



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2006/5  
9 January 2006

Original: ENGLISH

---

COMMISSION ON HUMAN RIGHTS  
Sixty-second session  
Item 11 (e) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION  
OF RELIGIOUS INTOLERANCE**

**Report of the Special Rapporteur on freedom of religion  
or belief, Asma Jahangir\***

---

\* The endnotes and the annex to this report are being circulated as received in the language of submission only.

## Summary

The Special Rapporteur on freedom of religion or belief has been monitoring and encouraging compliance with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief since the creation of the mandate in 1986. In July 2004, Asma Jahangir was appointed Special Rapporteur on freedom of religion or belief for a period of three years.

The present report is divided into four sections. The first section sets out the activities that have been carried out under the mandate since the submission of the last report to the Commission (E/CN.4/2005/61). It summarizes the communications sent and in situ visits completed during the period under review. It also gives an overview of the current status of requests for invitations to carry out in situ visits.

The Special Rapporteur considers that in situ visits are the best way to comprehensively and thoroughly assess the freedom of religion or belief in a particular country. She has carried out three such visits during the period under review, to Nigeria, Sri Lanka and France. She welcomes the recent invitations from the Governments of Azerbaijan and Israel to carry out visits to these countries in 2006.

A total of 84 communications were sent to 36 different countries during the period from 12 November 2004 to 30 November 2005. Of these communications, 28 were urgent appeals and 56 were letters of allegation. Moreover, 34 of the communications, which addressed allegations of multiple human rights violations, were transmitted together with other special procedures.

The Special Rapporteur considers that it is important to increase the effectiveness of communications. Accordingly, in the second section of the report she introduces a framework on communications, which she has developed to enable her to send more precise communications, drawing the attention of the government concerned to the relevant international standards. The framework is in the form of a table which lists the different types of situations that the Special Rapporteur addresses under her mandate. It is annexed to the report.

In the third section of the report, the Special Rapporteur focuses on one issue, namely the display of religious symbols, which has recently been the subject of much debate. It examines, from an international human rights perspective, both the positive and the negative freedom of religion or belief of individual persons with regard to the wearing of religious symbols such as garments and ornaments. The fourth section of the report sets out her conclusions and recommendations.

The summary of communications sent by the Special Rapporteur from 12 November 2004 to 30 November 2005 and the replies received from Governments by 30 January 2006 is found in addendum 1 to the report. Addendums 2 to 4 are the reports on

the country visits to Sri Lanka, Nigeria and France, respectively. The joint preliminary report with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention concerning the human rights situation of prisoners detained at the United States of America Naval Base at Guantánamo Bay, Cuba, will be submitted separately in document E/CN.4/2006/120.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	5
I.    ACTIVITIES .....	5 - 27	5
A.    Communications .....	8 - 16	6
B.    In situ visits .....	17 - 24	8
C.    Request for an invitation to visit the United States detention facilities at Guantánamo Bay, Cuba .....	25 - 27	9
II.   FRAMEWORK FOR COMMUNICATIONS .....	28 - 35	9
A.    The purpose of the framework .....	28 - 31	9
B.    International standards covered by the framework .....	32 - 34	10
C.    The elements of freedom of religion or belief covered by the framework .....	35	11
III.  RELIGIOUS SYMBOLS .....	36 - 60	11
A.    Factual aspects .....	36 - 39	11
B.    Legal framework at the international level .....	40 - 42	12
C.    International case law .....	43 - 50	14
D.    Development of a set of general criteria to balance competing human rights .....	51 - 60	15
IV.   CONCLUSIONS AND RECOMMENDATIONS .....	61 - 68	19
Annex - The mandate of the Special Rapporteur on freedom of religion or belief: framework for communications .....		24

## **Introduction**

1. This report is submitted pursuant to resolution 2005/40 of the Commission on Human Rights. It covers the activities carried out under the mandate on freedom of religion or belief since the submission of the previous report to the Commission (E/CN.4/2005/61 and Add.1 and 2).
2. The Special Rapporteur on religious intolerance was initially appointed pursuant to Commission resolution 1986/20. The Commission changed the title to Special Rapporteur on freedom of religion or belief by its resolution 2000/33. In July 2004, Asma Jahangir was appointed Special Rapporteur for a period of three years.
3. The present report is divided into four sections. Section I presents the activities that have been undertaken under the mandate during the period under review. Section II presents a framework for communications, which the Special Rapporteur has developed as a tool to enable her to improve the effectiveness of her communications with Governments. Section III provides a more detailed analysis of one issue, namely the issue of religious symbols. Section IV sets out the Special Rapporteur's conclusions and recommendations.
4. The summary of communications sent by the Special Rapporteur from 12 November 2004 to 30 November 2005 and the replies received from Governments by 30 January 2006 is found in addendum 1 to the report. Addendums 2 to 4 are the reports of the country visits to Sri Lanka, Nigeria and France, respectively. The joint preliminary report with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention concerning the human rights situation of prisoners detained at the United States of America Naval Base, Guantánamo Bay, Cuba (E/CN.4/2006/120), will be submitted separately.

## **I. ACTIVITIES**

5. The twenty-fifth anniversary of the adoption of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief will take place in 2006. Nevertheless, the Special Rapporteur notes with concern that freedom of religion or belief is not a reality for many individuals throughout the world. The high level of religious intolerance in some countries is leading to an alarming degree of polarization.
6. The activities of the Special Rapporteur are focused mainly on the protection of individuals, and particularly the monitoring of cases and situations of alleged violations of the right to freedom of religion or belief. This was carried out mainly in the context of acting on information provided by several sources, including individuals and non-governmental organizations (NGOs), and in situ visits.

7. The Special Rapporteur would like to express her gratitude to the people assisting her mandate, as the human resources available to her are very limited but exceedingly dedicated. She calls for the allocation of increased resources so that the mandate can achieve its full potential.

#### **A. Communications**

8. The amount of information received from both individuals and NGOs on situations that appear to fall within the scope of the mandate is overwhelming and deals with a wide range of complex and sensitive issues. One of the crucial activities undertaken by the Special Rapporteur in this regard is to engage in constructive dialogue with Governments by sending them communications in order to seek clarification on credible allegations received.

9. During the period from 12 November 2004 to 30 November 2005, a total of 84 communications were transmitted to 36 different countries. The Special Rapporteur sent communications to Armenia, Azerbaijan, Bangladesh, Belarus, Belgium, China, Denmark, Egypt, Eritrea, Greece, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kuwait, Malaysia, Maldives, the Netherlands, New Zealand, Pakistan, the Republic of Korea, Romania, the Russian Federation, Saudi Arabia, Serbia and Montenegro, Sri Lanka, Thailand, Turkey, Turkmenistan, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uzbekistan, Viet Nam and Yemen.

10. Of the 84 communications, 49 were sent to the Asian and Pacific region, 21 to Europe and North America, 10 to the Arab region, 4 to Africa and none to Latin America and the Caribbean. In this regard, the Special Rapporteur notes that while there is an obvious imbalance between States regarding the amount of information received, the picture does depict positive trends in some regions, which has remained consistently encouraging. The Special Rapporteur reiterates that the absence of information about a specific country does not mean that the situation with regard to freedom of religion or belief in that country is necessarily satisfactory. Indeed, the absence of information may sometimes be explained by the lack of a civil society or by obstacles that prevent the information from being transmitted outside the country.

