

# GUIDELINES FOR REVIEW OF LEGISLATION PERTAINING TO RELIGION OR BELIEF

PREPARED BY THE OSCE/ODIHR ADVISORY PANEL OF EXPERTS ON  
FREEDOM OF RELIGION OR BELIEF IN CONSULTATION WITH THE EUROPEAN  
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## INTRODUCTION

These *Guidelines for Review of Legislation Pertaining to Religion or Belief* were prepared by the members of the Advisory Panel of Experts on Freedom of Religion and Belief (Panel) of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in consultation with the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe. The Guidelines were prepared to assist the OSCE Panel and the Venice Commission in their analyses of laws and draft legislation pertaining to the freedom of religion or belief. The Guidelines incorporate comments received from members of the Panel, as well as from members of the Venice Commission. The Guidelines were not designed to be a comprehensive statement of all relevant human rights standards related to freedom of religion or belief, but to provide an overview and suggestions for those who will be involved in the review of laws.

These Guidelines were endorsed at the 59th plenary session of the European Commission for Democracy through Law on 18 June 2004 and were welcomed by the OSCE Parliamentary Assembly at its Annual Session in July 2004.

It is expected that the Guidelines will be revised over time. The Panel and the Venice Commission welcome additional comments and suggestions. However, all such suggestions should be precise and propose specific language either for inclusion or deletion, and suggestions should clearly note where in the Guidelines the changes should be made. Suggestions should be sent to the Rapporteur of the Panel, Dr. T. Jeremy Gunn: [JGunn@law.emory.edu](mailto:JGunn@law.emory.edu), and to the Secretariat of the Venice Commission: [venice@coe.int](mailto:venice@coe.int).

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# I.

## SOURCES FOR STANDARDS TO BE USED BY THE PANEL AND BY THE VENICE COMMISSION

The sources of law identified below are among the most important to which the Panel and the Venice Commission will refer in conducting their reviews. Panel members will have a special interest in applying OSCE commitments when conducting reviews requested by OSCE participating States. Among the most important sources are the following:<sup>1</sup>

### A. International Conventions, United Nations, and UN Specialized Agencies

- International Covenant on Civil and Political Rights (1966) (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Universal Declaration of Human Rights (1948) (UDHR)
- Relevant obligations from other international conventions
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
- United Nations Human Rights Committee General Comment 22
- Reports of United Nations Special Rapporteurs
- Other United Nations and specialized-agency documents

### B. Council of Europe

- [European] Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR)
- Other Council of Europe documents
- Decisions of the European Court of Human Rights<sup>2</sup>

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<sup>1</sup> For selected texts, see Appendix I below.

<sup>2</sup> The Panel has prepared a synopsis of leading cases from the European Court of Human Rights that is available for reviewers.

## **C. OSCE**

- Commitments and Concluding Documents of the OSCE process (particularly the 1989 Vienna Concluding Document)
- *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*
- Previous Panel legislative analyses
- Recommendations by the OSCE High Commissioner on National Minorities
- Other OSCE documents

## **D. Best practices of States**

Examples from States may be cited as illustrative of good practices.

## **E. Scholarly writings**

Writings of recognized scholars may be of value. For a list of some scholarly writings, see Appendix II below.

## II. SUBSTANTIVE ISSUES THAT TYPICALLY ARISE IN LEGISLATION

### A. Preliminary review issues

1. *Whether legislation is necessary.* It is important to bear in mind that legislation may not be necessary with regard to many of the issues for which a State might be considering enacting laws. Sometimes special legislation dealing with religious issues is proposed in response to an incident that excited public opinion, but that might in fact be better addressed by normal criminal or administrative actions. If a religious group is involved in a fraud or assault, for example, it is not necessarily best to respond by enacting new laws on religion. Thus, it is appropriate to consider whether the general laws on fraud or assault may be sufficient to address the problem without enacting a new statute to cover offences when committed in conjunction with religious activity (see Section III.G below).

2. *The definition of “religion.”* Legislation often includes the understandable attempt to define “religion” or related terms (“sects”, “cults”, “traditional religion”, etc.). There is no generally accepted definition for such terms in international law, and many States have had difficulty defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counterexamples are classical Buddhism, which is not theistic, and Hinduism, which is polytheistic. In addition, terms such as “sect” and “cult” are frequently employed in a pejorative rather than analytic way. To the extent that legislation includes definitions, the text should be reviewed carefully to ensure that they are not discriminatory and that they do not prejudice some religions or fundamental beliefs at the expense of others.

3. *Religion or belief.* International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. It is very common for legislation not to protect adequately (or to not refer at *all* to) rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.

4. *Religious “extremism”*. The question of religious “extremism” and state security has, during the last few years, been increasing in importance. There is no question that some groups and individuals, acting in the name of religion, have been involved in political violence. Regardless of whether their motivation is sincere and religious, or political and manipulative, it is an issue to which States understandably and appropriately need to respond. The concern, of course, is that States may use “extremism” as a rationale not only for responding to groups that are genuinely violent and dangerous, but that they may use the rhetoric of “extremism” to suppress legitimate religious expression or to target groups whose beliefs may simply be different or unusual. With regard to legislation, it is important that laws focus on genuinely dangerous *acts* or commission of *violence*, and not unduly grant police powers to the State to suppress groups that are merely disfavoured or unusual.

5. *Interrelationship of human rights norms*. International standards pertaining to freedom of religion and belief do not arise solely from clauses in covenants, conventions, and documents addressing religion and belief specifically. They come also from other clauses, such as those pertaining to association, expression, and rights of parents. For example, some European Court of Human Rights decisions with important implications for religion do not necessarily rely on Article 9, but on other grounds. Important examples include *Hoffmann v. Austria* (1993).

6. *Margin of appreciation*. International standards generally, and the European Court of Human Rights specifically, presume that there is a “margin of appreciation” that allows, to some extent, States to enact laws and implement policies that may differ from each other with regard to different histories and cultures. While this margin of appreciation should be respected, it should not be interpreted with a degree of latitude that would permit the undermining of the substance of human rights values. While laws of different States do not need to be identical, and while they should be allowed some flexibility, this flexibility should nevertheless respect the important underlying rights.

## **B. Basic values underlying international standards for freedom of religion or belief**

Broad consensus has emerged within the OSCE region on the contours of the right to freedom of religion or belief as formulated in the applicable international human rights instruments. Fundamental points that should be borne in mind in addressing legislation in this area include the following major issues.

