

# WCC-CCIA

International Study Consultation on Freedom of Religion and Rights of Religious Minorities (Istanbul, Turkey. 27 Nov – 2 Dec 2011)

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## Country Situation – Nepal

### Introduction

The discourse on Freedom of Religion and the Rights of Religious minorities is current in Nepal on account of the constitution making exercise facilitated by the constituent assembly. The *jana andolan* of 2006 pushed for a participative inclusive exercise of constitution making in order that the influences of the 1990 exercise are not repeated. The involvement of the UN in the transition period ensures that certain protocols including those demanded under ICCPR are adhered to.

### Country profile

Nepal, sandwiched between two major Asian giants India and China - and with Bhutan being the other neighbour, is home to 29.8 million of the world's population (UN 2010). The country with its mountainous terrain is spread over 54,363 square miles. Of the nearly 30 million citizens, approximately 80% are Hindus, 9% Buddhists, 4% Muslims, and 1-3% Christians and others. Minority religious groups believe they were significantly undercounted.

It is reported that about 400 Christian churches operate in Kathmandu valley alone, and that there were at least 3,600 madrassas most of which were associated with a mosque.

### Position of the state

Nepal is declared a Secular republic. It was in fact the demand of the *jana andolan* and that of the Maoists that the country should be declared a republic. It is seen as a welcome development from the 'hindu' monarchic rule which should ensure freedom to all religious groups especially to the religious minorities.

### Constitutional provisions

It is to be noted that the 1948 constitution (known as that of the Ranas), despite alluding to the fact that Nepal is the country of Lord Pashupatinath, mentioned equality for all in the eyes of law and freedom of worship

And whereas it is our fervent desire, through all social, economic and political developments to bring Nepal, this sacred country of Lord Pashupatinath, in line with the advanced nations of the world and give our beloved motherland her rightful place in the comity of nations (Constitution of Nepal 1948, Preamble)

Subject to the principles! of public order and morality this Constitution guarantees to the citizens of Nepal freedom of person, freedom of speech, liberty of the press, freedom of assembly and discussion, freedom of worship, complete equality in the eye of the law, cheap and speedy justice, universal free compulsory elementary education, universal and equal suffrage for all adults, security of private property as defined by the laws of the State as at present existing and laws and rules to be made hereunder (Constitution of Nepal 1948, Part II Fundamental Rights and duties)

In the 1951 Constitution there is a marked change. There is no religious overtones in the Preamble to the constitution but 'the freedom to worship' disappears.

Equality before law: His Majesty's Government shall not deny to any person equality before law or the equal protection of the laws within the territory of Nepal (Constitution of Nepal, 1951, Article 14)

Discrimination on grounds of religion, race, caste, sex, etc.: His Majesty's Government shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Constitution of Nepal, 1951, Article 15(1))

The 1962 constitution supposedly brings in a lot more value to the minority communities as the legitimate constituents of the nation. The constitution also commits itself not to discriminate in the context of government service and public service. However it introduces a new element in the right to religion, as 'own religion handed down from ancient times'.

Having common aspirations and united by the common bond of allegiance to the Crown, the Nepalese people irrespective of religion, race, caste or tribe collectively constitute the nation (Constitution of Nepal 1962 Article 2 (1))

Right of equality: (1) All citizens shall have the right to equal protection of the laws. (2) No discrimination shall be made against any citizen in the application of general laws on ground of religion, race, sex, caste, tribe or any of them (3) There shall be no discrimination against any citizen in respect of appointment to the government service or any other public service only on grounds of religion, race, sex, caste, tribe or any of them (Constitution of Nepal 1962 Article 10)

Right to Religion: Every person may profess his own religion as handed down from ancient times and may practice it having regard to the tradition. Provided that no person shall be entitled to convert another person from one religion to another (Constitution of Nepal 1962 Article 14)

The 1990 constitution which was made on public demand, yet decried and disowned as of 2006 as a monarchical and an instrument developed without the active participation of the citizens, maintains that the people of Nepal irrespective of religion, race, caste or tribe collectively constitute the nation. However it introduces Nepal as a Hindu and Constitutional Monarchical Kingdom. It also maintains the previous version of the right to religion, that of freedom to profess and practice one's own religion as handed down from ancient times. The 1990 constitution also introduces a clause restraining right to convert another person from one religion to another. It is also interesting to note religion denoted as '*dharmā*' which can immediately connect to the world view of brahminical Hinduism that all manifestations of the divine are '*adharmā*'

Nepal is a multiethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom (Constitution of Nepal 1990, Article 4(1))

Right to Religion: (1) Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices; provided that no person shall be entitled to convert another person from one religion to another. (2) Every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts (Constitution of Nepal 1990, Article 19)

No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharmā), race (varya), sex (li\_ga), caste (jāt), tribe (jāti) or ideological conviction (vaicārik) or any of these (Constitution of Nepal 1990, Article 11(2))

The interim constitution that came into effect on the 15<sup>th</sup> day of January 2007, and that which is progressively evolving at least through 8 amendments as on date, state the following with regard to religious freedom and freedom of religious minorities (or otherwise) in Nepal.