11. The communications sent during the period under review were made up of 28 urgent appeals and 56 allegation letters. The Special Rapporteur is pleased that 23 of the urgent appeals and 11 of the allegation letters were sent jointly with other special procedures. The Special Rapporteur welcomes once again this important collaboration, especially in view of the fact that violations of the right to freedom of religion or belief are very often coupled with violations of other human rights. During the period under review communications were sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the independence of judges and lawyers, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur on the right to education and the Special Rapporteur on the question of torture.

12. The following issues were raised with the Governments: freedom to adopt, change or renounce a religion or belief as well as freedom from coercion; the right to manifest one's religion or belief; freedom to worship; places of worship; religious symbols; registration; the right to appoint clergy; and the freedom of religion or belief of detainees. The question of conscientious objection was also addressed in several communications. Moreover, the Special Rapporteur has received an important number of reports alleging discrimination on the basis of religion or belief, including inter-religious discrimination, intolerance, as well as gender discrimination. Indeed, almost a quarter of the communications sent were related to the discrimination aspect of the mandate. The Special Rapporteur has, as in the previous period, sent communications to some Governments requesting information on legislative issues.
13. A significant proportion of the communications were sent concerning cases in which violations of the right to freedom of religion or belief were coupled with violations of other human rights. For instance, there have been cases where freedom of expression was also violated and where the situation concerned intra-religious conflicts and/or incitement to religious hatred. There were further communications sent with regard to alleged cases of torture or ill-treatment of persons held in custody on the basis of their religion or belief, one case of death in custody, as well as recurring cases of religiously motivated forms of punishment such as stoning and flogging. As mentioned above, in cases which raised a number of human rights violations, the Special Rapporteur acted jointly with other relevant mandates.
14. At the time of writing, the Special Rapporteur had received 38 responses from 25 States: Armenia, Azerbaijan, Bangladesh, Belarus, Belgium, China, Greece, Indonesia, Iran (Islamic Republic of), Jordan, Kazakhstan, Kuwait, Maldives, New Zealand, Pakistan, the Republic of Korea, the Russian Federation, Serbia and Montenegro, Sri Lanka, Turkey, Turkmenistan, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uzbekistan and Viet Nam. The Special Rapporteur expresses her appreciation to those Governments that have provided comprehensive replies to her communications. The Special Rapporteur also thanks the Governments of China, Kazakhstan, Pakistan, the Russian Federation and Serbia and Montenegro for their replies to communications mentioned in previous reports to the Commission.
15. There has been an improvement in the quantity, but most significantly in the substance, of responses to the Special Rapporteur's communications. These improvements may be due, in part, to the increased efforts to tailor each communication to a given situation, as well as to ask specific questions in every communication. While the Special Rapporteur is pleased by these developments, she is constantly trying to find means of improving the mechanism. In this regard, she has elaborated a framework for responding to individual communications. The framework, the content of which is developed in section III and described in detail in the annex, is intended primarily as a tool for the Special Rapporteur, to enable her to draw the attention of the relevant Government to the international standards that are relevant to the particular nature of each alleged violation.
16. A summary of communications sent from 12 November 2004 to 30 November 2005 and responses received from Governments by 30 January 2006 is contained in addendum 1, which also contains the Special Rapporteur's observations on the concerns raised.

## **B. In situ visits**

17. In the period under review, three in situ visits were carried out, to Nigeria, Sri Lanka and France. The Special Rapporteur takes this opportunity to thank the Governments concerned for the cooperation they extended to the mandate. Her reports on each of these visits can be found in documents E/CN.4/2006/5/Add.2, E/CN.4/2006/5/Add.3 and E/CN.4/2006/5/Add.4, respectively.

18. The basic principles relating to the right to freedom of religion or belief were generally respected by the Governments concerned. Nevertheless, a number of situations, including for reasons related to religious intolerance, raised some concerns. In particular, the Special Rapporteur noted the existence of legislative measures enacted or proposed for placing limits or obligations on the practice, observance or propagation of religion. The country visits also confirmed that religion or freedom of religion is sometimes used as a pretext or a justification for violating other human rights.

19. The Special Rapporteur observed that one of the main challenges to human societies lies in organizing themselves along political lines without infringing on the beliefs or religious freedom of individuals and communities or focusing too heavily on religious considerations at the expense of other rights. There is a need to create better harmony between religious communities to enable them to live side by side and in mutual respect. Efforts to promote inter-religious dialogue at all levels should not only be praised, but also encouraged and actively supported by Governments. At the same time, such harmony can only be forged, and flourish, if Governments remain committed to the promotion of freedom of religion or belief in a neutral and balanced manner.

20. The Special Rapporteur wishes to draw attention to the crucial importance of country visits to the effective implementation of her mandate, and indeed to the mandates of all the special procedures. The cooperation that is expected from Governments in this respect is particularly vital. The Special Rapporteur recalls that in its resolution 2005/40, the Commission on Human Rights urged “all Governments to cooperate fully with the Special Rapporteur and to respond favourably to her request to visit their countries so as to enable her to fulfil her mandate more effectively”.

21. The Special Rapporteur draws the attention of the Commission to her report to the General Assembly (A/60/399) in which she provided detailed information on the status of requests for visits and invitations received. Moreover, she welcomes the decision of the Governments of Azerbaijan, the Islamic Republic of Iran and Israel to extend an invitation to her and is looking forward to carrying out in situ visits to these countries in 2006. She notes, however, that the Governments of Israel and Iran have still not suggested dates for a visit.

22. There is concern that the number of countries that do not wish to extend an invitation is increasing. This trend is particularly worrying because these are countries concerning which she has received substantial allegations or information regarding violations of the right to freedom of religion or belief. In this regard, the Special Rapporteur reiterates her support for a mechanism to appropriately address the situation of countries that consistently fail to cooperate with the special procedures mechanisms.



23. She is particularly concerned at the absence of invitations from the Governments of Indonesia and the Russian Federation despite numerous requests and reminders. She also notes with concern the failure of the Governments of Egypt, Eritrea, Kyrgyzstan, Turkmenistan and Uzbekistan to respond to requests for an invitation. She encourages these Governments to extend her an invitation without delay and emphasizes that a formal invitation should be followed by proposals for the dates of the visit; otherwise, the invitation, whether standing or ad hoc, tends to lose its significance.

24. Along with a number of other special procedures, the Special Rapporteur requested an invitation to visit the United States detention facilities at Guantánamo Bay, Cuba. Further information on this request is set out in the following section.

### **C. Request for an invitation to visit the United States detention facilities at Guantánamo Bay, Cuba**

25. The Special Rapporteur is one of a group of five special procedures that requested a visit to the United States detention facilities at Guantánamo Bay, Cuba (herself plus the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention).

26. On 27 October 2005, the Government of the United States invited three of the five to visit the detention facilities, namely the Special Rapporteur on freedom of religion, the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group. The Government limited the visit to one day and explicitly excluded private interviews or visits with detainees. On 31 October 2005, the experts accepted the short duration and the limitation on the number of mandate holders, but indicated that they could not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-finding missions by special procedures and undermine the purpose of, forming an objective and fair assessment of the situation of the detainees.

27. On 18 November 2005, the experts informed that the Government had not accepted their conditions, and therefore the mission would not proceed. A joint preliminary report on the applicability of international human rights law to the persons held at the detention facilities in Guantánamo Bay, Cuba, as well as the human rights situation of the detainees will be submitted separately in document E/CN.4/2006/120.

