

ADF International White Paper

Anti-Conversion Laws and the International Response

Meghan Grizzle Fischer



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Summary

Four countries in South and Southeast Asia—India, Nepal, Myanmar, and Bhutan—have laws that severely regulate religious conversion. Government officials and the police, in line with increasingly nationalist politicians and lawmakers, selectively enforce these laws, effectively banning conversion from the majority religion to a minority religion, in particular Christianity and Islam. This article examines the language of these anti-conversion laws, the political and religious contexts in which they became law, and their effects on religious minorities. The article argues that anti-conversion laws violate basic human rights because they have vague and overly broad terms, target minorities, and restrict the fundamentally personal decision to change one's religion. This article then evaluates what the United Nations has done to combat anti-conversion laws. It explains how each UN entity can prioritize its responsibility to protect the right to choose one's own religion by focusing on core human rights.

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1) Introduction

In 2015, Tarun Vijay, an MP in the Upper House of India's national Parliament, declared, 'It is very important to keep the Hindus in majority in the country.'¹ Vijay was concerned about the decrease in the population of Hindus in India to less than 80 percent for the first time in the nation's history:

We have to take measures to arrest the decline. [. . .] My argument is that religion must remain a matter of personal choice. But in India, it has become a political tool in the hands of foreign powers, who are targeting Hindus to fragment our nation again on communal lines. This has to be resisted in national interest and in the interest of all minorities in India.²

Vijay's sentiments capture a nationalist line of thinking that is becoming more prevalent and more powerful in India and broader South and Southeast Asia: conversions away from the majority religion, whether Hinduism in India and Nepal or Buddhism in Myanmar and Bhutan, are a threat to the country. To stem this perceived threat, these countries, or individual states in the case of India, have passed laws banning conversion from one religion to another in vague circumstances such as under 'inducement' and in 'fraudulent circumstances.' In effect, the laws are selectively enforced and therefore ban conversion from the majority religion to a minority religion. The mere existence of an anti-conversion law in a state or country usually gives license to nationalist religious extremists to persecute members of minority religions.

¹ *Indian evangelist suffers brain haemorrhage after police grilling*, WORLD WATCH MONITOR (Jan. 24, 2017), <https://www.worldwatchmonitor.org/2017/01/4877077/>.

² *Id.*

Heiner Bielefeldt, the United Nations Special Rapporteur on freedom of religion or belief from 2010 to 2016, devoted a report to the issue of conversion because violations of the right to convert have 'become a human rights problem of great concern.'³ The report notes the different perpetrators of, and motives for, such violations:

For instance, abuses are perpetrated in the name of religious or ideological truth claims, in the interest of promoting national identity or protecting societal homogeneity, or under other pretexts such as maintaining political and national security. While some undue restrictions on the rights of converts or those trying non-coercively to convert others are undertaken by State agencies, other abuses, including acts of violence, stem from widespread societal prejudices. Violations in this sensitive area also include forced conversions or reconversions, again perpetrated either by the State or by non-State actors. In addition, the rights of converts or those trying non-coercively to convert others are sometimes questioned in principle.⁴

Religious conversion is restricted in many countries. The Pew Research Center reports that in the year ending December 2015, 42 countries restricted conversion from one religion to another, up from 31 countries in June 2007.⁵ In 25 countries there were incidents of social hostility over

³ Heiner Bielefeldt (Special Rapporteur on freedom of religion or belief), *Interim report of the Special Rapporteur on freedom of religion or belief*, ¶ 15, U.N. Doc. A/67/303 (Aug. 13, 2012) [hereinafter Bielefeldt, *Right to convert*].

⁴ *Id.*

⁵ PEW RESEARCH CTR., TRENDS IN GLOBAL RESTRICTIONS ON RELIGION app. D at 62 (GRI.Q.7) (2017), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/04/07154138/Appendix-D.pdf>. The 42 countries and territories are Afghanistan, Algeria, Bangladesh, Bhutan, Brunei, Burma (Myanmar), China, Comoros, Egypt, Finland, Iceland, India, Indonesia, Iran, Iraq, Israel, Jordan, Kuwait, Kyrgyzstan, Laos, Lebanon, Malaysia, Maldives, Mauritius, Mexico, Morocco, Nepal, Norway, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Somalia, Sudan, Syria, United Arab Emirates, United States, Uzbekistan, Vietnam, Western Sahara, and Yemen. *Id.*, app. E at 8 (GRI.Q.7).

conversion that fell short of physical violence, and in 27 countries there were incidents that included physical violence.⁶ While many countries have laws banning blasphemy and apostasy,⁷ which ultimately affect the ability to convert, this article examines the development of legislation that specifically regulates the act of converting to another religion through so-called inducement or by so-called fraudulent means. These laws are known as anti-conversion laws and are found not just in India, but throughout South and Southeast Asia, in particular Nepal, Myanmar, and Bhutan. Sri Lanka has introduced, but not yet passed, anti-conversion bills, and one province in Pakistan attempted to pass an anti-conversion law to protect religious minorities.

This article presents the international legal basis for the freedom to convert and then evaluates the language of these laws and bills in that context. It also details the effects these laws have had on believers of different faiths, including severe persecution of religious minorities. It explains how the United Nations has a special role to play in combating anti-conversion laws and evaluates the UN's response to anti-conversion laws through its many mechanisms, including the Human Rights Council, special rapporteurs, the Universal Periodic Review, human rights treaty bodies, and the General Assembly. The article calls on the United Nations to combat anti-conversion laws more effectively, especially through returning to its mandate to promote and protect universally agreed, fundamental rights.

⁶ *Id.* app. D at 79 (SHI.Q.13); *id.*, app. E at 48 (SHI.Q.13).

⁷ Angelina E. Theodorou, *Which countries still outlaw apostasy and blasphemy?*, PEW RESEARCH CENTER (July 29, 2016), <http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/>.

2) International law background

Bielefeldt has divided the right to conversion into four subcategories:

(a) the right to conversion (in the sense of changing one's own religion or belief); (b) the right not to be forced to convert; (c) the right to try to convert others by means of non-coercive persuasion; and (d) the rights of the child and of his or her parents in this regard.⁸

Such subcategorization is helpful because the subcategories 'differ with respect to the precise content and degree of legal protection attached to them under international human rights law,' although there are nevertheless 'close links among the various dimensions.'⁹

International legal support for each of these subcategories is clear, which Bielefeldt outlines in detail.¹⁰ International treaties clearly support freedom of religion. Bans on conversion are rooted neither in international law nor human rights but rather in protecting majority religions from the loss of adherents and, subsequently, political, social, and economic power.

A. The right to convert from one religion to another and the right not to be forced to convert

The Universal Declaration of Human Rights (UDHR) most explicitly protects the right to convert from one religion to another in Article 18, which states 'the right to freedom of thought, conscience and religion [. . .] includes freedom to change [one's] religion or belief [. . .].'

⁸ Bielefeldt, *Right to convert*, *supra* note 3, ¶ 16.

⁹ *Id.*

¹⁰ *Id.* ¶¶ 17-34. This paper will not address children's and parents' rights related to conversion, however.

The International Covenant on Civil and Political Rights (ICCPR) acknowledges both the right to convert and the right to not be forced to convert. Article 18(1) states, 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice [. . .].'¹¹ Article 18(2) follows, 'No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.'¹² This right is non-derogable,¹³ meaning that even in times of public emergency, the state must still protect it.

The Human Rights Committee, the body charged with monitoring implementation of the ICCPR, explained clearly in its General Comment No. 22 that the freedom to adopt a religion may not be limited in any way:

Article 18 [. . .] does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.¹⁴

General Comment No. 22 elaborates on the right to convert:

The Committee observes 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

¹¹ International Covenant on Civil and Political Rights art. 18(1), Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹² *Id.* art. 18(2).

¹³ *See id.* art. 4(2).

¹⁴ U.N. Human Rights Comm. (HRC), General Comment No. 22: Article 18: Freedom of Thought, Conscience or Religion, ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993) [hereinafter HRC, General Comment No. 22].

as the right to retain one's religion or belief.¹⁵

The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also states that '[t]his right shall include freedom to have a religion or whatever belief of his choice' in Article 1(1), and, correspondingly in Article 1(2), that '[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.'¹⁶ Although not legally binding, the 1981 Declaration has significant weight, as it was passed by the General Assembly and is entirely devoted to religious freedom.

Bielefeldt concludes that to guarantee the right to change one's religion, States must 'abolish[] punishments against converts and remov[e] administrative obstacles' as well as ensure that third parties do not encroach on this right through, for example, violence.¹⁷ To guarantee freedom from coercion to convert, States must 'ensure that the specific authority of State agents and State institutions is not used to coerce people to convert or reconvert,' such as in schools, the police force, the military, and prisons.¹⁸ Likewise, States must protect against third-party coercive conversion practices, which may require legislation.

Because anti-conversion laws are usually introduced to protect majority religions from the influence of minority religions, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which is not binding and is not mentioned in the Bielefeldt report, is relevant. It states in Article 2(1) that people belonging to religious minorities have the right 'to profess and

¹⁵ *Id.* ¶ 5.

¹⁶ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief art. 1, U.N. Doc. A/RES/36/55 (Nov. 25, 1981) [hereinafter 1981 Declaration].

¹⁷ *Id.* ¶ 21.

¹⁸ *Id.* ¶ 23.

practice their own religion [. . .] in private and in public, freely and without interference or any form of discrimination.’¹⁹ They also ‘have the right to participate effectively in cultural, religious, social, economic and public life.’²⁰

B. The right to try to convert others

ICCPR article 18(1) protects not just the internal components of belief, such as choosing one’s religion. It also guarantees ‘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.’²¹ One such manifestation is ‘non-coercive attempts to persuade others, sometimes called “missionary work.”’²² ICCPR article 19(2), which protects the right to freedom of expression, including ‘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 [one’s] choice,’²³ also implicates ‘the freedom to communicate within one’s own religious or belief group, share one’s conviction with others, broaden one’s horizons by communicating with people of different convictions, cherish and develop contacts across State boundaries, receive and disseminate information about religious or belief issues and try to persuade others in a non-coercive manner.’²⁴

Likewise, the 1981 Declaration recognizes in article 6 the freedoms ‘(d) to write, issue and disseminate relevant publications in these areas’; ‘(e) to teach a religion or belief in places suitable for these purposes’; and ‘(i) to establish and maintain communications with individuals and

¹⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities art. 2(1), U.N. Doc. A/RES/47/135 (Dec. 18, 1992).

²⁰ *Id.* art. 2(2).

²¹ ICCPR, *supra* note 11, art. 18(1).

²² Bielefeldt, *Right to convert*, *supra* note 3, ¶ 26.

²³ ICCPR, *supra* note 11, art. 19(2).

²⁴ *Id.* ¶ 27.

communities in matters of religion or belief at the national and international levels.²⁵

Bielefeldt asserts that while freedom to manifest one's religion is not absolute given that actual force and coercion are not allowed, to restrict this freedom the State must meet the burden of proof: the restrictions must be in line with ICCPR article 18(3), which states they must be 'prescribed by law and [] necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.'²⁶ Bielefeldt concludes, 'Thus, limitations imposed on the right to try to convert others require a legal basis; they must pursue one of the legitimate aims exhaustively listed in article 18 (3); they should be clearly and narrowly defined; they must be proportionate; and they should not be implemented in a discriminatory manner.'²⁷

The HRC also outlines in General Comment No. 22 acceptable limitations on the right to try to convert:

Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.²⁸

²⁵ 1981 Declaration, *supra* note 16, art. 6.

²⁶ ICCPR, *supra* note 11, art. 18(3).

²⁷ Bielefeldt, *Right to convert*, *supra* note 3, ¶ 28.

²⁸ HRC, General Comment No. 22, *supra* note 14, ¶ 5.

3) Anti-conversion laws

Anti-conversion laws have taken hold in countries where the dominant religious (and often ethnic) majority feels threatened by an active and growing religious minority. These laws are found in India, Nepal, Myanmar, and Bhutan. Sri Lanka has considered anti-conversion bills but has not yet enacted any, and one province in Pakistan passed but ultimately failed to enact a bill to protect religious *minorities*—unlike in these other countries—from forced conversions.

A. India

1. Background

India is the second most populous country in the world at 1.3 billion people, as of July 2016.²⁹ 79.8 per cent of the population is Hindu, 14.2 per cent Muslim, 2.3 percent Christian, and 1.7 per cent Sikh.³⁰ Article 25(1) of the Constitution of India protects religious freedom, but with leeway for significant exceptions: 'Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.'³¹

Despite this recognition of freedom of religion, India has been plagued by religious violence and intolerance, especially since the late 1990s. Christian groups have documented numerous attacks against Christians. One group estimates there is nearly one case of anti-Christian violence every day.³² Another has determined that 133 cases of targeted

²⁹ U.S. STATE DEP'T, INDIA 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2017), <https://www.state.gov/documents/organization/269174.pdf>.

³⁰ *Id.*

³¹ INDIA CONST. art. 25(1) (1949).

³² Anto Akkara, *In India, one case of anti-Christian violence a day*, WORLD WATCH MONITOR (Jan. 21, 2016), <https://www.worldwatchmonitor.org/2016/01/4257104/>; see also *India – Not Safe to be Christian?*, CATHOLIC FORUM REPORT (Jan. 21, 2016), <http://www.thecsf.org/>

violence occurred in the first half of 2016, as compared to 147 and 177 cases in 2014 and 2015, respectively.³³ In the state of Odisha (formerly known as Orissa) in 2008, radical Hindus instigated riots against the Christian minority that resulted in the deaths of 100 people, the destruction of 300 churches and 6,000 homes, and the displacement of 50,000 people.³⁴ India is number eleven on the 2018 World Watch List,³⁵ up from number thirty-one on the 2013 World Watch List, a list of the fifty countries where Christians are most severely persecuted.³⁶ Muslims also suffer at the hands of radical Hindus.³⁷ India is on the U.S. Commission

2016/01/21/india-not-safe-to-be-christian-catholic-forum-report-on-indian-persecution-2015-2/.

³³ *Alarming Government Impunity Underpins Continuing Persecution of Christians in 2016 by Non-State Actors*, EVANGELICAL FELLOWSHIP OF INDIA, <http://www.efionline.org/the-news/persecution/651-persecution-watch-half-yearly-report-2016> (last visited Feb. 16, 2018) [hereinafter EFI, 2016 Report]; see also EVANGELICAL FELLOWSHIP OF INDIA, *HATE AND TARGETED VIOLENCE AGAINST CHRISTIANS IN INDIA* (2015), <http://www.efionline.org/images/pdf/efi%20annual%20report%20hate%20and%20targeted%20violence%20against%20christians%20in%20india%202015.pdf> [hereinafter EFI, 2015 REPORT].

³⁴ John L. Allen Jr., *'Kandhamal' tells the whole story of anti-Christian persecution*, CRUX (July 28, 2015), <https://cruxnow.com/faith/2015/07/28/kandhamal-tells-the-whole-story-of-anti-christian-persecution/>.

³⁵ OPEN DOORS, *WORLD WATCH LIST 2018 2* (2018), <https://www.opendoorsusa.org/wp-content/uploads/2018/01/WWL2018-BookletNew.pdf>.

³⁶ *The 2013 World Watch List is here*, OPEN DOORS (June 5, 2013), <https://www.opendoorsusa.org/christian-persecution/stories/the-2013-world-watch-list-is-here/>.

³⁷ See, e.g., U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (USCIRF), *2017 ANNUAL REPORT* 151 (2017), <http://www.uscirf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf> [hereinafter USCIRF, 2017 ANNUAL REPORT]; Bijay Kumar Minj, *Christians join Muslims to discuss hate crimes in India*, UCANEWS.COM (Sept. 7, 2016), <http://www.ucanews.com/news/christians-join-muslims-to-discuss-hate-crimes-in-india/77064>; Greg Bearup, *India's fundamentalist Hindus fomenting anti-Islam hysteria*, THE AUSTRALIAN (Apr. 16, 2016), <http://www.theaustralian.com.au/news/inquirer/indias-fundamentalist-hindus-fomenting-antiislam-hysteria/news-story/899352fcb724cf4690bd70d8239bd4d3>; *Persistent anti-Muslim violence in India (1992-2015): Gainers and losers*, ASIA TIMES (Oct. 25, 2015), <http://atimes.com/2015/10/persistent-anti-muslim-violence-in-india-1992-2015-gainers-and-losers/>; *India 'beef' lynching: Local groups fanning anti-Muslim violence?*, BBC NEWS (Oct. 2, 2015), <http://www.bbc.com/news/world-asia-india-34421417>; James Traub, *Is Modi's India Safe for Muslims?*, FOREIGN POLICY (June 26, 2015), <http://foreignpolicy.com/2015/06/26/narendra-modi-india-safe-for-muslims-hindu-nationalism-bjp-rss/>.

for International Religious Freedom's (USCIRF) list of Tier 2 countries, where significant religious freedom violations occur.³⁸

A decline in religious freedom came about with religiously-divisive campaigning during the 2014 general election season, and with the national victory of the Bharatiya Janata Party (BJP), which was already in power in several states.³⁹ The BJP has as its official ideology 'Hindutva,' or Hindu nationalism, with the goal of India as a Hindu state with Hindu values.⁴⁰ As a result, there has been a significant increase in administrative restrictions and curtailing of civil liberties, and religious minorities have suffered further attacks and forced conversions by Hindu nationalists. With the BJP in power, minority religious communities have seen a decrease in their ability to practice their religions freely.⁴¹

2. Anti-Conversion Laws

State BJP parties and other nationalist groups, such as Rashtriya Swayamsevak Sangh (RSS), continue to tout anti-conversion laws, which in India are called 'Freedom of Religion' Acts. Hindu nationalists' stated rationale for anti-conversion laws is that Christians and Muslims are using coercion to convert vulnerable Hindus in the lowest castes, also known as Dalits or Untouchables.⁴² Nationalists also have cited the need to 'protect the cultural identity of tribal communities of the country.'⁴³

³⁸ Tier 2, USCIRF, <http://www.uscirtf.gov/all-countries/countries-of-particular-concern-tier-2> (last visited Apr. 7, 2018).

