

Introduction

1. Christian Solidarity Worldwide (CSW) is a human rights organisation specialising in the right to freedom of religion or belief (FoRB) for all.
2. CSW welcomes the opportunity to contribute to the Human Right Council's (HRC) Universal Periodic Report (UPR) on Nepal and wishes to draw attention to particular concerns regarding the right to FoRB in the country.
3. Nepal supported 152 out of a total of 211 recommendations during its second UPR in 2015. However, during the most recent reporting period, the Government of Nepal has failed to fully comply with its obligations under Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) pertaining to right to freedom of religion or belief (Article 18), right to hold opinions and right to freedom of expression (Article 19), right to freedom of association (Article 21) and right to equality and non-discrimination (Article 26).

International Legal Obligations

4. Nepal is party to the ICCPR. Article 18 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." This has been interpreted by the General Comment 22, paragraph 5 of the UN Human Rights Committee as including the right "to replace one's current religion or belief with another or adopt atheistic views." The state is bound to implement the requirements of international human rights conventions according to its 1991 Treaty Act, under which all ratified treaties become laws of Nepal, and existing laws must be brought into compliance with them.
5. The provisions of these treaties have not been incorporated into Nepal's Constitution (2015) or Penal Code (2017), despite the government of Nepal accepting recommendation 121.1 during the second UPR cycle which urges the state to consider effectively fulfilling its obligations to ensure the implementation of ratified international instruments. .
6. **Recommendation: The State Party is urged to ensure that the provisions of these treaties are fully incorporated into its constitution and penal code, in accordance with the requirements of the 1991 Treaty Act. The constitution should also provide explicitly for freedom of religion and belief without discrimination.**

Freedom of religion or belief - the national framework

7. After decades of Hindu monarchy rule, Nepal was declared a Republic in 2008. With several Constituents Assembly impasses, the constitution was finalised and promulgated in 2015. Nepal adopted a new Penal Code in 2017, which came into force in August 2018 and replaced the Country Code (Muluki Ain), 1963.
8. In the 2015 UPR process, Nepal failed to accept recommendation 124.7 to "Consider amending the Constitution to strike provisions that appear to curtail religious freedoms". Nepal also noted recommendation 124.16 to "eliminate the prohibition of conversion to another religion, which undermines freedom of religion" . but did accepted recommendation 121.16 to, more vaguely, "take necessary steps to ensure that the new constitution is implemented while protecting human rights..."
9. While the constitution of Nepal states that "each person shall be free to profess, practice and preserve his/her religion according to his/her faith, in Article 26," it criminalises the freedom to manifest one's religious beliefs by propagation, which is an integral part of FoRB. The formulation of the right under Article 26 of the constitution is inconsistent with the right to freedom of religion or belief guaranteed in Article 18 of the ICCPR.
10. In addition, Article 26 (3) of the constitution of Nepal states that "No person shall, in the exercise 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 jeopardise other's religion and such act is punishable by law." This contravenes Nepal's international obligation to the right to FoRB; the provision violates Articles 18 and 19 of the ICCPR. The State Party has failed to discharge its duty to guarantee the right of its citizen to choose and change religion as enshrined in the ICCPR.
11. Sections 155, 156, 157 and 158 of the Penal Code are vaguely worded and open to discriminatory abuse in application, raising concerns of subjective interpretations and selective prosecutions.
12. The provisions include "damaging or injuring or, in any way, defiling, destroying or polluting any place of religious worship with the intent of insulting the

religion or religious feeling (Section 155) and “outraging religious feeling (Section 156) and “no one should create obstacles knowingly in the religious tradition of other faith being practiced since ancient times (Section 157).” This stands in contravention to Article 18(1) of the ICCPR.

13. The Human Rights Committee, General Comment No. 34, paragraph 25 states that “a law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly...a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”

14. The prohibition on proselytization under Section 158(1) of the Penal Code also breaches Nepal’s obligation under ICCPR. It states “no person shall convert any one from one religion to another or make attempt to or abet such conversion” and (2) “no person shall do any act or conduct which undermines the religion, opinion or feeling/faith...” This is contrary to the Article 18 of the ICCPR and exposes religious minorities to discriminatory prosecution for manifesting their religion through teaching, practice, worship and observance, even where there is no intention to convert others, giving government officials arbitrary powers to misuse the law. In October 2017 the UN Special Rapporteur on the right to freedom of religion or belief, Dr Ahmed Shaheed, raised concerns that anti-conversion laws serve as a platform to enable intolerance.

15. Recommendation: The State Party must amend Sections 155, 156, 157 and 158 of the Penal Code (2017) in line with international standards, including on freedom of expression; freedom of thought, conscience or religion; and equality before the law and equal protection of the law without discrimination, as guaranteed under the ICCPR.

