

# ***Rapporteur's Digest on Freedom of Religion or Belief***

***Excerpts of the Reports from 1986 to 2011 by the  
Special Rapporteur on Freedom of Religion or Belief  
Arranged by Topics of the Framework for Communications***

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The Special Rapporteur on freedom of religion or belief is an independent expert appointed by the United Nations Human Rights Council. The mandate holder has been invited to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles.

### **Historical background**

The United Nations Commission on Human Rights appointed further to resolution 1986/20 a “Special Rapporteur on religious intolerance”. In 2000, the Commission on Human Rights decided to change the mandate title to “Special Rapporteur on freedom of religion or belief”, which was subsequently endorsed by ECOSOC decision 2000/261 and welcomed by General Assembly resolution 55/97. On 18 June 2010, the Human Rights Council adopted resolution 14/11 which, inter alia, extended the mandate of the Special Rapporteur for a further period of three years.

### **Mandate**

The Special Rapporteur has been mandated through Human Rights Council resolution 6/37:

- to promote the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right to freedom of religion or belief;
- to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles;
- to continue her/his efforts to examine incidents and governmental actions that are incompatible with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and to recommend remedial measures as appropriate;
- 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.

### **Working methods**

In the discharge of the mandate, the Special Rapporteur:

- transmits urgent appeals and letters of allegation to States with regard to cases that represent infringements of or impediments to the exercise of the right to freedom of religion and belief;
- undertakes fact-finding country visits;
- submits annual reports to the Human Rights Council, and General Assembly, on the activities, trends and methods of work.

### **Special Rapporteurs**

Mr. Heiner Bielefeldt (Germany), since 1 August 2010

Ms. Asma Jahangir (Pakistan), August 2004 - July 2010

Mr. Abdelfattah Amor (Tunisia), April 1993 - July 2004

Mr. Angelo d'Almeida Ribeiro (Portugal), March 1986 - March 1993

## TABLE OF CONTENTS

<b>Introduction.....</b>	<b>4</b>
<b>I. Freedom of religion or belief .....</b>	<b>6</b>
1. Freedom to adopt, change or renounce a religion or belief.....	6
2. Freedom from coercion.....	12
3. The right to manifest one's religion or belief .....	15
a) Freedom to worship .....	16
b) Places of worship .....	17
c) Religious symbols .....	21
d) Observance of holidays and days of rest.....	28
e) Appointing clergy .....	30
f) Teaching and disseminating materials (including missionary activity).....	31
g) The right of parents to ensure the religious and moral education of their children.....	34
h) Registration.....	39
i) Communicate with individuals and communities on religious matters at the national and international level ...	43
j) Establish and maintain charitable and humanitarian institutions/solicit and receive funding.....	44
k) Conscientious objection.....	45
<b>II. Discrimination .....</b>	<b>48</b>
1. Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance.....	48
2. State religion .....	58
<b>III. Vulnerable groups .....</b>	<b>60</b>
1. Women.....	60
2. Persons deprived of their liberty .....	66
3. Refugees.....	72
4. Children .....	77
5. Minorities .....	82
6. Migrant workers.....	86
<b>IV. Intersection of freedom of religion or belief with other human rights .....</b>	<b>89</b>
1. Freedom of expression including questions related to religious conflicts, religious intolerance and extremism.....	89
2. Right to life, right to liberty .....	94
3. Prohibition on torture and other cruel, inhuman or degrading treatment or punishment .....	96
<b>V. Cross-cutting issues.....</b>	<b>98</b>
1. Derogation.....	98
2. Limitation.....	100
3. Legislative issues .....	102
4. Defenders of freedom of religion or belief and non-governmental organizations .....	105

## INTRODUCTION

On the occasion of the 25<sup>th</sup> anniversary of the adoption of resolution 1986/20 of the Commission on Human Rights, the Special Rapporteur on freedom of religion or belief launches this Digest with excerpts of the reports from 1986 to 2011. The Rapporteur's Digest is arranged according to the topics of his framework for communications and an online version is available at the following website: <http://www2.ohchr.org/english/issues/religion/standards.htm>

E/CN.4/2006/5, paras. 28-35:

### **“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.”

#### A/HRC/4/21, para. 33:

“33. Uploading the framework for communications on the OHCHR website will make the legal basis of freedom of religion or belief even more easily accessible for Governments and for civil society worldwide. Furthermore, the Special Rapporteur plans to develop the existing framework into an online digest, illustrating the international standards with pertinent excerpts of the mandate-holders' findings according to the categories of her framework for communications. Consequently, the 20 years of mandate practice up to now may eventually help to flesh out the legal standards and contribute to their implementation. Compiling this online digest is a time consuming endeavour, especially as the human resources available to her mandate are very limited but exceedingly dedicated, however, the Special Rapporteur hopes to present a preliminary version in 2007.”

#### A/HRC/6/5, Summary:

“The Human Rights Council, in its resolution 4/10 of 30 March 2007, recalls all resolutions on the elimination of all forms of intolerance and of discrimination based on religion or belief that have been adopted by the General Assembly and by the Commission on Human Rights and requests the Special Rapporteur on freedom of religion or belief to report on this issue to the Human Rights Council at its sixth session. In the present report, the Special Rapporteur gives an overview of the mandate's issues of concern according to the categories of her framework for communications. This structure enables her to summarize the pressing issues, as analysed during the 21 years of mandate practice, with regard to intolerance and discrimination based on religion or belief.”

#### References

- International Covenant on Civil and Political Rights (ICCPR), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976.
- International Covenant on Economic, Social and Cultural Rights (ICESCR), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976.
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force on 4 January 1969.
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.
- Convention on the Rights of the Child (CRC), Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), Adopted by General Assembly resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003.
- Convention Relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 and entered into force on 22 April 1954.
- General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Resolution 36/55 of 25 November 1981.
- General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Resolution 47/135 of 18 December 1992.
- General Assembly Declaration on the Elimination of Violence against Women, Resolution 48/104 of 20 December 1993.
- Commission on Human Rights Resolution on Elimination of all forms of intolerance and of discrimination based on religion or belief, Resolution 2005/40 of 19 April 2005.
- Commission on Human Rights Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, Resolution 2005/39 of 19 April 2005.
- Commission on Human Rights Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, Resolution 2003/32 of 23 April 2003.
- General Comment No. 20 concerning Prohibition of torture and cruel treatment or punishment (Art. 7), Human Rights Committee, 10 March 1992.
- General Comment No. 22 on the right to freedom of thought, conscience and religion (Art. 18), Human Rights Committee, 30 July 1993.
- General Comment No. 28 on Equality of rights between men and women (Art. 3), Human Rights Committee, 29 March 2000.
- Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
- Economic and Social Council Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Resolution 1984/50 of 25 May 1984. Endorsed by General Assembly resolution 39/118 on 14 December 1984.

## I. FREEDOM OF RELIGION OR BELIEF

### *1. Freedom to adopt, change or renounce a religion or belief*

#### **UDHR**

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief [...]."

#### **ICCPR**

Art. 18 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice [...]."

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

Art. 1 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice [...]."

#### **Human Rights Committee general comment 22**

Para. 3: "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;"

Para. 5: "The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."

### **Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)**

E/CN.4/1997/91, paras. 70-80:

"Right to change religion

70. The Universal Declaration of Human Rights sets forth, in article 18, the principle that "everyone has the right to freedom of thought, conscience and religion", and clearly states that such a right "includes freedom to change his religion or belief and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practise, worship and observance".

71. The 1966 International Covenant on Civil and Political Rights and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination follow in the direction set by the 1948 Declaration but do not explicitly restate the right to change religion.

72. Article 18 of the International Covenant on Civil and Political Rights offers general recognition of the right "to have or to adopt" a religion of one's choice.

73. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also makes general provision for the "freedom to have a religion or whatever belief of [one's] choice". Like the International Covenant on Civil and Political Rights, it contains no formal, explicit statement of the right to change religion, but the omission cannot be interpreted as betokening an intention to dilute the provisions of the 1948 Declaration.

74. The World Conference on Human Rights (Vienna, June 1993), while acknowledging concerns about specifics and invoking national legislation, strongly reaffirmed the universal nature of human rights.

75. The variety of formulations used to refer to the acknowledgement and development of religious freedom do not amount to a denial of the right to change religion.

76. Lastly, many formulations address a single point. They have cast doubt on the underpinnings of religious freedom and lent support to those who believe that religious freedom cannot extend to recognition of the right to change religion.

77. It is now established that religious freedom cannot be dissociated from the freedom to change religion. 78. As long ago as 1986, Elisabeth Odio B nito wrote of the 1948 and 1981 Declarations and the International Covenant on Civil and Political Rights that, although they varied slightly in wording, all meant precisely the same thing: that everyone had the right to leave one's religion or belief and to adopt another, or to remain without any at all. That meaning, she added, was implicit in the concept of the right to freedom of thought, conscience, religion and belief, regardless of how the concept was presented.

79. In its general comment 22 on article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee reached the same conclusion. It observes that the freedom to "have or to adopt" a religion or belief necessarily entails a freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.

80. The Special Rapporteur therefore emphasizes once again the right to change religion as a legally essential aspect of religious freedom."

E/CN.4/2005/61, paras. 45-47:

"C. Conversions

45. The Special Rapporteur has addressed the issue of conversion in a number of communications, in which she used the term to include situations where there has been an alleged infringement on the freedom to change, maintain or adopt a religion or a belief. While these communications have not very often dealt with situations where people had been arrested, tried or otherwise challenged because they had converted to another religion, there were a number of cases of persons being arrested because of their beliefs, and where there had been an attempt to force them to renounce or abandon their faith. This has been the case in communications sent to the Governments of China, Saudi Arabia, the Lao People's Democratic Republic, Egypt, and Turkmenistan.

46. The Special Rapporteur considers such acts as unacceptable forms of violations of the right to freedom of religion or belief because, in essence, they limit or tend to limit the freedom of thought or conscience itself (or what is sometimes called the "forum internum"), which, according to the main international instruments, forms the part of the right to freedom of religion or belief that is not susceptible to any limitation.

47. In this regard, the Special Rapporteur emphasizes that, according to general comment No. 22 of the Human Rights Committee, freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18, paragraph 2, of the Covenant 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 those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of ICCPR, are similarly inconsistent with this article. The same protection is enjoyed by holders of all beliefs of a non-religious nature. [general comment No. 22 on article 18 of the International Covenant on Civil and Political Rights, adopted by the Human Rights Committee at its forty-eighth session (1993), para. 5]."

A/60/399, paras. 40-68:

"A. The question of conversion

40. The questions related to change of religion are at the very heart of the mandate on freedom of religion or belief. Violations and limitations of this aspect of the right to freedom of religion are unacceptable and still occur too often. In this section, the Special Rapporteur would like to give an overview of the problem as well as of the applicable standards.

She wishes to emphasize that the complexity of the question, which includes many different situations, requires that it be examined further.

#### 1. Types of situations reported under the mandate

41. The mandate of the Special Rapporteur on freedom of religion or belief has received numerous reports of situations related to the question of the right to have or adopt a religion of one's choice, including cases of alleged forcible and so-called "unethical" conversions. On the basis of these reports, it is possible to identify four broad types of situations. It should be noted that certain cases may fall within more than one type of situation.

##### (a) Situations, where state agents try to convert, re-convert or prevent the conversion of persons

42. These reports describe situations where State officials at different levels, often municipal, and different institutions (police, army) tried to convert members of religious groups, often of minority religious communities, or to force them to renounce their beliefs. They did so by threatening to kill them or their relatives, depriving them of their liberty, torturing and ill-treating them or threatening to dismiss them from their jobs. In some instances State officials tried to make believers renounce their religion and join a State-approved religion.

##### (b) Situations, where religious conversion is prohibited by law and punished accordingly

43. The punishment for conversion can consist of arrest and trial for "apostasy", imprisonment, and sometimes the death penalty. In some countries other penalties can be imposed, such as the suspension of all contracts and inheritance rights, the annulment of marriages, loss of property or the removal of children. Administrative requirements can also make it difficult to change one's religion or belief: in a number of cases converts have found it impossible to obtain identity cards after having changed their religion. Where conversion is not actually prohibited by law, converts can be harassed or threatened by State and religious officials.

##### (c) Situations where members of majority religious groups seek to convert or reconvert members of religious minorities

44. This includes cases where local members of the clergy lead attempts to convert or groups of believers attack members of minority religious groups or their places of worship with the aim of converting them.

##### (d) Situations where so-called "unethical" conversions have been reported

45. These situations include cases where members of religious groups try to convert other people by "unethical" means such as the promise of material benefit or by taking advantage of the vulnerable situation of the person whose conversion is sought. Such conversions are sometimes prohibited by law and the acts facilitating such conversion may constitute a criminal offence. In some countries, legislation prohibits conversion without prior notification of the authorities or defines "forcible" conversion in broad terms.

#### 2. Applicable standards

46. The Special Rapporteur notes that, according to universally accepted international standards, the right to freedom of religion or belief includes the right to adopt a religion of one's choice, the right to change religion and the right to maintain a religion. She also notes that these aspects of the right to freedom of religion or belief have an absolute character and are not subject to any limitation whatsoever.

47. Article 18 of the Universal Declaration of Human Rights states that the right to freedom of thought, conscience and religion "includes freedom to change [one's] religion or belief". Article 1 of the 1981 Declaration states that "[t]his right shall include freedom to have a religion or whatever belief of [one's] choice" and that "[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice".

48. The content of article 18, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR) is the result of a lengthy process of discussion in the Human Rights Commission and the third Committee of the General Assembly. The wording initially proposed was "Everyone should have the freedom to maintain or to change his religion", but, following opposition by some countries which feared that this formulation would lend encouragement to proselytism and anti-religious propaganda, it was changed to "have or to adopt a religion or belief of his choice", a wording that was adopted without dissent. This final version of the provision was undoubtedly intended to include the right to convert from one religion or belief to another. The Human Rights Committee, in paragraph 5 of its general comment No. 22 (1993) on article 18, observed 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."

49. The fact that article 18, paragraph 3, of the Covenant to be imposed only on the manifestation of religion or belief clearly assigns the freedom to "have or to adopt a religion or belief" to the first part of paragraph 1, freedom of thought, conscience and religion, also called *forum internum*, which cannot be interfered with in any way. In its general comment No. 22 the Human Rights Committee states clearly that article 18 "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice" (para. 3).

