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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the Organization of American States, the European Commission and Parliament, and is a participant in the FRA Fundamental Rights Platform.
2. This submission reviews the current state of freedom of religion or belief in Nepal, where religious minorities are restricted from, inter alia, freely manifesting their faith and possessing religious texts and materials. Accordingly, it makes recommendations regarding the need to align relevant laws with international human rights standards.
3. Secondly, this report highlights the negative impact of Nepal’s culture of “son-preference” and resulting sex ratio imbalance, and makes recommendations on further protecting women’s equal enjoyment of their right to life and freedom from exploitation.

(a) Freedom of Religion or Belief

Legal Framework

4. Nepal is home to a Hindu majority, encompassing approximately 80% of the country’s total population of 29 million.¹ The remainder is comprised of minority groups including Buddhists, Muslims and Kirants, as well as one of the fastest-growing groups of Christians in the world, currently comprising 4% of the population.²
5. The Constitution of Nepal recognizes the state as being “secular”, and defines this term as “protection of religion and culture being practiced since ancient times and religious and cultural freedom”.³
6. However, Section 26 of the same Constitution clearly imposes strict limitations to the exercise of the fundamental human right of freedom of religion or belief. Indeed, while stating that “Each person shall be free to profess, practice, and preserve his/her religion according to his/her faith,” it also provides that “...no person shall act... or convert a person of one religion to another religion or disturb the religion of other people.”⁴
7. Although Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991, the situation of freedom of religion is at odds with its obligations under this and other relevant international human rights instruments. Indeed, the country’s constitutional and legal framework restrict religious practice both explicitly, by forbidding the peaceful sharing or communicating of one’s faith, and tacitly, by

¹ World Population Review, ‘Nepal Population 2020’ (2020) <<http://worldpopulationreview.com/countries/nepal-population/>>.

² World Watch Monitor, ‘Nepal’ <<https://www.worldwatchmonitor.org/countries/nepal/>>.

³ Constitution of Nepal (2015) Art. 4(1).

⁴ Ewelina Ochab, “Nepal’s Protection Of Religious Freedom On Downward Spiral” *Forbes* (7 February 2018) <<https://www.forbes.com/sites/ewelinaochab/2018/02/07/nepals-protection-of-religious-freedom-on-downward-spiral/#33546bdcc87b>>.

stifling the growth of minority religions through limiting the free expression of their adherents.

8. In 2018, a change in the Criminal Code took effect in Nepal increasing the persecution of Christians and other religious minorities markedly. The amendment criminalizes propagating “any religion in such a manner as to undermine the religion of others” or causing others to convert (Section 9.156, 9.158). The offence triggers a punishment of up to 5 years’ in custody and a fine of up to 50,000 rupees (the equivalent of \$488).⁵ Foreigners are not exempt from these rules, and are in fact threatened with deportation should they engage in such activities.⁶ There are also government restrictions in terms of registration of faith-based organizations and restrictions of raising funds from abroad.⁷
9. Several media and other reports clearly illustrate the impact of such restrictions on the ordinary life of people of religion or belief, particularly those belonging to religious minorities. In June 2016, 8 Nepali Christians were arrested for handing out pamphlets detailing the story of Jesus at a Christian school. The group were detained for proselytizing before the case was eventually dropped by the courts.⁸ In May 2018, six Christians were arrested for “proclaiming Christ” – four in their own homes, and two whilst singing worship songs outdoors.⁹ In July 2019, Mr. Cho Yusang, a 73-year-old Christian man, was arrested for distributing Bibles in an act which authorities deemed to be initiating “forceful conversion”. Following his arrest, police raided his room and confiscated all Bibles and Christian literature. Mr. Yusang ended up in hospital after spending two traumatic weeks in jail.¹⁰
10. Societal violence and discrimination also continues to disproportionately affect religious minorities. In May 2018, four churches in Dhangadhi, Kachanpur, Doti and Panchtar were targeted in arson and bomb attacks over a five-day period by unidentified aggressors.¹¹ In 2019, a video of Pastor Sukdev Giri, from Nepal’s Chitwan District, speaking of his own journey of faith was posted online. Soon afterwards, Giri received death threats from those in his community saying he had “abused” Hinduism. Threats and societal pressure forced Pastor Sukdev Giri to leave his hometown in Nepal. From then on, he decided to live his life in hiding.¹²
11. Despite Nepal’s weak protections for freedom of religion or belief and criminalization of conversion, Nepal has one of the fastest growing Christian populations in the world.

