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NEPAL

FREEDOM OF RELIGION OR BELIEF

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OUTLINE OF THE CONSTITUTIONAL PROCESS TO DATE

The first Constituent Assembly (CA) of Nepal, created by the Comprehensive Peace Agreement (CPA) and elected in April 2008, took the fundamental decision to abolish the Hindu monarchy and declare Nepal a secular republic.

Tasked by the CPA with creating 'a political system that fully complies with universally accepted fundamental human rights', it nevertheless failed to complete the new constitution and, even after the election of the second CA in November 2013, the political parties were still unable to agree the new constitution until after the earthquakes in April and May 2015.

On 8 June 2015 the main parties agreed an outline plan for the new constitution, which was expedited to produce a final draft by the beginning of July.

PUBLIC CONSULTATION ON THE DRAFT CONSTITUTION

From the beginning of the CA's work on a new constitution, it was accepted that when the first draft was approved, an undefined period of public consultation would follow.

However, the public consultation stage was curtailed to 15 days, with members of the CA required to return in July to their constituencies for just two days of listening to the public and receiving comments. CSW believes that this shortened period of public consultation was not adequate for a full and widespread public consultation in a country as diverse as Nepal, especially considering the acute problems in communications which Nepal experienced following the earthquakes. It was reported in the media that as many as 136,000 submissions concerning aspects of the draft constitution were received by the committee responsible, including many on religious freedom.

However, it was not evident that these submissions were fully and carefully considered. After this brief public consultation period, very little of the draft constitution appeared to have changed in response to submissions received.

Over the period between June 2014 and June 2015 there was a growing number of accusations of mass forced conversions, and strident calls from the Rastriya Prajatantra Party-Nepal (RPP-N) party to insert into the new constitution a ban on all religious conversions. This demand was acceded to in the draft and final versions of the constitution, but demands for the removal of the word 'secular' from the definition of the nature of the state were not in the end accepted.

There were widespread objections to the constitution from the Madhesi and Tharu people in the Terai areas bordering India, and demonstrations that became violent, ending with the deaths of over 40 demonstrators and police. Nevertheless, the new constitution was passed in the Constituent Assembly on 16 September 2015 by 507 to 94 votes, and the President signed and promulgated the new constitution on 20 September.

Legally, it is possible to amend the new constitution¹ by a majority vote of two thirds of the members of the assembly, but such a majority may be difficult to achieve.

1 Part 33, Clause 269(2) of the constitution of Nepal www.inseconline.org/linkedfile/Bill%20Of%20Constitution%202015%20Sept.pdf

In November 2015 Nepal underwent its [second UPR \(Universal Periodic Review\)](#), where its domestic human rights situation was [peer reviewed by United Nations member states](#). The Nepal delegation was headed by the Deputy Prime Minister and Minister for Foreign Affairs, Mr Kamal Thapa. In his introductory statement at the UPR, he emphasised that 'the promulgation of the constitution marks the conclusion of the peace process as well as the historic political transition in Nepal'.



He went on to say that 'like many other democratic constitutions, the constitution of Nepal is also a living and dynamic document that can be amended in accordance with the needs and aspirations of the people. It is flexible enough to adequately address the new contexts the nation faces through timely amendment.'

States participating in the UPR dialogue made a series of recommendations to Nepal including encouraging it to ratify a range of human rights instruments, issue standing invitation to UN special procedures, and increase efforts to protect women from violence and discrimination. Nepal accepted many of the recommendations, including the recommendation to amend its National Human Rights Commission Act in order to guarantee its independence and financial autonomy.

However, recommendations relating to freedom of religion or belief were among those that [Nepal did not accept](#). These recommendations were made by Spain and the USA, who had encouraged Nepal to:

- Eliminate the prohibition of conversion to another religion, which undermines freedom of religion (Spain);

and

- Consider amending the Constitution to strike provisions that appear to curtail religious freedoms (United States of America).

The Nepali delegation responded to these recommendations in their final statement, stating "Nepal is a country that has guaranteed religious freedom. This has been specifically mentioned in the new constitution. Total religious freedom is guaranteed by law...having total religious freedom in the constitution, we have also made provision that organised and planned conversion will be punishable by law."

Although the Nepali delegation stated that 'full' religious freedom is guaranteed in the new constitution, the provisions are not in keeping with international human rights treaties that Nepal has ratified, as they limit the freedom of an individual to convert from one faith to another, and the freedom to peacefully express and share their faith with others.

REGION-WIDE TREND OF RESTRICTING RELIGIOUS CONVERSIONS

There seems to be a worrying trend developing across South Asia to implement laws that restrict the freedom of the individual to change their faith.

In Burma, for example, this year new legislation was passed that restricts religious conversions and inter-religious marriage.