## **II. FRAMEWORK FOR COMMUNICATIONS**

### **A. The purpose of the framework**

28. The right to freedom of religion or belief, as defined by international standards, is a wide-ranging right covering a large number of distinct yet interrelated issues. This diversity is very much reflected in the information and allegations received by the Special Rapporteur. In order to enable the Special Rapporteur to respond more effectively to the information she

receives, she has developed a framework for communications. This framework sets out the different types of cases or situations that are submitted to her and are within the scope of her mandate, along with the corresponding international standards relevant to each issue. The framework can be found in the annex to this report.

29. The Special Rapporteur has indicated on a number of occasions that one of the main focuses of her activities is the protection aspect of the right of individuals to freedom of religion or belief. Accordingly, the use of communications to engage with Governments on allegations of violations of individual rights is vitally important. The framework enables the Special Rapporteur to determine which elements, if any, of the mandate on freedom of religion or belief are raised by each allegation and to send more specific, tailored communications. In particular, it allows her to draw the attention of the Government concerned to the particular international standards on the specific issue or issues and to ask pertinent questions about compliance.

30. The Special Rapporteur underlines that not all the communications she receives fall neatly into one of the different categories set out in the framework. It is necessary to take the particular facts and context of each allegation into account. Furthermore, in many cases, the allegation will disclose a number of different elements of the right to freedom of religion or belief. She emphasizes that the framework is not intended to provide an exhaustive list of issues that fall within her mandate. The mandate is constantly evolving, a fact which is evidenced by the content of successive resolutions of the Commission on Human Rights. The framework is thus very much a work in progress to be developed as the Special Rapporteur continues to implement her mandate.

31. The framework is included in this report to give readers a clearer understanding of the issues that are covered by the mandate on freedom of religion or belief, and as a guide to the types of issues that are the subject of communications sent and received under the mandate. In this regard, the framework could be a useful tool for NGOs and other actors in their interactions with the Special Rapporteur.

## **B. International standards covered by the framework**

32. The framework has been developed on the basis of an analysis of international standards on freedom of religion or belief. In her previous report to the Commission (E/CN.4/2005/61 and Corr.1), the Special Rapporteur set out the international legal instruments that are relevant to the implementation of her mandate. The primary instruments upon which the Special Rapporteur bases her activities are article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

33. Her interventions are also based on the relevant articles of the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention

on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention relating to the Status of Refugees.

34. She is also guided by relevant resolutions of the Commission on Human Rights and other organs of the United Nations including the General Assembly and the Economic and Social Council. She is further guided by relevant general comments and concluding observations and jurisprudence of the treaty bodies, and the relevant provisions of international humanitarian law. The Special Rapporteur also takes into account relevant human rights instruments and jurisprudence at the regional level.

### **C. The elements of freedom of religion or belief covered by the framework**

35. The framework is divided into five different categories. The first category deals with elements of the right to freedom of religion or belief and the right to manifest one's religion or belief. The second category covers discrimination in relation to the freedom of religion or belief. The third category deals with vulnerable groups, including women, children, refugees, members of minorities and persons deprived of their liberty. The fourth covers situations where the right to freedom of religion intersects with violations of other human rights, such as the right to freedom of expression and the prohibition on torture and other cruel, inhuman or degrading treatment or punishment. The fifth category covers cross-cutting issues including international provisions on limitations and derogations.

## **III. RELIGIOUS SYMBOLS**

### **A. Factual aspects**

36. When dealing with the issue of religious symbols, two aspects of the question need to be taken into account. On the one hand, many individuals in various parts of the world are prevented from identifying themselves through the display of religious symbols, while on the other hand the reports and activities of the mandate have revealed the practice in some countries of requiring people to identify themselves through the display of religious symbols, including religious dress in public. The Special Rapporteur refers to the former as positive freedom of religion or belief, and to the latter as negative freedom of religion. The following paragraphs examine, from an international human rights perspective, both positive and negative freedom of religion or belief of individuals with regard to the wearing of religious symbols such as garments and ornaments. A different, albeit related, issue is the display of religious symbols in public locations such as courthouses, polling stations, classrooms, public squares, etc. Some aspects of these situations have been the subject of several national legal judgements at the highest level,<sup>1</sup> but the question will not be covered in this section.

37. A comparative analysis of the factual aspects reveals a set of regulations or prohibitions on wearing religious symbols in more than 25 countries all over the world.<sup>2</sup> Several religions are affected and religious symbols remain a subject of controversy in a number of countries. Examples of affected believers and their religious garments or ornaments include Muslims wearing headscarves, Jews wearing yarmulkes, Christians wearing crucifixes, collars and nuns' habits, Hindus displaying a bindi, Buddhists wearing saffron robes, Sikhs wearing turbans or

kirpans as well as followers of Bhagwan (Osho) wearing reddish-coloured clothing. There are different levels of regulation or prohibition on the wearing of religious symbols including constitutional provisions, legislative acts at the national level, regulations and mandatory directives of regional or local authorities, rules in public or private organizations or institutions (e.g. school rules) and court judgements. The intensity of possible adverse effects for individuals who do not abide by the regulations or prohibitions also depends on the respective field of application. Pupils in primary and secondary schools run the risk of being expelled from the public school system, whereas teachers are in danger of reprimands, suspension and, ultimately, dismissal from their jobs. At the university level, students also run the risk of being expelled or of not being awarded their degrees unless they abide by prescriptions concerning religious symbols. University lecturers are likely not to be employed in the first place. In the work environment in general there is a risk of reprimands, suspension and dismissal directly connected to the wearing of religious symbols. This may affect both employees in private enterprises and civil servants, as well as members of Parliament and military personnel. When certain dress codes are applicable for ID photographs, e.g. on permanent resident cards, visas, passports and driving licences, individuals run the risk of not receiving the official ID or of being forced to wear the required head covering on ID photographs for deportation purposes. In public, individuals may either be prevented (positive aspect of freedom of religion or belief) or coerced to wear religious symbols that they consider not essential to their convictions (negative freedom of religion or belief).

38. The obligation to wear religious dress in public in certain countries was particularly criticized by Special Rapporteur Amor, who stated that “women are among those who suffer most because of severe restrictions on their education and employment, and the obligation to wear what is described as Islamic dress” (E/CN.4/1998/6, para. 60). There were reports of punishment by whipping and/or a fine (A/51/542/Add.2, para. 51) and a growing number of women being attacked in the streets (E/CN.4/2003/66/Add.1, para. 59), or even killed after being threatened for failing to wear religious symbols (E/CN.4/1995/91, p. 36). After in situ visits, Special Rapporteur Amor addressed possible solutions by urging that dress should not be the subject of political regulation and by calling for flexible and tolerant attitudes in this regard. At the same time he emphasized that traditions and customs were worthy of respect (E/CN.4/1996/95/Add.2, para. 97 and A/51/542/Add.2, para. 140). In his thematic studies he also referred to the different possible meanings of religious symbols (E/CN.4/2002/73/Add.2, paras. 101-102) and in particular to the situation of pupils in the public school system (A/CONF.189/PC.2/22, paras. 56-59).

39. Furthermore, in resolution 1464 (2005) on “Women and religion in Europe”, the Parliamentary Assembly of the Council of Europe has recently called on its member States to “ensure that freedom of religion and respect for culture and tradition are not accepted as pretexts to justify violations of women’s rights, including when underage girls are forced to submit to religious codes (including dress codes)”.<sup>3</sup>

## **B. Legal framework at the international level**

40. As mentioned in the Special Rapporteur’s previous annual report (E/CN.4/2005/61, para. 65), most international judicial or quasi-judicial bodies consider the display of religious

symbols as a manifestation of religion or belief (*forum externum*) rather than being part of internal conviction (*forum internum*), which is not subject to limitation. Several universal and regional human rights instruments refer to the freedom “to manifest his religion or belief in worship, *observance, practice* and teaching”<sup>4</sup> (emphasis added). The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief more specifically enumerates the freedom to “make, acquire and use to an adequate extent the necessary articles and materials related to rites or customs of a religion or belief”.<sup>5</sup> According to the Human Rights Committee’s general comment No. 22 on article 18 of the Covenant, “[t]he observance and practice of religion or belief may include not only ceremonial acts but also such customs as ... the wearing of distinctive clothing or head coverings” (para. 4).

