

Universal Periodic Review, 23rd Session Christian Solidarity Worldwide – Stakeholder Submission NEPAL

INTRODUCTION

1. Christian Solidarity Worldwide (CSW) is a human rights organisation promoting freedom of religion or belief for all. CSW monitors and raises awareness of the human rights situation in Nepal and undertakes annual fact-finding visits to the country. This submission seeks to draw attention to particular concerns over the right to freedom of religion or belief in Nepal.

INTERNATIONAL LEGAL OBLIGATIONS

2. Nepal has signed and ratified many international human rights treaties. It is bound to implement the requirements of international human rights conventions according to its 1991 Treaty Act, under which all ratified treaties become laws of Nepal, and existing laws must be brought into compliance with them. However, the provisions of these treaties have not been incorporated into Nepal's constitution or laws, and there is currently no fundamental legal protection against violations of human rights. In the UPR process of 2011, the government of Nepal accepted Recommendation A-106.2., "to ensure that the new constitution...and its national legislation is in line with international human rights instruments acceded to by Nepal".
3. **Recommendation: The State Party is urged to ensure that the provisions of these treaties are fully incorporated into Nepal's new constitution and penal code, in accordance with the requirements of the 1991 Treaty Act. The constitution should also provide explicitly for freedom of religion or belief without discrimination.**

ESTABLISHMENT OF A SECULAR STATE

4. The Comprehensive Peace Agreement (CPA) of 2006 ended hostilities in Nepal in 2006. It led to the election of the first and second Constituent Assemblies (CA) in April 2008 and November 2013. The CAs were tasked with creating "a political system that fully complies with universally accepted fundamental human rights".¹ The CAs took the fundamental decision in 2008 to abolish the Hindu monarchy and declare Nepal a secular republic, which has significant implications for freedom of religion or belief. In a secular democracy, the rights of people from all religions must be equally guaranteed. In a secular democracy, the state must be neutral towards all religions, giving equal attention to the rights of members of all faiths. The state should have no role in appointments of personnel in religious institutions; nor should it contribute to the upkeep of buildings or give financial help for one religion's festivals, as has been the case in the past in Nepal. Nepal has made progress in this matter, and should be congratulated for declaring Christian and Muslim festivals as public holidays, in addition to traditional Hindu and Buddhist festivals.
5. **Recommendation: The State Party is urged to formalise the decision to establish a secular republic by enshrining it in its constitution and national laws, and by**

¹ Ministry of Foreign Affairs, Government of Nepal, 'Unofficial Translation of the Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) (November 21, 2006)', Articles 7.1.1. and 3.4.

defining its neutrality in religious matters, and guaranteeing equal treatment to all religions in an agreed policy statement and regulatory framework. The State Party is encouraged to establish a statutory, multi-faith religious commission, with representation and involvement of all religious communities, to address religious and social issues, with the power to issue recommendations to the government.

RIGHT TO FREEDOM OF RELIGION OR BELIEF IN THE INTERIM CONSTITUTION AND IN THE NEW CONSTITUTION

6. In the 2011 UPR process, Nepal accepted Recommendation A-106.1., to “Ensure that the new constitution fully guarantees the right to freedom of religion and belief”, and for this right “for all citizens to be clearly included and formulated according to international standards”; Nepal also accepted Recommendation A-106.21., to “Make further efforts to overcome the difficult issue of discrimination on the grounds of religion.”
7. The Interim Constitution, rapidly drafted in 2007 and intended for a very limited period, has already been in place for eight years. It defines the right to religion as follows:
“Every person shall have the right to profess, practise and preserve his or her own religion as handed down to him or her from ancient times paying due regard to social and cultural traditions.”

This fails to guarantee the right to choose and change one’s religion, as enshrined in the International Covenant on Civil and Political Rights (ICCPR).