Having multi-ethnic, multi-lingual, multi-religious, multi-cultural characteristics with common aspirations, and being committed to and united by a bond of allegiance to national independence, integrity, national interest and prosperity of Nepal, all the Nepali people collectively constitute the nation (Interim Constitution of Nepal 2007, Article 4)

Right to equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws (2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these (Interim Constitution of Nepal 2007, Article 13)

Right to religion: (1) Every person shall have the right to profess, practise and preserve his or her own religion as handed down to him or her from ancient times paying due regard to social and cultural traditions. Provided that no person shall be entitled to convert another person from one religion to another, and no person shall act or behave in a manner which may infringe upon the religion of others. (2) Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law (Interim Constitution of Nepal 2007, Article 23)

### **Religious freedom and the drafting of the new constitution**

It is noted that among the many committees formed by the Constituent Assembly that is vested with the task of framing the new constitution for Nepal, two committees viz., the Committee for Fundamental Rights and Directive Principles and the Committee on the Protection of Rights of Minorities and Marginalised communities have dealt with the concerns relating to religious freedom and the freedom of religious minorities.

The Committee for Fundamental Rights and Directive Principles proposes a constitutional provision in the new constitution as follows

1. Every person shall have the freedom to profess, practice and preserve his or her own religion in accordance with his or her faith, or to refrain from any religion. Provided that no person shall be entitled to act contrary to public health, decent behaviour and morality, to indulge in activities of jeopardizing public peace or to convert a person from one religion to another, and no person shall act or behave in a manner which may infringe upon religion of others.
2. Every religious denomination shall have the right to maintain its independent existence, and for this purpose to manage and protect its religious places and religious trusts, in accordance with law.

The Committee on the Protection of the Rights of Minorities and marginalised communities proposes a constitutional provision as follows:

- (1) All persons shall have the freedom of religion as given below.
  - To accept or not to accept a religion,
  - To profess and practise religion according to one's own faith,
  - To disseminate the religion of one's own faith and religious belief,
  - To renounce or convert to another religion out of one's own accord,
  - To open and run religious associations or organizations.
- (2) While exercising the freedom of religion mentioned in Sub-Article (1) (a), (b), (c), (d) and (e), it shall have to be done in a manner which shall not affect other religions or religious faith,
- (3) No one shall be allowed to convert another person from one religion to another against his or her desire.

- (4) Acts contrary to Sub-Articles (2) and (3) shall be punishable by laws.
- (5) Every religious denomination shall have the right to manage and protect religious places and religious trusts in accordance with the law by maintaining its independent existence and religious tolerance.

It is noted that the recommendations of the committees are good but not adequate since they can be misused to intimidate the minorities. This is because some of the proposed provisions are open to various interpretations, and that can give rise to the minorities being harassed by the members of the dominant communities and the right wing groups.

### **International documents and religious freedom in Nepal**

Christian Solidarity Worldwide (CSW) in its briefing on Nepal dated March 2010 opines that the interim constitution fails to protect religious freedom of the Nepali citizens. It notes that there is no freedom of religion to those whose own religion is not handed down from ancient times; this could include those who have changed their religion in due course.

The CSW briefing holds the interim constitution 2007 as violating Article 18 of the ICCPR since it states that “no person shall be entitled to convert another person from one religion to another” - Article 18 of the ICCPR provides for the freedom to manifest religion or belief. The briefing also holds that the stipulation that no person shall act or behave in a manner which may infringe upon religion of the others” is ill defined and open to abuse. On the contrary CSW is of the opinion that,

There is no necessity for a specific constitutional provision prohibiting one person from converting another person: coercive techniques could be addressed under the provisions of the penal code of Nepal. A specific constitutional ban on religious conversions is therefore unnecessary, as well as detrimental to the enjoyment of human rights.

It is also to be noted that Nepal ratified the Convention on the Rights of the Child (CRC) on 14<sup>th</sup> September 1990 and is bound by its provisions to respect the right of the child to freedom of thought, conscience, and religion (Article 2), and the right of the children belonging to religious minorities to profess and practice their own religion (Article 30)

### **Violations of the right to religion**

It is noted that despite the provisions in the interim constitution that provide for equality before law and non-discrimination on the basis of religion, several acts of violence on religious minorities are documented. The International Religious Freedom Report 2010 prepared by the Bureau of Democracy, Human Rights and Labour of the US Department of State for its government notes thus:

The government generally respected religious freedom during the reporting period. On a few occasions, the government interfered with the practice of a religious group. The interim constitution officially declared the country a secular state; however, the president, in his capacity as head of state, attended major Hindu religious ceremonies over which the king previously presided. Members of minority religious groups occasionally reported police harassment; it was not always clear if the harassment was for political or religious reasons. Authorities stopped Tibetan Buddhist religious gatherings, especially those with perceived political overtones, and arrested some participants. There was often substantial police presence at religious gatherings. Under political pressure from the Chinese government, three Tibetan Buddhists, including one monk, were forcibly returned to China in June 2010.

The report also noted that religious organisations were not required to register, but only registered organisations can own land; say for building churches, mosques, synagogues or for burial sites.

