

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

REFERENCE:
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15 September 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/18 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **provisions relating to the freedom of religion or belief and freedom of opinion and expression in the recent "Bill designed to amend and intergrate prevalent laws relating to Criminal Offense"**.

An allegation letter was sent on 7 October 2011 (NPL 2/2011) raising concerns about provisions in both the draft Constitution and the Penal Code concerning "anti-conversion" and criminalization of "insulting or undermining the religion". On 24 July 2015, another letter (NPL 1/2015) was sent to raise similar concerns of the provisions on freedom of religion or belief in the draft Constitution that was open for public consultation. To our regret, no response has been received from your Excellency's Government. Given that the current new bill is not yet signed into law, we would appreciate it if you could kindly ensure that our comments are transmitted to the attention of the President's Office for his consideration.

According to the information received:

The Nepali parliament has been reviewing bills that propose a series of amendments to replace the existing Muluki Ain (known as the general code - civil and criminal code) to fully reflect the provisions of the new constitution.

These include the 'Bill designed to amend and integrate prevalent laws relating to Criminal Offense', which was registered on 15 October 2014, in the parliament. This bill was subsequently passed by the Nepali parliament on 8 August 2017. The bill contains provisions that criminalise religious conversion and "the hurting of religious sentiment".

Section 9, Clause 158 of the bill provides that:

1. Nobody should hurt the religious sentiment of any caste, ethnic community or class by writing, through voice/talk or by a shape or symbol or in any other such manner.

2. Anyone committing the offense as per sub-clause (1) shall face up to two years of imprisonment and a fine of up to twenty thousand rupees.

Section 9, Clause 158 (1) is similar to blasphemy law provisions that exist in other countries, criminalising insults of another's religion. The language in Section 9, Clause 158 (1) is too vague to adequately define what action, behaviour or type of expression could be considered as "hurting the religious sentiment of a caste, ethnic community or class" and thus become subject to penal sanction.

We are seriously concerned about the broad restriction of the freedom of expression implied by Section 9, Clause 158 (1). When people's religious feelings are hurt, it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to live and act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comments by others. The question as to whether criticism, derogatory statements, insults or ridicule of one religion may actually negatively affect an individual's right to freedom of religion or belief can only be determined objectively and, in particular, by examining whether the different aspects of the manifestation of one's right to freedom of religion are accordingly negatively affected.

Freedom of expression plays a central role in the effective functioning of a vibrant democratic society. International human rights law provides that States have the responsibility to ensure an environment in which a diverse range of opinions and ideas can be freely and openly expressed and debated. Freedom of expression also includes sharing one's beliefs and opinions with others who may have different opinions. While the right to freedom of expression can legitimately be restricted in case of statements that incite to acts of violence or discrimination against individuals on the basis of their religion, restrictions to the exercise of that right, including on the grounds of defamation, must be provided by law, necessary in a democratic society, must and necessary be and proportionate and must be consistent with all other rights recognized in the Covenant on Civil and Political Rights (ICCPR).

We are respectfully referring Your Excellency to the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Paragraph 17 of that Plan states 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 ICCPR. 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 of the ICCPR. 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”.

Paragraph 18 of Rabat Plan of Action further provided that “article 20 of the ICCPR requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such threshold must take into account the provisions of article 19 of the ICCPR. Indeed the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.”

Section 9, Clause 160 of the bill provides that:

- 1. Nobody should convert the religion of another person or indulge in such act or encourage such an act.*
- 2. Nobody should indulge in any act or conduct so as to undermine the religion, faith or belief that any caste, ethnic group or community has been observing since sanatan [eternal] times or to jeopardize it with or without any incitement to convert to any other religion, or preach such religion or faith with any such intention.*
- 3. Anyone committing the offense as per sub-clause (1) and (2) shall face up to five years of imprisonment and fine of up to fifty thousand rupees.*
- 4. If a foreigner is found to have committed the crime as per sub-clause (1) and (2), he/she will have to be sent out of Nepal within seven days of completion of the sentence as per this clause.*

Section 9, Clause 160 could be invoked against a wide range of expressions of religious faith and opinions, including the charitable activities of religious groups or peacefully talking about one’s faith, that could be portrayed as attempts to convert others. These provisions are similar to anti-conversion laws in force some States.

We note that there is a clear prohibition under international human rights law of coercion to change or maintain one’s religion. The term “coercion” in article 18, paragraph 2 of ICCPR, is to be broadly interpreted and includes pressure applied by a State or policies aiming at facilitating religious conversions. The same is true for prohibition of conversions. Since the choice of religion or belief is part of the

forum internum, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual's desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.

In the cases where non-State actors interfere with the right to “have or adopt a religion or belief of [one's] choice”, the requirements of article 18 of the Covenant and other relevant international instruments also entail a positive obligation for the State to protect persons from such interference. The Special Rapporteurs wish to re-iterate in this regard that States must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practise the religion or belief of their choice free of coercion and fear.

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 ICCPR, to which Nepal has acceded on 14 May 1991. Article 18, paragraph 1 of ICCPR explicitly provides for the right “in public or private, to manifest [one's] religion or belief in worship, observance, practice and teaching”. Article 18, paragraph 3 of the ICCPR also emphasises the “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.”

The Human Rights Committee in its paragraph 3 of general comment no. 22 on freedom of thought, conscience and religion states that “article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice;” while paragraph 4 stresses that “The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. [...] In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.” Paragraph 5 moreover 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.”

General Assembly resolution 36/55 of 1981 on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides that the right to freedom of thought, conscience, religion or belief, in article 6 (d) includes the freedom, “To write, issue and disseminate relevant publications in these areas;” and “To teach a religion or belief in places suitable for these purposes” in article 6 (e).

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.”

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 articles 19 of the ICCPR and UDHR. These articles establish the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. We would like to remind your Excellency’s Government that any restriction to this right shall be provided by law; may only be imposed for one of the grounds set out in article 19 and subparagraphs (a) and (b) of paragraph 3 and must conform to the strict tests of necessity and proportionality.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we respectfully urge the President of the Republic of Nepal not to sign the Bill and to invite the Parliament to review these provisions that are incompatible with international human rights standards. We would appreciate a response on the steps taken by your Excellency’s Government to safeguard the rights of freedom of religion or belief and freedom of opinion and expression in compliance with international instruments and to seek clarification of the relevant section and clauses of concerns relating to freedom of religion or belief and freedom of opinion and expression in the “Bill designed to amend and intergrate prevalent laws relating to Criminal Offense”.

As 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, we would be grateful for your observations on the following matters:

1. Are the provisions cited above summary of the “Bill designed to amend and integrate prevalent laws relating to Criminal Offense”, accurate?

2. Please provide further details and a copy of the text, if possible in English, of that Bill.
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, as provided for in the UDHR and the ICCPR, which the Republic of Nepal has formally acceded to.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we respectfully urge that all necessary interim measures be taken to review that Bill, to ensure that all the concerns raised by different stakeholders carefully considered, and not to rush the process of promulgating that law.

We are considering to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We believe that given the importance of the matter for the rights and freedoms of people in Nepal, the wider public should be alerted to the potential implications of the Bill on their rights.

Finally, we would like to inform your Government that this joint communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: (<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>).

Your Government's response will also be made available on the same website as well as in the regular periodic Communications Report to be presented to the Human Rights Council.

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

David Kaye
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and expression

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