50. This prohibition of limitation is reinforced by paragraph 2 of the same article, which provides that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." The fact that the prohibition of coercion was made explicit shows that the drafters of the Covenant found the freedom provided by paragraph 1 to be so significant that any form of coercion by the State was impermissible, independently of whether the coercion was physical or in the form of State-sponsored incentives. According to the Human Rights Committee:

"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" (general comment No. 22, para. 5).

51. The Special Rapporteur notes that there is a clear prohibition under international human rights law of coercion to change or maintain one's religion. She also draws attention to the fact that the term "coercion" in article 18, paragraph 21, is to be broadly interpreted and includes pressure applied by a State or policies aiming at facilitating religious conversions. In the case *Kang v. Republic of Korea*, the Human Rights Committee found the "ideology conversion system" as well as the succeeding "oath of law-abiding system" to be in violation of article 18, paragraph 1, of the Covenant. [Views of the Human Rights Committee in *Kang v. Republic of Korea*, adopted on 15 July 2003 (CCPR/C/78/D/878/1999), para. 7.2: "As to the author's claim that the 'ideology conversion system' violates his rights under articles 18, 19 and 26, the Committee notes the coercive nature of such a system, preserved in this respect in the succeeding 'oath of law-abidance system', which is applied in discriminatory fashion with a view to [altering] the political opinion of an inmate by offering inducements of preferential treatment within prison and improved possibilities of parole. The Committee considers that such a system, which the State party has failed to justify as being necessary for any of the permissible limiting purposes enumerated in articles 18 and 19, restricts freedom of expression and of manifestation of belief on the discriminatory basis of political opinion and thereby violates articles 18, paragraph 1, and 19, paragraph 1, both in conjunction with article 26."]

52. The same is true, *mutatis mutandis*, for prohibition of conversions. Since the choice of religion or belief is part of the *forum internum*, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual's desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.

53. In the cases where non-State actors interfere with the right to "have or adopt a religion or belief of [one's] choice", the requirements of article 18 of the Covenant and other relevant international instruments also entail a positive obligation for the State to protect persons from such interference. The Special Rapporteur wishes to re-iterate in this regard that States must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practise the religion or belief of their choice free of coercion and fear. If non-State actors interfere with this freedom, and especially the freedom to change or to maintain one's religion, the State is obliged to take appropriate measures to investigate, bring the perpetrators to justice and compensate the victims (see also E/CN.4/2005/61, para. 42).

54. Finally, the Special Rapporteur notes that with regard to children, the choice of religion is restricted by the parents' rights to determine their child's religion up to an age where the child is capable of doing so on his/her own, in accordance with article 18, paragraph 4, of the Covenant.

### 3. Missionary activities and the propagation of religion

55. In the context of several reports submitted to the Special Rapporteur, in particular after the period following the tsunami which occurred on 26 December 2004 in the Indian Ocean, numerous questions have arisen in relation to missionary activities as well as humanitarian efforts and development activities carried out by groups or organizations

affiliated with particular religions. In many cases, it was reported that people, mainly from the poorest parts of the population, have been induced to convert by various means, including material benefits. In some places, the authorities have responded to these concerns by enacting legislation that prohibits or limits the right to propagate a religion, which includes missionary activities and other actions aimed at persuading others to adopt a new religion, or making the right to change religion subject to certain conditions, for example making a formal declaration of conversion to a designated authority.

56. In May 2005, the Special Rapporteur travelled to Sri Lanka where she had the opportunity to investigate in situ this type of question. In Sri Lanka, numerous persons told the Special Rapporteur that missionaries, religious groups and humanitarian organizations, often from foreign countries, used material or other incentives to convert people or to induce them to convert. In response to this situation, a number of initiatives had been made to enact special legislation to prohibit religious conversions or criminalize allegedly "unethical" conversions. Many of these initiatives were started well before the tragedy of the tsunami. The report of the Special Rapporteur on her visit to Sri Lanka, which contains conclusions and recommendations with respect to the question of "unethical" conversions, will be submitted to the Commission at its sixty-second session. The following observations are therefore of a general nature and should by no means be taken as pertaining exclusively to the situation prevailing in Sri Lanka.

57. The Special Rapporteur considers that these situations raise questions both with regard to the right to freedom of religion of those who take the decision to convert (freedom of conscience and the right to change one's religion) and the right to freedom of religion of persons who perform acts leading to the conversion of others (missionary activities and the propagation of one's religion). These are taken separately below.

(a) Freedom of conscience and the right to change one's religion

58. In this respect, the Special Rapporteur would mainly refer to the arguments made earlier in this report. The right to change religion is absolute and is not subject to any limitation whatsoever. Any legislation that would prohibit or limit the right to change one's religion would be contrary to international human rights standards and the provisions mentioned above.

(b) Missionary activities and propagation of one's religion

59. Article 1 of the 1981 Declaration and article 18, paragraph 1, of ICCPR explicitly provide for the right "*in public or private, to manifest [one's] religion or belief in worship, observance, practice and teaching*" (emphasis added). Many human rights instruments stipulate and the Human Rights Committee hold that the right to manifest one's religion includes carrying out actions to persuade others to believe in a certain religion. For example, article 6 (d) of the 1981 Declaration states that the practice of the freedom of religion includes the freedom, "to write, issue and disseminate relevant publications." Similarly, in resolution 2005/40, the Commission on Human Rights urged States "[t]o ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications." In its general comment No. 22 (1993) the Human Rights Committee holds that "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] and] the freedom to prepare and distribute religious texts or publications" (para. 4). This thinking is reflected in the above-mentioned decision *Kang v. Republic of Korea*, where the distribution of communist leaflets was recognized by the Human Rights Committee as the manifestation of a belief in the sense of article 18, paragraph 1.

60. The question of missionary activities and other forms of propagating one's religion has been at the centre of the mandate on freedom of religion since the beginning. In one of his reports, Special Rapporteur Amor considered "constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration and stresse[d] the need for greater respect for internationally recognized human rights norms, including freedom to convert and freedom to manifest one's religion or belief, either individually or in community with others, and in public or private, except where necessary restrictions are provided for by law" (A/51/542/Add.1/para. 134).

61. Also, while not explicitly including religious rights, article 19 of ICCPR, which protects freedom of expression, is formulated in a way that also covers missionary activities: "[T]his 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 [one's] choice". The Human Rights Committee's constant jurisprudence has deemed the protection afforded by article 19 extremely strong. [See Manfred Nowak, UN Covenant on Civil and Political Right., CCPR Commentary (2nd revised ed.), 2005, pp. 450-452.]

62. Whereas the scope of freedom afforded to persons for the practice of their religion or belief by producing and distributing information about their religion or belief is wide, certain limitations can be imposed in accordance with article 18, paragraph 3, of the Covenant. However, it should be noted that this article allows for restrictions only in very

exceptional cases. In particular the fact that it mentions the protection of "*fundamental* rights and freedoms" (emphasis added) of others as a ground for restriction indicates a stronger protection than for some other rights whose limitation clauses refer simply to the "rights and freedoms of others" (e.g. article 12, 21 and 22). It could indeed be argued that the freedom of religion or belief of others can be regarded as such a fundamental right and freedom and would justify limitations to missionary activities, but the freedom of religion and belief of adults basically is a question of individual choice, so any generalized State limitation (e.g. by law) conceived to protect "others" freedom of religion and belief by limiting the right of individuals to conduct missionary activities should be avoided.

63. The test of legality of a prohibition of any act motivated by belief or religion is therefore extremely strict. In practice, the European Court of Human Rights has given some guidance concerning the distinction between permissible religious persuasion, on the one hand, and coercion on the other in *Larissis v. Greece*, [Larissis and Others v. Greece, European Court of Human Rights, Reports 1998-I, judgement of 24 February 1998.] the court decided that an officer of the Greek army had exploited his position of authority over his subordinates in trying to convert them. However, in *Kokkinakis v. Greece*, [Kokkinakis v. Greece, European Court of Human Rights, Series A. No. 260-A, judgement of 25 May 1995.] the Court did not find any violation when Jehovah's Witnesses called on their neighbour to discuss religious issues with her since that act, in the Court's view, fell under "bearing Christian witness" and was therefore protected by article 9 of the European Convention on Human Rights. Judge Pettiti, in his partly concurring opinion, made this particularly clear: "Freedom of religion and conscience certainly entails accepting proselytism, even where it is not respectable. Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing."

64. There are, however, situations in which certain actions aimed at converting people go beyond conventional forms of missionary activities or propagation of religion. Some such actions cannot be considered as a "manifestation" of religion or belief and are therefore not protected by article 18.

65. The question that arises in this regard is how the State should address such actions. The Special Rapporteur is of the opinion that a distinction should be made between whether these actions raise a human rights concern or whether they could constitute criminal acts. Certain acts may constitute an offence under the criminal code of the State concerned and should therefore be prosecuted. In view of the Special Rapporteur, however, it would not be advisable to criminalize non-violent acts performed in the context of manifestation of one's religion, in particular the propagation of religion, including because that might criminalize acts that would, in another context, not raise a concern of the criminal law and may pave the way for persecution of religious minorities. Moreover, since the right to change or maintain a religion is in essence a subjective right, any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.

66. Apart from forcible and other conversions that are improper in the sense of human rights law, there are many cases which, while not constituting a human rights violation, nevertheless raise serious concern because they disturb a culture of religious tolerance or contribute to the deterioration of situations where religious tolerance is already being challenged. The Special Rapporteur has received numerous reports of cases where missionaries, religious groups and humanitarian NGOs have allegedly behaved in a very disrespectful manner vis-à-vis the populations of the places where they were operating. The Special Rapporteur deplors such behaviour and is of the opinion that it constitutes religious intolerance, and may even provoke further religious intolerance. She considers that religious groups, missionaries and humanitarian NGOs should carry out their activities in full respect of the culture and religion of the populations concerned and abide strictly by relevant codes of ethics, including the Code of Conduct for International Federation of Red Cross and Red Crescent Societies and NGOs in Disaster Relief, [Available at: [www.ifrc.org/publicat/conduct/code.asp](http://www.ifrc.org/publicat/conduct/code.asp).] as well as guidelines adopted by religious organizations.

67. In conclusion, any form of coercion by State and non-State actors aimed at religious conversion is prohibited under international human rights law, and any such acts have to be dealt with within the remit of criminal and civil law. Missionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by article 18 of ICCPR and other relevant international instruments. Missionary activity cannot be considered a violation of the freedom of religion and belief of others if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.

68. The Special Rapporteur wishes to underline that certain forms of "unethical" conversion are not per se contrary to international standards. Moreover, while some of these acts may not enjoy protection under human rights law, they should not as a result necessarily be seen to constitute a criminal offence. She recommends that cases of alleged "unethical" conversion be addressed on a case-by-case basis, examining the context and circumstances in each individual situation and dealt with in accordance with the common criminal and civil legislation. The Special Rapporteur is therefore of the opinion that the adoption of laws criminalizing in abstracto certain acts leading to "unethical" conversion should be avoided, in particular where these laws could apply even in the absence of a complaint by the converted person."

## I. FREEDOM OF RELIGION OR BELIEF

### 2. Freedom from coercion

#### UDHR

"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."

#### ICCPR

Art. 18 (2): "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

#### 1981 Declaration of the General Assembly

Art. 1 (2): "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."

#### Human Rights Committee general comment 22

Para. 5: "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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1996/95/Add.2, para. 97 (country visit to the Islamic Republic of Iran):

"97. In the socio-cultural field, the Special Rapporteur recommends that practical steps should be taken to ensure strict respect for the principle that religious laws should be applied in personal and community affairs, thereby excluding the application of the Shari'a to non-Muslims. With regard to the dress code, the Special Rapporteur emphasizes that the various community traditions and behaviour concerning dress should likewise be respected, but believes that dress should not be turned into a political instrument and that flexible and tolerant attitudes should be shown so that the richness and variety of Iranian dress can be manifested without coercion. In particular, in the field of education, and especially in minority schools, the Special Rapporteur recommends freedom of dress on the understanding that this should obviously not be exercised in a manner contrary to its purposes."

A/60/399, paras. 49-53:

"49. The fact that article 18, paragraph 3, of the Covenant is to be imposed only on the manifestation of religion or belief clearly assigns the freedom to "have or to adopt a religion or belief" to the first part of paragraph 1, freedom of thought, conscience and religion, also called *forum internum*, which cannot be interfered with in any way. In its general comment No. 22 the Human Rights Committee states clearly that article 18 "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice" (para. 3).

50. This prohibition of limitation is reinforced by paragraph 2 of the same article, which provides that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." The fact that the prohibition of coercion was made explicit shows that the drafters of the Covenant found the freedom provided by paragraph 1 to be so significant that any form of coercion by the State was impermissible, independently of whether the coercion was physical or in the form of State-sponsored incentives. According to the Human Rights Committee:

"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" (general comment No. 22, para. 5).

51. The Special Rapporteur notes that there is a clear prohibition under international human rights law of coercion to change or maintain one's religion. She also draws attention to the fact that the term "coercion" in article 18, paragraph 21, is to be broadly interpreted and includes pressure applied by a State or policies aiming at facilitating religious conversions. In the case *Kang v. Republic of Korea*, the Human Rights Committee found the "ideology conversion system" as well as the succeeding "oath of law-abiding system" to be in violation of article 18, paragraph 1, of the Covenant. [Views of the Human Rights Committee in *Kang v. Republic of Korea*, adopted on 15 July 2003 (CCPR/C/78/D/878/1999), para. 7.2: "As to the author's claim that the 'ideology conversion system' violates his rights under articles 18, 19 and 26, the Committee notes the coercive nature of such a system, preserved in this respect in the succeeding 'oath of law-abidance system', which is applied in discriminatory fashion with a view to [altering] the political opinion of an inmate by offering inducements of preferential treatment within prison and improved possibilities of parole. The Committee considers that such a system, which the State party has failed to justify as being necessary for any of the permissible limiting purposes enumerated in articles 18 and 19, restricts freedom of expression and of manifestation of belief on the discriminatory basis of political opinion and thereby violates articles 18, paragraph 1, and 19, paragraph 1, both in conjunction with article 26."]

52. The same is true, *mutatis mutandis*, for prohibition of conversions. Since the choice of religion or belief is part of the *forum internum*, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual's desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.

