindu religion.

On 18th January, which was also during the festival of *pongal*, President Sirisena was visiting a Hindu university in Kalutara to the south of Colombo. After being welcomed by Hindu priests, he declared: “Building peace and reconciliation between the different elements of the population of this country cannot be done simply by enacting laws and adopting a new constitution. This can only be achieved through a religious philosophy. Consequently I call on all the religious leaders to commit to supporting the programme embarked upon by the government in order to build peace and fraternity and so that fear and suspicion between the communities may disappear from this country.” The president added that religious leaders carried more weight than the politicians in ensuring the success of this national reconciliation; and he called upon the *Maha Sangha* – the community of the Buddhist monks – and on the Hindu, Muslim and Catholic leaders to support the government’s efforts to prevent any return to violence and to reinforce the process of national reconciliation.⁷

The months to come will be crucial for the future of the country. One key issue will be the effective devolution of power enabling the provinces with a Tamil majority to enjoy a degree of autonomy that satisfies Tamil claims. Another question that will have to be answered is the place of the Buddhist religion in the future constitution. The 1978 text guaranteed freedom of religion – a freedom that did exist in Sri Lanka – but Article nine accorded “the first place” to Buddhism and entrusted to the state the concern to “protect and promote the teaching of the Buddha, while guaranteeing the rights of all the religions”.⁸ Hence, observers are speculating, given the current political context, that the future constitution will continue to defend freedom of thought, conscience and religion, as well as the freedom to hold or adopt the religion of one’s own choice.

Yet it is nonetheless true that the extreme tensions that have shaken Sri Lankan society over the course of the past 30 years simply have not disappeared as result of the defeat of Mahinda Rajapaksa. Bearing this in mind, the government is seeking to persuade Parliament to vote through new laws forbidding “hate speech”.

In April 2015, and then again in September 2015 the government announced that parliamentary measures to prohibit “hate speech linked to ethnic and religious identity and seeking to exacerbate ethnic and religious tensions” would be put before the house. These proposed laws envisaged the inclusion in the penal code of a measure that carries a penalty of two years imprisonment together with fines for those who “in the recent past have made statements promoting religious extremism”.⁹ It was added that the government was concerned to give the courts the means to fight against “the numerous hate filled utterances and hate campaigns targeting the religious minorities... , notably the numerous attacks against the Muslim and Christian places of worship which took place under the former administration [i.e. of President Mahinda Rajapaksa]”.¹⁰

The authorities did not hide the fact that these new laws target in particular the extremist Buddhist groups that have sprung up since the end of the war following the military defeat of the Tamil Tigers in the spring of 2009. There were three organisations that particularly gained notoriety by portraying the Sinhalese and Buddhist nation (70 percent of the population of 20 million Sri Lankans) as threatened by the Muslim (seven – 11 percent of the population) and Christian

(principally Catholic: seven percent of the population) minorities. These are: the *Bodu Bala Sena* (BBS, Buddhist Power Force), the *Sihala Ravaya* (Sinhalese Roar) and the *Ravana Balakaaya* (Ravana Brigade).

According to Galagoda Aththe Gnanasara Thero, the general secretary of the BBS, the Muslim minorities may live in Sri Lanka if they wish, but only as second-class citizens under the domination of the Buddhist Sinhalese. The BBS has endeavoured to demonise the Muslim minority, by conducting a campaign of alleged lies and rumours against Muslims on the internet and by text messaging and organising anti-Muslim demonstrations. The BBS claims that the Muslims are attempting to convert the Sinhalese by building numerous mosques in the country and that they are trying to sterilise Buddhist women by selling them poisoned products. The militant monks of the BBS have also attacked the Muslim religious beliefs, their rituals and their places of worship.

Incidents

As of early 2016, the events of June 2014 are still fresh in people's memories: four Muslims were killed and dozens of shops and businesses belonging to Muslims were destroyed in Aluthgama, a coastal village to the south of Colombo. A simple altercation between a Buddhist monk and two Muslims degenerated into violence after the general secretary of the BBS declared to a crowd of Sinhalese Buddhists that "if a single Sinhalese were touched, it would be the end of all the Muslims". Riots immediately broke out, resulting in the casualties referred to in an incident described by the UN high commissioner for human rights as "one of the worst outbreaks of sectarian violence in the recent history of Sri Lanka".¹¹

Since the defeat of President Rajapaksa, the BBS – which it is alleged was actively supported by his brother, the defence minister Gothabaya Rajapaksa – has been a little more discreet, but it has nonetheless promised that its supporters will not respect the proposed laws.

Moreover, these two proposed laws are not criticised by anyone except the extremist Buddhist groups. Various organisations of civil society, the human rights commission of Sri Lanka and the opposition parties have all underlined the fact that the proposed measures are already firmly based on Section 2, Article 1, h of the Prevention of Terrorism Act, a text drafted in 1979 and somewhat notorious, since it was broadly used by President Rajapaksa to repress all dissident voices (it may be recalled that the Tamil journalist J. S. Tissainayagam was sentenced to 20 years in prison for having accused the government of committing war crimes).¹²

At the end of December 2015 the government decided to backpedal and announced the withdrawal of these two proposed laws.¹³ It still leaves unresolved problems that those who make hate filled statements against other groups on religious or ethnic grounds will remain unpunished and are not concerned about justice.