³⁹ USCIRF, 2017 ANNUAL REPORT, *supra* note 37, at 149.

⁴⁰ *Hindutva: The Great Nationalist Identity*, BHARATIYA JANATA PARTY, [http://www.bjp.org/index.php?option=com_content&view=article&id=369:hindutva-the-great-nationalist-ideology&Itemid=501_\(last visited Apr. 7, 2018\)](http://www.bjp.org/index.php?option=com_content&view=article&id=369:hindutva-the-great-nationalist-ideology&Itemid=501_(last%20visited%20Apr.%207,%202018)).

⁴¹ USCIRF, 2017 ANNUAL REPORT, *supra* note 37, at 149.

⁴² TEHMINA ARORA, INDIA'S DEFIANCE OF RELIGIOUS FREEDOM: A BRIEFING ON 'ANTI-CONVERSION' LAW 5 (2012), https://www.iirf.eu/site/assets/files/92149/iirf_reports_2012_02.pdf [hereinafter ARORA, INDIA'S DEFIANCE].

⁴³ Rakesh Mohan Chaturvedi & Vasudha Venugopal, 'Protect' tribals via national anti-conversion law: RSS, *Econ. Times* (Mar. 24, 2016, 6:21 AM), <http://economictimes.indiatimes.com/news/politics-and-nation/protect-tribals-via-national-anti-conversion-law-rss/>

Anti-conversion laws first came into existence in the 1930s in the princely states, those states where Britain did not have direct rule.⁴⁴ After independence, the Indian parliament considered several anti-conversion bills but ultimately dropped all of them.⁴⁵ However, due to India's federal structure, state legislatures have been able to pass anti-conversion measures. Seven states in India have such laws: Orissa (1967), Madhya Pradesh (1968), Arunachal Pradesh (1978), Chhattisgarh (2000), Gujarat (2003), Himachal Pradesh (2006),⁴⁶ Jharkhand (2017),⁴⁷ and Uttarakhand (2018).⁴⁸ However, Arunachal Pradesh has never implemented the law, although with the rise of the BJP there in December 2016, the government may create implementing rules.⁴⁹ Further, Tamil Nadu passed the Prohibition of Forcible Conversion of Religion Bill in 2002, but the law was repealed after the BJP coalition failed in 2004.⁵⁰ Rajasthan followed suit in 2006, but the President of India never approved it after the Governor of Rajasthan forwarded it to him.⁵¹ However, in December 2017 the Rajasthan High Court introduced guidelines for people wanting to

articleshow/51535608.cms.

⁴⁴ ARORA, INDIA'S DEFIANCE, *supra* note 42, at 6.

⁴⁵ *Id.*

⁴⁶ *Id.* at 6-7.

⁴⁷ Arvin Valmuci, *Jharkhand Becomes Ninth State in India to Pass Anti-Conversion Law*, Sikh24.com (Sept. 14, 2017), <https://www.sikh24.com/2017/09/14/jharkhand-becomes-ninth-state-in-india-to-pass-anti-conversion-law/#.WuelHdPwaT8>.

⁴⁸ *Anti-Conversion Bill Becomes Law in Uttarakhand State, India*, Morning Star News (Apr. 30, 2018), <https://morningstarnews.org/2018/04/anti-conversion-bill-becomes-law-in-uttarakhand-state-india/>. As of April 30, 2018, the official Jharkhand government gazette had not yet published the act and it is not yet available on government websites.

⁴⁹ Rahul Karmakar, *Spotlight on conversion in Arunachal after Cong accuses BJP of pushing Hinduism*, Hindustan Times (Feb. 12, 2017), <http://www.hindustantimes.com/india-news/spotlight-on-conversion-in-arunachal-after-congress-accuses-bjp-of-pushing-hinduism/story-0lnJvTSAjct4dDNRG556BL.html>.

⁵⁰ ARORA, INDIA'S DEFIANCE, *supra* note 42, at 7.

⁵¹ *Id.*; see also Vijaita Singh, *Rajasthan conversion Bill returned by Centre*, Hindu (Nov. 15, 2017), <http://www.thehindu.com/news/national/other-states/rajasthan-conversion-bill-returned-by-centre/article20461261.ece>; Vijaita Singh, *MHA sends back anti-conversion bills*, Hindu (Dec. 21, 2015), <http://www.thehindu.com/news/national/mha-sends-back-anti-conversion-bills/article8011172.ece>.

convert.⁵² Maharashtra also tabled an anti-conversion bill in 2015⁵³ and again proposed an anti-conversion law in April 2017.⁵⁴ The push by nationalists to increase the number of states that have anti-conversion laws has been successful, as evidenced by the swift passage of bills in Jharkand and Uttarakhand in 2017 and 2018, respectively. Nationalists have advocated for anti-conversion laws in other states⁵⁵ and even in India as a whole.⁵⁶

The alleged purpose of each of the anti-conversion laws is to prohibit conversion by force, fraud, or inducement. Each of the laws states, 'No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurements or by any fraudulent means nor shall any person abet such conversion.'⁵⁷

⁵² *Rajasthan HC sets guidelines to check 'forced conversion of religion'*, Hindustan Times (Dec. 16, 2017), <https://www.hindustantimes.com/india-news/rajasthan-hc-sets-guidelines-to-check-forced-conversion-of-religion-in-marriages/story-leMamuQo7bEVoyAnBTZ27J.html>.

⁵³ *Bill seeking anti-conversion law tabled in Maharashtra assembly*, Hindustan Times (July 24, 2015), <http://www.hindustantimes.com/mumbai/bill-seeking-anti-conversion-law-tabled-in-maharashtra-assembly/story-Qt0raOF0cdI9EjCVX18W11.html>.

⁵⁴ Surendra P Gangan, *Maharashtra government considering anti-conversion law*, Hindustan Times (Apr. 7, 2017), <http://www.hindustantimes.com/mumbai-news/maharashtra-government-considering-anti-conversion-law/story-YJ0PaKlvGd4z9UVMBJ5gWK.html>.

⁵⁵ Valmuci, *supra* note 47; Vishal Arora, *Anti-Conversion Law Considered in Karnataka*, World Watch Monitor (Mar. 3, 2009), <https://www.christianheadlines.com/news/%E2%80%99anti-conversion%E2%80%99-law-considered-in-karnataka-india-11600274.html>.

⁵⁶ Chaturvedi & Venugopal, *supra* note 43; Anita Joshua, *Rajnath pitches for anti-conversion law*, Hindu (Apr. 28, 2015), <http://www.thehindu.com/news/national/states-should-act-against-communal-incidents-rajnath/article7150757.ece>; *BJP calls for national law to curb conversions*, Hindu (Dec. 11, 2014), <http://www.thehindu.com/news/national/agra-conversions-centre-advocates-anti-conversion-laws/article6683116.ece>.

⁵⁷ Orissa Freedom of Religion Act, Act 2 of 1968, art. 3 (1967) (India); Madhya Pradesh Freedom of Religion Act, Act 27 of 1968, art. 3 (1968) (India); Arunachal Pradesh Freedom of Religion Act, Act 4 of 1978, art. 3 (1968) (India); Gujarat Freedom of Religion Act, Act 24 of 2003, art. 3 (2003) (India), Himachal Pradesh Freedom of Religion Act, Act 31 of 2006, art. 3 (2006) (India); Jharkhand Freedom of Religion Act, Act 17 of 2017, art. 3 (2017) (India).

The definition of 'conversion' in the Orissa, Madhya Pradesh, Himachal Pradesh, and Jharkhand acts is 'renouncing one religion and adopting another.'⁵⁸ In the Arunachal Pradesh law, it is 'renouncing one religious faith and adopting another religious faith,'⁵⁹ where "religious faith" includes any indigenous faith.⁶⁰ The Gujarat law defines 'convert' as 'to make one person to renounce one religion and adopt another religion.'⁶¹

The laws all define 'force' as including 'a threat of injury of any kind including the threat of divine displeasure or social ex-communication.'⁶² The Madhya Pradesh, Gujarat, and Jharkhand laws define 'allurement' as the 'offer of any temptation in the form of (i) any gift or gratification either in cash or kind; (ii) grant of any material benefit, either monetary or otherwise.'⁶³ The others do not define 'allurement,' but instead define 'inducement' as 'the offer of any gift or gratification, either in cash or in kind or grant of any benefit either pecuniary or otherwise.'⁶⁴ 'Fraud' is defined as including 'misrepresentation or any fraudulent contrivance.'⁶⁵

⁵⁸ Orissa Freedom of Religion Act, *supra* note 57, art. 2(a); Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 2(b); Himachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(a); Jharkhand Freedom of Religion Act, *supra* note 57, art. 2(b).

⁵⁹ Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(b).

⁶⁰ *Id.* art. 2(h).

⁶¹ Gujarat Freedom of Religion Act, *supra* note 57, art. 2(b).

⁶² Orissa Freedom of Religion Act, *supra* note 57, art. 2(b); Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 2(b); Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(d); Gujarat Freedom of Religion Act, *supra* note 57, art. 2(c); Himachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(b); Jharkhand Freedom of Religion Act, *supra* note 57, art. 2(d).

⁶³ Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 2(a); Gujarat Freedom of Religion Act, *supra* note 57, art. 2(a); Jharkhand Freedom of Religion Act, *supra* note 57, art. 2(a).

⁶⁴ Himachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(d). The definition is slightly different in the Orissa and Arunachal Pradesh and Orissa laws. Orissa Freedom of Religion Act, *supra* note 57, art. 2(d); Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(f).

⁶⁵ Orissa Freedom of Religion Act, *supra* note 57, art. 2(c); Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 2(d); Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 2(e); Gujarat Freedom of Religion Act, *supra* note 57, art. 2(d); Himachal

Penalties for violating the prohibition on converting others in Orissa and Madhya Pradesh amount to one year's imprisonment and/or a fine of up to 5,000 rupees, extended to two years' imprisonment and/or 10,000 rupees if the converted person is a minor, a woman, or a person belonging to a Scheduled Caste or Scheduled Tribe.⁶⁶ The Chhattisgarh law was inherited from Madhya Pradesh when Chhattisgarh was formed from a part of Madhya Pradesh in 2000, and in 2006 an amendment passed—to stem the influence of Christian missionaries⁶⁷—that increased the punishment to up to three years' imprisonment and/or 20,000 rupees, with an increase to four years if a minor, woman, or person belonging to a Scheduled Caste or Scheduled Tribe is involved.⁶⁸ In Himachal Pradesh and Arunachal Pradesh the imprisonment may extend to two years, with a fine of 25,000 rupees in Himachal Pradesh⁶⁹ and 10,000 rupees in Arunachal Pradesh.⁷⁰ In Himachal Pradesh, the punishment may extend to three years and the fine to 50,000 rupees if a minor, a woman, or a person belonging to a Scheduled Caste or Scheduled Tribe is involved.⁷¹ Further, if a person is converted in violation of the law, he or she is considered not converted.⁷² In Gujarat and Jharkhand the base

Pradesh Freedom of Religion Act, *supra* note 57, art. 2(d); Jharkhand Freedom of Religion Act, *supra* note 57, art. 2(e).

⁶⁶ Orissa Freedom of Religion Act, *supra* note 57, art. 4; Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 4. Scheduled Castes and Scheduled Tribes are disadvantaged indigenous people groups recognized by the government. *Scheduled Castes and Scheduled Tribes*, United Nations in India, <http://in.one.un.org/task-teams/scheduled-castes-and-scheduled-tribes/> (last visited Apr. 7, 2018); *State wide list of Scheduled Castes updated up to 26-10-2017*, Ministry of Social Justice and Empowerment, <http://socialjustice.nic.in/UserView/index?mid=76750> (last visited Feb. 17, 2018).

⁶⁷ Indo Asian News Service, *Chhattisgarh passes anti-conversion bill*, Christian Persecution India Blog (Aug. 4, 2006), <http://christianpersecutionindia.blogspot.com/2006/08/chhattisgarh-passes-anti-conversion.html>.

⁶⁸ Chhattisgarh Freedom of Religion (Amendment) Act, Act 18 of 2006, art. 3 (2006) (India).

⁶⁹ Himachal Pradesh Freedom of Religion Act, *supra* note 57, art. 5.

⁷⁰ Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 4.

⁷¹ Himachal Pradesh Freedom of Religion Act, *supra* note 57, art. 5.

⁷² *Id.* art. 3.

imprisonment term is three years and the fine 50,000 rupees, with an increase to four years and 100,000 rupees if a minor, woman, or person belonging to a Scheduled Caste or Scheduled Tribe is involved.⁷³

In Madhya Pradesh and Arunachal Pradesh, anyone who takes part in converting a person, such as a priest, must inform the district official after the fact.⁷⁴ If he fails to report the conversion, he is subject to up to one year's imprisonment and/or a fine of up to 1,000 rupees.⁷⁵ In Chhattisgarh, a person involved in converting someone as a priest or as a direct or indirect participant in a conversion ceremony must report the details to the District Magistrate at least thirty days prior, and the District Magistrate has the power to permit or refuse the conversion.⁷⁶ The applicant has the right to appeal the decision.⁷⁷ If he does undergo conversion, he must notify the District Magistrate within a month of the ceremony.⁷⁸ If he participates in conversion despite being denied permission, he may receive up to three years' imprisonment and/or a fine of up to 20,000 rupees.⁷⁹ If he does not notify the District Magistrate within a month of the ceremony, he may receive up to one year's imprisonment and/or a fine of up to 10,000 rupees.⁸⁰ In Gujarat and Jharkhand, a person who converts from one religion to another needs permission from the District Magistrate before doing so.⁸¹ He must also report his conversion

⁷³ Gujarat Freedom of Religion Act, *supra* note 57, art. 5(1); Jharkhand Freedom of Religion Act, *supra* note 57, art. 4.

⁷⁴ Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 5(1); Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 5(1).

⁷⁵ Madhya Pradesh Freedom of Religion Act, *supra* note 57, art. 5(2); Arunachal Pradesh Freedom of Religion Act, *supra* note 57, art. 5(2).

⁷⁶ Chhattisgarh Freedom of Religion Act, *supra* note 57, art. 4.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Gujarat Freedom of Religion Act, *supra* note 57, art. 5(1); Jharkhand Freedom of Religion Act, *supra* note 57, art. 5(1).

to the District Magistrate after the fact.⁸² If he fails to comply with these provisions, he may receive a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees in the case of Gujarat⁸³ and up to 5,000 rupees in the case of Jharkhand.⁸⁴ The Orissa Freedom of Religion Rules of 1989 require reporting to the District Magistrate the date, time, and place of the conversion ceremony at least fifteen days prior.⁸⁵ The District Magistrate will notify the relevant Superintendent of Police, who will then notify the relevant police station and officer-in-charge, who will then determine if there is any local objection to the proposed conversion.⁸⁶ There is no indication of what happens if there is local objection. The District Magistrate will also report all proposals to the State Government.⁸⁷ If a person fails to report conversion ceremony details to the District Magistrate, he may receive a fine of 1,000 rupees.⁸⁸ In 2012, the High Court of Himachal Pradesh struck down the law's provision requiring advance notice while upholding the rest of the law.⁸⁹

3. Supreme Court Decision

The Supreme Court of India considered two states' anti-conversion laws in 1977 in *Rev. Stanislaus v. State of Madhya Pradesh and Orissa*.⁹⁰ The court upheld the laws as constitutional, stating that Article 25 of the Indian Constitution 'grants [] not the right to *convert* another person to one's own

⁸² Gujarat Freedom of Religion Act, *supra* note 57, art. 5(2); Jharkhand Freedom of Religion Act, *supra* note 57, art. 5(2).

⁸³ Gujarat Freedom of Religion Act, *supra* note 57, art. 5(3).

⁸⁴ Jharkhand Freedom of Religion Act, *supra* note 57, art. 5(3).

⁸⁵ Orissa Freedom of Religion Rules, § 5(1) (1989) (India).

⁸⁶ *Id.* § 5(3).

⁸⁷ *Id.* § 9.

⁸⁸ *Id.* § 8.

