

briefing

Nepal

Religious freedom and the new constitution

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I. Executive summary

The Constituent Assembly (CA) of Nepal, created by the Comprehensive Peace Agreement (CPA) and elected in April 2008, took the fundamental decision to abolish the monarchy and declare Nepal a secular republic. However, this decision, with significant implications for religious freedom, is yet to be enshrined in law, and can only be regarded as a statement of intent until it is reflected in a new constitution. As Nepal formalises the transition from Hindu monarchy to secular republic, in the promulgation of a new constitution now due by May 2011, the right to freedom of religion and belief must be protected if the transition is to be a successful one.

The CA is currently tasked with creating “a political system that fully complies with universally accepted fundamental human rights”. Several committees have been drafting proposals for the constitution, including religious rights, and their reports are being considered by the CA.

Nepal is a state party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 provides for “the right to freedom of thought, conscience and religion”. This includes a person’s “freedom to have or to adopt a religion or belief of his choice”, interpreted by General Comment 22 of the UN Human Rights Committee as necessarily including the right “to replace one’s current religion or belief with another or adopt atheistic views” (clause 5). General Comment 22 also narrowly restricts the permissible limitations to this right.

The current interim constitution fails to protect religious freedom in a manner consistent with the provisions of international law. There is no religious freedom at all for those whose own religion is not “handed down to him or her from ancient times paying due regard to social and cultural traditions”, either because their religion does not have the character of being handed down in that way, or because they have changed religion. The provision that “no person shall be entitled to convert another person from one religion to another” is in violation of the freedom to manifest religion or belief under Article 18 of the ICCPR. 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 abuse.

Two committees have introduced proposals for the protection of religious freedom in the new constitution: the Committee for Fundamental Rights and Directive Principles and the Committee on the Protection of the Rights of Minorities and Marginalized Communities. Both proposals would prohibit a person from converting another person, in violation of the right to manifest religion. They would also be prone to misuse, and could have a damaging normative effect on religious minorities. There is no necessity for a specific constitutional provision prohibiting one person from converting another person: coercive techniques could be addressed under the provisions of the penal code of Nepal. A specific constitutional ban on religious conversions is therefore unnecessary, as well as detrimental to the enjoyment of human rights.

The prohibitions on conversion which are proposed by the two committees, resemble ‘anti-conversion legislation’ in force in five states of India and proposed in Sri Lanka, which, according to the UN Special Rapporteur on freedom of religion or belief “are being used to vilify Christians and Muslims” and which “should be reconsidered since they raise serious human rights concerns”. Groups within Nepal have proposed a multi-faith religious commission, with the power to make recommendations to the government, which would constitute an alternative to proscribing conversion, and would provide a forum for discussing the particular legal protections needed for the customs of minority religions.

2. Recommendations

2.1. To the Constituent Assembly of Nepal

It is recommended that the new constitution should include the following provisions:

1. The “right to freedom of thought, conscience and religion” as defined by Article 18 of the International Covenant on Civil and Political Rights (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 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”;¹
2. Full freedom of religion for minors, as defined by Articles 14 and 30 of the Convention on the Rights of the Child (CRC);
3. The right to own, maintain, protect and have access to sacred sites and burial grounds;
4. The establishment of 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.

2.2. To third-party states and regional actors

It is recommended that states and regional actors should:

1. Encourage the Government of Nepal to give due consideration in the constitutional negotiations to the issue of enshrining religious freedom in a manner which is consistent with Nepal’s obligations under international law and status as a secular republic;
2. Engage with the Government of Nepal to encourage the implementation of the recommendations given in section 2.1 above, and to adopt a constitution and frame laws subsequently, which embody fully Nepal’s commitments under the ICCPR.

2.3. To the UN Special Rapporteur on freedom of religion or belief

It is recommended that the UN Special Rapporteur on freedom of religion or belief should strongly encourage the Government of Nepal to enshrine in the new constitution provisions for religious freedom which are fully consistent with the provisions of the ICCPR.

¹ “United Nations General Assembly: Human rights questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms”, A/60/399, 30 September 2005 (http://www2.ohchr.org/english/issues/religion/docs/A_60_399.pdf), paragraph 59.

