

Freedom of Religion or Belief in Nepal

Mapping Report
February 2022

All Party Parliamentary Group for
International Freedom of Religion or Belief



The All Party Parliamentary Group (APPG) for International Freedom of Religion or Belief (FoRB) is a group of over 140 cross-party parliamentarian members who champion the right to FoRB, as outlined in Article 18 of the Universal Declaration of Human Rights, among their fellow parliamentarians, policy-makers, the media and the general public, and pursue effective implementation of policy recommendations relating to this right. Established in 2012, the group benefits from the expertise of 20 human rights and faith-based stakeholder organisations.

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The work of the APPG is also made possible by financial support from the APPG's stakeholders, whose names can be found on the APPG's website via <https://appgfreedomofreligionorbelief.org/stakeholders/>

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Executive Summary

Executive Summary

Freedom of religion or belief is a foundational human right that is paramount to the flourishing, health, safety, economic success and sustainable growth of a country. And yet, in 2019 globally, Government restrictions on freedom of religion or belief were at their highest level in years.¹ This is also true in Nepal.

While Nepal has not been designated as a Country of Particular Concern by the United States Commission on International Religious Freedom or other international governmental organisations, there is growing concern of increased religious and belief suppression. With the new Nepalese Constitution ratified in 2015, strict scrutiny reveals that several provisions of the criminal code expressly target non-Hindus in Nepal. Conversion and proselytising are outlawed. A growing number of violent incidents, arbitrary arrests, destruction of property, and hate speech campaigns have been perpetrated by both State and non-State actors with impunity.

This report is a mapping report before the APPG fact-finding mission to Nepal in 2022. This report outlines the history of religion and law in Nepal, current legal standards as implemented through the 2015 Constitution, current freedom of religion or belief violations and challenges, and recommendations for the Nepalese and UK Governments. It is critical that intervention be initiated before mass atrocity crimes occur. The APPG for International Freedom of Religion or Belief has completed this report upon request from its members who are UK Parliamentarians. The APPG supports timely and sustainable intervention.

¹ See: <https://www.pewresearch.org/fact-tank/2021/09/30/key-findings-about-restrictions-on-religion-around-the-world-in-2019/>

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Foreword

Foreword



Jim Shannon MP, Chair of the APPG for
International Freedom of Religion or Belief

As drives all areas of the APPG's work, we hope freedom of religion or belief moves from rhetoric to reality. Many of our priority countries are household names when it comes to FoRB violations, with many people aware of the harrowing repression and discrimination suffered by many religious or belief minorities around the world. Such widespread awareness of FoRB violations often does not, however, entail an understanding of the situation in Nepal.

The fact that Nepal is not among the highest ranking countries for violations of freedom of religion or belief means that it is often overlooked. Increased concern regarding the suppression of religion or belief, with restrictions on this freedom reaching their highest levels in years, highlights the importance of directing more attention to this country, before violations escalate further.

It is my hope that this report leads to an improvement in the state of freedom of religion or belief in Nepal, with the recommendations contained herein offering a strategic way forward for the Nepalese and UK Governments to enact positive change. When implemented, such recommendations have the power to transform the lives of vulnerable people for good, giving future generations greater hope of freedom and peace.

A lot of work has gone into this report. I would like to thank the staff at the APPG office for their work on this report, namely Portia Berry-Kilby, Director, for editing this report. My special thanks are owed to Rachel Miner, founder and president of Bellwether International, and Dr. Ewelina Ochab, for their extensive research that made this report possible. Finally, I would like to thank our Stakeholders for their continued support of this APPG, which allows the APPG members to speak out on behalf of those who are persecuted from around the world.

Reflecting on the Past and Looking Forwards



Lord David Alton of Liverpool

In 1982, as a young MP, I travelled to Nepal, Calcutta, and to the People's Republic of China assessing religious freedom and human rights.

In Nepal our little team was assisted by Charles Mendies – whose mother had established Mendies Haven in Kathmandu. As Christian missionaries they were not permitted to set up an orphanage but Mrs. Mendies had simply adopted children who had been abandoned on the streets. It had become a very large family.

The Mendies were remarkable people.

In 1946, after leaving her Canadian hometown in Ontario, “Mummy” Mendies – Elizabeth – had married Tom, “Daddy” Mendies. She met Tom in India. They married in Calcutta, moved to Kathmandu, and established Nepal's first hotel. Then came the Haven – where for decades they cared for countless abandoned children many of them abandoned to the street.

Charles arranged for us to have a private meeting with a senior Government Minister to raise Nepal's discrimination against Christians. Not only did he say that he would take action to address this but told us that he had never forgotten the opportunities he had been given as a result of attending a Church school. He asked us to trust him, which we did, and several months later we were delighted and amazed to learn that the worst of the legislation had been repealed.

We were left in no doubt that there was shocking persecution.

We trekked into the countryside to take evidence. Our exertions were put into perspective by an elderly man who had walked for a week to tell us his story and to show us the scars on his back where he had been beaten after refusing to renounce his beliefs. We heard, too, the story of two nuns who



1982 Nepal - with Charles Mendies
(bottom photograph) taking evidence from
persecuted Christians in Nepal

had been stripped, paraded through a village, and put in stocks where they were pelted. The extraordinary dignity and courage of the people I met left a deep impression.

