



Kathmandu, Nepal. Photo: Giulio Paletta, CSW 2016

NEPAL

CONCERNS ON PROPOSED LEGISLATION

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CSW is concerned by Clauses 154-156 of a bill¹ entitled 'Bill designed to amend and integrate prevalent laws relating to Criminal Offense' currently being reviewed by the Nepali parliament. The bill was registered in parliament on 15 October 2014 by Narahari Acharya, former Minister of Law, Justice, Constituent Assembly and Parliamentary Affairs of Nepal. Citizens of Nepal were invited to submit their comments on the bill by 14 April 2016.

Certain clauses in Section 9, entitled 'Offense related to Religion', are not in keeping with Article 18 or Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Nepal is a signatory.

Clause 154 states that:

1. *Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/talk or by a shape or symbol or in any other such manner.*
2. *Anyone committing the offense as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.*

The wording of this clause is similar to the blasphemy laws in Pakistan (Section 295, PPC), which make it a criminal offence to insult another's religion. These laws are poorly defined and widely misused to settle personal scores, to target religious minorities or to further extremist agendas. Decades of misuse of the blasphemy laws have resulted in a situation where even voicing disagreement with these laws can lead to violence.

Clause 156 bans religious conversion by stating:

1. *Nobody should convert the religion of other person or indulge in such act or encourage such an act.*
2. *Nobody should indulge in any act or conduct so as to undermine the religion, faith or belief that any caste, ethnic group or community has been observing since sanatan [eternal] times or to jeopardize it with or without any incitement to convert to any other religion, or preach such religion or faith with any such intention.*
3. *Anyone committing the offense as per sub-clause (1) and (2) shall face up to five years of imprisonment and fine of up to fifty thousand rupees.*
4. *If a foreigner is found to have committed the crime as per sub-clause (1) and (2), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per this clause.*

These provisions restricting religious conversion could be invoked against a wide range of legitimate expressions of religious faith, including the charitable activities of religious groups, or peacefully sharing or talking about one's faith, which may be portrayed as attempts to forcefully convert others.

Similar anti-conversion laws in force in five Indian states have been misused to foster social intolerance and violence towards peaceful religious activities and falsely accuse religious minorities (especially Muslims and Christians) of forcefully converting others. If similar laws were passed in Nepal this would have a damaging normative effect, fuelling social prejudice against the activities of minority religious groups. This would be highly detrimental to Nepal's transition towards secular democracy.

¹ See Appendix.

Furthermore, the Nepalese government has declared that Christmas will no longer be a public holiday only for Christian civil servants, rather than in Nepal for the general public. It is now a public holiday only for Christian civil servants.² For the past eight years, Christmas has been the only Christian holiday festival recognised as a public holiday. Christian leaders and interfaith harmony groups in Nepal are appealing for the holiday to be restored.

RECOMMENDATIONS

To the government of Nepal

- Ensure that the penal code guarantees all citizens the right to express and share their beliefs, the right to choose and change their religion or belief, as well as the right not to believe in any religion.
- Respond favourably to Christians and interfaith groups in Nepal who are appealing for Christmas Day to be restored as a public holiday for the general public.

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

- Monitor the progress of the aforementioned bill and encourage the government of Nepal to amend Section 26(3) of its constitution to conform with international treaties and to ensure that it along with the draft penal code reflects in full the requirements of the ICCPR and of Nepal's own Treaty Act 1991.

² *Himalayan Times*, 'Christians see red as Xmas holiday scrapped', 3 April 2016 <https://thehimalayantimes.com/kathmandu/christians-see-red-as-xmas-holiday-scrapped/>

APPENDIX

Unofficial English translation of the title, preamble and section 9 of the bill

Bill designed to amend and integrate prevalent laws relating to Criminal Offense

Preamble

Whereas it is expedient to provide for a timely criminal code to prevent and check criminal offence by integrating the prevalent laws relating to it so as to maintain morality, courtesy, good conduct, privileges and economic interest of the people by maintaining law and order in the country,

This Act has been drafted by the Constituent Assembly, in capacity as the Legislature-Parliament, as per Article 83 of the Interim Constitution of Nepal, 2007.

Criminal Procedures Code

Section -9 Offense related to Religion

153. Not to cause damage to a religious site or a place regarded as sacred:

1. Nobody should, with an intent to hate or insult the religious faith or religion of any caste, ethnicity, community or class or despite knowing that it would do so, cause any loss or damage or pollute, spoil, litter or carry out any such act to a place where religious worshipping, prayer or act is carried out or to any location, goods, graveyard or burial that is regarded as sacred.
2. Anyone committing the offense as per sub-clause (1) shall face up to three years of imprisonment and a fine of up to thirty thousand rupees.
3. If a foreigner is found to have committed the crime as per sub-clause (1), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per sub-clause (2).

154. Not to hurt religious sentiments:

1. Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/talk or by a shape or symbol or in any other such manner.
2. Anyone committing the offense as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.

155. Not to cause obstruction to religious custom-traditions:

1. Nobody should knowingly create obstructions to the religious customs-traditions that is being observed or is practiced since sanatan (eternal) times by others.

156. Not to convert a religion:

1. Nobody should convert the religion of other person or indulge in such act or encourage such an act.
2. Nobody should indulge in any act or conduct so as to undermine the religion, faith or belief that any caste, ethnic group or community has been observing since sanatan (eternal) times or to jeopardize it with or without any incitement to convert to any other religion, or preach such religion or faith with any such intention.
3. Anyone committing the offense as per sub-clause (1) and (2) shall face up to five years of imprisonment and fine of up to fifty thousand rupees.
4. If a foreigner is found to have committed the crime as per sub-clause (1) and (2), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per this clause.

157. Limitation: In offense under Clause 156, complaint shall not be applicable after completion of six months of knowledge of such offense to have been committed and after completion of three months of committing of other offense under this section.