41. It is not clear whether the wearing of religious symbols falls under the category of “practice” or “observance”. In listing the features that required protection, the Committee does not seem to distinguish clearly between these two categories. However, some commentators have suggested that observance refers to “prescriptions that are inevitably connected with a religion or belief and protects both the right to perform certain acts and the right to refrain from doing certain things”, whereas practice concerns manifestations which are “not prescribed, but only authorized by a religion or belief”.<sup>6</sup> Such a distinction between compulsory prescriptions and mere authorizations may ultimately lead to problems when trying to determine who should be competent to consider this aspect of the individual’s freedom of religion or belief. During the elaboration of general comment No. 22, Human Rights Committee member Rosalind Higgins stated that “... it was not the Committee’s responsibility to decide what should constitute a manifestation of religion”. She resolutely opposed the idea that “States could have complete latitude to decide what was and what was not a genuine religious belief. The contents of a religion should be defined by the worshippers themselves”.<sup>7</sup> A certain appearance or exhibition of a symbol may or may not be linked to any religious sentiment or belief. It would therefore be most inappropriate for the State to determine whether the symbol in question was indeed a manifestation of religious belief. The Special Rapporteur therefore shares the approach of the Human Rights Committee in dealing with the wearing of religious symbols under the headings of “practice and observance” together.

42. The controversy under international human rights law tends to centre on possible limitations on the freedom to manifest one’s religion or belief, e.g. according to article 29 (2) of the Universal Declaration on Human Rights, article 18 (3) of the International Covenant on Civil and Political Rights, article 1 (3) of the Declaration, article 9 (2) of the European Convention on Human Rights (ECHR) and article 12 (3) of the American Convention on Human Rights (AmCHR). Generally speaking, these clauses only accept such limitations as are prescribed or determined by law and are necessary - in a democratic society - to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The list of permissible reasons for intervention notably does not include additional grounds stipulated for different human rights, e.g. national security or the reputations of others. Furthermore, article 4 (2) of the Covenant and article 27 (2) of AmCHR prescribe that, even in time of public emergency or war, no derogation from the freedom of conscience and religion is permissible. That this right is non-derogable again underlines the importance of the freedom of religion or belief.

### C. International case law

43. When discussing the wording of its general comment No. 22, the Human Rights Committee also took account of the “need to avoid rivalry or provocation”<sup>8</sup> with regard to the wearing of clothing in accordance with religious practice. The following cases illustrate typical contentious situations and the respective findings of the relevant international judicial or quasi-judicial body. Two cases before the Human Rights Committee as well as concluding observations of the Committee on the Rights of the Child appear to be pertinent to the issue of religious symbols. Furthermore, there are a number of precedents, including the most recent Grand Chamber decision of 10 November 2005, in the case law of the European Court of Human Rights and of the European Commission on Human Rights.

44. Communication No. 931/2000, *Hudoyberganova v. Uzbekistan*, concerned a female Muslim student of the Tashkent State Institute for Eastern Languages who allegedly had been suspended for wearing a headscarf. On 5 November 2004, the majority of the Human Rights Committee concluded, in the absence of any justification provided by the State party, that there had been a violation of article 18, paragraph 2, of the Covenant. It also confirmed that “the freedom to manifest one’s religion encompasses the right to wear clothes or attire in public which is in conformity with the individual’s faith or religion. Furthermore, it considers that to prevent a person from wearing religious clothing in public or private may constitute a violation of article 18, paragraph 2, which prohibits any coercion that would impair the individual’s freedom to have or adopt a religion.”<sup>9</sup> Three Committee members, however, decided to append individual opinions, referring to the uncertain state of the record and to more complex causes for Ms. Hudoyberganova’s exclusion from the institute, based on her own statements.

45. In communication No. 208/1986, *Bhinder v. Canada*, the Human Rights Committee held on 9 November 1989 that the requirement for Sikhs to wear safety headgear during work was justified under article 18 (3) of the Covenant, without further specifying which of the grounds for limitation it thought to be in question. In addition, the Committee did not find de facto discrimination against persons of the Sikh religion violating article 26 of the Covenant because the legislation was to be “regarded as reasonable and directed towards objective purposes that are compatible with the Covenant”.<sup>10</sup>

46. The Committee on the Rights of the Child in its concluding observations on the second periodic report of France was concerned at the alleged rise in discrimination, including that based on religion, and that the new legislation on wearing religious symbols and clothing in public schools may neglect the principle of the best interests of the child and the right of the child to access to education. It recommended that the State party “consider alternative means, including mediation, of ensuring the secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation. The dress code of schools may be better addressed within the public schools themselves, encouraging participation of children”. The Committee further recommended that “the State party continue to closely monitor the situation of girls being expelled from schools as a result of the new legislation and ensure that they enjoy the right of access to education.”<sup>11</sup>

47. At the regional level, the European Court of Human Rights and, previously, the European Commission on Human Rights appear to be more inclined to allow States to limit individuals' positive freedom of religion or belief. The Court case *Şahin v. Turkey* concerned the refusal of admission to lectures and examinations at Istanbul University for students whose heads were covered. Both the Court Chamber and the recent Grand Chamber judgements held the notion of secularism to be consistent with the values underpinning the European Convention on Human Rights. With regard to article 9 of ECHR, "the Court considered that, when examining the question of the Islamic headscarf in the Turkish context, there had to be borne in mind the impact which wearing such a symbol, which was presented or perceived as a compulsory religious duty, may have on those who chose not to wear it".<sup>12</sup> In her dissenting opinion, however, Judge Tulkens disagreed with the manner in which the principles of secularism and equality were applied by the majority of the Grand Chamber. She underlined that not mere worries, but only "indisputable facts and reasons whose legitimacy is beyond doubt" were capable of justifying interference with a right guaranteed by the Convention.

48. In the case *Dahlab v. Switzerland*, the application of a teacher in a primary school who had been prohibited from wearing a headscarf in the performance of her professional duties was dismissed by the European Court of Human Rights at the admissibility stage. The Court held that a teacher, wearing a "powerful external symbol" such as the headscarf might have some kind of proselytizing effect on young children, who were in this case aged between 4 and 8 years. Thus, the Court concurred with the view of the Swiss Federal Court that the prohibition of wearing a headscarf in the context of the applicant's activities as a teacher was "justified by the potential interference with the religious beliefs of her pupils, other pupils at the school and the pupils' parents, and by the breach of the principle of denominational neutrality in schools".<sup>13</sup>

49. The protection of the beliefs of others and of public order was also stressed in the case *Refah Partisi (the Welfare Party) and Others v. Turkey*, where the Grand Chamber of the European Court stated that "measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under article 9 [paragraph] 2 of the Convention".<sup>14</sup>

50. The European Commission on Human Rights also dealt with two applications, *Karaduman v. Turkey* (No. 16278/90) and *Bulut v. Turkey* (No. 18783/91), concerning the university's refusal to issue a diploma because the photographs that the applicants had submitted for their identity documents portrayed them with their heads covered. In its decisions of 3 May 1993, the Commission did not regard the rejection to be an interference with the applicants' freedom of religion or belief as secular universities may regulate manifestation of religious rites and symbols with the aim of ensuring harmonious coexistence between students of various faiths and thus protecting public order and the beliefs of others.

