

**Submission to Universal Periodic Review of Nepal  
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**Freedom of Religion or Belief of Religious Minorities in Nepal**

**Submitted by**



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## I. Context

1. The constitution establishes Nepal as a “secular state” but defines secularism as “protection of the age-old religion and culture and religious and cultural freedom.” It provides for the right to profess and practice one’s own religion.
2. Socio-political environment in Nepal has changed significantly during last four years. Nepal has gone through state restructuring with establishment of 7 Provinces and 753 local municipal bodies. Election for the membership of the local municipal councils was held in May, June and September 2017 and that for the provincial and federal level were held in November and December 2017. During 2017, the UML and the Maoist party came together to fight the elections, and in 2018, as the main political bloc, they eventually formed the government. The two parties subsequently merged to become the Communist Party of Nepal (CPN), which then achieved significant political dominance at both national and provincial level governments. The nation observed the federal government with majority after decades. Since their formation, governments at different levels have come up with the periodic plans, policies and programs for marginalized and vulnerable groups of Nepal. The Constitution of Nepal has provided power to the provincial and local level to make law, make annual budget, decision, formulate and implement policies and plans on any matters related to their jurisdiction.
3. With a high and ambitious goal, National Planning Commission released the 15th Periodic Plan in the year 2019 to make Nepal a middle-income country by 2030, qualifying for going beyond the LDC status. The 15th plan has significance of its own as it is the first periodic plan being implemented by the federal government with a view to materializing the much-touted slogan of Nepal Government - Prosperous Nepal, Happy Nepali.
4. According to the 2011 census, the most recent, Hindus constitute 81.3 percent of the population, Buddhists 9 percent, Muslims (the vast majority of whom are Sunni) 4.4 percent, and Christians (a large majority of whom are Protestant) 1.4 percent. Other groups, which together constitute less than 5 percent of the population, include Kirats (an indigenous religion with Hindu influence), animists, and adherents of Bon (a Tibetan religious tradition), Jains, Baha’is, and Sikhs.
5. This report is based on primary data collected through field survey and media monitoring of the issue specified in the report. Information and data were also collected through consultations, focus group discussion and key informative interviews and organizations of specified religious minorities groups. The report benefited from the secondary data produced by the government and stakeholders for this submission.
6. In accordance with Human Rights Council (HRC) Resolution [Samari Utthan Sewa \(SUS\)](#) and [Federation of National Christian Nepal \(FNCN\)](#) present this submission as non-governmental organizations (NGOs) to supplement the report of the government of Nepal (the Government), scheduled for review by the HRC during its 37th Session.

## II. Implementation of previous recommendations

### Previous Recommendations:

7. Nepal supported recommendations - 1st Cycle/106.1/Holy See and Italy to guarantee that the new Constitution fully guarantees the right to freedom of religion or belief and the right to equality and non-discrimination in line with international standards; recommendations -1st Cycle/106.21/Japan, Pakistan and Argentina to make further efforts to overcome the difficult issue of discrimination on the grounds of religion, gender, race or otherwise to ensure

the respect of civil, political, economic, social and cultural rights; recommendation-1st Cycle/107.12/Germany to criminalize discrimination based on caste, gender, religion, ethnicity, political belief or disabilities; recommendations - 2nd Cycle/122.36/ Switzerland; 2nd Cycle/122.33/Paraguay; 2nd Cycle/121.17/Thailand; 2nd Cycle/122.35/Denmark; 2nd Cycle/122.39/Czech Republic; 2nd Cycle/122.41/Namibia to ensure full and effective implementation of the existing laws and policies to eliminate all forms of discrimination; and noted-2nd Cycle/124.16/Spain to eliminate the prohibition of conversion to another religion, which undermines freedom of religion.

### **State Effort:**

8. The Constitution of Nepal, 2015, recognizes the “secular” nature of the State. It guarantees the right of individuals to freely “profess, practice and preserve” their religion, and prohibits discrimination on a number of grounds, including on the basis of one’s religion.
9. Article 18 of the Constitution has the provision of right to equality under which all citizens are equal before law and no one shall be discriminated on the basis of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology or any other such grounds as a fundamental right.
10. Article 26 of the constitution has the provision of right to freedom of religion under which every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or her conviction.
11. The Constitution of Nepal, 2015 has National Inclusive Commission in its Part-29 which will focus on protecting rights and welfare of indigenous communities, Khash Arya, Madhesi, Tharu, Muslim, backward class, persons with disabilities, senior citizens, laborers, peasants, marginalized and minority communities, people of Karnali region and economically disadvantaged people.
12. Chapter 10 of "Criminal Code, 2018" has illegalized offenses related to any kind of discrimination and other inhuman behaviors. Any person who practices such offences shall be punished as per the Act.
13. The Supreme Court issued directive orders to the Christian and other non-Hindu communities to cease burial of deceased in the *Shleshmantak* forest, and to concerned government agencies to arrange for alternative places for burial without hurting anyone’s religious sentiments. Additionally, the Supreme Court suggested that communities that require cemeteries for the performance of last rites of their deceased should buy lands, individually or through institutions, and establish such cemeteries<sup>1</sup>.
14. Nepal became party to the International Covenant on Civil and Political Rights (ICCPR) on 14 May 1991. Article 18 of the ICCPR guarantees the right to freedom of thought, conscience and religion.

