

APPG FoRB

International Freedom of Religion or Belief

NEPAL REPORT 2023



APPG FoRB

All-Party Parliamentary Group

The All-Party Parliamentary Group (APPG) for International Freedom of Religion or Belief (FoRB) is a group of over 170 + cross-party parliamentarian members who champion the right to FoRB, as outlined in Article 18 of the Universal Declaration of Human Rights. The APPG FoRB mission statement reads: “We are to raise awareness and profile of International Freedom of Religion or Belief as a human right amongst parliamentarians, media, government and the general public in the UK; and to increase effectiveness and awareness of the UK’s contribution to international institutions charged with enforcing this human right.”

Article 18 of the Universal Declaration of Human Rights (UDHR) states, ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance’.

The APPG FoRB was established in 2012, the group benefits from the expertise of more than 20 human rights and faith-based stakeholder organisations. This is not an official publication of the House of Commons or the House of Lords. It has not been approved by either House or its committees. All-Party Parliamentary Groups are informal groups of members of both Houses with a common interest in particular issues. The views expressed in this report are those of members of the delegation to Nepal. 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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- Victims of Persecution Pastor Keshav Acharya, Chinimaya Blon, and Kiran Budha
- Interfaith Peace Federation Nepal
- Member organizations of the IPFN represent seven provinces in Nepal:
 1. Community Development Forum (CDF), Morang
 2. Interfaith Peace Network (IPN), Morang
 3. Participation Mobilization Centre (PMC), Sunsari:
 4. Kabir Panth Dharma Tatha Sahitya Parisad, Dhankutta
 5. Track Nepal, Lalitpur
 6. Bishop Kirat Nari Sangh, Kathmandu
 7. Initiative for Transformation Nepal (InT-Nepal), Gorkha
 8. Sansthaगत Bikash Sanjal, Lalitpur
 9. Interfaith Alliance for Peace, Kathmandu
 10. Aslam Society, Kathmandu
 11. Transformation Nepal (TFN, Nepal), Rukum
 12. Micah Nepal, Lalitpur
 13. Nepal Muslim Women Welfare Society (NMWWS), Kathmandu
 14. Province level, Interfaith Peace Federation Nepal, province 1
 15. Nepal Christian Society, Lalitpur
 16. The Seven Nepal, Doti
 17. 17 Youth in the Empowerment Sector, Acham including 3 staff and advisory members
- UN Human Rights Commission
- British Embassy Staff

- National Churches Fellowship of Nepal
- Nepal Christian Society (NCS)
- Aruna Joshi - Chief of Human Rights & International Treaties Division
- Govinda Sharma, Former Minister of Law and Justice
- Dr. Bhisma Kumar Bhusa
- Meeting with Freedom for All (Hotel)
- Dr. Mahendra Bhattraï, Chairperson and SAFFoRB Team
- BP Khanal, Janajagaran
- Tibetan Refugee Welfare Office
- Revd Prem Thanga

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EXECUTIVE SUMMARY

APPG FoRB - International Freedom of Religion or Belief

The All-Party Parliamentary Group on Freedom of Religion or Belief travelled to Nepal during the first week of January 2023 to follow up on an APPG preliminary report written in February 2022 regarding the current state of freedom of religion or belief in the country. The APPG representation included Tommy Sheppard MP, Julie Jones, and Deputy Special Envoy for Freedom of Religion or Belief David Burrowes, Professor Mark Hill KC representing Notre Dame University Religious Liberty Initiative and Rachel Miner from Bellwether International.

The APPG representatives held meetings with the current Attorney General of Nepal, Mr. Dinmani Pokhrel. The APPG met several local Nepali lawyers who are acting in religious liberty cases at the Supreme Court and individuals who have been convicted. The APPG met the former Minister of Justice, Govinda Sharma, who is currently pursuing several religious liberty appeals at the Supreme Court.

These visits were supplemented by meetings with the Prime Minister's joint secretary on human rights, the Ministry of Home Affairs, the UN Human Rights Commission Nepal, representatives from the South Asia Forum for FoRB, the Nepali representative from the International Panel of Parliamentarians for FoRB, the Interfaith Peace Federation Nepal, National Christian Fellowship Nepal at Aradhana Church, Nepal Church Society, Humanists International, Buddhist monks at Boudathana Temple, the Tibetan Refugee Welfare Office, and Pashupati Priests from the Hindu faith.

Among the findings from the trip are the following:

- There appears to be no guidance or code of practice for charging decisions by police or for how the particular provisions of the criminal law affecting religious conversion are to be interpreted. This would be a helpful innovation.
- Section 158 of the Criminal Code which prohibits proselytism has been interpreted and applied by the lower courts of Nepal unduly widely so as to criminalise

the ordinary manifestations of religious belief and the legitimate practice of evangelism. It should be revised, or read down by the courts, so as only to apply to coercion of conversion by other improper means.

- Several faith-based organisations have been unable to register their organisations with the government, particularly those with religious names such as Christian churches, whilst others have been obliged to obscure to minimize their religious content in order to register.

- There is aggression against people who do not belong to the Hindu faith, particularly in rural villages across Nepal. This aggression can take the form of false reports filed with the police about forced conversion which can result in custody and imprisonment. Police have the power to intervene at any time without a warrant or other authority.

- The government of Nepal emphasised the identity of the country as a secular state with constitutional protection of freedom of religion or belief for all (Article 26(1)), but However, the interpretation of Article 4(1) with its emphasis on protecting religion and culture “handed down from time immemorial”¹ has had a tendency to protect and promote Hindu faith and practice to the detriment of other faiths who are disadvantaged through the discriminatory application of the constitution and of the criminal law

- The caste system reinforces religious minorities as Dalits or “untouchables” which creates societal stigma, and fear to live out faith in public or private.

- There are approximately 12,000 Tibetan Buddhist refugees that are unable to register for government identification, receive employment, access to social services, and are currently stateless.

- The government continues to intervene when Tibetan Buddhists celebrate the birthday of the Dalai Lama by sending police with weapons and armored vehicles.

- During political campaigning speeches, members of the Nepal Communist Party spoke openly against Christians. Members of Parliament refused to meet with concerned Christians on the matter.

¹ Nepal’s Constitution, Article 4(1)

- Gender-based violence is deeply entrenched in the caste system and there are reports of mass rape and violence against women of minority faiths including Muslims.
- Ministries with the mandate to respond to human rights are overworked and understaffed. Freedom of religion or belief is not a top priority.

The findings in this report come from interviews conducted as part of the delegation and in follow-up meetings. Claims made by individuals were then substantiated by additional reports on freedom of religion or belief and human rights as cited in the report below.

This report augments the evidence gathering of the January 2023 delegation by drawing upon additional sources of background information. Further, it reviews the Freedom of Religion of Belief in Nepal: Mapping Report of February 2022 and assesses its conclusions and recommendations in the light of additional material obtained during the intervening period.

FOREWORD



JIM SHANNON MP

CHAIR OF THE APPG FoRB

INTERNATIONAL FREEDOM OF RELIGION OR BELIEF

Jim Shannon MP, Chair of the APPG FoRB, 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 final 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.

FOREWORD



TOMMY SHEPPARD MP

OFFICER OF THE APPG FORB

INTERNATIONAL FREEDOM OF RELIGION OR BELIEF

Human rights and the importance of self-expression are at the heart of the work undertaken by the All-Party Parliamentary Group on freedom of religion or belief and are a common thread throughout our report on Nepal.

