

briefing

Nepal

Towards peace, democracy and religious freedom

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I. Executive summary

In the autumn of 2005, the Seven Party Alliance (SPA) arrived at an understanding with the Communist Party of Nepal (Maoist) on the future path to peace. This political rapprochement led to the countrywide people's demonstrations of April 2006, the recall of the House of Representatives and the return of a democratic government which negotiated a ceasefire and later a full peace agreement signed on 22 November 2006. The process agreed included the CPN (Maoist) and the SPA in an interim government and led in April 2008 to free democratic elections which resulted in the creation of the Constituent Assembly. The Constituent Assembly is now tasked with framing a new constitution. In its first action it decided that the country should become a republic. After long delays, a president was elected and a new government formed in September 2008.

Despite the many international treaties signed and ratified by the Nepalese Government which guarantee fundamental human rights, these rights have not been enshrined in the current constitution or in local law. Nepal now has the opportunity to agree on a permanent constitution which guarantees all human rights, including full freedom of religion and belief.

This is the right time for governments of friendly states to advocate and support the establishment in the new Nepalese constitution of guarantees of full human rights and religious freedom.

2. Recommendations

The following recommendations have been developed by CSW in consultation with the National Council of Churches in Nepal (NCCN) and the Inter-Religious Council (IRC).

2.1. To the Government of Nepal

CSW recommends the Government of Nepal should:

1. Negotiate and democratically approve a new constitution which guarantees all the rights and freedoms to which Nepal acceded in ratifying the International Covenant on Civil and Political Rights (ICCPR);
2. Establish in the constitution the following protections for religious freedom:
 - a. Full freedom of religion and belief, namely the right to change one's religion or belief and to manifest one's religion or belief in teaching, practice, worship and observance, including the right to observe one's own religious traditions and ceremonies, and to own, maintain, protect and have access to sacred sites and burial grounds;
 - b. A single multi-faith religious commission in Nepal, with its own secretariat and building, which would deal with all religious issues;
 - c. The principle that the state is neutral towards religions and religious groups;

- d. The principle that the government may not fund any religion or allow any religious group to use public property;
 - e. The principle that the government may not take any part in religious appointments;
- 3. Establish in the constitution and in legislation the following protections against caste-based discrimination:
 - a. The prohibition of any form of discrimination against Dalits or others on the basis of caste;
 - b. The institution of a National Dalit Commission, allocating government property to house it, providing it with a secretariat, and establishing and funding regional offices;
- 4. Include in future constitutional negotiations representation and involvement of all religious communities in Nepal;
- 5. Bring to justice those guilty of perpetrating human rights abuses including abduction, torture and extra-judicial killing.

2.2. To the international community

CSW recommends that the international community should:

- 1. Actively engage with the Government of Nepal to encourage the implementation of the recommendations given in section 2.1 above;
- 2. Support Nepal in the peace process and support the government in the development of a new constitution through the newly elected Constituent Assembly;
- 3. Advocate the adoption of a constitution and the framing of laws which fully embody Nepal's commitments under international human rights treaties;
- 4. Urge the Government of Nepal to give a high priority to the implementation of full religious freedom in the new constitution, including all the rights guaranteed in Article 18 of the ICCPR.

3. Human rights: the current situation

Following a decade of war between the security forces and the CPN (M) People's Liberation Army, state structures of control, law enforcement and judicial remedy for crimes were severely curtailed, and in many rural areas largely replaced by the CPN (M) People's Courts. With the signing of the Comprehensive Peace Agreement (CPA) in November 2006, this absence of legitimate state authority continued and complete implementation of the law did not fully return. Consequently, human rights abuses continue and the perpetrators appear to enjoy impunity for their crimes, though it must be noted that current numbers of abuses and crimes are dramatically less than during the last years of the hostilities.

Abductions and intimidation continue to occur, and, in the Terai region bordering India, there has been a disturbing rise in abuses by violent groups, only partially halted by the government-negotiated agreement with the regional parties prior to the elections of 2008. The interim government, the Nepal Army and the CPN (M) leadership have not shown the political will to address past human rights abuses and bring the perpetrators to justice, which does not bode well for the prospect of peace and the universal application of law to prevent future human rights abuses. The new coalition government needs to take a firm grip on this difficult issue if full peace and justice are to return.

3.1. Religious freedom

Nepal has historically been a one-religion state, with its monarch given the added status of "King of all Hindus". Traditionally, therefore, all minority faiths have been outside the state's religious framework. There is virtually no religious education in Nepal's national curriculum, and those who would wish to teach a faith other than Hinduism have had no right to do so and, indeed, have been prevented from doing so.

