

**United Nations Human Rights Council
Universal Periodic Review
Nepal**

Submission of The Becket Fund for Religious Liberty

5 July 2010

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.

**United Nations Human Rights Council
Universal Periodic Review of Member-State Nepal**

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and law of religious freedom in Nepal as a contribution to the Universal Period Review of UN member-state Nepal.

1. Background

Of the nearly 29 million people inhabiting Nepal, eighty-one percent are Hindu, eleven percent are Buddhist, and four percent are Muslim. The remaining population identifies with a variety of traditions, with those who follow the Kirat religion comprising the majority. Nepal maintains a vast ethnic makeup where the Chhettri, the single largest identifiable group, account for approximately fifteen percent of Nepal's population.¹

Nepal gained sovereignty in 1768, and for slightly less than two centuries the country was ruled by a monarchy.² After this time, the parliament and the monarchy struggled for control of Nepal. Power switched back and forth for nearly fifty years until an interim legislature limited monarchical power and promulgated an interim constitution in 2007.³

Since 1996, a Maoist insurgency has challenged government authority.⁴ In 2001, Prime Minister GP Koirala resigned due to violence committed by the Maoist rebels.⁵ Later that year in November, a state of emergency was declared after rebels killed over 100 people in a span of four days. The government responded by attacking the Maoist rebels, and in the next few months, violence committed by rebels and the government resulted in the deaths of hundreds of Nepal's citizens.⁶ After a 2006 cease-fire and peace agreement, Maoist leaders joined the interim government in April of 2007 and abolished the

¹ The Central Intelligence Agency, *The World Factbook*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html> (last visited June 3, 2010). While these population statistics have been repeated by numerous other sources, inaccuracies may be present due to a variety of reasons. For example, survey questions regarding religious adherence can be seen as misleading. More specifically, in Nepal's 1981 census a question asked whether one worshipped Ganesh, and subsequently persons were categorized as Hindu. Despite this, Ganesh is also worshipped by many Buddhists, thus obscuring religious population data. *Nepal, in Religious Freedom in the World* 303-05 (Paul A. Marshall ed., Rowman and Littlefield 2008).

² The Central Intelligence Agency, *supra* note 1; Marshall, *supra* note 1, at 303.

³ In 1959, Nepal's first election granted the Nepali Congress Party (NC) power; however, only a year later, King Mahendra dissolved parliament and banned political parties. After rallies and protests, King Birendra re-legalized parties, with the NC winning elections in 1991. Later, King Gyanendra dissolved parliament and took power in 2001 only to give control back to political parties in 2006. Marshall, *supra* note 1, at 303.

⁴ *Id.*

⁵ BBC News, *Timeline: Nepal*, http://news.bbc.co.uk/2/hi/south_asia/1166516.stm (last visited June 3, 2010).

⁶ *Id.*

monarchy in December of the same year.⁷ On May 28, 2010, the prominent powers in Nepal made a deal with the Maoists (Unified Communist Party of Nepal Maoist) to extend the deadline for creating a new constitution by one year.⁸

Nepal joined the United Nations in 1955, and since that time has been a signatory of various treaties and declarations concerning human rights. In 1991, Nepal signed the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR),⁹ and the Convention on the Elimination of all forms of Discrimination Against Women.¹⁰ Section eighteen of the ICCPR guarantees the right of public expression of religion,¹¹ yet this right is limited under Nepal's Interim Constitution.

2. Legal Framework

2.1 Constitution

The Interim Constitution of 2007 states that the Nepalese people assembled their nation out of a "common aspiration" for a "multiethnic, multilingual, multireligious" nation.¹² This identifies the Nation of Nepal as "an independent indivisible, sovereign, secular, inclusive and a fully democratic state."¹³

Under Section 3, titled "Fundamental Rights," Nepal's constitution directly addresses issues pertaining to religious freedom. The text states that everyone has the right to "profess, practice and preserve his/her own religion. . . ."¹⁴ However, proselytism and conversion are not recognized as inherent to this right. The text states, "Provided that no person shall be entitled to convert another person from one religion to another, and shall not act or behave in a manner which may jeopardize the religion of others."¹⁵ The condemnation of behavior that "may jeopardize the religion of others" threatens the philanthropic activity of many religious groups. Charitable deeds and even the simplest acts of kindness can be considered violations of this statute if they are directed at those who adhere to different religious traditions.

⁷ *Id.*

⁸ Syed Zain Al-Mahmood, *Nepal Braces for Confrontation*, The Daily Star, available at <http://www.thedailystar.net/newDesign/news-details.php?nid=141152> (last visited June 3, 2010).

⁹ Wade M. Cole, *Sovereignty Relinquished: Explaining Commitment to the International Human Rights Covenants, 1966-1999* (Stanford Institute on International Studies, CDDRL Working Paper, September 2004), available at http://iis-db.stanford.edu/pubs/20730/Sovereignty_Relinquished.pdf (last visited June 10, 2010).

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, 1249 U.N.T.S. 13.

¹¹ "International Covenant on Civil and Political Rights" *The United Nations*, 2010. <http://www2.ohchr.org/english/law/ccpr.htm> (Accessed June 10, 2010)

¹² Nepal Interim Const. 2007 part 1, § 3.

¹³ *Id.* at part 1, § 4.

¹⁴ *Id.* at part 3, § 23.

¹⁵ *Id.* at part 3, § 23.

Nepal's ban on conversion and proselytism is a violation of international law. Nepal is a signatory to numerous international treaties and proclamations¹⁶ that protect conversion and proselytism.¹⁷

Also, the language regarding conversion and proselytism is overbroad and ambiguous. For example, the instruction that citizens "shall not act or behave in a manner which may jeopardize the religion of others" is inherently vague and therefore lends itself to arbitrary enforcement.¹⁸ This provision could be used to prohibit everything from forced conversions to simple acts of charity. The constitution gives no notice as to what activities can be legitimately performed by religious organizations, and provides no guidance as to what constitutes a genuine self-motivated conversion.¹⁹ Such provisions fall especially hard on religious minorities whose speech and acts of goodwill can be excluded from the public square, and who will be bereft of any means of gaining support or recognition of their tradition.

2.2 Registration

Nepal does not apply registration requirements to religious groups per se, but instead applies them to non-government organizations. Under these rules, many Christian, Muslim, and Jewish organizations are required to register in order to gain property rights for the use of churches, mosques, and synagogues.²⁰ The government may tax registered institutions.²¹ The government has selectively enforced the registration requirement against religions it disfavors. For example, the government denied registration to a Jewish organization founded to provide kosher food for tourists.²²

3. Normative Effects of Restrictions on Religious Expression

Historically, the South Asian region has been host to various cultural philosophies spanning many of the world's political and religious traditions.²³ Despite this natural

¹⁶ Nepal's interim constitution directly contradicts Article 18 of the UDHR. It also violates subsequent reaffirmations of the declaration such as the Bangkok Declaration of 1993 and The World Conference of Human Rights of 1993 in Vienna.

¹⁷ David Griffiths, *Religious Freedom in Nepal*, Guardian.co.uk, April 27, 2010, <http://www.guardian.co.uk/commentisfree/belief/2010/apr/27/christianity-nepal> (last visited June 7, 2010).

¹⁸ Nepal Interim Const. 2007 part 3, § 23.

¹⁹ Griffiths, *supra* note 26.

²⁰ U.S. Dept. of State, *Nepal, International Religious Freedom Report* (October 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127369.htm#> (last visited June 2, 2010).

²¹ The organizations must be registered with either the Chief District Administration or the Social Welfare Council, and this registration process must also be repeated annually. VisitNepal.com, *Non Government Organizations in Nepal* (2008), http://www.visitnepal.com/nepal_information/ngo_in_nepal.php.

²² U.S. Dept. of State, *supra* note 22.

