

# **A Primer on International Human Rights Law and Standards on the Right to Freedom of Thought, Conscience, Religion or Belief**

January 2019

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® A primer on international human rights law and standards on the right to freedom of thought, conscience, religion or belief


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## **A Primer on International Human Rights Law and Standards on the Right to Freedom of Thought, Conscience, Religion or Belief**

June 2019

## Table of content

<b>EXECUTIVE SUMMARY AND RECOMMENDATIONS</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>5</b>
DISCRIMINATION ON THE GROUNDS OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF	6
<b>INTERNATIONAL LEGAL FRAMEWORK</b>	<b>8</b>
<b>DUTY TO RESPECT, PROTECT AND FULFILL</b>	<b>8</b>
DUTY TO RESPECT HUMAN RIGHTS	8
DUTY TO PROTECT HUMAN RIGHTS	8
DUTY TO FULFIL HUMAN RIGHTS	8
<b>THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF</b>	<b>9</b>
INTERNATIONAL LAW GUARANTEES THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF	9
<b>FREEDOM TO ADOPT, CHANGE OR RENOUNCE A RELIGION OR BELIEF</b>	<b>9</b>
RIGHT TO ADOPT OR CHANGE RELIGION	9
<b>THE RIGHT TO MANIFEST ONE'S RELIGION OR BELIEF</b>	<b>10</b>
LIMITATIONS ON ONE'S FREEDOM TO MANIFEST ONE'S RELIGION OR BELIEF	11
FREEDOM TO WORSHIP AND PLACES OF WORSHIP	11
DISPLAY OF RELIGIOUS SYMBOLS	12
SONIA YAKER V. FRANCE	14
BIKRAMJIT SINGH V. FRANCE	15
OBSERVANCE OF HOLIDAYS AND DAYS OF REST	15
APPOINTMENT OF CLERGY	16
RELIGIOUS TEACHING, PREACHING AND PROSELYTISM	16
FORCE, COERCION, UNDUE INFLUENCE OR PRESSURE AND OTHER FORMS OF ABUSE	18
LARISSIS AND OTHERS V. GREECE	18
THE RIGHT OF PARENTS AND LEGAL GUARDIANS TO ENSURE THE RELIGIOUS EDUCATION OF THEIR CHILDREN	18
CONSCIENTIOUS OBJECTION TO MILITARY SERVICE	20
<b>DISCRIMINATION</b>	<b>21</b>
<b>DISCRIMINATION AND STATE RELIGION</b>	<b>22</b>
<b>DISCRIMINATION WITH REGARD TO THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b>	<b>23</b>
<b>DISCRIMINATION AND VIOLENCE ON THE BASIS OF RELIGION OR BELIEF</b>	<b>24</b>
<b>GROUPS PARTICULARLY AT RISK</b>	<b>24</b>
WOMEN	24
PICHON AND SAJOUS V. FRANCE	25
LESBIAN, GAY, BISEXUAL AND TRANSGENDER INDIVIDUALS	26
REFUGEES	27
RELIGIOUS AND BELIEF MINORITIES	28
<b>RELATIONSHIP WITH OTHER HUMAN RIGHTS</b>	<b>30</b>
<b>FREEDOM OF OPINION AND FREEDOM OF EXPRESSION</b>	<b>30</b>
ROSS V. CANADA	31
BLASPHEMY LAWS	31
<b>RECOMMENDATIONS</b>	<b>32</b>

## Executive summary and recommendations

The right to freedom of thought, conscience, religion or belief is a wide-ranging right encompassing a large number of distinct, and yet interrelated entitlements. International law, including, chiefly, Article 18 of the International Covenant on Civil and Political Rights (ICCPR), provides for and guarantees the right to freedom of thought, conscience, religion or belief broadly, encompassing the right to freedom of thought and personal convictions in all matters, and protecting the profession and practice of different kinds of beliefs, whether theistic, non-theistic or atheistic, and the freedom not to disclose one's religion or belief. International law also guarantees and protects the right not to have a religious confession.

The right to freedom of thought, conscience, religion or belief does not exist in a vacuum, but along a continuum with other rights – civil and political, as well as economic, social and cultural – human rights that, together with the right to freedom of thought, conscience, religion or belief, are all inalienable, inhere to all human beings by virtue of their common humanity, and are universal, indivisible, interdependent and interrelated.

### Freedom from discrimination on the grounds of one's religion or belief

The non-discrimination principle applies and is integral to all human rights, whether civil and political or economic, social and cultural. Thus, it applies to the right to freedom of thought, conscience, religion or belief.

States, therefore, have the duty to refrain from discriminating against individuals or groups of individuals because of their religion or belief, as well as the obligation to take necessary measures to prevent discrimination by non-State actors. In this context, it is important to recall that multi-level, intersecting and compounding forms of discrimination, including in respect of age, gender, socioeconomic status, racial or ethnic background, national origin, citizenship, migration status, language, health status, particularly HIV/AIDS, and disability, as well as poverty and sexual orientation or gender identity or expression, are all factors that can exacerbate or otherwise influence the nature of discrimination on the grounds of one's real or imputed religion or belief.

### Freedom to adopt, change or renounce a religion or belief

According to international standards, the right to freedom of thought, conscience, religion or belief guarantees and includes the right to adopt a religion of one's choice, as well as the right to change religion, and the right to retain a religion. These entitlements are core elements of the right to freedom of thought, conscience, religion or belief; they have an absolute character, and cannot be subject to any limitation whatsoever, reflecting the nature of the right to freedom of thought, conscience, religion or belief guaranteed under international law.<sup>1</sup>

### Right to manifest a religion or belief

International standards guarantee the right to manifest one's religion or belief as a fundamental aspect of the right to freedom of thought, conscience, religion or belief. This includes the right to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes, as places of worship are an essential element of the manifestation of the right to freedom of thought, conscience, religion or belief to the extent that the great majority of religious communities need the existence of a place of worship where their members can manifest their faith.

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<sup>1</sup> As the Human Rights Committee has noted, the fact that "this provision [i.e., the right to the right to freedom of thought, conscience, religion or belief guaranteed by Article 18 of the ICCPR] cannot be derogated from, even in time of public emergency" is testament to the fundamental character of the freedom it guarantees. Article 4, ICCPR; UN Human Rights Committee, General Comment 22, para. 1.

The freedom to manifest one's religion or belief also includes the freedom to make, acquire and use necessary articles and materials related to the rites or customs of a religion or belief, as well as the freedom to wear or display religious symbols. The freedom to manifest one's religion or belief, however, is not absolute under human rights law. In certain circumstances, States can legitimately limit the freedom to manifest one's religion or belief, including, for example, by imposing limitations on the right to wear or display religious symbols, but only when they can demonstrate that the restrictions they wish to impose are both prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Moreover, in this context, it should be emphasized that international law allows for restrictions on the freedom to manifest one's religion or belief only in very exceptional cases, and that, even in such cases, in most circumstances the resort to the criminal law would not be necessary, and that limiting measures short of the criminal law may ordinarily be effective and suffice.

International human rights law also recognizes the right to attempt to convince and convert other people, for example through "teaching" and missionary activity, as implicit in the exercise and enjoyment of one's right to manifest one's religion or belief. However, any activity aiming at converting other people must not be coercive. Indeed, acts of coercion, force, undue influence or pressure or other forms of abuse to seek to pressurize and coerce another person into adopting a particular religious belief violate one's right not to be subject to coercion impairing one's right to have or to adopt a religion or belief of one's choice.<sup>2</sup>

The right to freedom of religion or belief also guarantees: the observance of days of rest to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; the freedom to train, appoint, elect or designate by succession appropriate religious leaders; and the protection of people from being forced to act against their conscience or their beliefs (e.g. conscientious objection to military service), especially regarding the use of weapons or deadly force. The right to freedom of religion or belief also includes the right of parents – and that of legal guardians in certain circumstances – to ensure the religious and moral education of their children in conformity with their own convictions.

### Relationship with other rights

The right to freedom of thought, conscience, religion or belief may come into conflict with other rights, including, with the right to freedom of expression – a right with which the right to freedom of thought, conscience, religion or belief is closely interrelated – and which guarantees the right of everyone to 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.

While freedom of expression is not an absolute right and, thus, may be subject to State regulation in a few enumerated areas, protection of a particular religion or religious belief per se – or someone's religious sentiments for that matter – do not constitute legitimate grounds recognized under international human rights law and standards for the lawful imposition of certain restrictions on the exercise of the right to freedom of expression.

Furthermore, prohibitions of displays of lack of respect for a religion or other belief systems, including "blasphemy laws", are impermissible under international human rights standards, as are laws that discriminate in favour of or against a particular religion or belief system, or their adherents over others or religious believers over non-believers. It is also impermissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

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<sup>2</sup> See, e.g., Article 18(2) of the ICCPR.

## Recommendations

In light of the analysis of international human rights law and standards on the right to freedom of thought, conscience, religion or belief presented in this primer, the ICJ recommends that States should:

- Repeal any legislation prohibiting or limiting “conversion”, “apostasy”, or that otherwise curtails one’s right to abandon, change or retain one’s religion or belief;
- Ensure that any limitation on the right to freedom of thought, conscience, religion or belief, including the freedom to manifest one’s religion through, for example, the display of religious symbols or the wearing of religious clothing, be based exclusively on the legitimate grounds recognized by international human rights law, namely, to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others; that any such limitations be prescribed by law and be necessary; that they pursue at least one of the above-mentioned legitimate aims; and that they be proportionate.
- Repeal any prohibitions on “proselytism” or religious teaching, except where such prohibitions meet the requirements of “necessary restrictions” under international human rights standards, as outlined in this primer;
- Ensure that places of religious worship, sites and shrines be fully respected and protected and take additional measures to ensure their protection when they face foreseeable risks of desecration or destruction;
- Adopt legislation to guarantee the right to conscientious objection, particularly in connection with the legitimate exercise of the right to freedom of thought, conscience, religion or belief;
- Ensure that the right to freedom of thought, conscience, religion or belief and respect for culture and tradition are never used as pretexts to justify discrimination and violence and, in particular, human rights violations against women and girls or anyone else for that matter;
- Enact legislation or amend existing legislation in order to prohibit all discrimination based on the identification of individuals with certain groups, including, inter alia, groups defined by religion or belief, ethnicity, race, gender, sexual orientation and gender identity;
- States where “blasphemy” is criminalized or otherwise prohibited by law should repeal such laws, as they are inconsistent with the rights to freedom of thought, conscience, religion or belief and freedom of expression, and have a chilling effect on the enjoyment and exercise of these rights; and
- States should become parties to all core international human rights instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention Relating to the Status of Refugees. They should also withdraw existing reservations, including any reservations purporting to ensure compliance with religious tradition.

