

Universal Periodic Review, 10th Session
Christian Solidarity Worldwide – Stakeholder Submission
NEPAL

INTRODUCTION

1. Christian Solidarity Worldwide (CSW) is a human rights organisation specialising in freedom of religion or belief. CSW monitors the human rights situation in Nepal and undertakes annual fact finding visits to the country, as well as raising awareness of human rights concerns and advocating for the full protection of human rights in Nepal. This submission seeks to draw attention to particular concerns over the right to freedom of religion or belief in Nepal.

POLITICAL BACKGROUND

2. Nepal was a feudal monarchy until 1990, when the first successful people's revolution saw the introduction of a partial democracy under a constitutional monarchy. However, during the period 1990-2006, the escalating war between the Communist Party of Nepal (Maoist) and the state challenged the fundamentals of the established state and led to the popular revolt of April 2006. The Comprehensive Peace Agreement (CPA) was signed in November 2006, and led to the election of the Constituent Assembly (CA) in April 2008.
3. Both sides “reiterate[d] their commitment to the respect and protection of human rights and the international humanitarian laws” in the CPA, and the CA is tasked with creating “a political system that fully complies with universally accepted fundamental human rights”.¹ The CA took the fundamental decision in 2008 to abolish the monarchy and declare Nepal a secular republic, which has significant implications for freedom of religion or belief.
4. **Recommendation: That the State Party formalise this decision and commitment through enshrining it in law, as it can only be regarded as a statement of intent until it is reflected in the new constitution.**

LEGISLATIVE & POLICY FRAMEWORK

5. Nepal signed and ratified many international treaties in the early 1990s which were not incorporated into the constitution or Nepalese law. For instance, Nepal ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC). However, since the provisions of these treaties were not incorporated into Nepal's constitution or laws, there are no fundamental protections against violations of human rights by the state and its security forces.
6. **Recommendation: The State Party is urged to ensure that the provisions of these treaties are fully incorporated into Nepal's new constitution and law.**

¹ Ministry of Foreign Affairs, Government of Nepal, ‘Unofficial Translation of the Comprehensive Peace Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) (November 21, 2006)’, Articles 7.1.1. and 3.4.

7. The CPA has introduced a number of welcome changes to Nepal, in particular the discharge of minors from its various armed units and their rehabilitation into society. However, a number of provisions in the CPA are yet to be realised. The armed forces of both sides have not been integrated; a truth and reconciliation commission has not been set up; 805 disappeared persons from the civil war have not been accounted for;² the matter of internally-displaced persons has not been fully resolved; and property controlled by both sides during the civil war has not been returned. The National Human Rights Commission (NHRC) in Nepal declared that “Neither the Government nor the Maoists have been seen as committed to the implementation of the CPA”.³
 8. **Recommendation: All parties to the CPA are urged to ensure that all the provisions in the CPA are fully implemented.**
 9. The CPA also provides that a new constitution will be formulated. An interim constitution, promulgated in January 2007, is temporarily in place. The new constitution should have been completed by 28th May 2010, but this failed to materialise, and the mandate of the CA has now been extended for one further year.
 10. **Recommendation: The State Party is urged to ensure that a new constitution is completed within this year, and that the deadline for completion does not continue to be extended.**
 11. During the constitutional writing process, a number of committees have drafted proposals on each section of the final constitution, including religious rights. The process is underway by which the CA examines, negotiates, votes and passes each section of the constitution.
 12. **Recommendation: That the State Party give due consideration to the extent to which constitutional proposals enshrine protections for human rights.**
 13. There is a strong likelihood that future government in Nepal will include some form of federal government. It is essential that the right to freedom of religion and belief is enshrined in the new constitution in order to prevent federal authorities from derogating on a right that is deemed by Article 4 of the ICCPR as too fundamental to be curtailed under any circumstances.
- Freedom of religion or belief in the interim constitution*
14. The interim constitution closely follows the text of the previous 1990 constitution on freedom of religion and belief. This means that there are a number of concerning implications for religious freedom within the text of Article 23:
 - a. The provision that “Every person shall have the right to profess, practise 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”, makes

² Based on complaints lodged at the NHCR. 620 complaints related to persons disappeared by the security forces and 205 by the Maoists.

³ Unofficial translation of Speech Delivered by the Hon’ble Chairperson Justice Kedarnath Upadhyay on the Occasion of 10th Anniversary of the National Human Rights Commission, Nepal (27 May 2010, Lalitpur).

the free exercise of religious beliefs contingent upon a person's descent, and excludes religious faiths which have not been present in Nepal since "ancient times". There is also no religious freedom at all for those whose own religion does not have the character of being handed down in this way, or because they have changed religion, and it could lend support to coercive legislative measures to prevent a change of religion.

- b. The stipulation that "no person shall act or behave in a manner which may infringe upon the religion of others" is ill-defined, and open to the abuse of discretionary authority by local officials. It might easily be invoked to settle personal scores among members of different religious communities, which would worsen, not improve, inter-religious harmony.
- c. The proviso that "no person shall be entitled to convert another person from one religion to another" could also be invoked against a wide range of legitimate expressions of religious faith, including the charitable activities of religious groups or peaceful evangelism, which may be portrayed as attempts to convert. Similar anti-conversion laws in force in five Indian states have been misused to foster social intolerance and violence towards peaceful religious activities. A constitution in Nepal which enshrines this would have a damaging normative effect, fuelling social prejudices against the activities of minority religious groups. This would be highly detrimental to Nepal's transition to a secular democracy.