The APPG's delegation took place amid increasing concerns of restrictions and suppression of religion and belief in Nepal and unease about the human rights situation there more generally. It was therefore a timely opportunity for the group to assess the current challenges faced by communities and individuals while trying to exercise these vital freedoms - and to advocate for change.

During our visit, we had the privilege of meeting a wide variety of stakeholders, including government officials, legal experts, religious leaders, and representatives from civil society. Our conversations provided valuable insights into the complex dynamics in Nepal, and we are grateful to the participants for sharing their views and experiences with us.

Our findings show that action is required to safeguard freedom of religion and belief in Nepal. There are aspects of the constitution and statutes which ostensibly are designed to protect religious freedoms – such as a ban on conversion or proselytizing – which in effect sometimes achieve the opposite.

We heard evidence that individuals who do not conform to the majority Hindu faith, particularly those in rural villages, face hostility and aggression. We also heard that gender-based violence remains a pervasive problem, with reports of rape and violence against

women of minority faiths. Other groups such as Humanists are not formally recognised by the authorities and are unable to record their belief system in any national census. Hate-speech against minority faiths is also commonplace in political campaigning.

As with all the work of the APPG, our hope is that our report achieves real change and improves the state of freedom of religion or belief in Nepal. Our recommendations offer a strategic way forward for the Nepalese and UK Governments to implement reforms that have the power to transform the lives of minority groups for good by promoting tolerance, peace and cohesion.

INTRODUCTION

On January 3, 2023, the All-Party Parliamentary Group (APPG) for International Freedom of Religion or Belief (FoRB) travelled to Kathmandu, Nepal to follow-up on the APPGs preliminary report written in February 2022 regarding the current state of Freedom of Religion or Belief in the country.

The APPG delegation trip successfully interacted with members of civil society, government, faith and belief leaders. A great deal of care was taken to investigate the current legal provisions of Freedom of Religion or Belief in the 2015 Constitution and in other policies implemented from the government.

The APPG members present on the delegation:

| | |
|--------------------------|---|
| Tommy Sheppard MP | Edinburgh East |
| Julie Jones | Assistant Director of the APPG FoRB |
| David Burrowes | Deputy Special Envoy to the Prime Minister for Freedom of Religion and Belief |
| Mark Hill KC | Notre Dame Religious Liberty Initiative |
| Rachel Miner | Bellwether International. |

BACKGROUND

The delegation was organised from the mapping report of Nepal, published by the APPG FoRB in February 2022. The background reports the findings from the report as follows:

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

⁷Torri, 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>

⁸Ibid.

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, Bhoté, 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.

⁹Ibid.

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

¹¹Ibid.

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>

NEPAL DELEGATION MEETINGS

See Appendix 1

OVERVIEW

Overview

1.1 Nepal is a majority Hindu nation (81.3%) with minority faiths including Buddhism (9%), Islam (4.4%), Christianity (1.4%), and indigenous belief groups (less than 5%). There are discrepancies between self-reported statistics on religious population and the national census. Muslims self-reported constituting 5% of the population and Christians reported they constitute 5% of the population.²

1.2 One Humanist representative expressed frustration that humanism is not acknowledged by the government as a formal belief system.³ Humanists do not identify as atheists and do not have the opportunity to identify on any national census. They believe this is derived from a lack of education in the population which prevents most people from distinguishing between Humanists, Christians, and Atheists. The exact number of Humanists in Nepal is unknown, but at least 300 Nepalis have registered formally with Humanists International. Unlike other religious groups, Humanists have not experienced any threats from proselytising, blasphemy, or unjustly imprisoned. The representative reiterated that the Hindu based curriculum in the national schooling system is problematic for their beliefs and non-Hindu faith groups.

1.3 Caste-based discrimination is illegal in Nepal but continues to inform everyday culture and freedom of religion or belief. Those of the lowest caste, Dalit or “unclean” face enormous barriers to education, health care, and social services. Many non-Hindu faiths have been born into the Dalit caste including Christians. Not all Dalits are Christians, but many Christians are Dalits. The United Kingdom Embassy in Nepal explained that for many years Christian missionaries promised humanitarian aid to Dalits if they converted to the faith leading to a large population of Christians in the Dalit caste.⁴ This also helps explain

² 2021 Report on International Religious Freedom: Nepal <https://www.state.gov/reports/2021-report-on-international-religious-freedom/nepal/>

³ Meeting with Humanist International Representative Uttam Niraula

⁴ Meeting with UK Ambassador to Nepal Nicola Pollitt

some of the cultural stigma against proselitisation and Christians that remains in Nepal today. The new constitution prohibits “untouchability” and yet, Dalit rights activists maintained that the laws against discrimination were too general and did not explicitly protect Dalits. They said most cases go unreported, and those that are reported rarely result in official action.”⁵ This stigma can have visceral consequences for faith groups who are targeted, harassed and persecuted.⁶

1.4 For example, there have been numerous targeted killings of Muslim leaders in Nepal. In a meeting with the Interfaith Peace Federation of Nepal (IPFN)⁷ they described how a prominent Muslim leader was shot in broad daylight.⁸ The government has failed to hold thorough investigations or prosecutions for the killer, causing many Muslim leaders to live in constant fear. IPFN reported that 20 Muslim leaders have been murdered to date in Nepal.

Legal Background

2.1 The Nepalese government has made important strides towards protecting freedom of religion or belief and is one of the major champions in Eastern Asia of this principle. However, the right to freedom of religion or belief, as guaranteed in the constitution, is compromised by other provisions of the constitution and by elements of the criminal code which prohibit proselytising under penalty of a fine or imprisonment.

2.2 The constitution guarantees freedom of religion or belief in Nepal; but it expressly forbids the exercise of this right to religion in order to convert another person between religions or jeopardise another’s religion. Furthermore, the constitution also professes to uphold secular values and traditions, defined as practices handed down from time immemorial, which has been taken to mean cultural practices and values associated with the country’s historic Hindu population.⁹

⁵2022 Country Reports on Human Rights Practices: Nepal <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/>

⁶ Meeting with NCFN, “The number one group killed for their faith are Dalits.”

⁷ Established in 2019, IPFN is a network of 20 organisations from seven provinces in Nepal.

⁸ <https://www.asianews.it/news-en/Nepal,-Muslim-leader-shot-to-death-while-leaving-a-mosque-22742.html>

⁹ See Article 4(1) of the Constitution.

2.3 In 2017, Nepal revised its criminal code to include a provision which prohibits the act of, or attempt at, converting another person from their religion to another religion.

2.4 The impugned provisions of the criminal code have disproportionately impacted Nepal's growing Christian and Muslim communities who have suffered prosecution under the criminal code section simply for practising their faith. In paragraph 7.1, the case of Pastor Acharya is discussed. His appeal is pending in the Supreme Court of Nepal.

2.5 Cases such as Pastor Acharya's raise the following legal issues, which can be summarised as follows:

- i. Nepalese police and law enforcement officials inconsistently apply the criminal law against minority faiths (including Christians and Muslims) and threaten to prosecute individuals, notwithstanding that no crime has been committed.
- ii. To the extent that a criminal offence may be disclosed, the provision of the code relied upon is inconsistent with Nepal's own constitution. It purports to criminalise an individual's right to carry out the ordinary activities of religious expression, which is protected by the constitution's guarantee of religious freedom.
- iii. If the provision is consistent with the constitution, then the constitution violates international law which specifically protects the right to proselytise. The International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a party, protects a broad range of religious rights, including the right to disseminate religious materials or teach a particular faith.