## Introduction

The right to freedom of thought, conscience, religion or belief<sup>3</sup> is a wide-ranging right encompassing a large number of distinct, and yet interrelated entitlements. International law provides for and guarantees the right to freedom of thought, conscience, religion or belief broadly, encompassing the right to freedom of thought and personal convictions in all matters, and protecting the profession and practice of different kinds of beliefs, whether theistic, non-theistic or atheistic, and the freedom not to disclose one’s religion or belief. International law also guarantees and protects the right not to have a religious confession.

The present primer focuses on international human rights law and standards relevant to the right to freedom of thought, conscience, religion or belief. However, this right does not exist in a vacuum, but along a continuum with other rights – civil and political, as well as economic, social and cultural – human rights that, together with the right to freedom of thought, conscience, religion or belief, are all inalienable, inhere to all human beings by virtue of their common humanity, and are universal, indivisible, interdependent and interrelated.<sup>4</sup>

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<sup>3</sup> See, inter alia, Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>4</sup> Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, “5. All human rights are universal, indivisible and interdependent and interrelated.”

**Discrimination on the grounds of thought, conscience, religion or belief**

Multi-level, intersecting and compounding forms of discrimination,<sup>5</sup> including in respect of age, gender, socioeconomic status, racial or ethnic background, national origin, citizenship, migration status, language, health status, particularly HIV/AIDS, and disability, as well as poverty and sexual orientation or gender identity or expression, are all factors that can exacerbate or otherwise influence the nature of discrimination on the grounds of one's real or imputed religion or belief. People who are living in poverty, including because they are subject to discrimination due to their economic position, are particularly at risk of intersectional discrimination. Some individuals will experience discrimination on several of the above-mentioned grounds simultaneously, including discrimination motivated by animus, prejudice or hatred against their real or imputed religion or belief. Inequality and intersectional discrimination are both a cause and a driver of violations of the right to freedom of thought, conscience, religion or belief and of violations of other human rights. The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, for example, makes clear the link between discrimination on the grounds of religion or belief and human rights violations by proclaiming that, "intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis",<sup>6</sup> and by calling on States to "take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life."<sup>7</sup> Furthermore, under international human rights law and standards, States are obliged to combat multiple discrimination, and to address situations where people belonging to national or ethnic, linguistic or religious minorities are also discriminated against on other grounds, such as gender, disability or sexual orientation.

The analysis of the right to freedom of thought, conscience, religion or belief and the other related issues featured in the present primer is based primarily on the following international human rights instruments: the Universal Declaration of Human Rights (UDHR);<sup>8</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>9</sup> the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the 1981 Declaration);<sup>10</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>11</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);<sup>12</sup> the Convention on the Rights of the Child (CRC);<sup>13</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>14</sup> the Convention Relating to the Status of Refugees (the Refugee Convention);<sup>15</sup> as well as relevant General Comments, Concluding Observations and jurisprudence of the UN treaty bodies<sup>16</sup> – in particular, the UN Human Rights Committee<sup>17</sup> – and reports of the UN Special Procedures,<sup>18</sup> in particular, the UN Special Rapporteur on Freedom of Religion or Belief.<sup>19</sup>

<sup>5</sup> Intersectional discrimination refers to a situation of discrimination that is based on multiple grounds, such as race, ethnicity, religion and gender, which, in turn, interact with one another, and produce and compound one's disempowerment, see, e.g., Durban Declaration, Article 2, and Programme of Action, Articles 49, 79, 104(c), and 172; CERD, General Recommendation No. 30 on Discrimination against non-citizens; and CERD, General Recommendation No. 32 on the Meaning and scope of special measures.

<sup>6</sup> The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 2(2).

<sup>7</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 4.

<sup>8</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.

<sup>9</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

<sup>10</sup> UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, UN Doc. A/Res/36/55.

<sup>11</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

<sup>12</sup> UN General Assembly, Elimination of all forms of racial discrimination, 26 October 1966, A/RES/2142.

Even if a number of States are not parties to one or more of the treaties mentioned above, they are still bound to respect the most fundamental aspects of the right to freedom of thought, conscience, religion or belief since the adoption by consensus of the 1981 Declaration by the UN General Assembly reflects a broad common understanding of the issues addressed in the Declaration itself. Indeed, the 1981 Declaration is now viewed as of interpretative value insofar as the guarantees in Article 18 of the ICCPR are concerned. Furthermore, the most fundamental aspects of the right to right to freedom of thought, conscience, religion or belief featured in the 1981 Declaration are now considered to constitute customary international law.<sup>20</sup>

While in some instances the present primer refers to regional human rights systems, and particularly to the case law of regional human rights courts, its focus is primarily on global international human rights law and standards related to the right to freedom of thought, conscience, religion or belief.

This primer is divided into four sections. The first section sets out States' general obligations under relevant international human rights law and standards to respect, protect and fulfil the right to freedom of thought, conscience, religion or belief; the second covers the freedom to adopt, change or renounce a religion or belief and looks at elements of the right to freedom of thought, conscience, religion or belief, such as the right to manifest one's religion or belief; the third focuses on discrimination in relation to the exercise and enjoyment of the right to freedom of thought, conscience, religion or belief, including discrimination against groups that are particularly at risk of violations of their right to freedom of thought, conscience, religion or belief, such as women, refugees, and members of minority communities, such as lesbian, gay, bisexual and transgender individuals and religious minorities; and the final section covers situations where violations of the right to freedom of thought, conscience, religion or belief constitute simultaneously violations of other human rights, such as the right to freedom of expression.

<sup>13</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>14</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180.

<sup>15</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>16</sup> See, Human rights treaty bodies, <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

<sup>17</sup> See, the Human Rights Committee, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

<sup>18</sup> See, Special Procedures of the Human Rights Council, <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

<sup>19</sup> See, the UN Special Rapporteur on Freedom of Religion or Belief, <https://www.ohchr.org/en/issues/freedomreligion/pages/freedomreligionindex.aspx>.

<sup>20</sup> Ghanea, N., Lindholm, T., Durham, C., Tahzib-Lie, B. G., 2004. Introduction. In: Lindholm, T., Durham, C., Tahzib-Lie, B. G. (eds), 2004. Facilitating freedom of religion or belief: A Deskbook. See, also, Max Planck Encyclopedia of Public International Law, Religion or Belief, International Protection, Christian Walter, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e867> Moreover, international humanitarian law, through the Hague Regulations, the Geneva Conventions of 1949 and their Additional Protocols, as well as customary international humanitarian law also upholds fundamental aspects of the right to freedom of thought, conscience, religion or belief. It safeguards certain rights and guarantees in connection with the exercise and enjoyment of the right to freedom of thought, conscience, religion or belief during armed conflict and for people affected by the armed conflict, and also aims to protect places of worship. For details, see: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule127](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule127) and [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule104](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule104).

## INTERNATIONAL LEGAL FRAMEWORK

### Duty to respect, protect and fulfill

By becoming parties to international human rights treaties, States undertake to respect, protect and fulfill the rights guaranteed therein. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires States to protect individuals and groups against human rights abuses; and the obligation to fulfill human rights means that States must take positive action to facilitate their exercise and enjoyment.

The UN Special Rapporteur on Freedom of Religion or Belief (hereinafter: the UN Special Rapporteur) has clarified that international human rights law obligations in respect of the right to freedom of thought, conscience, religion or belief are primarily obligations on States, not on religious communities.<sup>21</sup>

### Duty to respect human rights

States have a duty to respect all human rights, including the right to freedom of thought, conscience, religion or belief. This presupposes a clear understanding that human beings, as individuals and/or in community with others, do not need any permission by the State to be allowed to have, adopt, profess and practise their religion or belief in private or in public. The obligation to respect all human rights also requires States to refrain from interfering in the exercise and enjoyment of human rights – including by refraining from any interference in advocacy or other legitimate action by individuals or groups to secure the right to freedom of thought, conscience, religion or belief for themselves or others.

### Duty to protect human rights

States should protect the right to freedom of thought, conscience, religion or belief against abuses by third parties, including non-State actors, by, for example, preventing harm by armed groups, security contractors and corporations, and religious vigilante groups. Depending on the precise nature of the threat, States' duty to protect will require different initiatives, such as legislative support for religious minorities against discrimination in the workplace; measures to protect people from forced conversion; and policies combating religious vigilantism or against armed attacks.

### Duty to fulfil human rights

Lastly, States must take positive measures to facilitate, promote, and provide rights. The duty to fulfill rights can be pursued through the adoption of national laws, policies and practices that guarantee the right to freedom of thought, conscience, religion or belief. Furthermore, States should provide appropriate resources and infrastructure that allow all persons living in their territory or who are otherwise under their jurisdiction to fully enjoy their human rights. States' duty to fulfill human rights includes making available suitable remedies for violations of human rights, including, in particular, an independent and impartial judiciary. States should also facilitate religious communities in purchasing land to build places of religious worship or establishing charitable organizations or institutions of religious learning. The obligation to fulfill also covers a broad range of promotional activities, such as education about diverse religions or beliefs as part of the school curriculum, and promoting religious tolerance.