16. Recommendation: The State Party must take appropriate measures to amend Article 26(1) of the Constitution to harmonize the scope of the right to freedom of religion or belief as guaranteed under Articles 18 of the ICCPR. The State Party must recognise the right to manifest one’s religion or belief and amend Article 26(3) of the constitution to prohibit only forceful conversion, and remove any clause prohibiting conversion.

Problematic notion of secularism

17. Although the constitution recognises Nepal as a secular state, the definition under Article 26 defines “secular”

as the “protection of religion and culture being practised since ancient times and religious and cultural freedom.”

18. The concept of ‘secularism’ in the constitution is interpreted as the safeguarding of ‘dharma sanskriti’ (religion and culture) that has been in existence for generations (sanaatan) as well as the freedom of religion and culture on the sovereign soil of Nepal. This in practice has been understood as the protection of the Hindu religion, which is the only religion that has been practiced since ancient times.

19. The current definition of ‘secularism’ is restrictive, and it is also inconsistent with international human rights framework; it prejudices other minority religions, which legitimises discrimination on the basis of religion.

20. Recommendation: The State Party must take immediate measures to reformulate Article 26 to remove prejudice in the definition of secularism. The State Party is urged to include a definition of secularism that will conform to the international human rights framework and refrain from preferential treatment of one religion over others.

Targeted attacks and legal prosecutions

21. Since the promulgation of the constitution in 2015, there has been about twenty five reported cases involving violations against the right to “profess, practice and preserve,” Christianity. The violations range from targeted attacks by non-state actors on prayer meetings and causing property damage, to false accusations of conversion resulting in legal prosecutions.

22. On 9 June 2016, the Dolakha District Police arrested eight Christians, following an anonymous allegation that they had been proselytizing among young children at the Mount Valley Higher Secondary School of Charikot, Dolakha. The accused were affiliated with an NGO named Teach Nepal, registered with the objective of imparting moral education to children. While the accused were acquitted after a lengthy trial, similar attempts to prosecute Christian people in Nepal continue.

23. On 23 April 2019, the General Secretary of Nepal Christian Society Dili Ram Paudel and three others (one involving an American citizen) were arrested on suspicion of proselytization and conversion. Although all four accused were released, they were subsequently charged for violating Section 158 of the Penal Code even though they were conducting meetings and

trainings with pastors. The case has since been dismissed by the court and the charges dropped.

24. According to interviews conducted by CSW with civil society groups in Nepal, targeted attacks by non-state actors' belonging to Hindu extremist groups are a growing concern for religious minorities. For example, on June 2019, a mob called Shiva Sena (Army of Shiva) assaulted staff at the Anandaban Leprosy Hospital, Kathmandu on suspicion of conversion. The hospital has been a pioneer in serving people with leprosy in the area and is staffed by Christian and non-Christians.

25. Prolonged legal prosecution against religious minorities are also difficult for individuals who have been wrongly accused of conversion. Civil society groups have informed CSW of doubts in the investigation processes by law enforcement officials and delays in the dispensation of justice. For instance, Chinimaya Blon, a social worker from Dhankuta District ran an orphanage since 2011. However her application to renew the licence was refused by the government in 2016. She moved the children to Kathmandu and placed them under the care of Pastor Hari Tamang with the approval of the parents of the children who are poor. In the same year, Chinimaya and Pastor Tamang were arrested, imprisoned and charged with child trafficking and attempted conversion. While the charge for child trafficking has been dropped, the charges for attempted conversion have continued before the court since 2016 with no ruling on the charges. Alongside emotional distress, legal cases such as this also have significant financial and reputational impacts on religious minorities who are the victims of State and non-state actors.

26. Recommendation: The State Party must ensure that the police prosecute perpetrators of crimes who target religious minorities and ensure that police officers who fail to carry out their duties are liable for failure to investigate. The State Party must take measures to protect against wrongful prosecution and urge the judiciary to expedite hearings.

Discrimination relating to burial rights

27. Challenges remain regarding the equal realisation of burial rights in Nepal. Two major religions (Islam and Christianity) and one sect of Hinduism (Kiratis) practise burial, yet there is no law regulating burial rights and sites in Nepal. Without burial grounds, minority religious groups - who do not customarily cremate - are forcibly resorting to cremating the deceased.