1. *Internal freedom (forum internum)*. The key international instruments confirm that “[e]veryone has the right to freedom of thought, conscience and religion.” In contrast to manifestations of religion, the right to freedom of thought, conscience and religion within the *forum internum* is absolute and may not be subjected to limitations of any kind. Thus, for example, legal requirements mandating involuntary disclosure of religious beliefs are impermissible. Both the UDHR (art. 18) and the ECHR (art. 9) recognize that the protection of the *forum internum* includes the right to change one’s religion or belief. The UN Human Rights Committee’s General Comment No. 22 (48) on Article 18 states that “freedom to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, 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”. ***In any event, the right to “change” or “to have or adopt” a religion or belief appears to fall within the domain of the absolute internal-freedom right, and legislative provisions that impose limitations in this domain are inconsistent with internal-freedom requirements.***

2. *External freedom (forum externum)*. Everyone has the freedom, either alone or in community with others, in public or private, “to manifest his [or her] religion or belief in worship, observance, practice, and teaching” (ICCPR, art. 18.1). As suggested by this phrase, the scope of protected manifestations is broad. Thus, legislation that protects only worship or narrow manifestation in the sense of ritual practice is inadequate. Also, it is important to remember that it is both the manifestations of an individual’s beliefs and those of a community that are protected. Thus, the manifestation of an individual’s beliefs may be protected even if the individual’s beliefs are stricter than those of other members of the community to which he or she belongs. Recognizing this fact, however, does not imply that the beliefs of a community as a collectivity do not also warrant respect. Manifestations of religion or belief, in contrast to internal freedom, may be limited, but only under strictly limited circumstances set forth in the applicable limitations clauses. Limitations are permissible only if warranted under these limitations clauses, as described in Section II.G below.

3. *Equality and non-discrimination*. States are obliged to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status. Legislation should be reviewed to assure that any differentiations among religions are justified by genuinely objective factors and that the risk of prejudicial treatment is minimized or totally eliminated. Legislation that acknowledges historical differences in the role that different religions have played in a particular country’s history are permissible so long as they are not used as a justification for discrimination.

4. *Neutrality and impartiality.* As stated by the European Court of Human Rights in *Metropolitan Church of Bessarabia v. Moldova*, “in exercising its regulatory power ... in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial”.<sup>3</sup> Among other things, this obligation includes an obligation to refrain from taking sides in religious disputes. When faced with religious conflicts, “the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other”.<sup>4</sup> In legislation dealing with the structuring of religious communities, the neutrality requirement “excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed”. Accordingly, “[s]tate measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, ... constitute an infringement of the freedom of religion”. Similarly, “where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9”. In general, the neutrality requirement means that registration requirements that call for substantive as opposed to formal review of the statute or charter of a religious organization are impermissible.

5. *Non-coercion.* No one shall be subject to coercion that would impair his or her freedom of religion or belief. This aspect of freedom of religion or belief protects against practices that use compulsion to go beyond reasonable persuasion, either by *improperly inducing* an individual to change a religion or belief, or *improperly preventing* an individual from changing religions or beliefs. As a historical matter, the adoption of this provision was prompted more by concerns about legal and social pressures that would prevent a person from changing religions than by worries about missionary work, but the norm applies to the use of compulsion in either direction. Although it may be permissible for a State to enact a law preventing bribes or other extreme material inducements, legislation should be reviewed to ensure that the proposed measures are designed to protect people from unwarranted pressures to change religions rather than unwarranted State pressures on people *not* to change religions. The non-coercion requirement also extends to legal requirements such as oath-taking, flag-salute requirements, or other state-mandated activities that force an individual to express or adopt beliefs inconsistent with those held by the individual. Coercive features of legislation should be reviewed with particular care.

<sup>3</sup> *Metropolitan Church of Bessarabia v. Moldova*, § 116 (ECtHR 2001).

<sup>4</sup> *Ibid*, citing *Serif v. Greece*, § 53 (ECtHR 1999).

6. *Rights of parents and guardians.* States are obliged to respect the liberty of parents and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child. This protection is spelled out with particular clarity in Article 5 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child. Legislation should be reviewed to assure that the appropriate balance of autonomy for the child, respect for parents' rights, and the best interests of the child are reached. Problematic in this regard are provisions that fail to give appropriate weight to decisions of mature minors, or that interfere with parental rights to guide the upbringing of their children. There is no agreed international standard that specifies at what age children should become free to make their own determinations in matters of religion and belief. To the extent that a law specifies an age, it should be compared to other State legislation specifying age of majority (such as marriage, voting, and compulsory school attendance).

7. *Tolerance and respect.* Principle 16(b) of the OSCE's Vienna Concluding Document provides that participating States will "foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers". Legislation should be assessed with regard to its compliance with this commitment. In general, in a world committed to respect for human dignity, mere toleration is scarcely enough; a climate of genuine respect is to be preferred. Although there is no requirement that the teaching of tolerance be included within any particular statute or statutory scheme, it may be appropriate to suggest the possibility of including such provisions.

8. *Right to association.* OSCE commitments have long recognized the importance of the right to acquire and maintain legal personality.<sup>5</sup> Because some religious groups object in principle to State chartering requirements, a State should not impose sanctions or limitations on religious groups that elect not to register. However, in the contemporary legal setting, most religious communities prefer to obtain legal personality in order to carry out the full range of their activities in a convenient and efficient way. Because of the typical importance of legal personality, a series of decisions of the European Court of Human Rights recognized that access to such a status is one of the most important aspects of the right to association,<sup>6</sup> and that the right to association extends to religious

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<sup>5</sup> See, for example, Principle 16(c) of the Vienna Concluding Document.

<sup>6</sup> *Sidiropoulos v. Greece* (ECtHR 1998); *United Communist Party of Turkey v. Turkey* (ECtHR 1998); *Gorzelik v. Poland*, § 55 (ECtHR 2001).

associations.<sup>7</sup> Undue restrictions on the right to legal personality are, accordingly, inconsistent with both the right to association and freedom of religion or belief (for registration of religious or belief associations, see Section II.F below).

9. *Right to effective remedies.* Parties asserting religious claims have rights to effective remedies. This is rooted in general rule-of-law conceptions, but has found specific embodiment in a number of international norms. Among other things, as indicated by provisions such as ICCPR Article 2, States have a general obligation to give practical effect to the array of norms spelled out in international human rights law. More specifically, provisions such as ECHR Articles 6(1) and 13 require that effective remedies be made available. The European Court has sustained the right of a religious community to acquire legal personality on the basis of ECHR Article 9, construed “in light of” Article 6.<sup>8</sup> Particularly significant in this area is that religious organizations be assured of prompt decisions on applications and a right to appeal, either in the legislation under consideration or under applicable administrative review provisions spelled out in separate legislative enactments.