### **III. Challenges:**

15. The Constitution defines “secular” to mean the “protection of religion and culture being practiced since ancient times and religious and cultural freedom,” which the Supreme Court has in the past interpreted as affording a special

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<sup>1</sup> Gahatraj et. al. v. Prime Minister and Council of Ministers et. al., supra fn 77, para. 6, based on an official translation of the Nepali.

- status to Hinduism<sup>2</sup>.
16. The Constitution recognizes the right to freedom of religion or belief of those who subscribe to a religious faith; it fails to guarantee the right to freedom of thought and conscience, which, in turn, includes the freedom to have theistic, non-theistic or atheistic beliefs, and the freedom not to profess any religion or belief.<sup>3</sup> Additionally, the narrow definition of the right to freedom of religion provided in Article 26 of the Constitution fails to guarantee the right to manifest one's religious beliefs through teachings, which, in turn, is an integral part of the freedom to manifest one's religious belief.<sup>4</sup>
  17. Nepal's commitment to equality, non-discrimination and social justice is embodied in various provisions of the Constitution,<sup>5</sup> social realities reveal a different picture altogether. For example, the Human Development Index (HDI) value for the Muslim community in Nepal is 0.422, which is significantly lower than that of Brahmin/Chettris, who are predominantly Hindu, and who have a HDI value of 0.538. This disparity has been largely attributed to low educational attainment of Muslims in the country.<sup>6</sup> Although HDI values of the Muslim community in Nepal have risen slightly, from 0.401 in 2009 to 0.422 in 2014, the progress is negligible at best.<sup>7</sup>
  18. Section 158 (1) of Nepal's Penal Code, 2017, criminalizes converting any one from one religion to another, as well as the abetment of such "conversion", whereas Section 158 (2) criminalizes converting "any one into another religion, whether by inducement or not, in a manner to so undermine or propagate such religion...". The retention of the prohibition of "proselytism" in the new Constitution of Nepal, 2015, as well as the criminalization of the same in the new Penal Code, 2017 are among the major concerns regarding the right to freedom of religion or belief in the country. During Nepal's 2015 Universal Periodic Review, Spain and the United States of America recommended that Nepal amend its legal provisions prohibiting conversion to another religion as they undermined freedom of religion.<sup>8</sup>
  19. The government of Nepal providing legislative, administrative as well as financial support to Pashupati Area Development Trust (Established in 1987); Nepal Sanskrit University (Established in 1986), Rajarshi Janak University (Established in 2017). Similarly, Buddhist Philosophy Promotion & Monastery Development Committee (Established in 1985); Lumbini Buddhist University (Established in 2004); National Dalit Commission (Established in 2001); National Muslim Commission (Established in 2012); and 'Central Hajj Committee' to coordinate and facilitate logistics for the Hajj for all Muslims. However, there is absence of formal and informal government institutions to address the problem of Christians and other religious minorities. The National Inclusive Commission also do not recognize the religious minorities.
  20. According to the annual reports published by the Supreme Court of Nepal the registered cases related to the conversion and proselytism is increased

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<sup>2</sup> Charles Mendes et. al. v. His Majesty's Government, Nepal Law Journal 2046, Vol. 6, Decision No. 3855. See also, US Bureau of Democracy, Human Rights and Labor International Religious Freedom Report for 2017, available at:

<https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2017&dliid=281030#wrapper>

<sup>3</sup> ICCPR, Article 18(1); Human Rights Committee, GC 22, supra note 27, paras 1-2.

<sup>4</sup> Human Rights Committee, GC 22, supra note 27, para. 4; Un General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN Doc. A/Res/36/55, (1981), Article 6(e).

<sup>5</sup> Constitution of Nepal, (2015 A.D.) Articles 18(2)(3), 38(3), 50(2), 51(c)(5).

<sup>6</sup> National Planning Commission (NPC) & United Nations Development Programme (UNDP), Nepal Human Development Report 2014: Beyond geography, unlocking human potential, 2014.

<sup>7</sup> United Nations Development Programme (UNDP), Nepal Human Development Report 2009: State Transformation and human development", 2009, p. 43.

<sup>8</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Nepal, UN Doc. A/HRC/31/9, (2015) paras 124.7, 124.16.