<sup>21</sup> UN Special Rapporteur on the Freedom of Religion or Belief, Country visit to Romania, U.N. Doc. E/CN.4/2004/63/Add.2, para 104.

## The right to freedom of thought, conscience, religion or belief

Article 18 of the UDHR and Article 18 of the ICCPR guarantee the right to freedom of thought, conscience, religion or belief.

### International law guarantees the right to freedom of thought, conscience, religion or belief

#### Article 18 – UDHR

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.

#### Article 18 - ICCPR

1. 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, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. 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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### Freedom to adopt, change or renounce a religion or belief

According to international human rights law and standards, the right to freedom of thought, conscience, religion or belief guarantees and includes the right to adopt a religion of one's choice, as well as the right to change religion, and the right to retain a religion. These aspects of the right to freedom of thought, conscience, religion or belief have an absolute character and are not subject to any limitation whatsoever, reflecting the nature of the right to freedom of thought, conscience, religion or belief guaranteed by Article 18 of the UDHR and Article 18 of the ICCPR. Indeed, to do otherwise would constitute a violation of the right not to "be subject to coercion which would impair [one's] freedom to have or to adopt a religion or belief of [one's] choice", guaranteed, inter alia, by Article 18(2) of the ICCPR.

### Right to adopt or change religion

In Article 18, the UDHR proclaims that "everyone has the right to freedom of thought, conscience and religion", and clearly guarantees that such a right "includes freedom to change his religion or belief". While the ICCPR and the ICERD do not explicitly affirm the right to "change religion", they effectively guarantee such a right. Indeed, Article 18 of the ICCPR guarantees to everyone the right "to have or to adopt" a religion of one's choice, as well as the right not to "be subject to coercion

which would impair [one's] freedom to have or to adopt a religion or belief of [one's] choice"; and the 1981 Declaration also proclaims the "freedom to have a religion or whatever belief of [one's] choice."<sup>22</sup>

The UN Human Rights Committee, in its General Comment 22 on Article 18 of the ICCPR,<sup>23</sup> has observed that the freedom to "have or to adopt" a religion or belief necessarily entails a 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.<sup>24</sup> The UN Special Rapporteur on Freedom

### The right to manifest one's religion or belief

Both the UDHR and the ICCPR guarantee the right to manifest one's religion or belief as a fundamental aspect of the right to freedom of thought, conscience, religion or belief.<sup>25</sup> In particular, Article 18(1) of the ICCPR affirms that the right to freedom of thought, conscience, religion or belief includes "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."<sup>26</sup> In addition, Article 27 of the ICCPR guarantees the right of persons belonging to religious minorities to profess and practise their own religion in community with the other members of their group.<sup>27</sup> In this context, moreover, the UN Human Rights Committee has further elucidated that the freedom to manifest one's religion or belief in worship, observance, practice and teaching encompasses a broad range of acts (see below).

<sup>22</sup> Article 1, 1981 UN Declaration.

<sup>23</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.

<sup>24</sup> *Ibid.*, para. 5.

<sup>25</sup> Article 18 of the UDHR proclaims, *inter alia*, "Everyone has the right to freedom of thought, conscience and religion; this right includes [...] 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."

<sup>26</sup> In Article 1(1), the 1981 Declaration also proclaims the right to manifest one's religion or belief with wording that is identical to that of Article 18(1) of the ICCPR.

<sup>27</sup> Article 27 of the ICCPR read as follows: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

### Limitations on one's freedom to manifest one's religion or belief

While, as stated above, the freedom to adopt, change, renounce or retain a religion or belief cannot be the object of any of limitation, States may, pursuant to Article 18(3) of the ICCPR (see above), in certain circumstances, legitimately impose limitations on other aspects of the right to freedom of thought, conscience, religion or belief, namely on one's 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. However, even when the circumstances are as such that, under international human rights law, States may legitimately impose such limitations, the limiting measures chosen must not restrict the exercise and enjoyment of the right to manifest one's religion or belief more than absolutely necessary in any given context. In addition, States may only impose such limitations when they can demonstrate that the restrictions to which they wish to resort are both prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, as per Article 18(3) of the ICCPR.

The UN Human Rights Committee in General Comment 22 has emphasized that Article 18(3) of the Covenant: "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."<sup>28</sup> Furthermore, in this context, it should be emphasized that Article 18(3) of the ICCPR allows for restrictions only in very exceptional cases, and that, even in such cases, in most circumstances the resort to the criminal law would not be necessary, and that limiting measures short of the criminal law may ordinarily be effective and suffice.

In its decision on the case of *Hudoyberganova v. Uzbekistan*,<sup>29</sup> the Human Rights Committee held that Ms. Raihon Hudoyberganova's exclusion from the Tashkent State Institute for Eastern Languages – because she wore a headscarf for religious reasons and refused to remove it – violated her rights under Article 18 of the ICCPR. In reaching its decision, the Committee reasoned that, although "the freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others",<sup>30</sup> Uzbekistan asserted no justification as to why the restriction in this case would be necessary. However, in *Bhinder v. Canada*, for example, the UN Human Rights held that, in the particular circumstances of the case, the requirement for Sikhs to wear safety headgear during work was justified under Article 18(3) of the ICCPR, as it could be "regarded as reasonable and directed towards objective purposes that are compatible with the Covenant."<sup>31</sup>

### Freedom to worship and places of worship

Article 6(a) of the 1981 Declaration affirms that: the right to right to freedom of thought, conscience, religion or belief includes the freedom: "[t]o worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes".

<sup>28</sup> Para 8, General Comment 22, *supra* fn 23.

<sup>29</sup> *Hudoyberganova v. Uzbekistan*, Merits, Communication No 931/2000, UN Doc CCPR/C/82/D/931/2000, (2004).

<sup>30</sup> *Ibid.*, para. 6.2.

<sup>31</sup> *Bhinder v. Canada*, CCPR/C/37/D/208/1986, para. 6.2



In General Comment 22, the Human Rights Committee has affirmed that:

*[t]he concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship.*<sup>32</sup>

The UN Special Rapporteur has repeatedly stated that places of worship are an essential element for the manifestation of the right to freedom of thought, conscience, religion or belief to the extent that the great majority of religious communities need the existence of a place of worship where their members can manifest their faith.<sup>33</sup>

In addition, international human rights standards recognize that religious places, sites and shrines enjoy a special protection, and that members of religious communities may face particular risks when they are in places of worship.<sup>34</sup> Moreover, unlike other violations of the right to freedom of thought, conscience, religion or belief, attacks or restrictions on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question.<sup>35</sup> In this context, the UN Special Rapporteur has observed that, preventing members of a religious community from using a place of worship that belongs to them would constitute a violation of their right to freedom of thought, conscience, religion or belief, and that the State cannot abdicate its responsibilities in lieu of a process involving a “settlement” between the two parties concerned.<sup>36</sup>

#### Display of religious symbols

Article 6(c) of the 1981 Declaration proclaims that the right freedom of thought, conscience, religion or belief includes the freedom: “[t]o make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief”.

In General Comment 22 the UN Human Rights Committee has affirmed that: “[t]he concept of worship extends to [...] the display of symbols”; and that: “the observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head coverings”.<sup>37</sup>

<sup>32</sup> General Comment 22, para. 4, supra fn 23.

<sup>33</sup> Report submitted by Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, U.N. Doc. E/CN.4/2005/61, 20 December 2004, para 50.

<sup>34</sup> Ibid., paras 48 and 49. See also: Human Rights Council resolution 6/37, Elimination of all forms of intolerance and of discrimination based on religion or belief, in which the Human Rights Council urges States “To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction” (para. 9(e)); and “To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes [...]” (para. 9(g)). For international humanitarian law, see also Article 53 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Article 16 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), which protect places of worship in times of armed conflict.

<sup>35</sup> See Article 27, ICCPR, and Report submitted by Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, U.N. Doc. E/CN.4/2005/61, 20 December 2004, para. 51.

<sup>36</sup> Report by Mr. Abdelfattah Amor, Special Rapporteur on Freedom of Religion or Belief, Visit to Romania, E/CN.4/2004/63/Add.2, 16 December 2003, para. 104.

<sup>37</sup> Human Rights Committee, General Comment 22, Article 18, para. 4.

<sup>38</sup> See, e.g., Article 12 of the UDHR and Article 17 of the ICCPR.

In addition, international human rights law also requires States to guarantee the right to privacy,<sup>38</sup> which includes the right to personal autonomy, such as the freedom to choose what to wear in private and in public. Similarly, States must ensure the exercise and enjoyment of human rights to all without discrimination, including, in particular, discrimination on the grounds of religion or belief or sex, as well as the right to equality before the law and equal protection of the law without discrimination.<sup>39</sup> In this context, the right to freedom of thought, conscience, religion or belief may be invoked both in terms of the “freedom” of people who wish to wear or display a religious symbol, and in terms of the right not to “be subject to coercion which would impair [one’s] freedom to have or to adopt a religion or belief of [one’s] choice”,<sup>40</sup> which, being coerced into wearing religious symbols, in turn, would violate. For example, in its decision in the case of Hudoyberganova v. Uzbekistan,<sup>41</sup> the Human Rights Committee emphasized that, “the freedom to manifest one’s religion encompasses the right to wear clothes or attire in public which is in conformity with the individual’s faith or religion”, and that, “to prevent a person from wearing religious clothing in public or private may constitute a violation of article 18, paragraph 2, which prohibits any coercion that would impair the individual’s freedom to have or adopt a religion.”

According to a 2006 report of the UN Special Rapporteur on Freedom of Religion or Belief, more than 25 States around the world regulated or prohibited the wearing religious symbols.<sup>42</sup> Examples of believers and the religious garments or ornaments affected by States’ regulations and prohibitions arise in connection with a range of religions and faiths, and include: Muslims wearing headscarves; Jews wearing yarmulkes;<sup>43</sup> Christians wearing crucifixes; Hindus displaying bindis;<sup>44</sup> Buddhists wearing saffron robes; and Sikhs wearing keskis<sup>45</sup> or turbans.

