



DRAFT

BOARD OF ADVISORS

July __, 2005

Hon. William P. Barr
Former Attorney General
of the United States

By Courier Mail

His Eminence
Francis Cardinal George, O.M.I.,
Archbishop of Chicago

Honorable Condoleezza Rice
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Prof. Mary Ann Glendon
Harvard Law School

Hon. Orrin G. Hatch
United States Senator
(R-Utah)

Honorable Paul V. Applegarth
Millennium Challenge Corporation
1000 Wilson Boulevard
Suite 1411

Hon. Henry J. Hyde
United States Representative
(R-Illinois)

Arlington, VA 22209

Dean Douglas Kmiec
Catholic University of America
Columbus School of Law

Dear Dr. Rice and Mr. Applegarth:

Prof. Douglas Laycock
University of Texas Law School

Prof. Michael McConnell
University of Utah College of Law

Rev. Richard John Neuhaus
President, Institute of Religion
and Public Life

Eunice Kennedy Shriver
Founder and Honorary Chairman,
Special Olympics International

Sargent Shriver
Chairman of the Board,
Special Olympics International

Dr. Ronald B. Sobel
Senior Rabbi, Congregation Emanu-El
of the City of New York

As you know, the Government of Sri Lanka has for years faced intense pressure from militant Buddhists demanding a solution to the “problem” of a perceived growth in minority religions in this overwhelmingly Buddhist country. These militants have perpetrated over 170 attacks against religious minorities (largely Christian) over the last two years, yet the Government of Sri Lanka has failed to prevent the violence or to prosecute the perpetrators. Intended or not, the Government’s toleration of violence against religious minorities has encouraged radical Buddhists to reach farther and try to enshrine religious discrimination in law permanently. Indeed, radical monks have led the call for anti-conversion legislation and continue to stage “fasts-unto-death” until their demands are met. The Government of Sri Lanka has unfortunately capitulated to these voices of intolerance and has now introduced in Parliament just such a law, one that will punish religious minorities with up to seven years imprisonment for the new crime of “attempted conversion.”

This proposed law not only violates international covenants (ICCPR Art. 18 *et al.*), but also threatens the work of scores of American tsunami relief organizations simply because they are religiously affiliated. We write to reiterate the concerns we brought to your attention last August with renewed urgency: Sri Lanka *must* improve its religious liberty record before receiving Millennium Challenge Account assistance.

As you are both aware, Sri Lanka was one of the first sixteen countries selected to receive development assistance from the United States through the Millennium Challenge Account (MCA) and, at last report, was engaged in the process of developing a Compact to determine how that assistance is to be put to use. The MCA was initiated by President Bush and passed by Congress in 2003 to reward nations that have shown progress in fighting corruption, establishing the rule of law and preserving the civil liberties and political rights of their citizens. We applaud this new approach to development assistance, especially for its pledge to hold nations accountable for their human rights commitments.

We are concerned, however, that these structures of accountability may be getting short shrift when it comes to Sri Lanka, given the dramatic escalation in violence against religious minorities, the ever increasing establishment of religious discrimination in law and, as found by the U.S. State Department, Sri Lanka's "overall deterioration in religious freedom."¹

Unfortunately, in the colonial period of Sri Lanka's history, some unethical means were used to encourage religious conversions. As advocates not just of religious freedom, but of religious harmony, we recognize that interfaith relations are still fragile and appreciate the many contributions Buddhism has made to Sri Lankan culture. Therefore, we strongly advise all faith-based aid organizations (both domestic and international) to carry out their work with the greatest degree of sensitivity and respect for Sri Lanka's religious diversity and heritage. We also fully endorse the work of local religious communities in Sri Lanka to develop a just interfaith solution to the recent tensions. Although the idea of banning conversions in Sri Lanka has been around for some time, the political momentum to actually introduce legislation came about only recently, prompted in large part by the approving signals sent by Sri Lanka's Supreme Court.

In a series of cases beginning in 2003, the Sri Lankan Supreme Court effectively interpreted its Constitution to relegate minority religions to second-class status before the law. As part of this change, the Court ruled that religiously-affiliated service organizations and schools could no longer legally incorporate, as the Constitution "does not recognize a fundamental right to propagate a religion." More troubling still, the Court singled out Christianity for special disfavor by holding that "the propagation and spreading of Christianity . . . would impair the very existence of Buddhism."² As you know, Buddhism is guaranteed special protection under the Sri Lankan Constitution and has been elevated by the Court above all other religions.³ With these and other discriminatory holdings, the Court opened wide the door to criminalizing any and all "attempted conversions of others." If the growth of minority religions is contrary to the Constitution, Sri Lanka's Buddhist majority is entitled to criminalize conversions—or so the logic goes.