3. Introduction: new political horizons in Nepal

3.1. From feudal monarchy to secular republic

Nepal was a feudal monarchy until 1990, with the king at the apex of its hierarchical system of authority. His designation as “King of all Hindus” added religious overtones to the feudal aura of the royal family, and created a situation in which loyalty to the anointed monarch was inextricably bound up with adherence to the dominant established religion. Political and religious authority have traditionally been fused in one person; until recent times, for majority of citizens, the distinction between a loyal citizen and a loyal Hindu would have been difficult to comprehend.

In 1990, the first successful people’s revolution resulted in a compromise by which the monarchic government was replaced by a constitutional monarchy. The king agreed to the election of a multi-party parliament, but retained full control over the armed forces and the power to shut down parliament. Article 4(1) of the 1990 constitution defined Nepal as a “Hindu and Constitutional Monarchical Kingdom”.

During the period 1990 to 2006, the escalating war between the Communist Party of Nepal (Maoist) and the state challenged the fundamentals of the established state and religious system. The accession and subsequent ruthless actions of King Gyanendra, led to the popular revolt in April 2006. In the peace process which ensued after a ceasefire, the CPN (Maoist) was included in the democratic process.

The Constituent Assembly (CA), created by the Comprehensive Peace Agreement (CPA) of November 2006, was elected in April 2008. It took the fundamental decision to abolish the monarchy and declare Nepal a secular republic. However, this decision, with significant implications for religious freedom, is yet to be enshrined in law, and can only be regarded as a statement of intent until it is reflected in a new constitution.

3.2. Towards a new constitution

Nepal is currently in the process of drafting a new constitution: the CA is tasked with creating “a political system that fully complies with universally accepted fundamental human rights”.² According to the CPA, “Both sides reiterate their commitment to the respect and protection of human rights and the international humanitarian laws and agree that no individual shall be discriminated on the basis of colour, gender, language, religion, age, race, nationality or social origin, property, disability, birth and other status and thought or belief”.³

The CA has produced a frequently-amended schedule for the making of the new constitution, which now gives a final date of 28 May 2011 for its promulgation. A number of committees have been drafting proposals on each section of the final constitution, including religious rights, and have now produced their reports. The CA must examine and pass each section of the constitution before the deadline.

The current political situation in Nepal does not bode well for enlightened and far-sighted decisions. The crisis on 28 May 2010, when a total political vacuum would have occurred with the passing of the then final deadline for the new Constitution, could be seen well in advance, but party interests prevented a resolution until the final few minutes. The position of prime minister has also been vacant since Madhav Kumar Nepal’s resignation on 30 June 2010, and the present coalition government, which excludes the largest single party, United

² 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)’, Article 3.4.

³ ‘Unofficial Translation of the Comprehensive Peace Agreement’, Article 7.1.1.

Communist Party of Nepal (Maoist), comprises an alliance of disparate groupings which have very little in common and share few political principles apart from the desire to guard against a political coup by the UCPN (Maoist). Little progress has been made under this coalition in implementing the fundamental building blocks of the CPA, including most notably the process of integrating the personnel of the People's Liberation Army and the Nepal Army into one reformed national military force.

Short-term party political advantage appears to be dictating party attitudes to crucial constitutional issues. There is a significant danger that horse-trading for political advantage could result in dangerous compromises being made on fundamental rights. A full guarantee of religious freedom is one fundamental right which could be endangered by secret political bargaining. According to CSW sources, when the interim constitution was being framed, a stronger protection for religious freedom was proposed, but in the face of opposition from members of one political party, the proposals were not adopted.

4. Religious freedom and the constitution

4.1. Importance of religious freedom

Not only is freedom of religion an important contributory factor to any stable, open society, but it has particular importance in Nepal at this time, as a consequence of the exigencies of establishing a secular republic, with all its ramifications for religious pluralism. As Nepal formalises the transition from Hindu monarchy to secular republic in the promulgation of a new constitution, the right to freedom of religion and belief, as defined by international law, must be protected carefully if the transition is to be a successful one.

4.2. Obligations under international law

Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR) on 14 May 1991, and is therefore bound by its provisions. Article 18 provides that:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

General Comment 22 of the UN Human Rights Committee interprets the right to “have or to adopt a religion” as necessarily including the right “to replace one’s current religion or belief with another or adopt atheistic views” (clause 5). General Comment 22 also narrowly restricts the limitations permitted in Article 18(3): “The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there ... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.”

Article 4 of the ICCPR provides that during times of national emergency, state parties are allowed to derogate from certain obligations under the ICCPR; however, it does not permit

derogation from Article 18 or certain other articles, which are considered so fundamental that they cannot be curtailed.