²³ David Griffiths, *Theology at the Heart of Nepal's Constitutional Crisis*, Lapid Media, May 26, 2010, <http://www.lapidmedia.com/theology-at-the-heart-of-nepals-constitutional-crisis> (last visited June 3, 2010).

diversity, external cultural norms are perceived as threats to internal cultural norms. Conversion is considered a prime example of this phenomenon. Due to this history of nationalism, colonialism, and acculturation,²⁴ conversion is regarded as an invasion of group identity that is instigated by an external party.²⁵ This anti-conversion, anti-proselytism attitude fosters an environment largely void of interfaith discourse and subsequently, a spirit of insecurity regarding communal identity.

Scholars who describe the ethnography of Nepal largely focus on religious affiliations. Such scholars see a community's beliefs and rites as integral to its communal identity.²⁶ Due to close ties between communal identity and religion, Nepal sees converts as "victims" of proselytism's "oppression."²⁷ Such attitudes reflect the issues concerning group identity described above.

Nepal's constitution reflects these sentiments. The text is primarily concerned with ameliorating insecurities regarding group identity and makes numerous references towards promoting the privileges and protections of local communities.²⁸ The rights of communities take precedence over the rights of individuals, particularly religious dissenters or minorities. Religious adherence is thus regarded primarily as a characteristic of the community and not of the individual. While such cultural values rightly recognize the value of communities, particularly the right to freedom of association, they tend to protect groups at the detriment of individual rights such as freedom of conscience and religious belief.

Bans on proselytism and conversion have particularly negative repercussions for religious minorities. Tibetan Buddhists may only celebrate on private property, and even then must have a notice of permission. Police interrupted one Buddhist celebration and burned a picture of the Dalai Lama.²⁹ The government has labeled Christians as more likely to instigate conversions and has used this stereotype to justify additional restrictions on their freedoms.³⁰

Aside from such events (and many others) the State Department reports that there is a general peaceful coexistence between religious creeds; however, "those who converted to a different religious group occasionally faced violence and were ostracized socially. . ."³¹ In particular, Hindu citizens who choose to convert to minority religious traditions such

²⁴ *Id.*

²⁵ Tom O'Neill, *Peoples and Polity: Ethnography, Ethnicity and Identity in Nepal*, 21 Contributions to Nepalese Studies, 45, 46 (January 1994), available at http://himalaya.socanth.cam.ac.uk/collections/journals/contributions/pdf/CNAS_21_01_02.pdf.

²⁶ *Id.*

²⁷ Griffiths, *supra* note 16.

²⁸ See Nepal Interim Const. 2007 part 4, § 34; *id.* at part 4, § 35 (particularly nos. 4, 10, and 14); *id.* at part 7, § 63, no. 4; *id.* at part 17, § 138; *id.* at part 18, § 142 (particularly no. 4).

²⁹ U.S. Dept of State, *supra* note 22.

³⁰ Griffiths, *supra* note 16.

³¹ U.S. Dept of State, *supra* note 22. The website cites many other cases regarding violence and restrictions targeted at religious minority groups.

as Islam or Christianity can become ostracized. Some have to leave their villages after facing violent retaliation from their communities.³² It can be dangerous to even casually speak about conversion.³³ As shown, both religious minority groups and religious converts continue to face prejudice, persecution, and violence in Nepal.

4. Recommendations

As mentioned, the deadline for Nepal's new constitution has been extended by a year. During this time period, there is an opportunity to suggest certain points of divergence from the Interim Constitution of 2007. The most significant points must be directed at stipulations regarding proselytism and conversion.

The root of the religious violence, prejudice, and restriction related to conversion can be traced to cultural concerns and constitutional provisions. To ameliorate these situations, the new constitution must revoke its previous standard of outlawing conversion and conversionary tactics. This would not only change the legal framework surrounding religious freedom in Nepal, but it may also ameliorate the societal insecurities surrounding communal identity. While religion may remain part of one's communal identity, one must have the right to change communal identities in order to better match one's self-identity. This may provide a foundation for not only secured identities but also for secured peace.

The constitution that develops over the next year should not have stipulations outlawing proselytism and conversion. In eliminating these stipulations, the constitution would be in accord with various international agreements, it would eliminate ambiguous legal language, and it would suppress violence stemming from historically rooted discomfort regarding religious converts and proselytizing minorities.

³² *Id.*

³³ Griffiths, *supra* note 16.