53. In the cases where non-State actors interfere with the right to "have or adopt a religion or belief of [one's] choice", the requirements of article 18 of the Covenant and other relevant international instruments also entail a positive obligation for the State to protect persons from such interference. The Special Rapporteur wishes to re-iterate in this regard that States must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practise the religion or belief of their choice free of coercion and fear. If non-State actors interfere with this freedom, and especially the freedom to change or to maintain one's religion, the State is obliged to take appropriate measures to investigate, bring the perpetrators to justice and compensate the victims (see also E/CN.4/2005/61, para. 42)."

E/CN.4/2006/5/Add.3, paras. 70-78 (country visit to Sri Lanka):

"70. Supporters of the "unethical" conversions bills were confident that the text of the bills had been carefully drafted and did not violate or contravene international law, including the right to freedom of religion or belief. They often referred to the findings of the European Court of Human Rights in the case *Kokkinakis v. Greece*, [Judgement of the European Court of Human Rights of 19 April 1993, *Kokkinakis v. Greece*, case No. 3/1992/348/421] and in particular its paragraph 48 where the Court held that "First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others."

71. In commenting on the determination of the Supreme Court, the Rapporteur on Religious Intolerance of the Human Rights Commission of Sri Lanka observed that the Court had relied on *Kokkinakis* case, "albeit mistakenly". The Court had made its determination *in abstracto*. Unlike the *Kokkinakis* case, the Court's jurisdiction had not been invoked by a victim. The Rapporteur concluded that in all three determinations made by the Supreme Court around the issue of conversion, its decisions were "in the realm of conjecture or speculation that the disadvantaged or vulnerable would be subject to improper conversion. What material was submitted to the Court to back this impression is not clear".

72. While not willing to discuss the findings of the European Court of Human Rights in a particular case, the Special Rapporteur is of the opinion that the supporters of the draft laws have disregarded the context of the *Kokkinakis* case. She recalls that the European Court eventually found a violation of the right to freedom of religion or belief of those

who wanted to propagate their religion. The Court also held that "freedom to manifest one's religion is not only exercisable in community with others, 'in public' and within the circle of those whose faith one shares, but can also be asserted 'alone' and 'in private'; furthermore, it includes in principle the right to try to convince one's neighbour, for example through 'teaching', failing which, moreover, 'freedom to change [one's] religion or belief', enshrined in Article 9 (art. 9), would be likely to remain a dead letter".

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

74. Moreover, the draft laws challenge an aspect of the right to manifest one's religion because they would criminalize certain acts that, according to how restrictively the laws are interpreted, may be part of the right to manifest one's religion. According to the Human Rights Committee, "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. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications".

75. Finally, the Special Rapporteur considers that article 9 of the Constitution, which gives a "foremost" place to Buddhism, may not per se be contrary to international human rights law, and in particular the right to freedom of religion. Nevertheless, the provision should not be used to limit the right to freedom of religion or belief of religious minorities living on the territory of Sri Lanka. In this respect also, the Human Rights Committee held that "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 nonbelievers. 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."

#### D. Difficulties pertaining to the future implementation of the laws

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

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

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

## I. FREEDOM OF RELIGION OR BELIEF

### 3. *The right to manifest one's religion or belief*

#### ICCPR

Art. 18 (1): "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."

Art. 18 (3): "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

#### 1981 Declaration of the General Assembly

Art. 1 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

Art. 1 (3): "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others."

#### Human Rights Committee general comment 22

Para. 4: "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."

- a) Freedom to worship
- b) Places of worship
- c) Religious symbols
- d) Observance of holidays and days of rest
- e) Appointing clergy
- f) Teaching and disseminating materials (including missionary activity)
- g) The right of parents to ensure the religious and moral education of their children
- h) Registration
- i) Communicate with individuals and communities on religious matters at the national and international level
- j) Establish and maintain charitable and humanitarian institutions/solicit and receive funding
- k) Conscientious objection

## I. FREEDOM OF RELIGION OR BELIEF

### a) Freedom to worship

#### 1981 Declaration of the General Assembly

Art. 6 (a): The right to freedom of thought, conscience, religion or belief includes the freedom, "To worship or assemble in connection with a religion or belief [...];".

Art. 6 (c): 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;".

#### **Commission on Human Rights resolution 2005/40 (paragraph 4 (d)), Human Rights Council resolution 6/37 (paragraph 9(g)) and General Assembly resolution 65/211 (paragraph 12 (g))**

Urges States "To ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief [...]."

#### **Human Rights Committee general comment 22**

Para. 4: "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 [...]."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/2005/61, paras. 56 and 58:

"56. The Special Rapporteur has noted in this regard, on the basis of information brought before her, that registration appeared often to be used as a means to limit the right of freedom of religion or belief of members of certain religious communities. [...]

58. Some main points to take into consideration with regard to registration are that:

- Registration should not be compulsory, i.e. it should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits;
- In the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed;
- Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.;
- No religious group should be empowered to decide about the registration of another religious group."

E/CN.4/2006/5/Add.1, para. 51:

"51. The Special Rapporteur is grateful for the Government's response and draws its attention to Resolution 2005/40 of the Commission on Human Rights, in which the Commission urged States, "[t]o 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" (Paragraph 4(c)). In this regard, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she noted in her previous report to the Commission on Human Rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58)."



## I. FREEDOM OF RELIGION OR BELIEF

### b) Places of worship

#### 1981 Declaration of the General Assembly

Art. 6 (a): 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;"

#### Human Rights Council resolution 6/37

9 (e): The Human Rights Council urges States, "To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction;"

9 (g): The Human Rights Council 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 [...];"

#### Human Rights Committee general comment 22

Para. 4: "The concept of worship extends to [...] the building of places of worship."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1997/91/Add.1, para. 93 (country visit to India):

"93. The Special Rapporteur also considers that places of worship should be used exclusively for religious, and not political, purposes. As places for prayer and meditation, they should be protected against tension and partisan struggle. The State should therefore ensure that places of worship remain neutral ground and are sheltered from political currents and ideological and partisan controversy. In this connection the Special Rapporteur urges that the dispute concerning Ayodhya should be settled on terms acceptable to the Muslim and Hindu communities. Although the Babri Masjid case can be partially settled by legal means, it must be approached with an exceptional degree of caution and an equally exceptional degree of wisdom. Calling into question situations and rights that are rooted in the distant past is likely to open the door to a sequence of events which could have unforeseeable consequences and in particular lead, through acts of violence performed in the name of an extremist conception of religion, to disorders in various parts of India, the news of which, as it spreads internationally and, more especially, throughout the region, may affect peace and security within the region. The most logical solution would seem to be to restore these places of worship as they were before the riots occurred - unless the religious communities concerned decide to effect a symbolic exchange as a means of cooling passions and reducing tensions. The authorities must remain on the watch to prevent the recurrence of such traumatic incidents, which are sources of division and hate between communities. It is important that the Indian authorities should be fully aware that the dangers in this area are not purely theoretical."

A/55/280/Add.1, para. 160 (country visit to Turkey):

"160. The following recommendations are made to the Turkish authorities with respect to the Christian, Greek Orthodox and Armenian minorities: [...] (d) The Government should guarantee minorities the right to establish and maintain their own places of worship, and should allow them to build such facilities in places where new communities have taken root. Any limitations in this respect, for example urban development regulations, should be consistent with international jurisprudence (see General Comment of the Human Rights Committee), and this means that any non-conforming regulations should be repealed or revised."

A/56/253, paras. 27-28:

"27 [...] The Bamayan statues were destroyed. During this Year of Dialogue among Civilizations, the international community should react strongly and take steps to effectively protect religious sites and monuments, including those

which are part of the cultural heritage of mankind. The Special Rapporteur notes with satisfaction that on 31 May 2001, the General Assembly adopted resolution 55/254 on the protection of religious sites, in which it condemns all acts or threats of violence, destruction, damage or endangerment, directed against religious sites as such; calls upon all States to adopt adequate measures aimed at preventing such acts or threats of violence, and invites relevant intergovernmental and non-governmental organizations to contribute to those efforts by developing appropriate initiatives in this field; encourages all States, relevant intergovernmental and non-governmental organizations and the media to promote, inter alia, through education, a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of mankind.

28. The Special Rapporteur draws attention to Commission on Human Rights resolution 2001/42, entitled "Elimination of all forms of religious intolerance", in which the Commission requests States to exert utmost efforts, in accordance with their national legislation and in conformity with international human rights standards, to ensure that religious places, sites and shrines are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction."

E/CN.4/2002/73/Add.1, paras. 112-113 and 150 (country visit to Argentina):

"C. Situation of indigenous peoples [...]

112. The principal problem regarding freedom of religion and freedom to manifest one's religion or belief relates to the question of land. Land is the sine qua non for the maintenance and development of an indigenous identity. A Mapuche tenet holds that "the land does not belong to the Mapuche, the Mapuche belongs to the land". The land, the source of identity, thus has a religious dimension and meaning for indigenous peoples. It constitutes the matrix for their beliefs and a support for the manifestation of those beliefs.

113. The claims of the indigenous communities regarding the restitution of property thus implicitly embody a religious dimension, namely, access to sacred sites and to graves. The situation varies widely in practice: some provinces have granted definitive community property title to land, others have recognized indigenous lands without granting property title; disputes involving private property have led to instances of expropriation or have yet to be resolved. Serious disputes remain, particularly involving companies (for example, in Patagonia, the expropriation by multinational companies, including Benetton, of land belonging to the Mapuche community), as well as State institutions (for example, the army). In this connection INAI has been criticized for a lack of consultation with indigenous groups, the meagre results obtained and, above all, in the view of some, a paternalistic approach to indigenous issues. [...]

150. [...] The process of returning land to indigenous people, as the touchstone of their identity, is thus a precondition for providing access to holy sites and burial grounds and hence for legitimate religious or spiritual activities."

E/CN.4/2004/63/Add.2, paras. 100-108 (country visit to Romania):

"100. With regard to the issue of returning religious property, the Special Rapporteur believes that this concerns situations that do not necessarily violate the right to freedom of religion or belief. The Special Rapporteur makes a distinction between, on the one hand, the actual places of worship and the religious items used in acts of worship and, on the other, other property that belonged to religious communities. The Special Rapporteur notes that most of the confiscated property in the latter category was in one way or another in the possession of the State, whereas the places of worship and associated items had mostly been handed over to the Orthodox Church.

101. The Special Rapporteur notes that it has taken a very long time to return the religious property that was confiscated during communist rule and then entered the possession of the State - this concerns most of the religions in Romania - and that most of the property in this category had not yet been returned at the time of the Special Rapporteur's visit. Consequently, while stressing that the failure to return property or the length of time taken to return it is not, at least for property in this category, necessarily a violation of the right to freedom of religion or belief of the members of the communities concerned, the Special Rapporteur requests the authorities to significantly speed up the process of returning property and to complete it as soon as possible.

102. With regard to the places of worship and the items used in acts of worship that were handed over to the Orthodox Church, the Special Rapporteur notes that this mainly concerns churches that had previously belonged to the Greek Catholic Church. The authorities expressly told the Special Rapporteur that they did not wish to become involved in the process of dispute settlement in these cases and that they preferred solutions to be found through dialogue between the two churches concerned. The regulations that have been adopted in this respect reflect the authorities' position.

103. In this connection, the Special Rapporteur takes note in particular of the comments by representatives of the Orthodox Church to the effect that, in the Orthodox tradition, churches are places of worship that belong to the community of believers who use them, not to the Church authorities. This form of ownership demonstrates how the link between the actual places of worship and the right to freedom of religion or belief is far closer than the link between this right and other types of property belonging to religious communities. The Special Rapporteur is of the opinion that, in certain circumstances, the closeness of this link shows how the deprivation of the right to attend a place of worship may constitute a violation of the right to freedom of religion or belief.

104. International obligations in respect of freedom of religion or belief are primarily obligations incumbent upon the State, not upon religious communities of any kind. Consequently, in cases where members of the community are prevented from using a place of worship that belongs to them, this thereby constituting a violation of their right to freedom of religion or belief, the State cannot abdicate its responsibilities in favour of a process involving an amicable settlement between the two parties concerned. International law requires it to take positive steps to put an end to any situation in which the freedom of religion or belief is violated.

105. From this viewpoint, the Special Rapporteur requests the Romanian Government to end its policy of refusing to become involved in the complex process of returning religious property to the Greek Catholic Church and encourages it to take practical steps to rectify situations that constitute violations of the right to freedom of religion or belief. In this respect, he stresses that the sooner the questions of restitution are settled, the sooner the inter-faith dialogue, which has suffered greatly because of them, can be resumed between the Orthodox Church and the Greek Catholic Church.

106. As for the court cases brought by the Greek Catholic community, the Special Rapporteur is concerned by the attempts to dissuade this community from resorting to this procedure for settling disputes over real estate and by the position of certain authorities that reject court cases in such disputes. The Special Rapporteur believes that an appeal to an independent judiciary is, in a democratic State, the principal means of seeking a remedy for a human rights violation, particularly within the meaning of article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

107. The Special Rapporteur is particularly concerned by reports that final decisions of the courts to grant restitution could not be implemented because of obstacles raised by the Orthodox Church, sometimes with the cooperation of the local authorities. Such actions are flagrant obstacles to the normal exercise of justice and to the independence of the judiciary and may amount to a serious failure by the Government to comply with its international obligation to provide effective remedies for the victims of human rights violations. The Special Rapporteur requests the Government to take appropriate measures to ensure the implementation of the final decisions of the courts in such matters, as well as future decisions on questions of restitution.

108. The Special Rapporteur also points out that international human rights law in matters of freedom of religion or belief, and particularly article 18 of the International Covenant on Civil and Political Rights, implies that the State has positive obligations, in cases where religious minorities are the victims of acts of intolerance or religious violence, including when these acts are perpetrated by non-State individuals or groups, to take the necessary steps to ensure that religious minorities can exercise their right to freedom of religion or belief in complete safety."

E/CN.4/2005/61, paras. 48-52:

"D. Places of worship and other religious buildings or properties

48. During the period under review, an important number of communications related to situations or cases where either a place of worship or a religious building or property had been attacked or otherwise subjected to other forms of restriction. States to which such a communication has been transmitted are disparate and no region is spared this form of human rights violation. Moreover, the Special Rapporteur notes that in addition to places of worship, different types of buildings or properties that have more than a material signification for the religious community that is attached to it, such as cemeteries, monasteries or community headquarters, have been targeted. Finally, while attacks on such places have usually been committed by non-State actors, other forms of harm or restrictions were usually committed or imposed by State authorities.