⁸⁹ John Dayal, *Court upholds anti-conversion law, knocks out major clause*, UCAN India (Aug. 31, 2012, 8:26 AM), <http://www.ucanindia.in/news/court-upholds-anti-conversion-law-knocks-out-major-clause/18945/daily>.

⁹⁰ *Rev. Stanislaus v. State of Madhya Pradesh & Orissa*, AIR. 1977 SC 908 (India).

religion, but [the right] to *transmit* or spread one's religion by an exposition of its tenets.⁹¹ It would be a violation of freedom of conscience, granted in Article 25(1) to allow a person to try to convert others. The court also cited the 'public order' exception in Article 25 as a justification for limiting religious freedom.⁹²

4. Analysis

India's anti-conversion laws are clearly without basis. First, there is little evidence for the unstated but obvious premise of the laws—that Muslims and Christians are forcibly converting the poor and disadvantaged away from Hinduism. The laws do not recognize that converts have any agency in their conversions; all conversions away from Hinduism are presumed problematic and open to investigation.

Second, the laws are overly broad, given the lack of detailed definitions, particularly of the terms under which conversions are not allowed, including 'force,' 'allurement,' 'inducement,' and 'fraud.' The ICCPR recognizes in article 19 the freedom to express one's beliefs, and in combination with article 18's guarantee of freedom of religion, people must be allowed to share their religious beliefs. The anti-conversion laws aim to criminalize a wide range of speech by those sharing their religious beliefs with others, whether they hope their listeners convert or not; this has a chilling effect on religious speech, as evidenced in the enforcement discussion below. Praying for healing of a sickness or offering help in the form of food or water after a natural disaster could be considered allurement or inducement, making the charitable activities of religious groups—often essential components of their faith—criminal.

The ICCPR also recognizes in article 18 that nothing may restrict the freedom to have or adopt a certain belief or religion—the *forum*

⁹¹ *Id.* (emphasis added).

⁹² *Id.*

internum—but these laws are designed to restrict this very choice. The Human Rights Committee made clear in General Comment No. 22 that no one should be compelled to reveal the religion to which he adheres.⁹³ The requirement in some states that a person planning to convert must apply for permission from a magistrate subjects the intended convert to the will of an official who is likely under pressure from extremists to prevent conversion from Hinduism but to ignore mass conversions to Hinduism. Even having only to notify rather than request permission from a magistrate in advance of conversion may deter potential converts, especially if the magistrate is unfavorable to the conversion. Magistrates may pass on the names of potential converts to extremists, who then may intimidate the potential convert to prevent conversion.

These laws also target people traditionally viewed as ‘weak’: women, Scheduled Tribes, and Scheduled Castes. One scholar notes,

Conversion laws [. . .] construct women, Scheduled Tribes, and Scheduled Castes as victims, and construct converts (particularly group converts) as passive dupes of the machinations of active converters. Such language reduces the convert to a victim—particularly converts from groups seen as vulnerable, commonly referred to as the “weaker sections” in Indian society. These laws perpetuate a longstanding tendency to see converts or potential converts as victims.⁹⁴

Furthermore, Indian lawyers and social scientists say that India already has criminal law in place to prevent force in conversions, such as a provision on criminal intimidation in the penal code.⁹⁵

⁹³ HRC, General Comment No. 22, *supra* note 14, ¶ 3.

⁹⁴ Laura Dudley Jenkins, *Legal limits on religious conversion in India*, 71 LAW & CONTEMP. PROBS. 109, 124 (2008).

⁹⁵ Shanoor Seervai, *The Arguments For and Against a National Anti-Conversion Law*, Wall St. J. (Jan. 9, 2015), <http://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-and-against-a-national-anti-conversion-law/>.

Asma Jahangir, United Nations Special Rapporteur on freedom of religion or belief from 2004 to 2010, visited India in 2008 and reported on state anti-conversion laws.⁹⁶ Her report recognizes the laws were targeted at Christians and Muslims⁹⁷ and notes that ‘they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions.’⁹⁸ It laments that provisions requiring advance notice to or permission granted by the government are ‘unduly onerous’ and that ‘state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual’s belief.’⁹⁹ Jahangir emphasizes that only the alleged victim should be able to lodge complaints.¹⁰⁰

5. Enforcement

Several people have been arrested recently for violating anti-conversion laws, especially in Madhya Pradesh, where, according to the president of the Global Council of Indian Christians, ‘the absolute lack of political will to control the most dangerous elements encourages the Hindu fundamentalists to harass and intimidate the vulnerable Christian community.’¹⁰¹ In March 2015, police arrested five people for participating

⁹⁶Asma Jahangir (Special Rapporteur on freedom of religion or belief), *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Mission to India*, U.N. Doc. A/HRC/10/8/Add.3 (Jan. 26, 2009).

⁹⁷ *Id.* ¶ 47.

⁹⁸ *Id.* ¶ 48.

⁹⁹ *Id.* ¶ 49.

¹⁰⁰ *Id.*

¹⁰¹ Nirmala Carvalho, *Madhya Pradesh: government ‘encourages’ radical Hindus to persecute Christians*, ASIANEWS.IT (July 31, 2014), <http://www.asianews.it/news-en/Madhya-Pradesh:-government-encourages-radical-Hindus-to-persecute-Christians-31772.html>.

in villagers' conversions to Christianity.¹⁰² Right-wing activists, who protested outside a village house where Christians were praying, demanded the police arrest them.¹⁰³ In October 2015, police arrested three Pentecostal Christians who allegedly offered Hindus money to convert.¹⁰⁴ In January 2016, police arrested and jailed twelve people, including a blind couple whose young child was with them.¹⁰⁵ The arrested people said they were not involved in conversion activities and that they did not consider themselves Christians, but that they were followers of Jesus and were celebrating a Hindu festival when Hindu activists protested and informed the police.¹⁰⁶ A pastor said, 'There is tremendous pressure on us that we cannot go and meet our people in the villages,' and the representative of a local Christian group said that since the BJP took power in the state twelve years ago, the police and Hindu activists 'have been unleashing a reign of terror against minority groups, especially Christians.'¹⁰⁷

In April 2016, police and Hindu activists interrupted a wedding and arrested several people on allegations that the bride and groom were not Christians because they had never informed the authorities of their conversion from Hinduism.¹⁰⁸ In May 2016, police, accompanied by Hindu

¹⁰² *MP police books five under anti-conversion law*, INDIAN EXPRESS (Mar. 21, 2015, 3:04 AM), <http://indianexpress.com/article/india/india-others/mp-police-books-five-under-anti-conversion-law/>.

¹⁰³ *Id.*

¹⁰⁴ Nirmala Carvalho, *Madhya Pradesh, three Pentecostal Christians arrested for alleged forced conversions*, ASIANEWS.IT (Oct. 5, 2015), <http://www.asianews.it/news-en/Madhya-Pradesh,-three-Pentecostal-Christians-arrested-for-alleged-forced-conversions-35491.html>.

¹⁰⁵ *Blind couple among 12 arrested for 'conversion'*, MATTERS INDIA (Jan. 18, 2016, 11:41 PM), <http://mattersindia.com/2016/01/blind-couple-among-12-arrested-for-conversion/>.

¹⁰⁶ Saji Thoma, *India arrests 12 for violating anti-conversion law*, UCANEWS.COM (Jan. 18, 2016), <http://www.ucanews.com/news/india-arrests-12-for-violating-anti-conversion-law/74989>.

¹⁰⁷ *Id.*

¹⁰⁸ *Police, Hindu hardliners halt Christian church wedding in India over claims that bride was forcefully converted*, STRAITS TIMES (Apr. 28, 2016), <http://www.straitstimes.com/asia/south-asia/police-hindu-hardliners-halt-christian-church-wedding-in-india-over-claims-that>.

extremists, arrested three evangelical Christians after villagers alleged that they were promised jobs at the church after they converted to Christianity, and the Christians tore up images of Hindu gods.¹⁰⁹ In July 2016, police arrested a Pentecostal pastor and his Christian friend for forced conversions, which the men denied, and even though they were found tied to a tree after being beaten by Hindu radicals.¹¹⁰ In May 2017, police detained sixty Christian children en route to a summer camp and charged their chaperones with attempted conversion; later that month, the police charged two more chaperones of other children traveling to the same camp.¹¹¹ In October 2017, Madhya Pradesh police arrested Anita Joseph and Amrit Kumar for allegedly abducting children to Mumbai to forcibly convert them; the Christians say they were accompanying the children to a prayer meeting.¹¹² In December 2017, thirty-two Catholic seminarians faced charges of forcible conversion for singing Christmas carols and distributing Bibles; one priest remained in custody as of December 19.¹¹³

¹⁰⁹ Milind Ghatwai, *Satna church row: Pastor, wife held on conversion charge*, INDIAN EXPRESS (May 23, 2016), <http://indianexpress.com/article/india/india-news-india/satna-church-row-pastor-wife-held-on-conversion-charge-2814389/>.

¹¹⁰ Nirmala Carvalho, *Madhya Pradesh: abducted and beaten, two Christians are arrested by police for "forced conversions"*, ASIANEWS.IT (July 26, 2016), <http://www.asianews.it/news-en/Madhya-Pradesh:-abducted-and-beaten,-two-Christians-are-arrested-by-police-for-forced-conversions-38141.html>.

¹¹¹ *Nine booked for trying to convert 60 tribal children from Madhya Pradesh to Christianity*, NEW INDIAN EXPRESS (May 23, 2017), <http://www.newindianexpress.com/nation/2017/may/23/nine-booked-for-trying-to-convert-60-tribal-children-from-madhya-pradesh-to-christianity-1608140.html>.

¹¹² Nirmala Carvalho, *Two Christians arrested in Madhya Pradesh for 'forced conversions' of minors*, ASIANEWS.IT (Oct. 24, 2017), <http://www.asianews.it/news-en/Two-Christians-arrested-in-Madhya-Pradesh-for-%E2%80%9Cforced-conversions%E2%80%9D-of-minors-42137.html>.

¹¹³ News Release, ADF Int'l, 'We are afraid of Christmas' – Christians in India fear violence during holiday season (Dec. 19, 2017), <http://adfinternational.org/detailspages/press-release-details/we-are-afraid-of-christmas---christians-in-india-fear-violence-during-holiday-season>.

People have been arrested in other states for allegedly participating in forced conversions. For example, in May 2016, police in Chhattisgarh arrested a Christian for distributing Christian pamphlets and charged him with violating the Freedom of Religion Act.¹¹⁴ In January 2015, police in Uttar Pradesh arrested a Christian man on suspicion of participating in forced conversions through sharing Bibles and, despite not having any evidence that he used force, kept him in prison to preserve public order.¹¹⁵ During Christmas celebrations in 2014, police arrested several Christians in Orissa after thirty-five Hindu fundamentalists complained.¹¹⁶ In 2011, Orissa police arrested twelve Tribals for converting to Christianity without a permit.¹¹⁷ Hindu nationalists have also made accusations of forced conversions in Gujarat.¹¹⁸ In 2011, a Muslim man and an imam were jailed for participating in the marriage of that man to a woman who had not registered her conversion from Hinduism to Islam with the government.¹¹⁹ Even in states without anti-conversion laws, people have been arrested for converting others.¹²⁰ The Evangelical Fellowship of India reports detail

¹¹⁴ Nirmala Carvalho, *Chhattisgarh: Evangelical Christian arrested for handing out brochures on Gospel*, ASIANEWS.IT (May 11, 2016), <http://www.asianews.it/news-en/Chhattisgarh%3A-Evangelical-Christian-arrested-for-handing-out-brochures-on-Gospel-37469.html>.

¹¹⁵ Nirmala Carvalho, *Christian man detained on security grounds even though he did not commit any crimes*, ASIANEWS.IT (Jan. 8, 2015), <http://www.asianews.it/news-en/Christian-man-detained-on-security-grounds-even-though-he-did-not-commit-any-crimes-33130.html>.

¹¹⁶ Nirmala Carvalho, *Christmas in jail for Christians in Orissa and Madhya Pradesh*, ASIANEWS.IT (Dec. 29, 2014), <http://www.asianews.it/news-en/Christmas-in-jail-for-Christians-in-Orissa-and-Madhya-Pradesh-33059.html>.

¹¹⁷ Nirmala Carvalho, *Orissa: 12 Tribals arrested for converting to Christianity without an official permit*, ASIANEWS.IT (Mar. 29, 2011), <http://www.asianews.it/news-en/-Orissa:-12-Tribals-arrested-for-converting-to-Christianity-without-an-official-permit-21156.html>.

¹¹⁸ Nirmala Carvalho, *Gujarat, allegations of forced conversions of First Communion 32 children*, ASIANEWS.IT (Mar. 29, 2012), <http://www.asianews.it/news-en/Gujarat,-allegations-of-forced-conversions-of-First-Communion-32-children--24376.html>.

¹¹⁹ *Ahmedabad couple in trouble for religious conversion*, TIMES OF INDIA (Dec. 31, 2011), <http://timesofindia.indiatimes.com/city/ahmedabad/Ahmedabad-couple-in-trouble-for-religious-conversion/articleshow/11311471.cms>.

¹²⁰ *Indian evangelist suffers brain haemorrhage after police grilling*, *supra* note 1.

numerous cases of alleged forced conversions that resulted in violence against Christians.¹²¹

Despite the numerous arrests, allegedly fewer than a dozen people in all the states that have Freedom of Religion Acts have been prosecuted, and even fewer convicted.¹²² Nevertheless, the laws serve to chill the free exercise of religion, as radicals view them as a license to attack and persecute people from minority religions.¹²³ One estimate is that 'more than 75 percent of the acts of violence against Christians, averaging now about 1,000 a year, are under the guise of stopping fraudulent conversions in villages.'¹²⁴ People do not explore other religions or convert for fear of reprisals. The recent increase in arrests also suggests that enforcement may result in increased prosecutions and convictions.¹²⁵

The laws have done nothing to prevent mass conversion to Hinduism, revealing the underlying purpose of the laws: preventing people from leaving Hinduism. Hindu activists have created mass conversion camps where, they claim, they 'reconvert' hundreds of thousands of Christians and Muslims to Hinduism; some who are 'reconverted' claim

¹²¹ See EFI, 2015 REPORT, *supra* note 33; EFI, 2016 Report, *supra* note 33; *Persecution Watch January 2017*, EVANGELICAL FELLOWSHIP OF INDIA, <http://www.efionline.org/the-news/persecution/653-persecution-watch-january-2017> (last visited Feb. 23, 2018).

¹²² Dayal, *supra* note 89.

¹²³ See, e.g., Nirmala Carvalho, *Radical Hindus attack Christians singing Christmas carols*, ASIANEWS.IT (Dec. 17, 2014), <http://www.asianews.it/news-en/Radical-Hindus-attack-Christians-singing-Christmas-carols-32979.html>; Nirmala Carvalho, *Madhya Pradesh: Hindu radicals beat eight Christians, have them arrested*, ASIANEWS.IT (Nov. 7, 2014), <http://www.asianews.it/news-en/Madhya-Pradesh:-Hindu-radicals-beat-eight-Christians,-have-them-arrested-32636.html>; Nirmala Carvalho, *More violence in Chhattisgarh: 40 Hindu radicals attack a Christian community*, ASIANEWS.IT (Oct. 27, 2014), <http://www.asianews.it/news-en/More-violence-in-Chhattisgarh:-40-Hindu-radicals-attack-a-Christian-community-32531.html>; Nirmala Carvalho, *Chhattisgarh, Christians targeted by Hindu radicals: Out by August or pay dearly*, ASIANEWS.IT (July 17, 2014), <http://www.asianews.it/news-en/Chhattisgarh,-Christians-targeted-by-Hindu-radicals:-Out-by-August-or-pay-dearly-31645.html>.

¹²⁴ Dayal, *supra* note 89.

¹²⁵ Jenkins, *supra* note 94, at 123-24.

they were threatened to do so.¹²⁶ Vishwa Hindu Parishad, or the World Hindu Council, claims it has converted 500,000 Christians and 250,000 Muslims to Hinduism, which Christian leaders believe must be inflated, but which they nevertheless want the government to investigate.¹²⁷ Nationalist group RSS claims it has converted thousands of Muslims and Christians and has taken over sixty unused Christian churches in one state alone.¹²⁸ In one Christian church, which they turned into a Hindu temple, RSS members converted seventy Tribals back to Hinduism, which the radicals explained as not a conversion but a recognition of wrongdoing and a "homecoming."¹²⁹ Human rights groups believe Hindus are using coercion to convert poor religious minorities back to Hinduism.¹³⁰ Dharam Jagram Samiti, or the Religious Awakening Committee, of the RSS has raised funds specifically to convert Christians,

¹²⁶ Shashank Bengali & Parth M.N., *Hindu activists organize mass 'reconversion camps' in India*, L.A. TIMES (Dec. 25, 2014, 7:00 AM), <http://www.latimes.com/world/asia/la-fg-india-conversions-20141225-story.html>.

¹²⁷ *Church leaders debunk Hindu group's claims*, UCANEWS.COM (Jan. 15, 2016), <http://www.ucanews.com/news/church-leaders-debunk-hindu-groups-claims/74976>.

