



View of Kathmandu valley. Photo: CSW

NEPAL

FREEDOM OF RELIGION OR BELIEF

JULY 2015 · FOR PUBLIC USE

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 within the time allotted. 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. However, on 8 June 2015 the four main parties agreed an outline plan for the constitution, which was expedited to produce a final draft by the beginning of July. There appears to be a shortened timescale for the rest of the process of promulgating the draft constitution: media reports suggest that the public consultation stage may be curtailed to about 15 days, possibly ending on 31 July 2015.

Over the past 12 months there have been a growing volume 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. The coalition government reportedly agreed to these demands, in order to end noisy demonstrations and obstruction in the CA on 3 July.

SUMMARY OF CONCERNS

The right to freedom of religion or belief has particular importance in Nepal at this pivotal moment in its history, as it makes the transition from a Hindu monarchy to a secular democratic republic. The CA must therefore ensure that full religious freedom is embodied within the new constitution.

The new draft constitution is currently under consideration in the CA. CSW has been able to access a copy of the draft under discussion in Nepali language, and three reliable

contacts in Nepal have translated the sections dealing with religious freedom into English. The key passage from Section 31, sub-section (3), reads as follows:

No one shall behave, act or undertake activities that breach public order or break public peace/peace in the community; and no one shall attempt to change or convert someone from one religion to another, or disturb/jeopardise the religion of others, and such acts/activities shall be punishable by law.

The wording of this draft 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. There is a serious risk that, if not amended, these draft clauses which are inconsistent with the international human rights framework, will be passed by the CA. If such restrictions on conversion were to be enshrined in the final version of the constitution, religious freedom for all Nepalis would be severely curtailed.

Furthermore, depending on the particular interpretation, talking about and witnessing to one's faith to a person of another faith could be construed as an act that 'jeopardises/disturbs another's religion', and could be categorised as an attempt to 'convert someone from one religion to another', 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.



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FREEDOM OF RELIGION OR BELIEF: INTERNATIONAL TREATY OBLIGATIONS

Nepal is a state party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the ICCPR provides for 'the right to freedom of thought, conscience and religion'. This includes a person's 'freedom to have or to adopt a religion or belief of his choice', interpreted by General Comment 22 of the UN Human Rights Committee as necessarily including the right 'to replace one's current religion or belief with another, or to adopt atheistic views' (Clause 5).

Moreover, 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.

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, voiced concern about proposals relating to religion and belief in the new constitution. The letter 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 acts performed in the manifestation and propagation of one's religion 'because this might pave the way for persecution of religious minorities.'

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 by the CA, a period of public consultation would follow, though the length of time required for this consultation was not specified. If the consultation is to be effective and fair, it is undoubtedly necessary for the period given for the draft to be read, analysed, discussed and commented upon, to be sufficient for all interested parties to make their contribution. A shortened and nominal period of about two weeks could not possibly meet the objectives of full and widespread consultation in a country as diverse as Nepal, most especially considering the acute problems in transport and communications which Nepal is experiencing following the earthquakes.

RECOMMENDATIONS

To the Constituent Assembly of Nepal:

- Ensure that the new constitution of Nepal reflects in full the requirements of the International Covenant on Civil and Political Rights (ICCPR) and of Nepal's own Treaty Act 1991;
- Ensure that the new constitution of Nepal guarantees the right to choose and change one's religion or belief, and the right to choose not to believe in a religion;
- Ensure that the new constitution does not include any sentence or clause prohibiting or banning religious conversion, whether defined as by force or with or without inducement;
- Ensure that a sufficiently lengthy period for public consultation on the draft constitution is allowed, to guarantee full participation by all citizens and concerned parties.

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

- Engage effectively with the Universal Periodic Review of Nepal's human rights, which culminates on 4 November 2015.

In contacts with the government of Nepal and members of its Constituent Assembly, to recommend:

- That the new constitution of Nepal reflects in full the requirements of the International Covenant on Civil and Political Rights (ICCPR) and of Nepal's own Treaty Act 1991;
- That the new constitution of Nepal guarantees the right to choose and change one's religion or belief, and the right to choose not to believe in a religion;
- That the new constitution of Nepal does not include any sentence or clause prohibiting or banning religious conversion, whether defined as by force or with or without inducement;
- That the process of public consultation on the new draft constitution of Nepal allows sufficient time for full consultation with all citizens of Nepal.