

1. Since the first Universal Period Review of Bhutan held at the 10th meeting of the Human Rights Council on 4 December 2009, Bhutan has made process as a new democratic republic securing for its citizens in greater measure the freedom of conscience, expression, religion and belief, association and the right to equality, life and information.
2. Article 7 of the Constitution of Bhutan recognizes, among others, the Fundamental Rights of Bhutanese citizens¹ as :
 - “2. A Bhutanese citizen shall have the **right to freedom of speech, opinion and expression.**
 3. A Bhutanese citizen shall have the **right to information.**
 4. 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.**
 12. A Bhutanese citizen shall have the **right to freedom of peaceful assembly and freedom of association, other than membership of associations that are harmful to the peace and unity of the country, and shall have the right not to be compelled to belong to any association.**
 15. **All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status.**
 19. A person **shall not be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence nor to unlawful attacks on the person’s honour and reputation.** (Emphasis supplied)
3. However, in spite of these constitutional protections and international commitments, Bhutan has enacted several laws which restrict the fundamental rights of its citizens, especially the freedom of association, right to equality, right to privacy and the freedom of religion and belief of individuals.

VIOLATION OF FREEDOM OF ASSOCIATION

4. In 2007, Bhutan enacted the Religious Organizations Act of 2007, the only legislation that provides a legal framework for the functioning of religious groups in the country. The main intent of the Act is to “benefit the religious institutions and protect the spiritual heritage of Bhutan.” The Preamble of the Act, states that “it is expedient to have a consolidated law and to provide for the registration and administration of the religious organizations to protect and preserve the spiritual heritage of Bhutan. The Act further provides a detailed framework for the registration of religious organizations and institutions.”²

¹ Article 3:22 states that “ *Notwithstanding the rights conferred by this Constitution, nothing in this Article shall prevent the State from subjecting reasonable restriction by law, when it concerns:*

(a) The interests of the sovereignty, security, unity and integrity of Bhutan; (b) The interests of peace, stability and well-being of the nation; (c) The interests of friendly relations with foreign States; (d) Incitement to an offence on the grounds of race, sex, language, religion or region; (e) The disclosure of information received in regard to the affairs of the State or in discharge of official duties; or (f) The rights and freedom of others.”

² Section 3 of the Act defines religious organizations as “*associations, societies, foundations, charitable trust, or other non-profit entities that do not distribute any income or profit to their members, founders, donors, directors or trustees and whose purpose and objectives are solely for the benefit of religious institutions and the spiritual heritage of Bhutan.*” The act also defines for “*the purpose of this Act “religious institutions” shall mean the Dratshang, Lhakhangs, Goendey, Shedra, Drubdeys, Gomdey, Hindu Mandirs or any other religious institutions as recognized by the Chhoedey Lhentshog established under this Act. Religious institution shall not include the Gedun Dratsang and the subsidiaries registered under it.”*

5. The effect of the legislation is that till date there is no official recognition for any churches or Christian communities in the country. Media reports quoted a pastor on the condition of anonymity as saying that local officials give the impression that Christian practice is illegal. Local authorities tell Christians that it is illegal to gather for worship on Sundays, and that they need permission from higher authority for such gatherings despite the constitutional guarantee to freedom of religion under Article 7.³ Furthermore, due to this discriminatory practice, religious groups other than Hindus and Buddhists, especially Christians, are unable to observe certain religious practices including observing traditional practices such as burying their dead in spite of making repeated requests to the government for the allotment of burial land.⁴
6. On April 11, 2004, three Protestant house churches in Sarpang district, southern Bhutan, were raided by police, following Easter Sunday services. While no arrests were made, the church members were warned to stop meeting together, and three pastors and one elder were asked to report daily to the local police station. Police told the Christians that the Bhutanese government viewed their meetings as “terrorist activities.” Catholic churches have also experienced increasing restrictions since the year 2000, when, according to Bishop Stephen Lepcha, the government outlawed “public non-Buddhist religious services, and imprisoned those who violate the law.”⁵
7. Christians in Bhutan are a tiny minority in a nation of approximately 737,765 people⁶. Though the exact number of Christians is unknown, commentators suggest that the Christian population stands at approximately 15,000 people. Christians in Bhutan are unable to freely profess, practice or propagate their religion due to legislative hurdles, in spite of several provisions in the country’s constitution which recognize and affirm basic human rights including the freedom of religion and belief.
8. That **restricting an association of persons from registering with state authorities merely on account of their religious beliefs before they can legally function is a violation of their constitutional rights and also international covenants.** Furthermore, by failing to recognize the right of individuals to form associations and to freely practice and share their religious beliefs is a violation of their most fundamental of human rights.