¹²⁸ Ishita Mishral, *RSS 're-converts' 200 Agra Muslims, says more in line*, TIMES OF INDIA (Dec. 9, 2014), <http://timesofindia.indiatimes.com/city/agra/RSS-re-converts-200-Agra-Muslims-says-more-in-line/articleshow/45419338.cms>.

¹²⁹ Nirmala Carvalho, *Uttar Pradesh: Hindu radicals "reconvert" Christians turn church into a temple dedicated to Shiva*, ASIANEWS.IT (Aug. 28, 2014), <http://www.asianews.it/news-en/Uttar-Pradesh:-Hindu-radicals-reconvert-Christians-turn-church-into-a-temple-dedicated-to-Shiva-32005.html>; see also Nirmala Carvalho, *Uttar Pradesh: 310 Christians reconverted to Hinduism with threats*, ASIANEWS.IT (Oct. 28, 2014), <http://www.asianews.it/news-en/Uttar-Pradesh:-310-Christians-reconverted-to-Hinduism-with-threats-32541.html>; Nirmala Carvalho, *Uttar Pradesh, Hindu radicals "reconvert" 23 Christians*, ASIANEWS.IT (Sept. 10, 2014), <http://www.asianews.it/news-en/Uttar-Pradesh,-Hindu-radicals-reconvert-23-Christians-32110.html>.

¹³⁰ Jason Burke, *India investigates reports of mass 'reconversion' of Christians*, GUARDIAN (Jan. 29, 2015), <https://www.theguardian.com/world/2015/jan/29/india-mass-reconversion-christians-hinduism>.

who cost 200,000 rupees each to convert, and Muslims, at 500,000 rupees each, to Hinduism.¹³¹ Its goal was to convert them on Christmas Day.¹³²

Even in states where one can apply to convert, the government does not grant permission freely. In Gujarat, the state government received 1,838 applications to convert over a five-year period, 94.4 per cent of which were from Hindus requesting to convert to another religion.¹³³ The government approved only 878 of the applications, or 47.8 per cent. However, some experts believe the government has not properly recorded all the applications, and that many more have applied to convert.¹³⁴

B. Nepal

1. Background

Nepal is predominantly Hindu: 81.3 per cent of Nepal's 29 million people are Hindu, 9 per cent Buddhist, 4.4 per cent Muslim, and 1.4 per cent Christian.¹³⁵ Nepal was officially a Hindu state until 2008, when the monarchy was abolished.¹³⁶ The Constitution, adopted on 20 September

¹³¹ Nirmala Carvalho, *Hindu radicals raise funds to pay for "re-conversions" to Hinduism*, ASIANEWS.IT (Dec. 12, 2014), <http://www.asianews.it/news-en/Hindu-radicals-raise-funds-to-pay-for-re-conversions-to-Hinduism-32939.html>.

¹³² *Id.* See also Nirmala Carvalho, *The Christmas of Hindu radicals: We will reconvert 5,000 Christian and Muslim families*, ASIANEWS.IT (Dec. 10, 2014), <http://www.asianews.it/news-en/The-Christmas-of-Hindu-radicals:-We-will-reconvert-5,000-Christian-and-Muslim-families-32917.html>.

¹³³ *In Gujarat, 94.4% of those seeking to convert are Hindu*, TIMES OF INDIA (Mar. 16, 2016), <http://timesofindia.indiatimes.com/city/ahmedabad/In-Gujarat-94-4-of-those-seeking-to-convert-are-Hindu/articleshow/51419977.cms>.

¹³⁴ *Id.*

¹³⁵ U.S. STATE DEP'T, NEPAL 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2017), <https://www.state.gov/documents/organization/269182.pdf> [hereinafter NEPAL 2016 RELIGIOUS FREEDOM REPORT].

¹³⁶ Harry Farley, *Christians under threat in Nepal as anti-conversion law passed*, Christian Today (Sept. 21, 2015), <http://www.christiantoday.com/article/christians.under.threat.in.nepal.as.anti.conversion.law.passed/65366.htm>.

2015, declares that Nepal is a secular state.¹³⁷ However, Christians and other religious minorities fear the increasing influence of nationalist Hinduism,¹³⁸ and there are efforts within the country to restore Hinduism as the official state religion.¹³⁹ Christians are often unable to bury their dead because the government refuses to grant permits to build Christian cemeteries.¹⁴⁰ In 2014, a Christian pastor was released from prison after two years for slaughtering a cow, an act that some Hindus claim is linked to conversion.¹⁴¹

2. Anti-Conversion Laws

The Constitution enshrines an anti-conversion provision in the section on a so-called 'right' to freedom of religion. While the Constitution guarantees each person the right to 'have the freedom to profess, practice and protect his or her religion according to his or her conviction,'¹⁴² the right is gutted by various exceptions:

¹³⁷ Nepal Const. art. 4 (2015).

¹³⁸ See, e.g., Janelle P., *Is Nepal on its way to becoming a Hindu nation again?*, Open Doors (Aug. 7, 2015), <https://www.opendoorsusa.org/takeaction/pray/tag-prayer-updates-post/is-nepal-on-its-way-to-becoming-a-hindu-nation-again/>; *Nepal's long-delayed transition to democracy worries its Christians*, World Watch Monitor (Apr. 27, 2015), <https://www.worldwatchmonitor.org/2015/04/3826342/>.

¹³⁹ See, e.g., Pragati Shahi, *Drive to make Nepal a Hindu state worries minorities*, UCANews.com (Mar. 30, 2016), <http://www.ucanews.com/news/drive-to-make-nepal-a-hindu-state-worries-minorities/75618>.

¹⁴⁰ NEPAL 2016 RELIGIOUS FREEDOM REPORT, *supra* note 135, at 7; Kalpit Parajuli, *Kathmandu: Christians have no right to a cemetery*, AsiaNews.it (Sept. 3, 2013), <http://www.asianews.it/news-en/Kathmandu-Christians-have-no-right-to-a-cemetery-28912.html>; Sudeshna Sarkar, *Nepal Christians Begin Legal Battle for Burial Ground*, World Watch Monitor (Apr. 20, 2011), https://www.worldwatchmonitor.org/2011/04-April/article_111159.html; Sudeshna Sarkar, *Nepal Christians Fight for Burial Rights*, World Watch Monitor (Jan. 25, 2011), <https://www.worldwatchmonitor.org/2011/01-January/31797/>.

¹⁴¹ *Nepali pastor leaves prison after 2 years for killing a cow*, World Watch Monitor (Aug. 29, 2014), https://www.worldwatchmonitor.org/2014/08/article_3324753.html/.

¹⁴² NEPAL CONST. art. 26(1).

No person shall, in the exercise of the right conferred by this Article, do, or cause to be done, any act which may be contrary to public health, decency and morality or breach public peace, or convert another person from one religion to another or any act or conduct that may jeopardize other's religion.¹⁴³

Part 4, Chapter 19, Number 1.512 of the General Code, which is Nepal's criminal code, states,

No one shall propagate any religion in such manner as to undermine the religion of other nor shall cause other to convert his or her religion. If a person attempts to do such act, the person shall be liable to imprisonment for a term of Three years, and if a person has already caused the conversion of other's religion, the person shall be liable to imprisonment for a term of Six years, and if such person is a foreign national, he or she shall also be deported from Nepal after the service of punishment by him or her.¹⁴⁴

The advocacy group Christian Solidarity Worldwide reported that on 8 August 2017, the Parliament passed a bill criminalizing religious conversions.¹⁴⁵ The president signed the bill into law on 16 October.¹⁴⁶ An imperfect translation of Criminal Code 2074, Section 9, Clause 158 reads:

(1) No one should involve or encourage in conversion of religion.

(2) No one should convert a person from one religion to another religion or profess them own religion and belief with similar intention by using or not using any means of attraction and by

¹⁴³ *Id.* art. 26(3).

¹⁴⁴ THE MULUKI AIN (GENERAL CODE) 4.19.1.512 (NEPAL).

¹⁴⁵ *NEPAL | Bill Criminalizes Religious Conversion*, CHRISTIAN SOLIDARITY WORLDWIDE (Aug. 22, 2017), <http://www.cswusa.org/filerequest/3802.pdf>.

¹⁴⁶ *Nepal president signs anticonversion bill into law*, CHRISTIAN SOLIDARITY WORLDWIDE (Oct. 20, 2017), <http://www.csw.org.uk/2017/10/20/press/3763/article.htm>.

disturbing religion or belief of any ethnic groups or community that being practiced since ancient times.

(3) If found guilty; there will be punishment of five years of imprisonment and penalty of fifty thousand rupees.

(4) If foreigners are found guilty; they will have to be deported within seven days after completing the imprisonment in third clause.¹⁴⁷

A June 2016 directive from the Ministry of Federal Affairs and Local Development told District Development Committees to refuse to register NGOs that preached or promoted conversion, resulting in difficulties for Christian groups seeking registration.¹⁴⁸

3. Analysis

The anti-conversion provision in the Constitution is broad. On its face, it seems to ban any conversion, at least to the extent that someone 'converts' another person, which could mean simply the encouragement of pastors or missionaries to consider the truth claims of a religion. Further, jeopardizing another person's religion could be understood as 'causing' that religion to lose adherents through conversion away from that religion, effectively banning all conversions. The provision also fails to recognize that religions themselves do not have rights; rather, individuals are rights-holders, and a fundamental right is the freedom to change one's religion.

The prohibition in the penal code on using 'any means of attraction' to 'convert' someone is also broad. 'Attraction' could include humanitarian relief and other charitable activities of religious people and organizations, as well as offers of prayer. Further, the provision's specific focus on not 'disturbing religion or belief of any ethnic groups or community that has

¹⁴⁷ Rhema Subedi, *Criminal Code 2074 Enacted by the President*, NEPALCHURCH.COM (Oct. 18, 2017), <http://nepalchurch.com/14432/criminal-code-2074-enacted-by-the-president/>.

¹⁴⁸ NEPAL 2016 RELIGIOUS FREEDOM REPORT, *supra* note 135, at 6.

been practiced since ancient times,' clearly intended to protect Hinduism, discriminates against anyone who is a member of one of these ethnic groups or communities and wants to convert away from his 'ancient' religion. CSW 'urge[d] the Nepali government to repeal this unjust law and amend Article 26 (3) of the constitution as they both curtail the right to freedom of religion or belief and undermine Nepal's commitments under international law, a contradiction made even more striking as Nepal assumes its seat on the Human Rights Council.'¹⁴⁹ Nepal is serving on the Human Rights Council, which is supposed to protect and promote freedom of religion and other human rights, from 2018 to 2020, and the Permanent Mission of Nepal to the United Nations released its press release the same day the president approved the anti-conversion provision in the penal code.¹⁵⁰

4. Enforcement

Nepal has already enforced anti-conversion provisions. In June 2016, authorities arrested a Christian woman who ran an orphanage on charges of converting the orphans and human trafficking.¹⁵¹ A Christian pastor was also arrested on conversion charges but was released after spending 25 days in jail.¹⁵² Nepal's first trial involving conversion charges took place in July 2016.¹⁵³ Eight Christian counselors, who were helping children in a

¹⁴⁹ *Nepal President signs anticonversion bill into law*, supra note 146.

¹⁵⁰ Press Release, Nepal's Election-United Nations Human Rights Council (HRC), Permanent Mission of Nepal to the U.N., Nepal's Election-United Nations Human Rights Council (HRC) (Oct. 16, 2017), https://www.un.int/nepal/statements_speeches/press-release-nepals-election-united-nations-human-rights-council-hrc.

¹⁵¹ *Nepalese Christian jailed over religious conversion*, UCANEWS.COM (July 22, 2016), <http://www.ucanews.com/news/nepalese-christian-jailed-over-religious-conversion/76652>.

¹⁵² *Id.*

¹⁵³ Vishal Arora, *UPDATE First religious freedom case under new Nepal constitution: all charges dropped*, WORLD WATCH MONITOR (Dec. 6, 2016), <https://www.worldwatchmonitor.org/2016/07/4559343/>. See also *Nepal Christians attacked while trying to help*, WORLD WATCH MONITOR (Aug. 18, 2016), <https://www.worldwatchmonitor.org/2016/08/4591743/>.

Christian school after a major 2015 earthquake, were arrested for sharing a pamphlet about Jesus with those children.¹⁵⁴ A judge dismissed the case in December 2016.¹⁵⁵ Nevertheless, a Christian missionary shared that the government told Christian orphanages and boarding schools that they would face serious consequences if they shared any Christian pamphlets with children.¹⁵⁶

C. Myanmar

1. Background

Myanmar is a secular country, but the 2008 Constitution ‘recognizes [the] special position of Buddhism as the faith professed by the great majority of the citizens of the Union.’¹⁵⁷ It also recognizes Christianity, Islam, Hinduism, and Animism as religions present in the country.¹⁵⁸ Religious strife has plagued Myanmar recently, led by strong Buddhist nationalist sentiments.

The 2014 census found that Myanmar has 51.4 million people, 87.9 per cent of whom are Buddhist, 6.2 per cent Christian, and 4.3 per cent Muslim.¹⁵⁹ The Myanmar government has instituted policies and carried out practices that impede the free exercise of faith. The Rohingya, a Muslim people who live primarily in Rakhine State, are severely persecuted and are denied citizenship.¹⁶⁰ Policies and practices also

¹⁵⁴ Arora, *UPDATE First religious freedom case under new Nepal constitution: all charges dropped*, *supra* note 153; *Nepal Christians attacked while trying to help*, *supra* note 153.

¹⁵⁵ Arora, *UPDATE First religious freedom case under new Nepal constitution: all charges dropped*, *supra* note 153.

¹⁵⁶ *Id.*

¹⁵⁷ MYAN. CONST. art. 361 (2008).

¹⁵⁸ *Id.* art. 362.

¹⁵⁹ San Yamin Aung, *Govt Publishes Data on Populations of Religious Groups*, IRAWADDY (July 21, 2016), <http://www.irawaddy.com/burma/govt-publishes-data-on-populations-of-religious-groups.html>.

¹⁶⁰ See, e.g., Susan Hayward & Matthew J. Walton, *Myanmar’s Religious Problem*, FOREIGN AFFAIRS (July 29, 2016), <https://www.foreignaffairs.com/articles/burma-myanmar/>

impact Christians, especially ethnic minorities.¹⁶¹ Myanmar is number twenty-four on the World Watch List.¹⁶² USCIRF considers Myanmar a Tier 1 Country of Particular Concern (CPC) 'due to systematic, egregious, and ongoing violations of freedom of religion or belief.'¹⁶³

2. Anti-Conversion Law

Under the powerful influence of the nationalist group of Buddhist monks, Ma Ba Tha, the Association for the Protection of Race and Religion, the Parliament passed four 'race and religion' laws in 2015, which then President Thein Sein signed into law.¹⁶⁴ The laws target Muslims but impact other religious minorities as well. The four laws allow officials to impose thirty-six-month birth spacing for the Rohingya and other targeted groups; outlaw polygamy; require any Buddhist woman who marries a non-Buddhist man to register the marriage with the government in advance; and regulate religious conversions.¹⁶⁵ Although the National

2016-07-29/myanmars-religious-problem; *Restless Myanmar state sees mass anti-Muslim protests*, INDIAN EXPRESS (July 3, 2016), <http://indianexpress.com/article/world/world-news/restless-myanmar-state-sees-mass-anti-muslim-protests-2891663/>; Austin Ramzy, *After Myanmar Election, Few Signs of a Better Life for Muslims*, N.Y. TIMES (Nov. 18, 2015), <http://www.nytimes.com/2015/11/19/world/asia/myanmar-election-rohingya-muslims.html>; *The Most Persecuted People on Earth?*, ECONOMIST (June 13, 2015), <http://www.economist.com/news/asia/21654124-myanmars-muslim-minority-have-been-attacked-impunity-stripped-vote-and-driven>.

¹⁶¹ See, e.g., USCIRF, 2017 ANNUAL REPORT, *supra* note 37, at 25-26; Meghan Fischer, ADF Int'l, Submission to the 23rd session of the Human Rights Council's Universal Periodic Review Working Group: Myanmar, http://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/adf_international_upr23_mmr_e_main.pdf; *Myanmar's Christian population grows to 6.2 per cent*, WORLD WATCH MONITOR (Aug. 3, 2016), <https://www.worldwatchmonitor.org/2016/08/4576673/>.

¹⁶² OPEN DOORS, WORLD WATCH LIST 2018, *supra* note 35, at 3.

¹⁶³ USCIRF, 2017 ANNUAL REPORT, *supra* note 37, at 22.

¹⁶⁴ Hnin Yadana Zaw, *Myanmar's president signs off on law seen as targeting Muslims*, REUTERS (Aug. 31, 2015), <http://www.reuters.com/article/us-myanmar-politics-idUSKCN0R011W20150831>.

¹⁶⁵ Michael Caster, *The Truth about Myanmar's New Discriminatory Laws*, DIPLOMAT (Aug. 26, 2015), <http://thediplomat.com/2015/08/the-truth-about-myanmars-new-discriminatory-laws/>.