## C. Religion and education (including financing)

Primary and secondary education is one of the most complicated areas pertaining to rights of religion or belief. (Post-secondary education raises similar issues, though they typically are less complex versions of the issues that arise in primary and secondary schools.) Laws involving education should be reviewed to identify these and other issues raising concerns regarding international standards and OSCE commitments. Among the most common (interrelated) issues are the following:

1. *Parental rights related to education of their children.* It is generally recognized that parents have the right to determine the religious education of their children.<sup>9</sup>

2. *State financing of religious education (both within State and community schools and religious and other private schools).* There is a wide variety of State practices regarding State financing of religious education both within State schools and private

<sup>7</sup> See, for example, *Hasan and Chaush v. Bulgaria*, § 62 (ECtHR 2000); *Metropolitan Church of Bessarabia v. Moldova*, § 118 (ECtHR 2001).

<sup>8</sup> *Metropolitan Church of Bessarabia v. Moldova*, § 118 (ECtHR 2001); *Canea Catholic Church v. Greece* (ECtHR 1997).

<sup>9</sup> See, for example, General Comment 22 § 6; ECHR Protocol 2, art. 2; 1981 Declaration, art. 5; Vienna Concluding Document 16.7; and Section II.B.6 above.

religious schools. The most obvious potential issue is whether the financing, when provided, is offered on a non-discriminatory basis.

3. *Religious, ethical, or humanist education in State and community schools.* There is a wide variety of State practices regarding religious, ethical, and other forms of ideological education in State and community schools. When considered in conjunction with the rights of the parents (see Section II.B.6 above), it is presumably the case that children cannot be required to take instruction in denominational or ideological education against their parents' wishes, though general education about religions, beliefs, and ethics generally is permissible. Some States require students to take either religious or ethical (life studies) education, which presumably is a permissible approach, though States should be sensitive to the religious and ideological concerns of parents on behalf of their children and should seriously consider providing opt-out possibilities when the education may interfere with deeply held religious and ideological beliefs. (The State may, however, take positions against extreme ideological positions, such as fascism and anti-Semitism.)

4. *State authorization of private religious or philosophical schools.* It presumably follows from Section II.B.6 above that parents should be able to educate their children in private religious schools or in other schools emphasizing ideological values. Certainly, the dominant practice among OSCE participating States is to allow for private religious and ideological schools, though the State is permitted to establish neutral criteria for the teaching of standard subjects such as mathematics, history, science, and languages. The State also permissibly may regulate teacher certification. The difficulty may arise when the State discriminates between religious or ideological groups that are permitted to operate schools and those that are not. For example, some States may permit religious schools to be operated only by "registered religions". Although it is possible to imagine cases where it would be acceptable to require that religious schools be operated only by registered religions, such a requirement becomes presumptively unacceptable wherever State policy simultaneously erects discriminatory obstacles to registration for some religious groups. It is important to evaluate whether laws are neutral and non-discriminatory.

5. *Rules pertaining to hiring and firing teachers and other school personnel on grounds of religion or belief.* Cases involving the hiring and firing of teachers and other school personnel at schools (both State and private) when religion or belief is a factor can be very complicated and fact-specific. Religious schools, for example, may require that employees must be members of the religion and may wish to terminate those who leave the religion or engage in conduct that officials deem to be contrary to the ethos of

the school. There are many State practices in this regard, and it is a continually evolving area of the law (see also Sections III.D and III.H below).

6. *Religious symbols (and attire) in State schools.* There are three principal issues that are likely to arise regarding religious symbols in State schools. First, there are several State practices regarding prohibitions on teachers or other school personnel wearing religious attire while teaching. Second, there is a variety of State practices regarding the placement of religious symbols in classrooms. Third, an issue that has been growing in significance is State prohibition of schoolchildren's wearing religious attire – an issue recently sparked by the Islamic headscarf. International instruments do not speak clearly to these issues, though caution should be offered, and general guidelines of promotion of tolerance and non-discrimination should be weighed.

## **D. Autonomy/self-determination of religious/belief organizations**

States have many different practices regarding autonomy (or self-determination) of religious and belief groups. These range from situations where the State formally has authority over the doctrines of established churches to situations where States are very reluctant to involve themselves in any matter that might be considered “internal” or “doctrinal” to a religious organization. There is a trend towards extricating the State from doctrinal and theological matters, and this trend will likely continue. It is reasonable to suggest that the State should be very reluctant to involve itself in any matters regarding issues of faith, belief, or the internal organization of a religious group. However, when the interests of religious or belief groups conflict with other societal interests, the State should engage in a careful and nuanced weighing of interests, with a strong deference towards autonomy except in those cases where autonomy is likely to lead to a clear and identifiable harm. For example, if the doctrine of a religious group prohibited individuals from leaving the group, the State might well intervene to prevent the group from using physical compulsion to enforce its doctrine. It is important to consider autonomy as a situation where a limitations analysis should be conducted with care (see Section II.G below). It should be noted that autonomy issues are particularly likely to arise in contexts where religious or belief organizations are engaged in activities such as operating hospitals, schools, or businesses and where individuals assert that the organizations discriminate (on grounds such as gender or membership in the religion). Although differential treatment may be permissible, it is appropriate to draw attention to the competing values of religious autonomy for institutions and the right of citizens to be free from discrimination on the grounds of reli-

gion, especially when the employers receive public financing or tax deductions for their activities.

## E. Clergy/religious leaders

States often enact laws that apply to members of the clergy. (The term “clergy” is broadly understood to identify religious leaders or officials in all religions.) Among the most common (and often interrelated) issues are the following:

1. *State benefits to clergy.* Many States provide benefits to recognized members of the clergy. The types of benefit that may be available are exemption from military service; the right to perform State-sanctioned marriages; access to provide pastoral care at prisons, hospitals, schools, and in the military; salaries paid by the State; and the right not to testify in court (for example “priest-penitent privilege”). Though benefits such as these are part of many State practices, the concern always will be whether such benefits are offered in a neutral way to all religious and belief groups. The procedures for identifying who is a member of the clergy may be a complicated issue involving both secular and religious laws. Some religions have lay ministries where many in a group are considered “clergy”, whereas others may be hierarchical and require theological training and certification. Laws should be reviewed with reference to favouritism or bias among different groups (see Section II.K below).