The “freedom” to wear or display religious symbols, however, is not absolute under human rights law. In this context, as mentioned above, in certain circumstances, States can legitimately limit the right to wear or display religious symbols, but only when they can demonstrate that the restrictions they wish to impose are both prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>46</sup>

While at the regional level, particularly the European Court of Human Rights appears more inclined to permit States’ limitations on the freedom to manifest one’s religion or belief,<sup>47</sup> at the international level, the UN Human Rights Committee and UN Special Procedures appear to have taken a less permissive approach to States’ limitations.

For example, in a number of cases regarding restrictions on the wearing of clothing or symbols with a religious connotation, the UN Human Rights Committee has found, that, “in the absence of any

<sup>39</sup> See, e.g., Articles 2 and 7 of the UDHR and Articles 2(1), 3 and 26 of the ICCPR.

<sup>40</sup> See, e.g., Article 18(2) of the ICCPR.

<sup>41</sup> Hudoyberganova v. Uzbekistan, Merits, Communication No 931/2000, UN Doc CCPR/C/82/D/931/2000, (2004).

<sup>42</sup> Report of the UN Special Rapporteur on the Freedom of Religion or Belief, Asma Jahangir, E/CN.4/2006/5, 9 January 2006, para 37.

<sup>43</sup> A Yarmulke is a small, round head covering worn by Jewish men during prayer and by some Jews at all times.

<sup>44</sup> A bindi is a coloured dot worn on the centre of the forehead, commonly by Hindu and Jain women.

<sup>45</sup> A keski is a small light piece of material, often used as a mini-turban, covering the long uncut hair considered sacred in the Sikh religion. It is frequently worn by young boys as a precursor or alternative to a larger turban.

<sup>46</sup> See, e.g., Article 18(3) of the ICCPR, which states: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

<sup>47</sup> See, for example, Marcella Ferri, “The freedom to wear religious clothing in the case law of the European Court of Human Rights: an appraisal in the light of states’ positive obligations,” Volume 45, 2017 - Issue 3-4: European Court of Human Rights and minority religions

justification provided by the State party”, there had been a violation of Article 18(2) of the ICCPR where a student had been expelled from her University on account of her refusal to remove the hijab (headscarf) that she wore in accordance with her religious beliefs.<sup>48</sup>

#### ***Sonia Yaker v. France***<sup>49</sup>

The author, a Muslim woman who wore the niqab (a full face veil), was stopped for an identity check while wearing her niqab and was then prosecuted and convicted of the offence of wearing a garment concealing her face in public.

The law in question - Act No. 2010-1192 of 11 October 2010 – prohibited the wearing of “any apparel intended to conceal the face” in public. However, it also stipulated that the prohibition would not apply to “clothing authorized by law or justified for health or professional reasons, sports practices, festivities or artistic or traditional manifestations.”

The author claimed that the prohibition on the wearing of the niqab and her criminal conviction for the same violated her rights under Articles 18 and 26 (i.e., guaranteeing the right to equality before the law and equal protection of the law without discrimination) of the Covenant, as wearing the niqab was the performing a religious practice for a segment of the Muslim population.

The Human Rights Committee stated that there was no question that the ban at issue constituted a restriction or limitation of the author’s freedom to manifest her beliefs or religion. The question before the Committee, therefore, was whether it fell under the permissible restrictions of Article 18, i.e. whether the ban was necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

The first ground presented by France in support of the law was “public safety”. The Committee recognized the need for States, in certain contexts, to be able to require that individuals show their faces. However, since the law imposed a blanket ban on covering the face in public, States would have to demonstrate how wearing the fullface veil in itself represented a threat to public order and safety, which France had failed to do. The second ground presented by France was that “living together” in society required a certain, minimum interaction among people, which included the “readiness to be identified”. The Committee reiterated that the Article 18(3) exceptions had to be interpreted strictly and not applied in the abstract. “Living together” was a vague and abstract concept, and “the right to interact with any individual” was not one of the grounds on which limitations may be permissible under Article 18(3). Finally, the Committee found that the ban was discriminatory, as even though it was framed in general terms, it included exceptions for “most contexts of face covering in public, thus limiting the applicability of the ban to little more than the full-face Islamic veil.” The Committee, therefore, found France in breach of its obligations under the ICCPR.

The converse, namely, coercing people into wearing religious symbols, is also contrary to international law, including Article 18(1) and (2) of the ICCPR. The UN Special Rapporteur on Freedom of Religion or Belief, for example, has particularly criticized the obligation to wear “a religious dress” in public in

<sup>48</sup> Hudoyberganova v. Uzbekistan, Merits, Communication No 931/2000, U.N. Doc CCPR/C/82/D/931/2000, (2004).

<sup>49</sup> Sonia Yaker v. France, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2747/2016. See also, Miriana Hebbadj v. France, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2807/2016. Cf. the judgment of the Grand Chamber of the European Court of Human Rights in the case of S.A.S. v. France, (Application no. 43835/11), 1 July 2014 in which the majority of the Grand Chamber found that the criminalization of the full-face veil in France did not violate the European Convention on Human Rights.

certain countries, and has stated that, “women are among those who suffer most because of severe restrictions on their education and employment” because of the obligation to wear what is described as “Islamic dress”, for example. The Special Rapporteur has urged States that dress should not be the subject of legal regulation.<sup>50</sup>

#### ***Bikramjit Singh v. France***<sup>51</sup>

This complaint before the UN Human Rights Committee arose in connection with France’s Education Code, which provides that in “public primary schools, secondary schools and lycées (senior secondary schools), the wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner is forbidden.” According to France, the law is intended to maintain and protect the principles of secularism within the State’s education system. In 2004, the complainant, Bikramjit Singh, an Indian national and practising Sikh, was living in France and attending a French lycée, where he went to school wearing a keski, a piece of dark material worn by adult men of the Sikh religion to cover and protect their hair which is considered a “sacred, inherent and intrinsic part of the religion”. The school asked Mr Singh to remove the keski; however, he refused. The school principal initially prohibited Mr Singh from entering the school premises, followed by allowing him to return to school, but to study alone in the canteen without instruction. Later, a disciplinary board was convened, and it ruled that Mr Singh be immediately and permanently expelled for breaching the Education Code.

Before the UN Human Rights Committee, Mr Singh alleged, among others, violations of his right to freedom of thought, conscience, religion or belief under Article 18 of the ICCPR. France defended its actions by emphasizing the importance of secularism in State schools, which, it submitted, was an important mechanism for protecting religious freedom. France also submitted that the Code was a means to quell the tensions and incidents sparked by the wearing of religious symbols in public schools and “to safeguard the neutrality of public education, in the interests of pluralism and freedom of others”.

The Committee accepted that the promotion and protection of secularism within the State education sector was a legitimate aim that served to protect the rights of others, particularly public order and safety. However, keeping in mind the particular circumstances of this case, the Committee ruled that France’s response had been unnecessary and disproportionate, as there was no evidence that Mr Singh’s wearing of the keski posed any actual threat to the rights and interests of others, or to public order. Moreover, Committee found that the State party had imposed a harmful sanction on him (i.e. excluding him permanently) not because of his personal conduct created any concrete risk, but solely because of his inclusion in a broad category of persons defined by their religious conduct. As a result, the UN Human Rights Committee found that France’s restrictions on the wearing of religious symbols or clothing in State schools breached the student’s right to religious freedom under the ICCPR. The Committee was also of the view that the penalty of permanent expulsion from public school was disproportionate and had had serious negative effects on Mr Singh’s education, to which, he like any person of his age, was entitled in the State party.

#### **Observance of holidays and days of rest**

Article 6(h) of the 1981 Declaration proclaims that the right to freedom of thought, conscience, religion or belief includes the freedom “[t]o observe days of rest and to The right to freedom of

<sup>50</sup> “Implementation of the declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief”, Report submitted by Mr. Abdelfattah Amor, Special Rapporteur in accordance with commission on human rights resolution 1997/18, e/cn.4/1998/6, para. 60.

<sup>51</sup> Bikramjit Singh v. France, UN Doc CCPR/C/106/D/1852/2008.

thought, conscience, religion or belief: A primer 17 celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief".

The UN Human Rights Committee has stated that, "the concept of worship extends to [...] the observance of holidays and days of rest."<sup>52</sup>

The UN Special Rapporteur has on a number of occasions commended the introduction of legislation granting recognition of religious holidays of the Christian, Jewish and Muslim communities, and allowing exemptions on religious grounds in schools.

### Appointment of clergy

The UN Human Rights Committee has elucidated that

*"the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers".<sup>53</sup>*

Art. 6(g) of the 1981 Declaration proclaims that the right to freedom of thought, conscience, religion or belief includes the freedom, "to train, appoint, elect or designate by succession appropriate leaders".

### Religious teaching, preaching and proselytism

In General Comment 22, the Human Rights Committee has elucidated as follows with respect to religious teaching: "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."<sup>54</sup>

Similarly, the 1981 Declaration affirms that the right to freedom of thought, conscience, religion or belief includes the freedom, "[t]o write, issue and disseminate relevant publications in these areas",<sup>55</sup> and "[t]o teach a religion or belief in places suitable for these purposes."<sup>56</sup>

The right to freedom of thought, conscience, religion or belief guaranteed in international human rights law and standards includes, as mentioned above, the freedom to manifest one's religion or belief. This freedom, in turn, comprises, in principle, the right to attempt to convince and convert other people, that is, to proselytize. This could, for example, include attempting to convince or convert others through "teaching". Without this right, the freedom to change one's religion or belief would remain a dead letter, as held by the European Court of Human Rights.<sup>57</sup>

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<sup>52</sup> Human Rights Committee general comment 22, para. 4.

<sup>53</sup> Human Rights Committee general comment 22, para. 4.

<sup>54</sup> Human Rights Committee, General Comment 22, para. 4.