8. The CPA provided that a new constitution would be formulated. The new constitution should have been completed by 28 May 2010, but an agreed draft failed to materialise. A new CA, elected in November 2013, fixed a deadline of 22 January 2015 to promulgate a new draft constitution. This deadline has also not been met. A significant proportion of the members of the CA do not believe that they are being fully consulted, or that every effort is being made to include them in achieving consensus in the completion of the constitution. Many also believe that the proposed constitution will not be truly inclusive of the interests of every sector of society, particularly marginalised groups.
9. It remains crucial that the new constitution will include a comprehensive provision for freedom of religion or belief, including the right to have or adopt a religion or belief of one’s choice, and the right to manifest one’s religion or belief either individually or in community with others, both in public and private. However, during the recent constitution-writing process, the draft constitutions of the two committees of the CA included severe limitations to freedom of religion and belief. The Committee on Fundamental Rights and Directive Principles produced a draft which included the following prohibition: ‘No person shall be entitled to...convert a person from one religion to another.’ The Committee on the Protection of the Rights of Minorities and Marginalised Communities also included a clause saying ‘No one shall be allowed to convert another person from one religion to another against his or her desire.’ The proposed clauses are of particular concern because they limit the ability to convert from one religion to another, which is a fundamental human right. There is no need to include provisions outlawing the use of force in the process of choosing to change one’s faith, as these cases can already be prosecuted under criminal law. Accusations of ‘forced conversions’ from one religion to another are frequently made in Nepal, often

with virtually no evidence to substantiate them. Legal provisions such as the draft clauses are prone to discriminatory abuse. For instance, a violent attack by an extremist religious group on a peaceful Christian baptism in Kathmandu in June 2014 was accompanied by accusations that a previous member of the extremist religious group had been illegally ‘converted’. This interpretation left no room for him to be seen as making a free decision of his own volition. Without constitutional and legal protection, those choosing to change their religious beliefs and their friends in their new religion, could increasingly be subject to verbal or physical attacks.

10. **Recommendation: The State Party should ensure that the new constitution enshrines adequate protections for full religious freedom, and that no restrictive clauses will be included in the new constitution which limit the right and freedom to choose and change one’s religion, as guaranteed under Article 18 of the ICCPR. The State Party should also ensure that the new constitution is completed as soon as possible, and that every effort is made to arrive at consensus in the CA and to ensure an inclusive constitution, protecting the rights of minorities and marginalized groups.**

REGISTRATION OF RELIGIOUS IDENTITY

11. On 5 May 2014 the government of Nepal announced that although its citizens would be provided with national identity documents, members of religious minorities must submit to greater scrutiny to receive their identity documentation. Official forms will require Christians, Muslims and other minority faiths, notably converts from Hinduism, to ‘reconsider their faith’ before submitting their paperwork. If no religious affiliation is submitted, the applicant will be registered by default as a Hindu. This process clearly treats members of other faiths differently from Hindus, and as such is not only unjust, but could be used to put barriers in the way of members of minority religions securing identity papers.
12. **Recommendation: The State Party should amend the regulations for securing identity documents so that they treat members of all religions equally. The regulations should not require non-Hindus to go through any processes or explain any changes in belief which Hindu citizens are not required to do.**

FREEDOM OF RELIGION OR BELIEF FOR DALITS

13. Freedom to choose and change religious belief is of great importance for people of different castes and ethnicities. Members of the National Dalit Commission have informed CSW that the right to choose and change their religion is the most fundamental human right for Dalits. Members highlighted that the violations of their right to freedom of religion and belief undermine the realization of all their other human rights.
14. In the 2011 UPR process Nepal accepted Recommendation A-107.6 to ‘Provide the National Dalit Commission with sufficient resources to effectively realize their mandate.’ Unfortunately, no progress has been achieved with regard to this recommendation. The National Dalit Commission does not have any official permanent buildings provided by the state, and has no established regional offices. Furthermore, the Commissioners have not been reappointed or replaced within the required time limit and the Commission can afford to pay very few staff, certainly inadequate for the tasks it faces. The Commission has also received insufficient funds to run and repeat the ‘100

Day Campaign’, a highly regarded Dalit human rights campaign organized in autumn 2011. Without a full commitment to the mandate and work of National Dalit Commission and adequate resourcing of its work, the considerable achievement of legislation on caste and ‘untouchability’ will remain largely a theoretical achievement, unimplemented in practice.