Radical Buddhists have heeded the Supreme Court's invitation and, as a result, a bill designed to outlaw religious conversions is now awaiting a vote in Parliament. This bill was first introduced in July 2004 by the political arm of Sri Lanka's militant Buddhist movement known as the JHU, a party composed of Buddhist monks. Shortly thereafter, the proposed bill was submitted to the Supreme Court for review. The Supreme Court ruled that two ancillary provisions of the bill should be removed, but expressly declined to strike down the bill's anti-conversion measures. This bears repeating: in line with prior precedents, the Court *upheld* the bill's anti-conversion provisions.⁴ On May 6, 2005, the JHU re-introduced their bill into parliament without amendment, which signals that they believe they may garner the required 2/3 majority vote in Parliament and win a national referendum. If the JHU's political calculations change, however, they may simply remove the bill's problematic ancillary clauses through amendment, thereby allowing passage of their anti-conversion bill by a simple majority vote in Parliament.

Not to be outdone, on June 27, 2005 the Government of Sri Lanka introduced its own, more draconian anti-conversion bill, which we expect will be rubber-stamped by the Sri Lanka's high court and quickly put up to a vote in Parliament. While the Government bill would purportedly criminalize only conversions brought about by "force, coercion, allurements, fraud or other unethical means," these terms are defined so broadly in the legislation that practically any action or form of speech that leads a person to convert from one religion to another could result in onerous fines or imprisonment. For example, much of the tsunami aid money provided by faith-based groups could be

1 U.S. Department of State, *International Religious Freedom Report 2004*.

2 See *In re Teaching Sister of the Holy Cross of the Third Order of St. Francis in Menzingen*, Special Determination No. 19/2003 (July 25, 2003).

3 See Article IX of Sri Lanka's Constitution, which guarantees Buddhism the "foremost place" in society.

4 For copies of the JHU's anti-conversion bill and all related Supreme Court determinations, see www.lankaliberty.org.

lost due to the uncertainty created by the proposed law since such aid can easily be considered an “allurement” to conversion. We expect many religiously-affiliated aid organizations would divert their generosity elsewhere rather than risk their workers being thrown in jail for seven years. For those organizations that do stay, we believe that the Government’s bill would at the very least have a chilling effect on their religious speech and expression, both of which are expressly protected by international covenants signed by Sri Lanka.

The Sri Lankan Government can no longer credibly claim that it is not seeking passage of anti-conversion legislation now that the Government’s bill is out in the open and has been “gazetted” (introduced) in Parliament. In fact, Ambassador Goonetilleke finally admitted the Government’s intention to hold a vote on an anti-conversion law after being confronted with leaked drafts of his own Government’s bill (a copy of which is enclosed with this letter). The Government has significantly improved the bills’ chances by publicly calling for “conscience votes” on either bill which will allow Members to vote outside of party affiliations. Many observers believe this proviso will all but assure majority passage while also creating a climate of divisive religious sectarianism in Parliament. These developments are confirmed by the international media as well as religious communities on the ground. But most telling are the public threats made by the militant Buddhists themselves, who openly seek to drive a wedge between moderate Buddhists and members of other religions—religions which the militants have labeled enemies of Sri Lanka’s Buddhist culture.

We wish to remind you, Dr. Rice, of the remarks your predecessor, Colin Powell, made during the open session of the Millennium Challenge Corporation Board of Directors meeting on July 20, 2004: “We’re entering a compact, a contract [with the nations selected for MCA assistance], and *if you want this funding and if you want it to continue*, and you want it to be multiyear, if you want us to stick with you, you’ve got to get better every year with respect to these basic tests of democracy and openness and economic freedom and end of corruption and the rule of law. *You’ve got to get better*” (emphasis added). In her May 2005 report on Sri Lanka, the United Nations Special Rapporteur on Freedom of Religion or Belief confirmed the many “violent acts of religious intolerance such as the destruction or burning of places of worship” and noted that “in most cases the perpetrators have not been brought to justice.” She also stated that the anti-conversion bills “raise concerns under human rights law, including the right to freedom of religion or belief.” We respectfully submit, Madame Secretary, that Sri Lanka’s human rights record is getting significantly worse, not better.

In light of the above, we urge you to hold the Government of Sri Lanka accountable to its international obligation to preserve and protect what is arguably the most fundamental of all civil liberties: the freedom of religious expression. We encourage you to make religious liberty a central issue in the Compact development process and call on you to exercise your discretion to withhold MCA funding unless Sri Lanka abandons its efforts to outlaw religious conversions and takes measurable steps to ensure the safety, freedom and equal legal rights of all of its religious minorities.

Respectfully,

[Signatures]

cc: Hon. John V. Hanford III, Ambassador-at-Large for International Religious Freedom
Hon. Christina B. Rocca, Assistant Secretary, Bureau of South Asian Affairs, U.S. State Dept.
John B. Bellinger III, Legal Adviser, U.S. State Dept.