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Introduction

Introduction

In April 2015, a magnitude 7.8 earthquake struck central Nepal, killing 9,000 and injuring over 22,000.² A symbol of deeper political and religious rifts, the earthquake ended a 7-year gridlock to introduce the new Nepalese Constitution which enshrined a new “secular” norm for religious law in Nepal. Both the earthquake and Constitution have shifted global focus to a country that has not historically received much attention, especially attention regarding the situation concerning the right to freedom of religion or belief of all.

While the situation differs from other countries where the freedom of religion or belief atrocities may meet the legal definition of international crimes, Nepal is a country where violations of the right to freedom of religion or belief are severe yet neglectfully overlooked.

PEW research studies in 2017 and 2018 noted the rise of religious hostilities in Nepal from moderate to high in both 2015 and 2016 following the adoption of the new Constitution.³ A report from the International Committee of Jurists summed up tensions, highlighting:

Hindu politicians made speeches attacking the “epidemic” of conversions and Christians who sought to “convert” Hindus, and local communities in the Kathmandu Valley opposed burials by perceived “outsiders”, “making it difficult for Protestant churches to access land they had bought years earlier.” Likewise, unlawful restrictions by the Government on freedom of religion were also on the rise, including restrictions on non-governmental organizations (NGOs) preaching or promoting religious conversion, and the introduction of new laws criminalizing “proselytism” and “blasphemy”.⁴

² See: <https://www.worldvision.org/disaster-relief-news-stories/2015-nepal-earthquake-facts>

³ Pew Research Center, “Global Restrictions on Religion Rise Modestly in 2015, Reversing Downward Trend”, 11 April 2017, p. 18, available at: <http://assets.pewresearch.org/wpcontent/uploads/sites/11/2017/04/24102207/Pew-Research-Center-Religious-Restrictions-2017-FULLREPORT.pdf> and Pew Research Center, “Global uptick in Government Restrictions on Religion in 2016”, 21 June 2018, available at: <http://assets.pewresearch.org/wpcontent/uploads/sites/11/2018/06/27121723/Restrictions-IX-FULL-REPORT-WITH-APPENDIXES.pdf>

⁴ See: <https://www.icj.org/wp-content/uploads/2018/08/Nepal-Freedom-of-religion-brief-Advocacy-Analysis-brief-2018-ENG.pdf>

In Open Doors' World Watch List 2021, Nepal ranked as 34th, among countries where Christians are most persecuted. In World Watch List 2022, however, Nepal dropped 14 places to 48th. But despite this seemingly positive change, persecution actually rose within the period under review. The fall in the ranking only means that persecution rose globally and by no means can be attributed to the improving situation in the country. Indeed, as Open Doors noted, "life for Nepalese Christians has hardly changed at all. Despite a decrease in violence, pressure in almost every sphere of life went up, showing that daily life remains difficult for Christians, especially converts from Hinduism."⁵

There is increasing concern of extremism perpetrated by parties such as the right-wing pro-Hindu nationalist group Rastriya Prajatantra Party who call for the reinstatement of Hindu rule – including discriminatory practices against religious and belief minorities.⁶ Other concerns regarding the restriction on religious conversion, compounded by the caste system and oppression of indigenous tribes, require further investigation and intervention.

Owing to the dire situation of minority religious or belief communities in Nepal, and because of the general neglect of the situation, the APPG decided to conduct an inquiry into the situation, to have a better understanding of the issue, and to produce a report with recommendations for the Nepalese and the UK Governments.

APPG Inquiry

The purpose of this inquiry is to:

- i. Develop an accurate understanding of the current state of Freedom of Religion or Belief (FoRB) in Nepal;
- ii. Ascertain whether there are existing and effective FoRB projects in Nepal that could be expanded or otherwise supported;
- iii. Support the Nepalese Government by developing a set of recommendations on how they can best protect FoRB in Nepal;
- iv. Provide the UK Government with a set of recommendations on how they can best interact with their Nepalese counterparts to promote FoRB.

Methodology

The APPG conducted a scaled inquiry into the situation of freedom of religion to map the main issues before its fact finding mission in 2022 (the Inquiry).

⁵ See: <https://www.opendoorsuk.org/persecution/world-watch-list/nepal/>

⁶ See: <https://www.worldwatchmonitor.org/coe/political-party-campaigns-for-nepal-to-become-a-hindu-state/>

The Inquiry, which took place throughout mid 2021, involved a few oral hearings, a targeted call for submissions and desktop research.

The APPG supplemented the Inquiry and oral hearings with extensive research on Nepal's legal and religious history from various articles, journals, and investigative journalistic news sources.

The APPG would like to express its gratitude to Dr Ewelina U. Ochab and Rachel Miner for their assistance with producing this report.

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Background

Background

Religious Demographics in Nepal

In 2020, the US State Department assessed the Nepalese population to be 30.3 million. According to the last census from 2011, Hindus constitute 81.3% of the population, Buddhists 9%, Muslims (with the majority of them being Sunni) 4.4%, and Christians (majority Protestant, minority Roman Catholic) 1.4%. The remaining 5% include Kirats, Animists, adherents of a Tibetan religious tradition (Bon), Jains, Baha'is, and Sikhs.