Freedom of religion or belief in new constitutional proposals

15. Two committees are known to have advanced proposals for the protection of religious freedom in the new constitution. Both, however, seek to proscribe or limit the right of a person to convert another person, in violation of the freedom to manifest freedom of religion or belief. As the UN Special Rapporteur on freedom of religion or belief stated,

"Many human rights instruments stipulate and the Human Rights Committee hold that the right to manifest one's religion includes carrying out actions to persuade others to believe in a certain religion.

"The question of missionary activities and other forms of propagating s (sic) religion has been at the centre of the mandate on freedom of religion since the beginning. In one of his reports, Special Rapporteur Amor considered "constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration and stresse[d] the need for greater respect for internationally recognized human rights norms, including freedom to convert and freedom to manifest one's religion or belief, either individually or in community with others, and in public or private, except where necessary restrictions are provided for by law" (A/51/542/Add.1/para. 134).

"Also, while not explicitly including religious rights, article 19 of ICCPR, which protects freedom of expression, is formulated in a way that also covers missionary activities: "[T]his right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one's] choice". The Human Rights Committee's constant jurisprudence has deemed the protection afforded by article 19 extremely strong."⁴

⁴ Ibid, paragraphs 59-61.

16. Furthermore, there is also no necessity of including an anti-conversion provision, as coercive techniques used to bring about conversions could be addressed under the provisions of the penal code of Nepal.
17. **Recommendation: That the State Party include within the new constitution the “right to freedom of thought, conscience and religion” as defined by Article 18 of the ICCPR, and subject only to such limitations as are prescribed by General Comment 22 of the UN Human Rights Committee. The rights enunciated in Article 18, which should be fully protected in the new constitution, include the following:**
 - a. The right of a person “to have or to adopt a religion or belief of his choice” (Article 18), including the right “to replace one’s current religion or belief with another or adopt atheistic views” (General Comment 22);
 - b. The freedom of a person “either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching” (Article 18), including the right “to persuade others to believe in a certain religion”.

RELIGIOUS PLURALISM

18. Besides the legislative restrictions outlined above, there are also significant cultural challenges to freedom of religion or belief. This is a particular concern as regards Christianity, which has a short history in Nepal and so does not have a tradition of cultural acceptance. It is sometimes viewed as an invasive and western religion, and those who convert to Christianity are seen as having betrayed their culture. While this is not universally the case, in more remote areas, which make up a large proportion of the country, it is not uncommon for Christians to be accused of witchcraft by local villagers, and forced to leave their homes.
19. **Recommendation: That the State Party establish a statutory, multi-faith religious commission after the model of the Inter-Religious Council (IRC), with statutory representation and involvement of all religious communities, for discussing issues arising among religious communities, and with the power to issue recommendations to the government.**
20. This societal prejudice is particularly a problem with regard to burial rights. Superstition leads many to regard the practice of burial as abhorrent, with the result that bodies intended for burial may be forcibly cremated; there have been cases in which pastors willing to officiate at burial services have been physically attacked, and Christians can be refused permission to buy land for burial or keep bodies in a rented church.
21. **Recommendation: That the State Party include the right to own, maintain, protect and have access to sacred sites and burial grounds in the new constitution, so that the right to express one’s religion is upheld.**

FREEDOM OF RELIGION OR BELIEF FOR MINORS

22. There is considerable pressure in Nepal against the idea that a minor can be permitted to change their religion, and therefore significant repercussions for any

who provide information or assistance to help them do so. This is particularly the case when a minor wishes to convert from Hinduism and into a minority religion.

23. **Recommendation: The State Party is urged to ensure full freedom of religion or belief for minors, as defined by Articles 12, 13 and 14 of the CRC.**

PRESS FREEDOM

24. Journalists have been the target of a number of attacks due to the expression of their views, either political or religious, in the media. There have been consistent allegations against the government of attempting to control or bribe journalists and a failed scheme in October 2009 to use journalists as informants. The interference has also extended to police arrests of journalists and their abuse while in custody. The failure of the security services to protect journalists or to bring to justice those guilty of crimes against journalists has been illustrated in the case of the murder in August 2008 of the journalist, Ms Urma Singh.
25. **Recommendation: The State Party is urged to protect press freedom, honouring the commitment made by the Prime Minister to the National Photo Journalists Association in May 2010.**

RULE OF LAW

26. The judicial system in Nepal is ineffective, due to a combination of a weak government and corruption. The Maoist army is now in cantonments and the army confined to barracks, but various ethnic militia groups still exercise authority in their respective regions, especially the Terai, and do not stay within the scope of the law. Even in high profile cases or areas where the rule of law is supposed to be authoritative, cases can take years or even decades to come to court, if they come at all.
27. There is a significant degree of impunity in Nepal. A lack of awareness of and training in human rights has meant that torture during questioning and brutality while in police custody are commonplace. This is exacerbated if those arrested are Dalits, despite the government's official eradication of caste discrimination.
28. Lawyers who seek justice in response to human rights abuses are liable to face serious repercussions. Human rights defenders are particularly vulnerable in the Terai and border regions, but can be subject to intimidation, death threats, displacement and extortion throughout the country. An employee of NHRC, Dayaram Pariyar, was shot by police and later died of his injuries in March 2006.
29. **Recommendation: The State Party is urged to promote the rule of law throughout Nepal, to overhaul the justice system and eliminate the use of torture, in accordance with the provisions of the ICCPR and CAT.**