⁵ Criminal and penal law (9) Criminal Procedure (Code) Act, 2074 (2017) 156, 158.

⁶ Country Code, Chapter 19 ‘On Decency/Etiquette’ (1963) ¶ 1, 1A. See International Commission of Jurists, ‘Challenges to Freedom of Religion or Belief in Nepal’ (Briefing Paper, July 2018) <<https://www.icj.org/wp-content/uploads/2018/08/Nepal-Freedom-of-religion-brief-Advocacy-Analysis-brief-2018-ENG.pdf>>.

⁷ ‘Nepalese police arrest pastor for preaching about COVID-19’ *ADF International* (9 June 2020) <<https://adfinternational.org/news/nepalese-police-arrest-pastor-for-preaching-about-covid-19/>>

⁸ Vishal Arora, “UPDATE First Religious Freedom Case under New Nepal Constitution: All Charges Dropped” *World Watch Monitor* (17 August 2018) <<https://www.worldwatchmonitor.org/2016/12/update-first-religious-freedom-case-under-new-nepal-constitution-all-charges-dropped/>>.

⁹ ‘6 Christians arrested, 4 Churches attacked, Bombed in Nepal’ *Christian Today* (June 7, 2018) <<http://www.christiantoday.co.in/article/6.christians.arrested.4.churches.attacked.bombed.in.nepal/18569.htm>>.

¹⁰ Emily Prescott, ‘Christian Crackdown: Elderly man jailed in Nepal for handing out Bibles’ *Express* (9 August 2019) <<https://www.keepthefaitth.co.uk/2019/08/12/elderly-man-jailed-in-nepal-for-handing-out-bibles/>>.

¹¹ *Op.Cit.* (n 8).

¹² “Pastor in Nepal Receives Death Threats After Testimony Video Goes Viral” *Persecution* (23 September 2019) <<https://www.persecution.org/2019/09/17/pastor-nepal-receives-death-threats-testimony-video-goes-viral/>>

In 2020, Christianity makes up almost 4.3% of the population¹³, compared to 1.4% in 2011.¹⁴

Freedom of religion or belief under international human rights law

12. Anti-conversion and “defamation of religion” laws constitute a violation of both Article 18 on freedom of thought, conscience and religion, and Article 19 of the ICCPR, which ensures that all people have the right to freedom of expression and to hold opinions without interference.
13. The Criminal Code provisions are particularly problematic, because while “violence” can clearly be identified, it is unclear what speech a court might count to be “hurting religious sentiment”, or “disturbing” the religion of others. The threat of prison sentences (or even fines) for saying the wrong things about a religion directly flouts the possibility of honest debate around religion and, in so doing, seriously undermines religious freedom.
14. Furthermore, sharing one’s faith in dialogue with others, including with a view to persuade others to convert is, in itself, an integral part of practicing a religion. The Special Rapporteur on Freedom of Religion and Belief notes that “proselytism is itself inherent in religion, which explains its legal status in international legal instruments...”¹⁵ Looking at the issue in practical terms, the Human Rights Committee has affirmed that “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”¹⁶
15. Although Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991, the situation of freedom of religion is at odds with its obligations under this and other relevant international human rights instruments. Indeed, the country’s constitutional and legal framework restrict religious practice both explicitly, by forbidding the peaceful sharing or communicating of one’s faith, and tacitly, by stifling the growth of minority religions through limiting the free expression of their adherents.
16. In particular, anti-conversion and “defamation of religion” laws constitute a violation of both Article 18 on freedom of thought, conscience and religion, and Article 19 of the ICCPR, which ensures that all people have the right to freedom of expression and to hold opinions without interference.

Freedom of Religion and Belief in the Context of Covid-19

¹³ Open Doors, ‘32. Nepal’ <<https://www.opendoors.org.za/christian-persecution/world-watch-list/nepal/>>.

¹⁴ Central Bureau of Statistics, National Planning Commission Secretariat of Nepal, ‘National Population and Housing Census 2011’ (National Report) Vol.1 (Kathmandu, November 2012) 4, ¶ 2.11; See Preiss D, “Why Nepal Has One Of The World’s Fastest-Growing Christian Populations” *NPR* (3 February 2016) <<https://www.npr.org/sections/goatsandsoda/2016/02/03/463965924/why-nepal-has-one-of-the-worlds-fastest-growing-christian-populations>>.

