

Universal Periodic Review 37<sup>th</sup> session – Stakeholders Report

## **NEPAL: Freedom of Religion or Belief**

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1. Our report addresses the situation of freedom of religion or belief in Nepal in law and in practice.
2. Unless stated otherwise, the Religious Liberty Forum Nepal (RLFN), a platform of Christian organizations and individuals in Nepal advocating for the right to freedom of religion or belief, is the source for the cases of violence and attacks against Christians and churches, and for the cases of government harassment of Christians. Third-party information is referenced in the footnotes and has been corroborated by the RLFN.
3. Since the last UPR of Nepal in November 2015, the country has experienced growing hostility towards minority religious groups. Faith based organizations which are actively engaged in Nepal are reporting mounting challenges and infringements to their right to freedom of religion or belief, as well as to the operations of international and local NGOs.

## Restrictions on the Right to Freedom of Religion in the Constitution

4. In 2015 Nepal enacted a new constitution. Article 26-1 of this constitution protects the right to freedom of religion or belief by stating that “every person who has faith in religion shall have the freedom to profess, practices and protect his or her religion according to his or her conviction.” Article 26-1 does not include the right to choose or change a religion.
5. Wide and far-reaching restrictions on the right to freedom of religion are imposed in the third clause of Article 26 which states “No person shall, in the exercise of the right 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 jeopardize the other's religion and such act shall be punishable by law."*

6. This provision conflicts with Nepal's constitutional "proportional and inclusive" principles as outlined in the constitution's preamble. It creates the risk of significant infringements to the right to freedom of religion of belief by introducing the vague and far-reaching notion of "conduct that may jeopardize the other's religion," as well as by including the assumption that religious conversion is something forced and not freely chosen.
7. Furthermore, Article 4 of the constitution provides an explanation of the term "secular" as follows: "'secular' means religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial". This explanation for the term "secularism" is problematic as it seeks to give a special status to *Sanatana* – the religion and culture handed down from ancient times which is commonly understood as Hinduism – over and above other all religious faith and traditions.
8. Article 26-2 states that "Every religious denomination shall have the right to operate and protect its religious sites and religious Guthi (trusts). Provided that nothing shall be deemed to prevent the regulation, by making law, of the operation and protection of religious sites and religious trusts and management of trust properties and lands." In contrast to this article, there are no legal provisions for registration of churches and their properties such as worship centers, institutions, schools, Bible colleges, burial grounds or social organizations. Currently, church property is registered either under NGOs, or in the name of individuals.

## **The Revised Criminal Code Further Limits the Right to Freedom of Religion or Belief**

9. A revision to the Criminal Code which came into effect in 2018 further refined the intent of the aforementioned constitutional amendment.
10. Article 156 of the Criminal Code criminalizes, with two years of imprisonment, the wounding of "religious sentiments of any caste, community or ethnic groups by using texts, writing, verbal, symbols or any other means."
11. Article 157 of the Criminal Code punishes, with one year of imprisonment, anyone who "knowingly poses any form of hindrance to the religious tradition of other faith being practiced since ancient times (Sanatan)." Article 158 of the Criminal Code limits the right to choose one's religion in the following terms: "(1) No one should involve or encourage religious conversion; (2) No one should convert a person from one religion to another religion or profess their own religion and belief with similar intention by whether using or not means of attraction, and by disturbing the religion or belief of any ethnic groups or community that is being practiced from time immemorial (Sanatan)."
12. The vague wording of the Code is conducive to arbitrary application and misuse. The changes to the Constitution and Criminal Code strengthen the position of Hinduism, to the detriment of other religions, and has a "chilling effect" on freedom of expression as it fails to provide the clear boundary of what is prohibited. These clauses can be and have been invoked against a wide range of legitimate

expressions of religious faith that are protected by international law.

