



NEPAL

FREEDOM OF RELIGION OR BELIEF

APRIL 2018 - FOR PUBLIC USE

RECOMMENDATIONS

To the government of Nepal:

- **Amend the constitution and penal code:** Amend both the penal code and Article 26(3) of the constitution, to uphold its commitments under international law to freedom of religion or belief and freedom of expression.
- **Ensure human rights are upheld in new provincial laws:** In December 2017 Nepal held its first ever provincial level elections as part of its federal restructure. The new provincial level government officials will be able to influence the wording of new provincial laws.
- **Address the root cause of religious hatred:** Nepal's constitution and penal code are symptomatic of concerning attitudes held by certain groups around freedom of religion or belief and towards religious minorities in the country. In the medium to long term, the Nepali government should therefore invest in initiatives that address religious hatred and discrimination, and support voices of peace and moderation.
- **Repeal order restricting how faith-based organisations work:** Repeal the stay order sent on 21 June 2016 by the Department of Federal Affairs and Local Development to all District Development Committees, that restricts the work of faith-based organisations (See Appendix).
- **Provide burial land for religious minorities:** Allocate land for burial to the Christian, Muslim and Kirat communities.

CONSTITUTION

The constitution, promulgated in 2015, has been criticised by human rights groups for its failure to protect the rights of marginalised communities including women, Dalits and religious minorities.

The right to freedom of religion or belief is of particular importance in light of the country's transition from a Hindu monarchy to a secular democratic republic, which was completed with the promulgation of the new constitution in 2015. While the constitution establishes Nepal as a secular state, it also stipulates that 'Sanatana Dharma' (the Hindu faith) will be protected by the state.

Article 26(3) of the constitution restricts the right to FoRB. It states:

No person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardize other's religion and such act shall be punishable by law.

Under this clause, talking about one's faith to a person of another faith could be construed as an act that may 'jeopardize other's religion', and as an attempt to 'convert another person from one religion to another', something which is to be punishable by law. This endangers two fundamental rights of every individual which are

guaranteed in international law: firstly the right to 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.

At Nepal's United Nations Universal Periodic Review (UPR) in November 2015, both Spain and the USA made recommendations to amend Article 26, to allow for full religious freedom to be upheld. However, Nepal did not accept these recommendations.

In June 2016, Article 26(3) of the constitution was used to charge eight Christians in Charikot with attempting to convert children through distributing a comic book on the story of Jesus.¹ Although the accused were acquitted of all charges in December 2016, similar cases may occur in the future if the penal code and constitution remain unchanged.

PENAL CODE

A Criminal Code Bill, which includes clauses that criminalise religious conversion and the 'hurting of religious sentiment', was signed into law on 16 October 2017 by President Bidhya Devi Bhandari. This new law severely restricts freedom of expression and freedom of religion or belief.

Provisions of Clause 158 in Section 9² could be invoked against a wide range of legitimate expressions of religion or belief, including the charitable activities of religious groups, or merely speaking about one's faith. Similar anti-conversion laws in force in neighbouring India have been misused to foster social intolerance and violence towards peaceful religious activities, and to falsely accuse religious minorities – especially Muslims and Christians – of forcefully converting others.

1 Christian Solidarity Worldwide, 'Nepal: Eight Christians acquitted in Charikot case', 6 December 2016 www.csw.org.uk/2016/12/06/press/3371/article.htm

2 158. 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 offence 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.

The wording of Clause 156 of Section 9,³ which criminalises the 'hurting of religious sentiment', is worryingly similar to Pakistan's so-called blasphemy laws. 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.

BURIAL RIGHTS FOR RELIGIOUS MINORITIES

In Hinduism and Buddhism the bodies of the dead are traditionally cremated. However, Nepal allocates no land to the Christian, Muslim and Kirat communities, for burial. In addition, Hindu landowners are often unwilling to sell land if it is to be used for burial. In some rural areas, Christians seeking to bury their dead have found themselves victims of violent reactions from local Hindus who have seized and forcibly cremated the body. In other cases mourners from the Christian, Muslim and Kirat communities have had to travel considerable distances to bury their dead, and even dig up and re-bury bodies. Besides discriminating against religious minorities, this represents a considerable public health issue and consequently threatens the realisation of UN Sustainable Development Goal 6, to ensure the availability and sustainable management of water and sanitation for all.

REGISTRATION

There is no provision in domestic law for Christians, Muslims, Jains, Buddhists, Baha'is and other religious minority groups to register their places of worship as religious organisations. They are obliged to register the buildings as non-governmental organisations (NGOs) under the NGO Act 2034 or as individually-owned properties, which restricts their activities in those buildings.