#### **D. Development of a set of general criteria to balance competing human rights**

51. In general, contentious situations should be evaluated on a case-by-case basis, e.g. by weighing the right of a teacher to manifest his or her religion against the need to protect pupils

by preserving religious harmony according to the circumstances of a given case. However, developing a set of general criteria to balance competing human rights seems to be desirable in order to give some guidance in terms of the applicable international human rights standards and their scope. In a manner similar to the guideline developed in 2004 by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE,<sup>15</sup> the aim of these general criteria is to assist national and international bodies in their analyses and reviews of laws and draft legislation pertaining to the freedom of religion or belief. The Special Rapporteur invites Governments that intend to regulate the wearing of religious symbols to consider seeking advisory services from the Office of the High Commissioner for Human Rights.

52. When developing such a set of general criteria, the competing human rights and public interests put forward in national and international forums need to be borne in mind. Freedom of religion or belief may be invoked both in terms of the positive freedom of persons who wish to wear or display a religious symbol and in terms of the negative freedom of persons who do not want to be confronted with or coerced into it. Another competing human right may be the equal right of men and women to the enjoyment of all civil and political rights, as well as the principle of the right to be protected from discrimination of any kind, including on the basis of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status. The right of everyone to education may be invoked by pupils who have been expelled for wearing religious symbols in accordance with their religion or belief. Furthermore, the rights of parents or legal guardians to organize life within the family in accordance with their religion or belief and bearing in mind the moral education which they believe should inform the child's upbringing (see article 5 (1) of the Declaration) may also be at stake. On the other hand, the State may try to invoke the "denominational neutrality of the school system" and the desire to "[preserve] religious harmony in schools" (see the Swiss Federal Court in the *Dahlab* case). According to the individual opinion by Human Rights Committee member Ruth Wedgwood in the *Hudoyberganova* case "a State may be allowed to restrict forms of dress that directly interfere with effective pedagogy".<sup>16</sup> Furthermore, the recent European Court Grand Chamber judgement in the *Şahin* case referred to the need to "preserve public order and to secure civil peace and true religious pluralism, which is vital to the survival of a democratic society".

53. However, any limitation must be based on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others, it must respond to a pressing public or social need, it must pursue a legitimate aim and it must be proportionate to that aim.<sup>17</sup> Furthermore, the burden of justifying a limitation upon the freedom to manifest one's religion or belief lies with the State. Consequently, a prohibition of wearing religious symbols which is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual's religious freedom.<sup>18</sup>

54. With regard to the scope of permissible limitation clauses, the Human Rights Committee's general comment No. 22 emphasizes that article 18 (3) of the Covenant "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and



must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner (para. 8)”.

55. On the basis of the above-mentioned factual aspects, the legal framework and international case law, the Special Rapporteur has endeavoured to develop a set of general criteria in order to evaluate - from a human rights law perspective - restrictions and prohibitions on wearing religious symbols. The following “aggravating indicators” show legislative and administrative actions which typically are incompatible with international human rights law whereas the subsequent “neutral indicators” by themselves do not tend to contravene these standards:

(a) Aggravating indicators:

- The limitation amounts to the nullification of the individual’s freedom to manifest his or her religion or belief;
- The restriction is intended to or leads to either overt discrimination or camouflaged differentiation depending on the religion or belief involved;
- Limitations on the freedom to manifest a religion or belief for the purpose of protecting morals are based on principles deriving exclusively from a single tradition;<sup>19</sup>
- Exceptions to the prohibition of wearing religious symbols are, either expressly or tacitly, tailored to the predominant or incumbent religion or belief;
- In practice, State agencies apply an imposed restriction in a discriminatory manner or with a discriminatory purpose, e.g. by arbitrarily targeting certain communities or groups, such as women;
- No due account is taken of specific features of religions or beliefs, e.g. a religion which prescribes wearing religious dress seems to be more deeply affected by a wholesale ban than a different religion or belief which places no particular emphasis on this issue;
- Use of coercive methods and sanctions applied to individuals who do not wish to wear a religious dress or a specific symbol seen as sanctioned by religion. This would include legal provisions or State policies allowing individuals, including parents, to use undue pressure, threats or violence to abide by such rules;

(b) Neutral indicators:

- The language of the restriction or prohibition clause is worded in a neutral and all-embracing way;

- The application of the ban does not reveal inconsistencies or biases vis-à-vis certain religious or other minorities or vulnerable groups;
- As photographs on ID cards require by definition that the wearer might properly be identified, proportionate restrictions on permitted headgear for ID photographs appear to be legitimate, if reasonable accommodation of the individual's religious manifestation are foreseen by the State;
- The interference is crucial to protect the rights of women, religious minorities or vulnerable groups;
- Accommodating different situations according to the perceived vulnerability of the persons involved might in certain situations also be considered legitimate, e.g. in order to protect underage schoolchildren and the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

56. In seeking to accommodate different categories of individuals details of permissible limitations will be controversial. In general schoolchildren are generally considered vulnerable in view of their age, immaturity and the compulsory nature of education. In addition, parental rights are also put forward as justification for limiting teachers' positive freedom to manifest their religion or belief. In all actions concerning children, the best interests of the child shall be the primary consideration. University students, however, have normally reached the age of majority and are generally considered to be less easily influenced than schoolchildren, and parental rights are usually no longer involved.

57. The above-mentioned controversy over the peculiarities of certain institutional settings was already alluded to in 1959 by Arcot Krishnaswami, then Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his seminal study of discrimination in the matter of religious rights and practices: "A prohibition of the wearing of religious apparel in certain institutions, such as public schools, may be motivated by the desire to preserve the non-denominational character of these institutions. It would therefore be difficult to formulate a rule of general application as to the right to wear religious apparel, even though it is desirable that persons whose faith prescribes such apparel should not be unreasonably prevented from wearing it."<sup>20</sup>

58. Where a policy decision has been taken at the national level to interfere with the freedom to manifest one's religion or belief with regard to wearing religious symbols issues of commensurability need to be thoroughly respected both by the administration and during possible legal review. For this purpose, the following questions should be answered in the affirmative:

- Was the interference, which must be capable of protecting the legitimate interest that has been put at risk, appropriate?

- Is the chosen measure the least restrictive of the right or freedom concerned?
- Was the measure proportionate, i.e. balancing of the competing interests?
- Would the chosen measure be likely to promote religious tolerance?
- Does the outcome of the measure avoid stigmatizing any particular religious community?

59. When dealing with the prohibition of religious symbols, two general questions should always be borne in mind: What is the significance of wearing a religious symbol and its relationship with competing public interests, and especially with the principles of secularism and equality? Who is to decide ultimately on these issues, e.g. should it be up to the individuals themselves, religious authorities, the national administration and courts, or international human rights mechanisms? While acknowledging that the doctrine of “margin of appreciation” may accommodate ethnic, cultural or religious peculiarities, this approach should not lead to questioning the international consensus that “[a]ll human rights are universal, indivisible and interdependent and interrelated”, as proclaimed in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993.