¹⁵ UN Special Rapporteur on Freedom of Religion or Belief, ‘Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief’ (7 November 1996) UN Doc A/51/542/Add.1 ¶ 12.

¹⁶ UN Human Rights Committee, General Comment 22: Article 18 (Freedom of Thought, Conscience or Religion) (30 July 1993) UN Doc CCPR/C/21/Rev.1/Add.4, ¶ 4.

17. The pretext of “spreading misinformation about Covid-19” has been unfairly utilised to further silence members of religious minorities from speaking about matters of faith.
18. Pastor Keshav Raj Acharya of Abundant Harvest Church in Pokhara was arrested on 23 March, based on an accusation that he uploaded a video to YouTube that claimed that prayer could lead to healing from the Coronavirus. Pastor Acharya denies uploading such a video. The arrest took place after the Pastor agreed, via telephone call and subsequent meeting, to pray for the wife of a local man.¹⁷
19. The pastor was kept in police custody and charged for misleading the public about the virus. Yet after being released on bail on 19 April, he was re-arrested without explanation at the premises of the District Administration office on the same day, and charged with “outraging religious feelings” and “attempting to convert” under Sections 156 and 158 of the Nepalese Penal Code.
20. Following the new charges, Pastor Keshav was returned to prison as he was unable to pay the bail until his wife was able to gather the funds to post his bail, almost a month later (13 May). However, the police arrested him for the third time on the same day at the court premises. He was detained in custody and immediately transferred to Dolpa District Police Office, which is one of the most remote districts of Nepal where no means of transportation is available, for further investigation.
21. This harassment of a Pastor for offering a simple prayer clearly indicates the bias that exists against Christians in Nepal. Even during this pandemic, the authorities continue to target religious minorities. Though the fundamental freedom to profess and practice one’s faith is guaranteed under the Constitution of Nepal, Christians and members of other religious minorities have regularly been subjected to arbitrary arrests and criminal charges on the false allegations of forcible conversion.

b) Women’s and Children’s Rights

22. The practice of sex-selective abortion is not legal in Nepal. Yet, the country’s culture has been steeped in a damaging pattern of “son-preference”. This is largely due to both cultural beliefs and discriminatory governmental privileges and rights given to men and not women (such as property rights and inheritance privileges).¹⁸
23. Although different regions of the country hold variant sex ratios at births (SRBs), a recent study of Nepal’s sex birth ratio found hospital(s) with steady male to female ratios of 121 to 100.¹⁹ This is well above what is considered a healthy ratio of a few fluctuation points which occurs naturally without interference of pregnancy.
24. A 2019 study published in the British Medical Journal supports the thesis that sex-selective abortion is “the dominant cause of skewed SRBs in study hospitals.” It concludes that “Comprehensive national policies that not only plan and enforce regulations against gender-biased abortions and, but also ameliorate the marginalized

¹⁷ CSW calls for unfounded charges against pastor to be dropped’ *Christian Solidarity Worldwide* (15 May 2020) <<https://www.csw.org.uk/2020/05/15/press/4666/article.htm>>.

¹⁸ Elina Pradhan and others, “Determinants of Imbalanced Sex Ratio at Birth in Nepal: Evidence from Secondary Analysis of a Large Hospital-Based Study and Nationally-Representative Survey Data” *BMJ Open* (1 January 2019) <<https://bmjopen.bmj.com/content/9/1/e023021.info>>.

¹⁹ *Ibid*.

status of women in Nepal are urgently required to change this alarming manifestation of son preference”.²⁰