2. *Social security and tax laws relating to clergy.* Laws relating to taxation and retirement benefits may raise specific issues relating to the clergy. Although there are virtually no international standards pertaining to this issue *per se*, provisions should be reviewed with respect to equality, non-discrimination, and autonomy.

3. *Limitations and disabilities on political activities.* Some States restrict clergy from participating in activities that are open to other citizens, such as holding political or other State offices. Such laws often reflect particular historical developments within countries and should be reviewed with care.

## F. Laws governing registration of religious/belief organizations

1. *Registration of religious/belief organizations.* Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like

are particularly significant for religious organizations.<sup>10</sup> The following are some of the major problem areas that should be addressed:

- Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits;
- Individuals and groups should be free to practise their religion without registration if they so desire;
- High minimum membership requirements should not be allowed with respect to obtaining legal personality;
- It is not appropriate to require lengthy existence in the State before registration is permitted;
- Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned;
- Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited;
- Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed (see Section II.D above);
- Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.
- Adequate transition rules should be provided when new rules are introduced;
- Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern (a registered religious entity should not have veto power over the registration of any other religious entity).

2. *Privileges and benefits of religious/belief organizations.* In general, out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief; at a minimum, access to the basic rights associated with legal personality – for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued – should

<sup>10</sup> See 2001 Seminar on “Freedom of Religion or Belief in the OSCE Region: Challenges to Law and Practice” ([http://www.osce.org/documents/odihri/2001/06/1523\\_en.pdf](http://www.osce.org/documents/odihri/2001/06/1523_en.pdf)) and Council of Europe Commissioner for Human Rights Seminar Concerning Church-State Relations in the Light of the Exercise of the Right to Freedom of Religion ([http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/Documents/CommDH\(2001\)15\\_E.asp](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/CommDH(2001)15_E.asp)).

be available without excessive difficulty. In many legal systems, there are additional legal issues that have substantial impact on religious life that are often linked to acquiring legal personality – for example, obtaining land use or other governmental permits; inviting foreign religious leaders, workers, and volunteers into a country; arranging visits and ministries in hospitals, prisons, and the military; eligibility to establish educational institutions (whether for educating children or for training clergy); eligibility to establish separate religiously motivated charitable organizations; and so forth. In many countries, a variety of financial benefits ranging from tax-exempt status to direct subsidies may be available for certain types of religious entities. In general, the mere making available of any of the foregoing benefits or privileges does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated.

3. *Dissolution provisions.* Religious organizations should be encouraged to provide adequately for what happens in the event of either voluntary or involuntary dissolution of a legal entity of the organization. Voluntary dissolution should be allowed. Dissolution provisions should be consistent with registration provisions in that the standards for access to, and retention of, legal personality should be broadly similar. Care should be taken to avoid vague provisions that allow discriminatory treatment of unpopular groups.

## **G. Limitations clauses (public safety, health, etc.)**

International human rights instruments and State constitutions typically identify not only the right of freedom of religion or belief, they also identify the circumstances in which a State legitimately may limit the manifestation of those rights. The internal-freedom rights of conscience and belief may never be limited by the State (see Section II.B.1). Thus, the European Convention on Human Rights (ECHR), for example, contains a “limitations clause” that allows for the restriction of religious manifestations that are “prescribed by law and [that are] necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” (ECHR, art. 9.2). The ICCPR’s stated limitations require that they be “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (ICCPR, art. 18.3).

The standard international analysis, which may vary depending on the country and the status of ratification of international instruments, makes three basic inquiries. First, is the limitation prescribed by law, meaning is it sufficiently clear as to give notice of what is and is not prohibited? Second, is the purported basis for the limitation identified in the limitations clause? (Note that “national security” is not a permissible limitation under

ECHR art 9.2 or ICCPR art. 18.3.) Third, is the limitation proportionate to the public interest that is served?<sup>11</sup> Laws must satisfy all three inquiries. The European Court of Human Rights and the UN Human Rights Committee, in the latter's General Comment 22, state that limitations should be construed strictly.

Article 4(2) of the ICCPR provides that States may make no derogation from the right to freedom of religion or belief, including in times of public emergency. In this regard, the right to freedom of religion or belief is accorded even higher priority than freedom of expression or freedom of association. This does not mean that other State interests may never override freedom of religion or belief. But it does mean that even during times of public emergency, this fundamental right can be overridden only if this is warranted under the applicable limitations clause.

The reviewer should identify which limitations clauses apply according to applicable international treaties, OSCE commitments, State constitutions, and laws. State laws should be evaluated for internal consistency: is the draft limitation inconsistent with the State constitution, and are State laws consistent with international obligations?<sup>12</sup>

## H. "Foreign" issues

1. *Visas*. States properly have authority to impose regulations concerning entry into their country by foreigners. This typically involves granting visas of differing kinds. Countries may have legitimate reasons for excluding particular individuals from their borders. If individuals from particular religious belief backgrounds fall within neutral criteria (such as by constituting security risks or likely criminal behaviour), they legitimately may be excluded. However, if a State creates purely religion-based categories for exclusion, this may be inconsistent with the required religious neutrality of the State. Moreover, since such restrictions may make it difficult for a particular belief community to staff its organization as it sees appropriate, such restrictions may in fact operate as an intervention in internal religious affairs. Thus, visa rules that specifically aim at religious exclusion, particularly discriminatory exclusion, should be carefully scrutinized.

<sup>11</sup> The core concept of proportionality is sometimes illustrated graphically in the metaphor of using a sledgehammer to crack open a nut. The tool will no doubt accomplish the task of smashing the shell, but at the inevitable cost of destroying the meat as well.

<sup>12</sup> For international obligations, see especially the ICCPR (art. 18.3), General Comment 22 (§ 8), the Declaration on the Elimination of All Forms of Intolerance (art. 1.3), the Vienna Concluding Document (Principles 17 and 25), the Moscow Concluding Document (§ 28.6), the ECHR (art. 9.2), and the case law of the European Court of Human Rights.

2. *Fund transfers.* As with visas, States have a variety of legitimate reasons for regulating fund transfers of various types. However, provisions that discriminate against religious groups on religious grounds should not be permitted.

## I. Proselytizing/missionary activity

Proselytism and missionary work is a sensitive issue in many countries. It is first important to remember that, at its core, the right to express one's convictions, beliefs, and faith can be a vital dimension of the human experience, and the right to do so is encompassed within the right to freedom of religion or belief, as well as by the right to freedom of expression. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved. Thus, it is now well-settled that traditional door-to-door proselytizing is protected (though the right of individuals to refuse to be proselytized also is protected).<sup>13</sup> On the other hand, exploiting a position of authority over someone in the military or in an employment setting has been found to be inappropriate.<sup>14</sup> If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.