Legal Provisions

3.1 Nepal is a secular republic with protections for religious freedom, and the country clearly seeks to conform with international standards concerning religious freedom for its citizens.¹⁰ However, the country still has shortcomings regarding the equal treatment under the law of adherents of Nepal's various minority faiths. Although freedom of religion or belief is enshrined in Nepal's constitution, under Article 26(1):

¹⁰ Freedom of Religion of Belief in Nepal: Mapping Report of February 2022, Pg. 13

“(1) Every person who has faith in religion shall have the freedom to profess, practice and protect his or her religion according to his or her conviction,”¹¹

the constitution also, under Article 4(1), promotes “traditional” Nepalese culture and values, including the historically dominant Hindu faith.¹²

“(1) Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state. Explanation: For the purposes of this Article, “secular” means religious, cultural freedoms, including protection of religion, culture handed down from the time immemorial.”¹³

3.2 Hinduism is the largest faith group in Nepal, being deeply embedded in the country’s culture, history, and its modern institutions. Despite this history, Nepal today has a multitude of different faiths including Christianity, Buddhism, and Islam, with believers across the country.¹⁴ In particular, the number of adherents of Christianity and Buddhism within Nepal has been steadily growing since the 1980’s, while the percentage of Nepalese Hindus has fallen from 90% to 81% of the population between the years of 1981 and 2011.¹⁵

3.3 There is a tension arising from this increased pluralism of beliefs and the constitution’s protection of “traditional” culture and values. The Nepalese prohibition on proselytism is contained in section 158 of Chapter 9 of the Nepalese Criminal Code (Revised 2017) under “Offences relating to religion”.¹⁶

“158. Prohibition of proselytising:

No person shall convert any one 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

¹¹ Nepal’s Constitution, Article 26(1)

¹² *Supra* note 1, pg. 14

¹³ Nepal’s Constitution, Article 4(1).

¹⁴ *Id.* At 15-17.

¹⁵ *Id.* At 13

¹⁶ <http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>

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.”¹⁷

3.4 The law sets two separate punishments for those violating the law, based on whether they are foreigners to Nepal. Anyone found to have violated this could be sentenced to a maximum of five years imprisonment and fined up to fifty thousand rupees (approximately £320 sterling).¹⁸ Foreigners who violate the provision are subject to the same sanctions but must also be deported from Nepal following the execution of their sentence.¹⁹ There have been reports that Nepalese law enforcement is utilizing this provision against all forms of proselytism, even non-coercive proselytism.²⁰ On its face, the provision does not explicitly target any one faith group. However, despite its ostensibly neutral language, the law has a disproportionate impact on Christians and Muslim believers, resulting in harassment, and even violent attacks by members of other religious groups based on religious identity.²¹

4. Misuse of Section 158

4.1 Section 158 of the Criminal Code is reproduced in full at paragraph 3.3 above.

4.2 A conviction under Section 158 requires a religious conversion (or attempt at religious conversion) to satisfy two elements. First, the act alleged must “undermine or

¹⁷ Nepal’s National Penal Code Act, 2017, Part 9, Section 156, <http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Supra* Note 5.

²¹ *Id.*

propagate” a religion or religious opinion. Second, the perpetrator must have had the specific intent of converting an individual.²² While this offence can cover a broad range of activities, in practice the law is often narrowly targeted at minority faiths and used to suppress expressions of religion outside of the Nepali mainstream.

4.3 As of 2018, roughly 81% percent of Nepalese identified as Hindu. However, nearly all prosecutions under Section 158 appear to have been directed at other faiths.²³ Of those, a significant portion have been against Christians, particularly missionaries and aid workers who minister to vulnerable or low-caste Nepalis.²⁴

4.4 When invoking Section 158 against Christians, Nepali police and prosecution authorities appear to adopt an over-broad construction of what actions constitute the crime of “attempted conversion”. In one case, a Christian couple who ran an orphanage for children between the ages of five and thirteen were arrested and charged under Section 158 for providing the children with bibles.²⁵ In another prosecution, eight Christian counsellors working with children affected by an earthquake were prosecuted because, as part of their counselling, they gave the children pamphlets about Jesus.²⁶ In other cases, Christians have been charged “for talking about religion, distributing Bibles or killing cows” (which are worshiped by Hindus).²⁷

4.5 Many Christian leaders in Nepal have spoken out and observed that Section 158 is being used in a way which is deliberately targeting them.²⁸ They have also noticed an

²² It is understood that a least one Court in Nepal has recently emphasised the importance of these component elements each of which need to be proved if a prosecution is to succeed.

²³ Supra note 1, pg. 16.

²⁴ <https://www.ucanews.com/news/nepals-new-law-puts-squeeze-on-christians/83153>. Research has not turned up a single case of Section 158 being applied against a Hindu.

²⁵ <http://www.ucanews.com/news/nepalese-christian-jailed-over-religious-conversion/76652>.

²⁶ https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf at 30–31

²⁷ <https://www.ucanews.com/news/nepals-new-law-puts-squeeze-on-christians/83153>

²⁸ Id.

increased number of interferences and investigations from Nepali Police since the law came into force.²⁹

4.6 Nepali officials use Section 158 to suppress minority religious activity in Nepal. This is done through prosecuting actions as “attempted conversion” even though they are outside the scope of Section 158. In addition, they use the mere threat of prosecution and investigation in an intimidating manner designed to discourage the Christians and Muslims from the open practice of their faith. This can range from threats of detention, as many Christians have reported, to more subtle threats of investigation.³⁰ For instance, after Section 158 came into force, many Christian charities and orphanages have been told they will be investigated and shut down under the law if they continue to distribute Christian material to their clients.³¹

4.7 Evidence suggests that courts in Nepal do not support the interpretation of Section 158 that seems to be taken by the police because many charges of this type are discontinued once they reach trial. In fact, the first prosecution under Section 158, that of the eight counsellors who distributed Christian literature, was discontinued before trial.³² These discontinuances appear to be a fairly common occurrence for Christians charged under the law, indicating overzealous police enforcement is taking place.³³

5. Section 158 is inconsistent with Nepal’s Constitution

5.1 Religious freedom is guaranteed under Article 4 of Nepal’s own constitution, which defines the State of Nepal as an “independent, indivisible, sovereign, secular, inclusive democratic [...] ‘secular’ is defined as “protection of religion and culture being practiced since ancient times and religious and

²⁹ *Id.*

³⁰ *Supra* note 1, pg. 16.

³¹ https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf

³² <https://www.worldwatchmonitor.org/2016/12/update-first-religious-freedom-case-under-new-nepal-constitution-all-charges-dropped/>

³³ https://adfinternational.org/wp-content/uploads/2021/08/Anti-Conversion_Laws_ebook_FINAL.pdf

cultural freedom.”³⁴ The right to religious freedom is further defined to include the freedom to “profess, practice, and preserve his/her religion according to his/her faith [...] [e]very religious denomination shall, maintaining its independent existence, have the right to manage and protect its religious places and religious trusts in accordance with law.”³⁵ Despite its history of rule by a monarchy that favoured Hinduism, Nepali society today enjoys “unity in diversity [...] [and a] determination to create an egalitarian society on the basis of the principles of proportional inclusion and participation.”³⁶

5.2 However, Section 158 of the Criminal Code severely limits freedom of religious expression and is inconsistent with the constitution. In practice, as shown by the behaviour of the officers in pastor Keshab Raj Acharya’s case, Section 158 criminalises actions that occur while practising one’s faith even if that practice does not directly involve proselytism.