In addition to formal religious groups, over one third (35%) of the Nepali population identifies as *janajati adivasi*, or “indigenous.” State criterion for janajati groups includes:

- a) A language other than Nepali
- b) Particular customs and practices differentiating them from the Hindus
- c) A distinct culture, again not Hindu
- d) A social structure not based on the four varna (i.e. the four groups of the caste system)
- e) A written or oral tradition.⁷

The differences in language, custom, culture, and tradition make them especially vulnerable to restrictions on freedom of religion or belief including scapegoating as the “other.” These groups have adopted some Hindu and Buddhist practices but are marginalised within the caste system and vulnerable to religious freedom violations. Religious traditions with indigenous groups include “a preponderance of shamanic elements, including dedicated part-time religious specialists acting as healers and mediators between their communities and the hosts of deities and spirits inhabiting the landscape.”⁸ There are 59 distinct *janajati* groups in Nepal, each with a different rank within the caste system (primarily based upon similarity

⁷ Torri, D., “Religious Identities and the Struggle for Secularism: The Revival of Buddhism and Religions of Marginalized Groups in Nepal”. *Entangled Religions*, vol. 8, Sept. 2019, doi:10.13154/er.8.2019.8355. See: <https://doi.org/10.13154/er.8.2019.8355>

⁸ *Ibid.*

with Hindu practice). Researcher Davide Torri indicates the grouping of indigenous tribes accordingly:

Advanced groups (2): Newar, Thakali

Disadvantaged groups (14): Tangbe, Teengaunle Thakali, Barahgaunle Thakali, Marphali Thakali, Gurung, Magar, Rai, Limbu, Sherpa, Yakkha, Chhantyal, Jirel, Byansi, Hyolmo

Marginalized groups (19): Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbanshi, Gangaai, Dhimal, Bhote, Darai, Tajpuriya, Pahari, Topkegola, Dolpo, Mugal, Larke, Lohpa, Dura, Walung

Highly marginalized groups (12): Majhi, Siyar, Lhomi (Shinsaba), Thundam, Dhanuk, Chepang, Santhal, Jhagad, Thami, Bote, Danuwar, Baramu

Endangered groups (9): Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Meche, Kuswadiya.⁹

Targeting and abuses of the *janajati* indigenous tribes are outlined in greater detail in the Challenges section of this report.

History of Religion and Law

Nepal's religious and legal history are intertwined, illustrating the importance for freedom of religion or belief in the broader context of state law. For most of Nepal's history, indigenous tribes' religious practice informed legal decisions and societal organisation. In 1768, King Prithivi Narayan Shah of Gorkha sought to unify all of the tribes of the region, instituting a caste system enforced by Hindi text and practice.¹⁰

In 1846, Jung Bahadur Rana installed the Rana Regime, a new hierarchical government based on Prime Minister rule and connected through the Rana Family line. Inspired by the Napoleon and Civil Code of France, and the civil code of Britain, Rana codified Hindi jurisprudence with help from his appointed Ain Kausal law council. By January 1854, the Country Code (Muluki Ain), the first legal code of modern Nepal, embodied Hinduism as the national religion and source for civil law.¹¹ The Muluki Ain remained Nepalese law for 110 years until the overthrow of the Rana regime and introduction of democracy in 1951.

⁹ Ibid.

¹⁰ Kanak Bikram Thapa, Religion and Law in Nepal. See: <https://classic.iclrs.org/content/blurb/files/Nepal.pdf>

¹¹ Ibid.

The Nepalese Constitution has been amended several times in the past 100 years. Kanak Bikram Thapa, Professor of Law and Former Dean at Tribhuvan University of Nepal, Kathmandu, explained:

The 1962 Constitution of Nepal for the first time declared that Nepal is an independent, indivisible, sovereign, monarchical Hindu kingdom. Religious freedom [was] granted...but conversion of religion was prohibited. The Constitution of Nepal 1962...mentioned that the word “His Majesty” means His Majesty the King currently reigning, being descendant of the Great King Prithivi Narayan Shah and adherent of Aryan culture and the Hindu religion.¹²

Thus, for nearly sixty years, Hinduism dictated the law of the land including the caste system, penal code, civil code, and legal custom. In the early 2000s, the People’s Movement of Nepal pressured the government to overthrow the monarchy, re-establish democracy, and eliminate other discriminatory practices. A revision to the Constitution was recommended and an interim peace process was initiated. Religious minorities and indigenous tribes emphasised the importance of freedom of religion or belief in the new Constitution. Although the 2007 Interim Constitution sought to establish a “secular” or religiously neutral legal code in Nepal, jurisprudence continued to solely reflect Hindu norms, practices, and discrimination against other religious minorities.

Collaboration on the new Nepalese Constitution stalled until 2015 (the 2015 Constitution), when a devastating earthquake motivated the leading political parties in Nepal to unite and establish a new era of Nepalese democracy.¹³ The 2015 Constitution asserts Hindu nationalism and continues to reflect core tensions for broader freedom of religion or belief in Nepal. The provision of the Constitution and the effect on religious and belief minorities is outlined in detail in the following sections.

¹² Ibid.

¹³ See: <https://www.bbc.com/news/world-asia-34280015>

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Legal Protections

Legal Protections

The right to freedom of religion or belief is contained within several legal documents relevant to Nepal, whether affirming the right or limiting it. These are discussed below.

The 2015 Constitution declares secularism upon the State with secularism being defined as the “protection of religion and culture being practiced since ancient times and religious and cultural freedom.”

Article 26(1) of the Constitution affirms that “each person shall be free to profess, practice, and preserve his/her religion according to his/her faith.”

Article 26(2) states that: “Every religious denomination shall, maintaining its independent existence, have the right to manage and protect its religious places and religious trusts in accordance with law.