<sup>55</sup> Article 6(d) of the 1981 Declaration.

<sup>56</sup> Article 6(e) of the 1981 Declaration.

<sup>57</sup> European Court of Human Rights, judgment, *Kokkinakis v. Greece*, application no. 14307/88,

<sup>25</sup> May 1993, para. 31.

<sup>58</sup> Special Rapporteur Abelfattah Amor noted in his report following the country mission to Greece in 1996 that "proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration". See <http://www.un.org/documents/ga/docs/51/plenary/a51-542add1.htm>, para 12

The UN Special Rapporteur on Freedom of Religion or Belief has noted that proselytism is itself inherent in the right to freedom of thought, conscience, religion or belief, which explains its legal status in international instruments and in the 1981 Declaration. 58 Not only would constraints on peaceful acts of proselytism almost always be inconsistent with Article 18 of the ICCPR, but, even when the circumstances may justify the authorities' taking of constraining measures on the exercise of the right, such measures would have to be justified on the facts of each case. At the minimum, this means they must pursue a legitimate aim, be strictly necessary and proportionate, and be applied in a non-discriminatory manner.

Similarly, under international human rights standards, missionary activity is accepted as a legitimate expression and exercise of the right to freedom of thought, conscience, religion or belief and, therefore, enjoys the protection afforded by Article 18 of ICCPR and other relevant international instruments. The UN Special Rapporteur has underscored that missionary activity cannot be considered a violation of the right to freedom of thought, conscience, religion or belief of others "if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities."<sup>59</sup>

While the freedom to manifest one's religion in principle comprises the right to attempt to convince and convert other people, including through teaching, the right to freedom of thought, conscience, religion or belief does not protect "improper proselytism", such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (see, for example, *Larissis and Others v. Greece*,<sup>60</sup> below).

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<sup>59</sup> Report of the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, U.N. Doc. A/60/399, 30 September 2005, para. 67.

<sup>60</sup> *Larissis et al v. Greece*, Applications nos. 140/1996/759/958960, judgment, European Court of Human Rights, 24 February 1998.

### Force, coercion, undue influence or pressure and other forms of abuse

The scope of the freedom afforded to persons to practise a religion or belief, including through the production and distribution of information about their religion or belief is wide. However, as long as they are warranted and in accordance with Article 18, paragraph 3, of the Covenant, certain limitations on one's freedom to manifest one's religion or beliefs may be imposed lawfully. In this context, however, as noted above, Article 18(3) of the ICCPR allows for restrictions only in very exceptional cases, and even in such cases, most measures of limitations would not require the resort to criminal law; measures short of criminalization may be effective and suffice.

Any measure taken by the authorities should clearly distinguish between, on the one hand, religious teachings, as a rightful manifestation of one's freedom to manifest one's religion or belief, as well as the legitimate exercise of the right to freedom of opinion and expression and, on the other hand, acts which, through the use of coercion, force, undue influence or pressure or other forms of abuse seek to pressurize and coerce another person into adopting a particular religious belief. The former are legitimate manifestations of one's rights (i.e., one's rights to freedom of thought, conscience, religion or belief, and to freedom of opinion and expression) and cannot be lawfully restricted, while the latter amount to acts that nullify or impair another person's right to freedom of thought, conscience, religion or belief, in particular, one's right not to be subject to coercion impairing one's right to have or to adopt a religion or belief of one's choice, under Article 18(2) of the ICCPR. As such, those abusive acts fall outside the scope of Article 18 altogether.

#### *Larissis and Others v. Greece*<sup>61</sup>

The three applicants in this case were air force officers and followers of the Pentecostal Church; the courts in Greece convicted them of proselytism after they tried to convert a number of people to their faith, including three airmen who were their subordinates.

The European Court of Human Rights held that the officers' criminal convictions for acts of proselytism towards air force service personnel had not constituted a violation of their right to freedom of thought, conscience and religion guaranteed under Article 9 of the European Convention on Human Rights, since it was necessary for the State to protect junior airmen from being put under undue pressure by senior personnel. However, the Court did find a violation of Article 9 with regard to the measures taken against two of the applicants for their acts of proselytism directed at civilians, since they, in turn, had not been subjected to pressure and constraints as the airmen had.

### The right of parents and legal guardians to ensure the religious education of their children

Article 18(4) of the ICCPR guarantees the right of parents and, when applicable, legal guardians "to ensure the religious and moral education of their children in conformity with their own convictions."

<sup>61</sup> Larissis et al v. Greece, Applications nos. 140/1996/759/958960, judgment, European Court of Human Rights, 24 February 1998.

<sup>62</sup> Article 14 of the CRC reads as follows: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. 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."

The Convention on the Rights of the Child,<sup>62</sup> the International Covenant on Economic, Social and Cultural Rights, 63 and the 1981 Declaration contain similar guarantees.<sup>64</sup>

Conflicts may arise in the interpretation and implementation of this right in the context of religious instruction in schools, particularly public schools where the State is responsible for the education system. In this regard, the UN Human Rights Committee has stated that public education that includes instruction in a particular religion or belief is inconsistent with Article 18(4) of the ICCPR "unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians."<sup>65</sup>

International standards also emphasize the duties of parents. The CRC, for example, states: "attention must be given to the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child,"<sup>66</sup> and that, in this context, "due weight should be given to the views of the child in accordance with his or her age and maturity, which need to be assessed on a case-by-case basis."<sup>67</sup>

The UN Special Rapporteur has found that, in some countries, students belonging to religious minorities experience pressure to attend religious instruction pertaining exclusively to the State's dominant religion. Similarly, those who adhere to an alternative or divergent interpretation of the dominant religion on which school instruction is based may also be subjected to pressure or even coercive instruction. The UN Special Rapporteur has stated that such practices, which forcibly expose students to religious instruction that is against their own will, violate Article 18(2) of the ICCPR, because they are coercive and thus impair one's freedom to have or adopt a religion or belief of one's choice. As the Human Rights Committee has noted, the fact that "this provision [i.e. Article 18] cannot be derogated from, even in time of public emergency" is testament to the fundamental character of the freedom it guarantees.<sup>68</sup>

<sup>63</sup> Article 13(3) of the ICESCR: "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians [...] to ensure the religious and moral education of their children in conformity with their own convictions."

<sup>64</sup> Article 5 of the 1981 Declaration: "(1) The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up. (2) Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle. (3) The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. (4) In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. (5) Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration."

<sup>65</sup> Para. 6, General Comment 22, supra fn 23.

<sup>66</sup> Article 14, para. 2, of the Convention on the Rights of the Child.

<sup>67</sup> Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, para. 29. With regard to the concept of evolving capacities in the context of the child's right to freedom of thought, conscience, religion or belief, see A/64/159, paras 26- 28.

<sup>68</sup> Article 4, ICCPR and UN Human Rights Committee, General Comment 22, para. 1.

## Conscientious objection to military service

The right to freedom of thought, conscience, religion or belief also protects people from being forced to act against their conscience or their beliefs, especially regarding the use of weapons or deadly force. Therefore, those who genuinely hold that their beliefs forbid them from performing military service, for example, are entitled under international human rights law and standards to be provided with a genuine civilian alternative to serving in the military. With respect to this, in its decision in the case of *Min-Kyu Jeong et al v. Republic of Korea*, the UN Human Rights Committee has emphasized that, “[t]he alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.”<sup>69</sup>

In several resolutions, the former UN Commission on Human Rights has recognized the right of everyone to exercise their conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience or religion, guaranteed in Article 18 of the ICCPR.<sup>70</sup>

<sup>69</sup> Human Rights Committee, *Min-Kyu Jeong et al v. Republic of Korea*, 24/03/2011, para. 7.3.

<sup>70</sup> See, for example, UN Commission of Human Rights, Resolution 1998/77 of 22 April 1998, accessed at : [https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/ECN\\_4-RES-1998-77.pdf](https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/ECN_4-RES-1998-77.pdf)

## Discrimination

The prohibition of discrimination is not only contained in numerous global human rights instruments, but it is also a part of customary international law, which binds all States.<sup>71</sup> The non-discrimination principle applies and is integral to all human rights, whether civil and political or economic, social and cultural; it is overarching, and therefore applies to all human rights, including the right to freedom of thought, conscience, religion or belief.

Under international human rights law, States must act to prevent, prohibit, eradicate and remedy discrimination. States must not only respect the human rights of every persons under their jurisdiction to be free from discrimination, including discriminatory conduct on the part of State officials, they must also ensure that every person is protected from third-party discrimination, including by private actors, impairing the exercise and enjoyment of their rights. In this regard, States have the duty to refrain from discriminating, directly or indirectly, against individuals or groups based on their real or imputed religion or belief (i.e., under their duty to respect human rights); they are required to prevent such discrimination, including from non-State actors (i.e., under their duty to protect human rights); and must take steps to ensure that, in practice, every person under their jurisdiction enjoys all human rights without discrimination of any kind (i.e., under their duty to fulfil human rights).

States, therefore, have the duty to refrain from discriminating against individuals or groups of individuals because of their religion or belief, as well as the obligation to take necessary measures to prevent discrimination by non-State actors. Where conduct that impairs human rights involves acts of discrimination and violence, there is a range of preventive and protective measures that States must take, including, in certain circumstances, the enforcement of criminal sanctions against perpetrators. Furthermore, States’ obligation to protect against discrimination applies not just in cases of *de jure* discrimination, i.e. where discrimination is enshrined in law, but also *de facto* discrimination, where it may be the result of laws, policies or practices.

The non-discrimination principle, together with the right to equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.<sup>72</sup> Under international human rights law, everyone has the right to equality before the law and equal protection of the law without discrimination, and where there is a failure to respect and protect these rights, people have a right to access to justice and effective remedies, including the recognition that laws and their implementation needs to change.