Article 27 of the ICCPR provides for the rights of persons belonging to minority religions:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Nepal is also bound by its provisions of the Convention on the Rights of the Child (CRC), which it ratified on 14 September 1990. Article 2 guarantees that the rights enunciated in this covenant must be exercised without discrimination as to religion; Article 14 provides that “States Parties shall respect the right of the child to freedom of thought, conscience and religion”; and Article 30 extends to children belonging to religious minorities the right “to profess and practise” their own religion.

4.3. Right to religion in the interim constitution

The interim constitution was promulgated in January 2007 as part of the Comprehensive Peace Agreement (CPA), and closely follows the 1990 constitution in its provisions for religion and belief.

Article 23 (which corresponds to Article 19 in the 1990 constitution) defines the right to religion as follows:

1. *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.
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.*

Article 13(2) also provides that, “There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these”.

4.4. Proposals for the right to religion in the new constitution

Two committees have introduced proposals for the protection of religious freedom in the new constitution.

4.4.1. Committee for Fundamental Rights and Directive Principles⁴

The proposed constitutional provision is as follows:

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.*

⁴ Center for Constitutional Dialogue, an initiative of the UNDP project on Support to Participatory Constitution Building in Nepal
(http://ccd.org.np/new/constitution_in_progresss/concept_paper_fundamental_rights_directive_principles.ENG.pdf).

Provided that no person shall be entitled to act contrary to public health, decent behaviour 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.*

The accompanying rationale is reproduced in full in the appendix below.

4.4.2. Committee on the Protection of the Rights of Minorities and Marginalized Communities⁵

The proposed constitutional provision is as follows:

- (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.*

The accompanying interpretative comments are reproduced in the appendix below.

5. Analysis

5.1. Limitations on religious freedom in the interim constitution

The main areas of concern over the protection of freedom of religion in Article 23(1) of the interim constitution are as follows:

1. 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 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 no religious freedom at all for those whose own religion is not “handed down to him or her from ancient times paying due regard to social and cultural traditions”, either because their religion does not have the character of being handed down in that way, or because they have changed religion. This provision is discriminatory in violation of Articles 2 and 26 of the ICCPR, as well as being in violation of Article 18 of the ICCPR, for failure to provide rights of freedom of religion at all to any such persons. Article 18 provides that that freedom of religion “shall include freedom ... *either individually or in community with others*” (emphasis added) to manifest religion.

⁵ Center for Constitutional Dialogue (http://www.ccd.org.np/pdf/concept_paper_minority_ENG.pdf).

2. The provision of the right “to profess, practise and preserve his or her own religion as handed down to him or her from ancient times” (emphasis added), could lend support to coercive legislative measures to prevent a change of religion. UN Human Rights Committee General Comment 22 defined the right to “have or to adopt” a religion as necessarily including the right “to replace one’s current religion or belief with another or adopt atheistic views” (clause 5). Additionally, ICCPR Article 19 also provides for the “freedom to seek, receive and impart information and ideas of all kinds”. As the UN Special Rapporteur on freedom of religion or belief noted:

“there is a clear prohibition under international human rights law of coercion to change or maintain one’s religion ... the term ‘coercion’ in article 18, paragraph 21, is to be broadly interpreted and includes ... prohibition of conversions. Since the choice of religion or belief is part of the forum internum, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual’s desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.”⁶

3. The provision that “no person shall be entitled to convert another person from one religion to another” is in violation of the freedom to manifest religion or belief under Article 18 of the ICCPR. This clause 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. 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. For example, article 6 (d) of the 1981 Declaration states that the practice of the freedom of religion includes the freedom, “to write, issue and disseminate relevant publications...” Similarly, in resolution 2005/40 of the Commission on Human Rights urged States “[t]o ensure, in particular, ... the right of all persons to write, issue and disseminate relevant publications .” In its general comment No. 22 (1993) the Human Rights Committee holds that “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, ... [and] the freedom to prepare and distribute religious texts or publications” (para. 4).

“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.”⁷

⁶ “United Nations General Assembly: Human rights questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms”, A/60/399, 30 September 2005 (http://www2.ohchr.org/english/issues/religion/docs/A_60_399.pdf), paragraphs 51-52.

⁷ Ibid, paragraphs 59-61.

4. 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.

