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NEPAL

SUMMARY OF CONCERNS AND RECOMMENDATIONS

JULY 2014 - FOR PUBLIC USE

SUMMARY OF CONCERNS

The first Constituent Assembly (CA) of Nepal, created by the Comprehensive Peace Agreement (CPA) and elected in April 2008, took the fundamental decision to abolish the Hindu monarchy and declare Nepal a secular republic. Tasked by the CPA with creating "a political system that fully complies with universally accepted fundamental human rights", it failed to complete the work of agreeing a new constitution within the time allotted.

The second CA, elected in November 2013, is currently in the process of reviewing all the articles proposed by the previous CA, resolving disputes over those items not agreed by May 2012, and agreeing the entire new constitution.

The right to freedom of religion or belief has particular importance in Nepal at this pivotal moment in its history, as it makes the transition from a Hindu monarchy to a secular democratic republic. The CA therefore needs to ensure that full religious freedom is embodied within the new constitution.

One of the two constitutional proposals on religious freedom inherited from the previous CA contains a provision that "no person shall be entitled to convert another person from one religion to another against his or her desire". This fails to allow choosing and changing one's faith to be seen as a positive individual choice or as a matter of individual rights, as required by the CPA.

There is a serious risk that already-drafted clauses from the previous CA, which are inconsistent with the international human rights framework, might be passed by the new CA. Furthermore, in May 2011 draft proposals for the new penal code of Nepal were submitted to the previous CA, which prohibit all changes of religion, "with or without inducement". If such an unconditional ban on choosing and changing one's faith were added to the proposals inherited from the previous CA, religious freedom for all Nepalis would be severely curtailed.

CURRENT SITUATION

The prevailing political climate with regard to religious freedom in Nepal has recently been seriously affected by a number of statements.

On 1 June 2014, while visiting Nepal, Bhagat Singh Koshiyari, the vice-chairman of the Indian Bharatiya Janata Party (BJP), called for a total legal ban on conversions from one faith to another and asserted that religious conversion is a criminal offence. This view was echoed by Nilam K.C., the Nepalese Social Welfare Minister, who said that conversion from one religion to another must be prohibited. On 16 June Nepali Congress Party leader Dr Sekhar Koirala demanded strict measures against conversion, and another Congress party leader, Laxman Ghimire, also demanded that Nepal be declared a Hindu state.

On 19 June a joint press conference of various Hindu organisations in Kathmandu demanded the declaration of Nepal as a Hindu state, and that this definition of a Hindu state should be clearly written in the new constitution.

It is obvious from these statements that there is a very vocal campaign in Nepal to prohibit by law the right to choose and change one's religion or belief, and to ban all religious conversions.



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FREEDOM OF RELIGION OR BELIEF: INTERNATIONAL TREATY OBLIGATIONS

Nepal is a state party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the ICCPR 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).

Moreover, Nepal is bound to implement the requirements of international human rights conventions according to its own 1991 Treaty Act, under which all ratified treaties become laws of Nepal, and existing laws must be brought into compliance with them.

A letter sent in October 2011 to the government of Nepal by the UN Special Rapporteurs on freedom of religion or belief and freedom of opinion and expression, voices concern about the two current proposals relating to religion and belief in the new constitution, pointing out that Article 18 of the ICCPR “necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another, or to adopt atheistic views”. With regard to the proposed anti-conversion clauses, the Rapporteurs “reiterate that it would be inadvisable to criminalize non-violent acts performed in the...manifestation of one’s religion, in particular the propagation of religion...because this might pave the way for persecution of religious minorities.” The letter also expresses concern at the draft sections of the proposed penal code that would criminalise “undermining the religion of any group,” and “prohibit harm, insult or offence to the religious feelings of any caste, race, class or sect.” Such prohibitions, it declares, are incompatible with the ICCPR.

RECOMMENDATIONS

TO THE CONSTITUENT ASSEMBLY AND GOVERNMENT OF NEPAL

- That the new constitution of Nepal reflect in full the requirements of the International Covenant on Civil and Political Rights (ICCPR) and of Nepal’s own Treaty Act 1991;
- That the new constitution of Nepal guarantee the right to choose and change one’s religion or belief, and the right to choose not to believe in a religion;
- That the new constitution and penal code not include any sentence or clause prohibiting or banning conversion, whether defined as by force or with or without inducement.

TO STATES, PARTIES OR INTERNATIONAL BODIES MAINTAINING DIPLOMATIC RELATIONS WITH NEPAL

In contacts with the government of Nepal, and members of its Constituent Assembly, to recommend:

- That the new constitution of Nepal reflect in full the requirements of the International Covenant on Civil and Political Rights (ICCPR) and of Nepal’s own Treaty Act 1991;
- That the new constitution of Nepal guarantee the right to choose and change one’s religion or belief, and the right to choose not to believe in a religion;
- That the new constitution and penal code of Nepal not include any sentence or clause prohibiting or banning conversion, whether defined as by force or with or without inducement (as indicated by the letter of the UN Special Rapporteurs).

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CSW is a Christian organisation working for religious freedom through advocacy and human rights, in the pursuit of justice.

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