League of Democracy displaced the military-backed Union Solidarity and Development Party with the historic free popular election of Aung San Suu Kyi in November 2015, the government under her leadership has not repealed the laws.¹⁶⁶

The preamble of the Law Concerning Religious Conversion highlights Article 34 of the Constitution of Myanmar, which recognizes religious freedom: 'Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution.'¹⁶⁷ At the same time, the preamble claims that transparency is needed to ensure the freedom to choose religion and convert. As such, the law lists several requirements for conversions, ostensibly to ensure the freedom to convert.

The law requires every township to create a registration board on religious conversions, comprised of certain individuals from the township religious affairs office, immigration department, administration department, and women's affairs federation, an education officer, and elders.¹⁶⁸ Anyone wanting to exercise the so-called right to convert¹⁶⁹ must be eighteen years of age or older¹⁷⁰ and must report personal information to the township registration board, including current religion and the religion to which he or she wants to convert, as well as the reason

¹⁶⁶ See, e.g., Fiona Macgregor & Thu Thu Aung, *New govt to defend 'race and religion' laws at UN meeting*, MYAN. TIMES (July 6, 2016), <http://www.mmtimes.com/index.php/national-news/21218-new-govt-to-defend-race-and-religion-laws-at-un-meeting.html>.

¹⁶⁷ MYAN. CONST. art. 34.

¹⁶⁸ Religious Conversion Bill (2015) art. 3, http://www.burmalibrary.org/docs21/2015-Religious_Conversion_Bill_2nd_Public_Draft-en.pdf. The final version in English, Law Concerning Religious Conversion, No. 48/2015, has not been published. This is the English version of the latest draft. The law in Burmese is available at http://www.burmalibrary.org/docs21/2015-08-26-Law_Concerning_Religious_Conversion-48-bu.pdf.

¹⁶⁹ *Id.* art. 4.

¹⁷⁰ *Id.* art. 5(a).

for wanting to convert.¹⁷¹ The registration board will then interview the applicant to determine whether he or she has made the decision to convert freely.¹⁷² At the time of the interview, the board must schedule a ninety-day period for the applicant to study the religion to which he or she wants to convert, including the religion's marriage and family laws and customs.¹⁷³ The board determines whether the applicant has been induced or under undue pressure to convert and has the authority to deny a conversion certificate.¹⁷⁴

The law also prohibits application 'for conversion to a new religion with the intent of insulting, degrading, destroying or misusing any religion.'¹⁷⁵ The associated penalty for this is up to two years' imprisonment and/or a fine of up to 200,000 Kyats (approximately \$160).¹⁷⁶ Likewise, compelling another person to convert 'through bonded debt, inducement, intimidation, undue influence or pressure' is prohibited¹⁷⁷ and will result in one year's imprisonment and/or a fine of up to 100,000 Kyats.¹⁷⁸ The law also forbids hindering or interfering with a person's desire to change his or her religion,¹⁷⁹ with a punishment of six months' imprisonment and/or a fine of up to 50,000 Kyats.¹⁸⁰ Anyone who violates the law more than once 'is liable to be punished again with the harshest sentences as stipulated under this law.'¹⁸¹

¹⁷¹ *Id.* art. 5(c).

¹⁷² *Id.* art. 7.

¹⁷³ *Id.*

¹⁷⁴ *Id.* art. 10(b).

¹⁷⁵ *Id.* art. 14.

¹⁷⁶ *Id.* art. 17. Ma Ba Tha, however, wanted a penalty of up to ten years' imprisonment. See Kyaw Phone Kyaw, *Religion activists call for tougher punishments on forced conversion*, MYAN. TIMES (June 2, 2014), <http://www.mmtimes.com/index.php/national-news/10545-religion-activists-call-for-tougher-punishments-on-forced-conversion.html>.

¹⁷⁷ Religious Conversion Bill (2015), *supra* note 168, art. 15.

¹⁷⁸ *Id.* art. 18.

¹⁷⁹ *Id.* art. 16.

¹⁸⁰ *Id.* art. 19.

¹⁸¹ *Id.* art. 20.

The law states, 'Religious conversion is not concerned with citizenship under this law,'¹⁸² an unclear provision that may mean the law does not apply to non-citizens. The Constitution does not grant religious freedom to non-citizens, including the Rohingya who have been in Myanmar for generations. After introducing, strongly advocating for, and celebrating the passage of this law,¹⁸³ nationalist Buddhist monks have held mass conversion ceremonies,¹⁸⁴ indicating the law does not police all religions but is only targeted at religious minorities.

3. Analysis

The four race and religion laws have been widely condemned by human rights advocates.¹⁸⁵ Given the current religious and ethnic tensions in Myanmar, the clear purpose of the conversion law and the other three in the package is to bolster Buddhism and harm minority religions, especially Islam. The law grants incredible power to the state to regulate personal religious affairs, which violates the right to privacy in article 17 of the ICCPR in addition to the right to freedom of religion. Township registration

¹⁸² *Id.* art. 25.

¹⁸³ Si Thu Lwin, 'Race and religion' law revellers hit Mandalay, MYAN. TIMES (Sept. 22, 2015), <http://www.mmtimes.com/index.php/national-news/16588-race-and-religion-law-revellers-hit-mandalay.html>; John Zaw, *Myanmar Buddhists celebrate religion laws as a 'victory'*, UCANEWS.COM (Sept. 22, 2015), <https://www.ucanews.com/news/myanmar-buddhists-celebrate-restrictive-religion-laws-as-a-victory/74304>.

¹⁸⁴ Khin Su Wai, *Residents critical of large-scale religious conversion in Meiktila*, MYAN. TIMES (May 24, 2016), <http://www.mmtimes.com/index.php/national-news/mandalay-upper-myanmar/20465-residents-critical-of-large-scale-religious-conversion-in-meiktila.html>.

¹⁸⁵ See, e.g., Caster, *supra* note 165; Press Release, USCIRF, BURMA: USCIRF Condemns Passage of Religious Conversion Bill (Aug. 24, 2015), <http://www.uscifr.gov/news-room/press-releases/burma-uscifr-condemns-passage-religious-conversion-bill>; *Burma: Discriminatory Laws Could Stoke Communal Tensions*, HUMAN RIGHTS WATCH (Aug. 23, 2015), <https://www.hrw.org/news/2015/08/23/burma-discriminatory-laws-could-stoke-communal-tensions>; *Myanmar: Parliament must reject discriminatory 'race and religion' laws*, AMNESTY INT'L (Mar. 3, 2015), <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>; Press Release, USCIRF, BURMA: USCIRF Strongly Condemns Race and Religion Bills (Jan. 22, 2015), <http://www.uscifr.gov/news-room/press-releases/burma-uscifr-strongly-condemns-race-and-religion-bills>; *Burma: Drop Draft Religion Law*, HUMAN RIGHTS WATCH (May 29, 2014, 5:55 PM), <https://www.hrw.org/news/2014/05/29/burma-drop-draft-religion-law>.

boards will likely be composed primarily of Buddhists with an interest in preserving Buddhism, and ethnic and religious minorities have no guarantee their rights will be respected. There is also no provision in the law allowing appeals.

The prohibition on converting with an intent to insult or degrade a religion fails to account for the fact that it is individuals, not religions, who have rights. Further, prohibitions on unduly influencing someone to convert and preventing someone from converting lack definitions and thus are overbroad. There are no criteria for how these determinations will be made and putting such discretion in the hands of likely biased registration boards poses serious threats to minorities. It is also clear the government has no intention of enforcing these prohibitions equally in all religious contexts.

Article 364 of the Constitution prohibits 'the abuse of religion for political purposes' and 'any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects.'¹⁸⁶ Given that the goal of Ma Ba Tha in introducing the religious conversion law was to promote Buddhism and stoke religious tensions, the law clearly violates the Constitution. However, the Constitution notes a significant exception to the granting of free exercise of religion, as it allows the government to 'enact[] law for the purpose of public welfare and reform'¹⁸⁷ and to 'assist and protect the religions its recognizes to its utmost.'¹⁸⁸

United Nations human rights experts spoke out strongly against the Myanmar anti-conversion bill in June 2014. Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief from 2010 to 2016, argued that 'State interferences into the right to change one's religion or belief are per se illegitimate and incompatible with international human rights

¹⁸⁶ MYAN. CONST. art. 364.

¹⁸⁷ *Id.* art. 360(b).

¹⁸⁸ *Id.* art. 363.

standards.¹⁸⁹ He highlighted the ludicrousness of the burden of meeting administrative requirements to convert. Rita Izsák, Special Rapporteur on minority issues, called on Myanmar 'not to create obstacles to the enjoyment of religious identity, minority rights, and the right of every individual to freely choose or to change their faith.'¹⁹⁰ Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee, who had been called a slur by one of the extremist Buddhist monks leading the charge to pass the race and religion laws,¹⁹¹ identified the draft bill as a 'signal [of] the risk of Myanmar going off-track on its path to being a responsible member of the international community that respects and protects human rights.'¹⁹²

D. Bhutan

1. Background

Bhutan is a landlocked country surrounded by China and India. The population, at 750,000 people, is 75 per cent Buddhist and 22 per cent Hindu.¹⁹³ Estimates of Christians range from 2,000 to 15,000.¹⁹⁴ It is a Buddhist kingdom and the king must be Buddhist.¹⁹⁵ The Constitution states that 'Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and

¹⁸⁹ *UN rights experts raise alarm on draft bill imposing restrictions to religious conversion in Myanmar*, OHCHR (June 20, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14988&LangID=E>.

¹⁹⁰ *Id.*

¹⁹¹ *U Wirathu defends 'whore' slur*, MYAN. TIMES (Jan. 21, 2015), <http://www.mmtimes.com/index.php/national-news/12855-u-wirathu-defends-whore-slur.html>.

¹⁹² *UN rights experts raise alarm on draft bill imposing restrictions to religious conversion in Myanmar*, *supra* note 189.

¹⁹³ U.S. STATE DEP'T, BHUTAN 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT 1 (2017), <https://www.state.gov/documents/organization/269172.pdf> [hereinafter BHUTAN 2016 RELIGIOUS FREEDOM REPORT]

¹⁹⁴ *Id.* at 1-2.

¹⁹⁵ Bhutan Const. art. 2.2 (2008).

tolerance.¹⁹⁶ It also says it is 'the responsibility of religious institutions and personalities to promote the spiritual heritage of the country while also ensuring that religion remains separate from politics in Bhutan. Religious institutions and personalities shall remain above politics.'¹⁹⁷

Government policies and practices generally favor Buddhism and discriminate against Christian groups.¹⁹⁸ Registration of religious organizations is required, but out of 96 registered organizations, one is Hindu and the rest are Buddhist.¹⁹⁹ No Christian groups are registered, despite their requests.²⁰⁰ Christians must worship in private and face pressure to participate in Buddhist traditions.²⁰¹ Bhutan is number thirty-three on the World Watch List.²⁰²

2. Anti-conversion law

Article 7.4 of Bhutan's Constitution, enacted in 2008, states, 'A Bhutanese citizen shall have the right to freedom of thought, conscience and religion. No person shall be compelled to belong to another faith by means of coercion or inducement.'²⁰³ Bhutan then amended its Penal Code in 2011, adding Section 463A, which states, 'A defendant shall be guilty of the offence of compelling others to belong to another faith if the defendant uses coercion or other forms of inducement to cause the conversion of a person from one religion or faith to another.'²⁰⁴ Section 463B makes

¹⁹⁶ *Id.* art. 3.1.

¹⁹⁷ *Id.* art. 3.3.

¹⁹⁸ BHUTAN 2016 RELIGIOUS FREEDOM REPORT, *supra* note 193, at 5; see also *Equal Rights for Christians in Bhutan Stalled*, Morning Star News (Dec. 6, 2012), <http://morningstarnews.org/2012/12/equal-rights-for-christians-in-bhutan-stalled/>.

¹⁹⁹ BHUTAN 2016 RELIGIOUS FREEDOM REPORT, *supra* note 193, at 5.

²⁰⁰ *Id.*

²⁰¹ *Equal Rights for Christians in Bhutan Stalled*, *supra* note 198.

²⁰² Open Doors, World Watch List 2018, *supra* note 35, at 3.

²⁰³ BHUTAN CONST. art. 7.4.

²⁰⁴ The Penal Code (Amendment) Act of Bhutan 2011 § 463A.

compelling others to convert a misdemeanor.²⁰⁵ Article 5(g) of the Religious Organizations Act of 2007 states that no religious organizations shall '[c]ompel any person to belong to another faith, by providing reward or inducement for a person to belong to another faith.'²⁰⁶ None of the laws provide any definitions of coercion or inducement.

3. Analysis

Bhutan's anti-conversion laws have the same problems as those laws in India, Nepal, and Myanmar. Due to the absence of definitions, minority religious groups risk punishment for religious teaching, charitable activities, and education, with major potential for arbitrary discrimination by the government.

E. Sri Lanka

1. Background

Although Sri Lanka's thirty-year civil war ended in 2009, religious and ethnic violence still persists, and the promotion of Buddhist supremacy has increased in recent years at the expense of religious minorities.²⁰⁷ The population of Sri Lanka, at 22.2 million people, is approximately 69 per cent Buddhist, 15 per cent Hindu, 8 per cent Muslim, and 8 per cent Christian.²⁰⁸ The Constitution affords special protection to Buddhism, giving it the 'foremost place,'²⁰⁹ and government policies and practices

²⁰⁵ *Id.* § 463B.

²⁰⁶ The Religious Organizations Act of Bhutan, art. 5(g) (2007).

²⁰⁷ See, e.g., Harry Farley, *New government, old story: The ongoing persecution of Christians in Sri Lanka*, CHRISTIAN POST (Apr. 12, 2016), <http://www.christiantoday.com/article/new.government.old.story.the.ongoing.persecution.against.christians.in.sri.lanka/83845.htm>; Rohini Mohan, *Sri Lanka's Violent Buddhists*, N.Y. TIMES (Jan. 2, 2015), <http://www.nytimes.com/2015/01/03/opinion/sri-lankas-violent-buddhists.html>.

²⁰⁸ U.S. STATE DEP'T, SRI LANKA 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2017), <https://www.state.gov/documents/organization/269186.pdf> [hereinafter SRI LANKA 2016 RELIGIOUS FREEDOM REPORT].

²⁰⁹ SRI LANKA CONST. art. 9 (1978).

increasingly favor Buddhism and discriminate against minority religions.²¹⁰ Christian groups have reported numerous attacks against Christians every year. The National Christian Evangelical Alliance of Sri Lanka recorded eighty-five incidents of violence against Christians or Christian churches and obstruction of religious services in 2016 and eighty-seven in 2015.²¹¹ The Buddhist Power Force, known locally as the Bodu Bala Sena, emphasizes Sinhalese Buddhist supremacy and speaks out against religious and ethnic minorities,²¹² calling for an anti-conversion law to stem alleged 'forced conversions' by Christians and a prohibition on missionary groups.²¹³ Sri Lanka is number forty-four on the World Watch List.²¹⁴

The Constitution guarantees every person 'freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice'²¹⁵ and to every citizen 'the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.'²¹⁶ However, the constitutionally guaranteed rights to freedom of speech and freedom of association are each subject to restrictions in law 'in the interests of racial and religious harmony,'²¹⁷ providing leeway for the government to curtail these rights to protect its own ideas of 'religious harmony.'

²¹⁰ See, e.g., US COMM'N INT'L REL. FREEDOM, ANNUAL REPORT 2015 202 (2015), <http://www.uscirf.gov/sites/default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf> [hereinafter USCIRF, 2015 ANNUAL REPORT].

²¹¹ SRI LANKA 2016 RELIGIOUS FREEDOM REPORT, *supra* note 208, at 1.

²¹² *Id.*

²¹³ USCIRF, 2015 ANNUAL REPORT, *supra* note 210, at 202.

²¹⁴ OPEN DOORS, WORLD WATCH LIST 2018, *supra* note 35, at 3.

²¹⁵ SRI LANKA CONST. art. 10.

²¹⁶ *Id.* art. 14.

²¹⁷ *Id.* arts. 15(2), 15(3).

2. *Anti-Conversion Bills*

Anti-conversion bills aimed at decreasing the influence of minority religions and at bolstering Sinhalese Buddhism have threatened religious freedom in Sri Lanka. The introduction of these bills was motivated by the evangelism of Christian groups providing medical and other assistance after the 2004 Indian Ocean tsunami; there were claims of alleged inducement to convert by gift-giving, such as food and medicine,²¹⁸ although such claims were difficult to substantiate.²¹⁹

Two pieces of legislation introduced in 2004 would have banned conversions, but neither became law. The first, proposed by Buddhist monks from the nationalist JHU party, would have banned conversions 'by use of force or allurement or by fraudulent means,' defined broadly.²²⁰ All converts would have had to report their conversions to the government.²²¹ Those convicted of wrongly converting others would have been subject to five years' imprisonment, or seven if the converted person were a woman, child, student, inmate, or law enforcement officer.²²² The President's cabinet introduced the second bill, which would have banned all religious conversions and forced the extradition of any foreigner involved in conversions in Sri Lanka.²²³

3. *Analysis*

In August 2004, the Supreme Court of Sri Lanka ruled unconstitutional two of the bill's clauses: the requirement that those who have converted report

²¹⁸ Asma Jahangir (Special Rapporteur on freedom of religion or belief), *Civil and Political Rights, Including the Religious Intolerance, Mission to Sri Lanka*, ¶¶ 43, 45, U.N. Doc. E/CN.4/2006/5/Add.3 (Dec. 12, 2005) [hereinafter Jahangir, *Sri Lanka report*].