5.3 This is not an isolated problem. Philippine national Richard De Vera and his wife, Rita Gongga, were accused in 2018 of converting Nepali Hindus to Christianity.³⁷ The only evidence the government cited was the fact that De Vera had been serving as a pastor at his local church, which apparently violated the terms of his business visa³⁸ That same year, a member of Nepal’s security personnel was arrested for giving testimony during Mass at a religious conference while on leave.³⁹

5.4 The constitutionality of Section 158 has been called into question by numerous international human rights groups. The U.S. 2021 Report on International Religious Freedom concluded that Nepal’s constitutional and criminal code provisions governing proselytism were “vague and contradictory, and opened the door for prosecution for actions carried out

³⁴ Constitution of Nepal Sep. 20 2015, art. 4.

³⁵ Constitution of Nepal Sep. 20 2015, art. 26.

³⁶ Constitution of Nepal Sep. 20 2015, Preamble.

³⁷ Christians Fighting Losing Battle in “Secular” Nepal, <https://international.la-croix.com/news/religion/christians-fighting-losing-battle-in-secular-nepal/8920>

³⁸ *Id.*

³⁹ *Id.*

in the normal course of practicing one’s religion”.⁴⁰ Christian organizations submitted a stakeholder’s report to the UN Human Rights Committee in 2022, detailing the persecution and discrimination faced by Christians and other non-Hindu practitioners.⁴¹ The report also mentioned “growing hostility against Christians and increasing challenges to faith-based operations in the country”.⁴² In 2021, Christian Solidarity Worldwide remarked that they “regret that Nepal has noted [but not accept or implement] recommendations made by Norway and Denmark, which respectively called for the removal of restrictions on the right to freedom of religion or belief contained within the Criminal Code, and for the repeal or amendment of sections 155, 156, and 158 of the Penal Code”.⁴³ International and Nepalese Tibetan community leaders affirmed that government authorities allowed private ceremonies of Buddhist holidays but prohibited the public celebration of the Dalai Lama’s birthday and other public celebrations.⁴⁴ These reports show how out of step Nepal is with international laws, norms, and practices, notwithstanding the protection of freedom of religion or belief under the constitution.

5.5 Section 158 of the Criminal Code is still inconsistent with Nepal’s Constitution even if an individual has every intention of proselytizing. One key aspect of practising one’s religion includes preaching or public displays of faith, and this should be protected as with any other form of religious expression. For example, Jehovah’s Witnesses are routinely apprehended in Nepal⁴⁵ for proselytizing. Members are encouraged to go door-to-door to spread their faith, which is considered a core tenant of their doctrine to follow the mandate of Christ..⁴⁶

⁴⁰ 2021 Report on International Religious Freedom: Nepal <https://www.state.gov/reports/2021-report-on-international-religious-freedom/nepal/>

⁴¹ 2021 Report on International Religious Freedom: Nepal <https://www.state.gov/reports/2021-report-on-international-religious-freedom/nepal/>

⁴² *Id.*

⁴³ HRC247: Oral Statement during the UPR Outcome on Nepal, <https://www.csw.org.uk/2021/07/07/report/5342/article.htm>

⁴⁴ 2021 Report on International Religious Freedom: Nepal <https://www.state.gov/reports/2021-report-on-international-religious-freedom/nepal/>

⁴⁵ *Id.*; see also 2021 Report on International Religious Freedom: Nepal <https://www.state.gov/reports/2021-report-on-international-religious-freedom/nepal/>. Seven Jehovah’s Witnesses were arrested in 2020 proselytizing, two of whom were U.S. citizens. *Id.*

⁴⁶ <https://www.jw.org/en/jehovahs-witnesses/faq/door-to-door/>

5.6 Section 158 should be brought into conformity with the constitutional guarantee of freedom to “profess, practice, and preserve his/her religion according to his/her faith”.⁴⁷ Section 158’s requirement to have the specific intent of converting an individual when proselytizing indicates that that the provision was meant to be read narrowly in order to give effect to the constitutional protections for religious freedom discussed in the previous section. Freedom of religious expression is only partial if individuals are prohibited from preaching, distributing religious materials, professing their faith publicly, engaging in public acts of worship, or speaking about their faith in any non-private setting. All forms of religious expression are entitled to protection, and this may require an amendment to the Criminal Code

6. Restrictions on evangelism are incompatible with international law.

6.1 Even if Nepal’s law does not enshrine the right to peaceful evangelism (contrary to the arguments above), such a right is a key component of international law. Article 18 of the International Covenant on Civil and Political Rights—to which Nepal is a party—guarantees “the right to freedom of . . . religion”.⁴⁸ In full, it 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.

⁴⁷ Constitution of Nepal Sep. 20 2015, art. 26.

⁴⁸ INT’L COVENANT ON CIV. & POL. RTS., UNITED NATIONS OFFICE OF THE HIGH COMM’R FOR HUM. RTS., art. 18 (1976) [hereinafter CCPR].

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.⁴⁹

Article 18 includes not only private belief and practice, but also the “[f]reedom to manifest [one’s] religion or belief” “in public”.⁵⁰ Whilst national law may “limit[]” that freedom “to protect public safety . . . or the fundamental rights and freedoms of others”,⁵¹ those limitations are narrow, and are only lawful and legitimate when proved to be “necessary”.⁵²

6.2 Freedom to manifest religious beliefs “encompasses a broad range of acts”.⁵³ It includes the right to produce and distribute materials “related to” religious customs and beliefs.⁵⁴ That protection extends to “produc[ing] . . . religious literature”⁵⁵ and considers the “possession” of “religious books and other materials . . . a manifestation of one’s religion under article 18(1)”.⁵⁶ It includes the related right to “issue and disseminate” that literature and use it to “teach a religion or belief”.⁵⁷ Article 18 protects evangelism in its most quintessential sense.⁵⁸

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Amedzro v. Tajikistan* (CCPR/C/133/D/3258/2018), para. 7.5.

⁵⁴ See DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF, GEN’L ASSEMB., art. 6 (1981) [hereinafter Declaration]; see also Derek H. Davis, *The Evolution of Religious Freedom as a Universal Human Right*, 2002 B.Y.U. L. REV. 217, 230 (2002) (“Even though the Declaration does not have binding status, it carries the weight of a solemn U.N. statement and a great degree of moral suasion. Therefore, it . . . carries an expectation of obedience within the international community . . .”).

⁵⁵ See, e.g., *Adyrkhayev v. Tajikistan* (CCPR/C/135/D/2483/2014), para. 9.2.

⁵⁶ *Sabirova and Sabirov v. Uzbekistan* (CCPR/C/125/D/2331/2014), para. 7.3.

⁵⁷ DECLARATION, art. 6.

⁵⁸ See *Gurbanova and Muradhasilova v. Azerbaijan* (CCPR/C/131/D/2952/2017), para. 7.4 (requiring State Party to “provide evidence” that Jehovah’s Witnesses’ proselytizing “has in any way disrupted social stability in its territory”); see also Michael J. Perry, 10 ROGER WILLIAMS U. L. REV. 385, 413 (2005) (“Article 18 . . . centrally includes freedom to practice one’s religion in public, as well as in private, and to try to persuade others to embrace one’s religion.”).