28. In some cases, Christians seeking to bury their dead have found themselves victims of violent reactions from local Hindus. There have been incidents in Nepal where bodies intended for burial have been forcibly cremated and the pastors intending to officiate at burial services have been physically attacked. In other cases mourners from the Christian, Muslim and Kirat communities have had to travel considerable distances to bury their dead. Christians have also been refused permissions to buy land for burial or keep bodies in a rented church. In December 2010, the Pashupati Area Development Trust, established by the Nepali government, decided to prohibit Christian burials in the Sleshmantak Forest. This decision was upheld by the Supreme Court, apparently on the basis that use of the forest for Christian funerals violated the religious rights of the Hindu community. Non-Hindu communities were expected to buy their own lands for establishing cemeteries despite lacking the financial means. Until August 2018 their religious institutions were not officially recognised, which added another layer of challenges. In 2010 and 2011, Christians in Kathmandu signed agreements with the Minister of Culture for the purpose of government facilitation in establishing cemeteries. However, no assistance has yet been provided. Besides discriminating against religious minorities, it represents a considerable public health issue.

29. Recommendation: CSW calls on the State Party to enshrine in law the right to own, maintain, protect and have access to sacred sites and burial grounds, and ensure that suitable unused public land are officially designated for burial, so that minority religions' right to manifest their faith in their traditional ceremony of burial can be officially upheld.

Women's right to freedom of religion or belief

30. Nepal accepted recommendation 122.47 during its second UPR which urged the state to "Strengthen measures to combat violence against children, particularly with regard to the prevention of early and forced child marriages and child trafficking and in particular through awareness-raising campaigns among families." In 2016, Nepal endorsed its National Strategy to stop Child Marriage by 2030.

31. Although the legal age of marriage is 20, it is very common for girls between 13 and 17 to be married. This practice is particularly noticeable in villages. According to UNICEF/UNFPA June 2017 report, called 'Ending

Child Marriage in Nepal,' the country has one of the highest rate of child marriage in Asia. Girls who are forced to marry early, are not able to practice and observe their religious teaching and traditions, leaving them with no choice but to adopt the religion of the man they are married to.

- 32. Recommendation: CSW urges the State Party to enforce the law to prevent child marriages; to establish policies across the nation which protect girls from the Dalit community from early and forced marriage; and to ensure that the constitution and laws of Nepal guarantee all women, and in particular girls from the Dalit community, full freedom to choose their own religion or belief.**

Protection of Tibetan refugees

33. During the 2015 Universal Periodic Review, Nepal was encouraged to establish mechanisms to promote non-discrimination, including the registration of Tibetan refugees. Nepal did not support recommendation 124.6, "the protection of Tibetan refugees by ratifying and applying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol" nor recommendation 124.18 to, "register refugees and provide documentation so they are able to work, access education and travel". Nepal does not have a national refugee framework and has not allowed the UNHCR to assist Tibetans who are already based in the country.
34. Since the Dalai Lama's exile from Tibet to India, many Tibetans have fled to neighbouring countries, including Nepal, who historically have granted asylum. However, over time, Nepal has come under pressure from China, resulting in a less favourable attitude towards Tibetans. The Tibetan Refugee Welfare Office informed CSW that as of 2019, there is an estimated 13,000 undocumented Tibetan refugees remaining in Nepal. With no identity cards, many young people have been unable to apply for jobs, open bank accounts, acquire drivers licence and access professional studies. While Nepal may be commended for welcoming Tibetan refugees since 1959, the challenges faced by this minority group remains unresolved, resulting in another generation of Tibetans living in Nepal who are undocumented.
35. Nepal supported recommendation 122.38 during its UPR in 2015 to "Ensure an inclusive dialogue with all Nepalese minority groups." However, there has been little sign of implementation over the past four years. Nepal has taken no measures to hold dialogues with

Tibetans living in Nepal. In addition, there has been increased monitoring and investigation by police into religious celebrations. The religious celebration of the 84th birthday of the Dalai Lama on the 6 July 2019 was banned for Tibetans living in Nepal. The government of Nepal issued the order to cancel the celebration with no opportunity for dialogue.

36. The Tibetan Refugee Welfare Office informed CSW that the portrait of the Dalai Lama was removed from a religious celebration on the 3rd day of the Tibetan New Year in 2018 leaving Tibetans embarrassed. Nepali Buddhists monks, have often been mistaken as Tibetans and face harassment and discrimination on account of their saffron robe. Nepal accepted recommendation 121.39 to "strictly uphold and respect the international law prohibiting refoulment" But Nepal has failed to honour its international commitment by agreeing to return Tibetans to China in an extradition treaty agreed between the two nations in October 2019.
- 37. Recommendation: The State Party must take concrete measures to guarantee Tibetans their rights under international law. The State Party is urged to ensure that Tibetans in the country are afforded the freedom to profess, practice and preserve their religion without fear or intimidation, harassment and attack.**