60. The fundamental objective should be to safeguard both the positive freedom of religion or belief as manifested in observance and practice by voluntarily wearing or displaying religious symbols, and also the negative freedom from being forced to wear or display religious symbols. At the same time, the competing human rights need to be balanced and public interest limitations should be applied restrictively. The Special Rapporteur fully agrees with European Court Judge Tulkens’ closing remarks: “Above all, the message that needs to be repeated over and over again is that the best means of preventing and combating fanaticism and extremism is to uphold human rights.”<sup>21</sup>

#### IV. CONCLUSIONS AND RECOMMENDATIONS

61. **The twenty-fifth anniversary of the adoption of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief will take place in 2006. Nevertheless, the Special Rapporteur notes with concern that freedom of religion or belief is not a reality for many individuals throughout the world. She hopes that this anniversary will be an occasion to reiterate the importance of promoting freedom of religion or belief and to draw attention to the evolution of the issues relating to the mandate. She encourages Governments and non-governmental organizations to support the initiatives that will be taken to organize events that will take stock of achievements since 1981, identify the provisions of the Declaration that today raise particular concern and challenge rising trends of religious intolerance.**

62. **While she notes that religious leaders regularly organize high-level meetings at the international level to promote inter-religious dialogue, she is concerned that Governments, which are primarily responsible for protecting people against violations of the right to**

freedom of religion or belief, rarely organize intergovernmental events to discuss the rise of religious intolerance, in particular at the regional level. The Special Rapporteur encourages more intergovernmental dialogue on the issues relating to her mandate, so as to increase the involvement of the relevant policymakers.

63. The Special Rapporteur expresses her gratitude to the Governments of Sri Lanka, Nigeria and France for their cooperation during her visits during the period under review. She considers that this cooperation will eventually prove beneficial to those States because all States have an interest in improving religious tolerance and religious freedom. She therefore encourages all States to respond favourably to her requests for country visits so as to enable her to fulfil her mandate more effectively.

64. However, there is a real concern that the number of countries that do not extend invitations for in situ visits is increasing. This trend is particularly worrying because these are the countries concerning which she has received substantial allegations regarding violations of the right to freedom of religion or belief. In this regard, the Special Rapporteur reiterates her support for a mechanism to appropriately address the situation of countries that consistently fail to cooperate with the special procedures mechanisms. She encourages States and other actors to consider this issue in the context of the efforts relating to United Nations reform. In particular, they should consider, barring those States that do not cooperate with the special procedures in the context of country visits, from consideration for membership in the new body.

65. The Special Rapporteur welcomes the responses received from Governments to the communications sent during the period under review. She reiterates the importance of initiating a dialogue with Governments on allegations of violations of the freedom of religion or belief in their countries. Accordingly, she has taken steps to improve the specificity and quality of the communications she sends to Governments by developing a framework on communications. She hopes that Governments will reciprocate by increasing their efforts to respond to her communications fully and in a timely manner, responding to the specific questions raised.

66. The Special Rapporteur has formulated a set of general criteria on religious symbols, including “neutral indicators” and “aggravating indicators”, in order to provide some guidance on the applicable human rights standards and their scope. She would like to emphasize that restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. Limitations must be directly related and proportionate to the specific need on which they are predicated. The burden of justifying a limitation upon the freedom to manifest one’s religion or belief lies with the State. The chosen measures should promote religious tolerance and avoid stigmatizing any particular religious community. Furthermore, the principles of appropriateness and proportionality need to be thoroughly respected both by the administration and during possible legal review.

67. During the period under review, the Special Rapporteur continued to receive reports of cases or situations where persons had deliberately offended the religions of

others. She recognizes that in many of these cases, the statements or other forms of expression may have been made as a result of the exercise of the right to freedom of expression. However, she is concerned that in some cases, such forms of expression may disclose a lack of tolerance for the religion of others, which can constitute a threat to the religious harmony of a society as they are often based on stereotypes and may provoke further polarization. She intends to further develop this aspect of her mandate in her forthcoming activities.

68. Finally, noting the undisputed advantages that special procedures bring to the United Nations human rights mechanism owing to their particularities, as well as the new challenges and ever-increasing demands that they face, the Special Rapporteur strongly encourages that additional resources be allocated to the Special Procedures Branch of the Office of the High Commissioner for Human Rights. In this regard, she notes that the evolving scope of cases and situations falling within her area of responsibility calls for strengthening the resources available to the mandate, including in terms of staffing.

#### Notes

<sup>1</sup> Cf. US Supreme Court, judgements of 27 June 2005 on posting the Ten Commandments in courthouses and on monuments (*McCreary County v. American Civil Liberties Union of KY* and *Van Orden v. Perry*); Italian Corte costituzionale, judgement of 13 December 2004 on crucifixes in schools (Ordinanza N.389 Anno 2004); Swiss Tribunal fédéral suisse/Schweizerisches Bundesgericht/Tribunale federale svizzero, judgement of 18 January 1995 on crucifixes in courtrooms (see official collection of jurisprudence, ATF 121 I 42) and judgement of 26 September 1990 on crucifixes in classrooms (ATF 116 Ia 252); German Bundesverfassungsgericht, judgement of 16 May 1995 on crucifixes in classrooms (see official collection of jurisprudence, BVerfGE 93, 1) and judgement of 17 July 1973 on crucifixes in courtrooms (BVerfGE 35, 366).

<sup>2</sup> Cf. the comparative table on prohibitions of wearing religious symbols, available at <http://www.uni-trier.de/~ievr/kopftuch/ReligiousSymbols.pdf>.

<sup>3</sup> Parliamentary Assembly of the Council of Europe, resolution 1464 (2005), para. 7.4, adopted on 4 October 2005.

<sup>4</sup> See the wording - with a slightly differing order of the list of possible manifestations of religion or belief - in article 18 Universal Declaration of Human Rights (UDHR), in article 18 (1) International Covenant on Civil and Political Rights (ICCPR), in article 12 (1) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), in article 1 (1) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration) and in article 9 (1) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

<sup>5</sup> Article 6 (c) of the 1981 Declaration. Cf. also Principle 16 of the Concluding Document of the 1989 Vienna Meeting of Representatives of the Participating States of the CSCE Conference: “In order to ensure the freedom of the individual to profess and practice religion or belief, the participating State will, inter alia, [...] (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;”.

<sup>6</sup> For further discussion see Cornelis D. de Jong, *The Freedom of Thought, Conscience and Religion or Belief in the United Nations (1946-1992)*, Antwerpen/Groningen/Oxford 2000, p. 105.

<sup>7</sup> See the Human Rights Committee discussion on 24 July 1992, Summary Records of the 1166th meeting of the forty-fifth session, para. 48.

<sup>8</sup> Id., para. 27 (Human Rights Committee member Mr. Sadi).

<sup>9</sup> CCPR/C/82/D/931/2000, para. 6.2.

<sup>10</sup> CCPR/C/37/D/208/1986, para. 6.2.

<sup>11</sup> CRC/C/15/Add.240, paras. 25-26; see also Committee on the Rights of the Child discussion on 2 June 2004, Summary Records of the 968th meeting of the thirty-sixth session, CRC/C/SR.968, paras. 33, 43 and 83. Concerning the ban on schoolteachers wearing headscarves see the Committee’s Concluding Observations on the second periodic report of Germany, CRC/C/15/Add.226, paras. 30-31.

<sup>12</sup> *Şahin v. Turkey*, application No. 44774/98, ECtHR Chamber judgement of 29 June 2004, para. 108 and ECtHR Grand Chamber judgement of 10 November 2005, para. 115.

<sup>13</sup> *Dahlab v. Switzerland*, application No. 42393/98, ECtHR decision of 15 February 2001 (cf. ECHR 2001-V at p. 462).

<sup>14</sup> *Refah Partisi (the Welfare Party) and Others v. Turkey*, applications Nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECtHR Grand Chamber judgement of 13 February 2003, para. 95. See also the ECtHR Chamber judgement of 31 July 2001, para. 51.