VIOLATION OF RIGHT TO EQUALITY

9. Article 3 of the Constitution of Bhutan outlines the Spiritual Heritage of the nation. It states that *“Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance”*.⁷ And that *“it shall be 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.”*⁸

³ <http://www.religiontoday.com/blog/equal-rights-for-christians-in-bhutan-stalled.html> last accessed on August 19, 2013 at 4:51 pm)

⁴ See <http://www.bhutannewsservice.com/main-news/bhutanese-christians-demand-cemetery/> (last accessed on August 19, 2013 at 4:51 pm)

⁵ At World Watch Monitor (http://www.worldwatchmonitor.org/2004/04-April/newsarticle_3024.html/) last accessed on August 19, 2013 at 4:38 pm.

⁶ This projection is based on the Population and Housing Census of Bhutan conducted on 31 May 2005 and assumes the growth rate of 1.8 percent per annum at the national level. available at <http://www.nsb.gov.bt/publication/publications.php?id=2>

⁷ Article 3:1

⁸ Article 3:3

10. Furthermore, several provisions of the Religious Organizations Act of 2007 suggest that religious organizations and institutions will promote the spiritual heritage of the country and the Act thereby seeks to indirectly limit religious organizations and institutions to only Buddhist or Hindu religious belief and traditions.⁹ The Act, therefore gravely restricts the religious freedom of adherents of other faith traditions and belief especially the Christian minority community, while protecting and promoting other religious traditions, thereby violating the constitutional guarantees of the right to equality (Articles 7.2,7.3,7.4,7.12, 7.15 and 7.19) and the Universal Declaration of Human Rights to which Bhutan is signatory.

VIOLATION OF FREEDOM OF RELIGION AND BELIEF

11. Article 7:4 of the Constitution of Bhutan states that *“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.”(emphasis supplied)***
12. In furtherance to this provision, in 2011, the legislature amended the Penal Code by way of the Penal Code (Amendment) Act of Bhutan 2011. The newly introduced Section 463 (A) states that, *“A defendant shall be guilty of the offense 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.**”* (emphasis supplied). Section 5 (g) of the Religious Organizations Act of 2007 also states that *“No Religious organizations shall compel any person to belong to another faith, by providing reward or inducement for a person to belong to another faith”*
13. The term ‘*inducement*’ is vague and overly broad and can potentially include even legitimate pursuits or actions of propagating one’s faith. The term “*inducement*”, unless restricted to a very narrow definition of monetary gift or the promise thereof, is liable to be misinterpreted and misconstrued as even an intangible benefit may come within the definition of the term. Furthermore, such terminology tends to color all religious conversions making them suspect and open to inquiry at the hands of the authorities.

⁹ Relevant sections of the Act are as follows

Section 3 : Religious Organizations, hereinafter referred to as ROs are associations, societies, foundations, charitable trust, or other non-profit entities that do not distribute any income or profit to their members, founders, donors, directors or trustees and whose purpose and objectives are solely for the benefit of religious institutions and the spiritual heritage of Bhutan.

Section 4 (a) of the Act, “Facilitate the establishment of ROs in order to benefit the religious institutions and protect the spiritual heritage of Bhutan;”

Section 5 No Religious Organisation shall ...

(f) Violate the spiritual heritage of Bhutan as expressed in Article 3 of the Constitution;

(g) Compel any person to belong to another faith, by providing reward or inducement for a person to belong to another faith;

Section 12. Functions of the Chhoehey Lhentshog

The Chhoehey Lhentshog shall:

(a) Endeavour to promote religious harmony and strengthen the spiritual heritage of Bhutan;

Section 13 Duties of the Chhoehey Lhentshog

(c)Ensure that religious institutions and personalities promote the spiritual heritage of the country;

Also the Constitution of Bhutan in Article 3 defines the Spiritual Heritage as “ (1) Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance.

....

3. It shall be 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.”

14. In a report on the country visit to Sri Lanka (E/CN.4/2006/5/Add.3, paras 56-78)¹⁰ the Special Rapporteur on Freedom of Religion and Belief addressed the issue of similar legislation in the country of Sri Lanka.