6.3 The rights set out in the International Covenant on Civil and Political Rights (ICCPR) are *erga omnes*, admitting of no derogation.⁵⁹ They extend to all branches of State Parties' governments—including their judiciaries.⁶⁰ Accordingly, the Covenant mandates that State Parties “take the necessary steps” to adopt laws that “give effect to” the rights the Covenant recognises.⁶¹ State Parties “are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant”.⁶² If domestic law and the Covenant prove “inconsisten[t]”, it is the domestic laws that must yield.⁶³

6.4 ICCPR case law confirms that wholesale bans on evangelism go too far. *Gurbanova v. Azerbaijan* involved an anti-proselytism statute similar to Nepal's.⁶⁴ In that case, the defendant Jehovah's Witnesses possessed religious literature and peaceably talked with a consenting adult in her home.⁶⁵ The Jehovah's Witnesses were arrested, convicted, and punished.⁶⁶ Azerbaijan defended its law as a permissible exception under Article 18(3). Azerbaijan contended that the defendants' leaflets might “contain disparaging statements” endangering “the public order”.⁶⁷ The anti-proselytism law, it insisted, was “necessary to protect individuals of other religions”.⁶⁸ But the Human Rights Committee disagreed:

6.5 The Human Rights Committee has arrived at similar conclusions in other cases. In *Aliyev v. Azerbaijan* and several other cases, it held that arresting, detaining, and fining

⁵⁹ See GEN'L CMT. 31 ON CCPR, UNITED NATIONS HUMAN RTS. COMM., para. 2 (2004); see also GEN'L CMT. 22, UNITED NATIONS HUM. RTS. COMM., para. 1 (1994).

⁶⁰ See GEN'L CMT. 31, para. 4 (noting that Covenant obligations apply to “[a]ll branches of government (executive, legislative, and judicial)”).

⁶¹ ICCPR, art. 2(2).

⁶² GEN'L CMT. 31, para. 13.

⁶³ *Ibid.*

⁶⁴ *Gurbanova*, at paras. 2.1–2.5.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Id.* at paras. 4.8 & 4.9.

⁶⁸ *Id.* at para. 4.9.

Jehovah's Witnesses for possessing religious literature and holding services violated their Article 18 rights.⁶⁹

6.6 The Committee recalls that article 18 (1) of the Covenant protects the right of all members of a religious congregation to manifest their religion in community with others, in worship, observance, practice and teaching. The Committee notes that during the domestic proceedings, the actions taken by the authors were upheld as violating domestic laws. However, the Committee considers that the justifications provided by [Azerbaijan's courts] do not demonstrate how the requirements to obtain official approval of religious literature prior to importation, or to obtain legal registration as an association before conducting religious worship, were proportionate measures necessary to serve a legitimate purpose within the meaning of article 18 (3) of the Covenant. The Committee concludes that the punishment imposed on the authors amounted to a limitation of their right to manifest their religion under article 18 (1) of the Covenant, and that neither the domestic authorities nor the State party have demonstrated that the limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant. Accordingly, the Committee concludes that by arresting, detaining, convicting and fining the authors for possessing religious literature and holding a peaceful religious service in a private home, the State party violated their rights under article 18 (1) of the Covenant.⁷⁰ And on the proportionality requirement, the Human Rights Committee noted that: the State party has not specified why the confiscated literature was deemed to be unadvisable for distribution, as it has not described any harmful material contained therein. The Committee considers that the State party has not provided evidence indicating that the peaceful manifestation of the authors' religious beliefs in the Aliyevs' home threatened public safety, order, health, or morals, or the fundamental rights and freedoms of others, either through the literature the authors were using, or through the religious service that they had organized. Even if the State party could demonstrate the existence of a specific and significant threat to public safety and order, it has failed to demonstrate that the

⁶⁹ See *Aliyev et al. v. Azerbaijan* (CCPR/C/131/D/2805/2016), para. 7.5 (“[B]y arresting, detaining, convicting and fining the authors for possessing religious literature and holding a peaceful religious service in a private home, the State party violated their rights under article 18 (1) of the Covenant.”); see also *Suleymanova and Israfilova v. Azerbaijan* (CCPR/C/133/D/3061/2017) (reaching the same conclusion on similar facts).

⁷⁰ *Aliyez*, at para. 7.5 (footnote omitted).

application of article 299.0.2 of the Code of Administrative Offences and related laws was proportionate to that objective, in view of the considerable limitation on the authors' act of religious worship.⁷¹

Those principles do not just protect possessing literature and convening for worship in private dwellings. The Human Rights Committee has reached the same conclusion when States impose registration requirements on religious groups⁷² or prohibit the distribution of religious literature "in public with interested persons".⁷³

6.7 The European Convention on Human Rights contains an almost identical right: "[e]veryone has the right to freedom of . . . religion", which includes the right "to manifest . . . religion or belief, in worship, teaching, practice and observance".⁷⁴ And while that right is not limitless, governments may only limit it when "necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".⁷⁵

6.8 Strasbourg's case law confirms that evangelism falls within that protection's ambit. First, the freedom to manifest and change beliefs includes a right to proselytise. If religious freedom included no "right to try to convince one's neighbour", then Article 9 "would be a dead letter".⁷⁶ That is why, in *Kokkinakis v. Greece*, the ECHR concluded that Article 9 *does* include such a right. "Bearing witness in words and deeds", the court concluded, "is bound up with the existence of religious convictions".⁷⁷ In full, it held that:

As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics,

⁷¹ *Id.* at para. 7.4.

⁷² See, e.g., *Bekmanov v. Kyrgyzstan* (CCPR/C/132/D/2659/2015), para. 6.6; *Geller v. Kazakhstan* (CCPR/C/126/D/2417/2014), paras. 10.2–10.4.

⁷³ *Amezro v. Tajikistan* (CCPR/C/133/D/3258/2018), paras. 2.2 & 7.9.

⁷⁴ COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUMAN RIGHTS, art. 9(1) (2021 ed.).

⁷⁵ *Id.* at art. 9(2).

⁷⁶ *Kokkinakis v. Greece* (ECHR/3/1992/348/421), para. 31.

⁷⁷ *Ibid.*

sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to “manifest [one’s] religion”. Bearing witness in words and deeds is bound up with the existence of religious convictions. According to Article 9 (art. 9), freedom to manifest one’s religion is not only exercisable in community with others, “in public” and within the circle of those whose faith one shares, but can also be asserted “alone” and “in private”; furthermore, it includes in principle the right to try to convince one’s neighbour, for example through “teaching”, failing which, moreover, “freedom to change [one’s] religion or belief”, enshrined in Article 9 (art. 9), would be likely to remain a dead letter.⁷⁸

That is not merely high-minded language. There is good practical reason for that rule too: it is both “logic[ally] and legal[ly] difficult[] [to] draw[] any even remotely clear dividing-line between proselytism and freedom to change one’s religion or belief and . . . manifest it, which encompass[es] all forms of reaching, publication and preaching between people”.⁷⁹

6.9 *Kokkinakis* also confirmed that wholesale proselytism bans are contrary to Article 9. In that case, a Jehovah’s Witness was convicted under an anti-proselytisation law similar to Nepal’s.⁸⁰ When *Kokkinakis* challenged that result in the European Court of Human Rights, the Republic of Greece insisted that its law met Article 9(2)’s narrow criteria for limitations. The law, it argued, had a legitimate aim: “protect[ing] . . . religious beliefs and dignity from attempts to influence [people] by immoral and deceitful means”.⁸¹ It contended that the law was necessary in a democratic society because evangelising amounts to “attacks on freedom of religious belief” likely to cause “major unrest . . . that would probably disturb the social peace”⁸². But the Court disagreed. True, protecting religious belief is a legitimate aim.⁸³ Yet that aim does not justify wholesale proselytisation bans. On the contrary, “bearing Christian witness” is not the same thing as “improper proselytism”, and the former

⁷⁸ *Ibid.*

⁷⁹ *Id.* at para. 29.