Various provisions of the ICCPR guarantee the right to be free from discrimination. For example, under Article 2(1) of the ICCPR, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26 of the ICCPR proclaims that: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion”. In addition, as the Human Rights Committee has observed, “[w]hile article 4, paragraph

<sup>71</sup> The Human Rights Committee has expounded that, “the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”, General Comment No. 18: Non-discrimination, 10 November 1989, para. 7.

<sup>72</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 1.

1 [of the ICCPR], allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, inter alia, that those measures should not involve discrimination solely on the ground of [...] religion [...] Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of [...] religious hatred which constitutes incitement to discrimination.”<sup>73</sup>

Other international instruments, including ICERD, ICESCR, CRC and the 1981 Declaration of the UN General Assembly provide similar protections against discrimination on the grounds of religion or belief.<sup>74</sup>

In addition, Article 27 of the ICCPR provides that, “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

The UN Human Rights Committee has viewed with concern “any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”<sup>75</sup>

As the Human Rights Committee has observed, “[t]he enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance.”<sup>76</sup> Further, not all forms of distinction or preference amount to prohibited discrimination under international human rights law – in certain circumstances, special temporary measures or affirmative action that aim to address the conditions that perpetuate discrimination, including on grounds of religion or belief, may be required. Such action may involve, for example, granting part of the population preferential treatment. However, as long as such action is needed to correct the causes of discrimination, it is a case of legitimate differentiation under the Covenant.<sup>77</sup>

### Discrimination and State religion

International human rights law and standards do not prohibit the adoption of “State religions”. However, the UN Human Rights Committee has elucidated that, even if a religion is recognized as a “State religion”, or that its followers comprise the majority of the population, this “shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.”<sup>78</sup> The Committee

<sup>73</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 2.

<sup>74</sup> ICESCR Article 2(2): “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as [...] religion”; Article 5, ICERD: “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [...] the right to freedom of thought, conscience and religion”; CRC, Article 30: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language;” and the 1981 Declaration of the General Assembly, Article 2(1): “No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.”

<sup>75</sup> Para. 2, General Comment 22, supra fn 23.

<sup>76</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 8.

<sup>77</sup> Ibid., para. 10.

has also emphasized that the adoption of a “State religion” must not result “in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.”<sup>79</sup>

This includes, for example, measures that discriminate against those who do not accept the official religious ideology of the State, such as restrictions on eligibility for government service, giving economic privileges to adherents of the majority or official religion, or imposing restrictions on the practice of other faiths.<sup>80</sup>

The UN Special Rapporteur on Freedom of Religion or Belief has also cautioned that, particularly in States with a range of religious and ethnic identities, “the constitutional profession of an official religion, a State religion or a religion of the State, may be politically or historically justified, but by its very nature it carries the seed of aggravated discrimination”,<sup>81</sup> and that, “the legalization of a distinction between different categories of religion is liable to pave the way for future violations of the right to freedom of religion or for discrimination on the basis of religion or belief.”<sup>82</sup>

### Discrimination with regard to the enjoyment of economic, social and cultural rights

It is critical that States give due consideration to preventing discrimination with regard to the enjoyment of economic, social and cultural rights, since minorities and other groups at risk of human rights violations are particularly affected when States do not abide by their obligations to respect, protect and fulfill these rights.

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, which addresses the principle of non-discrimination, specifically includes a reference to religion:

*States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In its General Comment on Article 18 of the ICCPR, the Human Rights Committee has specifically referred to economic, social and cultural rights in the context of freedom of religion, and has stated that policies or practices having the same intention or effect such as those restricting access to education, medical care or employment are similarly inconsistent with Article 18(2) of the ICCPR.<sup>83</sup> The 1981 Declaration reinforces this approach by urging States to strengthen their efforts to ensure that no one is discriminated against on the basis of his or her religion or belief when accessing economic, social, cultural rights, including education, medical care, employment, humanitarian assistance or social benefits.<sup>84</sup>

<sup>78</sup> Para 9, General Comment 22, supra fn 23.

<sup>79</sup> Ibid., para. 10.

<sup>80</sup> Ibid., para. 9.

<sup>81</sup> Rapporteur’s Digest on Freedom of Religion or Belief, para. 120.

<sup>82</sup> Report submitted by Asma Jahangir, the UN Special Rapporteur on Freedom of Religion or Belief, U.N. Doc. E/CN.4/2005/61, 20 December 2004, paras 61 and 62

<sup>83</sup> Para. 5, General Comment 22, para 5, supra fn 23.

<sup>84</sup> UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, Articles 2-4.

## Discrimination and violence on the basis of religion or belief

The UN Special Rapporteur on Freedom of Religion or Belief has noted a pattern of discrimination and violence in the name of religion or belief globally.<sup>85</sup> There are a number of manifestations of this phenomenon: dissenting or dispassionate believers are being marginalized and face interreligious or intra-religious problems; violent acts or threats against members of religious minorities are perpetrated by non-State actors, often with impunity; places of worship and other religious buildings or properties are attacked; and laws, policies and practices ostensibly designed to combat terrorism have led to the estrangement of communities, and worse, expose them to violence and discrimination.<sup>86</sup>

Not only do these acts constitute violations of the right to be free from discrimination on the basis of religion or belief, but some of them also fall foul of Article 20(2) of the ICCPR, which obliges States to prohibit any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

## Groups particularly at risk

### Women

As mentioned above, discrimination often operates intersectionally. As the UN Human Rights Committee has noted, discrimination against women “is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>87</sup> The Committee has also recognized that, “inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes.”<sup>88</sup>

There are a number of practices that discriminate against women and girls, violate their human rights and are harmful to their health and wellbeing, such as female genital mutilation, female infanticide, cruelty to widows, so called “honour killings”, child and early marriage, forced marriage, discriminatory personal laws, and restrictions on access to public spaces, to name but a few.<sup>89</sup> Harmful practices by definition constitute a denial of dignity and integrity, and are imposed on women and girls “regardless of whether the victim provides, or is able to provide, full, free and informed consent.”<sup>90</sup> In addition to being inconsistent with women’s and girls’ right under Article 18(2) of the ICCPR not to “be subject to coercion which would impair [their] freedom to have or to adopt a religion or belief of [their] choice”, harmful practices impair or nullify the enjoyment and exercise by women and girls of other human rights guaranteed under international human rights law, including the ICCPR, such as the right to liberty and security of person (Article 9); freedom from torture or other cruel, inhuman or degrading treatment or punishment (Article 7); the right to equality between men and women (Article 3); freedom from slavery (Article 8); freedom of movement (Article 12); right to freedom of expression (Article 19); the right to privacy (Article 17); and the right to equality before the law and equal protection of the law without discrimination (Article 26). While many harmful practices may be attributable to cultural interpretations of religion, they may, in

<sup>85</sup> Report of the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, U.N. Doc. A/HRC/13/40, 21 December 2009, paras 34-47.

<sup>86</sup> Ibid.

<sup>87</sup> General Comment 28, para. 30.

<sup>88</sup> Ibid., para. 5.

<sup>89</sup> Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014. <sup>90</sup> Ibid., p.6.

fact, even be in conflict with religious prescriptions. At times, however, States or communities claim that certain harmful and discriminatory practices are religious duties. While this may make it particularly difficult to challenge and adequately address such harmful practices, international human rights law is clear: purported claims to be legitimately exercising ones’ right to freedom of thought, conscience, religion or belief as a human right cannot be used as grounds for violating the human rights of women and girls under international human rights law, or of anyone else for that matter.

### *Pichon and Sajous v. France*

The decision of the European Court of Human Rights in the case of *Pichon and Sajous v. France* is an emblematic one in this context.<sup>91</sup> The applicants, two pharmacists, had refused to sell lawfully prescribed contraceptives on the grounds that their refusal to do so amounted to a legitimate manifestation of their freedom of religion protected by Article 9 of the European Convention on Human Rights. As a result, they were found guilty at first instance of refusing to sell medically prescribed contraceptive products. The decision was upheld on appeal and their final domestic appeal to the Court of Cassation was dismissed. The domestic jurisdictions confirmed that, in the circumstances of the case, the applicants’ religious beliefs did not constitute a valid reason for refusing to dispense lawfully prescribed contraceptives. The applicants lodged an application with the European Court of Human Rights, complaining under Article 9 of the European Convention on Human Rights that the domestic courts had disregarded their right to freedom of religion. In declaring the application inadmissible, the Court held that the applicant’s refusal to sell the contraceptive pill was not protected by Article 9. The Court confirmed that the right to freedom of thought, conscience and religion does not necessarily guarantee the right to behave in accordance with one’s beliefs in public. The applicants could not give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they could manifest their beliefs in many ways outside the professional sphere.

Provisions of international human rights instruments that guarantee the right to freedom of thought, conscience, religion or belief, including Article 18 of the ICCPR, do not specifically or expressly mention the equality of women with men in the practice of religion or belief. Similarly, international human rights provisions guaranteeing and protecting women’s equality, including, chiefly, those enshrined in the CEDAW, do not expressly mention religion or belief. However, every major international human rights instrument affirms the non-discrimination principle, the right to equality before the law and equal protection of the law without discrimination, and contains provisions that prohibit discrimination on the basis of sex or religion. These include, for example, Articles 2(1) and 3 of ICCPR and Article 2(2) and 3 of the ICESCR. Non-discrimination both on grounds of sex and religion or belief, therefore, must necessarily be read into human rights provision related to the right to freedom of thought, conscience, religion or belief.

With respect to the standalone non-discrimination on the basis of sex provision in Article 3 of the ICCPR (i.e., “States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”), in its General Comment 28 the Human Rights Committee emphasized that, “all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality [...] States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.”<sup>92</sup> The Committee went on to affirm that State Parties must take “all necessary steps” to enable the equal enjoyment of Covenant rights to everyone, whether in the public or private sectors, or during

<sup>91</sup> *Pichon and Sajous v. France*, European Court of Human Rights, Appl. No. 49853/99, decision, 02/10/2001.