Until recently, minority faiths have little or no official recognition in Nepal. There are greater numbers of Buddhists than other minority faiths, but all faiths other than Hinduism have been in need of legal protection for their rights. The great majority of Muslims are largely concentrated in one region of Nepal, around Nepalgunj, but individual Muslims are to be found in many places throughout Nepal.

Prior to 1990, Christians suffered widespread persecution throughout Nepal and many were imprisoned for their faith. Democracy first came to Nepal in 1990, when a constitutional monarchy was established. Since 1990, persecution of Christians has been at a very low level, with occasional unjust arrests and prosecutions. However, the 1990 constitution failed to provide safeguards or legal protections for minority faiths; indeed, it also made public evangelism and the right to change one's personal faith illegal, prohibiting proselytising and making it punishable by fines and imprisonment. Until recently, Christians were not able to register churches or Christian institutions with the words 'Jesus', 'Christ' or 'Bible' in the title and could not own land specifically for burials. Thus, since 1990, it has been possible for persecution to start again in earnest at any time, without any specific legal guarantees for freedom of faith.

The position for Baha'is has not been greatly different from that experienced by Christians.

The declaration on 18 May 2006 by the House of Representatives that Nepal was to be a secular state can be seen as the first step on the road to establishing full religious freedom for people of all faiths. The interim constitution established in January 2007 confirmed the establishment of Nepal as a secular state, but unfortunately made no further provisions to guarantee religious freedom. Indeed, proselytism was still specifically forbidden.

3.2. Obligations under international law

The state of Nepal signed and ratified many international treaties in the early 1990s which were not incorporated into the constitution or Nepalese law. For instance, she ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC). However, since the provisions of these treaties were not incorporated into Nepal's constitution or laws, there are no fundamental protections against the abuse of human rights by the state and its security forces.

3.3. Monitoring bodies

3.3.1. National Human Rights Commission of Nepal

The National Human Rights Commission (NHRC) of Nepal does not have mandatory powers, but is only advisory. Under the 1997 NHRC Act, the members of the NHRC were recommended by a committee comprising the prime minister, the chief justice of the Supreme Court and the leader of the main opposition party in Parliament. However, in 2005, the king amended the NHRC Act through an ordinance by which the chief justice, the foreign minister, and the speaker of parliament were given the power to appoint NHRC members – a revised process which drew widespread criticism from legal experts and the international human rights community. It was pointed out that this amendment jeopardised the credibility of the NHRC, and that it was against the Paris Principles that stress the autonomy and impartiality of national human rights commissions.

Under provisions of the peace agreement signed on 22 November 2006, a new NHRC was established by the Parliament of Nepal in autumn 2007 with a revised mandate and newly appointed commissioners.

3.3.2. UN presence in Nepal

On 11 April 2005, the Nepalese Government agreed to accept a UN monitoring operation in Nepal. This move raised hopes of an improvement in the human rights situation. The Office of the High Commissioner for Human Rights set up field offices in the regions of Nepal to ensure rapid responses to reports of human rights violations. The UN agency's presence is intended to reduce and remedy violations of international human rights law.

The fact that, even in 2009, the UN has such a visible presence in Nepal is of considerable advantage for the future of the peace process, in which UN participation for monitoring of peace and control of arms will be crucial. As part of the agreement between the CPN (M) and the Seven-Party Alliance, the UN was invited to set up a mission to supervise the return to barracks and cantonments of the Nepalese Army and the Maoist People's Liberation Army, the registering and returning to armouries of all arms in barracks and cantonments and the process of registering and verifying the ages of all fighting personnel, so that any individuals under the age of eighteen can be identified and removed from armed service. The UN performed this role with thoroughness and proficiency from spring 2006 to spring 2008, establishing conditions suitable for the democratic elections which took place in April 2008. Its mandate has been extended more than once.

3.4. Faith-based initiatives for peace and democracy

3.4.1. Ecumenical cooperation for justice and peace

Under the auspices of the National Council of Churches of Nepal (NCCN), and through the initiative of their general secretary, Dr K.B. Rokaya, 55 leaders of the Christian community in Nepal came together in July 2003 to consider the role they could play in restoring permanent peace and bringing justice and reconciliation. This led to the formation of Christian Efforts for Justice and Peace (CEPJAR), which has arranged meetings and conferences which brought together representatives of churches and other religious and civil society organisations to take action for peace, justice and democracy. It has issued a number of statements, to which national media reactions have been universally favourable.