⁸⁰ *Id.* at para. 6.

⁸¹ *Id.* at para. 42.

⁸² *Id.* at para. 46.

⁸³ *See id.* at para. 44.

is inseparable from religious belief because it is “an essential mission and responsibility of every Christian and every Church”.⁸⁴ That, the Court concluded, states cannot prohibit. Nor can a State rely on overbroad definitions that sweep legitimate evangelism into the same category as “violence or brainwashing”.⁸⁵ Because Greece failed to prove that criminalising Kokkinakis’s conduct was “justified” and “proportionate” because of “a pressing social need”, it concluded that there had been a violation of Article 9.⁸⁶

6.10 These authorities make clear that however Nepal’s law categorises peaceful evangelism, international law protects it. Possessing religious literature is a manifestation of religious belief. So is participating in religious activities with consenting parties—whether in public or in private. States seeking to limit that freedom must satisfy a high evidential burden. They must plead—and then prove—that their proposed limitations are necessary in a democratic society. Thus, without evidence that proselytising will disrupt the social order *and* that prohibiting it is the least restrictive means of preserving that order, banning evangelism is not permitted. There is nothing to suggest that Nepal can discharge the evidential burden necessary to justify its criminalising of evangelism.

7. Case Study: Pastor Keshab Raj Acharya

7.1 In 2020, Christian pastor Keshab Raj Acharya was arrested under the anti-conversion law for posting a sermon on YouTube, an activity the pastor regularly engaged in, claiming that Covid-19 could be cured through Christian prayer.⁸⁷ While the video itself contained a Christian message, the pastor was not attempting to convert any individual to Christianity by posting the sermon on the internet. Though the pastor was released on bail, he was quickly re-arrested by the authorities under accusations of travelling to different parts of Nepal to distribute Gospel tracts.⁸⁸ The evidence offered to support his further arrest was the fact that, when police officers searched his phone, there were photographs of the

⁸⁴ *Id.* at para. 48.

⁸⁵ *Ibid.*

⁸⁶ *Id.* at paras. 49–50.

⁸⁷ Pastor Acharya’s YouTube channel is accessible at <https://www.youtube.com/@KeshabAcharya>.

⁸⁸ MORNING STAR NEWS, Pastor in Nepal Jailed for More than Three Months Released on Bail (Jul. 29, 2020) <https://morningstarnews.org/2020/07/pastor-in-nepal-jailed-for-more-than-three-months-released-on-bail/>.

pastor in different parts of Nepal and screenshots of Gospel tracts, which were taken together to indicate that the pastor had travelled to different parts of Nepal in order to distribute these tracts.⁸⁹ The arresting officers pointed to no specific instance of conversion or individuals who had been subjected to a conversion attempt by the pastor, yet he was arrested and prosecuted pursuant to the anti-proselytism provision. Furthermore, the evidence presented against pastor Acharya also fails to stand to reason, as he could have distributed the Gospel tracts digitally without having to travel across the country. According to Pastor Acharya, the officers “mocked and harassed him as they ordered him to explain each photo they found in the cell phone they had confiscated from him . . . saying he had been to every district, and that the photos were solid evidence against him”.⁹⁰ The officers stated that his photos were “solid evidence against him”, “twist[ing] the context of [his] narration and [writing] statements on their own to only make the cases against [Pastor Acharya] stronger”.⁹¹

7.2 Pastor Acharya was found to have violated the law prohibiting proselytization for the simple acts of posting Christian content on the internet and possessing Christian materials on his own cell phone, indicating that Nepalese officials are adopting a dangerously expansive definition of “proselytisation”, which wrongly extends to innocent religious conduct and genuine Christian practices altogether. As evidenced here, the anti-conversion criminal code is misused to arbitrarily target religious minorities and non-proselytizing actions taken while in the simple course of practicing one’s faith. The Supreme Court of Nepal is expected to make a decision on the admissibility of his appeal at a hearing scheduled for 24 July 2023.

7.3 . . . The Committee observes that while the State party has referred to the need to preserve peace and harmony in a multi-religious society, it has not referred to any specific circumstances where the authors’ actions could have created or exacerbated serious interreligious tensions or an atmosphere of hostility and hatred between religious

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

communities in Azerbaijan, such that those actions could have represented a threat to public safety, order, health or morals within the meaning of article 18 (3) of the Covenant.

7.4 In addition, the Committee notes that the State party has not indicated any specific concerns surrounding the individual who invited the authors into her home to discuss their faith. The Committee notes, for example, that there is no indication that the individual objected to the authors' entry or religious speech, was unable to reason on her own, or had a relationship or dependency or hierarchy with the authors such that she might have felt coerced, pressured, or unduly influenced by the manifestation of their religious beliefs.

7.5 The Committee further considers that even if the State party could demonstrate that the authors' activity represented a specific and significant threat to public safety and order, it has failed to demonstrate that its actions were proportionate to preserving public safety and order. Specifically, the Committee considers that the conviction of the authors, and the fine imposed on each of them by the courts . . . considerably limited their ability to manifest their religious beliefs. Nor has the State party attempted to demonstrate that the actions of the police and the domestic courts were the least restrictive measures necessary to ensure the protection of the freedom of religion or belief. The Committee concludes that the punishment imposed on the authors amounted to a limitation of their right to manifest their religion under article 18 (1) of the Covenant, and that neither the domestic authorities nor the State party have demonstrated that the limitation represented a proportionate measure necessary to serve a legitimate purpose identified in article 18 (3) of the Covenant.⁹²

Public order may be a legitimate governmental objective under Article 18(3), but it does not justify penalising peaceful conduct. And without "evidence indicating that the peaceful manifestation of the authors' religious beliefs has in any way disrupted social stability",⁹³ speculative worries about "disparaging or hostile statements" do not satisfy Article 18(3)'s lofty standard.⁹⁴In addition, while proving an actual disruption is a necessary condition, it is not a sufficient one. The Human Rights Committee concluded that even if the law was

⁹² *Id.* at paras. 7.4–7.6.

⁹³ *Id.* at para. 7.5.