15. **Recommendation: The State Party is urged to provide suitable permanent buildings, both headquarters and regional offices, for the National Dalit Commission, and the full funding required to staff its offices and campaigns throughout the regions, and a full complement of Commissioners to be appointed or reappointed immediately when the terms of the previous commissioners end.**

WOMEN’S RIGHT TO FREEDOM OF RELIGION AND BELIEF

16. In the 2011 UPR process Nepal accepted Recommendation A-106.22., to ‘Continue its efforts to ensure gender equality’ and ‘to promote the role of women in society in order to guarantee quality life for its citizens’...‘their development, protection and participation’. It also accepted the Recommendation A-106.21 to ‘make further efforts to overcome the difficult issue of discrimination on the grounds of religion, gender, race or otherwise.’
17. Early marriage for girls between the ages of 12 and 17 is very common in rural Nepal. According to 2012 research by PLAN, Save the Children and World Vision, three out of four Dalit girls marry during their early teens. Girls from religious and ethnic minorities are disproportionately affected by early and forced marriages. For instance, Dalit girls are often abducted by prospective husbands and forcibly married at an early age.
18. The dangerous practice of early and forced marriage undermines a wide range of fundamental human rights for the women and girls in Nepal. Furthermore, it undermines the right of women to freedom of religion or belief. Nepal’s legislation does not provide for the right of a wife or daughter to choose a different religion from her father or husband. Girls can be forced to marry men of a different religion, and are often expected to adopt their new husband's religion. In other cases, young women are often prevented from attending worship in church, temple, or mosque of a religion which differs from their husband’s.
19. **Recommendation: The State Party should enforce the law to prevent child marriages; establish policies across the nation which protect Dalit and low caste girls from early and forced marriage; and ensure that the constitution and laws of Nepal guarantee all women, and in particular girls of low caste, full freedom to choose their own religious beliefs.**

DISCRIMINATION RELATING TO BURIAL RIGHTS

20. Challenges remain regarding the equal realisation of burial rights in Nepal. Two major religions (Islam and Christianity) and one sect of Hinduism (Kiratis) practise burial. There have been incidents in Nepal when bodies intended for burial have been forcibly cremated and the pastors intending to officiate at burial services have been physically attacked. Christians have also been refused permission to buy land for burial or keep bodies in a rented church.

21. **Recommendation: The State Party should include the right to own, maintain, protect and have access to sacred sites and burial grounds in the new constitution, and ensure that suitable unused public land will be officially designated for burial, so that minority religions' right to manifest their faith in their traditional ceremony of burial is officially upheld.**

NATIONAL HUMAN RIGHTS INSTITUTIONS

22. National human rights organisations play an important role in promoting and protecting human rights and in increasing public awareness and debate on human rights, including freedom of religion or belief. In the 2011 UPR process Nepal accepted Recommendation A-107.5., to 'Restore the independence and mandate of the National Human Rights Commission (NHRC) in line with the Paris Principles', to 'provide adequate funding' to ensure the Commission 'can properly fulfil its mandate', and to 'take all necessary measures' to establish 'respect for its independence and autonomy, as well as the implementation of its recommendations'.
23. However, the NHRC Act of January 2012 permitted the executive branch of government to second civil servants from ministries to the NHRC, which could undermine its independence. The Act also restricts the financial independence of the NHRC, as it has to seek approval for all expenses from the government. Even travel to the regions for essential assessment of human rights violations may well require government approval. The new Act removed the provision for the NHRC to be housed in a building independent of the government, thus in effect making it no different from a government department.
24. Without the independence from the government, the NHRC can easily become a tool of government, ignoring or legitimising human rights violations. Although the Paris Principles require the NHRC to hear any complaints and petitions, whatever the timescale and dates of the events reported, the new Act of January 2012 required all cases to be filed within six months. This new stipulation not only ignores the distances victims must travel in Nepal, the costs and delays incurred in filing a case, and the physical and psychological state of the victim after the crime, but arbitrarily disqualifies all cases prior to July 2011 as yet unregistered. Furthermore, in 2012 serious accusations and evidence of corruption from within the NHRC were not investigated, nor was any action taken to prosecute those found to be guilty or to end such corrupt practices.
25. **Recommendation: The State Party should amend the NHRC Act of January 2012 and allow cases prior to 2011 to be investigated. The State Party is also urged to remove government control over use of funds and personnel, and to provide the NHRC with buildings independent of government control. The State Party should ensure that all allegations of corruption within the NHRC are fully investigated and appropriate action taken.**