## J. Financing of religious/belief groups/general economic activity

Many issues arise regarding the financing of religious and belief organizations. Among the most important issues are:

1. *The permissibility of accepting gifts and the ability to solicit funds.* There is a variety of State practices with regard to permission to accept gifts and solicit funds. Some States give wide latitude for raising funds while others carefully limit amounts that can be received and how funds can be raised. The principal international guidelines suggest that, although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies. The laws should be established in a non-discriminatory manner.

<sup>13</sup> Kokkinakis v. Greece, (ECtHR 1993).

<sup>14</sup> Larissis v. Greece (ECtHR 1996).

2. *Tax exemption.* It is very common, though not universal, for the State to provide tax benefits to non-profit associations. The benefits typically are of two types: first, direct benefits such as exemption from income and property taxes; and second, indirect benefits that allow contributors to receive a reduction in taxes for their contribution. There is little international law regarding these issues, though non-discrimination norms apply.

3. *Tax system for raising funds.* Some States allow religions to raise funds through the State tax system. For example, a (religious) public law corporation may have an agreement with the State whereby the latter taxes members of the religion and then transfers the proceeds to the religion. The two difficulties that frequently arise in such systems are, first, whether such arrangements are discriminatory among religion and belief groups; and second, whether individuals who do not wish to have taxes taken from them for the religion to which they belong may opt out. While international law does not prohibit such taxing systems *per se*, individuals presumably should be able to opt out of the taxing system (though the opt-out might entail loss of membership in the religion).

4. *State financing.* Many States provide both direct and indirect financing for religious and belief organizations. In addition to the indirect (but very real) benefits that come from tax exemptions and tax deductions, a variety of funding systems operate, including: paying salaries (or providing social benefits) for clergy; subsidizing religious schools; allowing organizations to use publicly owned buildings for meetings; and donating property to religious organizations. In many cases, State-financing schemes are directly tied to historical events (such as returning property previously seized unilaterally by the State), and any evaluations must be very sensitive to these complicated fact issues.

## **K. Special issues of prisons, the military, hospitals, and other State institutions**

Several issues arise related to public institutions, including prisons, the military and State-operated hospitals. In addition to the question of clergy access to such institutions in order to conduct pastoral work (see Section II.E above), and to the rights of employees (see Sections II.D. and III.H), there are questions about the rights of religious expression of people who are housed within the institutions. It is expected that the rules governing the rights of religious expression will, of course, depend on the nature of the institution.

For practical purposes, most legal systems are highly deferential to the judgement of prison authorities and military officials regarding public safety and efficiency. Nevertheless,

States are becoming increasingly sensitive to the rights of prisoners and soldiers to have access to religiously sanctioned foods whenever feasible. Some limited freedoms are often provided for the wearing of some types of religious attire, provided that it does not interfere with discipline in the prison or efficiency in the military. It is also advisable to permit, when reasonable, access to religious books and spiritual counselling. Ultimately, limitations should be made only after a proper "limitations analysis", with the understanding of the reasonable possibility of heightened State-security interests. With regard to State hospitals, where security concerns are much lower, the State should accordingly be more flexible and sensitive with respect to issues such as religiously sanctioned foods and attire.

## L. Exemptions from laws of general applicability

There are many circumstances where individuals and groups, as a matter of conscience, find it difficult or morally objectionable to comply with laws of general applicability. Some people have religious objections to eating certain types of food and others insist on wearing particular clothing. For some, military service violates deeply held religious beliefs. Certain days of the week, and certain calendar days, have a vital religious significance that requires that rituals be performed or that work must not be undertaken. Most modern democracies accommodate such practices for popular majorities, and many are respectful towards minority beliefs.

The laws governing possible exemption from laws of general applicability are in two basic forms. The first are in the form of general constitutional provisions or human rights instruments that defend generally rights of religion and belief and imply that exemptions should be provided when matters of conscience are implicated. The second form is much more specific and provides exemptions for particular actions, such as a statutory provision that exempt conscientious objectors from military service (usually with a requirement to perform alternative service). It is important that laws affecting religion and belief be drafted in a way that is cognizant of the general guiding principles of constitutional norms and human rights standards, and that specific statutory exemptions be drafted and applied in a way that is fair to those with conscientious objections but without unduly burdening those who do not have such objections.

Of the many issues that are likely to raise questions about exemptions from laws of general applicability, some of the most frequent are:

- *Conscientious objection to military service.* Although there is no controlling international standard on this issue, the clear trend in most democratic States is to

allow those with serious moral or religious objections to military service to perform alternative (non-military) service. In any case, State laws should not be unduly punitive for those who cannot serve in the military for reasons of conscience;<sup>15</sup>

- *Food.* There are several foods that are prohibited by many religious and ethical traditions, including meat generally, pork, meat that is not prepared in accordance with ritual practices, and alcohol. In a spirit of promoting tolerance, the State could encourage institutions that provide food – particularly schools, hospitals, prisons, and the military – to offer optional meals for those with religious or moral requirements;
- *Days for religious activities.* The two types of day that raise questions of exemptions are, first, days of the week that have religious significance (for example, for Friday prayers and Saturday or Sunday worship), and, second, calendar days of religious significance (such as Christmas, Yom Kippur, Ramadan). To the extent possible, State laws should reflect the spirit of tolerance and respect for religious belief;
- *Medical.* Some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and that States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that is sought;
- *Other.* In addition to issues that have been noted elsewhere, other places in which objections may arise are in regard to refusing to take oaths or to perform jury service. To the extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population.

<sup>15</sup> Recommendation (1987)8 on conscientious objection to compulsory military service, adopted by the Council of Europe Committee of Ministers on 9 April 1987, at the 406th meeting of the Ministers' Deputies, <http://cm.coe.int/stat/E/Public/1987/1987r8.htm>; Commission on Human Rights resolution 1998/77; Commission on Human Rights resolution 2002/45.

### III.

## OTHER SUBJECTS THAT MAY ARISE IN A WIDE VARIETY OF LAWS

The subjects identified above are those that are most likely to arise in a review of a general law regulating religious and belief activities. The following are some issues that may arise, depending on the context and the type of law introduced.

