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Introduction

ADF International is a global alliance-building legal organization that advocates for the right of people to freely live out their faith. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Fundamental Rights Agency of the European Union, and the Organization for Security and Co-operation in Europe.

This report identifies problematic prohibitions on the free exercise of religion in the interim constitution of Nepal and calls on Nepal to guarantee freedom of religion to its fullest extent under its new constitution. It also outlines how Christians in Nepal are suffering from discrimination and calls on Nepal to ensure that people of all faiths are treated equally.

(a) Lack of Guarantee of Freedom of Religion in the Constitution

Background

1. Nepal is a religiously diverse country of over 30 million people.¹ The 2011 census found that Hindus constitute 81.3 percent of the population, Buddhists 9 percent, Muslims 4.4 percent, and the remaining 5 percent Kirats, Christians, and others.² However, these numbers are disputed by religious minorities, and Christian groups state the number of Christians is almost 5 percent of the population.³
2. Nepal was a Hindu Kingdom, and the only officially Hindu country, until the introduction of the interim constitution in 2007, a result of the dismantling of the monarchy after a decade-long civil war. The interim constitution recognizes Nepal as “an independent, indivisible, sovereign, secular, inclusive”⁴ and “multi-ethnic, multi-lingual, multi-religious, multi-cultural”⁵ state.
3. With respect to freedom of religion, the interim constitution states in article 23,
 - (1) Every person shall have the right to profess, practice and preserve his or her own religion **as handed down to him or her from ancient times paying due regard to social and cultural traditions.**
Provided that no person shall be entitled to convert another person from one religion to another, and no person shall act or behave in a manner which may infringe upon the religion of others.
 - (2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

¹ U.S. State Dep’t, Nepal 2013 International Religious Freedom Report 1, *available at* <http://www.state.gov/documents/organization/222549.pdf>.

² *Id.*

³ *Id. at 1-2.*

⁴ The Interim Constitution of Nepal, 2063 (2007), art. 4.

⁵ *Id.*, art. 3.

4. According to article 63(1), the Constituent Assembly (CA) is responsible for drafting a new constitution. The deadline for the new constitution has changed repeatedly. Most recently, the CA failed to have ready the new constitution by 22 January 2015, due to major disagreement among political parties.⁶ This means that the interim constitution still governs, and it is still unknown what the status of freedom of religion will be. However, two constitutional committees have presented draft provisions on freedom of religion, which may form a basis for the final constitutional provisions.
5. The Committee for Fundamental Rights and Directive Principles proposed an article that states:

(1) Every person shall have the freedom to profess, practice and preserve his or her own religion in accordance with his or her faith, or to refrain from any religion.

Provided that no person shall be entitled to act contrary to public health, decent behavior and morality, to indulge in activities of jeopardizing public peace or **to convert a person from one religion to another, and no person shall act or behave in a manner which may infringe upon religion of others.**

(2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.⁷

6. The Committee on the Protection of the Rights of Minorities and Marginalized Communities proposed an article that states:

(1) All persons shall have the freedom of religion as given below.

- a. To accept or not to accept a religion,
- b. To profess and practise religion according to one's own faith,
- c. To disseminate the religion of one's own faith and religious belief,
- d. To renounce or convert to another religion out of one's own accord,
- e. To open and run religious associations or organizations.

(2) While exercising the freedom of religion mentioned in Sub-Article (1) (a), (b), (c), (d) and (e), **it shall have to be done in a manner which shall not affect other religions or religious faith.**

(3) **No one shall be allowed to convert another person from one religion to another against his or her desire.**

(4) Acts contrary to Sub-Articles (2) and (3) shall be punishable by laws.

(5) Every religious denomination shall have the right to manage and protect religious places and religious trusts in accordance with the law by maintaining its independent existence and religious tolerance.⁸

⁶ Gopal Sharma, *Nepal plunges into turmoil as politicians scuffle over constitution*, REUTERS, 23 Jan. 2015, <http://www.reuters.com/article/2015/01/23/us-nepal-politics-idUSKBN0KW0DL20150123>.

⁷ Constituent Assembly Committee for Fundamental Rights and Directive Principles, *A Report on Thematic Concept Paper and Preliminary Draft 2066 (2009-10 AD)*, http://www.ccd.org.np/resources/concept_paper_fundamental_rights_directive_principles.ENG.pdf.

⁸ Constituent Assembly Committee on the Protection of the Rights of Minorities and Marginalized Communities, *Concept Paper*, http://www.ccd.org.np/resources/concept_paper_minority_ENG.pdf.

Analysis

7. Nepal has acceded to the International Covenant on Civil and Political Rights. ICCPR article 18 guarantees the right to freedom of thought, conscience and religion. This includes the “freedom to have or to adopt a religion or belief of [one’s] choice,” which is interpreted by the UN Human Rights Committee (HRC) in paragraph 5 of its General Comment 22 to include the right to “replace one’s current religion or belief with another or adopt atheistic views, as well as the right to retain one’s religion or belief.”
8. ICCPR article 18(2) states, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” The HRC interprets this to include “the use of threat of physical force or penal sanctions” and policies and practices that “restrict[] access to education, medical care, [and] employment.”
9. The prohibition in both the interim constitution and the two draft provisions on one person converting another person from one religion to another appears to prohibit more than what is outlined in article 18(2), as it does not mention coercion. The prohibition is vague and could mean that sharing one’s faith with another person, or even attempting to persuade another person of the superiority of one faith over another—central components of the freedom to manifest one’s religion, and also protected by ICCPR article 19’s guarantee of freedom of expression—is illegal. It could also prohibit social work done by religious organizations, such as hospitals and schools, as that work is often openly faith-based and often serves members of other religions, who may be influenced by the faith-based mission of these organizations.
10. All three documents also prohibit infringing on the religion of others in the exercise of one’s own religion. This is also unclear and could allow government officials to prevent the exercise of faith by religious minorities.
11. The interim constitution also limits the exercise of religion to only those religions that have been “handed down [. . .] from ancient times paying due regard to social and cultural traditions.” Laudably, the two committee proposals do not include this restriction.
12. This limitation means that people who have converted to another faith, and thus do not adhere to the faith of their ancestors, as well as people whose faith was not present in Nepal in ancient times, such as Christianity, are not able to profess and practise their faith freely. This violates ICCPR articles 2 and 26, which guarantee equal rights and freedom from discrimination on the basis of religion, and article 27, which guarantees the rights of religious minorities to profess and practise their faith.