49. Regarding, in particular, attacks on places of worship, the Special Rapporteur wishes to point out that in addition to the special protection that is granted to religious places, sites and shrines by resolution 2004/36, members of religious communities or communities of belief, whenever they find themselves in places of worship, are in a situation of special vulnerability given the nature of their activity. The Special Rapporteur is therefore of the opinion that States should pay increased attention to attacks on places of worship and ensure that all perpetrators of such attacks are properly prosecuted and tried.

50. More generally, as mentioned, inter alia, in paragraph 4 of the Human Rights Committee's general comment No. 22, the Special Rapporteur insists that places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious communities or communities of belief need the existence of a place of worship where their members can manifest their faith.

51. Moreover, unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question.

52. Finally, the Special Rapporteur draws attention to article 53 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and article 16 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), which protect places of worship in times of armed conflict."

## I. FREEDOM OF RELIGION OR BELIEF

### c) Religious symbols

#### 1981 Declaration of the General Assembly

Art. 6 (c): 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;".

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

4 (b): 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;".

#### Human Rights Committee general comment 22

Para. 4: "The concept of worship extends to [...] the display of symbols".

Para. 4: "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 [...]."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/2006/5, paras. 36-60:

### "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. [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).] 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. [Cf. the comparative table on prohibitions of wearing religious symbols, available at <http://www.uni-trier.de/~iev/r/kopftuch/ReligiousSymbols.pdf>.] 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)". [Parliamentary Assembly of the Council of Europe, resolution 1464 (2005), para. 7.4, adopted on 4 October 2005.]

## 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" [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).] (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". [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;."] 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". [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.] 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". [See the Human Rights Committee discussion on 24 July 1992, Summary Records of the 1166th meeting of the forty-fifth session, para. 48.] 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" [*Id.*, para. 27 (Human Rights Committee member Mr. Sadi).] 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." [CCPR/C/82/D/931/2000, para. 6.2.] 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". [CCPR/C/37/D/208/1986, para. 6.2.]

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." [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.]

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 *Sahin 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". [*Sahin 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.] 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". [*Dahlab v. Switzerland*, application No. 42393/98, ECtHR decision of 15 February 2001 (cf. ECHR 2001-V at p. 462).]

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". [*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.]

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, ["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).] 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". [CCPR/C/82/D/931/2000, op. cit.] Furthermore, the recent European Court Grand Chamber judgement in the *Sahin* 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. [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.] 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. [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).]

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; [*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.]
- 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." [E/CN.4/Sub.2/200/Rev.1, p. 33.]

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." [Dissenting opinion of Judge Tulkens in the ECtHR Grand Chamber judgement of 10 November 2005 in the case of *Sahin v. Turkey*, para. 20.]

A/65/207, para. 34:

"34. The Special Rapporteur also follows closely the discussions in a number of countries on banning the wearing of specific religious dress and garments. Recently, most related domestic laws or bills were focusing on restrictions with regard to the display in public places of the full head-to-toe Islamic veil. She notes that this discussion on the burka or niqab is not limited to Western States [For example, on 19 May 2010, the Council of Ministers of France approved a bill to ban garments which cover the face in public and to punish those who force someone through threats, violence or misuse of a position of authority to cover her face because of her sex. On 4 May 2010, the Parliament of the Swiss canton of Aargau voted to introduce a motion in the Federal Assembly of Switzerland that would forbid people from wearing the niqab in public places. On 29 April 2010, the Lower House of Parliament of Belgium voted in favour of a bill which bans any clothing that conceals the face in public space, including on the street. Provincial legislation introduced in March 2010 in the Canadian province of Quebec stipulates that Muslim women would need to uncover their faces when dealing with Quebec government services or when they are employees of the province. See also the latest report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/15/53, paras. 46-60).] but that related decisions have also been issued in other regions.[The High Court of Bangladesh, for example, issued a verdict on 8 April 2010, ordering the Ministry of Education to ensure that women who are employed in public institutions are not required to wear the veil against their will. In January 2010, the Indian Supreme Court ordered that burka-clad women cannot be issued with voter identity cards, rejecting the argument that religion prohibits them from lifting their veils. According to a law passed in 2006 in Kuwait, women with covered faces are not allowed to drive cars in Kuwait.] In her 2006 report to the Commission on Human Rights, the Special Rapporteur already analysed some factual aspects, the legal framework and international case law with regard to religious symbols in general. In this regard, she developed a set of general criteria to balance competing human rights, to assist States in reviewing and drafting legislation on the right to freedom of religion or belief.[E/CN.4/2006/5, paras. 51-60.] The Special Rapporteur identified some "aggravating indicators", i.e. legislative and administrative actions which typically are incompatible with international human rights law, for example if exceptions to the prohibition of wearing religious symbols are tailored to the predominant or incumbent religion or belief. At the same time, the Special Rapporteur also referred to "neutral indicators", for example if the interference is crucial to protect the rights of women, religious minorities and vulnerable groups or if the wearer must be properly identifiable, e.g. on an identity card photograph or at security checks. She would like to reiterate that the fundamental objective should be to safeguard both the positive freedom of religion or belief, as manifested by voluntarily displaying religious symbols, and also the negative freedom from being forced to display religious symbols. Special attention should be paid to the protection of women's rights, in particular in the context of wearing the full head-to-toe veil."

## I. FREEDOM OF RELIGION OR BELIEF

### d) Observance of holidays and days of rest

#### 1981 Declaration of the General Assembly

Art. 6 (h): 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;" .

#### Human Rights Committee general comment 22

Para. 4: "The concept of worship extends to [...] the observance of holidays and days of rest."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1987/35, para. 57:

"57. The freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief (art. 6 (h)) is particularly significant since it allows the faithful to perform a series of ceremonies and religious customs that often have cultural and traditional connotations. It is precisely this cultural aspect that is often viewed with suspicion by the authorities and combated by them. Thus, in one country, the religious practice of the circumcision of male children is not permitted; similarly, obstacles are placed in the way of religious traditions such as the celebration of marriage and funeral ceremonies according to the rites of a religion. In another country, certain rites and ceremonies peculiar to tribal religions have been banned. Elsewhere, it is extremely difficult in practice for the followers of a certain religion to bury their dead in accordance with religious ritual. Sometimes a conflict of interest is visible between religious requirements and health requirements, particularly in the case of children. Thus, in one country, the courts decided in certain cases against ritual practices when the latter were believed to constitute a direct danger to children's lives. On occasion, the conflict arises from the fact that the authorities fail to take account, in certain areas, of religious requirements concerning days of rest. In one country, a petition was presented to the authorities to enable the members of a sect to be exempted from sitting for examinations on a certain week-day considered by their faith as a complete day of rest, to which the authorities agreed. "

E/CN.4/1996/95/Add.1, paras. 48-49 (country visit to Pakistan):

"(i) Time off for Christian employees

48. As a result of the switch-over of the weekly holiday from Sunday to Friday in government and semi-government offices and corporations in 1977, Christian employees are granted time off on Sunday after 11 a.m. with a view to enabling them to offer their prayers.

(ii) Optional holiday

49. Employees belonging to minority communities are granted optional holidays liberally, to enable them to celebrate their religious holidays."

E/CN.4/1998/6/Add.1, paras. 37 and 47 (country visit to Australia):

"37. One of the characteristics of Australian Muslims is the importance of religious practice on Fridays and religious holidays. The call to prayer is allowed, but without microphones, except at the end of Ramadan. The Muslim representatives said that they had requested official recognition of religious days so that believers, i.e. adults in the workplace and young people in school, who so wished did not have to work on those days. It was also stated that the authorities approached responded positively to such requests. One representative of the Department of Training and Education in the State of New South Wales said that, if the Muslims insisted, religious holidays could be observed in public schools, as was already the case for the Jewish community. In reply to the Special Rapporteur's question on how requests by minorities could be reconciled with the concerns of the majority, a representative of the Human Rights and Equal Opportunity Commission explained that, while the Australian democratic system was based on a general

preference for the majority, flexibility, compromise and pragmatism had to be demonstrated, according to the context.[...]

47. Australia 's community harmony and, in particular, the importance of inter-faith dialogue are two points that were stressed. In this connection, religious holidays are often an opportunity to invite the leaders of other communities and get to know them, their cultures and their religions, as well as to promote dialogue."

E/CN.4/2002/73/Add.1, paras. 29-32 and 125 (country visit to Argentina):

"Religious holidays

29. The act entitled "National Holidays and Non-working Days" of 14 June 1976 provides that Holy Thursday is a holiday.

30. Act No. 24571 (1995), entitled "Declaration of Non-working Days for Jewish Inhabitants", provides for paid holidays for the Jewish holy days of New Year (Rosh Hashanah), the Days of Atonement (Yom Kippur) and Passover (Pesach).

31. Act No. 24757 (1996), entitled "Declaration of Non-working Days for Muslim Inhabitants", provides that the Muslim New Year (Hegira), the day after the end of Ramadan (Eid al-Fitr) and the day of the Holy Day of Sacrifice (Eid al-Adha) are holidays for all Muslims.

32. The two above-mentioned acts are supplemented by Act No. 25151 (1999), entitled "Pay of Workers on Jewish and Muslim Holidays". [...]

125. The Special Rapporteur notes with satisfaction the legislation adopted to grant recognition to the religious holidays of the Christian, Jewish and Muslim communities, allow exemptions on religious grounds in schools and guarantee the right to conscientious objection for reasons of belief."

## I. FREEDOM OF RELIGION OR BELIEF

### e) Appointing clergy

#### General Assembly Declaration 36/55 1981

Art. 6 (g): The right to freedom of thought, conscience, religion or belief includes the freedom, "To train, appoint, elect or designate by succession appropriate leaders [...]"

#### Human Rights Committee general comment 22

Para. 4: "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 [...]"

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

#### A/51/542/Add.1, paras. 138-139 (country visit to Greece):

"138. As for the special provisions concerning Muslims and, more particularly, muftis and waqfs, the Special Rapporteur recalls article 6, paragraph (g), of the 1981 Declaration, which guarantees freedom to "train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief".

139. The Special Rapporteur believes it necessary for the Greek authorities to comply fully and in good faith with the Treaty of Lausanne and with the country's international undertakings. He also recalls the need to refrain from interfering in the affairs of a religion, apart from the restrictions provided for in international law, and calls for respect for the traditions of each religious group within the framework of internationally recognized norms. "

#### A/55/280/Add.1, paras. 160 (country visit to Turkey):

"160. [...] (e) The Government should guarantee minorities the right to teach their religion, in places suitable for this purpose, and to train their clergy. The Special Rapporteur believes it indispensable that minorities once again have their own religious seminaries, in accordance with article 6 of the 1981 Declaration and the General Comment No. 22 (48) of the Human Rights Committee ("the practice and teaching of religion and belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminars or religious schools.").

#### E/CN.4/2006/5/Add.1, paras. 93-95 (communications report):

"Communication sent on 9 June 2005 [to the Government of the People's Republic of China ]

93. The Special Rapporteur sent this communication to underline the tenth anniversary of the disappearance of Gedhun Choekyi Nyima, 16 years.

94. Gedhun Choekyi Nyima, then aged 6, disappeared together with his parents from Lhari, their village in Tibet on 17 May 1995, three days after having been recognized as the eleventh reincarnation of the Panchen Lama by the Dalai Lama. Their whereabouts were not known.

95. The Special Rapporteur wished to express her concern about the grave interference with the freedom of belief of the Tibetan Buddhists who have the right to determine their clergy in accordance with their own rites and who have been deprived of their religious leader. "

## I. FREEDOM OF RELIGION OR BELIEF

### f) Teaching and disseminating materials (including missionary activity)

#### 1981 Declaration of the General Assembly

Art. 6 (d): The right to freedom of thought, conscience, religion or belief includes the freedom, "To write, issue and disseminate relevant publications in these areas;"

Art. 6 (e): 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."

#### Commission on Human Rights resolution 2005/40 (paragraph 4 (d)) and Human Rights Council resolution 6/37 (paragraph 9 (g))

Urges States, "To ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications in these areas".

#### Human Rights Committee general comment 22

Para. 4: "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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/51/542/Add.1, paras. 11-12 and 134 (country visit to Greece):

"b) Proselytism

11. Article 13, paragraph 2, of the Constitution provides that proselytism in general - theoretically with respect to any religion whatsoever - is prohibited. The Constitution does not define the concept of proselytism. According to the Ministry of Justice, this prohibition applies to proselytism of a negative sort, and not to the dissemination of religious beliefs, which supposedly makes it possible to safeguard religious freedom from any dangerous religion.

12. The Special Rapporteur notes that proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration. However, proselytism is punishable under two "Necessity Acts", Act No. 1363/1938 and Act No. 1672/1939 promulgated during the dictatorship of General Metaxas (see chap. I.B, "Legislation on proselytism,") and their impact on religion in general and on religious minorities is of considerable concern (see chap. II). [...]

134. The Special Rapporteur considers the constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration and stresses the need for greater respect for internationally recognized human rights norms, including freedom to convert and freedom to manifest one's religion or belief, either individually or in community with others, and in public or private, except where necessary restrictions are provided for by law. These comments also apply to the Necessity Acts concerning proselytism. Removal of the legal prohibition against proselytism is very strongly recommended. Failing this, proselytism could be defined in such a way as to leave appropriate leeway for the exercise of religious freedom. "

A/60/399, paras. 59-68:

" (b) Missionary activities and propagation of one's religion

59. Article 1 of the 1981 Declaration and article 18, paragraph 1, of ICCPR explicitly provide for the right "in public or private, to manifest [one's] religion or belief in worship, observance, practice and teaching" (emphasis added). Many human rights instruments stipulate and the Human Rights Committee hold that the right to manifest one's religion includes carrying out actions to persuade others to believe in a certain religion. For example, article 6 (d) of the 1981 Declaration states that the practice of the freedom of religion includes the freedom, "to write, issue and disseminate

relevant publications [...]. Similarly, in resolution 2005/40 of the Commission on Human Rights urged States "[t]o ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications." In its general comment No. 22 (1993) the Human Rights Committee holds that "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] and] the freedom to prepare and distribute religious texts or publications" (para. 4). This thinking is reflected in the above-mentioned decision *Kang v. Republic of Korea*, where the distribution of communist leaflets was recognized by the Human Rights Committee as the manifestation of a belief in the sense of article 18, paragraph 1.