This legislation has been opposed by civil society in Burma and the international community. The UN Special Rapporteur on Human Rights in Burma, Yanghee Lee, [highlighted the "significant human rights concerns"](#) relating to legislation on religious conversions and inter-faith marriage. She stated that that this would "legalise discrimination, in particular against religious and ethnic minorities and against women". At the end of her recent visit to Burma, she described the process for registering religious conversions proposed in the bill as "onerous and potentially intimidating. The freedom to practice religion and to convert is a fundamental human right, a very personal one."

Similar anti-conversion laws, or 'Freedom of Religion Act(s)', as they are officially known, exist in six states in India. In 2009, following her official state visit to India, Asma Jahangir, the former UN Special Rapporteur on freedom of religion or belief [wrote that she was "deeply concerned"](#) that anti-conversion laws were "being used to vilify Christians and Muslims", and that these laws "should be reconsidered since they raise serious human rights concerns".

In a recent [joint statement by UN rights experts](#), Heiner Bielefeldt, the Special Rapporteur on freedom of religion or belief, reiterated that "The right to conversion has the status of unconditional protection under international human rights law," and that "States must respect everyone's right to conversion as an essential component within freedom of religion or belief by removing administrative obstacles."

SUMMARY OF CONCERNS

The right to freedom of religion or belief is of particular importance in Nepal as the country makes the transition from a Hindu monarchy to a secular democratic republic. The CA was tasked with ensuring that full religious freedom was embodied within the new constitution.

The new constitution contains a key passage in Section 26, sub-section (3), which reads as follows:

Any act which may be contrary to public health, public decency or morality or incitement to breach public peace or act to convert another person from one religion to another or any act or behavior to undermine or jeopardize the religion of another is not allowed & such act shall be punishable by law.

The wording of this clause fails to allow for choosing and changing one's faith to be seen as a positive individual choice or as a matter of individual rights, as required by the CPA and guaranteed by international treaties. Under this legal definition, talking about and witnessing to one's faith to a person of another faith could be construed as an act 'to undermine or jeopardise the religion of another', and could be categorised as an attempt to 'convert someone from one religion to another', something which is to be punishable by law. This endangers two internationally guaranteed fundamental rights of every individual: firstly the right to enjoy full freedom of expression, and secondly the right to follow a religion of his or her own choice and to manifest that religion in word and action. If not amended, these severe legal restrictions on conversion will have serious consequences for the religious freedom of all Nepalis.

FREEDOM OF RELIGION OR BELIEF: INTERNATIONAL TREATY OBLIGATIONS

Section 26(3) is inconsistent with the international human rights framework. Nepal is a state party to the International Covenant on Civil and Political Rights (ICCPR), and Article 18 of the ICCPR provides for 'the right to freedom of thought, conscience and religion', including a person's freedom to have or to adopt a religion or belief of his choice. Article 18 section 2 requires that 'no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice'. It should be noted that this clause outlaws intimidation and coercion, not conversion; but Section 26(3) of Nepal's constitution makes free and unforced conversion illegal.

Nepal is bound to implement the requirements of international human rights conventions according to its own 1991 Treaty Act, under which all ratified treaties become laws of Nepal, and existing laws must be brought into compliance with them. Section 26(3) clearly does

not reflect the requirements of Articles 18 and 19 of the ICCPR, since it outlaws the free expression of beliefs and ideas in conversation with a person of another faith.

A letter sent in October 2011 to the government of Nepal by the UN Special Rapporteurs on freedom of religion or belief and freedom of opinion and expression pointed out that Article 18 of the ICCPR 'necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another'. With regard to anti-conversion clauses, the Rapporteurs warned against criminalising non-violent actions in the manifestation and propagation of one's religion 'because this might pave the way for persecution of religious minorities.' Members of minority faiths in Nepal may well find their freedom of belief is endangered by Section 26(3) of the new constitution, which could lead to prosecution and persecution.

The European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance sent an [open letter](#) to the Prime Minister of Nepal in September 2015 recommending that the government of Nepal revise the current text of the constitution and bring it in line with Article 18 of the ICCPR.



RECOMMENDATIONS

To the Constituent Assembly of Nepal

- Review Section 26 of the new constitution to ensure that it reflects in full the requirements of the International Covenant on Civil and Political Rights (ICCPR) and of Nepal's own Treaty Act 1991;
- Pass an amendment to the constitution guaranteeing the right to choose and change one's religion or belief, and the right to choose not to believe in a religion;

To states, parties or international bodies maintaining diplomatic relations with Nepal:

- In contact with the government of Nepal and members of its Constituent Assembly, recommend that Section 26(3) be amended to conform with international treaties and to guarantee the right to choose and change one's religion or belief, and the right to choose not to believe in a religion;
- Recommend that the new constitution of Nepal be amended to reflect in full the requirements of the ICCPR and of Nepal's own Treaty Act 1991;
- Recommend that the government of Nepal extend standing invitations to UN Special Procedures including the Special Rapporteur on freedom of religion or belief.
- Urge Nepal to guarantee independence and financial autonomy to its National Human Rights Commission.

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CSW is a Christian organisation working for religious freedom through advocacy and human rights, in the pursuit of justice.

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