*“73. In the opinion of the Special Rapporteur, the draft laws do indeed raise concern in terms of human rights law, including in terms of the right to freedom of religion or belief. **While some maintain that freedom of religion, and in particular the right to choose a religion, may be violated in cases where, for example, a person in need has converted after having received presents and inducements that may significantly improve his or her life, the enjoyment of that right by the same person may equally 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.** Of even greater concern is that the decision to complain is not restricted to the aggrieved party. The Special Rapporteur's role is indeed to ensure that individuals are both protected against acts aimed at forced conversions and that their freedom to adopt a religion of their choice or to change religion is safeguarded. In its general comment No. 22, the Human Rights Committee clearly held that "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief"*

*74. **Moreover, the draft laws challenge an aspect of the right to manifest one's religion because they would criminalize certain acts that, according to how restrictively the laws are interpreted, may be part of the right to manifest one's religion...***

75...

D. Difficulties pertaining to the future implementation of the laws

*76. **Probably one of the main problems with the draft laws on "unethical" conversions will be in their implementation. In particular, they use wording that allows for too broad an interpretation. Moreover, it is very difficult to assess the genuineness of a conversion. While it may be easy to prove that a person has received a gift, it would not be easy to demonstrate that the person has converted because of the gift.** Under international law, freedom of conscience is absolute and cannot be subject to any limitation. A mechanism designed to monitor conversions and thus the reasons and purposes behind them could constitute a limitation on freedom of conscience.*

*77. **The wording of the draft laws is also too vague. It allows too great a margin of interpretation, which could be a source of possible abuse and could potentially transform the law into a tool of persecution by those who are genuinely opposed to religious tolerance. The Special Rapporteur is concerned that the adoption of these laws would provide legitimacy to those who want to promote religious intolerance and hatred vis-à-vis certain religious groups.***

*78. **Criminalizing unethical conversions, as defined by the bills, in particular the Ministry Bill might pave the way for persecution of all religious communities, and particularly of religious minorities. The bills allow anyone to complain even if the victim may be unwilling to do so. It thus leaves the door wide open for overzealous people to create further polarisation and to generate an atmosphere of fear among religious minorities"** (Emphasis Supplied)*

15. The potential for misuse and arbitrary action due to vague terminology has been witnessed in instances of violence and arbitrary action against the minority Christian community in the nation of Bhutan. On July 30, 2012, a government official beat and threatened to kill a Christian pastor Pema Sherpa. The

¹⁰ Full report (E/CN.4/2006/5/Add.3) dated 12 December 2005 is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/166/64/PDF/G0516664.pdf?OpenElement>

independent pastor was hit on his forehead and chest after being asked by the official not to conduct worship service in his home. Sherpa was among four pastors the official had summoned.¹¹

16. Similar provisions, in neighboring India have served only to exacerbate the hostility between religious communities. **Such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them.** Arrests on false charges of forcible conversion and undue harassment of religious minorities are common in India.¹²

BHUTAN'S INTERNATIONAL OBLIGATIONS

17. Bhutan is signatory to the following international covenants and conventions: International Convention on the Elimination of All Forms of Racial Discrimination (signed on 07 March, 1966), Convention on the Elimination of All Forms of Discrimination against Women (ratified on 18th December, 1979), International Covenant on the Rights of the Child (ratified on 20th November, 1989) and the Convention on the Rights of Persons with Disabilities (signed on 13th December 2006).

RECOMMENDATIONS TO THE GOVERNMENT OF BHUTAN

18. Ratify or accede to all core international human rights instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights and the Convention against Torture.
19. Take all necessary action to promote and ensure freedom of religion and belief for individuals of all faiths by repealing relevant provisions in the constitution and the penal code which restrict the religious freedom of citizens of Bhutan.
20. Make suitable amendments to the Religious Organizations Act of 2007 to ensure that all persons, religious denominations and institutions are able to freely associate and practice their religious beliefs.
21. Accept visits from United Nations Special Rapporteurs, and in particular to accept the request made by the Special Rapporteur on freedom of religion or belief to visit the country.

¹¹ See <http://www.bhutannewsservice.com/main-news/politics/gelephu-dungpa-beats-christian-pastor-threatens-to-kill-him/> and <http://www.christianpost.com/news/official-beats-christian-pastor-in-buddhist-bhutan-79204/> (last accessed on August 19 at 5:00 pm)

¹² See the report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSION TO INDIA (A/HRC/10/8/Add.3 , 26 January 2009):

“—Even in the Indian states which have adopted laws on religious conversion there seem to be only few - if any - convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat. However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them. There is a risk that Freedom of Religion Acts may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.” (§50)