<sup>15</sup> “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 Council of Europe’s Commission for Democracy Through Law (Venice Commission), 2004, available at [http://www.osce.org/odihr/item\\_11\\_13600.html](http://www.osce.org/odihr/item_11_13600.html).

<sup>16</sup> CCPR/C/82/D/931/2000, op. cit.

<sup>17</sup> See Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, Annex, para. 10.

<sup>18</sup> See Board of Experts of the International Religious Liberty Association, Guiding Principles Regarding Student Rights to Wear or Display Religious Symbols (15 November 2005), Principles Nos. 6 and 7, available at [www.irla.org/documents/reports/symbols.html](http://www.irla.org/documents/reports/symbols.html).

<sup>19</sup> *Id.* For the *travaux préparatoires* see the Human Rights Committee discussion on 2 and 5 April 1993, Summary Records of the 1225th and 1226th meetings of the forty-seventh session.

<sup>20</sup> E/CN.4/Sub.2/200/Rev.1, p. 33.

<sup>21</sup> Dissenting opinion of Judge Tulkens in the ECtHR Grand Chamber judgement of 10 November 2005 in the case of *Şahin v. Turkey*, para. 20.

**Annex**

**THE MANDATE OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF: FRAMEWORK FOR COMMUNICATIONS**

<p><b>Freedom to adopt, change or renounce a religion or belief</b></p>	<p><b>UDHR</b></p> <p>“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief [...].”</p> <p><b>ICCPR</b></p> <p><u>Art. 18 (1)</u>: “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 [...].”</p> <p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 1 (1)</u>: “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 [...].”</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 3</u>: “Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one’s choice;”.</p> <p><u>Para. 5</u>: “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.”</p>
<p><b>Freedom from coercion</b></p>	<p><b>UDHR</b></p> <p>“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom [...] either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”</p> <p><b>ICCPR</b></p> <p><u>Art. 18 (2)</u>: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”</p> <p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 1 (2)</u>: “No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”</p>



	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 5:</u> “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.”</p>
<p><b>The right to manifest one’s religion or belief</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 18 (1):</u> “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.”</p> <p><u>Art. 18 (3):</u> “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.”</p> <p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 1 (1):</u> “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.”</p> <p><u>Art. 1 (3):</u> “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.”</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4:</u> “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 head coverings, 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 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.”</p>
<p><b>Freedom to worship</b></p>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (a):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To worship or assemble in connection with a religion or belief [...]”.</p>

	<p><u>Art. 6 (c)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;”.</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>4 (d)</u>: The Commission on Human Rights urges States “To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief [...]”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4</u>: “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 use of ritual formulae, and objects [...]”.</p>
<b>Places of worship</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (a)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;”.</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>4 (b)</u>: The Commission on Human Rights urges States, “To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;”.</p> <p><u>4 (d)</u>: The Commission on Human Rights urges States, “To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes [...]”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4</u>: “The concept of worship extends to [...] the building of places of worship.”</p>
<b>Religious symbols</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (c)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “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;”.</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>4 (b)</u>: The Commission on Human Rights urges States, “To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights law, to ensure that religious places, sites, shrines and religious expressions are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;”.</p>

	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4:</u> “The concept of worship extends to [...] the display of symbols”.</p> <p><u>Para. 4:</u> “The observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head coverings [...]”</p>
<b>Observance of holidays and days of rest</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (h):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4:</u> “The concept of worship extends to [...] the observance of holidays and days of rest.”</p>
<b>Appointing clergy</b>	<p><b>General Assembly Declaration 36/55 1981</b></p> <p><u>Art. 6 (g):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To train, appoint, elect or designate by succession appropriate leaders [...]”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4:</u> “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 [...]”.</p>
<b>Teaching and disseminating materials (including missionary activity)</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (d):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To write, issue and disseminate relevant publications in these areas;”.</p> <p><u>Art. 6 (e):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To teach a religion or belief in places suitable for these purposes.”</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>4.d:</u> The Commission on Human Rights urges States, “To ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications in these areas, taking into account the limitations contained in article 29 of the Universal Declaration of Human Rights;”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 4:</u> “In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”</p>

**The right of parents to ensure the religious and moral education of their children**

**ICCPR**

Art. 18 (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.”

**CRC**

Art. 14 (2): “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child [...]

(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;”.

**ICESCR**

Art. 13 (3): “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.”

**Migrant Workers Convention**

Art. 12 (4): “States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

**1981 Declaration of the General Assembly**

Art. 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.
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.

<b>Registration</b>	<p><b>Commission on Human Rights resolution 2005/40</b></p> <p>4 (c): The Commission on Human Rights urges States, “To review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private;”.</p> <p>4 (e): The Commission on Human Rights urges States, “To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”</p>
<b>Communicate with individuals and communities on religious matters at the national and international level</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (i)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”</p>
<b>Establish and maintain charitable and humanitarian institutions/solicit and receive funding</b>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 6 (b)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To establish and maintain appropriate charitable or humanitarian institutions;”.</p> <p><u>Art. 6 (f)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To solicit and receive voluntary financial and other contributions from individuals and institutions.”</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p>4 (e): The Commission on Human Rights urges States, “To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”</p>
<b>Conscientious objection</b>	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 11</u>: “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.”</p>

<b>DISCRIMINATION</b>	
<b>Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance</b>	<p><b>ICCPR</b></p> <p><u>Art. 2 (1)</u>: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...].”</p> <p><u>Art. 5 (1)</u>: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”</p> <p><u>Art. 26</u>: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...].”</p> <p><u>Art. 27</u>: “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.”</p> <p><b>ICERD</b></p> <p><u>Art. 5</u>: “[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (d) Other civil rights, in particular: [...] (vii) The right to freedom of thought, conscience and religion”.</p> <p><b>ICESCR</b></p> <p><u>Art. 2 (2)</u>: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as [...] religion [...].”</p> <p><b>CRC</b></p> <p><u>Art. 30</u>: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”</p> <p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 2 (1)</u>: “No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.”</p>

Art. 3: “Discrimination between human beings 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.”

Art. 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.”

Art. 4 (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.”

**Commission on Human Rights resolution 2005/40**

4 (g): The Commission on Human Rights urges States, “To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief, and that all necessary and appropriate education or training is provided;”.

7: The Commission on Human Rights, “Expresses concern at the persistence of institutionalized social intolerance and discrimination practised in the name of religion or belief against many communities;”.

8: The Commission on Human Rights urges States to step up their efforts to eliminate intolerance and discrimination based on religion or belief, notably by: “(a) Taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities, and also to devote particular attention to practices that violate the human rights of women and discriminate against women, including in the exercise of their right to freedom of thought, conscience, religion or belief; (b) Promoting and encouraging, through education and other means, understanding, tolerance and respect in all matters relating to freedom of religion or belief; (c) Making all appropriate efforts to encourage those engaged in teaching to cultivate respect for all religions or beliefs, thereby promoting mutual understanding and tolerance;”.

9: The Commission on Human Rights, “Recognizes that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization of the aims of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and invites Governments, religious bodies and civil society to continue to undertake dialogue at all levels to promote greater tolerance, respect and understanding;”.

10: The Commission on Human Rights, “Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding;”.

	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 2:</u> “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.”</p>
<p><b>State religion</b></p>	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 9:</u> “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.”</p> <p><u>Para. 10:</u> “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.”</p>
<p><b>VULNERABLE GROUPS</b></p>	
<p><b>Women</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 5 (1):</u> “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”</p> <p><u>Art. 18 (3):</u> “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.”</p>



## **CEDAW**

Art. 2: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”

Art. 3: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

## **ICESCR**

Art. 2 (2): “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

## **1981 Declaration of the General Assembly**

Art. 8: “Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the UDHR and the Covenants;”.

## **Commission on Human Rights resolution 2005/40**

5.b: In which the Commission on Human Rights invites the Special Rapporteur to address situations of violence and discrimination that affect many women as a result of religion or belief.

	<p><u>14</u>: The Commission on Human Rights, “Stresses the need for the Special Rapporteur to continue to apply a gender perspective, inter alia through the identification of gender specific abuses, in the reporting process, including in information collection and in recommendations;”.</p> <p><b>Human Rights Committee general comment 28</b></p> <p><u>Para. 13</u>: “States parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.”</p> <p><u>Para. 19</u>: “The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.”</p> <p><u>Para. 21</u>: “States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one’s choice - including the freedom to change religion or belief and to express one’s religion or belief - will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion; States parties should therefore provide information on the status of women as regards their freedom of thought, conscience and religion, and indicate what steps they have taken or intend to take both to eliminate and prevent infringements of these freedoms in respect of women and to protect their right not to be discriminated against.”</p>
<p><b>Persons deprived of their liberty</b></p>	<p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 8</u>: “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.”</p>

	<p><b>Standard Minimum Rules for the Treatment of Prisoners</b></p> <p><u>Rule 41:</u></p> <p>“(1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.</p> <p>(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.</p> <p>(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.”</p> <p><u>Rule 42:</u> “So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.”</p>
<p><b>Refugees</b></p>	<p><b>Convention relating to the Status of Refugees</b></p> <p><u>Art. 4:</u> “The Contracting State shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”</p> <p><u>Art. 33:</u> “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”</p>
<p><b>Children</b></p>	<p><b>CRC</b></p> <p><u>Art. 14 (1):</u> “States Parties shall respect the right of the child to freedom of thought, conscience and religion.”</p> <p><u>Art. 14 (2):</u> “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child [...] (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;”.</p> <p><u>Art. 30:</u> “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”</p>

<p><b>Minorities</b></p>	<p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 5 (3)</u>: “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.”</p> <p><u>Art. 5 (5)</u>: “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.”</p> <p><b>ICCPR</b></p> <p><u>Art. 27</u>: “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.”</p> <p><b>CRC</b></p> <p><u>Art. 30</u>: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”</p> <p><b>General Assembly Declaration 47/135</b></p> <p><u>Art. 1 (1)</u>: “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”</p> <p><u>Art. 2 (1)</u>: “Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”</p>
<p><b>Migrant workers</b></p>	<p><u>Art. 12 (1)</u>: “Migrant workers and members of their families 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 their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.”</p> <p><u>Art. 12 (2)</u>: “Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.”</p> <p><u>Art. 12 (4)</u>: “States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”</p>

## INTERSECTION OF FREEDOM OF RELIGION OR BELIEF WITH OTHER HUMAN RIGHTS

**Freedom of expression including questions related to religious conflicts, religious intolerance and extremism**

**ICCPR**

Art. 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.”

Art. 20:

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

**Commission on Human Rights resolution 2005/40**

5 (a): In which the Commission on Human Rights invites the Special Rapporteur to address the rise of religious extremism affecting religions in all parts of the world.

5 (c): In which the Commission on Human Rights invites the Special Rapporteur to address the issue of the use of religion or belief for ends inconsistent with the Charter of the United Nations and other relevant instruments of the United Nations.

6: The Commission on Human Rights, “Recognizes with deep concern the overall rise in instances of intolerance and violence directed against members of many religious communities in various parts of the world, including cases motivated by Islamophobia, anti-Semitism and Christianophobia;”.

9: The Commission on Human Rights, “Recognizes that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization of the aims of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and invites Governments, religious bodies and civil society to continue to undertake dialogue at all levels to promote greater tolerance, respect and understanding;”.

	<p><u>10</u>: The Commission on Human Rights, “Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding;”.</p> <p><u>11</u>: The Commission on Human Rights, “Also emphasizes that equating any religion with terrorism should be avoided as this may have adverse consequences on the enjoyment of the right to freedom of religion or belief of all members of the religious communities concerned;”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 7</u>: “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.”</p>
<p><b>Right to life, right to liberty</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 6</u>:</p> <p>“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”</p> <p><u>Art. 9 (1)</u>: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>4 (f)</u>: The Commission on Human Rights urges States, “To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights;”.</p> <p><b>Economic and Social Council resolution 1984/50</b></p> <p><u>Para. 1</u>: “In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”</p>

**Prohibition on torture and other cruel, inhuman or degrading treatment or punishment**

**ICCPR**

Art. 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

**Convention against Torture**

Art. 1: “For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as [...] punishing him for an act he or a third person has committed or is suspected of having committed, [...] or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Art. 16: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

**CEDAW**

Art. 5 (a): States Parties shall take all appropriate measures, “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

**Commission on Human Rights resolution 2005/40**

4.f: The Commission on Human Rights urges States, “To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights;”

**Commission on Human Rights resolution 2005/39**

7: The Commission on Human Rights, “Reminds Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture;”

**Commission on Human Rights resolution 2003/32**

5: The Commission on Human Rights, “Reminds Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture;”

**General Assembly Declaration 48/104**

Art. 4 (c): States should, “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”

	<p><b>Human Rights Committee general comment 20</b></p> <p><u>Para. 5:</u> “In the Committee’s view, moreover, the prohibition [of torture] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”</p>
<p><b>CROSS-CUTTING ISSUES</b></p>	
<p><b>Derogation</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 4 (1):</u> “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.”</p> <p><u>Art. 4 (2):</u> “No derogation from articles [...] 18 may be made under this provision.”</p>
<p><b>Limitation</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 18 (3):</u> “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.”</p> <p><b>CRC</b></p> <p><u>Art. 14 (3):</u> “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.”</p> <p><b>Migrant Workers Convention</b></p> <p><u>Art. 12 (3):</u> “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.”</p> <p><b>Commission on Human Rights resolution 2005/40</b></p> <p><u>12:</u> The Commission on Human Rights, “Further emphasizes that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;”.</p> <p><b>Human Rights Committee general comment 22</b></p> <p><u>Para. 8:</u> “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</p>



	<p>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. [...]”.</p>
<p><b>Legislative issues</b></p>	<p><b>ICCPR</b></p> <p><u>Art. 2 (2)</u>: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p><b>ICESCR</b></p> <p><u>Art. 2 (1)</u>: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”</p> <p><b>CEDAW</b></p> <p><u>Art. 3</u>: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”</p> <p><b>1981 Declaration of the General Assembly</b></p> <p><u>Art. 4 (2)</u>: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination.”</p> <p><u>Art. 7</u>: “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.”</p>

	<p><b>Commission on Human Rights resolution 2005/40</b></p> <p>4 (a): The Commission on Human Rights urges States, “To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, the right to practise freely one’s religion, including the right to change one’s religion or belief, is violated;”.</p>
<p><b>Defenders of freedom of religion or belief and non-governmental organizations</b></p>	<p><b>Commission on Human Rights resolution 2005/40</b></p> <p>17: The Commission on Human Rights, “Welcomes and encourages the continuing efforts of non-governmental organizations and bodies and groups based on religion or belief to promote the implementation of the Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief, and further encourages their work in promoting freedom of religion or belief and in highlighting cases of religious intolerance, discrimination and persecution;”.</p>