5.2. Limitations on religious freedom in the new constitutional proposals

The proposals advanced by the Committee for Fundamental Rights and Directive Principles and Committee on the Protection of the Rights of Minorities and Marginalized Communities differ in some respects from the provisions of the interim constitution. Both exclude the problematic provision that a person’s right to profess, practise and preserve a religion is contingent on that religion being “handed down to him/her from ancient times” and on “having due regards to the social and cultural traditional practices”.

However, both proposals are problematic in their approach to religious propagation and conversion.

The proposal of the Committee for Fundamental Rights and Directive Principles would provide that no person “should convert a person from one religion to another”. The interpretative comment on the proposal makes a distinction between a person’s “right to convert on his or her will”, which is legitimate, and “converting a person from one religion to another”, which is illegitimate. The right to change one’s religion would therefore be protected, but the right to cause another person to change his or her religion would be proscribed. The process involved in the latter is not defined.

The proposal of the Committee on the Protection of the Rights of Minorities and Marginalized Communities would protect the right, “To disseminate the religion of one’s own faith and religious belief” and “To renounce or convert to another religion out of one’s own accord”. However, it also proposes that “No one shall be allowed to convert another person from one religion to another against his or her desire” and that a violation of this provision would be punishable by law. The interpretative comment on this proposal simply states that, “No one shall be allowed to convert another person from one religion to another”.

As in the interim constitution, both proposed provisions fail to distinguish conversion of another person, from the propagation or dissemination of religion. As such, the provisions are in violation of the freedom to manifest religion or belief under Article 18 of the ICCPR (see point 3 in section 5.1 above). They would also be prone to misuse, and could have a damaging normative effect on religious minorities. This concern is especially pertinent in light of the recent rise in the activity of Hindu extremist groups in Nepal, which may fuel a rise in social prejudice and violence against religious minorities, as in some states of neighbouring India.⁸

Moreover, there is no necessity for a specific constitutional provision prohibiting one person from converting another person. Coercive techniques which might be employed to bring about conversion, such as assault, battery or fraud, could be addressed under the provisions of the penal code of Nepal. A specific constitutional ban on religious conversions is therefore unnecessary, as well as detrimental to the enjoyment of human rights.⁹

⁸ For further information on this issue, see CSW’s briefing, “Nepal: Emerging threat of Hindu extremism, October 2009” (<http://dynamic.csw.org.uk/article.asp?t=report&id=116>).

⁹ This argument also applies to ‘anti-conversion laws’ in India and a proposed ‘anti-conversion law’ in Sri Lanka. See CSW’s briefings, “India: Religiously-Motivated Violence & Discrimination against Christians in 2008” (<http://dynamic.csw.org.uk/article.asp?t=report&id=106>), pp.9-10, and “Sri Lanka: Religious freedom in the post-

5.3. A comparative perspective: anti-conversion legislation in south Asia

The prohibitions on conversion which are proposed by the two committees, resemble ‘anti-conversion legislation’ in force in five states in India,¹⁰ and proposed in a similar form in Sri Lanka.¹¹ However, these ‘anti-conversion laws’, which typically proscribe conversion carried out under the loosely-defined conditions of “force, fraud or allurement”, have been misused to foster social intolerance and violence towards peaceful religious activities.

In the report of her 2008 mission to India, the UN Special Rapporteur on freedom of religion or belief indicated that she was “deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims” (paragraph 47). She concluded that these “should be reconsidered since they raise serious human rights concerns” (paragraph 70).¹²

Under these laws, “conversion” is conceptualised as an abusive act carried out by active agent “A” upon passive recipient “B”. Radical Hindu nationalist leaders in India have described conversion as an act of violence in itself.

A constitution in Nepal which enshrines this perspective 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.

5.4. Inter-faith co-operation as an alternative

Although the population of Nepal includes significant numbers of non-Hindus, including Buddhists, Muslims, Christians and smaller numbers of Bahá’ís, Sikhs and adherents to traditional religions,¹³ the officially-established status of Hinduism has in the past been a hindrance to moves towards understanding and cooperation between members of different faiths.

