



ADF INTERNATIONAL

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Comment on Article 31 of Nepal's Draft Constitution

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1. ADF International is a global alliance-building legal organization that advocates for religious freedom before national and international institutions. As well as having ECOSOC consultative status with the United Nations, ADF International has accreditation with the European Commission and Parliament, the Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and Organization of American States.
2. We write with regard to article 31 of the Draft Constitution of Nepal, which is currently open for public consultation.
3. Article 31 of the Draft Constitution states:

Right to religious freedom:

- 1) Every person shall have the right to profess, practice and preserve his/her own religion as well as has the right to be free of any religious beliefs.
 - 2) Every religious denomination in accordance with the law will maintain their independent existence, religious trusts, operation and protection of their religious places.
 - 3) While exercising the rights conferred by this section, anyone causing disturbance to the public health, order/ decency and morality or disrupting public peace by converting any person religion as well as jeopardize/mock someone's religion, such work shall be punishable in accordance with law.
4. We are concerned that the language in section 3 of article 31 violates international law by abridging fundamental rights to freedom of religion and freedom of speech.
 5. While sections 1 and 2 of article 31 purport to protect the freedom of religion, section 3 of article 31 places restrictions on the free exercise of religion that violate international law in two ways. First, section 3 of article 31 violates the international right to choose and change one's religion. Article 18 of the Universal Declaration of Human Rights (UDHR) guarantees "freedom to change [one's] religion or belief," and article 18 of the International Covenant on Civil and Political Rights (ICCPR)¹ states that each person possesses by right the "freedom to have or to adopt a religion or belief of his choice."
 6. Given that people very rarely and perhaps never change religions without some form of engagement with other people, the right to change religion or belief necessarily includes the right to discuss religious ideas in a manner that can possibly lead to conversion. To legally punish one person or group for playing a role in another person or group's conversion is therefore to deny the right to freely change religions. Enacting such legal penalties would create an atmosphere of intimidation that would repress honest dialogue about religious ideas and further infringe upon the right to choose and change one's religion.

¹ Nepal ratified the ICCPR in 1991.

7. Legal punishments for “mock[ing] someone’s religion” would contribute to this atmosphere of intimidation, for what some see as an honest assessment of the merits of a given religion might easily appear to others as mockery. Article 31 of Nepal’s draft constitution falls short of the requirements of international law in recognizing only the right to preserve one’s religion or to be free of religious belief altogether. By placing the right to change religions as the first of the enumerated rights associated with the freedom of thought, conscience, and religion, both the UDHR and the ICCPR strongly affirm that religious freedom does not exist when there is a legal expectation that no one will change religions and legal penalties exist to prevent conversions.
8. It is unlawful under international law to *forcibly* convert another.² An individual’s right to freely practice her religion grants her the right not to be forced to convert to a different religion.³ A forced conversion is one that arises out of coercion rather than free will. Examples of such coercion include physical force or “restricting access to education, medical care or employment” unless an individual converts.⁴ Article 31 of the draft constitution, however, singles out converting—not forcibly converting—another. Such a restriction is inconsistent with international law.
9. The second way in which section 3 of article 31 of Nepal’s draft constitution violates the international right to religious freedom is by setting illegitimate limitations on religious practice. Article 18 of the UDHR guarantees the “freedom, either alone or in community with others and in public or private, to manifest [one’s] religion or belief in teaching, practice, worship and observance.” Similarly, article 18 of the ICCPR recognizes the “freedom, either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice and teaching.” According to the Special Rapporteur on Freedom of Religion or Belief, “[i]t cannot be denied that this covers non-coercive attempts to persuade others, sometimes also called ‘missionary work.’”⁵ Therefore, this broad guarantee of the right to observe, practice, and teach one’s religion includes the right to engage with people of other faiths in ways that might lead to their conversion.
10. Most obviously, the two largest world religions—Christianity and Islam—consider mission (or *dawah*) to be central to religious practice. Yet adherents of religions that have not historically emphasized mission will also invariably discuss their religious ideas with some other people, and such informal conversations regularly precipitate conversions. Even where religious people attempt to comply with a law prohibiting them from making converts, they might nevertheless find themselves in violation of the law, for conversions can be motivated by the observation of others’ beneficent actions or moral integrity. Legal punishments for making converts will invariably have a chilling effect on religious practice and lead to the harassment of minority religious groups, including especially Christians.