### A. Criminal and administrative law/penalties

Some States attach significant penalties (serious fines or imprisonment) to breaches of laws related to religion and belief activities. Although minor fines for minor breaches of an administrative regulation may be appropriate, it is not appropriate to punish a simple administrative mistake as if it were a violation of the criminal law or to make it punishable by punitive administrative penalties. Serious penalties for small registration mistakes, for example, would raise serious questions about whether the rights of religion and belief are being infringed by a pretextual reliance on the criminal law. Whereas serious penalties may be appropriate when the law is proscribing activities that are typically part of a traditional criminal code (such as prohibitions of murder, assault and battery, or theft), they are much less likely to be appropriate when there is a simple breach of an administrative procedure. So, for example, it presumably would be appropriate (though perhaps redundant) to enact a law that specifically prohibits physical assaults on the clergy or that prohibits using religious association status as a cover for a criminal enterprise. However, it presumably would be inappropriate to attach criminal penalties to a mere failure to register a religious association *per se*. State laws that include onerous registration requirements while attaching criminal penalties to a failure to register are particularly suspect.

### B. National security/terrorism

While State laws pertaining to national security and religious terrorism may well be appropriate, it is important that such laws not be used to target religious organizations

that do not engage in objectively criminal or violent acts. Laws against terrorism should not be used as a pretext to limit legitimate religious activity.

### **C. Land use/zoning**

Laws relating to building, remodelling, or use of properties for religious purposes are likely to involve complicated State laws relating to land, property, and historical preservation. It is not uncommon for State officials (at the national, federal, or local level) to use such laws to restrict religious communities from operating religious facilities. The justifications for restrictions may appear to be neutral (such as regulating the flow of traffic, harmony with other buildings or activities, or noise restrictions), but are selectively enforced for discriminatory purposes against disfavoured religious groups. It is important that such laws both be drafted neutrally and applied neutrally, and that they be enforced with a genuinely legitimate purpose.

### **D. Religious-property disputes**

There are two classic religious-property disputes. The first is where the ownership of religious property is disputed as a result of a prior State action that seized the property and transferred it to another group or to individuals. This has been particularly problematic in many cases in formerly communist countries. The second case is where a dispute within a religious community leads to one or more groups contesting ownership rights. Both types of dispute, as well as other related issues, often involve historical and theological questions. Such disputes can be very complicated and demand expertise not only on strictly legal issues involving property, but also on technical questions of fact and doctrine. To the extent that laws deal with such issues, it is important that they be drafted and applied as neutrally as possible and without giving undue preferential treatment to favoured groups.

### **E. Political activities of religious organizations**

States have a variety of approaches towards the permissible role of religious and belief organizations in political activities. These can range from the prohibition of reli-

gious-political parties, to preventing religious groups from engaging in political activities, to eliminating tax exemptions for religious groups engaging in political activities. While such issues may be quite complicated, and although a variety of differing but permissible laws is possible, such laws should not be drafted in a way either to prohibit legitimate religious activities or to impose unfair limitations on religious believers.<sup>16</sup>

## F. Family law

Family law often intersects with issues related to religion or belief. Among the most frequent issues are marriage and child custody. With regard to marriage, State laws vary with regard to the relationship of a “religious” marriage and a “State” marriage. (The issue of the right of clergy to perform a valid marriage recognized by the State is discussed above in Section II.E.) Although different options are possible (such as requiring a State-approved civil marriage prior to a religious marriage), laws should not be enacted that restrict religious or belief organizations from performing a religious ceremony in addition to whatever other neutral requirements the State might impose (such as individuals having reached the age of majority and not being currently married to another person). Issues related to marriage that are likely to arise in the future will be State restrictions on arranged marriages and prohibitions on polygamous marriages that may be permitted under some religious doctrines. Child-custody disputes may raise religious issues when the parents are of different religions and each wishes to raise the child in his or her own faith.<sup>17</sup> Whereas statutes may not address such issues directly, they are likely to arise in custody disputes. Laws should be reviewed for their neutrality and to ensure that the best interests of the child are protected in a neutral way that does not assume the superiority of one religion over another.

<sup>16</sup> The leading case of the European Court of Human Rights is *Refah Partisi v. Turkey* (2003), in which the Turkish courts had dissolved one of the largest Turkish political parties because of its alleged support for Islamic fundamentalism, including advocating the introduction of *Shariah* law in Turkey. The European Court held that although “a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy” (§ 100), it could be appropriate for a State to dissolve a political party if it appears that the party may be on the verge of obtaining political power (§ 108) and if some of its proposals are against the State’s constitutional order (§§ 59-60, 67, 93) or fundamental democratic principles (§ 98).

<sup>17</sup> See, for example, *Hoffman v. Austria* (ECtHR 1993).

There are several other issues that may arise where religious doctrines are in conflict with State laws. For example, State laws on inheritance may conflict with religious laws with regard to the right of one spouse to inherit the estate of the deceased spouse. Or, some States restrict the ability of couples of one religious belief to adopt children from other faiths or restrict the ability of members of some religions to adopt children at all because of the perceived dangers of the religion. Islamic law typically makes it much easier for a husband to divorce a wife than is permitted by State law. In all such cases, the State laws should be examined for neutrality and to determine whether limitations on rights to manifest religion are proportionate to legitimate State interests.

## **G. Broadcast media**

Three of the principal issues that arise with regard to the broadcast media are ownership, access, and disparagement of, or incitement against, other religious communities. International standards typically are not specific with regard to broadcast-media issues. Thus, general principles of equality and non-discrimination are the basic guidelines. Religious and belief groups should presumably not be particularly disadvantaged from owning or operating media facilities. When the media is operated by the State, an equitable procedure should be allowed for providing various religious or belief groups with access to the media. While States will have differing and often conflicting policies with regard to libel, hate speech, or disparagement of religious or belief groups, the laws should nevertheless be equitable and non-discriminatory (see ICCPR art. 20).

## **H. Labour**

Three of the principal issues regarding the relationship between labour (employment practices) and religion or belief involve hiring and other personnel practices of, first, religious or belief groups; second, private enterprises; and, third, State offices. To the extent that State laws prohibit discrimination on the basis of religion or belief, religious and belief organizations will likely seek exemptions from non-discrimination laws so that they may hire and retain people whose sympathies correspond to the interests of the associations. A variety of legal approaches are possible. With regard to private (non-religious) enterprises, the typical standard will be to prohibit discrimination in such matters such as hiring. Employers may be allowed to restrict some manifestations of belief. States should not discriminate in personnel practices, though some States prohibit officials from wearing religious insignia.