<sup>92</sup> Human Rights Committee, General Comment 28, para. 2.

states of emergency or conflict. The Committee recognized that this will require positive measures, as well as measures of protection, including public education as to the role of women, the empowerment of women, changes to domestic legislation and tracking their effectiveness, and human rights training for officials.<sup>93</sup>

Furthermore, Article 5 of the ICCPR proclaims that nothing in the Covenant “may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”

Acknowledging that the right to freedom of thought, conscience, religion or belief is often invoked as a justification by States to impede women’s enjoyment of human rights, the UN Human Rights Council has requested that the UN Special Rapporteur on Freedom of Religion or Belief applies a gender perspective in the discharge of the mandate, including through the “identification of gender-specific abuses, in the reporting process, including in information collection and in recommendations.”<sup>94</sup>

In this context, in 2009, the UN Special Rapporteur on Freedom of Religion or Belief prepared a detailed report on the “right to freedom of thought, conscience, religion and belief and the status of women in the light of religion and traditions.”<sup>95</sup> The report highlighted the discriminatory practices that women have suffered over centuries and continue to do so, sometimes in the name of religion or within their religious communities, and urged that it no longer be taboo to demand that women’s rights take priority over intolerant beliefs that are used to justify discrimination on the basis of gender.<sup>96</sup>

Similarly, in 2013, the UN Special Rapporteur on Freedom of Religion or Belief prepared a report on the “freedom of religion or belief and equality between men and women.”<sup>97</sup> The report noted that, “abstractly antagonistic constructions of the relationship between freedom of religion or belief and equality between men and women are often based on a misunderstanding of the human rights nature of freedom of religion or belief”, and highlighted the need to understand that, as a human right, freedom of religion or belief does not protect religions per se, but aims at the “empowerment of human beings, as individuals and in community with others.” Based on the “empowerment” principle, it is possible to “develop and defend a holistic understanding of the complex interplay between freedom of religion or belief and equality between men and women.”

### Lesbian, gay, bisexual and transgender individuals

Given that some religious teachings declare the immorality of same-sex sexual relations, and that some claim, purportedly based on religious precepts, that it is not only same-sex sexual activity, but

<sup>93</sup> Ibid., paras 4, 7, 8 and 31.

<sup>94</sup> UN Human Rights Council, Resolution on the “Elimination of all forms of intolerance and of discrimination based on religion or belief”, U.N. Doc. A/HRC/RES/6/37, 14 December 2007.

<sup>95</sup> Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 2001/42 Addendum Study on the right to freedom of thought, conscience, religion and belief and the status of women in the light of religion and traditions, U.N. Doc. E/CN.4/2002/73/Add.2, 24 April 2009.

<sup>96</sup> Interim report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/68/290, 7 August 2013.

<sup>97</sup> Report on the Elimination on all forms of religious intolerance (Freedom of belief and equality between men and women) (August 2013), conclusions and recommendations, pages, 19-22, available at <https://www.ohchr.org/Documents/Issues/Religion/A.68.290.pdf>.

<sup>98</sup> See, for example, ‘Council of Churches against UNIBAM’s seeking of gay rights’, Channel 5 Belize (18 May 2011). At: [edition.channel5belize.com/archives/54599](http://edition.channel5belize.com/archives/54599); Kapya Kaoma, ‘The US Christian Right and the Attack on Gays in Africa’ (Winter 09/Spring 10), The Public Eye

also lesbian, gay, bisexual and transgender (LGBT) individuals themselves, that are worthy of condemnation, conflicts between the right to freedom from discrimination and the right to manifest one’s religion or beliefs may be inevitable.<sup>98</sup>

Religiously motivated disapproval of homosexuality may be manifested publicly or privately, by an individual, by religious institutions and private businesses, or by State employees in a variety of situations, including those related to education, employment, medical care, partnership and marriage. Examples from these various contexts underscore the diversity of circumstances in which the principle of nondiscrimination is relevant for LGBT individuals.<sup>99</sup>

However, international human rights standards prohibit discrimination on the grounds of sexual orientation and gender identity and, as discussed above,<sup>100</sup> intersecting and compounding forms of discrimination, including sexual orientation or gender identity or expression, can exacerbate or otherwise influence the nature of discrimination on the grounds of one’s real or imputed religion or belief. Under international standards, exercising ones’ right to freedom of thought, conscience, religion or belief as a human right, cannot be used as grounds to justify discrimination against LGBT individuals.

In this context, it is also worth noting that the UN Human Rights Committee has held that “sex” in Articles 2(2) and 26 ICCPR includes sexual orientation,<sup>101</sup> while the Committee on Economic, Social and Cultural Rights has also indicated that discrimination on the grounds of sexual orientation is prohibited by Articles 2(2) and 3 of the ICESCR.<sup>102</sup> Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have also expressly addressed discrimination on the basis of gender identity.<sup>103</sup>

### Refugees

Refugees, asylum-seekers, those who are stateless, migrants and internally displaced people are among those who are particularly at risk of violations of their right to freedom of thought, conscience, religion or belief.<sup>104</sup>

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Magazine; see generally Kapya Kaoma, *Globalizing the Culture Wars: US Conservatives, African Churches, and Homophobia* (Political Research Associates 2009).

<sup>99</sup> For illustrative cases, see International Commission of Jurists, “SOGI Casebook, Chapter ten: Freedom of Religion and Non-Discrimination,” accessed at: <https://www.icj.org/sogi-casebookintroduction/chapter-ten-freedom-of-religion-and-non-discrimination/>. See also, Dr. Alice Donald and Dr. Erica Howard, “The right to freedom of religion or belief and its intersection with other rights,” A research paper for ILGA-Europe, January 2015, accessed at: [https://www.ilgaeurope.org/sites/default/files/Attachments/the\\_right\\_to\\_freedom\\_of\\_religion\\_or\\_belief\\_and\\_its\\_intersection\\_with\\_other\\_rights\\_0.pdf](https://www.ilgaeurope.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights_0.pdf).

<sup>100</sup> See “Discrimination on the grounds of thought, conscience, religion or belief”, p. 6.

<sup>101</sup> Toonen v. Australia (488/1992) CCPR/C/50/D/488/1992, 1-3 IHRR 97 (1994), para. 8.7.

<sup>102</sup> See CESCR, General Comment No. 14 (right to the highest attainable standard of health), 2000, para. 12; General Comment No. 15 (right to water), 2002, para. 18; General Comment No. 18 (right to work), 2005, para. 12; and, General Comment No. 20 (Non-discrimination in economic, social and cultural rights), 2009, para. 32.9. See, e.g. Concluding observations of the HRC on Ireland (CCPR/C/IRL/CO/4), para. 7, and on the United Kingdom (CCPR/C/GBR/CO/6), at para. 5; and, CESCR, General Comment No. 20 (n 8), para. 32.

<sup>103</sup> See, e.g. Concluding observations of the HRC on Ireland (CCPR/C/IRL/CO/4), para. 7, and on the United Kingdom (CCPR/C/GBR/CO/6), at para. 5; and, CESCR, General Comment No. 20 (n 8), para. 32.

<sup>104</sup> For example, in its resolution on the “Elimination of all forms of intolerance and of discrimination based on religion or belief”, the UN General Assembly has “[r]ecognize[d] with concern the situation of persons in vulnerable situations, including [...] refugees, asylumseekers and internally displaced persons [...] persons belonging to national or ethnic, religious and linguistic minorities and migrants, as regards their ability to freely exercise their right to right to freedom of thought, conscience, religion and belief”, U.N. Doc. A/RES/65/211, 30 March 2011, para. 8. See also, Interim report of the UN Special Rapporteur on the Freedom of Religion or Belief, U.N. Doc A/62/280, 20 August 2007, pp. 38-63.



International human rights instruments guaranteeing the right to freedom of thought, conscience, religion or belief, such as the ICCPR, do not restrict the exercise and enjoyment of such freedom to citizens only – in fact, as a general principle, under international human rights law, the obligations of States towards individuals do not depend on the particular status or recognition of such status of these persons under domestic or international law, except for a limited number of provisions explicitly applicable to special categories.<sup>105</sup>

Under international human rights law, “[e]veryone has the right to seek and to enjoy asylum in other countries from persecution.”<sup>106</sup> Refugee law recognizes claims to refugee status based on religion,<sup>107</sup> and, all things being equal, entitles those who have a well-founded fear of persecution for those reasons to international protection as refugees.<sup>108</sup> In addition, under refugee law, refugees have specific rights in their country of asylum. Article 4 of the Refugee Convention provides that: “States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.” Moreover, Article 3 of the Refugee Convention guarantees that: “States shall apply [its] provisions to refugees without discrimination as to race, religion or country of origin”. Finally, Article 33(1) of the Refugee Convention guarantees that: “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

### Religious and belief minorities

The UN Special Rapporteur on Freedom of Religion or Belief has stated that religious minorities remain the main victims of violations of the right of freedom of religion or belief and other acts of religious intolerance.<sup>109</sup> Religious and belief minorities face various forms of discrimination, including with regard to official registration procedures or undue limitations with respect to religious teaching, dissemination of religious materials and displaying religious symbols. Some religious minorities are also adversely affected by intolerance, threats or acts of violence perpetrated by non-State actors, which are often tolerated or encouraged by the authorities.<sup>110</sup>

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<sup>105</sup> For instance, all the rights guaranteed by the ICCPR apply to everyone, with the sole exception of the rights under Article 25 (participation in public life, voting and election, access to serve in the public service), which the ICCPR expressly guarantees only to citizens.

<sup>106</sup> E.g., Article 14 of the UDHR.

<sup>107</sup> See, inter alia, UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/04/06, 28 April 2004.

<sup>108</sup> Article 1A(2) of the Refugee Convention, as amended by its 1967 Protocol, defines the term refugee for the purposes of that treaty as someone, who, among other things, “owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” The 1951 Convention Relating to the Status of Refugees, 189 United Nations Treaty Series 137, entered into force 22 April 1954, as amended by the Protocol Relating to the Status of Refugees, 606 United Nations Treaty Series 267, entered into force 4 October 1967.