² Interim Report (A/67/303) of the Special Rapporteur on Freedom of Religion or Belief, para. 22, available at: <http://www.un.org/en/ga/third/67/documentslist.shtml>.

³ *Id.*

⁴ *Id.* at para. 23.

⁵ *Id.* at para. 26.

11. Section 3 of article 31 of Nepal's draft constitution also violates the international right to freedom of speech, opinion, and expression by enjoining legal punishments for speech and expression that leads other people to change their religious beliefs. Article 19 of the UDHR states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Echoing this language, article 19 of the ICCPR holds, "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."
12. The right to impart ideas of all kinds regardless of frontiers and through any medium whatsoever is explicit in international law. Yet Nepal's draft constitution seeks precisely to punish people who impart religious ideas insofar as those ideas are compelling to those that hear them. If one has the right to impart ideas of all kinds, one also has the right to do so in a manner that might conceivably convince some hearers of the veracity of the ideas communicated. To suggest that freedom of speech and expression exists when a speaker can be punished for speaking winsomely is farcical.
13. Section 3 of article 31 of Nepal's draft constitution presumes to obscure the reality that it is in violation of international law by including language reminiscent of that included in articles 18 and 19 of the ICCPR. Section 3 of article 18 of the ICCPR states, "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." Similarly, section 3 of article 19 of the ICCPR holds, "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary." The ICCPR does, then, envision the possibility of enacting some form of limitations on religious freedom and freedom of speech. However, it is readily demonstrable that these hypothetical legitimate limitations cannot possibly include the restrictions discussed in section 3 of article 31 of Nepal's draft constitution.
14. Section 3 of article 31 of Nepal's draft constitution suggests that both converting someone and jeopardizing/mockingly someone's religion can (or, perhaps, always do) constitute "causing a disturbance to the public health, order/decency and morality" or "disrupting public peace[.]" Yet free interchange of ideas that leads to conversion cannot, in itself, have these results. It is impossible for a person's changed convictions on religious matters to directly and immediately either disturb public health, order, morality, or peace. Internal states of religious conviction do not produce immediate external effects in the surrounding society.
15. When the ICCPR considers the possibility of restricting religious exercise, it can only be envisioning restrictions on religiously motivated actions that in themselves disrupt public

safety, order, health, or morals.⁶ For example, a government has legitimate reasons to stop religious violence because it is violence, despite the fact that it may be enjoined by a religion. Moreover, a government might have a legitimate reason to stop a public ceremony that involved sexually explicit acts because they degrade public morality, despite the fact that such a ceremony might be part of some religion's practice. The ICCPR is concerned to emphasize that governments may need to restrict actions that in themselves threaten peace, order, health, or morality, despite the fact that they may happen to be religiously motivated.

16. Nepal's draft constitution, in contrast, seeks to specifically punish religious speech and action, working from the assumption that such religious speech and action is in itself harmful to society. In doing so, Nepal's draft constitution unmoors itself from international law and seeks to directly deny two of the most basic and widely recognized human rights.

17. Section 3 of article 31 therefore threatens to place Nepal in direct and egregious violation of international law. It is our recommendation that Nepal revise article 31 of its draft constitution to fit with the language and spirit of the UDHR and the ICCPR.

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⁶ Section 3 of article 18 and section 3 of article 19 of the ICCPR both make clear that limitations are only allowed where "necessary" to protect the public.