## I. Cemeteries

States have a variety of practices involving the relationship between religion and cemeteries. In some cases, the State exercises complete control over the subject, and in others a great deal of responsibility is held by religious institutions. Although there are no clear rules governing the subject, the State should avoid discrimination among religious groups and permit, within reasonable grounds (particularly public health), the right to manifest religion and belief in this phase of the human condition.

## IV. CONTENTS OF TEXT PROVIDED TO THE GOVERNMENT OR PARLIAMENT

Each review of draft legislation should be adapted to fit the particular requirements of the State that has sought advice. However, as a general rule, the following thematic organization suggests the order in which written reviews should ordinarily appear.

1. Provide an affirmative statement about the importance of complying with international standards and, as appropriate, OSCE commitments. A brief statement about international standards should be provided.

2. Identify the concerns that gave rise to the draft legislation. It is important that reviewers understand the concerns of the government or State that prompted the drafting of legislation. It is very important that they be articulated in a way that shows that the concerns have been fully understood and appreciated.

3. Describe the information that was collected that constitutes the state-specific factual and legal basis for the recommendations. The review should identify, as appropriate, the individuals and groups that were consulted within the State, including State officials, government officials, parliamentarians, NGOs, religious persons, and others. The review should make clear that a serious and thorough attempt was made to gather information and that a variety of sources was consulted.

4. All relevant State laws should be identified. The reviewer should show familiarity with the constitution, statutes, codes, and decrees. To the extent that judicial decisions are relevant, they should be identified as well.

5. Controlling international instruments should be identified. The relevant OSCE commitments should be identified, as well as the international instruments ratified by the State.

6. Identify positive features of the draft legislation. To the extent there are positive features of the draft, it is appropriate to highlight them.

7. Identify "neutral" provisions. This will help clarify the purpose of the analysis.

8. Identify problematic features. This is likely to be the core of the analysis and the longest portion. This can be done either by discussing the principal issues that are problematic or by providing a section-by-section analysis. The analysis should be clear, non-argumentative, and constructive. The principal goal is to provide suggestions that will assist officials in understanding alternatives and appreciating international standards. It is important to remember that the reviewers do not propose alternative statutory language; rather, they comment on drafts without suggesting specific wording.

9. The draft should conclude by expressing appreciation for the confidence shown in allowing the review to occur and by offering continuing co-operation and support.

# APPENDIX I: SELECTED PROVISIONS FROM INTERNATIONAL AND REGIONAL INSTRUMENTS

The following includes provisions from some of the most frequently cited instruments pertaining to the freedoms of religion or belief, expression, and association.

## United Nations and International Instruments

### The Universal Declaration of Human Rights (1948)

#### Article 18

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 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

### The International Covenant on Civil and Political Rights (1966)

Adopted and opened for signature, ratification and accession on 16 December 1966. Entry into force on 23 March 1976.

#### Article 2

1. 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 rec-

ognized 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 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation

#### Article 18

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.

## Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

## Article 20

- ...
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

## Article 26

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 race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## Article 27

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.

## **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**

Proclaimed by General Assembly resolution 36/55 of 25 November 1981

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of nondiscrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

#### Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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 a religion or belief of his choice.
3. Freedom to manifest one's religion or belief 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.

#### 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.
2. For the purposes of the present Declaration, the expression "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.

#### Article 3

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

## Article 4

1. All States shall 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.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

## Article 5

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.

## Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

#### Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

#### Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

### **United Nations Human Rights Committee General Comment 22**

Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HR/GEN/1/Rev.1 at 35 (1994).

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the free-

dom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views 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.

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

4. The freedom to manifest religion or belief may be exercised “either individually or in community with others and in public or private”. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The 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, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, 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, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to

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

6. The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 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. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, 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. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall 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.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under

article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.

## Regional Instruments

### Organization for Security and Co-operation in Europe

#### Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975)

##### Questions Relating to Security in Europe

##### Chapter 1(a) – Declaration on Principles Guiding Relations Between Participating States

##### Principle VII – Respect for Human Rights and Fundamental Freedoms, Including the Freedom of Thought, Conscience, Religion or Belief

1. The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

...

Within this framework the participating States will recognize respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

##### Co-operation in Humanitarian and Other Fields

##### Chapter 1 – Human Contacts

The participating States,  
Desiring to contribute to the strengthening of peace and understanding among

peoples and to the spiritual enrichment of the human personality without distinction as to race, sex, language or religion,

Conscious that increased cultural and educational exchanges, broader dissemination of information, contacts between people, and the solution of humanitarian problems will contribute to the attainment of these aims,

Determined therefore to cooperate among themselves, irrespective of their political, economic and social systems, in order to create better conditions in the above fields, to develop and strengthen existing forms of co-operation and to work out new ways and means appropriate to these aims,

Convinced that this co-operation should take place in full respect for the principles guiding relations among participating States as set forth in the relevant document,

Have adopted the following:

...

(d) Travel for Personal or Professional Reasons

They confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

**Concluding Document of the Vienna Meeting of Representatives  
of the Participating States of the Conference on Security and Co-operation  
in Europe (1989)**

Principle 11 Questions Relating to Security in Europe

[The participating States] confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and co-operation among themselves, as among all States.

Principle 13 Questions Relating to Security in Europe

(13.7) [The participating States will] ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without dis-

tion of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

#### Principle 16 Questions Relating to Security in Europe

In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, *inter alia*,

(16.1) – take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) – foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) – grant upon their request to community of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) – respect the right of religious communities to

- establish and maintain freely accessible places of worship or assembly,
- organise themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions;

(16.5) – engage in consultations with religions faiths, institutions and organisations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) – respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) – in this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) – allow the training of religious personnel in appropriate institutions;

(16.9) – respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;

(16.10) – allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) – favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

#### Principle 17 Questions Relating to Security in Europe

The participating States recognise that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

#### Principle 19 Questions Relating to Security in Europe

[The participating States] will protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others.

#### Principle 21 Questions Relating to Security in Europe

The participating States will ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

#### Co-operation in Humanitarian and Other Fields

##### Paragraph 32 Human Contacts

[The participating States] will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, inter alia through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

#### Co-operation in Humanitarian and Other Fields

##### Paragraph 68 Co-operation and Exchanges in the Field of Education

[The participating States] will ensure that persons belonging to national minorities or regional cultures on their territories can give and receive instruction on their own

culture, including instruction through parental transmission of language, religion and cultural identity to their children.

