

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on  
the promotion and protection of the right to freedom of opinion and expression.**

REFERENCE: AL G/SO 214 (67-17) G/SO 214 (56-23)  
NPL 2/2011

7 October 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 14/11 and 16/4.

We would like to draw the attention of your Excellency's Government to information we have received regarding the **proposals on provisions relating to religion or belief in the draft new constitution and draft new penal code of Nepal**.

According to the information received:

It has been reported that the Constituent Assembly in Nepal has been entrusted with drafting a new constitution to ensure that it is fully compliant with international human rights treaties and obligations. However, the current proposals relating to religion or belief in the new constitution, if adopted in their current draft form, would seriously curtail the right to freedom of religion or belief.

It has been reported that, in particular, the current anti-conversion clause provides no space for religious conversion as being a positive choice. The present two constitutional proposals for this anti-conversion clause concerning religious conversion are too broad, and do not take a rights based approach.

In addition, the proposals concerning offences related to religion for the new penal code are reportedly extremely broad and vague, and therefore open to abuse. The current language may be used to suppress legitimate religious activities, including missionary and charitable activities. Moreover, it has been reported that certain sections of the penal code would criminalize "insulting or undermining the

religion” of any group and would provide that “no one shall harm, insult or offend the religious feelings of any caste, race, class or sect.”

The proposals in their current form risk a serious curtailment of the rights to freedom of religion or belief and freedom of opinion and expression and would be inconsistent with international human rights norms and standards if adopted in their current draft form.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency’s Government to seek clarification of the proposals relating to religion or belief in the draft new constitution and draft new penal code.

We would like to recall the rights of individuals to freedom of religion or belief, in accordance with articles 18 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee in its general comment no. 22 on freedom of thought, conscience and religion states that “the freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”

The General Assembly, in its resolution 65/211, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end “(a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction, inter alia, by providing access to justice and effective remedies in cases where the right to freedom of thought, conscience and religion or belief or the right to freely practise one’s religion, including the right to change one’s religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory manner or does not result in discrimination based on religion or belief, that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights; [...] (g) To ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes, and the right of all persons to seek, receive and impart information and ideas in these areas; (h) To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected; (i) To ensure that all public officials and civil servants, including members of law enforcement bodies, and personnel of detention facilities, the military and educators, in the course of fulfilling their official duties, respect freedom of religion or belief and do not discriminate for reasons based on religion or belief and that all necessary and appropriate awareness-raising, education or training is provided”.

With regard to the proposed anti-conversion clauses, we would like to reiterate that “it would not be advisable to criminalize non-violent acts performed in the context of manifestation of one’s religion, in particular the propagation of religion, including because that might criminalize acts that would, in another context, not raise a concern of the criminal law and may pave the way for persecution of religious minorities. Moreover, since the right to change or maintain a religion is in essence a subjective right, any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.” (A/60/399, para. 65) Consequently, “the adoption of laws criminalizing in abstracto certain acts leading to ‘unethical’ conversion should be avoided, in particular where these laws could apply even in the absence of a complaint by the converted person.” (A/60/399, para. 68)

In relation to the draft sections of the penal code that would criminalize “insulting or undermining the religion” of any group and prohibit to “harm, insult or offend the religious feelings of any caste, race, class or sect”, we would like to draw the attention of your Excellency’s Government to General Comment No. 34 on article 19 of the ICCPR of the Human Rights Committee. In paragraph 48, the Human Rights Committee underlines that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the above mentioned proposals accurate?
2. Please provide further details and a copy of the text, if possible also in English, of the proposals of the draft new constitution and draft new penal code.

3. Please explain how these provisions are compatible with international human rights standards regarding non-discrimination and the right to freedom of religion or belief and the right to freedom of opinion and expression.

We would appreciate a response within 60 days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Heiner Bielefeldt  
Special Rapporteur on freedom of religion or belief

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression