

# THE UPR PROJECT AT BCU



## **Submitted by:**

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## **About the UPR Project at BCU:**

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder and is frequently cited by the OHCHR. You can read more about the UPR Project here: [www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu](http://www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu)

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## INTRODUCTION

1. Bhutan is party to only two of the nine core international human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).<sup>1</sup>
2. This Stakeholder Report focuses upon freedom of religion or belief and recommends that Bhutan ratifies the International Covenant on Civil and Political Rights (ICCPR) and safeguards this fundamental human right. We make recommendations to the Government of Bhutan on this key issue, implementation of which would also see Bhutan moving towards achieving Sustainable Development Goal 10 which aims to reduce inequalities based on discriminating factors such as religion and Goal 16 which aims for peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions at all levels.
3. We urge the State to make practical commitments in the fourth cycle of the UPR for the advancement of freedom of religion or belief. This includes giving full and practical consideration to all recommendations made by Member States, effectively implementing the recommendations Bhutan accepts, and actively engaging with civil society throughout the process.

## FREEDOM OF RELIGION OR BELIEF

### A. Bhutan and International Law on Freedom of Religion or Belief

#### *Bhutan's Domestic Laws*

4. The Kingdom of Bhutan primarily comprises of individuals holding Buddhist beliefs. In 2020, over 83% of the Bhutanese population were considered to be Buddhists by faith.<sup>2</sup> Conversely, in 2019, Hindus and Christians were estimated to be around 11% and 2.3% of the population respectively.<sup>3</sup>
5. Bhutan adopted its first constitution on 18 July 2008. The Constitution of Bhutan states that only a Buddhist may be the King, and Buddhism is designated the unique position of “spiritual heritage”.<sup>4</sup> The King is instructed to protect this “spiritual heritage”.<sup>5</sup> Therefore, Buddhism is revered and venerated by the Bhutanese state.
6. Article 3(3) of the Constitution also declares the duty of all religious institutions and personalities to “promote the spiritual heritage of the country...”<sup>6</sup> and Article 9(20) envisions a sustainable and compassionate Bhutanese society to be “rooted in Buddhist ethos and universal human values”.<sup>7</sup> Despite the overt prioritisation of Buddhism by the constitutional structure, Bhutan is deemed a secular state, and religious institutions are instructed to “ensure that religion remains separate from politics”.<sup>8</sup> Whilst the state is

espoused to be secular and tolerant, Buddhism and Buddhist ethos remains the locus of Bhutanese constitutionalism in 2024.

7. The domestic legislative framework that deals with freedom of religion or belief in Bhutan comprises of the 2008 Constitution, the Religious Organizations Act of 2007, and the Penal Code of 2004 (Amended 2011).
8. Article 7(4) of the constitution enshrines freedom of religion or belief stating: “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.”<sup>9</sup>
9. Article 5(g) of the Religious Organizations Act of 2007 provides 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.”<sup>10</sup>
10. A few years later, in 2011, Bhutan amended its Penal Code and introduced Section 463A whereby “[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.”<sup>11</sup> Section 463B considers coercion or inducement to convert as a misdemeanour and is punishable up to three years in prison.<sup>12</sup> Unfortunately, none of these laws provide any definitions of coercion and/or inducement and raise a number of human rights concerns which are further discussed in Section B below.

#### *International Law on Freedom of Religion or Belief*

11. Article 18 of the Universal Declaration of Human Rights provides that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”
12. The ICCPR further protects freedom of religion including the right to convert under Article 18(1) as well as the right to not be forced to convert under Article 18(2) which states: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”
13. The Human Rights Committee’s General Comment No. 22 emphasises that this right must not be limited in any way:

Article 18 [...] does not permit any limitations whatsoever on the freedom of thought and conscience or 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.<sup>13</sup>

14. The Special Rapporteur on the Freedom of Religion or Belief has affirmed the “absolute protections covering the right to have, adopt or change one’s religion or belief (or have any beliefs at all) under international human rights law.”<sup>14</sup>

## **B. Implementation of Recommendations from Cycle Three in 2019**

15. Bhutan received 258 recommendations in the Third Cycle of which 165 were accepted and 93 were noted.<sup>15</sup> A total of five recommendations focused on freedom of religion or belief, which is a disappointingly low number for such an important issue. Four were noted and one supported.<sup>16</sup> A significant number of recommendations focused on Bhutan’s treaty ratification status.

### *Recommendations concerning Bhutan’s Adoption of International Law*

16. A total of 64 recommendations were issued to Bhutan regarding ratification of international instruments of which 14 focused on the ICCPR. These were received from: **Austria** (para 158.3), **Belgium** (para 158.11.7), **Estonia** (para 158.8.1), **Germany** (para 158.9), **Ireland** (para 158.8.3), **Italy** (para 158.6), **Kazakhstan** (para 158.7), **Mauritius** (para 158.1), **Mexico** (para 158.11.2), **Montenegro** (para 158.11.6), **Nepal** (para 158.11.5), **Switzerland** (para 158.11.3), **Timor-Leste** (para 158.11.4), and the **United Kingdom** (para 158.11.1).

17. All these recommendations were noted. Bhutan clarified its position noting:

accession to the remaining human rights treaties will be considered upon thorough study and consultation among national stakeholders, based on national needs, priorities and capabilities... The Royal Government is committed to gradually accede to the remaining human rights instruments depending on resource availability and capacity building.<sup>17</sup>

18. We therefore urge Bhutan to consider ratification of the ICCPR in consultation with national stakeholders, with a view to accession before the next UPR cycle.

### *Recommendations concerning Invitation of Special Procedures of the Human Rights Council*

19. Bhutan received four recommendations from **France** (para 158.36.2), **Latvia** (para 158.35.1), **Seychelles** (para 158.35.2), and **Ukraine** (para 158.36.1) to accept visit requests from the UN Special Procedures and/or consider extending a standing invitation to all of them. Unfortunately, these recommendations did not enjoy state support and were noted.

20. In response, Bhutan highlighted its commitment to engaging with United Nations human rights mechanisms and that it would:

continue to host visits by special procedures mandate holders whenever possible...However, extending invitation to all special procedures mandate holders of the Human Rights Council will be a challenge for the

Royal Government on the account of its capacity, national priorities, resource constraints and the need for adequate preparation. Consequently, such visits will be considered on a case by case basis to ensure constructive engagement.<sup>18</sup>

21. It is pertinent to note that the first visit request by the Special Rapporteur on freedom of religion or belief was made in 2006 and the last reminder was sent in 2009.<sup>19</sup> Given that this request has been pending for more than 18 years, we strongly encourage the government to prioritise this visit and grant access to the Special Rapporteur on freedom of religion or belief.
22. The Special Rapporteur's expertise and advice can support the Bhutanese government in its efforts to further the right to freedom of religion or belief. In doing so, Bhutan would demonstrate its commitment to addressing concerns raised by other Member States and foster a dialogue and interaction process which would benefit the country as a whole and its citizens.

#### *Recommendations concerning Registration of Religious Organizations*

23. **Canada** (para 158.60), **Netherlands** (para 158.58), and the **United States** (para 158.59) issued recommendations concerning the registration system in place for religious organisations. The United States recommended Bhutan “amend the Law on Religious Organizations to protect the free practice of religion and the ability of religious organizations to obtain legal status” whilst Canada recommended the inclusion of religious communities “by facilitating the registration of minority religious groups”. These were all noted by Bhutan.
24. Bhutan responded with its position that “registration of religious organizations is not a prerequisite for practice. Religious groups are free to practice without registering with the Chhoday Lhentshog (Commission for Religious Organizations).”<sup>20</sup>
25. However, in the absence of registration and thus formal government recognition, religious organizations are not able to conduct public religious services, own land, accept and receive funds, organise any outreach activities, or import literature.<sup>21</sup> We therefore recommend the government accelerate the registration of all peaceful groups which seek to register under the Religious Organizations Act of Bhutan and provide the necessary support to any such group(s) seeking assistance with the process.
26. Furthermore, in terms of conferring legal status to religious organisations, both the wording of the Religious Organizations Act and the manner in which it is implemented discriminate against groups which do not adhere to Buddhism or Hinduism. Article 3 defines religious institutions eligible for registration to include a number of Buddhist and Hindu organisations “or any other religious institutions as recognized by the Chhoday Lhentshog”. However, the principles established in the Act are heavily focused on enhancing the “spiritual heritage of Bhutan” which is defined as Buddhism in Article 3(1) of the Constitution.<sup>22</sup>

27. The legal framework outlined in the Religious Organizations Act makes it challenging to envision any non-Buddhist or non-Hindu religious groups being granted legal status as a religious organisation in the country. For example, Article 4(a) states the very first objective of the Act is “to benefit the religious institutions and protect the spiritual heritage of Bhutan”. Article 5(f) stipulates that no eligible religious organisation may “violate the spiritual heritage of Bhutan as expressed in article 3 of the Constitution”. Article 12(a) highlights the first and foremost function of the Choedey Lhentshog as the promotion of “religious harmony and [to] strengthen the spiritual heritage of Bhutan” and it is mandated to “ensure that religious institutions and personalities promote the spiritual heritage of the country” (Article 13(c)).
28. There are 137 Buddhist religious organisations and 2 Hindu registered organisations, with no Christian organisations registered at any point.<sup>23</sup> This has two implications. Firstly, it has meant that religious discrimination against Christians has been exacerbated because of formal restrictions on Christian organisations, as they are compelled to resort to hidden church services, leading to little Christian mobilisation for religious purposes. Secondly, it also points towards structural discrimination of Christians; the Bhutan Christian Association for example has received no reply until 2018 and continues to not be registered as of 2024.<sup>24</sup> 14 organisations applied for registration in 2020 but there is no data as to their religious composition, while no organisations applied for registration in 2021 and 2022.

*General Recommendations concerning Freedom of Religion or Belief*

29. **Estonia** (para 158.61) recommended Bhutan “ensure freedom of religion and belief and actively combat discrimination against religious minorities” which was noted. However, the recommendation from **Italy** (para 157.46) to “intensify efforts to protect and promote freedom of religion or belief and the rights of persons belonging to religious minorities” was the only one supported by Bhutan on this human rights issue.
30. Whilst such recommendations are welcomed, it is crucial that they remain specific and measurable in order to assess the level of implementation. Broad recommendations, whilst easy to accept, lack any impetus to bring about real change.<sup>25</sup> It is recommended that States adopt a SMART approach to recommendations as recognised by UPRinfo.<sup>26</sup>
31. It is disappointing to note that Italy’s recommendation has **not been implemented**. As of 2024, minorities especially Christians report a systemic discrimination that has remained steady with no legislative, executive or policy level changes at the federal level. Despite the 2024 elections in Bhutan and the remarkably high Gross National Happiness (GNH), Christians remain persecuted,<sup>27</sup> and the Prime Minister Togyay has consistently associated the GNH and economic progress with the Buddhist faith.<sup>28</sup>
32. Minority religious groups continue to remain at risk due to Bhutan’s poorly formulated anti-conversion laws which require amendment. Bhutan’s laws governing freedom of religion or belief are overly broad and lack detailed definitions, particularly of the terms

under which conversions are prohibited such as “force,” “coercion” and “inducement”.<sup>29</sup> Due to the absence of definitions, minority religious groups risk punishment for religious teachings, education, and charitable activities, with a high likelihood for arbitrary discrimination by the government. This can have a damaging normative effect against religious minorities as it risks promoting negative attitudes towards those engaged in legitimate activities.

33. The former Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, highlighted that “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.”<sup>30</sup> She further stated that:

it would not be advisable to criminalize non-violent acts performed in the context of manifestation of one’s religion, in particular the propagation of religion, including because that might criminalize acts that would, in another context, not raise a concern of the criminal law and may pave the way for persecution of religious minorities.<sup>31</sup>

34. We therefore recommend the government amend its laws governing freedom of religion or belief and provide a precise differentiation between what constitutes permissible and impermissible activities concerning the propagation of religion, in line with ICCPR Article 18(3).<sup>32</sup>

### **C. Further Points for Bhutan to Consider**

#### *Creation of an Independent National Human Rights Institution*

35. Six states recommended Bhutan “establish a national human rights institution in accordance with the Paris Principles”. These included **Australia** (para 158.49), **Indonesia** (para 158.49), **Nepal** (para 158.46), **Seychelles** (para 158.48), **Tunisia** (para 158.46), and **Ukraine** (para 158.47). These were all noted.
36. It is disappointing to note that all recommendations concerning the creation of an independent NHRI did not receive state support with Bhutan stating that it will “study different options that may be best suited for the country taking into considerations the need and national state of preparedness.”<sup>33</sup>
37. A future NHRI could advise the government on its international law commitments such as safeguarding freedom of religion or belief in the country. It could also help coordinate activities related to the implementation of international human rights treaties which Bhutan is party to, as well as provide advice on ratification of outstanding treaties.

#### *The Universal Periodic Review Recommendations and the Contribution to the Sustainable Development Goals*

38. Bhutan should consider adopting the UPR recommendations as an expression of mutual reinforcement of the government's commitment to promoting the Sustainable Development Goals.<sup>34</sup> The human rights values expressed in both the UPR and the SDGs can be woven together to promote policy coherence.<sup>35</sup>
39. SDG 10 aims to “reduce inequalities within and among countries”. Of particular relevance is SDG target 10.2 which aims to “empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status” and SDG target 10.3 which aims to “ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices”.<sup>36</sup>
40. Similarly, SDG 16 provides for “Peace, Justice and Strong Institutions”. Goal 16 is concerned with promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. All individuals, regardless of ethnicity or faith, should be free of fear from all forms of violence and feel safe as they go about their lives.
41. Accepting recommendations received on freedom of religion or belief will signal Bhutan's commitment to the promotion and achievement of the SDGs.

#### **D. Recommendations**

We recommend that, before the next cycle of review, the government of Bhutan should:

- i. Adopt an implementation matrix for recommendations received during the fourth cycle of the UPR and effectively implement it.
- ii. Ratify the International Covenant on Civil and Political Rights, in close consultation and cooperation with national stakeholders, within the next three years.
- iii. Accept the request for a visit by the Special Rapporteur on Freedom of Religion or Belief.
- iv. Amend its anti-conversion laws by clearly defining what makes a conversion improper.
- v. Ensure equal treatment of all religious communities in Bhutan in line with Article 18 ICCPR.
- vi. Expedite the registration of all peaceful groups which seek to register under the Religious Organizations Act of Bhutan and provide the necessary support to any group(s) seeking assistance with the process.
- vii. Provide a publicly accessible database as to the number of registered organisations in Bhutan, including their status and religious composition.
- viii. Establish an independent National Human Rights Institution, in line with the Paris Principles, fully independent from the government.

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<sup>1</sup> The optional protocols have not been included in the core treaty count. It must be noted that being party to a treaty is in reference to its ratification. Bhutan is a signatory to a further two treaties but has not ratified these. See <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN)>.