⁹⁴ *Ibid.*

conceptually justifiable, its penalties went too far. It held that convicting and fining the Jehovah's Witnesses, "considerably limited their ability to manifest their religious beliefs" and therefore failed Article 18(3)'s proportionality standard.⁹⁵

8. Freedom of Religion or Belief and other Human Rights

8.1 Freedom of religion or belief in Nepal intersects with other country-wide human rights concerns including substantiated reports of "unlawful or arbitrary killings, including extrajudicial killings by the government; torture and cases of cruel, inhuman or degrading treatment by the government; arbitrary detention;...substantial interference with peaceful assembly and freedom of association, including overly restrictive laws on the organization, funding, and operation of NGOs and civil society organizations; restrictions on freedom of movement for refugees, notably resident Tibetans; serious government corruption; lack of investigation of and accountability for human rights abuses and gender-based violence, including domestic and intimate partner violence, sexual violence, child, early and forced marriage and other harmful practices; trafficking in persons..."⁹⁶

In many cases, these abuses disproportionately affect religious minorities in Nepal and women of minority faiths which will be outlined in specific cases in the following section.

8.2 These human rights abuses are also a consequence of the 10-year civil war between the Maoist Communism party and the government of Nepal which left 13,000 dead⁹⁷ and 1,300 missing.⁹⁸ Following the end of the conflict, the Comprehensive Peace Accord was signed and mandated systematic monitoring and reporting of human rights violations in addition to accounting for those missing. The mandates were not matched with administrative capacity, creating gaps in human rights reporting that are still evident today, and are particularly relevant for freedom of religion or belief claims. For example, the Chief

⁹⁵ *Id.* at para. 7.5.

⁹⁶ 2022 Country Reports on Human Rights Practices: Nepal <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/>

⁹⁷ Some estimates are as high as 17,000 dead.

⁹⁸ <https://www.ohchr.org/en/documents/country-reports/nepal-conflict-report>

of Human Rights and International Treaties Division, who reports directly to the Prime Minister and is responsible for monitoring and creating a national human rights action for the entire country has a meagre staff of just 5 people. Their mandate is to report human rights complaints but have delegated intervention to local police.⁹⁹

8.3 Another implication of administrative capacity for freedom of religion or belief is particularly prominent in taxation and the registration of religious organisations. The National Churches Fellowship of Nepal (NCF) reported on our visit that there is virtually no protection for church property. Codified protections in law are easily interpreted to systematically exclude Christian property, particularly burial sites. Taxation law requires that religious organisations be registered for tax purposes under the name of a single individual creating an enormous liability burden and responsibility for paying church taxes on a single individual. This claim contradicts laws granting religious institutions tax-exempt status in Nepal. Nepal Christian Society (NCS) confirmed that Christian organisations face ongoing difficulties registering their organisations particularly at the time of renewal. NCS also reported working for 15 years to register a gravesite with the government. This was confirmed by the US Department of State report which states, “some NGOs, particularly those with a Christian religious element, reported increasing bureaucratic constraints after the devolution of power to local level officials.”¹⁰⁰

8.4 Nepal has made significant improvements in reducing human trafficking, however, the Department of State has designated Nepal as a Tier 2 country for ongoing sex trafficking concerns.¹⁰¹ Heightened scrutiny of human trafficking has had spillover effects for religious minority groups. Chinimaya Blun ran an orphanage in eastern Nepal as an extension of her church fellowship. When it came time to renew the organisation, police prevented her registration from being accepted and ordered that the sign board of the organisation be

⁹⁹ Meeting with Aruna Joshi

¹⁰⁰ 2022 Country Reports on Human Rights Practices: Nepal <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/>

¹⁰¹ 2022 Trafficking in Persons Report, Nepal: Department of State <https://www.state.gov/reports/2022-trafficking-in-persons-report/nepal/#:~:text=Of%20the%20187%20victims%2C%20traffickers,90%20victims%20experienced%20transnational%20trafficking.>

removed and her doors be closed. Chinimaya then had to safely transport the 14 orphans in her care to another orphanage but was unable to secure a place for them. After watching over the children for several days at a local church, Chinimaya was arrested for human trafficking and attempting to convert the children. Chinimaya spent 25 days in custody and 3 months in jail in 2016. After the District Court sat on the case for three years, they dropped the human trafficking charges, but Chinimaya now faces a Supreme Court case appealing the claim of attempted religious conversion. It is still unknown who filed the initial complaint with the police. Ongoing litigation is costly for many believers who do not have adequate funds to resolve court cases. Chinimaya had to travel over 700 miles every time she needed to meet with her lawyer, traveling 14 hours by bus. Bellwether International is providing support to people of all faiths facing court cases and working with local civil society groups to resolve tensions with local police and government.

8.5 Freedom of religion or belief holds intersectionality with gender equality. Chinimaya had to pursue her legal case while concealing details from her husband in order to avoid being prevented from traveling to mandatory court hearings. This case is common across the country. Even though the law stipulates a prison sentence of 5 years and fines for dowry-related violence, 7 cases were documented last year particularly in the Terai region, home to 95% of Nepal’s Muslim population.¹⁰²

8.6 In September 2019, a Christian family was accused of witchcraft after a prayer video was disseminated. After several days in detention, they were released on bail and were eventually cleared of all charges.¹⁰³ Ongoing cases of accusation of witchcraft and subsequent torture have been reported including 61 cases in 2020 and 10 cases in 2022. “Traditional beliefs about witchcraft negatively affected rural women, especially widows, the elderly, persons of low economic status, and members of the Dalit caste, despite a law

¹⁰²2022 Country Reports on Human Rights Practices: Nepal <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/>

¹⁰³ Annex 1 to Universal Periodic Review 37th Session Stakeholders Report on Nepal: Freedom of Religion or Belief

specifically criminalizing discrimination and violence against those accused of witchcraft.”¹⁰⁴ Witchcraft is used as a vehicle to attack minority faiths in Nepal.

8.7 Women of minority faiths report harassment and violence from members of the Hindu faith. The South Asia Forum for Freedom of Religion or Belief (SAFFORB) reported an instance where a group of Muslim women in the Terai region had gathered to pray at the riverside. A group of Hindus approached the women initially circling them and rallying to incite fear, but the situation quickly escalated to an attempted mass rape. Muslim women reported that constitutional protections were only good in theory and did not protect them in application.

9. Policing and Freedom of Religion or Belief

9.1 Ongoing harassment and violence from police has been reported as a serious concern from multiple faith groups in Nepal. Nepal has two different police bodies, the police and *armed* police force. The Ministry of Home Affairs has stewardship of the police and armed police force. “The government investigated but did not widely hold accountable those officials and security forces accused of committing violations of the law. Security personnel accused of using excessive force in controlling protests in recent years did not face notable accountability nor did nearly any conflict-era human rights violators.”¹⁰⁵ No standardised policies regarding responding to local complaints exist in the law and an overall conflicted sentiment towards freedom of religion or belief in government complicates prioritising additional police training. This sentiment was confirmed by the local United Nations Human Rights team who have the mandate to publish ongoing statements concerning human rights in Nepal.

9.2 Many local organisations of all faiths reported facing ongoing harassment from police forces. NCS reported that 100% of their members had been stopped and questioned by the police regarding their affiliation with religion and Christianity. With mounting

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

difficulties between religious communities and police, more and more complaints must be settled in court. This creates enormous inefficiencies in the economy as those least equipped for legal action end up paying the most. Govinda Sharma, the previous Minister of Justice and a senior practising advocate, reported that over 30,000 cases are before the Supreme Court creating a nearly impossible task for the courts to respond efficiently on urgent matters.

9.3 Freedom for All Nepal (FAN) has run several successful sensitisation workshops with local police groups across the country raising awareness of freedom of religion or belief and building trust in communities where religious minorities are targeted. Workshops have successfully decreased freedom of religion or belief violations over time.