²¹⁹ *Id.* ¶ 48.

²²⁰ Tracy Hresko, *Rights Rhetoric as an Instrument of Religious Oppression in Sri Lanka*, 29 B.C. INT'L & COMP. L. REV. 123, 127 (2006) (citing JHU Law art. 2).

²²¹ *Id.* (citing JHU Law art. 3(a)).

²²² *Id.* (citing JHU Law art. 4(a)).

²²³ *Id.* at 128 (citing Cabinet Law art. 7).

their conversions to the government, and the punishment for those who fail to report.²²⁴ The Court said that Parliament nevertheless could pass the law as-is with at least a two-thirds majority, with a subsequent referendum by the people of Sri Lanka.²²⁵ However, the Supreme Court did not rule on the criminalization of fraudulent conversions.²²⁶

Special Rapporteur Jahangir visited Sri Lanka in 2005 and her report addresses draft conversion laws.²²⁷ During her visit, Jahangir did not meet anyone who claimed to have been induced to convert even though alleged inducement was the basis for the introduction of the bills.²²⁸ Jahangir asserts in her report that someone who 'has converted after having received presents and inducements' may 'be impaired if he or she does not have the possibility to freely decide to convert to another religion, even after having received a gift.'²²⁹ She also expresses concern that the wording of the laws 'allows for too broad an interpretation,' that 'it is very difficult to assess the genuineness of a conversion,' and that '[a] mechanism designed to monitor conversions and thus the reasons and purposes behind them could constitute a limitation on freedom of conscience.'²³⁰ She laments that the vague wording of the draft laws could become 'a tool of persecution by those who are genuinely opposed to religious tolerance.'²³¹ Finally, because the draft laws allowed complaints by anyone, not just a victim, 'overzealous people [would] create further polarisation and [] generate an atmosphere of fear among

²²⁴ *Sri Lankan Supreme Court Rules Part of Anti-Conversion Bill Unconstitutional*, CHRISTIAN SOLIDARITY WORLDWIDE (Aug. 23, 2004), <http://www.csw.org.uk/2004/0823/press/366/article.htm>.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Jahangir, *Sri Lanka report*, *supra* note 218.

²²⁸ *Id.* ¶ 48.

²²⁹ *Id.* ¶ 73.

²³⁰ *Id.* ¶ 76.

²³¹ *Id.* ¶ 77.

religious minorities.²³² Sri Lanka ultimately decided not to pursue an anti-conversion law at the time.²³³

4. Another round of anti-conversion legislation

Sri Lanka again in 2009 introduced draft legislation ostensibly to ban forced conversions.²³⁴ However, the bill yet again was too broad. USCIRF attacked the bill, highlighting three major concerns. First, its terms were so broadly defined that it would 'ban[] the distribution of religious literature,' 'prohibit many charitable activities,' and ban the condemnation of any other religion during a discussion of one's own religion.²³⁵ USCIRF concluded, 'Should the bill become law, Sri Lankans rightly would be in fear of long prison terms and crippling financial penalties when they merely speak to others about their differing religious beliefs, exercising basic rights to freedom of expression.'²³⁶ Second, the bill would have allowed a more severe punishment if a woman had been the subject of a case, raising the imprisonment sentence from five years to seven.²³⁷ Third, it would have made 'hiring converts as clergy or employees of faith-based schools or hospitals a legally suspect act,' which 'could have [had] a chilling effect on freedom of religion.'²³⁸ The bill lapsed in 2010.²³⁹ Given

²³² *Id.* ¶ 78.

²³³ *Sri Lanka drops anti-conversion bill*, TAMIL GUARDIAN (Oct. 4, 2005), <http://tamilguardian.com/content/sri-lanka-drops-anti-conversion-bill?articleid=249>.

²³⁴ See, e.g., Melani Manel Perera, *Anti-conversion bill: minorities fear restrictions on religious freedom*, ASIANEWS.IT (Jan. 30, 2009), <http://www.asianews.it/news-en/Anti-conversion-bill:-minorities-fear-restrictions-on-religious-freedom-14360.html>.

²³⁵ Press Release, USCIRF, USCIRF Expresses Concern Over Broad Prohibitions in Sri Lankan Draft Law (Feb. 4, 2009), <http://www.uscirf.gov/news-room/press-releases/uscirf-expresses-concern-over-broad-prohibitions-in-sri-lankan-draft-law>.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Sri Lanka*, CHRISTIAN SOLIDARITY WORLDWIDE, http://www.csw.org.uk/our_work_profile_srilanka.htm (last visited Apr. 7, 2018).

the current trend toward increasing Buddhist extremism, it is possible that an anti-conversion bill will be introduced again.

F. Pakistan

1. Background

Pakistan, where 95 per cent of the 201.2 million people are Muslim, 75 percent of whom are Sunni,²⁴⁰ does not have a national anti-conversion law, but one expert asserts that blasphemy laws there, which forbid insulting the Quran or the Prophet Mohammed, similarly affect people wanting to convert.²⁴¹ The definition of 'insult' is not clear, and just one unverified accusation of blasphemy can result in an arrest.²⁴² The laws also serve as justification for vigilante justice against Shiite Muslims, Hindus, Christians, and other minorities.²⁴³ Pakistan is number five on the World Watch List.²⁴⁴ USCIRF considers Pakistan a Tier 1 Country of Particular Concern due to its blasphemy law, official policies of religious discrimination, and failure to protect religious minorities from terrorist organizations and individuals.²⁴⁵

²⁴⁰ U.S. STATE DEP'T, PAKISTAN 2016 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2017), <https://www.state.gov/documents/organization/269184.pdf>.

²⁴¹ Tehmina Arora, *The Spread of Anti-Conversion Laws from India: A threat to the religious freedom of minorities*, Lausanne Movement (2016), <https://www.lausanne.org/content/lga/2016-05/anti-conversion-laws-india>. The National Commission for Justice and Peace says that as of 2014 633 Muslims, 494 Ahmadis, 187 Christians, and 21 Hindus had been accused of blasphemy since 1987. *What are Pakistan's blasphemy laws?*, BBC (Nov. 6, 2014), <http://www.bbc.com/news/world-south-asia-12621225>.

²⁴² Jackie Northam, *Blasphemy Charges on the Rise in Pakistan*, NPR (Nov. 20, 2012), <http://www.npr.org/2012/11/20/165485239/blasphemy-charges-on-the-rise-in-pakistan>.

²⁴³ *Id.*

²⁴⁴ Open Doors, World Watch List 2018, *supra* note 35, at 2.

²⁴⁵ USCIRF, 2017 ANNUAL REPORT, *supra* note 37, at 60.

2. *Anti-conversion law*

In November 2016, the Sindh province passed a law criminalizing forced conversions to, according to the law, 'provide protection for those who are victims of this abhorrent practice,' which allegedly is common in this predominantly Muslim country.²⁴⁶ Forced conversions in Pakistan often entail abducting girls and women and forcing them to convert to Islam to be married; one estimate is that hundreds of Christian and Hindu girls are forcibly converted each year.²⁴⁷ The Sindh province has a large Hindu minority, and a Hindu legislator claimed the law 'will end the plight of minority Hindus, who will feel more protected now.'²⁴⁸ Muslims called for the repeal of the law, alleging that no forced conversions had occurred in Sindh.²⁴⁹

Under the law, those convicted of forcibly converting others receive a punishment from five years' imprisonment to a life sentence. Minors under the age of eighteen years are not allowed to change religions, and anyone who wants to convert has to wait for twenty-one days.

3. *Analysis*

Unlike in other countries with anti-conversion laws, the law was passed to protect minorities from forced conversion to the dominant religion rather

²⁴⁶ *Pakistan province criminalises 'forced conversions', forbids minors from changing religion*, INDIAN EXPRESS (Nov. 24, 2016, 9:57 PM), <http://indianexpress.com/article/world/world-news/pakistan-province-criminalises-forced-conversions-forbids-minors-from-changing-religion-4393556/>.

²⁴⁷ MOVEMENT FOR SOLIDARITY AND PEACE IN PAKISTAN (MSP), REPORT ON FORCED MARRIAGES & FORCED CONVERSIONS IN THE CHRISTIAN COMMUNITY OF PAKISTAN 2 (2014), http://d3n8a8pro7vhm.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP_Report__Forced_Marriages_and_Conversions_of_Christian_Women_in_Pakistan.pdf?1396724215 [hereinafter MSP, REPORT ON FORCED CONVERSIONS IN PAKISTAN].

²⁴⁸ *Pakistan province criminalises 'forced conversions', forbids minors from changing religion*, *supra* note 246.

²⁴⁹ *Govt asked to revoke anti-conversion bill*, DAWN (Dec. 3, 2016), <http://www.dawn.com/news/1300104/govt-asked-to-revoke-anti-conversion-bill>.

than protecting the dominant religion from encroachment by minority religions. There is substantial evidence that forced conversion to Islam is a problem in Pakistan,²⁵⁰ whereas in the other countries the evidence suggests that anti-conversion laws are used to prevent all conversions away from the majority religion.

The Sindh bill was met with serious resistance from Islamic hardliners, forcing the Sindh governor to send it back to the Assembly for revision.²⁵¹ If a revised act passes, there will likely be no clause prohibiting conversion of minors, effectively 'crippling' the law since the conversion of minor girls in forced marriages prompted the original law.²⁵²

²⁵⁰ See MSP, Report on Forced Conversions in Pakistan, *supra* note 247.

²⁵¹ Shailaja Neelakantan, *In Sindh, Islamic hardliners force return of progressive anti-conversion bill*, Times of India (Jan. 7, 2017), <http://timesofindia.indiatimes.com/world/pakistan/in-sindh-islamic-hardliners-force-return-of-progressive-anti-conversion-bill/articleshow/56388757.cms>.

²⁵² Veengas, *Bring Back Our Girls: Pakistan's Hindus Struggle Against Forced Conversions*, The Wire (Jan. 14, 2017), <https://thewire.in/99522/pakistan-minorities-girls/>; see also F.M. Shakil, *Forced conversions given seal of approval in Pakistan*, Asia Times (May 10, 2017), <http://www.atimes.com/article/forced-conversions-given-seal-approval-pakistan/>.

4) The International Response: What has the United Nations done and how can it improve?

Lawyers in countries with anti-conversion laws have expressed concern that their governments will not amend or repeal these laws without external pressure. The United Nations (UN) is particularly situated to combat anti-conversion laws and to promote freedom of religion, especially given that what the UN says and does impacts the domestic policies of Member States that are small, relatively poor, or developing. The UN, which was founded in the wake of World War II in 1945, outlines its four main purposes in its Charter, one of which is '[t]o achieve international co-operation [. . .] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion[.]'²⁵³ To that end, the UN and its organs can and should be an emphatic voice against anti-conversion laws, which so clearly disrespect human rights and fundamental freedoms. Several UN mechanisms have condemned such laws strongly, particularly those mechanisms led by independent human rights experts, such as Special Rapporteurs and human rights treaty bodies. At the same time, however, the UN is comprised of 193 Member States, some of whom have their own anti-conversion laws or other policies and practices that violate religious freedom. This explains why UN bodies led by Member States have done little to combat anti-conversion laws other than issue general and sometimes contradicting recommendations related to religious freedom.

Further, the UN and its mechanisms have lost legitimacy in the eyes of many Member States because of their increasing demand on States to guarantee non-core 'rights' derived from international human rights treaties. There is much disagreement among States as to whether these rights—identified by UN bodies and not by universal Member State consensus—exist, causing many States to ignore their recommendations.

²⁵³ U.N. Charter art. 1(3).

The trend toward broadly interpreting human rights obligations has caused many States to determine that their sovereignty to implement the policies and practices that accord with national customs, practices, and beliefs has been attacked. This trend has therefore done a great disservice to one of the purposes of the UN: to protect and promote universally agreed, fundamental human rights.

This section evaluates the responses of UN entities to anti-conversion laws and provides suggestions for improvement, primarily emphasizing that these entities return to a focus on protecting and promoting core human rights, among which is freedom of religion.

A. Human Rights Council Resolutions

The Human Rights Council, a subsidiary body of the UN General Assembly,²⁵⁴ is, as its name suggests, charged with promoting and protecting human rights and fundamental freedoms.²⁵⁵ The Council has State members who vote on resolutions, but it also has its own subsidiary entities that focus on human rights, such as special rapporteurs and the Universal Periodic Review, which are discussed in the following sections.

The General Assembly elects the forty-seven State members by majority vote to serve for staggered three-year terms.²⁵⁶ Often the GA is not able to choose among applicants, as there are not enough candidates within a regional bloc for there to be a competition.²⁵⁷ Thus, members are elected regardless of their qualifications with respect to the protection of human rights.

²⁵⁴ *Welcome to the Human Rights Council*, UNHRC, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (last visited Apr. 7, 2018).

²⁵⁵ G.A. Res. 60/251, ¶ 2, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

²⁵⁶ *Welcome to the Human Rights Council*, *supra* note 254.

²⁵⁷ *See Elections and Appointments*, GEN. ASSEMBLY OF THE U.N., <http://www.un.org/en/ga/68/meetings/elections/hrc.shtml> (last visited Apr. 7, 2018).

This means that Council membership includes known human rights violators. Through the end of 2017, one of the forty-seven members was India, the country whose anti-conversion laws have inspired other countries in the region to enact similar laws.²⁵⁸ Membership includes many other States that perpetuate abuses of the right to freedom of religion. While Council members are supposed to ‘uphold the highest standards in the promotion and protection of human rights,’²⁵⁹ current Council members Afghanistan, China, Egypt, Ethiopia, Iraq, Kenya, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Qatar, Saudi Arabia, and United Arab Emirates are on the 2018 World Watch List.²⁶⁰ Fourteen of forty-seven Council members are thus on the World Watch List. Members China, Nigeria, Pakistan, and Saudi Arabia are also classified Tier 1 CPCs by USCIRF for their violations of freedom of religion.²⁶¹ Tier 2 countries with current Council membership are Afghanistan, Cuba, Egypt, and Iraq.²⁶²

The Council has three regular sessions a year, during which it votes on resolutions related to thematic human rights issues, such as freedom of religion, and it also holds special sessions to address human rights situations in conflicts, such as in Syria.²⁶³ The Council is thus capable of

²⁵⁸ *Membership of the Human Rights Council, 1 January – 31 December 2017 by year when term expires*, OHCHR, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year2017.aspx> (last visited Apr. 7, 2018).

²⁵⁹ G.A. Res. 60/251, *supra* note 255, ¶ 9.

²⁶⁰ *Current Membership of the Human Rights Council, 1 January - 31 December 2018*, OHCHR, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx> (last visited Apr. 7, 2018) [hereinafter *OHCHR Current Membership*]; OPEN DOORS, WORLD WATCH LIST 2018, *supra* note 35, at 2-3.

²⁶¹ OHCHR Current Membership, *supra* note 260; Tier 1 Countries of Particular Concern, USCIRF, <http://www.uscifr.gov/all-countries/countries-of-particular-concern-tier-1> (last visited Apr. 7, 2018).

²⁶² *OHCHR Current Membership*, *supra* note 260; *Tier 2*, *supra* note 38.

²⁶³ *United Nations Human Rights Council Sessions*, OHCHR, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx> (last visited Apr. 7, 2018).

calling on countries to amend or repeal anti-conversion laws in its resolutions, although it does not do so.

There are three annual Council resolutions related to religion: 'Freedom of religion or belief'; 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief'; and 'Rights of persons belonging to national or ethnic, religious and linguistic minorities.' The most recent resolution on freedom of religion or belief reiterates 'the freedom to have or not to have, or to adopt, a religion or belief of one's choice' from the ICCPR, but adds 'the right to change one's religion or belief.'²⁶⁴ It makes reference to the problem of violations of the right to freedom of religion in law and in practice,²⁶⁵ as well as the failure of some constitutional and legislative systems,²⁶⁶ but does not identify specific types of laws, including restrictions on the ability to convert.

The most recent resolution on combating intolerance refers in its preamble to the freedom to choose one's religion, but does not elaborate on this freedom at any point.²⁶⁷ In fact, this resolution is put forward every year by Pakistan on behalf of the Organization of Islamic States (OIC), which is comprised of States that are decidedly opposed to granting people the ability to convert away from Islam.²⁶⁸ The EU-sponsored resolution on freedom of religion or belief is negotiated as a package with the OIC resolution, which is focused on 'hate speech,' although this term is not in the resolution. Negotiations are brief and the resolutions are

²⁶⁴ UNHRC Res. 37/L.20, Freedom of religion or belief, ¶ 1, U.N. Doc. A/HRC/37/L.20 (Mar. 16, 2018).