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- <sup>2</sup> Office of International Religious Freedom, *2022 Report on International Religious Freedom: Bhutan (US Department of State)* <[www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan](http://www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan)>.
- <sup>3</sup> *ibid.*
- <sup>4</sup> Constitution of the Kingdom of Bhutan [Bhutan Constitution] 2008, art 3(1).
- <sup>5</sup> *ibid.*
- <sup>6</sup> Bhutan Constitution 2008, art 3(3).
- <sup>7</sup> Bhutan Constitution 2008, art 9(20).
- <sup>8</sup> Bhutan Constitution 2008, art 3(3).
- <sup>9</sup> Bhutan Constitution 2008 available at <[www.constituteproject.org/constitution/Bhutan\\_2008](http://www.constituteproject.org/constitution/Bhutan_2008)>.
- <sup>10</sup> Religious Organization Act of Bhutan 2007 available at <<https://parliament.bt/religious-organization-act-of-bhutan-2007>>.
- <sup>11</sup> Penal Code (Amendment) Act of Bhutan 2011 available at <<https://faolex.fao.org/docs/pdf/bhu219756.pdf>>.
- <sup>12</sup> See *ibid.*
- <sup>13</sup> General Comment No. 22 on the Freedom of Thought, Conscience and Religion, CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 3.
- <sup>14</sup> Report of the Special Rapporteur on the freedom of religion or belief, A/HRC/34/50, para. 39.
- <sup>15</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Bhutan- Addendum’ (3 September 2019) UN Doc A/HRC/42/8/Add.1, para 2.
- <sup>16</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Bhutan’ (3 September 2019) UN Doc A/HRC/42/8.
- <sup>17</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Bhutan- Addendum’ (3 September 2019) UN Doc A/HRC/42/8/Add.1, Response to SI No. I.
- <sup>18</sup> *ibid.*, Response to SI No. II.
- <sup>19</sup> View Country visits of Special Procedures of the Human Rights Council since 1998- Bhutan at <<https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=BTN&Lang=en>>.
- <sup>20</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Bhutan- Addendum’ (3 September 2019) UN Doc A/HRC/42/8/Add.1, Response to SI No. XII.
- <sup>21</sup> Office of International Religious Freedom, *2022 Report on International Religious Freedom: Bhutan (US Department of State)* <[www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan](http://www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan)>.
- <sup>22</sup> Article 3(1) states “Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance.”
- <sup>23</sup> Office of International Religious Freedom, *2022 Report on International Religious Freedom: Bhutan (US Department of State)* <[www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan](http://www.state.gov/reports/2022-report-on-international-religious-freedom/bhutan)>.
- <sup>24</sup> *ibid.*
- <sup>25</sup> Amna Nazir, ‘A UPR Perspective on Capital Punishment and the Kingdom of Saudi Arabia’ (2022) 19 Muslim World Journal of Human Rights 77-94.
- <sup>26</sup> See UPRinfo, ‘For impact on the ground the UPR needs SMART recommendations’ <[www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations](http://www.upr-info.org/en/news/for-impact-on-the-ground-the-upr-needs-smart-recommendations)> (21 October 2015).
- <sup>27</sup> ‘Religious Freedom Concerns Remain for Christians After Election in Bhutan,’ (*Persecution.org*, 23 February 2024) <[www.persecution.org/2024/02/23/religious-freedom-concerns-remain-for-christians-after-election-in-bhutan/](http://www.persecution.org/2024/02/23/religious-freedom-concerns-remain-for-christians-after-election-in-bhutan/)> accessed 26 March 2024.
- <sup>28</sup> *ibid.*
- <sup>29</sup> Meghan G Fischer, ‘Anti-Conversion Laws and the International Response’ (2018) 6(1) Penn State Journal of Law & International Affairs 1, 20.
- <sup>30</sup> Asma 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 (26 January 2009) UN Doc A/HRC/10/8/Add.3.
- <sup>31</sup> Asma Jahangir (Special Rapporteur on freedom of religion or belief), ‘Elimination of all forms of religious intolerance’ (30 September 2005) UN Doc A/60/399, para 65.
- <sup>32</sup> Article 18(3) ICCPR: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.
- <sup>33</sup> UNHRC, ‘Report of the Working Group on the Universal Periodic Review: Bhutan- Addendum’ (3 September 2019) UN Doc A/HRC/42/8/Add.1, Response to SI No. VI.
- <sup>34</sup> See the UN Sustainable Development Goals website, <https://sustainabledevelopment.un.org/?menu=1300>.
- <sup>35</sup> The first two cycles of the UPR were reviewed under a data mining procedure and of the circa. 50,000 recommendations, it was possible to link more than 50% of those to SDG targets, see, The Danish Institute for Human Rights, Linking the Universal Periodic Review to the SGGs, p. 2.
- <sup>36</sup> See <[https://sdgs.un.org/goals/goal10#targets\\_and\\_indicators](https://sdgs.un.org/goals/goal10#targets_and_indicators)>.