Recent trends in India, Pakistan and Sri Lanka have shown the destructive effects of religious hatred and violence across the sub-continent. Several recent incidents of religiously-motivated violence carried out by members of Hindu extremist organisations, principally the Nepal Defence Army and Ranbir Sena, have shown the threat which religious communalism poses to fragile relations between different religious communities in Nepal.¹⁴

It is highly important, therefore, that the new constitution of Nepal should not only fully protect the right to religious freedom, and the rights of religious minorities, but should also establish a mechanism for developing mutual understanding and cooperation among the different religious communities. Since 2004, the National Council of Churches (NCCN) has been working to consolidate dialogue between representatives of all other religions in Nepal towards common goals of peace, justice and human rights, through the Inter-Religious Peace

conflict situation, January 2010” (<http://dynamic.csw.org.uk/article.asp?t=report&id=123&rnd=0.8427393>), p.2, and the Becket Fund for Religious Liberty’s briefing, “United Nations Human Rights Council Universal Periodic Review: India: Submission of The Becket Fund for Religious Liberty, 20 November 2007” (<http://www.becketfund.org/files/cc4a8.pdf>), p. 2.

¹⁰ For further information, see CSW’s briefing, “India: Religiously-Motivated Violence & Discrimination against Christians in 2008”.

¹¹ For further information, see CSW’s briefing “Sri Lanka: Religious freedom in the post-conflict situation, January 2010”.

¹² “Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir: Addendum: Mission to India”, A/HRC/10/8/Add.3, 26 January 2009 (<http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>).

¹³ The most recent available data is from the 2001 census, according to which Hindus constituted 80.6 per cent of the population, and the remainder belonged to these other religions.

¹⁴ CSW’s briefing “Nepal: Emerging threat of Hindu extremism, October 2009”.

Committee, which was later officially recognised as the Inter-Religious Council (IRC), with a Hindu named as its president, and a Christian as its vice-president.

An established mechanism for inter-faith dialogue with the power to make recommendations to the government would provide an alternative to proscribing conversion, by offering a means for discussing and tackling grievances among religious communities. It would also provide a forum for discussing the particular legal protections needed for the customs of minority religions, such as the need to own land for the purpose of burial, a major difficulty for Christian churches in a land where cremation is the norm.

To this end, after widespread consultations across Nepal, the NCCN and IRC have proposed that the constitution should establish a multi-faith religious commission. They have argued that this would be more effective than separate consultative bodies for each faith, which would risk entrenching religious differences and would not create the required opportunities and momentum for inter-faith co-operation and Nepal, which will be urgently needed in the new, secular republic of Nepal.

6. Appendix: interpretative comments on the constitutional proposals

6.1.1. Committee for Fundamental Rights and Directive Principles

The “Rationale Behind Making the Provision” is as follows:

“This right is guaranteed to every person. The right to religious freedom consists of the freedom of every person to religious faith, thought, wisdom, freedom to adopt and practice a religion of his or her choice, right to convert on his or her will, no discrimination by the state on the basis of religion, right to perform religious activities, rituals or prayers and freedom to not follow any religion or to be free from adopting a religion. Moreover, this provision has been made to protect and patronize religious rights of every person. This right cannot be claimed by any person engaged or making to get indulged in any activity contrary to public health, decent behaviour and morality, get indulged in activities of jeopardizing public peace or converting a person from one religion to another, and acting or behaving in a manner which may infringe upon religion of others. This provision has been made in order to make such an act culpable. This right has been provided to all religious denominations under the community right. This right includes such rights as State shall make equal treatment to all, people can adopt and practice religion in a collective way, can perform prayers and religious activities, can form religious trusts and organizations in accordance with law and operate the same in a transparent way. This provision has been made in order to ensure the condition that the State shall show equal feelings towards all the religions and shall, keeping in mind the right and responsibility of the nation, strengthen religious tolerance, social good will and national unity in the country and protect and promote the religious and cultural heritages of national importance, and a person shall not undermine the religious freedom others while adopting and practicing a religion, and every religious denomination shall form and run religious activities and organizations in a transparent manner.”

6.1.2. Committee on the Protection of the Rights of Minorities and Marginalized Communities

The interpretative comments are as follows:

“Right to religious (sic) is a fundamental right of man. All persons have et he (sic) right to accept or not to accept a religion, to profess and practise religion according to one's own faith, to disseminate the religion of one's own faith and religious belief, to renounce or convert to another religion out of one's own accord and to open and run religious associations or organizations. But while exercising these rights, it should be done in a manner which shall not affect other religions or religious faith. No one shall be allowed to convert another person from one religion to another. Also, every religious denomination shall have the right to manage and protect religious places and religious trusts in accordance the law by maintaining its independent existence. Failure to achieve these freedoms in the past gave rise to different religious movements including the April movement. The right to religion should be made in the Constitution on the basis of the principle of secularism, keeping in mind the agreements including CPA reached with the governmental and other representative bodies including political parties, and the suggestions received from the people.”