60. The question of missionary activities and other forms of propagating s religion has been at the centre of the mandate on freedom of religion since the beginning. In one of his reports, Special Rapporteur Amor considered "constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration and stresse[d] the need for greater respect for internationally recognized human rights norms, including freedom to convert and freedom to manifest one's religion or belief, either individually or in community with others, and in public or private, except where necessary restrictions are provided for by law" (A/51/542/Add.1/para. 134).

61. Also, while not explicitly including religious rights, article 19 of ICCPR, which protects freedom of expression, is formulated in a way that also covers missionary activities: "[T]his 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 [one's] choice". The Human Rights Committee's constant jurisprudence has deemed the protection afforded by article 19 extremely strong. [See Manfred Nowak, UN Covenant on Civil and Political Right., CCPR Commentary (2nd revised ed.), 2005, pp. 450-452.]

62. Whereas the scope of freedom afforded to persons for the practice of their religion or belief by producing and distributing information about their religion or belief is wide, certain limitations can be imposed in accordance with article 18, paragraph 3, of the Covenant. However, it should be noted that this article allows for restrictions only in very exceptional cases. In particular the fact that it mentions the protection of "fundamental rights and freedoms" (emphasis added) of others as a ground for restriction indicates a stronger protection than for some other rights whose limitation clauses refer simply to the "rights and freedoms of others" (e.g. article 12, 21 and 22). It could indeed be argued that the freedom of religion or belief of others can be regarded as such a fundamental right and freedom and would justify limitations to missionary activities, but the freedom of religion and belief of adults basically is a question of individual choice, so any generalized State limitation (e.g. by law) conceived to protect "others" freedom of religion and belief by limiting the right of individuals to conduct missionary activities should be avoided.

63. The test of legality of a prohibition of any act motivated by belief or religion is therefore extremely strict. In practice, the European Court of Human Rights has given some guidance concerning the distinction between permissible religious persuasion, on the one hand, and coercion on the other in *Larissis v. Greece*, [Larissis and Others v. Greece, European Court of Human Rights, Reports 1998-I, judgement of 24 February 1998.] the court decided that an officer of the Greek army had exploited his position of authority over his subordinates in trying to convert them. However, in *Kokkinakis v. Greece*, [Kokkinakis v. Greece, European Court of Human Rights, Series A. No. 260-A, judgement of 25 May 1995.] the Court did not find any violation when Jehovah's Witnesses called on their neighbour to discuss religious issues with her since that act, in the Court's view, fell under "bearing Christian witness" and was therefore protected by article 9 of the European Convention on Human Rights. Judge Pettiti, in his partly concurring opinion, made this particularly clear: "Freedom of religion and conscience certainly entails accepting proselytism, even where it is not respectable. Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing."

64. There are, however, situations in which certain actions aimed at converting people go beyond conventional forms of missionary activities or propagation of religion. Some such actions cannot be considered as a "manifestation" of religion or belief and are therefore not protected by article 18.

65. The question that arises in this regard is how the State should address such actions. The Special Rapporteur is of the opinion that a distinction should be made between whether these actions raise a human rights concern or whether they could constitute criminal acts. Certain acts may constitute an offence under the criminal code of the State concerned and should therefore be prosecuted. In view of the Special Rapporteur, however, it would not be advisable to criminalize non-violent acts performed in the context of manifestation of one's religion, in particular the propagation of religion, including because that might criminalize acts that would, in another context, not raise a concern of the criminal law and may pave the way for persecution of religious minorities. Moreover, since the right to change or maintain a religion is in essence a subjective right, any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.



66. Apart from forcible and other conversions that are improper in the sense of human rights law, there are many cases which, while not constituting a human rights violation, nevertheless raise serious concern because they disturb a culture of religious tolerance or contribute to the deterioration of situations where religious tolerance is already being challenged. The Special Rapporteur has received numerous reports of cases where missionaries, religious groups and humanitarian NGOs have allegedly behaved in a very disrespectful manner vis-à-vis the populations of the places where they were operating. The Special Rapporteur deplores such behaviour and is of the opinion that it constitutes religious intolerance, and may even provoke further religious intolerance. She considers that religious groups, missionaries and humanitarian NGOs should carry out their activities in full respect of the culture and religion of the populations concerned and abide strictly by relevant codes of ethics, including the Code of Conduct for International Federation of Red Cross and Red Crescent Societies and NGOs in Disaster Relief, [A available at: [www.ifrc.org/publicat/conduct/code.asp](http://www.ifrc.org/publicat/conduct/code.asp).] as well as guidelines adopted by religious organizations.

67. In conclusion, any form of coercion by State and non-State actors aimed at religious conversion is prohibited under international human rights law, and any such acts have to be dealt with within the remit of criminal and civil law. Missionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by article 18 of ICCPR and other relevant international instruments. Missionary activity cannot be considered a violation of the freedom of religion and belief of others if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.

68. The Special Rapporteur wishes to underline that certain forms of "unethical" conversion are not per se contrary to international standards. Moreover, while some of these acts may not enjoy protection under human rights law, they should not as a result necessarily be seen to constitute a criminal offence. She recommends that cases of alleged "unethical" conversion be addressed on a case-by-case basis, examining the context and circumstances in each individual situation and dealt with in accordance with the common criminal and civil legislation. The Special Rapporteur is therefore of the opinion that the adoption of laws criminalizing in abstracto certain acts leading to "unethical" conversion should be avoided, in particular where these laws could apply even in the absence of a complaint by the converted person."

## I. FREEDOM OF RELIGION OR BELIEF

### g) 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.

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/HRC/16/53, paras. 47-62:

#### “D. Religious instruction in schools

47. As elaborated above (see paras. 27-40), it is crucial to distinguish conceptually between information about religions or beliefs on the one hand and religious instruction on the other. On a practical level there are a number of overlaps which pose problems in the actual application of that distinction. [One example would be a school subject that “combines education on religious knowledge with practising a particular religious belief, e.g. learning by heart of prayers, singing religious hymns or attendance at religious services”. See Human Rights Committee, communication No. 1155/2003, *Leirvåg v. Norway*, Views adopted on 3 November 2004, para. 14.6.] In addition, different pedagogical approaches may add nuances, for example if teaching methods encourage pupils to “learn about religions” [“Learning about religion’ includes enquiry into, and investigation of, the nature of religions, their beliefs, teachings and ways of life, sources, practices and forms of expression. It covers students’ knowledge and understanding of individual religions and how they relate to each other as well as the study of the nature and characteristics of religion. It includes the skills of interpretation, analysis and explanation. Pupils learn to communicate their knowledge and understanding using specialist vocabulary.” (*Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, pp. 45-46, footnote 52).] or to “learn from religion” [“Learning from religion’ is concerned with developing students’ reflection on and response to their own and others’ experiences in the light of their learning about religion. It develops pupils’ skills of application, interpretation and evaluation of what they learn about religion.” (*Ibid.*)]. At any rate, on a normative level conceptual clarity remains of strategic importance to pursue a human rights approach and to do justice to the ambivalence of the school being a place of learning, social development and communicative interaction but also a place in which situations of particular vulnerability can occur.

48. Religious instruction, i.e. instruction in a particular religion or belief based on its tenets, can take place in different constellations. The following paragraphs will primarily focus on religious instruction given in the public school system, i.e. the system of public education provided by the State. While the role of private schools, including denominational schools, will also be mentioned, the Special Rapporteur will leave aside in this chapter those forms of religious instruction that are organized in religious institutions – such as churches, mosques, pagodas, synagogues or temples – and attended by students outside of school.

49. In many countries religious instruction in the above defined sense constitutes an integral part of public school teaching and maybe even of the mandatory school curriculum. Such practice may reflect the interests and demands of large parts of the population. Many parents may wish that their children be familiarized with the basic doctrines and rules of their own religion or belief and that the school take an active role in that endeavour. In the understanding of many parents, the development of knowledge and social skills of their children through school education would be incomplete unless it includes a sense of religious awareness and familiarity with their own religion or belief. Hence the provision of religious instruction in the public school system may be based on the explicit or implicit wishes of considerable currents within the country’s population.

50. However, given the ambivalence of the school situation – including possible situations of particular vulnerability for some persons or groups – religious instruction in the public school system must always go hand in hand with specific safeguards on behalf of members of religious or belief minorities. The Human Rights Committee has also emphasized that instruction in a religious context should “respect the convictions of parents and guardians who do not believe in any religion” [See Human Rights Committee, communications No. 40/1978, *Hartikainen v. Finland*, Views adopted on 9 April 1981, para. 10.4, and *Leirvåg v. Norway*, para. 14.2.]. A minimum requirement would be that members of minorities have the possibility of “opting out” of a religious instruction that goes against their own convictions. Such exemptions should also be available for persons adhering to the very same faith on which instruction is given, whenever they feel that their personal convictions – including maybe dissenting convictions – are not respected. Moreover, the possibility of opting out should not be linked to onerous bureaucratic procedures and must never carry with it de jure or de facto penalties. Finally, wherever possible, students not participating in religious instruction due to their different faith should have access to alternative courses provided by the school.

51. The decision whether or not to opt out of religious instruction must be left to students or their parents or guardians who are the decisive rights holders in that respect. With regard to article 18, paragraph 4, of the International Covenant on Civil and Political Rights, the Human Rights Committee has noted that “public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians”. [Human Rights Committee, general comment No. 22, para. 6. See also Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 28.] Moreover, attention must be given to the rights and

duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child. [Art. 14, para. 2, of the Convention on the Rights of the Child.] The concept of “evolving capacities” is crucial since it acknowledges that the child at some point “comes of age” and should be able to make personal choices in matters of religion or belief. Due weight should be given to the views of the child in accordance with his or her age and maturity, which need to be assessed on a case-by-case basis. [See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 29. With regard to the concept of “evolving capacities” in the context of the child’s right to freedom of religion or belief see A/64/159, paras. 26-28.]

52. Unfortunately, however, reports from various countries indicate that the above mentioned principles – which constitute an integral part of freedom of religion or belief – are not always respected. In some countries students belonging to minorities allegedly experience formal or informal pressure to attend religious instruction given on the sole basis of the country’s dominant religious tradition. The same can happen to adherents of alternative interpretation of, or dissenting views on, the dominant religion on which school instruction is based. Even worse, incidents have been reported that in some schools members of minorities or persons with dissenting views have to express criticism of their own conviction as a precondition to take their school examinations. Exemptions for students adhering to religions or beliefs other than those instructed in school, if available at all, are sometimes linked to onerous application procedures or stigmatizing practices, with the result that students and parents often refrain from making use of them.

53. In this context, it is worth emphasizing that practices which forcibly expose students to religious instruction against their own will violate article 18, paragraph 2, of the International Covenant on Civil and Political Rights which states that “no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice”. This forum internum component of freedom of religion or belief enjoys particularly strong protection under international human rights law as no derogation from article 18 of the Covenant may be made, not even in a time of public emergency which threatens the life of the nation. [International Covenant on Civil and Political Rights, art. 4; see also Human Rights Committee, general comment No. 22, para. 1.] In addition, coercive practices may also violate the rights of parents “to ensure the religious and moral education of their children in conformity with their own convictions” (art. 18, para. 4, of the Covenant).

54. The situation of religious instruction in private schools warrants a distinct assessment. The reason is that private schools, depending on their particular rationale and curriculum, might accommodate the more specific educational interests or needs of parents and children, including in questions of religion or belief. Indeed, many private schools have a specific denominational profile which can make them particularly attractive to adherents of the respective denomination, but frequently also for parents and children of other religious or belief orientation. In this sense, private schools constitute a part of the institutionalized diversity within a modern pluralistic society. States are not obliged under international human rights law to fund schools which are established on a religious basis, however, if the State chooses to provide public funding to religious schools, it should make this funding available without any discrimination. [Human Rights Committee, communication No. 694/1996, *Waldman v. Canada*, Views adopted on 3 November 1999, para. 10.6.]

55. Furthermore, the existence of private denominational schools – or the possibility of their establishment – cannot serve as an excuse for the State not to pay sufficient attention to religious and belief diversity in public school education. Even though private denominational schools may be one way for parents to ensure a religious and moral education of their children in conformity with their own convictions, the public school system must also respect religious and belief diversity. In this context, the inaugural session of the Forum on Minority Issues, held in December 2008, recommended that “where separate educational institutions are established for minorities for linguistic, religious or cultural reasons, no barriers should be erected to prevent members of minority groups from studying at general educational institutions, should they or their families so wish”. [See the report of the independent expert on minority issues (A/HRC/10/11/Add.1), para. 27.]

56. Another caveat concerns situations in which private denominational schools have a de facto monopoly in a particular locality or region, with the result that students and parents have no option to avoid school education based on a denomination different from their own religious or belief conviction. In such situations it falls upon the State, as the guarantor of human rights, to ensure that freedom of religion or belief is effectively respected, including the right of students not to be exposed to religious instruction against their will as well the right of parents to ensure a religious and moral education of their children in conformity with their own convictions.

#### IV. Conclusions and recommendations

57. Freedom of religion or belief and school education is a multifaceted issue that entails significant opportunities and far-reaching challenges. The school is the most important formal institution for the realization of the right to

education. It provides a place of learning, social development and social encounter. At the same time, the school is also a place in which authority is exercised and some persons, including members of religious or belief minorities, may find themselves in situations of vulnerability. Given this ambivalence of the school situation, safeguards to protect the individual's right to freedom of religion or belief are necessary. Special attention must be given to the forum internum component of freedom of religion or belief which enjoys the status of an absolute guarantee under international human rights law. With regard to the freedom to manifest one's religion or belief, both the positive and the negative aspects of that freedom must be equally ensured, i.e. the freedom to express one's conviction as well the freedom not to be exposed to any pressure, especially from State authorities or in the State institution, to practice religious or belief activities against one's will.

58. Schools may offer unique possibilities for constructive dialogue among all parts of society and human rights education in particular can contribute to the elimination of negative stereotypes that often adversely affect members of religious minorities. However, freedom of religion or belief and school education has also sparked controversy in many societies, particularly with regard to contentious issues such as religious symbols in the school context and religious instruction (see paras. 20-56 above).