NGOs need the approval of local District Development Committees (DDCs) to carry out their activities. In a stay order sent on 21 June 2016, the Department of Federal Affairs and Local Development instructed all DDCs to deny permission to any NGOs that apply for activities that involve *dharmapracharak*, or sharing of one's faith. An unofficial translation of point four in this letter reads: 'When making a memorandum of understanding and project agreement [with NGOs], do not approve any projects that involve the sharing of one's faith.'

3 156. 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 offence as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.

CONCLUSION

By criminalising conversion and the 'hurting of religious sentiment' in the penal code and constitution, the government of Nepal has disregarded its commitments under international law to freedom of religion or belief and freedom of expression – commitments which the country's own 1991 Treaty Act obliges it to uphold.

Ahmed Shaheed, UN Special Rapporteur on FoRB, called for a 'global repeal of blasphemy laws' in his first report at the United Nations General Assembly in November 2017 and stressed that "anti-blasphemy, anti-apostasy or anti-conversion laws...serve as platforms for enabling intolerance".⁴

The government is also restricting the right to freedom of religion or belief by denying religious minorities the ability to register their places of worship and refusing to supply them with land to use for burial. These contraventions of international human rights law is made even more striking as Nepal assumes its seat as a first time member of the UN Human Rights Council in January 2018.

4 United Nations Office of the High Commissioner for Human Rights, 'UN expert urges global repeal of blasphemy laws to boost religious freedom', 24 October 2017 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22286&LangID=E

APPENDIX

Nepali version of the stay order sent to District Development Committees on 21 June 2016 by the Department of Federal Affairs and Local Development.



नेपाल सरकार
सङ्घीय मामिला तथा स्थानीय विकास मन्त्रालय
सिंहदरबार, काठमाडौं

(सामाजिक परिचालन तथा गैर सरकारी संस्था समन्वय शाखा)

पत्र संख्या: १०६९१६३

चलानी नं.: ८९

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श्री जिल्ला विकास समितिको कार्यालय सबै,

विषय: - गैर सरकारी संस्था परिचालन संबन्धमा ।

प्रस्तुत विषयमा स्थानीय स्वायत्त शासन ऐन २०५५ र नियमावली २०५६ को मर्म र भावना अनुरूप स्थानीय तहमा गैर सरकारी संस्थाहरूको परिचालन हुन नसकिरहेको सन्दर्भमा "स्थानीय निकाय गैरसरकारी परिचालन कार्यविधि" तर्जुमा प्रक्रिया सुरु भैसकेको व्यहोरा अनुरोध गर्दै हाल राष्ट्रिय/अन्तर्राष्ट्रिय गैरसरकारीहरूलाई स्थानीय निकायको योजना प्रक्रियामा बढी भन्दा बढी सहभागी गराई प्रभावकारी परिचालन गर्न मन्त्रालयको च.नं ४५ मिति २०७३/०१/०६ को परिपत्र प्राप्त भएकै होला सो को प्रभावकारी कार्यान्वयन गर्नुका साथै तपसिल बमोजिम गर्नु गराउनु हुन समेत सचिबस्तरको मिति २०७३/०३/०३ को निर्णयानुसार अनुरोध छ ।

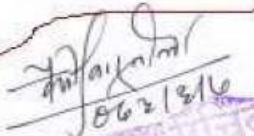
तपसिल

- १) गैरसरकारी संग परियोजना सम्झौता गर्दा र पूर्व सहमति दिँदा स्थानीय विकास अधिकारीले मात्र गर्ने । स्थानीय विकास अधिकारी नभएको अवस्थामा मन्त्रालयले निमित्त स्थानीय विकास अधिकारीको काम गर्न तोकेको पदाधिकारीले मात्र गर्ने।
- २) परियोजनाका लागि समाज कल्याण परिषद्मा पूर्व सहमति दिँदा अनिवार्यरूपमा परियोजना कार्यान्वयन हुने गा.वि.स/न.पा र वडा छनौट, लाभग्राही छनौट, परियोजना क्रियाकलाप निर्धारण आदि संबन्धमा जिल्लाका विषयगत कार्यालय र सरोकारवालाहरु संग छलफल गरेर मात्र समाज कल्याण परिषद्ले तोकेको ढाँचामा सहमति पत्र दिने। उक्त सहमति पत्रको ढाँचा यसैसाथ संलग्न छ ।
- ३) सबै जि.वि.समा NGO Desk स्थापना गर्ने। NGO हरूको प्रोफाइल अध्यावधिक गर्ने।
- ४) परियोजना सम्झौता गर्दा वा पूर्व सहमति दिँदा धर्मप्रचार वा तत्सम्बन्धि गतिविधि संचालन गर्ने प्रकृतिका परियोजनालाई अस्वीकृत गर्ने ।

बोधार्थ:

श्री समाज कल्याण परिषद्, लैनचौर, काठमाडौं ।

श्री सूचना तथा विधुतीय शासन शाखा, संधिय मामिला तथा स्थानीय विकास मन्त्रालय:


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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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