“Provided that it shall not be deemed to have hindered to make law to operate and protect a religious place or religious trust and to manage trust property and regulate land management.”

Article 26(3) places limits on this freedom stating that “no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.”

While the 2015 Constitution affirms the right to freedom of religion or belief, its wording is very limited and not in line with international standards. As Dr Ewelina U. Ochab commended:

The provision is problematic for several reasons. First, the scope of the right is narrower than the currently accepted international standard as it does not incorporate and protect the right to choose and change religion, or not to have a belief.

Second, despite the fact that religious profession is safeguarded in Section 26(1), Section 26(3) places significant limits on the practice and manifestation of religion or belief. Indeed, section 26(3) prohibits anyone to act in a manner ‘which is contrary to public health, decency

and morality or behave or act or make others act to disturb public law and order situation.’ The reference to acts contrary to public decency or morality are very vague and are left open to broad interpretation, leaving the potential for restrictions upon religious practices that are not accepted or welcomed by the religious majority. Furthermore, Section 26(3) prohibits religious conversion or even the act of ‘disturbing’ the religion of others. This leaves open potential prohibitions on trying to convert others and curtails an individual’s ability to speak about their religion to others. This limitation potentially creates two crimes in one sentence; blasphemy and ban on proselytising.¹⁴

Some of the provisions in the Criminal Code, that came into force on 17 August 2018, could be considered to aim for the protection of the right to freedom of religion or belief. For example, Section 157 of the Criminal Code incorporates a prohibition of causing obstruction to religious rites and rituals, stating that:

(1) No person shall knowingly cause obstruction to others’ religious rites and rituals that are handed down or being followed from the time immemorial.

(2) A person who commits, or causes to be committed, the offence referred to in sub-section (1) shall be liable to a sentence of imprisonment for a term not exceeding one year or a fine not exceeding ten thousand rupees or both the sentences.

Although aimed to increase freedom of religion or belief, implications of Section 157 is a strong Hindu bias which is referenced in the phrase “time immemorial,” pointing to the long Hindu history in Nepal. This section has been used to target non-Hindu practice.

Furthermore, Section 155 of the Criminal Code prohibits the injuring of shrines or places held sacred:

(1) No person shall damage or injure or, in any way, defile, destroy or pollute any place of religious worship, pray or function or place, object held sacred or burial place or place of sepulture or do similar other act with intent to outrage or insult the religion or religious feelings of any caste, race, community or class or with the knowledge that such outrage or insult is likely to occur.

¹⁴ Ewelina U Ochab, Nepal's Protection Of Religious Freedom On Downward Spiral (7 February 2018) Forbes. See: <https://www.forbes.com/sites/ewelinaochab/2018/02/07/nepals-protection-of-religious-freedom-on-downward-spiral/?sh=542074d8c87b>.

(2) A person who commits, or causes to be committed, the offence referred to in sub-section (1) shall be liable to a sentence of imprisonment for a term not exceeding three years and a fine not exceeding thirty thousand rupees.

(3) Where a foreigner has committed, or caused to be committed, the offence referred to in sub-section (1), he or she shall be deported from Nepal within seven days after the date of completion of the service of imprisonment under sub-section (2).

While at their face value these provisions should be beneficial for the protection of the right to freedom of religion or belief, it is reasonable to conclude that such provisions can be abused, especially against religious or belief minorities.

The Nepalese law contains several provisions which have the effect of limiting the right to freedom of religion or belief. For example, Section 156 of the Criminal Code prohibits the act of “outraging religious feelings”:

(1) No person shall outrage the religious feelings of any caste, race, community or class by words, either spoken or written, by visible representation or signs or otherwise.

(2) A person who commits, or causes to be committed, the offence referred to in sub-section (1) shall be liable to a sentence of imprisonment for a term not exceeding two years and a fine not exceeding twenty thousand rupees.

Section 158 of the Criminal Code prohibits “proselytising”:

(1) No person shall convert anyone from one religion to another or make attempt to or abet such conversion.

(2) No person shall do any act or conduct which undermines the religion, opinion or faith of any caste, race, community or convert any one into another religion, whether by inducement or not, in a manner to so undermine or propagate such religion or opinion with the intention of making such conversion.

(3) A person who commits, or causes to be committed, the offence referred to in sub-section (1) or (2) shall be liable to a sentence of imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees.

(4) If a foreigner commits, or causes to be committed, the offence referred to in sub-section (1) or (2), he or she shall be deported from Nepal within seven days after the date of completion of the service of imprisonment imposed under this Section.

Furthermore, the administrative law provides certain obstacles to the enjoyment of the right to freedom of religion or belief.

The law does not require registration or official recognition of religious organisations as religious institutions, except for Buddhist monasteries. While Buddhist monasteries are not required to register, such a registration is a prerequisite for government funding. A monastery development committee under the Ministry of Culture, Tourism, and Civil Aviation is responsible for the registration process.

All religious groups, apart from Buddhist monasteries, must register as NGOs or non-profit organisations. This will enable them to operate legally, own land or other property, and access government grants and partnerships.¹⁵ Registrations are renewable annually.