Prospects for Religious Freedom

While the Sri Lankan government made a commitment in Geneva to investigate the attacks on human rights committed during the war against the Tamil Tigers, at the 30th session of the UN Human Rights Council, in September 2015, so far there have been few signs of any concrete measures.¹⁴ The Catholic Church, for example, has still had no official explanation of the disappearance of one of its priests, Father Jim Brown, from the Diocese of Jaffna, who was last seen in front of a military guard post in Allaipiddy.¹⁵ Without a genuine process of "truth and reconciliation"¹⁶, many people in Sri Lanka still believe that the religious violence could resurface.

¹ *BBC News* : " Sri Lanka's Rajapaksa suffers shock election defeat ", 9 January 2015 (<http://www.bbc.com/news/world-asia-30738671>)

² *Eglises d'Asie* : " Sirisena élu président du Sri Lanka : Rajapaksa admet sa défaite ", 9 January 2015 (<http://eglises.mepasie.org/asia-du-sud/sri-lanka/2015-01-09-sirisena-elu-president-du-sri-lanka-rajapaksa-concede-sa-defaite>)

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- ³ *Eglises d'Asie* : “ Le gouvernement met en place une police religieuse ”, 30 April 2014 (<http://eglasie.mepasie.org/asie-du-sud/sri-lanka/2014-04-30-le-gouvernement-met-en-place-une-police-religieuse>)
- ⁴ *Eglises d'Asie* : “ La visite du pape François en janvier prochain s'inscrit dans un contexte tendu ”, 9 September 2014 (<http://eglasie.mepasie.org/asie-du-sud/sri-lanka/2014-09-09-la-visite-du-pape-francois-en-janvier-prochain-s2019inscrit-dans-un-contexte-tendu>)
- ⁵ *Eglises d'Asie* : “ Au sanctuaire marial de Madhu, le pape appelle Tamouls et Cinghalais à un examen de conscience ”, 14 January 2015 (<http://eglasie.mepasie.org/asie-du-sud/sri-lanka/2015-01-14-au-sanctuaire-marial-de-madhu-le-pape-appelle-tamouls-et-cinghalais-a-un-examen-de-conscience>)
- ⁶ *The Indian Express* : “ Sri Lanka parliamentary polls: Ranil Wickremesinghe's coalition edges ahead ”, 18 and 20 August 2015 (<http://indianexpress.com/article/explained/sri-lanka-parliamentary-polls-ranil-wickremesinghes-coalition-edges-ahead/>)
- ⁷ *South Asia Monitor* : “ New Constitution offers hope of addressing old grievances ”, 26 January 2016 (<http://southasiamonitor.org/detail.php?type=n&nid=15403>)
- ⁸ Département d'Etat américain : www.state.gov/j/drl/rls/irf/2010_5/168252.htm
- ⁹ <https://drive.google.com/folderview?id=0Bxbk4wYolphweG5kVEV0V0dPT1E&usp=sharing>
- ¹⁰ *Eglises d'Asie* : “ Vers une loi sanctionnant les discours de haine ciblant les personnes en fonction de leur appartenance religieuse ”, 20 April 2015 (<http://eglasie.mepasie.org/asie-du-sud/sri-lanka/2015-04-20-vers-une-loi-sanctionnant-les-discours-de-haine-ciblant-les-personnes-en-fonction-de-leur-appartenance-religieuse/>)
- ¹¹ OHCHR : “ Stop the promotion of hatred and faith-based violence ” – UN rights experts urge Sri Lanka”, 2 July 2014 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14812&LangID=E>)
- ¹² *BBC News* : “ Sri Lankan editor JS Tissainayagam gets bail ”, 11 January 2010 (http://news.bbc.co.uk/2/hi/south_asia/8451413.stm)
- ¹³ *The Sunday Times* : “ Govt backs away from bills claimed to bar free speech ”, 20 December 2015 (<http://www.sundaytimes.lk/151220/news/govt-backs-away-from-bills-claimed-to-bar-free-speech-175994.html>)
- ¹⁴ *Al Jazeera* : “ Sri Lankan president: No allegations of war crimes ”, 29 January 2016 (<http://www.aljazeera.com/programmes/talktojazeera/2016/01/sri-lankan-president-allegations-war-crimes-160128150748006.html>)
- ¹⁵ *Eglises d'Asie* : Guérir une ‘ blessure ethnique ’ qui suppure “ – Commission ‘ Justice et Paix ’ du diocèse de Jaffna ”, 17 November 2013 (<http://eglasie.mepasie.org/asie-du-sud/sri-lanka/2013-11-17-pour-approfondir-ab-guerir-une-2019blessure-ethnique2019-qui-suppure-bb-2013-commission-2018justice-et-paix2019-du-diocese-de-jaffna/>)
- ¹⁶ *Boston Globe* : “ Truth and reconciliation in Sri Lanka ”, 15 September 2015 (<https://www.bostonglobe.com/opinion/editorials/2015/09/15/truth-and-reconciliation-sri-lanka/6AG2GxRCRwJ2G3gRcidtRO/story.html>)