²⁶⁵ *Id.* ¶ 3(d).

²⁶⁶ *Id.* ¶ 3(e).

²⁶⁷ UNHRC Res. 37/L.17, Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, pmbi., U.N. Doc. A/HRC/37/L.17 (Mar. 16, 2018).

²⁶⁸ OIC Member States overwhelmingly have apostasy laws. See Theodorou, *supra* note 7.

adopted without a vote, as each side has agreed to accept the other side's resolution, even though they contain conflicting ideas.²⁶⁹

The 2016 resolution on minorities calls on States to '[r]eview[] any legislation, policy or practice that has a discriminatory or disproportionately negative effect on persons belonging to national or ethnic, religious and linguistic minorities, with a view to considering its amendment,'²⁷⁰ but does not elaborate.

Given the human rights crisis in Myanmar in the early 1990s, the Commission on Human Rights, the predecessor to the Council, began passing regular resolutions on the 'situation of human rights in Myanmar,'²⁷¹ which the Council has continued.²⁷² In 2015, the Council 'call[ed] upon the Government to ensure that any legislation on the protection of race and religion is [. . .] fully consistent with international human rights treaties to which Myanmar is a part'²⁷³ and '[e]xpresse[d] concern at the increase in nationalist-based intolerance of religious and ethnic minorities.'²⁷⁴ The Council's appeal to Myanmar's international human rights treaty obligations falls short because Myanmar is not a party to the ICCPR. In 2016, the Council 'urge[d] the Government of Myanmar to repeal discriminatory legislative and policy measures'²⁷⁵ and

²⁶⁹ For example, the OIC resolution hints that it should be easier for States to punish blasphemy. Michael De Dora, *Inside Look: UN Human Rights Council Resolutions on Freedom of Religion, Belief, and Expression*, CENTER FOR INQUIRY (Mar. 26, 2015), http://www.centerforinquiry.net/blogs/entry/inside_look_un_human_rights_council_resolutions_on_freedom_of_religion_comb/.

²⁷⁰ UNHRC Res. 31/13, Rights of persons belonging to national or ethnic, religious and linguistic minorities, ¶ 6(a), U.N. Doc. A/HRC/31/L.18 (Mar. 18, 2016).

²⁷¹ See Comm'n on Human Rights Myanmar resolution database, OHCHR, http://ap.ohchr.org/documents/dpage_e.aspx?b=1&c=125&t=11 (last visited Feb. 18, 2018).

²⁷² See UNHRC Myanmar resolution database, OHCHR, http://ap.ohchr.org/documents/dpage_e.aspx?b=10&c=125&t=11 (last visited Feb. 18, 2018).

²⁷³ UNHRC Res. 28/23, Situation of human rights in Myanmar, ¶ 8, U.N. Doc. A/HRC/RES/28/23 (Apr. 2, 2015).

²⁷⁴ *Id.* ¶ 9.

²⁷⁵ UNHRC Res. 31/24, Situation of human rights in Myanmar, ¶ 5, U.N. Doc. A/HRC/RES/31/24 (Apr. 20, 2016).

‘to address outstanding concerns, in particular regarding the right to freedom of religion or belief.’²⁷⁶ A 2018 resolution condemns ‘discriminatory provisions’ of the four race and religion laws, including the anti-conversion law²⁷⁷; however, it does not specify what is discriminatory.

1. Response

It is unrealistic to expect Council resolutions specifically to address anti-conversion, blasphemy, apostasy, or other such laws, so long as many of its Member States refuse to abolish these laws from their own legislative systems and attempt to prevent other States on the Council from voting for strong religious freedom protections. The nature of the UN as a union of the world’s countries and the Human Rights Council as a subset of those countries means that Member States with problematic human rights records will have influence on the content of resolutions. While structural reform of the Council is unlikely, accountability and transparency are possible and, more so, crucial. Powerful Member States have bullied other States to vote a certain way on controversial resolutions, and some have threatened to withhold foreign aid. Member States should be able to vote free from coercion.

At the very least, even without improvements to its operation, the Council must reiterate in its resolutions its support for freedom of religion as outlined in the ICCPR and UDHR while non-Member States and NGOs draw attention to the hypocrisy of including human rights violators on the Human Rights Council.

²⁷⁶ *Id.* ¶ 6.

²⁷⁷ UNHRC Res. 37/32, Situation of human rights in Myanmar, ¶ 6, U.N. Doc. A/HRC/RES/37/32 (Apr. 9, 2018).

B. Special Rapporteurs

A component of the Council are ‘special procedures,’ or ‘independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.’²⁷⁸ One of the special procedures is the Special Rapporteur on the freedom of religion or belief, whose task is ‘to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles.’²⁷⁹ The Special Rapporteur makes fact-finding country visits, submits annual reports to the Human Rights Council and General Assembly, and sends communications to countries that have infringed the free exercise of religion in specific instances.²⁸⁰ Special Rapporteurs have written specifically on anti-conversion laws and on issues related to religious conversion several times. They have unequivocally supported the freedom to change one’s religion, in line with the ICCPR and the 1981 Declaration.

Heiner Bielefeldt’s report on the right to convert, discussed above,²⁸¹ is the main UN document on the right to convert. Other Special Rapporteurs on the freedom of religion or belief have addressed anti-conversion laws as well. Jahangir, the Special Rapporteur from 2004 to 2010, devoted a section of her annual report to the General Assembly in 2005 to conversion.²⁸²

²⁷⁸ *Special procedures of the Human Rights Council*, OHCHR, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (last visited Apr. 7, 2018).

²⁷⁹ *Special Rapporteur on freedom of religion or belief*, OHCHR, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx> (last visited Apr. 7, 2018).

²⁸⁰ *Id.*

²⁸¹ *See supra* § II.

²⁸² Asma Jahangir (Special Rapporteur on freedom of religion or belief), *Elimination of all forms of religious tolerance*, ¶¶ 40-68, U.N. Doc. A/60/399 (Sept. 30, 2005).

As noted above, special rapporteurs have analyzed and condemned anti-conversion legislation in India,²⁸³ Myanmar,²⁸⁴ and Sri Lanka.²⁸⁵ Bielefeldt also briefly addressed the issue of conversion in Bangladesh following his visit in 2015, given that conversion there often results in social ostracism, and that the government restricts visas for co-religionists due to fears of religious conflict caused by missionary activities.²⁸⁶ His report emphasizes, “[T]hose who have converted or would like to convert always deserve respect for their decision as part of their freedom of religion or belief.”²⁸⁷ In his report on the rights of the child in the area of freedom of religion or belief, Bielefeldt addresses situations in which parents who convert away from ‘mainstream’ religions are separated from their children or forced to give up custody and calls on States to reform their practices in these areas.²⁸⁸

²⁸³ See *supra* notes 96-100 & accompanying text.

²⁸⁴ There is a special rapporteur devoted to human rights in Myanmar, mandated by a 1992 Commission on Human Rights resolution, so there is a special opportunity to emphasize repeatedly to the government that Myanmar’s anti-conversion legislation violates human rights. See Comm’n on Human Rights Res. 1992/58, Situation of human rights in Myanmar, U.N. Doc. E/CN.4/RES/1992/58 (Mar. 3, 1992). In 2015, the Special Rapporteur told Myanmar to “[r]eview and amend the Population Control Healthcare Act, the Women’s Special Marriage Law, the Monogamy Law and the Religious Conversion Law to ensure their compliance with international human rights standards. Pending this, safeguard against any discriminatory effects in the implementation of the new laws[.]” UNGA, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, ¶ 81(d), U.N. Doc. A/70/412 (Oct. 6, 2015) (prepared by Yanghee Lee). The special rapporteur “renew[ed] her call for their revision or repeal” in 2016. UNHRC, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, ¶ 33, U.N. Doc. A/HRC/31/71 (Mar. 18, 2016) (prepared by Yanghee Lee).

²⁸⁵ See *supra* notes 227-32 & accompanying text.

²⁸⁶ Heiner Bielefeldt (Special Rapporteur on freedom of religion or belief), *Elimination of all forms of religious intolerance*, ¶¶ 57-62, U.N. Doc. A/HRC/31/18/Add.2 (Jan. 22, 2016).

²⁸⁷ *Id.* ¶ 61.

²⁸⁸ Heiner Bielefeldt (Special Rapporteur on freedom of religion or belief), *Elimination of all forms of religious intolerance*, ¶¶ 13, 30, 62, 74, 79(l-n), U.N. Doc. A/70/286 (Aug. 5, 2015).

1. Response

Among UN entities, special rapporteurs on freedom of religion or belief have taken the lead on condemning anti-conversion laws. Given the increasing proliferation of anti-conversion legislation, the current Special Rapporteur, Ahmed Shaheed, must continue to focus on this problem.

Much of the work of special rapporteurs depends on country visits, during which they attempt 'to get an in-depth understanding of specific contexts and practices and to provide constructive feedback to the given country and report to the Council or the General Assembly.'²⁸⁹ They meet with government officials, representatives of religious communities, and NGOs to assess the status of freedom of religion in the country.²⁹⁰ Of the countries with anti-conversion laws, only India has a standing invitation for special rapporteurs to visit.²⁹¹ Some countries are hostile to the idea of allowing a special rapporteur direct access to evaluate their human rights records and thus refuse permission to visit, as is the case with Nepal's refusal to grant a visit to the Special Rapporteur on minority issues,²⁹² who is well-positioned to address the anti-conversion provision due to its impact on religious minorities.

Member States can and should have sovereignty, which means they are not obligated to allow special rapporteurs access to their countries, particularly when these rapporteurs visit in order to upbraid them for laws and policies that do not conflict with their core international human rights obligations, those specifically outlined in the UDHR and international human rights treaties. To maintain their legitimacy, special rapporteurs must focus on the core human rights that States have obligated themselves to protect and promote. They must also respect

²⁸⁹ *Freedom of religion country visits*, OHCHR, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/visits.aspx> (last visited Apr. 7, 2018).

²⁹⁰ *Id.*

²⁹¹ *Standing Invitations*, OHCHR, http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx (last visited Apr. 7, 2018).

²⁹² *Minorities country visits*, OHCHR, <http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/visits.aspx> (last visited Apr. 7, 2018).

States' rights to maintain diverse policies and practices that do not violate core human rights. To the extent that the Special Rapporteur on freedom of religion or belief respects State sovereignty but emphasizes that sovereignty does not permit States to renege on their fundamental commitment to guarantee freedom of religion, countries with a view to protecting religious freedom must put pressure on the refusing countries to accept and welcome visits of the Special Rapporteur on freedom of religion or belief, as has been done with Bhutan through the Universal Periodic Review, for example.²⁹³

C. Universal Periodic Review

The Universal Periodic Review (UPR) is also a mechanism of the Human Rights Council. When the General Assembly created the Council by resolution in 2006, it called on the Council to '[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.'²⁹⁴ Through the UPR mechanism, approximately every four years each State undergoes an official review, presenting its human rights record and in turn receiving recommendations from other States on areas for improvement. The State under review then accepts or rejects each recommendation, sometimes providing justification for its response.

The UPR website states, 'The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.'²⁹⁵ The UPR process thus provides States a platform to encourage other States to

²⁹³ See *infra* § IV.C.4.

²⁹⁴ G.A. Res. 60/251, ¶ 5(e), U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

²⁹⁵ *Universal Periodic Review*, OHCHR, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last visited Apr. 7, 2018).

improve their records on religious freedom. However, because States are able simply to 'note' or reject recommendations, the UPR allows States with poor human rights records to claim legitimacy by participating in the process, while also ignoring any recommendations with which they disagree.

The countries with anti-conversion laws have reacted accordingly. India, Nepal, Myanmar, and Bhutan have received recommendations to abolish their anti-conversion laws and/or to change their laws to guarantee religious freedom. All four countries have rejected specific recommendations to amend the anti-conversion laws, claiming that these laws in fact protect religious freedom.

1. India

The Holy See,²⁹⁶ the Netherlands,²⁹⁷ and Italy²⁹⁸ recommended to India in its third UPR session in 2017 that it abolish state anti-conversion laws. India rejected these recommendations,²⁹⁹ unsurprising given that its national report submitted prior to its UPR session states, 'India views anti-conversion laws as important safeguards against coercion and inducement to convert or reconvert from one religion to another in a multi-

²⁹⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review: India*, ¶ 161.126, U.N. Doc. A/HRC/36/10 (July 17, 2017) ("Strengthen efforts to guarantee freedom of religion and belief, especially by retracting so-called anti-conversion laws").

²⁹⁷ *Id.* ¶ 161.127 ("Take all necessary measures to protect the rights of persons belonging to religious minorities, and repeal laws which restrict religious conversion").

²⁹⁸ *Id.* ¶ 161.128 ("Abolish anti-conversion laws and grant access to justice to victims of religious violence and discrimination").

²⁹⁹ UNHRC, *Report of the Working Group on the Universal Periodic Review: India, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/36/10/Add.1 (Sept. 6, 2017).

religious society.³⁰⁰ Further, in its second UPR session it rejected all recommendations to amend or repeal anti-conversion legislation.³⁰¹

2. Nepal

Nepal's second UPR session occurred in 2015. Spain recommended to Nepal that it '[e]liminate the prohibition of conversion to another religion, which undermines freedom of religion.'³⁰² Nepal rejected this recommendation and argued, 'Every person is free to choose, adopt, profess or practice religious belief. However, proselytism by force or undue influence or inducement is prohibited. This does not undermine freedom of religion.'³⁰³ The U.S. also recommended, likely in reference in part to the anti-conversion provision of the Constitution, that Nepal 'strike provisions that appear to curtail religious freedoms.'³⁰⁴ Nepal responded that, on the contrary, the Constitution 'fully ensures religious freedom to all people [. . .]. Every person is free to choose, adopt, profess or practice religious belief.'³⁰⁵

3. Myanmar

In its second UPR session in November 2015, several countries made recommendations to Myanmar on the package of race and religion laws, which includes the ban on conversion. Myanmar accepted Japan's

³⁰⁰ UNHRC, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, ¶ 59, U.N. Doc. A/HRC/WG.6/27/IND/1 (Feb. 23, 2017).

³⁰¹ UNHRC, *Report of the Working Group on the Universal Periodic Review: India, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/21/10/Add.1 (Sept. 17, 2012); UNHRC, *Report of the Working Group on the Universal Periodic Review: India*, ¶¶ 138.49, 138.50, 138.123, 138.124, U.N. Doc. A/HRC/21/10 (July 9, 2012).

³⁰² UNHRC, *Report of the Working Group on the Universal Periodic Review: Nepal*, ¶ 124.16, U.N. Doc. A/HRC/31/9 (Dec. 23, 2015).

³⁰³ *Id.* ¶ 132.

³⁰⁴ *Id.* ¶ 124.7.

³⁰⁵ *Id.* ¶ 128.

recommendation that it '[e]nsure that the rights of women and ethnic minorities are not undermined as a result of the recently introduced set of Protection of Race and Religion laws.'³⁰⁶ The phrasing of the recommendation likely allowed Myanmar to accept the recommendation on the grounds that it believes that the laws do protect women and ethnic minorities. However, Myanmar explicitly rejected a recommendation that it simply '[r]eview the recently adopted "protection of race and religion" laws to ensure that they are line with Myanmar's human rights treaty obligations and that they adequately protect the rights of persons belonging to minority groups.'³⁰⁷ Likewise, it rejected several stronger calls to amend or repeal the laws.³⁰⁸

Myanmar accepted the Holy See's recommendation that it '[m]ake every effort to guarantee the right to religious conversion and to respect the freedom of religion, in particular, enabling religious practice.'³⁰⁹ Myanmar explained in its report preceding the UPR session, 'The purpose of the Religious Conversion Bill is to promote freedom of belief and to be systematic and transparent in any religious conversion in accordance with the Constitution and international norms and standards. Registration of conversion is voluntary and there is no penalty for those who do not wish to register for conversion.'³¹⁰ This ignores the fact that the law punishes those who register to convert 'with the intent of insulting, degrading, destroying or misusing any religion,' which is determined by a registration board that is likely to be biased against religious minorities.

³⁰⁶ UNHRC, Report of the Working Group on the Universal Periodic Review: Myanmar, ¶ 143.63, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).

³⁰⁷ Id. ¶ 145.17.

³⁰⁸ Id. ¶¶ 145.13-21.

³⁰⁹ Id. ¶ 143.96.

³¹⁰ UNHRC, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Myanmar, ¶ 147, U.N. Doc. A/HRC/WG.6/23/MMR/1 (Aug. 5, 2015).