Hindu, Buddhist, and Islamic religious schools must register as religious educational institutions with local district education offices (under the Ministry of Education, Science, and Technology). Catholic and Protestant groups must register as NGOs to operate private schools. Currently, the law does not allow Christian schools to register as public schools. As such, they are not eligible to receive government funding.¹⁶

International obligations

The Nepal Treaty Act of 1991 provides for the primacy of international treaties over national laws. As such, Nepal's accession or ratification of international treaties is a crucial step towards ensuring comprehensive protections of the right to freedom of religion or belief.

Nepal has acceded to the International Covenant on Civil and Political Rights (the ICCPR) and, as such, is bound to adhere to the provisions. Article 18 of the ICCPR states:

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.

¹⁵ See: US State Department, FoRB Report 2020.

¹⁶ See: US State Department, FoRB Report 2020.

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, among others, clarifies that the right to freedom of religion or belief includes the right to “replace one’s current religion or belief with another or adopt atheistic views, as well as the right to retain one’s religion or belief.”¹⁷

Furthermore, Article 27 of the ICCPR ensures additional protections for minority communities stating that “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.”

Throughout several UPR sessions and other UN initiatives, Nepal received recommendations to address the issue of freedom of religion or belief in the country.

In the last UPR review of Nepal, several issues pertaining to the right to freedom of religion or belief were raised, including:

33. Several organizations noted that Nepal’s new penal code enacted a prohibition against the conversion of persons from one religion to another. They contended that the language was vague and overbroad and had led to the arrest and imprisonment of individuals exercising their constitutional rights to profess and practice religion, notably since the prohibition on conversion was not limited to coercion; and that the Government had utilized the COVID-19 pandemic and the vagueness of the penal code as cover for denial of religious minority rights. JUBILEE, JS40 and ECLJ reported that, since the passage of the 2017 anti-conversion law, Christians had been increasingly targeted by Hindu extremists.

¹⁷ UN General Comment 22, para.5.

34. JS1 and JS40 informed that media campaigns portraying Muslims as the primary population responsible for spreading COVID-19 had fueled discrimination and violence towards Muslims.

(...)

93. JUBILEE, JS18 and CSW noted challenges for Tibetan refugees regarding gaining legal recognition, negatively impacting their freedoms of movement, religion, and to education and work.¹⁸

Nepal promised to examine the following recommendations and provide responses in due course, but no later than for the 47th session of the HRC:

159.80 Take all necessary measures, in particular at the legislative level, in order to protect the rights of persons from religious minorities and in order to guarantee freedom of religion or belief in law and in practice, in accordance with international human rights law (Haiti);

159.86 Amend article 26 of the Constitution to include the right to choose or change one's religion or belief, in accordance with article 18 of the International Covenant on Civil and Political Rights (Netherlands);

159.87 Remove restrictions on the right to freedom of religion or belief in the Criminal Code (Norway).¹⁹

These recommendations remain unimplemented.

Nepalese views on the protections of the right to freedom of religion or belief

In a meeting organised by the APPG, Ram Tiwari, chairman of Nepal's Restorative Justice International Working Group, testified that the constitutional provisions on FoRB are open to interpretation. He noted that they can be used to privilege one group over another, in particular the Hindu majority groups. He explained that law imposes Hindu cultural norms, for example the ban on slaughter of cows and primacy over certain festivals. Tiwari indicated that having interviewed many religious leaders, he found lots of fear based on the presumption that FoRB is a western imposed idea and is not an organic demand. There is general fear that the number of mosques and churches are rising. This is unsubstantiated, however, as all religions are growing in Nepal. Ram Tiwari indicated that unless there is an

¹⁸ A/HRC/WG.6/37/NPL/3. Available at: https://www.upr-info.org/sites/default/files/document/nepal/session_37_-_january_2021/a_hrc_wg.6_37_npl_3_e.pdf

¹⁹ A/HRC/47/10. Available at: https://www.upr-info.org/sites/default/files/document/nepal/session_37_-_january_2021/a_hrc_47_10_e.pdf.

acceptance of all religions as equally deserving, it will be hard to overcome this fear. Furthermore, Ram Tiwari emphasised that the law sets standards but there is a difference between legal standards and their empirical implementation and enforcement.

Tanka Subedi, Director of the International Nepal Fellowship, emphasised that there is confusion in the Constitution where Article 4 defines Nepal as a secular State but then states that it needs to protect the traditional culture which is Hinduism. He added that from the beginning it is biased against minority religious and belief groups. Subedi noted that the Constitution contains a good provision on FoRB, but it does not allow for a free will conversion: one cannot convert from Hinduism to other religions. Penal codes were developed to punish such conversion with stringent penalties.

While the Constitution prescribes that one should not harm religious sites, the provision is usually used against Christians to say they are trying to destroy temples (which is untrue in most cases). Tanka Subedi indicated that in one case, a pastor who was training other pastors in churches was arrested for supposed conversions.

6

Challenges

6

Challenges

Many of the challenges discussed in this section stem from the limited protection of the right to freedom of religion or belief, as explained above. In short, the legal protections can be used to privilege one group over another, and fair implementation and enforcement are an issue. Penal codes that were developed to punish free-will conversion with stringent penalties, translate into challenges faced by persons because of their religion or belief.

More broadly, however, the challenges faced by people of religion or belief have many sources and are here considered under two headings of State and non-State actors. These are discussed below based on the actor responsible for the acts.