Working with many leaders and participating with 300 other faith and civil society organisations, CEPJAR and its allies were able to put together a joint programme calling for a new constitution guaranteeing full religious freedom and an end to all human rights violations.

In May 2006 the NCCN wrote to all members of the reinstated House of Representatives (Parliament) on behalf of the Christian community of Nepal. Included with recommendations for the peace process was a request that members should “work towards ensuring full religious freedom in the country”.

In 2008, after requests from the NCCN and many Christians, as well as people of other faiths, the Government of Nepal declared nine new public holidays reflecting the multi-faith nature of the new Nepal, one of which was Christmas Day.

3.4.2. Inter-faith cooperation for justice and peace

During the period from 2004 to 2006, a group of religious leaders from many faiths formed the Inter-Religious Peace Committee, working for inter-faith harmony, peace and justice, and for religious freedom. This group included leaders from the Hindu, Buddhist, Christian, Muslim and Baha'i faiths, as well as members of traditional religions.

Its meetings were publicised and noted with approval by the media, and its leaders met senior officials of the UN. The interim government had no formal policy on inter-faith understanding, but the success of the Inter-Religious Peace Committee has been largely demonstrated by the official establishment of the Inter-Religious Council (IRC), with a Hindu named as its president, and a Christian as its vice-president.

4. Appendix

4.1. Political background and constitution

Nepal was largely a closed society into the second half of the 20th century, with a powerful and traditional absolute monarchy in full control until 1990. Until 2006, it was the only officially Hindu state in the world, with Hinduism firmly established as the state religion in the 1990 constitution. Hindus declared the monarch as “King of all Hindus” worldwide.

The constitution of 1990 was devised by a group of experts selected by the then monarch. It was the result of a compromise between the Congress party, the coalition of the left and the king, and it established a constitutional monarchy with a multi-party parliamentary system. The king appointed the leader of the majority party in Parliament as prime minister, who formed a cabinet which commanded majority support in Parliament.

Since 1990, there has been a Supreme Court which, on paper, represents an independent judiciary. Later, through internal and external pressure both from civil society and the international community, a National Human Rights Commission Act was passed, and, after a delay of nearly three years, the Commission was finally formed in the year 2000.

4.2. Deteriorating human rights situation during the civil war

It is important to recognise that Nepal is one of the poorest countries in the world, with 39 to 42 per cent of the population living below the UN-recognised poverty line (income of US\$1 per day).¹ A previous fact-finding mission by CSW found that hired labourer in rural areas may earn no more than US\$1 a day, but may have five or more children to support on these wages. This utter poverty, in a country dominated by the caste system with huge disparities in status and income, has been fertile ground for revolutionary political parties to gain the support of the common people.

There are up to twenty Communist parties in Nepal, many of which are represented in Parliament or in local government, following the multi-party parliamentary system. But the national political system as established in 1990 became entangled in party-infighting and riddled with corruption. After itself suffering violence, the CPN (M) took the decision in 1996 to pursue its policies by force and started a revolutionary movement, which appeared then to the government as nothing more than a small isolated pocket of Maoist malcontents. Such was the injustice and poverty in the mountainous rural areas that the CPN (M) rapidly gained recruits and began attacking police stations,² initially acquiring all the weapons they needed from the state security forces' depots.³ They quickly grew in strength, recruiting those who saw them as the only hope of change from an entirely unjust system. Wherever they controlled the countryside, they established their own new local government system. More recently, forced recruitment of young men (and women) over the age of ten became all too common. Even though the Maoists have enjoyed widespread popular support, in the past many people in rural areas obeyed the Maoists for fear of punishments which include the burning of houses and the torture and killing of 'enemies of the people'.

¹ See UN Economic and Social Commission for Asia and the Pacific report of 2003, and UN statistical databases.

² See Amnesty International report, 'A Spiralling Human Rights Crisis', April 2002 (<http://www.amnesty.org/en/library/info/ASA31/024/2002/en>).

³ See media reports, including 'Maoists Kill 129 in Nepal Raids', *The Guardian*, 18 February 2002 (<http://www.guardian.co.uk/world/2002/feb/18/nepal>).

In 2002, a state of emergency was declared, and the army was deployed for the first time against the Maoists. Security forces enjoyed virtual immunity from prosecution. This led to widespread abuse of human rights by the military, including thousands of disappearances and extra-judicial executions, widespread torture of often innocent 'Maoist suspects' and the arming of local militias without any civilian control.⁴

An estimated 13,000 people died during the war.⁵ The state reported almost all deaths as 'Maoist', even when innocent and unarmed young women and children were killed.⁶ Because of the disparity in firepower and in numbers of combatants, it was believed that at least two out of three of these deaths were victims of the security forces, but both sides were guilty of gross violations of human rights. The state's violent responses were the strongest impetus for recruitment to the Maoists.