4. Bhutan

In its second UPR session in 2014, no country specifically recommended that Bhutan repeal its constitution's anti-conversion provision, but some made general recommendations that implicated it. Sierra Leone told Bhutan to '[r]eview its laws and practices relating to religious groups to ensure that all persons, religious denominations and institutions feel free to associate and practice their religious beliefs.'³¹¹ The U.S. similarly told Bhutan to '[p]rotect religious freedom by allowing individuals to practise their religion freely, and provide religious organizations equal opportunities to obtain legal status.'³¹² Canada asked Bhutan to '[s]trengthen measures to ensure inclusion of and respect for the rights of all ethnic and religious communities.'³¹³ Bhutan responded to these three recommendations by asserting that Bhutanese citizens have the right to freedom of religion, which excludes compelling others to convert.³¹⁴ Section 463(A) was added to the penal code '(t)o protect majority of the population who are poor, uneducated and vulnerable to inducement and other coercion. . . . There has been no arrest or prosecution and conviction of any Bhutanese for embracing any religion of their free will.'³¹⁵ Bhutan's response did nothing to prove that its anti-conversion provision protects freedom of religion.

³¹¹ UNHRC, *Report of the Working Group on the Universal Periodic Review: Bhutan*, ¶ 120.44, U.N. Doc. A/HRC/27/8 (July 1, 2014) [hereinafter *Bhutan UPR Recommendations*].

³¹² *Id.*, ¶ 120.45.

³¹³ *Id.*, ¶ 120.51.

³¹⁴ UNHRC, *Report of the Working Group on the Universal Periodic Review: Bhutan, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 29, U.N. Doc. A/HRC/27/8/Add.1 (Sept. 17, 2014).

³¹⁵ *Id.*

Instead, France,³¹⁶ the Czech Republic,³¹⁷ the United Kingdom,³¹⁸ and Ireland³¹⁹ told Bhutan to accept the request of the Special Rapporteur on freedom of religion or belief to visit the country. Although Bhutan responded that it continued to receive special rapporteurs—with no mention of the special rapporteur on freedom of religion or belief—the Special Rapporteur on freedom of religion or belief never visited Bhutan.³²⁰

5. Response

States under review receive hundreds of recommendations. This allows countries that violate religious freedom to claim they are unable to implement all of the recommendations they receive. Further, many of the recommendations are not taken explicitly from international human rights treaties but rather from sweeping interpretations of those treaties.³²¹ By limiting recommendations to fundamental rights, offending States will be unable to avoid addressing their human rights violations by using the number of recommendations as an excuse. At the same time, more States should give recommendations on religious freedom violations, especially on anti-conversion laws. The above discussion highlights which States have recommended to India and the other violators that they abolish their anti-conversion laws; considering the number of States that do protect religious freedom, the number of States telling these violators to improve their religious freedom records is very small. These recommendations can be clearly grouped together under the heading of religious freedom so as to avoid the problem of having too many recommendations. At the very least, the UPR process can categorize

³¹⁶ *Bhutan UPR Recommendations*, *supra* note 311, ¶ 120.26.

³¹⁷ *Id.*, ¶ 120.27.

³¹⁸ *Id.*, ¶ 120.28.

³¹⁹ *Id.*, ¶ 120.29.

³²⁰ OHCHR, *Freedom of religion country visits*, *supra* note 289.

³²¹ See Meghan Grizzle Fischer, *The Rise of Faux Rights: How the UN went from recognizing inherent freedoms to creating its own rights*, ADF INT'L (2017), <https://adfinternational.org/resource/the-rise-of-faux-rights/> [hereinafter Fischer, *The Rise of Faux Rights*].

recommendations by priority and designate violations of fundamental rights as most important.

Nevertheless, it is not possible to force States to accept religious freedom recommendations or to agree to improve their human rights records, highlighting a flaw of the UPR: States' rejections of recommendations are the last word within the mechanism. This means that the UPR is not enough in itself to get the States to abolish their anti-conversion laws, although it is a necessary component. Pressure must come from all mechanisms within the United Nations and in States' individual dealings with each other, especially in the promise of foreign aid and in trade relationships.

D. Human Rights Treaty Bodies

Human rights treaty bodies monitor implementation of the human rights treaties and are separate from the work of the Council.³²² They interpret treaty obligations through documents called general comments or recommendations; these comments are non-binding. They are also responsible for telling States when their policies and practices violate treaty provisions through concluding observations, which are also non-binding. The Human Rights Committee is the body charged with monitoring implementation of the ICCPR, whose article 18 protects the right to freedom of religion and thus the right to convert. The HRC therefore is the treaty body most appropriate to condemn anti-conversion laws. However, it is limited to the extent that countries do not ratify the ICCPR. India, Nepal, Sri Lanka, and Pakistan are parties to the ICCPR; Myanmar and Bhutan are not,³²³ and thus are not investigated by the

³²² *Monitoring the core international human rights treaties*, OHCHR, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Apr. 7, 2018).

³²³ U.N. Treaty Collection, International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (last visited Apr. 7, 2018).

Committee. As noted above,³²⁴ in its General Comment No. 22 the HRC specifically recognizes article 18's recognition of the freedom to convert from one religion to another, and it also explains that coercion impairing this freedom, such as restricting access to basic services, is not allowed under article 18(2).³²⁵

The HRC's last concluding observations on India were in 1997 and do not mention AC laws.³²⁶ The HRC did not say anything about religion to Nepal in its 2014 concluding observations.³²⁷ Although the HRC expressed concern in 2014 about limitations on religious freedoms in Sri Lanka for minorities such as Muslims, Tamils, and Christians, it did not explicitly mention the anti-conversion bills that had been introduced in prior years.³²⁸ Bhutan and Myanmar are not parties to the ICCPR and therefore do not submit reports to the HRC.

Other treaty bodies have addressed the issue of conversion. CEDAW expressed concern that the passage of the anti-conversion bill and the other race and religion bills in Myanmar would 'discriminate against women and have a negative impact on the enjoyment of their rights under [CEDAW]'³²⁹ and told Myanmar to '[a]mend or repeal' them.³³⁰ The CRC evaluated Myanmar in 2012, before the passage of the anti-conversion bill, but suggested that the right of children to freedom of religion is not respected³³¹ and told Myanmar to 'cease placing children in

³²⁴ See *supra* § 2.

³²⁵ HRC, General Comment No. 22, *supra* note 14, ¶ 5.

³²⁶ HRC, *Concluding observations of the Human Rights Committee: India*, U.N. Doc. CCPR/C/79/Add.81 (Aug. 4, 1997).

³²⁷ HRC, *Concluding observations on the second periodic report of Nepal*, U.N. Doc. CCPR/C/NPL/CO/2 (Apr. 15, 2014).

³²⁸ HRC, *Concluding observations on the fifth periodic report of Sri Lanka*, ¶ 23, U.N. Doc. CCPR/C/LKA/CO/5 (Nov. 21, 2014).

³²⁹ CEDAW, *Concluding observations on the combined fifth and sixth reports of Myanmar*, ¶ 14(c) U.N. Doc. CEDAW/C/MMR/CO/4-5 (July 25, 2016).

³³⁰ *Id.* ¶ 15(b).

³³¹ CRC, *Concluding observations: Myanmar*, ¶ 45, U.N. Doc. CRC/C/MMR/CO/3-4 (Mar. 14, 2012).

Buddhist monasteries and converting them to Buddhism without their parents' knowledge or consent.³³²

Although it did not mention anti-conversion laws, the CRC expressed concern that the law in India 'does not allow children to choose a religion different from their parents.'³³³ When the CRC last addressed Bhutan, in 2008, it expressed concern that minority children were not able 'to profess and practice their own religion.'³³⁴

Both the CRC³³⁵ and CEDAW³³⁶ have highlighted the problem of forced conversions in Pakistan, with CEDAW telling Pakistan to 'conduct research on the extent of the phenomenon of abduction of girls for the purposes of forced conversion and forced marriages and develop a comprehensive strategy to address this phenomenon [. . .].'³³⁷

1. Response

Human rights treaty bodies, especially the Human Rights Committee, must continue to call on countries with anti-conversion laws to repeal them. At the same time, these bodies must focus exclusively on universally agreed, fundamental rights. It is common for treaty bodies to stray into promoting 'rights' they argue are derived from international human rights treaties,³³⁸ alienating many States and causing them to reject or ignore all treaty body recommendations. They must be committed solely to their mandates to ensure implementation of obligations enumerated in international human rights treaties. This will give them greater capacity to address religious freedom violations,

³³² *Id.* ¶ 46.

³³³ CRC, *Concluding observations on the combined third and fourth periodic reports of India*, ¶ 45, U.N. Doc. CRC/C/IND/CO/3-4 (July 7, 2014).

³³⁴ CRC, *Concluding observations: Bhutan*, ¶ 72, U.N. Doc. CRC/C/BTN/CO/2 (Oct. 8, 2008).

³³⁵ CRC, *Concluding observations on the fifth periodic report of Pakistan*, ¶ 30, U.N. Doc. CRC/C/PAK/CO/5 (July 11, 2016).

³³⁶ CEDAW, *Concluding observations on the fourth periodic report of Pakistan*, ¶¶ 37-38, U.N. Doc. CEDAW/C/PAK/CO/4 (Mar. 27, 2013).

³³⁷ *Id.* ¶ 38(d).

³³⁸ See Fischer, *The Rise of Faux Rights*, *supra* note 321.

including through investigating specific allegations of abuse, such as deterring or preventing religious conversions.

Furthermore, States that agree to ratify the ICCPR—including those that already have ratified it—deserve to be certain about what they are obligating themselves to follow. The growing trend on the part of the Human Rights Committee, special rapporteurs, and some Member States to interpret the ICCPR broadly and demand that States guarantee non-enumerated rights makes other States reluctant to agree to be bound by it or reluctant to consider any of the recommendations of these entities. These entities must commit themselves to faithful interpretations of the ICCPR, which will make States more willing to be bound by its requirement that States guarantee freedom of religion. Myanmar and Bhutan have not signed or ratified the ICCPR, and they are unlikely to do so with the continued push toward expansive readings of the treaty.

E. General Assembly

The General Assembly (GA), in which each of the 193 Member States has equal representation, is the main policymaking body of the UN.³³⁹ Like the Human Rights Council, the GA has three yearly resolutions related to religion, titled ‘Freedom of religion or belief’; ‘Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief’; and ‘Promotion of interreligious and intercultural dialogue, understanding and cooperation for peace’—and one every two years on ‘Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.’

The first two resolutions have language from their counterpart Council resolutions, although the GA resolutions are more detailed. The

³³⁹ *About the General Assembly*, UNGA, <http://www.un.org/en/ga/about/index.shtml> (last visited Apr. 7, 2018).

GA resolution on freedom of religion or belief often has strong and specific language that applies to anti-conversion laws, although it does not mention anti-conversion laws in particular. As in the Human Rights Council resolution, the GA resolution emphasizes ‘the right to change one’s religion or belief,’³⁴⁰ which is beyond the language of ICCPR. Likewise, the GA resolution ‘[e]xpresses deep concern at continued obstacles to the enjoyment of the right to freedom of religion or belief, as well as the increasing number of instances of intolerance, discrimination and violence based on religion or belief,’ such as:

(a) Acts of violence and intolerance directed against individuals based on their religion or belief, including religious persons and persons belonging to religious minorities and other communities in various parts of the world;

(b) The rise of religious extremism in various parts of the world that affects the human rights of individuals, including persons belonging to religious minorities;

[. . .]

(e) Instances, both in law and practice, that constitute violations of the human right to freedom of religion or belief, including of the individual right to publicly express one’s spiritual and religious beliefs, taking into account the relevant articles of the International Covenant on Civil and Political Rights, as well as other international instruments;

(f) Constitutional and legislative systems that fail to provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction[.]³⁴¹

³⁴⁰ G.A. Res. 72/177, Freedom of religion or belief, ¶ 1, U.N. Doc. A/RES/72/177 (Jan. 29, 2018).

³⁴¹ *Id.* ¶ 13.

Accordingly, the General Assembly calls on States

(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[;]

[...]

(e) To ensure that existing legislation is not implemented in a discriminatory manner or does not result in discrimination based on religion or belief[;]

(f) To review, whenever relevant, existing registration practices in order to ensure that such practices do not limit the right of all persons to manifest their religion or belief, either alone or in community with others and in public or private[.]³⁴²

The resolution also condemns Christianophobia in addition to Islamophobia and anti-Semitism,³⁴³ unlike in the Council resolution.

As in the Human Rights Council, the resolution on freedom of religion or belief is negotiated as a package with the OIC's resolution on combating intolerance, which can be understood as allowing States to quash blasphemy and other forms of religious speech and conduct.

1. Response

Just as the Human Rights Council has as members several countries that routinely violate religious freedom in law and in practice, the General Assembly does too—and on a much larger scale since in the GA all 193 Member States have an equal vote. However, this is an important design of the GA and of the UN more broadly; all States are on an equal footing, regardless of other factors such as wealth or size. The GA's failure to

³⁴² *Id.* ¶ 14.

³⁴³ *Id.* ¶ 4.

focus on specific religious freedom issues is a natural consequence of this structure. This means that the other mechanisms within the UN need to prioritize persuading all Member States to adhere to their core human rights obligations. States with anti-conversion laws will ignore UN bodies that push 'obligations' that are not grounded in international law. If these bodies emphasize enumerated core human rights obligations, these States will have no legitimate basis to ignore them. Further, just as States must be able to operate independently within the Human Rights Council, GA Member States should be able to vote without being coerced by dominant, wealthier States.

F. Office of the High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights (OHCHR), an office of the UN Secretariat, has 'a unique mandate from the international community to promote and protect all human rights.'³⁴⁴ Yet OHCHR has devoted few resources to promoting and protecting freedom of religion, including denouncing anti-conversion laws. The OHCHR website's page on its religious freedom activities indicate it 'supports' the work of the Special Rapporteur on freedom of religion or belief, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights, but it does not indicate it spearheads any work on religious freedom.³⁴⁵ At the same time, OHCHR has launched an initiative on promoting language on 'sexual orientation and gender identity' (SOGI),³⁴⁶ a term that does not appear in any international human rights treaty.

³⁴⁴ *Who We Are*, OHCHR, <http://ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (last visited Apr. 7, 2018).

³⁴⁵ *Combating discrimination based on religion or belief*, OHCHR, http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination_religious.aspx (last visited Apr. 7, 2018).

³⁴⁶ *Free & Equal*, OHCHR, <https://www.unfe.org/> (last visited Feb. 23, 2018).

1. Response

The OHCHR must give more attention to freedom of religion, a fundamental right explicitly recognized in the ICCPR. It should use its resources, including '1085 staff (as of 31 December 2013) based in Geneva, New York and in 13 country offices and 13 regional offices or centres around the world, as well as a workforce of 689 international human rights officers serving in UN peace missions or political offices,'³⁴⁷ to draw attention to religious freedom violations. States must hold OHCHR accountable, demanding transparency on how OHCHR spends its funds and considering withholding funds until it returns to its core obligations.

³⁴⁷ Who We Are, *supra* note 344.

5) Conclusion

The case is clear that anti-conversion laws, as formulated in India, Nepal, Myanmar, and Bhutan, violate basic human rights and international law. These laws discourage conversion from the majority religion to a minority religion and give license to extremists to perpetrate violence against minority religious communities under the guise of preventing forced conversions. They have done nothing to combat the real problem of forced conversions, evidenced by the mass conversions or re-conversions extremists from the majority religion have performed on the poor and uneducated through threats and force.

It is legislation like anti-conversion laws that the UN is designed to combat: these laws clearly violate international human rights law, which should give the UN sufficient reason to follow its mandate to promote and protect human rights, including the right to freedom of religion. Yet anti-conversion laws have spread in recent years. Some UN entities, in particular special rapporteurs, have highlighted the problems with anti-conversion laws, but other entities have failed to condemn them—emblematic of the UN's overall failure to protect religious freedom.³⁴⁸

The UN must begin taking seriously its responsibility to protect religious freedom. The Human Rights Council, whose very members are among the worst violators of human rights, needs to ensure that Member States can vote freely in favor of religious freedom. States giving recommendations in the Universal Periodic Review must emphatically urge countries with anti-conversion laws to amend or repeal those laws; the more pressure offending countries receive, the likelier they are to change course. Treaty bodies must step away from pestering States to accept controversial new rights and return to their core focus of fundamental rights, especially religious freedom. The UN cannot fulfill its role as promoter and protector of human rights until it prioritizes religious freedom.

³⁴⁸ See Meghan Grizzle Fischer, *The UN's Failure to Promote and Protect Religious Freedom*, ADF INT'L (2017), <https://adfinternational.org/resource/the-uns-failure-to-promote-and-protect-religious-freedom/>.



ADF INTERNATIONAL

ADF International is an alliance-building human rights organization that advocates for the right of people to freely live out their faith. With headquarters in Vienna, and offices in Brussels, Geneva, Strasbourg, London, New York City, Washington DC, and Mexico City, we are at the forefront of defending religious freedom, the sanctity of life, and marriage and family worldwide.

We operate at institutions of strategic international importance—the United Nations, the European Union, the Council of Europe, the Organization of Security and Cooperation in Europe, the European Court of Human Rights, and the Organization of American States—while also working alongside Member States to protect the fundamental values that these organizations were founded to uphold. ADF International's influence at these key institutions means we are instrumental in shaping policy around the world.

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