**Document of the Copenhagen Meeting of Representatives of the Participating States of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (1990)**

Principle 9

The participating States reaffirm that

(9.4) everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;

Principle 18

The participating States

(18.1) – note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

(18.2) – note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

(18.3) – note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

(18.4) – agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

(18.5) – will make available to the public information on this issue;

(18.6) – will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

Principle 24

The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under

international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

#### Principle 25

The participating States confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that

(25.1) – measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;

(25.2) – the imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;

(25.3) – measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;

(25.4) – such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

#### Principle 30

The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

## Principle 32

To belong to a national minority is a matter of a persons individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

...

(32.2) – to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) – to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4) – to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

...

(32.6) – to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

## Principle 33

The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

## Principle 35

The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

## Principle 36

The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

## Principle 40

The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

(40.1) – take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) – commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3) – take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

(40.4) – endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

(40.5) – recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;

(40.6) – consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

(40.7) – consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

### **[European] Convention for the Protection of Human Rights and Fundamental Freedoms**

#### Article 9 Freedom of thought, conscience and religion

1. 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 worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### Article 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as

are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### Article 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### Article 14 Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **European Convention First Protocol (1952)**

#### Article 2 Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

**American Convention on Human Rights**, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978

#### Article 12 Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and free-

dom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

#### Article 13 Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - (a) respect for the rights or reputations of others; or
  - (b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

## APPENDIX II: SELECTED BIBLIOGRAPHY

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## APPENDIX III: OSCE PANEL PROCEDURES IN PREPARATION FOR REVIEW OF DRAFT LEGISLATION (OR CONSULTATION)

This Appendix outlines the typical circumstances under which draft legislation affecting religion or belief may be reviewed by the Advisory Panel of Experts on Freedom of Religion or Belief (Panel) of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE). Although this section explains the typical circumstances under which a review is likely to take place, there are other ways in which States may solicit the Panel's assistance, including consultations to parliamentary committees or to State bodies. In addition, the Panel seeks to work co-operatively with other institutions, including the Venice Commission, to provide joint reviews of legislation affecting religion or belief. Depending on the circumstances, the procedures described below will change to reflect the participation of other entities assisting in the review or other State institutions soliciting advice.

The typical circumstances for Panel review of draft legislation by OSCE participating States affecting religion or belief are as follows:

*OSCE/ODIHR and the State make initial contacts.* The OSCE, through the ODIHR, offers technical assistance and advice on legislative drafting following formal requests by interested participating States. In Decision No. 4/03 on Tolerance and Non-Discrimination, the OSCE Ministerial Council "commits to ensure and facilitate the freedom of the individual to profess and practice a religion or belief, alone or in community with others, where necessary through transparent and non-discriminatory laws, regulations, practices and policies. [It also encourages] participating States to seek the assistance of the ODIHR and its Panel of Experts on Freedom of Religion or Belief". In line with the above-mentioned documents, legislative reviews or analyses will be conducted in a participating State only after receipt of an invitation or request for assistance from a relevant State body of that participating State. To the extent that a State is considering new legislation, but has not yet prepared a draft, the Panel also can provide consultations.

*Panel member(s) identified to conduct review.* Upon receipt of an invitation to review a law or a request for assistance from a relevant political institution, a decision will be made by the ODIHR on whether to proceed. If it is decided to proceed, the ODIHR will assign primary responsibility to a Panel member (or members) and the draft laws will

be distributed immediately to all members of the Panel to allow them to comment and contribute from their perspective, thereby ensuring that the final review is a document of the Panel as a whole.

*Translations of important texts.* The draft law, as well as other important texts, will be translated by the ODIHR where necessary and provided to the Panel.

*Identify the entire corpus of relevant law and practice.* When reviewing a draft law, the Panel will also take account of the entire corpus of relevant law and practice (for example, constitution, Civil Code, Criminal Code, etc.) and examine in particular the effect of the draft law on how freedom of religion or belief is treated in the legal system.

*Site visit (if possible).* Wherever possible, an in-country assessment trip will be organized to gain an understanding of the entire corpus of relevant law and practice and to meet with government officials, parliamentarians, political parties, religious and belief groups, academics, and NGOs in order to further the OSCE policy of developing and supporting consultation with the public and increasing input from civil society into the legislative process.<sup>18</sup> Whenever possible and appropriate, a roundtable discussion will be held to facilitate public input into the process.

*Identify issues of importance to the State and NGOs.* Meetings with relevant State authorities will also be carried out to ascertain issues of importance to the State, as well as the aims the draft law is intended to achieve. The relevant State authorities will also be invited to nominate a focal point for further interaction on the review.

*Consultations with OSCE missions, Council of Europe, international organizations.* Meetings with the OSCE mission, which will be consulted from the start of the process, Council of Europe, and other international organizations present in the country, will also be carried out to ascertain their views.

*Draft analysis by Panel member(s).* Subsequent to the necessary consultations outlined above, the persons with primary responsibility for the draft will prepare a draft for circulation to the Panel.

*Circulation of draft review to entire Panel.* Every effort will be made to circulate the draft review as early as possible to all Panel members in order to give them time for additional comments to be included in the review. This will also give other Panel members the opportunity to suggest additional or alternative areas of focus at an early stage in the review.

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<sup>18</sup> Document of the Moscow Meeting, 1991, 18.1: Legislation will be adopted as the result of an open process reflecting the will of the people; see also Copenhagen Document, 1990, art. 5.8.

*Incorporate comments of Panel and prepare revised draft.* The drafter will seek to incorporate all comments from the Panel to ensure that the final document reflects the consensus of the Panel as a whole. The revised review will be re-circulated to the Panel if appropriate, particularly if comments from an outside source, such as the Venice Commission, have been solicited and incorporated, before the review is sent to the ODIHR for final editing and delivery to the requesting authority in the participating State. Once a reasonable amount of time has passed for the requesting authority to consider the comments, it shall be circulated to other interested parties: governmental institutions, parliamentarians, religious and belief groups, academia, NGOs, IGOs, etc. Where necessary, the review shall be translated by the ODIHR.

*Follow-up visit (if possible).* Where possible and practical, a follow-up visit will be organized to discuss the review with the requesting authority, governmental institutions, parliamentarians, political parties, religious and belief groups, academia, NGOs, IGOs, etc.

*The Panel does not propose statutory language.* The Panel's work is strictly advisory in order to assist in explaining international standards and OSCE commitments of participating States. Throughout the process of preparing the comments, the Panel should refrain from proposing statutory language. It should limit itself to commenting on the language already formulated, pointing out deficiencies where necessary, and referring to international documents and commitments.