State-actors

Excessive use of force

State-actors have been using excessive force against members of religious or belief groups. For example, on 3 September 2020, in response to COVID-19 restrictions against large gatherings, nearly 1,000 protestors celebrated the Buddhist festival of Rato Machindranath in Lalitpur District. Government response included 650 Nepalese police and Armed Forces who in addition to arresting nine protestors, discharged tear gas and water cannons into the crowd of peaceful protestors.²⁰

In another violent encounter with Nepalese police, a man was killed on 27 August 2020 following the arrest of two Muslims for slaughtering cows, a practice prohibited by Hindu law due to the consideration of cows as holy.²¹ In October 2020, “35 individuals were arrested for cow slaughter in nine separate incidents through October. These arrests took place in eight different districts throughout the country.”²² Differences in belief, including those surrounding the sacred nature of cows, are often cause for great concern.

²⁰ See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

²¹ See: <https://thehimalayantimes.com/nepal/one-killed-in-police-firing-tension-runs-high-in-jhapa>

See also: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

²² See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

Arbitrary arrests

Members of religion or belief communities have been arbitrarily arrested. For example, as reported by the US State Department 2020 Report on International Religious Freedom, on 23 March 2020, Keshav Raj Acharya was arrested for spreading “misinformation” regarding COVID-19 – he had said “Jesus can cure Corona.” The US State Department reported that following the arrest:

The Kaski District Administration Office released Acharya with a 5,000-rupee (\$43) fine for the COVID-19 related charges, but police kept him in jail and subsequently charged him with religious conversion and offending religious sensibilities. On May 13, when Acharya was released on bail, he was immediately rearrested at the courthouse and transferred 400 miles to Dolpa District to face additional charges of religious conversion. Multiple religious groups stated that local police prejudice continued to factor heavily in the selective enforcement of the vague criminal code provision against “forced conversion.” In a July 18 letter to Nepal’s Attorney General, the International Religious Freedom Roundtable described Acharya’s arrest as “arbitrary” and “discriminatory” and called for charges against him to be dropped.²³

Since then, on November 30 November 2021, Dolpa District Court in Nepal sentenced Pastor Keshav to two years imprisonment and a fine of 20,000 Nepali Rupees under Section 158 (1) and (2) of Nepal’s Penal Code (2017) for sharing his faith.

Five days after Acharya was first arrested, two additional pastors were arrested for hosting worship services in violation of COVID-19 restrictions. Pastor Mohan Gurung of Surkhet District of Karnali Province Gurung said “police jumped over the church gate, barged inside the premises, and accused [him] of holding a worship service” while he “was having family time, chatting, and studying the Bible.”²⁴ The second arrest of Pastor Prem Bahadur Bishwakarma occurred, “while telling members of his congregation not to gather because of pandemic restrictions and showing them pictures depicting COVID-19 health precautions.” US State Department reports that “Bahadur told the media that police officers using lathis (clubs) ‘charged at us’ before arresting him.”²⁵ Both were charged with “violating

²³ See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

²⁴ Ibid.

²⁵ Ibid.

the lockdown, disturbing the peace, and putting public health at risk. Both were released on bail on March 29.”²⁶

In September 2021 police arrested two South Korean Catholic nuns for their charitable work.²⁷

Throughout 2020, the US State Department identified the following cases raising the issues pertaining to the right to freedom of religion or belief and discrimination against minorities:

Police arrested seven Jehovah’s Witnesses on two separate occasions in Pokhara for proselytizing. Two were U.S. citizens and five were Nepali citizens. The Nepali citizens were arrested on February 1 and released February 27 on 200,000 rupees (\$1,700) bail per person. The U.S. citizens were arrested on March 17 and charged with religious conversion while they were visiting the house of friends, who were also Jehovah’s Witnesses. They were detained in police custody pending investigation for 11 days. On March 27, police released them due to COVID-19 protocols on 230,000 rupees (\$2,000) bail each. On April 24, police recalled them and detained them until April 26, when the district court released them on an additional 200,000 rupees (\$1,700) bail each, pending trial. The original 230,000 rupee bail was refunded to the U.S. citizens after they paid the second bail. As of the end of the year, their case was pending in Kaski District Court.²⁸

Abuse of criminal laws against religious minorities

Criminal laws are being excessively used or abused against persons because of their religion or belief.

Religious Freedom Institute considers that the “anti-conversion laws are perceived to be aimed specifically at Christian communities, the members of which are increasingly harassed and arrested under their authority.”²⁹ They reported that “Christian communities noted that since the Constitution’s enactment, they have been increasingly harassed, and in some cases detained by local governmental officials, due to allegations they were converting Hindus, especially Dalit Hindus.”³⁰

²⁶ Ibid.

²⁷ See: <https://www.ucanews.com/news/korean-missionary-nuns-granted-bail-in-nepal-on-conversion-charges/95031>

²⁸ See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

²⁹ RFI Nepal Report, p.19.

³⁰ Ibid.

CSW submitted to this report that, “Several legal prosecutions against Christians for attempting to convert others are ongoing in the Supreme Court and trial courts. However, the delay in conclusion of these cases have drawn criticisms by local Christian groups, who say that it puts undue financial burden on the defendant.”³¹

While the Constitution prescribes that one should not harm religious sites, the provision is usually used against Christians to say they are trying to destroy temples (which is untrue in most cases). Tanka Subedi indicated that in one case, a pastor who was training other pastors in churches was arrested for supposed conversions.