10. Freedom of Religion or Belief and Refugees

10.1 There are over 12,000 Tibetan Buddhist refugees in Nepal who face growing challenges including freedom of religion or belief discrimination, persecution, and isolation from society at large. Local Nepali Buddhists distinguish themselves from Tibetan Buddhists in community and language to avoid discrimination and targeting.¹⁰⁶ In 1995, the Nepali government stopped granting National ID cards to Tibetan refugees, bifurcating families where parents would have access to social services and children would not.¹⁰⁷ The Tibetan Refugee Welfare Office (TRWO) in Nepal reported that those without ID cards must do low paying jobs despite their qualifications. The US State Department reported that “three-quarters of the approximately 12,000 resident Tibetan refugees remain undocumented, including all those who were younger than the age of 16 in 1995, or who have been born since then.”¹⁰⁸ There are many young Tibetan refugees in Nepal with qualifications in nursing or have obtained higher education from India hoping to escape the poverty cycle. However, without a National ID they are forced to find alternative work in low paying jobs. The TRWO reported growing numbers of depressed youth and young adults in their

¹⁰⁶ Meeting with Monks at Ka-Nying Shedrub Ling Monastery

¹⁰⁷ Meeting with Tibetan Refugee Welfare Office

¹⁰⁸ 2022 Country Reports on Human Rights Practices: Nepal <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/>

community with rising number of suicides reported each year. Tibetan Buddhists are continually denied the right to work.¹⁰⁹

10.2 Additionally, there have been reports that the Nepali government will no longer recognise the initial National IDs granted before 1995 out of growing pressure from the Chinese government.¹¹⁰ The Nepali police also restricts the Tibetan community from celebrating holidays including continuing to deploy “police to Tibetan settlements to monitor politically important events, including Tibetan Uprising Day and Tibetan Democracy Day.”¹¹¹ National Buddhist celebrations of the Dalai Lama have also been met with armored vehicles and increased policing.

10.3 Other refugees of faith are also marginalized in Nepal. “UNHCR reported 663 refugees and 60 asylum seekers from other countries, including Pakistan, Burma, Afghanistan, Sri Lanka, Bangladesh, Somalia, Iran, and Iraq, lived in the country. The government continued to deny these groups recognition as refugees, even when recognized as such by UNHCR.”¹¹²

i. Ibram Hatti escaped from Pakistan to Nepal after being targeted for his faith. Ibram was working as a Pastor in Pakistan where he arranged healing meetings and Bible study. Muslims in Pakistan reported him to local authorities and on his wedding anniversary an armed mob stormed his home killing members of his family. He fled with his wife who was pregnant. When they finally reached Nepal, his wife was refused medical care and eventually miscarried. Complicated relationships between the Ahmadiyya and United Nations in Nepal make it difficult for faith refugees targeted in other countries like Pakistan. Enormous fees prevent faith refugees from obtaining needed documentation to stay in Nepal including waivers from overstaying a visa.¹¹³

¹⁰⁹ *Ibid.*

¹¹⁰ Meeting with TRWO

¹¹¹ *Ibid.*

¹¹² *Ibid.* Confirmed in Meeting with BP Khanal

¹¹³ Meeting with BP Khanal and Ibram Hatti

CONCLUSION

11. Conclusion

11.1 Nepal has potential to be in the forefront of the promotion of freedom of religion or belief in South Asia.

11.2 Nepal's anti-proselytism law in its criminal code covers a broad range of religious expression and prohibits ordinary activities of religious observance. The prosecution of Pastor Acharya and others indicates significant overreach. Nepal's criminal code is applied too widely and without discretion by Nepalese law enforcement officers, placing religious minorities (including Nepalese Muslims, Christians, Tibetan Buddhists) under threat of prosecution, even though in many cases no crime has been committed. To the extent that the police are correctly applying this criminal provision, it is inconsistent with the constitution. It prohibits the ordinary exercise of religious activity which is enshrined in Nepal's constitution. If this criminal provision is consistent with Nepal's constitution, then the constitution is in breach of international law. Nepal is a party to the ICCPR, which protects a broad range of religious rights, including the right to disseminate religious materials and educate others about one's own religion.

RECOMMENDATIONS

12. Recommendations -

12.1 During the course of the delegation a consensus emerged amongst the members and the vast majority of consultees that written guidance or a code of practice would assist the police and local administrators in properly understanding the reach of section 158 of the Criminal Code and identifying what merited further investigation or publication. This can be achieved with relative ease, and speed, and would not require any revision to the constitution or the criminal code.

12.2 The APPG on Freedom of Religion or Belief published a Nepal Mapping Report in February 2022 which offered the following recommendations which we now review and refine based on the delegation findings.

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;

The wording reflects international standards, but Article 26 is not properly applied in practice, particularly by the lower courts. Training lawyers and judges in Nepal on the effect and implementation of Article 26 is needed.

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;¹¹⁴ Amend Article 26(3) of the Constitution to prohibit only forceful conversion, and remove any clause prohibiting conversion per se.

¹¹⁴ See: <https://www.icj.org/wp-content/uploads/2018/08/Nepal-Freedom-of-religion-brief-Advocacy-Analysis-brief-2018-ENG.pdf>

Nepalese police, prosecutors and law enforcement officials would benefit from guidance clarifying what conduct constitutes proselytism for the purposes of section 158 of the Criminal Code. Such guidance would prevent misconceived prosecutions (which are subsequently discontinued at trial) and eliminate the chilling effect which the threat of prosecution has on religious practice more generally. Guidance should be given to prosecutors pursuant to the component elements of the crime.

Ensure that the definition of secularism in the Constitution is reviewed and amended;

This can be achieved through a multi-faith coalition. Humanists in Nepal have developed helpful material on secularism that could be considered and adopted.

Ensure that the rights of religious or belief minorities are fully protected, as per Article 27 of the ICCPR;

Agreed

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;¹¹⁵

Work with the office of the Joint Secretary on Human Rights and Trade Agreement, of the Office of the Prime Minister and Council of Ministers, to make sure that the established commission represents all faith groups in Nepal and has a mechanism to report human rights abuses especially freedom of religion or belief violations.

Facilitate the free exercise of Tibetan refugees' right to manifest their religion in community with their fellow believers;¹¹⁶

Reinstate National Identity cards for Tibetan refugees in Nepal and allow them full access to employment and social welfare in the country.

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.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

This was achieved through the January 2023 Delegation. Subsequent to the delegation, arrangements have been put in place for representatives of the Nepalese Supreme Court to visit the Supreme Court of the United Kingdom. It is hoped that an enduring relationship will be created in which both courts can work collaboratively in the promotion of due process and the rule of law.

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;

This is agreed as a priority.

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;

This report provides additional evidence that should be shared with the Nepalese government.

Engage local NGOs in Nepal to act as accountability mechanisms for Government action;

The delegation found that strong coalitions for freedom of religion or belief exist in Nepal and are working to hold the Nepalese government to account. These coalitions include Interfaith Peace Federation Nepal, South Asia Forum for Freedom of Religion or Belief (SAFFoRB), among others.

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;

Her Excellency Nicola Pollitt, British Ambassador in Nepal, gave generous support to the delegation and on a follow-up trip by one of its members. The ROLE UK (Rule of Law) programme sponsored by the FCDO, could be a useful first set in this initiative.

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.