25. Besides being an affront to human dignity and a violation of human rights, sex-selective abortion has severe negative social implications. In particular, the female-shaped gap that is left in society is alarming, because where “son preference” persists, a disproportionate ratio of males-to-females has led to a spike in trafficking for young women for the purpose of forced marriage and surrogate child-bearing.
26. Unfortunately, the trend outlined above has evidently taken root in Nepal, with sex trafficking increasing at an alarming rate. According to the National Human Rights Commission’s (NHRC) Office of the Special Rapporteur on Trafficking in Persons (OSRT), between 2015 and 2016 “about 23,200 persons were trafficked or attempted to traffic...”; a marked increase from an average reported cases of 14,750 between 2012 and 2013.²¹
27. Entrenched societal discrimination against women also allowed the surrogacy industry to flourish during the first half of the decade. Nepal has served as a “haven” to international surrogacy agents banned from acting in India, but able to either hire Nepali women or to take Indian surrogates over the border to give birth.²²
28. The 2015 earthquake starkly highlighted how the industry was exploitative of the women it employed when the Israeli government airlifted 26 babies bound for commissioning parents in their country, while leaving the destitute, nursing surrogate-mothers behind in the disaster zone.
29. In a move that must be applauded as an advancement for equality, the Supreme Court of Nepal issued a directive that the government refuse all commercial surrogacy applications. The practice was formally banned by a Cabinet decision on September 18, 2015.
30. However, while the ban refuses surrogacy to foreign nationals and single men or women; the Supreme Court ruled in 2016 that infertile Nepali married couples may still enter into so-called “altruistic” surrogacy arrangements, as soon as the government adopts laws to regulate it.²³ No such laws have, as yet, been articulated.
31. Determining whether an arrangement is truly “altruistic” and what is “paid in kind” would be an immense challenge, and would allow for women to face exploitation under the radar. Indeed, whether “altruistic” or commercial, the practice of surrogacy is always exploitative of women for their reproductive capacity. By separating a woman’s personhood from her motherhood and dehumanizing her as a simple “incubator”, her inherent dignity is compromised. Furthermore, the balance of social and economic power between the surrogate and the “commissioning parents” is very rarely, if ever, in equilibrium. Yet, it is consistently the surrogate who shoulders the

²⁰ *Ibid.*

²¹ National Human Rights Commission (NHRC), Office of the Special Rapporteur on Trafficking in Persons, “Trafficking in Persons: National Report 2015/16” (Lalitapur, 2017).

²² Ramesh Parajuli, ‘Surrogacy in Nepal: Threat to Reproductive Right’ *The Himalayan Times* (18 August 2015) <<https://thehimalayantimes.com/opinion/surrogacy-in-nepal-threat-to-reproductive-right/>>.

²³ Shreejana Shrestha, ‘Supreme Court Verdict on Surrogacy’ *Nepali Times* (27th November 2016) <<http://archive.nepalitimes.com/blogs/thebrief/2016/11/27/supreme-court-verdict-on-surrogacy/>>.

burden of risk should the pregnancy impose complications or should the contractual arrangement regarding the care of the child fall through.

32. Moreover, aside from the typical risks of pregnancy, surrogacy carries a more than three-fold risk of developing pregnancy-induced hypertension and pre-eclampsia.²⁴ As many surrogates are implanted with multiple embryos, this also heightens risks of maternal and perinatal complications such as gestational diabetes, fetal growth restriction, and pre-eclampsia as well as premature birth.²⁵
33. It is clear, then, that while the government of Nepal made a laudable move to protect women and children in their decision to ban this form of exploitation, further efforts must be undertaken to retain this stance.

c) Recommendations

34. In light of the aforementioned, ADF International suggests the following recommendations be made to Nepal:

- i) Take all necessary measures to protect the rights of persons belonging to religious minorities, and guarantee the full exercise of the right to freedom of religion;
- ii) Review Nepal's legislative framework in order to ensure freedom of religion or belief for all;
- iii) Bring Article 26(1) of the Constitution into line with international human rights law;
- iv) Amend Article 26(3) of the Constitution to remove any prohibition on religious conversion or proselytization;
- v) Repeal or abolish blasphemy or 'defamation of religion' laws that limit the right to freedom of religion or belief, particularly Sections 9.156 and 9.158 of the Criminal Code;
- vi) Enact legislation which protects the rights of all religious communities to freely create religious associations or communities;
- vii) Take measures to ensure that freedom of religion or belief is protected within the context of the national response to COVID-19;
- viii) Ensure the freedom of persons to choose a religion or belief including the right to change one's current religion or belief;
- ix) Safeguard personal access to, use, ownership and distribution of religious literature and materials;

²⁴ European Society of Human Reproduction and Embryology, 'Pregnancies following egg donation associated with more than 3-fold higher risk of hypertension' *ScienceDaily* (1 July 2014) <www.sciencedaily.com/releases/2014/07/140701091446.htm>.

²⁵ The American College of Obstetrics and Gynecologists, 'FAQ188: Pregnancy' (January 2019) <<https://www.acog.org/Patients/FAQs/Multiple-Pregnancy?IsMobileSet=false>>.

- x) Adopt effective measures to combat the culture of son preference, with special emphasis on the prevention of sex-selective abortion;
- xi) Enact legislation to explicitly prohibit all forms of maternal surrogacy.



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