Criminal law prevents the vandalism of property, and yet “Christian sources reported one incident of vandalism against a church in Dhading District in August.”³²

Registration

Christians, Muslims, Jains, Buddhists, Baha'is and other religious minority groups cannot register their places of worship as religious organisations. They are to register the buildings either as non-governmental organisations (NGOs) under the NGO Act 2034, or as individually-owned properties. Local governments and municipality offices have the discretion to grant NGO registrations and renewal of licences.

As CSW submitted to the APPG, “according to local sources discriminatory practices continue to be prevalent in the determination of applications from Christian groups. Nepal’s proposed National Integrity and Ethics Policy 2074, aimed at regulating and controlling the work of national and international NGOs, has been criticised by civil society groups for restricting the activities of religious minorities. United Nations Special Procedures Mandate Holders David Kaye, Clément Nyaletsossi Voule, Michel Forst, and Ahmed Shaheed have raised their concerns with the government of Nepal about the serious negative effects of the policy on the activities of organisations and civil society.”³³

In a report prepared for the 2015 UN Human Rights Council Universal Periodic Review of Nepal, two NGOs reported: “Discrimination, based on historical oppression and exclusion, against indigenous peoples remains deeply rooted in Nepal. Land and forest-related practices and laws of Nepal have hindered the development of indigenous communities leading to a litany of human rights issues, including in the name of ‘development’...Demands for rights of indigenous peoples,

³¹ CSW, written submission.

³² See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

³³ CSW, Written submission.

particularly in relation to lands and resources and political participation, have been met with violence and criminal persecution.”³⁴ Further investigation regarding the persecution and targeting of indigenous tribes is needed.

Burials

Tanka Subedi told the APPG that another big problem faced by many minorities is the lack of burial sites. Indeed, there is no burial land specifically allocated to Christian, Muslim and Kirat communities in Kathmandu. In some rural areas, people have been forced to travel large distances to bury their family members. Subedi explained that while some Christians may purchase burial sites, they are unable to use this land because Hindus will complain. In some cases, people had to be dug up and reburied. Subedi noted that some local councils have given burial sites for Muslim, Christian and Kirat Muslim groups, and he suggested that the Nepal Government should promote this practice across other local government areas.

Gatherings

Wangdue Tsering, first secretary at the Office of Tibet in London, said that although Nepal is a secular nation that respects all major religious groups, when it comes to Tibetan refugees the Nepalese Government restricts the Tibetan refugees from holding or organising large religious ceremonies and gatherings. The public celebration of the birthday of His Holiness the Dalai Lama and the Tibetan New Year have been banned for the last few years. Wangdue Tsering told the APPG that the Nepalese police closely monitor these kinds of events and often investigate and question the monasteries where such events are likely to take place or have taken place in secret. Police often detain organisers and community leaders who have tried to organise such events, which the police see as having a political dimension even though they are religious ceremonies. The Nepalese Government impose more restrictions when the event is related to His Holiness the Dalai Lama, who is a revered spiritual leader for millions around the world including the Nepalese Buddhist community.

Throughout 2020, the US State Department identified the following cases as raising the issues pertaining to the right to freedom of religion or belief:

³⁴ Observations on the Human Rights Situation of Indigenous People in Nepal in Light of the UN Declaration on the Rights of Indigenous Peoples, March 2015. Accessible at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2124&file=EnglishTranslation>

On 6 July 2020, the government continued deepened restrictions on Tibetans' ability to publicly celebrate the Dalai Lama's birthday, stating the religious celebrations represented "anti-China" activities. Although authorities allowed small private celebrations of the Dalai Lama's birthday in July, security personnel around these events outnumbered the Tibetan attendees. Similarly, Tibetans could only conduct other ceremonies with cultural and religious significance in private, such as Losar, the Tibetan New Year, and World Peace Day, which commemorates the Dalai Lama receiving the Nobel Peace Prize.³⁵

Destruction of Property

Earlier this year, on 20 January 2021, "Nepalese authorities appeared at the doorsteps of the Rupantaran Khristiya Church with demolition equipment to destroy the church."³⁶ The land had been designated as the new site of a public school, the Nepalese authorities said, and informed church leaders they would have time to relocate before demolition began. This communication, however, proved misleading and the church was demolished before a new location could be secured. This indicates basic religious freedom protections ensured in Section 155 of the Criminal Code are not protected.

Proselytising

In November of 2018, Katie Rachel Graham was arrested and deported for proselytizing in Gularia, a small town near the Indian border. The Immigration Department authorities reported that "She breached our immigration act, engaged in conversions, which is strictly prohibited under our laws."³⁷ Katie was with four local Nepalese at the time who were also arrested for teaching Christianity and encouraging conversion.

³⁵ See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

³⁶ See: <https://www.persecution.org/2021/01/29/authorities-demolish-rupantaran-khristiya-church-nepal/>

³⁷ See: <https://www.abc.net.au/news/2018-11-28/australian-deported-nepal-trying-convert-locals-christianity/10564748>

Non-State actors

Acts of violence

Acts of violence perpetrated by non-State actors against persons of religion or belief are not uncommon. For example, Narendra Pande, an interfaith expert, told the APPG that the media has been attacking religious minorities in Nepal, spreading misinformation and religious hate about minority religions. This may then result in attacks against members of the group.

Similarly, prominent religious leaders have been spreading misinformation and hate against different religions, and inciting violence against them. Narendra Pande stressed the need to counter such narratives and encourage interfaith dialogue.

As reported by CSW, “according to local sources, since the promulgation of the penal code, an estimated twenty-five incidents involving targeted attacks against Christians have been reported. Violations include property damage and harassment, intimidation and physical assault during prayer meetings by non-state actors, and false accusations of conversion resulting in legal prosecutions.”³⁸ Among others, “in June 2019 a mob called Shiva Sena (Army of Shiva) assaulted staff at the Anandaban Leprosy Hospital in Kathmandu on suspicions that hospital staff were engaging in conversion. The hospital has been a pioneer in serving people with leprosy in the area and is staffed by Christian and non-Christians.”³⁹

Hindus have experienced violent attacks in wake of the growing nationalism present in Nepal. The US State Department reports that on 19 August 2020, “assailants shot and killed a 65-year-old Hindu priest on the premises of Hanuman Temple, Rautahat District.”⁴⁰

Some Hindus have been accused of provoking violence such as on 18 September 2020, when a “clash erupted in Sarlahi District when a Hindu procession carrying an idol of the god Bishwakarma passed through a Muslim community which some Muslim commenters said they believed was a deliberate provocation – an allegation the Hindu community denied.”⁴¹

Religious illiteracy

³⁸ CSW, Written submission.

³⁹ Ibid.

⁴⁰ See: <https://www.state.gov/reports/2020-report-on-international-religious-freedom/nepal/>

⁴¹ Ibid.

Ram Tiwari indicated to the APPG that having interviewed many religious leaders, he found lots of fear based on the presumption that FoRB is a western imposed idea and is not an organic demand. There is general fear that mosques and churches are growing in number in Nepal. Ram Tiwari indicated that unless there is an acceptance of all religions as equally deserving, it will be hard to overcome this fear.

Tanka Subedi is unaware of any effective projects supporting FoRB. He said that no one is doing this work openly apart from small trainings – this is because the Social Welfare Council of Nepal will not give permission to do FoRB or religious work. He said that conversion was treated like a traitorous crime and that this view still prevails in the minds of educated people in Nepal.

Religious education

As Humanists International state on their website: “Religious Education is not part of the public school curriculum. Nevertheless, Hinduism is taught at schools under the name of Dhyana, or meditation, and many schools have a statue of Saraswati, the Hindu goddess of learning, on school grounds. Children attending public schools are also taught ethics.”⁴² This reflects wider bias for the majority religion.

Destruction of Property

In May 2018, four Christian churches were targeted and attacked with fire and bombing within a five day period. The assailants were unidentified but “police attribute the attack to the Biplab Maoist group, local sources cite threats by a Hindu extremist group.”⁴³

⁴² See: <https://fot.humanists.international/countries/asia-southern-asia/nepal/>

⁴³ See: <https://anglican.ink/2018/05/17/four-nepalese-churches-firebombed/>

7

Conclusions and Recommendations

Conclusions and Recommendations

The situation of religious or belief communities in Nepal is dire and demands intervention. Nepalese Government action and inaction continues to dictate restrictions on freedom of religion or belief in addition to persecution, discrimination, and targeting of those who do not subscribe to Hindu nationalism. Many recommendations given below include amendments to the Nepal Penal Code and aligning other policies to reflect current human rights standards outlined in the ICCPR and UDHR.

To the Nepalese Government

- Ensure that Article 26 of the Constitution is fully reflective of international standards as set out in Article 18 of the ICCPR and explained in General Comment 22;
- Ensure that Sections 155 to 158 of the Penal Code are reviewed for their human rights compliance and their adverse effect on minority communities, and amend or remove them altogether. This could be achieved by ensuring that only “forceful conversion” be proscribed and, at the same time, providing that “forceful conversion” entails elements of coercion and/or undue influence;⁴⁴
- Ensure that the definition of secularism in the Constitution is reviewed and amended;
- Ensure that the rights of religious or belief minorities are fully protected, as per Article 27 of the ICCPR;
- Coordinate with Christian, Muslim, Baha'i and other affected religious communities, including by establishing a commission or working group with a view to locating appropriate sites for use as cemeteries in harmony with environment and development planning as soon as possible;⁴⁵
- Facilitate the free exercise of Tibetan refugees' right to manifest their religion in community with their fellow believers;⁴⁶
- Amend Article 26(3) of the Constitution to prohibit only forceful conversion, and remove any clause prohibiting conversion per se.

⁴⁴ See: <https://www.icj.org/wp-content/uploads/2018/08/Nepal-Freedom-of-religion-brief-Advocacy-Analysis-brief-2018-ENG.pdf>

⁴⁵ Ibid.

⁴⁶ Ibid.

To the UK Government

- Engage in a dialogue with Nepalese counterparts on the need to protect the right to freedom of religion or belief for all in Nepal, and in accordance with international standards;
- Provide capacity building assistance to ensure that changes in the Penal code are supported by police and judicial training, and government accountability mechanisms including reporting;
- Present evidence of freedom of religion or belief violations to the Nepalese Government and conduct an investigation into other targeting including against Tibetan refugees and indigenous populations;
- Engage local NGOs in Nepal to act as accountability mechanisms for Government action;
- Create a 2-year plan with the Nepalese Government based on above mentioned recommendations that includes public statements from the Nepalese Government concerning progress made on resolving freedom of religion or belief violations;
- Any future UK Aid to Nepal should be accompanied by reference to the recommendations in this report and an understanding, if not a confirmation, from the Nepalese Government that they have taken them into account and are progressing with their implementation.