<sup>109</sup> Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/61/340, 13 September 2006, pp. 49-51.

<sup>110</sup> Interim report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/64/159, 17 July 2009, para. 29.

<sup>111</sup> Report of the Special Rapporteur on freedom of religion or belief, U.N. Doc A/61/340, 13 September 2006, pp. 49-51.

Moreover, when religious minorities are groups that follow “a so-called non-traditional or newer religion”, the members of these communities may be the object of suspicion and, consequently, may suffer greater limitations of their right to freedom of religion or belief.<sup>111</sup>

Under international human rights law and standards,<sup>112</sup> States have an obligation to guarantee the right of minorities to freedom of religion and the practice of religion. The State has a duty to protect religious minorities against abuses committed against them by non-State entities. States are also required to create conditions for promoting the identity, including the religious identity, of minorities.

To fulfil their obligations under international human rights law, States must take a broad and inclusive interpretation of the rights of persons belonging to religious or belief minorities. This includes taking into account the right to freedom of religion or belief of those individuals or groups who do not, or do not seem to, fit into the setting of theologically accepted religions, such as members of other minorities, individual dissenters, minorities within minorities, atheists or agnostics, converts or people with unclear religious affiliation.<sup>113</sup>

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<sup>112</sup> See, for example, Article 27 of the International Covenant on Civil and Political Rights; General Comment No. 23 of 6 April 1994 of the Human Rights Committee; Article 30 of the Convention on the Rights of the Child; and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

<sup>113</sup> See “Protecting the freedom of religion or belief of persons belonging to religious minorities”, Heiner Bielefeldt, Freedom of Religion or Belief: Thematic Reports of the UN Special Rapporteur 2010 – 2016, p. 134-144.

## Relationship with other human rights

The right to freedom of thought, conscience, religion or belief is, at times, perceived to be in tension with other human rights. Indeed, it may come into conflict with other rights, such as the right to freedom of expression – a right with which the right to freedom of thought, conscience, religion or belief is closely interrelated. However, as noted by UN Special Rapporteur on the Freedom of Religion or Belief, both rights facilitate “the flourishing of free and democratic societies in conjunction with other rights to freedom”,<sup>114</sup> and any perceived tensions between the right to freedom of thought, conscience, religion or belief and other human rights are usually based on the “misunderstanding that the right to freedom of religion or belief protects religions or belief systems per se.”<sup>115</sup> However, the international human rights law framework guarantees the right to freedom of expression and the right to freedom of thought, conscience, religion or belief of individual human beings, as opposed to guaranteeing the supremacy of any particular belief or religious system or specific expression, for that matter.

### Freedom of opinion and freedom of expression

Article 19(1) of the ICCPR guarantees the right of everyone to hold opinions without interference, and Article 19(2) guarantees the right of everyone to freedom of expression, including to 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.

The Human Rights Committee has observed that, “all forms of opinions are protected including opinions of a...religious nature”, and that, “harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of Article 19(1).”<sup>116</sup> The Committee has also considered that criminalizing the holding of an opinion, no matter what the opinion, is incompatible with Article 19.<sup>117</sup>

Freedom of expression is not an absolute right, and it may be subject to State regulation for the furtherance of those purposes set forth in Article 19(3) of the ICCPR. These are the respect of the rights or reputations of others and the protection of national security, public order, or of public health or morals. However, protection of a particular religion or religious belief per se, or someone’s religious sentiments for that matter, do not constitute legitimate grounds recognized under international human rights law and standards for the lawful imposition of certain restrictions on the exercise of the right to freedom of expression.

Conversely, there may be instances in which someone’s freedom of expression may be lawfully restricted, including for the protection of certain religious communities, particularly minorities, from discrimination. However such restrictions should be prescribed by law, for the purposes recognized by the ICCPR, and be strictly necessary for the protection of interests set forth in Article 19(3) ICCPR.<sup>118</sup>

<sup>114</sup> See “Two closely interrelated rights: freedom of religion or belief and freedom of opinion and expression”, Heiner Bielefeldt, Freedom of Religion or Belief: Thematic Reports of the UN Special Rapporteur 2010 – 2016, p. 331.

<sup>115</sup> Ibid.

<sup>116</sup> UN Human Rights Committee (HRC), General Comment 34: Freedoms of Opinion and Expression (Article 19), UN Doc. CCPR/C/GC/34, (2011), para. 9, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

<sup>117</sup> Ibid., para. 48.

<sup>118</sup> Malcolm Ross v. Canada, Human Rights Committee Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997 Views of 26 October 2000, see paras 11.1 – 11.6.

### Ross v. Canada

In *Ross v. Canada*,<sup>119</sup> the Human Rights Committee examined the circumstances in which freedom of expression may be lawfully restricted to protect the interest of a religious community. The case related to the transfer of Malcolm Ross, a resource teacher for remedial reading, to a non-classroom teaching position because of his public statements and writings widely perceived as “anti-Jewish”. The Committee concluded that the restrictions imposed on the author by the State party “were for the purpose of protecting the “rights or reputations” of persons of Jewish faith, including the right to have an education in the public school system free from bias, prejudice and intolerance.”<sup>120</sup> The Committee agreed that the State party had established a causal link between the author’s anti-Semitic views and the ‘poisoned school environment’ experienced by Jewish children in schools, and thus, ultimately, found that the removal of the author from a teaching position was a restriction necessary to protect the rights and freedoms of Jewish children to a learning environment free of bias and prejudice.<sup>121</sup> Additionally, the Committee observed that the restrictions placed on the author did not go any further than strictly required to fulfill the protective purpose.<sup>122</sup>

### Blasphemy laws

The UN Human Rights Committee, expounding on Article 19 of the ICCPR, has specifically stated: “Prohibitions of displays of lack of respect for a religion or other belief system, including “blasphemy laws”, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20, paragraph 2, of the Covenant”.<sup>123</sup> The Committee has further clarified that it is impermissible for any such laws to discriminate in favour of or against a particular religion or belief system, or their adherents over another or religious believers over non-believers. It is also impermissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.<sup>124</sup>

<sup>119</sup> Ibid., the author (Mr. Malcolm Ross) submitted a communication to the Human Rights Committee claiming that Canada as a State Party to the ICCPR had violated his rights set forth in Articles 18 and 19 of the Covenant. The author worked as a resource teacher for remedial teaching from 1976 onwards until 1991. Throughout this period the author published several books, pamphlets and appeared in television interviews. The content of his books, pamphlets and interviews were anti-Semitic. After complaints from a few parents the author’s in class teachings were monitored from 1979 onwards, and he was also warned that continued public discussion of anti-Semitic views could lead to his dismissal. However, he once again appeared in a television interview which led to a complaint being filed by a Jewish parent with the Human Rights Commission of New Brunswick stating that the lack of action against the author by the commission and the school board implied that they condoned the author’s anti-Semitic views and violated Jewish and other minority students’ rights against non discrimination. This led to the author being placed under a legal moratorium on publication or expression of anti-Semitic views for 18 months, violation of which could lead to his dismissal. The author claimed that the State Party violated his right to freedom of opinion and expression and his right to freedom of religion (see paras 2.1, 2.2, 2.3, 4.3).

<sup>120</sup> *Ross v. Canada*, supra fn 116, para. 11.5.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> UN Human Rights Committee, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland-the Crown Dependencies of Jersey, Guernsey and the Isle of Man, 25 April 2000, UN Doc. CCPR/CO/79/Add.119, HRC, GC 34, para. 48. Article 20(2) of the ICCPR relates to the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This prohibition does not necessarily mean censorship or stifling of freedom of expression but possibility of civil remedies. See Commission of Human Rights, Travaux Préparatoires of Article 20 of the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/SR.377,10, cited at, Michael G. Kearney, *The Prohibition of Propaganda for War in International Law*, 2007, New York, Oxford University Press, p. 111.

<sup>124</sup> See, for example, International Commission of Jurists, “On Trial: the implementation of Pakistan’s blasphemy laws,” November 2015.

## Recommendations

In light of the analysis of international human rights law and standards on the right to freedom of thought, conscience, religion or belief presented in this primer, the ICJ recommends that States should:

- Repeal any legislation prohibiting or limiting “conversion”, “apostasy”, or that otherwise curtails one’s right to abandon, change or retain one’s religion or belief;
- Ensure that any limitation on the right to freedom of thought, conscience, religion or belief, including the freedom to manifest one’s religion through, for example, the display of religious symbols or the wearing of religious clothing, be based exclusively on the legitimate grounds recognized by international human rights law, namely, to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others; that any such limitations be prescribed by law and be necessary; that they pursue at least one of the above-mentioned legitimate aims; and that they be proportionate.
- Repeal any prohibitions on “proselytism” or religious teaching, except where such prohibitions meet the requirements of “necessary restrictions” under international human rights standards, as outlined in this primer;
- Ensure that places of religious worship, sites and shrines be fully respected and protected and take additional measures to ensure their protection when they face foreseeable risks of desecration or destruction;
- Adopt legislation to guarantee the right to conscientious objection, particularly in connection with the legitimate exercise of the right to freedom of thought, conscience, religion or belief;
- Ensure that the right to freedom of thought, conscience, religion or belief and respect for culture and tradition are never used as pretexts to justify discrimination and violence and, in particular, human rights violations against women and girls or anyone else for that matter;
- Enact legislation or amend existing legislation in order to prohibit all discrimination based on the identification of individuals with certain groups, including, inter alia, groups defined by religion or belief, ethnicity, race, gender, sexual orientation and gender identity;
- States where “blasphemy” is criminalized or otherwise prohibited by law should repeal such laws, as they are inconsistent with the rights to freedom of thought, conscience, religion or belief and freedom of expression, and have a chilling effect on the enjoyment and exercise of these rights; and
- States should become parties to all core international human rights instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention Relating to the Status of Refugees. They should also withdraw existing reservations, including any reservations purporting to ensure compliance with religious tradition.

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