## **Arrest and Courts Cases Against Christians for “Conversion”**

13. For this report, we have documented cases where 19 persons were arrested and taken to court on charges of "conversion" during the course of 2018, and 15 persons in 2019. While we have documented cases prior to 2018, our reporting is most systematic, but not exhaustive, in 2018 and 2019. To-date, no one has been convicted on the basis of articles 156, 157 and 158 of the Criminal Code. Several court cases are currently ongoing.
14. In an emblematic case that unfolded on 23 April 2019, the Nepalese police arrested four people in Hotel Doko, Ghorahi, Dang District, during an indoor pastors training. The detainees were charged with religious conversion and distribution of Christian material, despite not holding any public activity. The detainees were released on 29 April. And in February 2020, the courts dropped all charges against the four Christians.
15. On 22 March 2020, Pastor Keshav Raj Acharya, in Pokhara, was arrested by Kaski District Police on the charges of violation of public health and peace order, following the publication of a video of him praying against the corona virus in February 2020 (filmed prior to the lockdown in Nepal). District administration Kaski fined him and ordered release but he was not released from the custody instead a new charges were brought forward accusing the pastor of "conversion activities". These charges were based on the same video that was filmed in February. On 13 May, the police took him into custody from the court premises in Dolpa district. Petitions were made to the Supreme Court in Nepal and to the National Human Rights Commission of Nepal. Pastor Raj Acharya remained in prison until 28 June when the court released him on bail. His court case involving charges of "conversion activities" is ongoing.
16. We have included in the annex a list of cases of detention of Christians and of court cases against them that the Religious Liberty Forum Nepal documented, or documented by third parties and corroborated by the RLFN (ANNEX 1).

## **No Accountability for Violence Against Christians and Attacks Against Church Property**

17. Legislative and political developments have been accompanied with increased violence against religious minorities, especially against the Christian minority.
18. While there were no attacks on church buildings in 2019, five attacks on church buildings took place in 2018. One attack took place in 2017. To-date, no one has been held accountable for all these attacks on church buildings. The following are the documented cases of attacks on church buildings in 2017 and 2018.

- a. On 14 September 2015, in Jhapa district, bombs went off at two churches causing structural damage only to buildings. Three police officers were injured on 15 September while attempting to defuse bomb at a third church. Pamphlets promoting radical Hindu organization were found at all 3 sites.<sup>1</sup> One person was arrested.
  - b. On 18 April 2017, several persons attacked Assumption Roman Catholic Cathedral in Lalitpur, Kathmandu Valley. The church compound sustained significant damage, but attackers couldn't enter the church building.<sup>2</sup>
  - c. On 1 March 2018, an arson attack was carried out on Dhading church, in Hindugh, Dhading. It was rebuilt as a temporary church which was again burnt down within 3 weeks.
  - d. On 5 May 2018, an arson attack was carried out on a Catholic church in Kohalpur, Banke District. A group of eight to ten unidentified arsonists reportedly warned locals to stay inside their houses, before breaking into St. Joseph's Catholic Church, in the town of Kohalpur, in the early hours of 5 May. They then doused it with petrol and set it alight.<sup>3</sup>
  - e. In May 2018, four churches in Dhangadhi, in Kanchanpur, in Doti and in Panchthar were attacked over a five-day period from 9 May. No one was killed as the attacks were carried out at night, but the churches were set of fire and suffered a substantial amount of structural damage, resulting in thousands of dollars of repairs. The church in Dhangadhi was attacked by a bomb thrown through a window.<sup>4</sup>
19. We have included in the annex a list of cases of violence and threats of violence against Christians that the Religious Liberty Forum Nepal documented, or documented by third parties and corroborated by the RLFN (ANNEX 2).

## **Lack of Political Representation for Christians**

20. Nepal's elections are based on a proportional representation system. However, in February 2018, the European Union's Election Observation Mission to Nepal stated, in its report on Nepal's House of Representatives and provincial assembly elections, that Christians were not represented in the election, despite comprising 1.4 percent of the population. The report indicated that Nepal's electoral system is not fully inclusive, as claimed in the constitution.