Recommendations to the Council for the Government of Nepal

13. Protect the freedom of religion fully in the new constitution, including the right to manifest one’s religion and the right to adopt a new religion or belief, regardless of one’s religion of birth or heritage.
14. Eliminate the prohibition on converting a person to another religion.

15. Eliminate the restriction on freedom of religion to only those people whose faiths have been handed down from “ancient times,” and explicitly guarantee in the new constitution the freedom of religion of people of all faiths.
16. Complete the new constitution immediately, so that all people in Nepal have the right to freedom of religion at the level required by the ICCPR.

(b) Protection and Equal Treatment of Religious Minorities in Practice

Background

17. Article 13 of the interim constitution guarantees equality before the law and prohibits discrimination by the government on the grounds of religion.
18. However, in practice, the government often favours Hindus and Hinduism. For example, the government is involved in managing properties or trusts associated with Hindu deities.⁹ Laws support Hinduism and protect Hindu religious sites. Many legal principles, such as in the areas of family law and property, are based on Hindu norms.
19. Government revenue goes toward religious activities, such as the celebration of the festival of Dashain for civil servants. The government provided financial and logistical support for the Hindu festival Maha Kumbh Mela in spring 2014, paying for shuttle service and room and board for pilgrims.¹⁰
20. Christians also have difficulty burying their dead, as they are considered unholy by Hindu extremists. They are often forced to dig up the remains of Christians. In one case, local authorities in Kathmandu banned construction of a cemetery near a Hindu shrine in order to protect it from other religions, and as a result other religious groups had to bury their dead in remote or hidden areas.¹¹ This prompted members of the Christian community in Kathmandu to go on a hunger strike for 39 days in 2011.
21. In April 2013, the government announced that all Nepali citizens will receive a national identity card, but members of religious minorities are asked to “reconsider their faith” before applying.¹² They have to restate their faith before registering, and if they do not state a faith, they are automatically registered as Hindus.
22. Christians are also persecuted by members of the community for their faith. Members of a church in southwestern Nepal were attacked by Hindu militants for

⁹ Center for Constitutional Dialogue, *State and Religion, Participatory Constitution Building in Nepal*, Booklet Series NO. 1, 2009.

¹⁰ Christopher Sharma, *Nepal's religious minorities tell government to be “secular” and not just support Hindus*, ASIANEWS, 1 Apr. 2014, <http://www.asianews.it/news-en/Nepal's-religious-minorities-tell-government-to-be-secular-and-not-just-support-Hindus-30714.html>.

¹¹ Kalpit Parajuli, *Kathmandu: Christians have no right to a cemetery*, ASIANEWS, 3 Sept. 2013, <http://www.asianews.it/news-en/Kathmandu:-Christians-have-no-right-to-a-cemetery-28912.html>.

¹² Christopher Sharma, *Some Nepalis to be asked to “reconsider their faith” to get their ID papers*, ASIANEWS, 30 Apr. 2014, <http://www.asianews.it/news-en/Some-Nepalis-to-be-asked-to-reconsider-their-faith-to-get-their-ID-papers-30957.html>.

refusing to pay for and participate in Hindu festivals.¹³ Villagers also stole their livestock. In October 2013, a Christian church elder and convert from Hinduism was murdered by a Hindu man when the elder went to the Hindu man's home, at his request, to pray for him.¹⁴ In December 2013, Hindu extremists set the homes of four Christian converts and a Christian church on fire.¹⁵

Analysis

23. ICCPR article 2 requires that Nepal ensure all individuals the same rights without distinction, including on the basis of religion. Provision of benefits to only one religious group discriminates against members of other religious communities and hampers their ability to enjoy the same level of freedom of religion.
24. ICCPR article 26 provides for equality before the law and entitlement to equal protection of the law without discrimination. It is laudable that the interim constitution guarantees Nepalis equality before the law, but the government must ensure that people of all faiths are treated equally in practice.

Recommendations to the Council for the Government of Nepal

25. Guarantee equality before the law and equal protection of the law in the new constitution.
26. Ensure that perpetrators of religiously motivated crimes are prosecuted and punished accordingly.

¹³ Gary Lane, *Christians 'On Top of the World' Facing Persecution*, CBN NEWS, 3 Jan. 2013, <http://www.cbn.com/cbnnews/world/2012/December/Nepal-Christians-On-Top-of-the-World-Facing-Persecution/>.

¹⁴ *Killing of Christian Leader in Nepal Appears Religiously Motivated*, MORNING STAR NEWS, 12 Nov. 2013, <http://morningstarnews.org/2013/11/killing-of-christian-leader-in-nepal-appears-religiously-motivated/>.

¹⁵ Carey Lodge, *Nepal: Christian homes and church in arson attack*, CHRISTIAN TODAY, 10 Jan. 2014, <http://www.christiantoday.com/article/nepal.christian.homes.and.church.in.arson.attack/35324.htm>.