Though public schools did not teach religious beliefs it is not uncommon to see a statue of a hindu goddess in the school grounds, and that some schools began with a Hindu prayer to the goddess. Harassment and extortions faced by Tibetan Buddhists is also reported. Madrassahs were required to be registered compulsorily; this was being object as discriminatory.

It is reported that Hindu extremism increased in recent times particularly after the declaration of the country as a 'secular state' in 2008 rather than a 'hindu kingdom'. Local affiliates of the Inda- based hindu political party Shiv sena locally known as pashupati sena, Shiv sena Nepal, and Nepal shivsena are becoming a cause for concern in Nepal because of their right wing fascist orientations of the hindu religion. It is noted that emboldened by the presence of these groups the local hindus harass Christians in the neighbourhood and beat them up; there are case reported in which Christian women were forcibly carried to hindu temples and a tika applied on their forehead. Abduction and extortion attempts were reported by Jains and other religious minorities from groups that claimed to be hindu extremist.

### **National Council of Churches in Nepal**

The National Council of Churches in Nepal formed in 1999, was fully operational from June 2003. In May 2004 the NCCN was registered under the government of Nepal with the name '*Nepal Rastriya Mandali Parishad*'. From its inception NCCN has been active in the field of democratisation and secularisation of Nepal. It played a crucial role in the formation of the constituent assembly and in bringing about a peaceful transition of power to the sovereign peoples of Nepal. NCCN has been focussing its activities mainly in the areas of Leadership Capacity Building, Peace and Reconciliation, Inter-faith Co-operation, Role of intellectuals in Nation Building, and Policy advocacy.

NCCN, with a view to ensure equality, , inclusiveness, guarantee of justice, and full religious freedom in the new constitution of Nepal, launched a program, " Role of the religious communities in the constitution making process and guarantee of full religious freedom in the new constitution" . The program was to provide input to the Constituent Assembly including through its committees. A series of consultations all over the country culminated in a National level consultation in Kathmandu where 220 representatives from all the regional consultations participated.

The concept paper presented in the inaugural session of the consultation, in the presence of Shri. Gopal Kiranti the Minister for Culture and State Restructuring of the Government of Nepal, outlined the recommendations to be made regarding the drafting of the new constitution. They are as under:

- ☐ In the current context of writing the constitution by elected representatives of the people for the first time in the history of Nepal through the struggle and sacrifice of the Nepali people, the new constitution must guarantee full religious freedom to every citizen including the freedom to change one's religion.
- ☐ The state must respect and treat all religions equally.
- ☐ There should be no representation in any state mechanism and machinery on the basis of religion. Religion should be treated as purely individual and personal matter of a citizen. The state should not be involved directly or indirectly in the promotion and preservation of a particular religion or faith.
- ☐ State treasury and public property should not be allowed to be used for the promotion and preservation of a particular religion or faith.
- ☐ Religious institutions should be maintained and run by the concerned religious community and the state should not interfere in the religious and cultural affairs of the people.

- ☒ A powerful Religious Commission should be constituted to coordinate among the various religious groups for religious harmony and understanding, to protect the rights of all religious groups and to discourage and control illegal, anti-social and unethical activities that may be carried out in the name of religion.

The final outcome of the consultation was communicated to the Chair of the Constituent Assembly, the President of Nepal, and the Prime Minister of the Government of Nepal.

### **United Nations and religious freedom in Nepal**

The United Nations mission in Nepal has been monitoring the situation in Nepal during the transitional period. The Centre for Constitutional Dialogue (CCD) established with support from UNDP serves as a resource centre to support participatory constitution making process of Nepal. Through the activities of the CCD the UN and particularly UNDP works to bring the members of the constituent assembly, the public, NGOs, INGOs, Civil Society organisations, the intelligentsia, and all those who are involved in and interested toward the constitution making process in Nepal.

According to the CCD it strives to be of assistance in the process, to the various stakeholders, by organising Workshops, Seminars and Interaction Programmes open to all, Training CA members and Civil Society Organization (CSO) leadership and staff, organising Workshops on Thematic Issues associated with Constitution Building, making available a Library with over 2,700 volumes on constitution building and other materials, providing Meeting Facilities with state-of-the-art translation, interpretation and audio-visual equipment and Access to technical experts and information materials.

### **Conclusion**

Despite the delay, the process to include all in the constitution making process through consultative mechanisms is noteworthy. The resolve of the people of Nepal aided by the Maoists and the fraternity of NGOs and CSOs has kept many a capricious motifs at bay.

Nepal has to come out clean with no fascist hangovers from her overbearing neighbour India. The new constitution must show the world the possibility of politically assuring a secular democratic republic.

The home-grown indigenous Nepali Christianity and Church have shown the possibility of a credible political public witness of the Church. The goodwill and the availability of the UN Mission and that of the UNDP assistance should not be missed out.

The global and regional ecumenical community must encourage the NCCN and the Government of Nepal to bear witness to an authentic document and a new government elected through a free and fair election so that the country will not slip back into remaining another fascist state or 'Hindu' monarchy in the region.