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1 Churches bombed as Nepal stays secular, 15 September 2015, <https://www.worldwatchmonitor.org/coe/churches-bombed-as-nepal-stays-secular/>

2 2018 International Religious Freedom Report of the United States Department of State

3 Nepal: Catholic church interior 'entirely destroyed' after arson, 11 May 2018, <https://www.worldwatchmonitor.org/coe/nepal-catholic-church-interior-entirely-destroyed-by-arson-attack/>

4 Nepal: Four churches targeted in arson attacks, 15 May 2018, <https://www.csw.org.uk/2018/05/15/press/3974/article.htm>

## Repressive Measures Against Local and International NGOs

21. There are more than 200 international non-governmental organizations (INGOs) and approximately 50,000 non-governmental organizations (NGOs) in Nepal. The government is seeking to tighten its regulation of INGOs and NGOs, as it has tried to do many times in the past.
22. In May 2018, Nepal's government issued a draft document, the National Integrity Policy, laying down strict guidelines about what aid agencies and non-government groups can and cannot do. Aimed at regulating the activities of, namely, Western aid agencies, this policy has broad working, and could easily be misused to restrict the activities of religious minority groups. This policy stipulates that international non-governmental organizations "must not act against Nepal's civilization, culture, social relations and goodwill," and "must not push for their religious, social or other agendas in Nepal." The policy adds that "INGOs assisting foreign embassies and religious missions (...) will be barred."
23. In June 2018, Nepali media outlets reported that the ministers from Home Affairs Ministry and Ministry of Women, Children and Senior Citizen have jointly decided not to renew the registration of local NGOs and INGOs who are involved in religious activities.
24. Leaders of international NGOs carrying out humanitarian aid report that their work is increasingly under threat from new governmental directives, including the National Integrity Policy. The Policy also has had a major impact on other entities including national NGOs.
25. These directives include the following concerns: (a) The tax free status of NGOs is no longer being renewed; (b) Chief District Officers in various regions are blocking the sale of NGO property; (c) Humanitarian aid workers are experiencing increased challenges in having their visas renewed, an appreciable amount having had to leave the country already; and (d) The State's expressed intent to expropriate NGO-owned land.
26. The NGO leaders report that many of the clauses in the policy existed previously but had not been consistently implemented or enforced. They report a lack of clarity as to what some of the processes and procedures outlined in the policy actually mean, but it seems likely that parts of the policy are unconstitutional and in violation of Nepal commitments under international human rights law.
27. The National Integrity Policy refers to the issue of proselytization, which was made a criminal offense in 2018, but it also mentions "influence or inspire" in the context of religious freedom. This is vague language and at risk of subjective interpretation. One organization which has been careful to adhere to the law regarding proselytization expressed concern that their practice to have a devotional session once a week which was optional for staff, was recognized to be a risk and open to misunderstanding and condemnation as a result of the policy.
28. The language around advocacy and lobbying is ambiguous. The policy contains ambiguous language about promoting the agenda of foreign governments, religions or bringing harm to Nepali culture. This would need to be clarified before the policy is made into law.
29. The level of commitment of the government to making the policy into law is also unclear. Currently there are about 300 acts waiting to be passed by government.

## **Recommendations to the Government of Nepal**

30. Amend article 26 of the constitution to include the right to choose or change one's religion, and to ensure adherence to international standards pertaining to the right to freedom of religion or belief.
31. Amend articles 156, 157 and 158 of the Criminal Code to ensure compliance with international human rights law, namely the right to freedom of religion or belief.
32. Ensure that no member of religious minorities is arrested or prosecuted in courts on charges of attempting to "convert" others.
33. Protect religious minorities and their places of worship, especially those that have received threats, and fully investigate cases of attacks on places of worship and on members of religious minorities.
34. Provide burial grounds for Christians and other religious minorities.
35. Enact legislation that enables the registration of religious communities as Guthi (trusts) as per article 26 of the Constitution.
36. Take initiatives to foster community cohesion and pluralism, and actively combat the stigmatization of minority religious communities.
37. Amend the National Integrity Policy to ensure that it is in line with Nepal's commitments under international human rights law, and ensure the protection of the work of the many organizations seeking to improve the lives of people in Nepal.

## **ANNEXES**

This report has two annexes that can be accessed on the OHCHR Nepal UPR webpage:

- ANNEX 1: Cases of detention of Christians and of court cases against them
- ANNEX 2: Cases of violence and threats of violence against Christians