- average 129.53% annually since 2014<sup>9</sup>.
21. A research conducted by Samari Utthan Sewa (SUS) shows that total of 9 Muslim leaders killed by unknown groups during last one decade. Likewise, on November 2017, a communal conflict between Hindu and Muslim happened in Basbariya settlement of Bidhyanagar, Kapilvastu<sup>10</sup>. Before that the settlement had destroyed by the Hindu extremists, where 124 households of Islamic faith were resided. Till to date the government of Nepal have not investigated the incident and provided justice to the victim.
  22. While world has been hit hard by the global COVID-19 pandemic, in Nepal it is mainly the Muslims in particular who find themselves bearing the stigma, harassment and social boycott– largely because of the social media and tv networks stereotyping them as an agent of COVID-19<sup>11</sup>.
  23. Record maintained by Federation of National Christian-Nepal (FNCN) during the time period of 2015-2019 AD, a total of 338 cases of Human Rights violence against religious minorities were recorded. The record shows that almost 42% cases were related to deportation of foreigners accusing promoting religious conversion, 19% were social boycott, 7% Bomb attack on religious places, 6% illegal arrest and detention of religious leaders, 3% restriction to funeral rites, 3% attacks on pastors and religious leaders; 3% were hate speech by political leaders, 2% were media mobilization against religious minorities and other were related to restriction in public place. However, no one perpetrator was punished.
  24. The existed laws does not provide for registration or official recognition of religious organizations as religious institutions, except for Buddhist monasteries. Hindu, Buddhist, and Muslim religious schools must register as religious educational institutions and receive funding at the same levels as nonreligious public/community schools. Christian schools are not legally able to register as public/community schools and are not eligible for government funding.
  25. Hindu priests and local high-caste residents continued to prevent Dalits, as members of a lower caste, from entering temples<sup>12</sup> and sometimes prevented them from performing religious rites and participating in religious festivals.

#### IV. Recommendation

26. A 2011 Supreme Court ruling requires the government to provide protection for religious groups carrying out funeral rites in the exercise of their constitutional right to practice their religion<sup>13</sup>, but it also states the government is not obligated to provide land grants for this purpose. There is no law specifically addressing the funeral practices of religious groups. Urge the government of Nepal to allocate land to the Christian, Muslim and Kirat communities for burial;
27. Religious organizations follow the same registration process as other NGOs and non-profits, including preparing a constitution and furnishing information on the organization's objectives, as well as details on its executive committee members, which is against the FoRB. Urge to amend all discriminatory legal

<sup>9</sup> Supreme Court of Nepal, 2019.

<sup>10</sup> Hindu muslim dispute upsets harmony of kapilvastu village, The Kathmandu Post, 11 January, 2017. <https://kathmandupost.com/national/2017/01/11/hindu-muslim-dispute-upsets-harmony-of-kapilvastu-village>, Accessed on 7 May, 2020.

<sup>11</sup> Nepal's Muslims face stigma after COVID-19 tests, Nepali Times, May 4, 2020, <https://www.nepalitimes.com/banner/nepals-muslims-face-stigma-after-covid-19-tests/>, Accessed on 7 May, 2020.

<sup>12</sup> Dalit thrashed for entering temple in Bode Barsain Municipality, The Himalayan Times, June 29, 2017. <https://thehimalayantimes.com/nepal/dalit-thrashed-entering-temple-bode-barsain-municipality/>, Accessed on 7 June 2020.

<sup>13</sup> 2018 Report on International Religious Freedom: Nepal, <https://www.state.gov/reports/2018-report-on-international-religious-freedom/nepal/>, Accessed on 7 June, 2020.

- provisions against religious minorities;
28. Coordinate with religious minorities and other affected religious communities, including by establishing a commission or working group with a view to locating appropriate sites for use as cemeteries in harmony with environment and development planning as soon as possible;
  29. Amend the Sections 155 and 156 of the Penal Code, 2017, so that they be consistent 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;
  30. Expressly include the requirement of proof of deliberate and malicious intent in all offences related to religion that are retained in the short or long term, particularly Sections 155 and 156 of the Penal Code;
  31. Revise Section 158 of the Penal Code, 2017, criminalizing converting anyone from one religion to another, to ensure that only “forceful conversion” be proscribed and, at the same time, provide that “forceful conversion” entail elements of coercion and/or undue influence;
  32. Amend Article 26(1) of the Constitution to harmonize the scope of the right to religious freedom provided therein with the right to freedom of religion or belief guaranteed in Article 18 of the ICCPR, including by express recognition of the right to manifest one’s religious beliefs in teaching; and to prohibit only forceful conversion, and remove any clause prohibiting conversion;
  33. Ensure inclusion of religious minorities in all stages of government planning from local to national level; specific measures needs to be enacted to ensure the participation and inclusion of religious minorities;
  34. Strengthen its measures to effectively implementation of constitutional provision in the true sense of FoRB, In particular, by sensitizing law enforcement officials, investigating and prosecuting those responsible for discrimination against religious minorities and conducting awareness-raising campaigns on the rights of religious minorities;
  35. Implement the “Three Point Agreement”, and then a “Six Point Agreement” between Christian community and the Ministry of Culture on 1 May 2011, regarding Government’s facilitation in establishment of cemeteries.
  36. Process all cases of Human Right Violence against religious minorities according to the Principle of Zero tolerance in the justice delivery system and punish law enforcement agencies (Police, government attorney and judge) who deny following the due process of laws. ß Train all law enforcement agencies and authorities on the national and international slandered to ensure the FoRB;
  37. Conduct awareness/sensitization programmes and campaigns to ensure FoRB in all training curricula of the government and local level government.