59. With regard to religious symbols, especially in public schools, the Special Rapporteur would like to reiterate that each case has to be decided according to its own circumstances. If restrictions on the wearing of religious symbols are deemed necessary, these restrictions should not be applied in a discriminatory manner and they must be directly related and proportionate to the specific need on which the restrictions are predicated. At the same time, for example, the rights of the child and their parents or legal guardians may justify limiting the freedom of teachers who wish to manifest their religion or belief by wearing a religious symbol. In all actions concerning children, the "best interests" of the child shall be a primary consideration. With regard to the State-prescribed mandatory display of religious symbols in classrooms, States should uphold confessional neutrality in public education in order to include students of different religions or beliefs on the basis of equality and non-discrimination.

60. In general, educational policies should aim to strengthen the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction inconsistent with one's conviction. Efforts should be made to establish advisory bodies at different levels that take an inclusive approach to involving different stakeholders in the preparation and implementation of school curricula related to issues of religion or belief and in the training of teachers.

61. The Special Rapporteur would like to refer to his predecessors' reports on these issues and to their involvement in the elaboration of the final document of the International Consultative Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-discrimination and the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools. In this context, the Special Rapporteur reiterates that States, at the appropriate level of Government and in accordance with their educational systems, should favourably consider:

- (a) Providing teachers and students with voluntary opportunities for meetings and exchanges with their counterparts of different religions or beliefs;
- (b) Encouraging exchanges of teachers and students and facilitating educational study abroad;
- (c) Strengthening a non-discriminatory perspective in education and of knowledge in relation to freedom of religion or belief at the appropriate levels;
- (d) Ensuring equal rights to women and men in the field of education and freedom of religion or belief, and in particular reinforcing the protection of the right of girls to education, especially for those coming from vulnerable groups;
- (e) Taking appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods;
- (f) Evaluating existing curricula being used in public schools that touch upon teaching about religions and beliefs with a view to determining whether they promote respect for freedom of religion or belief and whether they are impartial, balanced, inclusive, age appropriate, free of bias and meet professional standards;

- (g) Assessing the process that leads to the development of curricula on teaching about religions and beliefs to make sure that this process is sensitive to the needs of various religious and belief communities and that all relevant stakeholders have an opportunity to have their voices heard;
- (h) Examining to what extent existing teacher-training institutions are capable of providing the necessary professional training for teaching about religions and beliefs in a way that promotes respect for human rights and, in particular, for freedom of religion or belief;
- (i) Determining the extent to which teacher-training institutions provide sufficient knowledge of human rights issues, an understanding of the diversity of religious and non-religious views in society, a firm grasp of various teaching methodologies (with particular attention to those founded on an intercultural approach) and significant insight into ways that one can teach about religions and beliefs in a respectful, impartial and professional way.

62. Finally, the Special Rapporteur would like to reiterate that the role of parents, families and legal guardians is an essential factor in the education of children in the field of religion or belief. Consequently, special attention should be paid to encouraging positive attitudes and, in view of the best interest of the child, to supporting parents to exercise their rights and fully play their role in education in the field of tolerance and non-discrimination, taking into account the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and the Convention on the Rights of the Child.”

## I. FREEDOM OF RELIGION OR BELIEF

### h) Registration

**Commission on Human Rights resolution 2005/40 (paragraphs 4 (c) and 4 (e)) and Human Rights Council resolution 6/37 (paragraphs 12 (e) and 12 (h))**

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;"

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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/2005/61, paras. 56-58:

"56. The Special Rapporteur has noted in this regard, on the basis of information brought before her, that registration appeared often to be used as a means to limit the right of freedom of religion or belief of members of certain religious communities.

57. In this regard, the Special Rapporteur would like to expressly refer to the "Guidelines for Review of Legislation Pertaining to Religion or Belief", prepared by the Organization for Security and Cooperation in Europe/Office of Democratic Institutions and Human Rights (OSCE/ODIHR) Advisory Panel of Experts on Freedom of Religion and Belief in consultation with the Council of Europe's Venice Commission in 2004. ["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), adopted by the Venice Commission at its fifty-ninth plenary session (Venice, 18-19 June 2004) (see [www.osce.org/documents/odihhr](http://www.osce.org/documents/odihhr)).] Since the panel has extensive experience in compiling information about international norms and best practices based on universal documents and standards, its guidelines are particularly relevant for the situations analysed by the Special Rapporteur.

58. Some main points to take into consideration with regard to registration are that:

- Registration should not be compulsory, i.e. it should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits;
- In the latter case, registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed;
- Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.;
- No religious group should be empowered to decide about the registration of another religious group. "

E/CN.4/2006/5/Add.1, paras. 51-52 and 445-446 (communications report):

"Observations [concerning the response from the Government of Belarus]

51. The Special Rapporteur is grateful for the Government's response and draws its attention to Resolution 2005/40 of the Commission on Human Rights, in which the Commission urged States, "[t]o 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" (Paragraph 4(c)). In this regard, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she noted in her previous report to the Commission on Human Rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a

precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58).

52. Moreover, the Special Rapporteur takes this opportunity to remind the Government of the views of the Human Rights Committee of 23 August 2005 on communication No. 1207/2003 (Malakhovsky and Pikul v. Belarus, CCPR/C/84/D/1207/2003) in which the Committee found a violation of Article 18 of the International Covenant on Civil and Political Rights, following the refusal to register Minsk Vaishnava community as a religious association. In its decision the Human Rights Committee made a distinction between the requirement for suitable premises for the purpose of carrying out religious rituals on the one hand and as a precondition for registration on the other hand (paragraphs 7.5 and 7.6). The Committee noted "that the State party has not advanced any argument as to why it is necessary for the purposes of article 18, paragraph 3 [ICCPR], for a religious association, in order to be registered, to have an approved legal address which not only meets the standards required for the administrative seat of the association but also those necessary for premises used for purposes of religious ceremonies, rituals, and other group undertakings. Appropriate premises for such use could be obtained subsequent to registration. [...] Also taking into account the consequences of refusal of registration, namely the impossibility of carrying out such activities as establishing educational institutions and inviting foreign religious dignitaries to visit the country, the Committee concludes that the refusal to register amounts to a limitation of the authors' right to manifest their religion under article 18, paragraph 1 that is disproportionate and so does not meet the requirements of article 18, paragraph 3. The authors' rights under article 18, paragraph 1 have therefore been violated". [...]

Observations [concerning the response from the Government of Uzbekistan]

445. The Special Rapporteur is grateful for the Government's response. She would like to point to the Concluding Observations of the Human Rights Committee, dated 26 April 2005, (CCPR/CO/83/UZB), paragraph 22: "The Committee notes that the provisions of the Freedom of Conscience and Religious Organizations Act require religious organizations and associations to be registered in order to be able to manifest their religion or belief. It is concerned about de facto limitations on the right to freedom of religion or belief, including the fact that proselytizing constitutes a criminal offence under the Criminal Code. The Committee is also concerned about the use of criminal law to penalize the apparently peaceful exercise of religious freedom and the fact that a large number of individuals have been charged, detained and sentenced and that, while a majority of them were subsequently released, several hundred remain in prison." The Special Rapporteur joins the Human Rights Committee in its recommendation that it should ensure that its legislation and practice are in full conformity with article 18 of the International Covenant on Civil and Political Rights.

446. Moreover, the Special Rapporteur wishes to emphasize that the right to freedom of religion is not limited to members of registered religious communities. As she reminded in her previous report to the Commission on human rights, referring to the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief, "registration should not be compulsory, i.e. it should not be a precondition for practicing one's religion, but only for the acquisition of a legal personality and related benefits" (E/CN.4/2005/61, para. 58)."

A/HRC/10/8/Add.4, paras 22-32 (country visit to Turkmenistan)

"B. Registration

22. According to article 11 of the Religious Organizations Law, the registration of a religious organization is conducted by the Ministry of Justice upon the application submitted by the Council on Religious Affairs. At the time of the visit of the Special Rapporteur, there were 122 registered religious organizations, of which 94 were Sunni Muslim, 13 were Russian Orthodox, 5 were Shi'a Muslim, and 10 were from other religious communities, such as Bahai, Baptist, Hare Krishna and Protestant. In addition, five applications submitted by the Council on Religious Affairs were being considered by the Ministry of justice and three other applications were being reviewed by the Council on Religious Affairs.

23. As done previously in her report to the Commission on Human Rights (see E/CN.4/2005/61, paras. 55-58), the Special Rapporteur would like to refer to some points of the OSCE/ODIHR Guidelines for Review of Legislation pertaining to Religion or Belief which are of particular relevance when examining the registration issue in Turkmenistan. While it would be appropriate to require registration for the acquisition of a legal personality and similar benefits, registration should not be a mandatory precondition for practicing one's religion. Registration procedures should be easy and quick and should not depend on extensive formal requirements in terms of the number of members or the length of existence of a particular religious group. Registration should not depend on the rev ew of the substantive content of the belief, the structure of the faith group and methods of appointment of the clergy. Additionally, provisions which are vague and which grant excessive governmental discretion in giving registration approvals should



not be allowed. It is imperative that no religious group be empowered to decide about the registration of another religious group.

24. The fact that the Religious Organizations Law prohibits the activities of unregistered religious organizations stands in contradiction with international human rights standards as well as the principles enshrined in the Constitution of Turkmenistan. Unregistered religious activity is no longer a criminal offence but has become an administrative offence in 2004. The prohibition of unregistered religious activity remains a matter of great concern to the Special Rapporteur. It adversely affects numerous aspects of the freedom to manifest one's religion or belief. Indeed, members of unregistered groups, especially those living outside of Ashgabat and those who are not Sunni Muslim or Russian Orthodox, seem to be under constant threat. They are not permitted to congregate, are unable to find facilities for meetings, and any collective observance is liable to punishment.

25. The Special Rapporteur wishes to reiterate that international human rights law recognizes freedom of religion or belief regardless of registration status. Those who cannot or do not want to register should therefore still be able to manifest their religion or belief both individually and collectively, in private or in public. Any limitations to the freedom to manifest one's religion or belief must not only be prescribed by law but must also be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, according to article 18 paragraph 3 of the International Covenant on Civil and Political Rights. The Human Rights Committee in its general comment No. 22 (1993) emphasizes that paragraph 3 of article 18 is to be strictly interpreted and that restrictions are not permitted on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as "national security". However, article 3 of the Religious Organizations Law states that the practice of freedom of religion shall not be contrary to the established public legal order and that it can be temporarily restricted to ensure national security and to protect public order, life, health, morality, rights and freedoms of other citizens. Consequently, article 3 of the Religious Organizations Law is not in consonance with international law since it includes "national security" as a possible limitation ground.

26. Concerning formal requirements in terms of the number of members or the length of existence of a particular religious group, the Religious Organizations Law does not require a particular religious group to have a lengthy existence in order to be registered and the 2004 Presidential Decree has reduced the number of required members for registration from 500 to 5. It is, however, not clear why the Religious Organizations Law distinguishes between "religious groups" (up to 50 members) and "religious organizations", which shall consist of no less than 50 citizens. Though presumably the latter can be granted legal status, such a distinction adds unnecessary confusion to the number of members required in order to register a religious organization. In addition, it is not clear which provisions of the Religious Organizations Law apply to religious groups or religious organizations.

27. The authorities have allegedly used the registration process to unduly restrict the right of freedom of religion or belief of members of certain religious communities, in particular of religious minorities. The Special Rapporteur was informed by members of certain religious communities seeking registration that they had often faced obstructions on procedural and/or substantive grounds. For instance, certain religious communities have seen their registration application being repeatedly sent back by officials of the Ministry of Justice requesting additional materials or suggesting amendments to the wording in the charter of the religious community and therefore delaying action on the application. While, according to article 11 of the Religious Organizations Law, decision regarding the registration of a religious community shall be made within three months from the date of the submission of the application, certain applications have reportedly been pending for several years. Other cases of obstruction relate to the requirement that the registration application be signed by all members of the religious organization and should contain their full names, dates of birth and places of residence. The Special Rapporteur would recommend that this requirement be at least limited to the initiators of the religious organizations, since it might in practice be difficult to obtain before registration the signature of all members, especially in large religious communities. Furthermore, those who were not included in the registration application might subsequently face difficulties when taking part in religious activities of their fellow believers. In addition, some members may legitimately wish to keep their religious affiliation confidential.

28. The Special Rapporteur would like to recall that registration procedures shall be applied in a non-discriminatory manner. Therefore, they shall make no distinction between large or small religious communities or between traditional religions and other religions or beliefs. As stated by the Human Rights Committee in its general comment No. 22 (1993), "the terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community".

29. The case of the small community of Jehovah's Witnesses living in Turkmenistan is of particular concern to the Special Rapporteur. Although their members have sought to register their community for many years, the Council on

Religious Affairs has invoked substantive reasons in order to deny legal status to the Jehovah's Witnesses. These reasons relate, for instance, to the manner in which Jehovah's Witnesses disseminate their religious views, to their refusal to serve in the army or to allow any blood transfusions. The Special Rapporteur would like to recall that while limitations on freedom to manifest one's religion or belief are permissible under certain strict conditions no limitations may be made to the internal and private realm of the individual's belief (forum internum). This is a core element of religious freedom, where the State has no right to interfere. No substantive review of an application should therefore be allowed, since it might lead to a discriminatory and excessively intrusive practice from the authorities. In a secular State like Turkmenistan,<sup>7</sup> the authorities should remain neutral with respect to religious matters and restrict themselves to a formal review of registration applications.

30. Among the different reasons for denial of registration or liquidation of a religious organization spelt out in articles 12 and 14 of the Religious Organizations Law, some of them lack clarity. It is difficult to determine what exactly constitutes an offence and this might lead to abusive interpretation or excessive discretion by the authorities. Further, this could result in the imposition of collective sanctions for offences committed by individuals or a small group of individuals within the religious organization. Some examples include denial of registration if the organization fails to be recognised as a religious one (article 12) or the liquidation of an organization if there are interferences into family relationships that result in the break-up of a family (article 14). The Religious Organizations Law also refers to the commitment of "illegal actions" as a basis for liquidating a religious organization. During her mission, the Special Rapporteur was often told by Government officials that there were organizations using religious cover to carry out illegal activities and that these should be denied registration and/or liquidated. In this regard, she wishes to reiterate that the use of registration law is rarely efficient in tackling such criminal activities and that related allegations should be addressed on a case-by-case basis in accordance with the common criminal or civil legislation.