Until 2006, the army controlled the towns and cities, but the Maoists controlled virtually all the mountains and countryside. There were many US military advisers working with the Nepalese Army, directing its activities. The US Government listed the CPN (M) as a terrorist organisation,⁷ and proclaimed that no government should negotiate with the terrorists until they had abandoned or destroyed their weapons. However, most Nepalis wanted peace negotiations to include the CPN (M), and the widespread demonstrations in April 2006 appeared to show great popular backing for such an inclusive peace process and a rejection of the hard-line policy pursued by the absolute monarchy.

However, until 2006, the protection and maintenance of this system was left entirely in the hands of the hereditary monarch, who was the head of the armed forces. This left ultimate power in the hands of the king. In 2002 King Gyanendra dissolved parliament, removed the elected prime minister and took political power into his own hands. He began ruling through a prime minister and cabinet appointed directly by him. In February 2005, the king further consolidated power by removing the government and assuming full personal control. He declared a state of emergency and formed a government under his own chairmanship, suspending many articles in the democratic constitution and all the rights that went with it, including freedom of speech, the rule of law, freedom from arbitrary arrest and the rights of assembly and free movement. These events were proof that there were effectively no guarantees of democracy in Nepal, and that any democratic freedoms had been temporary concessions by an all-powerful absolute monarchy which had unfettered control of state military forces.

Such was the total exclusion of all political parties from government that, in November 2005, during a ceasefire announced by the Maoists, a twelve-point understanding was negotiated between CPN (M) and an alliance of seven constitutional political parties, the Seven-Party Alliance (SPA). This understanding was directly aimed at ending the king's autocratic rule and restoring democracy. Local elections in February 2006 announced by the monarch were largely boycotted by the recognised political parties. All protests against these elections were met with a ban on demonstrations, a curfew and the arrest of hundreds of political leaders and activists.

⁴ See Amnesty International report, 'Human Rights Escalate Under State of Emergency', April 2005 (<http://www.amnesty.org/en/library/info/ASA31/036/2005>).

⁵ See Amnesty International report, 'Military Assistance Contributing to Grave Human Rights Violations', June 2005 (<http://www.amnesty.org/en/library/info/ASA31/047/2005>).

⁶ See Amnesty International report, 'Killing With Impunity', January 2005 (<http://www.amnesty.org/en/library/info/ASA31/001/2005>).

⁷ On 1 May 2003, the US administration published two lists of organisations considered terrorists; the CPN (M) was on the second list.

Public resentment at the actions of the king and security forces culminated in nationwide strikes and demonstrations in April 2006, and, despite daytime curfews ordered by the king, mass protests took place throughout the country with the Maoists organising nationwide blockades. Fierce and aggressive action by the security services – including the use of live bullets, baton charges and tear gas – against these protests resulted in the killing of at least 21 people and the injury of up to 4,000.

With no signs of the protests ending, the king was forced to appoint a prime minister recommended by the SPA and to recall Parliament, which reassembled on 28 April. Both the Parliament and the CPN (M) declared a ceasefire.

On 18 May, Parliament declared itself 'supreme', removing the king's powers as head of the army and giving control of the army henceforth to elected representatives. The country was declared a secular state, and the king was stripped of almost all his executive powers.

On 26 May, the CPN (M) and the SPA began negotiations to hold elections for a constituent assembly in order to create a new constitution. They agreed to a 25-point code of conduct to govern the period of ceasefire, which was to be policed by a ceasefire monitoring committee, appointed in June.

Both the CPN (M) and the SPA agreed to draft an interim constitution and form an interim government which would include members of both the CPN (M) and the SPA. In July and August, both the SPA and Maoists requested the help of the UN in the management of arms and armed personnel, to which the UN agreed.

Binding agreements on most outstanding items were made and signed by both SPA and CPN (M) in November 2006, including the UN supervision of the return to base and cantonment (or lock-up) of all arms during the period leading up to the elections for a constituent assembly.

These elections having taken place in April 2008, the new Constituent Assembly passed a resolution establishing Nepal as a federal republic, and the king accepted this decision and left his palace. A president was elected by the new Parliament and a new coalition government, under a CPN (M) prime minister, was finally established by September 2008, including members of all the main political parties except the Congress Party.