31. Although the Special Rapporteur was told by Ministry of Justice officials that, once registered in Ashgabat, religious organizations have the right to operate on the entire national territory and to establish local branches, it appears that in practice local registration is required in order to carry out religious activities. The Religious Organizations Law contains no provisions on that issue and since local authorities are left with wide discretionary power, registration requirements at the local level are often unclear. As a result, religious organizations have reportedly faced difficulties when trying to obtain local registration. The 2004 presidential decree, which has relieved the Ministry of Justice from the obligation to publish the list of registered religious organizations in the local media, has created further difficulties for religious organizations wishing to establish local branches and having to provide proof of their registration on the national level.

32. While religious organizations which have obtained registration seem to be able to operate with greater freedom, their activities, especially those of religious minorities, are still under great scrutiny on the part of the authorities. For instance, registered religious organizations still require permission from the authorities before holding a special meeting. The Special Rapporteur received reports that some religious communities preferred not to register, in order to avoid exposure to, and interference from, the authorities."

## I. FREEDOM OF RELIGION OR BELIEF

<p><b>i) Communicate with individuals and communities on religious matters at the national and international level</b></p>	<p><b>1981 Declaration of the General Assembly</b></p> <p>Art. 6 (i): 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>
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### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1988/45, para. 48:

"48. Lastly, the freedom to have communications in matters of religion and belief at the national and international levels also seems to be jeopardized in some cases, one illustration being the Czech priest whose contacts with members of religious orders and Polish Catholics formed the subject of charges against him by the authorities. "

E/CN.4/1996/95/Add.1, paras. 23-24, 45 and 85 (country visit to Pakistan)

"23. All passports include a reference to the religion of the holder. According to the authorities, this formality is due in part to the pilgrimage to Mecca in Saudi Arabia giving rise to a need to identify applications by unauthorized Ahmadis, who are considered non-Muslims.

24. The passport application form also asks holders to identify their religion, while Muslims must state that they do not recognize Ahmadis or Mirza Ghulam Ahmad as Muslim. [...]

45. [...] Christians are also reported to be faced with administrative difficulties (such as visa formalities) on the occasion of the visits of Christian clergy and personalities from abroad. [...]

85. The Special Rapporteur also considers that no mention of religion should be included on passports, on identity card application forms or on any other administrative documents. Deletion of the statement required of Muslims regarding non-recognition of Ahmadis as Muslims in passport application forms is strongly recommended."

## I. FREEDOM OF RELIGION OR BELIEF

<p><b>j) Establish and maintain charitable and humanitarian institutions/solicit and receive funding</b></p>	<p><b>1981 Declaration of the General Assembly</b></p> <p>Art. 6 (b): The right to freedom of thought, conscience, religion or belief includes the freedom, "To establish and maintain appropriate charitable or humanitarian institutions;"</p> <p>Art. 6 (f): 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 (paragraph 4 (e)) and Human Rights Council resolution 6/37 (paragraph 12 (h))</b></p> <p>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>
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### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1999/58/Add.2, paras. 115-117 (country visit to Vietnam):

"115. Lastly, the controlled areas of religious freedom described above are part of a general situation in which limitations, and even prohibitions, in the religious sphere continue. It is therefore essential for these areas of freedom gradually to be extended to the entire religious sphere and, at the same time, for most of the limitations which are illegal under international law to be eliminated and only those limitations retained which are admissible according to the International Covenant on Civil and Political Rights, the 1981 Declaration and the case law of the Human Rights Committee.

116. The current situation of the religious communities, in which circumscribed areas of freedom are emerging within a general framework of controls, limitations and even prohibitions, appears to be valid for all religious dominations (considered as a whole rather than each community group specifically), Buddhist, Catholic, Cao Dai, Hoa Hao, Protestant and Muslim (the representatives of the Muslim community said that they enjoyed freedom of religion and freedom to practise their religion, but also that their association was the only Muslim association approved by the authorities for all of Viet Nam).

117. These limitations are the following: [...]

(h) The religious communities are not, generally speaking, authorized to extend their religious activities into social, health or educational matters. In addition, the cultural, educational, social and hospital functions removed from the religious communities after 1975 have generally not been restored by the authorities."

A/65/207, paras. 35-36

"35. The Special Rapporteur has also noted with concern that the freedom to establish and maintain religious, charitable or humanitarian institutions is not always fully respected and protected in accordance with appropriate national legislation and in conformity with international human rights law. On a domestic level, some religious minorities are, for example, not authorized to extend their religious activities into social, health or educational matters.

36. While the right to establish religious, charitable or humanitarian institutions and to receive funding is not unlimited, any restrictions imposed must be prescribed by law and must be necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, for example in order to prevent such institutions being misused to advance their cause through violence. In addition, States must prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

## I. FREEDOM OF RELIGION OR BELIEF

### k) Conscientious objection

#### Human Rights Committee general comment 22

Para. 11: "Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1992/52, para. 185:

"The Special Rapporteur has dealt with several cases of conscientious objection in the exercise of his mandate, in accordance with the provisions of the Declaration. He felt that it would be appropriate to establish a set of criteria regarding this issue. The responses to the questionnaire provided additional insight which helped him to formulate his views on the matter more precisely. Conscientious objectors should be exempted from combat but could be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection, should such service exist in their country. To avoid opportunism, it would be acceptable if this service were at least as onerous as military service, but not so onerous as to constitute a punishment for the objector. They could also be asked to perform alternative service useful to the public interest, which may be aimed at social improvement, development or promotion of international peace and understanding. Conscientious objectors should be given full information about their rights and responsibilities and about the procedures to be followed when seeking recognition as conscientious objectors, bearing in mind that application for the status of conscientious objector has to be made within a specific time frame. The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or a by regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing, and be entitled to legal representation and to call relevant witnesses."

A/51/542/Add.1, para. 40 (country visit to Greece):

"40. The Special Rapporteur draws attention to resolution 1989/59 of 8 March 1989 of the Commission on Human Rights of the United Nations, reaffirmed *inter alia* in 1991 (resolution 1991/65 of 6 March 1991) and in 1993 (resolution 1993/84 of 10 March 1993), which recognizes "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights" (para. 1) and which recommends to Member States "with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service" (para. 3) which "should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature" (para. 4)."

A/52/477, paras. 77-78:

"3. The right of conscientious objection

77. With regard to the third category of violations, the Special Rapporteur wishes to stress that the right of conscientious objection is a right which is closely linked with freedom of religion.

78. The Special Rapporteur considers it necessary to remind States of Commission on Human Rights resolution 1989/59, reaffirmed several times, which recognizes the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights. The Commission therefore recommends to States with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service which should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature. In its resolution 1984/93 on conscientious objection to military service, the Commission on Human Rights also called for minimum guarantees to ensure that conscientious objection status can be applied for at any time."

A/55/280/Add.1, para. 139 (country visit to Turkey)

"139. Finally, in accordance with the resolutions of the Commission on Human Rights (for example Resolution 1998/77 recognizing the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion) and General Comment No. 22 (48) of 20 July 1993 of the Human Rights Committee, and on the basis of the Turkish Constitution, which enshrines freedom of belief, the Special Rapporteur believes that regional characteristics and tensions are not sufficient to justify, in Turkey or anywhere else, a categorical rejection of conscientious objections, and recommends that legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs."

E/CN.4/2000/65, para. 87:

"87. The Special Rapporteur, while understanding the concerns of the Republic of Korea, wishes to recall that the United Nations Commission on Human Rights, in several resolutions, such as resolution 1998/77, recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the International Covenant on Civil and Political Rights and General Comment No. 22 (48) of the Human Rights Committee. It also reminded States with a system of compulsory military service, where such a provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of non-combatant or civilian character, in the public interest and of not punitive nature. Moreover, it should be pointed out pursuant to article 4 of the International Covenant on Civil and Political Rights, freedom of belief cannot be subject to limitations, on the understanding that it is distinct from freedom to manifest a belief, which can be subject to limitations as provided for by international law."

E/CN.4/2006/5/Add.1, paras. 10-11, 25-26, 138 and 305 (communications report):

"10. The Special Rapporteur is grateful for the Government's response. She would like to draw the Government's attention to Paragraph 5 of Resolution 1998/77 of the Commission on Human Rights, which emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment.

11. Moreover, she notes that the Human Rights Committee has encouraged States to ensure that the length of alternative service does not have a punitive character, in comparison to the duration of regular military service. (See *inter alia* CCPR/CO/83/GRC, paragraph 15). Noting Armenia's commitment regarding alternative service further to its accession to the Council of Europe, she encourages the Government to initiate a review the law from the perspective of its compliance with international standards and best practices. [...]

25. The Special Rapporteur is grateful for the detailed response regarding Mr. Mahir Baghirov. However, she would like to refer the Government's attention to Article 1 of Resolution 1998/77 of the Commission on Human Rights, which draws attention to the right of everyone to have conscientious objections to military service. This right is not, and should not be, limited to clerics and students of religious schools. She encourages the Government to review its legislation on alternative service, in accordance with international standards and best practices.

26. She will address the question of conscientious objection as well as other situations raised by the above communication in the report that will be submitted further to the visit that she carried out in Azerbaijan from 26 February to 5 March 2006 at the invitation of the Government. [...]

138. The Special Rapporteur is grateful for the Government's detailed response to her communication. However, she notes with concern the strict time limits for applying for conscientious objector status. In this regard, she draws the Government's attention to Council of Europe Recommendation 1518(2001), which invites member states to introduce into their legislation "[t]he right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service". This acknowledges that conscientious objection may develop over time, and even after a person has already participated in military training or activities. [...]

305. The Special Rapporteur is grateful for the Government's detailed response. She has also taken note of the Government's position on conscientious objectors through the third periodic State Party Report, which it submitted to the Human Rights Committee in February 2005 (CCPR/C/KOR/2005/3). While she notes that military service may sometimes be necessary for purposes of national security she would like to draw the Government's attention to paragraph 11 of General Comment 22 of the Human Rights Committee which provides that although the International Covenant on Civil and Political Rights "does not explicitly refer to a right to conscientious objection, 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".

## II. DISCRIMINATION

### *1. Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance*

#### **ICCPR**

Art. 2 (1): "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]."

Art. 5 (1): "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."

Art. 26: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...]."

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

#### **ICERD**

Art. 5: "[...] 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".

#### **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 such as [...] religion [...]."

#### **CRC**

Art. 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

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

Art. 2 (1): "No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief."

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;"

#### **Human Rights Committee general comment 22**

Para. 2: "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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1987/35, paras. 104-108:

"104. A dialogue should also be established through the establishment of institutional mechanisms, such as commissions of representatives of Governments and of religious and other non-governmental organizations competent in this field, which could submit their suggestions as to ways and means of combating discrimination and intolerance in matters of religion or belief.

105. Victims of intolerance or of discrimination based on religion or belief should be able to avail themselves of effective legal remedies.

106. In order to promote ideals of tolerance and understanding in matters of religion and belief, instruction on international and national standards in respect of freedom of religion and belief should be included in school and university curricula and teaching staff must receive proper training in this regard. Similarly, education should be aimed at inculcating, from early childhood, a spirit of tolerance and respect for the spiritual values of others.

107. Non-governmental organizations in general, and groups representing specific religions or ideologies in particular, can play an active role in assuring respect for and promoting tolerance and freedom of religion and belief by initiating an inter-denominational dialogue at the national and international levels, in the form of meetings, conferences and seminars whose topics would be aimed at emphasizing the similarities among various religions and beliefs rather than their differences.

108. The media can also contribute, by disseminating information showing the importance of freedom of religion and belief as a fundamental human right, to educate society and public opinion in the direction of greater tolerance in matters of religion and belief."

A/55/280, paras. 110-117:

"110. From 1 to 5 May 2000, the Special Rapporteur participated in the Preparatory Committee for the Conference [World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance] and, in particular, submitted his study (A/CONF.189/PC.1/7).

111. In it, he explains that when the right to freedom of religion and the right to belong to an ethnic group or to a minority are infringed in the case of a single person or group of persons, the violation is not just a superimposition or ordinary addition of offences or discriminations. It is not just a question of multiple offences. The combination of the two offences creates a new, more serious, offence - an aggravated discrimination - which, while of varying intensity, is by its very nature a separate concept.

112. On the basis of the legal and factual elements of the issue of religious discrimination aggravated by racial discrimination, the Special Rapporteur draws the following preliminary conclusions:

- (a) None of the international instruments studied contains any special provisions establishing a specific legal regime or special treatment covering acts of aggravated discrimination, particularly those that affect minorities;
- (b) Nevertheless, a study of the various provisions leads to the conclusion that there is a body of sufficiently well-established rules and a set of principles shared by all the nations and all the States members of the international community, which suggests an openness to theoretical acceptance of a right to freedom from aggravated discrimination;
- (c) Minorities are sometimes granted specific rights under the internal legislation and even under the Constitution. Yet, many forms of discrimination, particularly those relating to religion, are directly or indirectly enshrined in those Constitutions and affect ethnic groups in particular;
- (d) A study of the facts has shown that the overlap between racial and religious discrimination is a common phenomenon that is especially grave and often has very tragic consequences;
- (e) The instruments studied would appear to be out of phase with reality. At any rate, they do not appear to accept the full consequences of their own recognition of the links between race and religion.

113. The Special Rapporteur therefore recommends:

A. Strengthening protection against aggravated discrimination

114. International protection. It seems clear that legislative provisions, whatever their nature or origin, should anticipate and take into account the possibility of aggravated discrimination. The first step in strengthening international protection is to consolidate existing means and mechanisms. The international community's work could be reinforced by adopting the following measures:

(a) Existing instruments should anticipate the possibility of aggravated discrimination. It might be useful to begin working within the framework of existing mechanisms towards, for example, the adoption of a resolution dealing specifically with aggravated discrimination;

(b) The Conference against discrimination could, within the context of its declaration and programme of action, devote some thought to aggravated discrimination;

(c) Protection against aggravated discrimination in the context of existing conventions and other instruments could be strengthened through review and follow-up procedures and through deadlines for consideration.

115. Internal protection. This will mean improving legal protection, in particular under criminal legislation:

(a) Each State should provide judicial guarantees to ensure that freedom of religion or belief and membership of an ethnic and religious group are protected in a concrete manner by explicit provisions.

It would be desirable for some States to enact general legislation based on international standards;

(b) States must make efforts to enact legislation or to modify existing legislation, as appropriate, in order to prohibit all discrimination based on identification of individuals with multiple groups. Most importantly, positive criminal legislation should be enacted, not only imposing severe penalties on single forms of discrimination, but above all defining a new offence, that of aggravated racial and religious discrimination, which should carry a specific penalty, and naturally one that is heavier than that imposed for single forms of discrimination, whether religious or racial;

(c) Establishment of an independent equal opportunity authority to monitor racial and religious discrimination.

B. Prevention of aggravated discrimination

116. Education and training. States need to ensure that, whatever the ethnic and religious make-up of the society, their education system is capable of observing the following principles, which form the basis of a policy striking at the roots of aggravated discrimination: encouragement through education and teaching; prohibition against segregating classes according to membership of ethnic and religious groups; condemnation of racism in schools; appropriate prevention programmes; production of appropriate textbooks.

117. States could also use the following means: information and communication; dialogue between and within religious groups; town planning policies; democracy and development."

A/56/253, paras. 122-130:

"Interreligious dialogue

122. The Commission on Human Rights, in its resolution 2001/42, invited Governments, religious bodies and civil society, during the year marking the twentieth anniversary of the adoption of the 1981 Declaration, to undertake dialogue at all levels to promote greater tolerance, respect and understanding of freedom of religion and belief.

123. Indeed, interreligious dialogue constitutes one of the pillars of prevention in the area of religion or belief. At its meeting in Chicago in 1993, the Parliament of the World's Religions attempted to promote the cause of true dialogue among religions. It is of primary importance that encounters with and among religions should create a space for mutual understanding in order to promote or strengthen full and sincere acceptance of freedom of religion or belief as defined and guaranteed by international human rights standards. In that way, interreligious dialogue should enable peaceful resolution and prevention of conflicts and violations worldwide.

124. The Special Rapporteur wishes to review and emphasize the numerous initiatives that recognize the essential value of interreligious dialogue and seek to promote it.

125. As the Commission on Human Rights noted in its resolution 2001/42, the Millennium Declaration adopted by the General Assembly and Assembly resolution 55/23 of 13 November 2000 on the United Nations Year of Dialogue among Civilizations recognize the valuable contribution that dialogue among civilizations can make to an improved awareness and understanding of the common values shared by all humankind. Clearly, interreligious dialogue is fully in line with the Millennium Declaration and the Year of Dialogue among Civilizations.

126. At the Millennium World Peace Summit, which was held in New York in August 2000, over 1,000 officials of various religions or faiths gathered together for the first time ever and made a commitment to work together to guarantee peace on earth. They emphasized their firm intention to use their moral authority to contribute to reconciliation and acceptance of diversity. Finally, they signed a commitment to promote world peace which recognized that all religious traditions teach that people should treat their neighbours as they would be treated themselves, whatever their differences might be in race, religion, ethnic origin, nationality, economic level, age and gender.

127. The Year of Dialogue among Civilizations also illustrates the contribution of UNESCO to interreligious dialogue. UNESCO has undertaken various activities in this field. In 1994, a Declaration on the Contribution of Religion to the Culture of Peace was adopted under its auspices and in 1995, the Declaration of Principles on Tolerance was adopted. UNESCO has launched programmes on intercultural and interreligious dialogue, basing its approach on a new dimension of the concept of dialogue. To the relevant traditional but reductionist approach to dialogue through mutual knowledge has been added the concept of interaction. In effect, mutual knowledge can reinforce identities, while interaction highlights proximity and pluralism. The Malta Declaration of 1997 suggested, *inter alia*, that collaboration should be promoted between academics and individuals involved in the interreligious dialogue on the ground with a view to combining reflection and action in order to extend the dialogue to families, communities and all levels of society, thus giving the dialogue a wider impact. UNESCO has also established institutes and chairs on mutual knowledge among religions, spiritual traditions and their specific cultures. The meeting held in Malta under UNESCO auspices in 1997 also recommended to that agency, States and the communities concerned that they should promote studies on the image and perception of the other in religious texts; promote research on the ways in which communities have used religious texts to justify conflicts; and review the textbooks used in schools, including religious schools, in order to eliminate any religious stereotyping. Finally, the Director-General of UNESCO established the International Committee for Interreligious Dialogue to advise on the development and implementation of activities to promote interreligious and intercultural dialogue. The Special Rapporteur on freedom of religion or belief was requested to make a contribution as a member of the Committee. In that capacity, he participated in the International Congress on Interreligious Dialogue and the Culture of Peace at Tashkent in September 2000.

128. The High Commissioner for Human Rights has also made a contribution to the promotion of interreligious dialogue. For example, in November 1998, the Office of the High Commissioner held a seminar on "Enriching the Universality of Human Rights: Islamic perspectives on the Universal Declaration of Human Rights". The High Commissioner participated in the Oslo Conference on Freedom of Religion or Belief in August 1998, among others, and has sent messages, in particular to the Nuremburg conference in September 1999 on "Human rights: Promoted by religion, threatened by religion". She also signed the Geneva Spiritual Appeal of 24 October 1999 at an inter-faith religious service attended by representatives of various religions and the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees and the World Health Organization. On 15 June 2001, a special publication entitled *Sacred rights: Faith Leaders on Tolerance and Respect* was issued, as a result of the Millennium World Peace Summit, as part of the preparations for the Durban conference. In this context, the High Commissioner called on religious leaders to establish an "annual interreligious and international day of celebration of diversity to put emphasis on the enriching character of human diversity." Finally, it should be noted that the Durban and Madrid conferences, in accordance with the wishes of the High Commissioner for Human Rights in particular, are taking place within the framework of the Year of Dialogue among Civilizations, and therefore the dialogue among religions.

129. The Special Rapporteur also wishes to recall the relevance of the recommendations made at the Seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief organized in December 1984 by what was then known as the United Nations Centre for Human Rights:

"The seminar recommended that: "... (h) Religious bodies and groups at every level have a role to play in the promotion and protection of religious freedoms or beliefs. They should foster the spirit of tolerance within their ranks and between religions or beliefs. Interfaith dialogue based on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief should be pursued at all levels. The seminar also recommends that the text of the Declaration be disseminated to their members as a basis for instruction and that

religious bodies consider recommending a common day of prayer or of dedication to the aims set out in the Declaration. Other groups are similarly recommended to consider a day of dedication to the aims of the Declaration."

130. In addition to his contribution to the UNESCO Committee and to the various events mentioned above (conferences, seminars, etc.), the Special Rapporteur has always been concerned with encouraging interreligious dialogue. For example, he has made specific recommendations in his reports on in situ visits, whether so-called traditional missions or visits to the major communities of religion or belief. In that regard, it should be specified that this "new" category of visits, for instance the visit to the Vatican in 1999, has the particular purpose of examining activities undertaken in the area of interreligious dialogue and offering a pathway for all towards the objectives, methods and mechanisms of interreligious dialogue. The Special Rapporteur has also included the question of interreligious dialogue into his general reports and into the framework of the Madrid international consultative conference on school education in relation to freedom of religion or belief, tolerance and non-discrimination (see above)."

E/CN.4/2006/5, paras. 19 and 62:

"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. [...]

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."

A/HRC/10/8, paras 29-62:

### "III. DISCRIMINATION BASED ON RELIGION OR BELIEF AND ITS IMPACT ON THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

29. In the implementation of her mandate, the Special Rapporteur has always strived to adopt a holistic approach and to examine all issues related to freedom of religion or belief in a non-selective manner. In doing so, she and her predecessors came across a great variety of issues of concern, including cases of discrimination based on religion or belief<sup>5</sup> pertaining to civil and political rights, as well as to economic, social and cultural rights. In this section, the Special Rapporteur provides a preliminary analysis on discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights. While focusing on economic, social and cultural rights in the present report, the Special Rapporteur recalls that the 1993 Vienna Declaration and Programme of Action proclaimed that all human rights are universal, indivisible, and interdependent and interrelated. Therefore, the distinction made in this section between civil and political rights on the one hand, and economic, social and cultural rights on the other, should merely be seen as reflecting the terminology used by the two international covenants.

#### A. Legal framework at the international level

30. The principle of non-discrimination is generally perceived as one of the most important in the field of human rights; it is overarching and therefore applies to all human rights, including the right to freedom of religion or belief. It is crucial to prevent discrimination with regard to the enjoyment of economic, social and cultural rights, since minorities and vulnerable groups are particularly affected when States do not abide by their obligations to respect, protect and fulfil these rights.

31. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. Indeed, discrimination not only occurs when individuals or groups in the same situation are treated differently, but may also occur when individuals or groups are treated in the same way although their situation is different. The principle of non-discrimination thus prohibits both unjustified distinctions when similar situations are treated differently and unjustified comparisons when different situations are treated in the same manner.

32. The Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief extensively addresses the principle of non-discrimination in its articles 2, 3 and 4. In particular, article 2 (1) of the Declaration states that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief”. Furthermore, article 2 (2) provides the following definition for the purposes of the Declaration: “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”. Article 4 provides that “[a]ll 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” and that they “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”.

33. The International Covenant on Economic, Social and Cultural Rights addresses the principle of non-discrimination in its article 2 (2), which includes a reference to religion, as follows: “[t]he 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”.

34. In its general comment No. 22 (1993), the Human Rights Committee specifically referred to economic, social and cultural rights in relation to the prohibition of coercion. In paragraph 5, it stated that policies or practices having the same intention or effect, such as those restricting access to education, medical care or employment, are similarly inconsistent with article 18 (2) of the International Covenant on Civil and Political Rights. This approach was recently reinforced by the General Assembly in its resolution 63/181 on the elimination of all forms of intolerance and of discrimination based on religion or belief, in which it urged States to step up their efforts to ensure that no one is discriminated against on the basis of his or her religion or belief when accessing, inter alia, education, medical care, employment, humanitarian assistance or social benefits.

35. On the basis of articles 2 and 4 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, three issues need to be emphasized. First, the principle of non-discrimination, as enshrined in the Declaration, applies to States as much as to non-State actors as potential perpetrators. States have therefore the duty to refrain from discriminating individuals or groups of individuals because of their religion and belief and must also take necessary measures to prevent and eliminate discrimination between non-State actors. Incidents among non-State actors tend to be less clear-cut than discrimination perpetrated by States. For instance, it may be difficult to determine whether faith-based associations are allowed to disregard employment applications from believers belonging to a different community or if they are compelled to consider all applicants, regardless of their religious affiliation. Another example is when a religious or belief community wishes to exclude a certain community from using its premises if these are usually available for rent. In order to determine whether these actions amount to discrimination or not, a case-by-case analysis is necessary.

36. Second, it follows from the definition provided by article 2 (2) that “any distinction, exclusion, restriction or preference based on religion or belief having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis” constitutes discrimination. Hence, not all forms of distinction, exclusion, restriction or preference amount to discrimination; some may in fact be used in the context of special temporary measures or affirmative action, aiming at the elimination of conditions which cause or help to perpetuate discrimination, including on grounds of religion or belief. According to the Human Rights Committee, “in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time, to the part of the population concerned, certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant”. The Special Rapporteur stresses that affirmative actions may be essential to empower communities that suffered on account of historic discriminatory practices. At the same time, she underlines that the effectiveness of affirmative action should be measured through various identifiable means and should be monitored for its progress.

37. Third, by referring to the “purpose” or “effect” of any distinction, exclusion, restriction or preference based on religion or belief, article 2 (2) of the Declaration provides protection against formal (de jure) and actual (de facto) discrimination. Both concepts are obviously closely linked. While de jure discrimination refers to discrimination enshrined in laws, de facto discrimination pertains to the effects of laws, policies or practices. It entails that de jure discrimination should be eradicated immediately, as this can be done by amending or repealing the discriminatory legislation. When faced with de facto discrimination, States should immediately adopt measures that are likely to lead to its elimination as soon as possible.

38. In addition to the above, reference should also be made to the concepts of direct and indirect discrimination based on religion or belief. A law, policy or practice creates direct discrimination when a difference in treatment, which cannot be justified objectively, is expressly based on a person's religion or belief. Indirect discrimination stems from a law, policy or practice that does not appear at first sight to involve inequalities but which inevitably leads to inequalities when implemented. Since indirect discrimination may also exist without intention from the perpetrator, it may be more difficult to detect and prove than direct discrimination. However, once indirect discrimination has been identified, States should adopt appropriate measures in order to remedy the situation as soon as possible.

39. Even in cases where there is no intention on the part of the State to discriminate against members of a certain religious or belief community, or where there is no de jure discrimination in national legislation, there may yet exist religious differentials in the enjoyment of economic, social and cultural rights. Access to basic services like education and health care or access to employment may therefore differ when comparing various religious communities or, more generally, socio-economic groups of individuals that may be closely linked to certain religious or belief communities. Where there is discrimination, be it de jure or de facto and direct or indirect, States should address existing or emerging imbalances in line with article 4 of the Declaration on the Elimination of Intolerance and Discrimination. Consequently, in-depth studies and analyses on the socio-economic situation of particular religious communities are vital for States to take adequate measures."

#### A/HRC/13/40

"33. The Special Rapporteur would also like to provide an overview of some general patterns and issues of concern related to her mandate. In this context, she wishes to distinguish between: (a) discrimination and violence "on the grounds of religion or belief", i.e., based on the religious affiliation of the victim; and (b) discrimination and violence "in the name of religion or belief", i.e., based on or arrogated to religious tenets of the perpetrator.

#### **A. Discrimination and violence on the grounds of religion or belief**

34. The most prominent example of a general, worrying pattern all over the world is the discrimination and violence suffered by members of religious minorities. Many religious minorities are in a vulnerable situation, which is further aggravated when States specifically target them by registering their members' names and scrutinizing these individuals. Worse still are laws that openly discriminate against individuals on the basis of religion or belief or the perceived lack of religious fervour. Indeed, dissenting or dispassionate believers are being marginalized and face interreligious or intra-religious problems. Admission to schools and employment in Government and private enterprises are denied to people because of their religious or belief affiliations. Many violent acts or threats against members of religious minorities are also perpetrated by non-State actors, all too often with impunity.

35. Another worrying general pattern is the targeting of places of worship and other religious buildings or properties. The Special Rapporteur is seriously concerned about frequent attacks on places of worship and the desecration of cemeteries. Such attacks violate the rights of not only a single believer, but also the group of individuals forming the community attached to the place in question. In this regard, the General Assembly has adopted resolution 55/254 on protection of religious sites, calling upon all States to exert their utmost efforts to ensure that religious sites are fully respected and protected.

36. National policies, legislation and practices which are designed to combat terrorism have had and continue to have adverse effects on the enjoyment of freedom of religion or belief worldwide. The Special Rapporteur notes with concern the worsening situation of minority communities in the wake of the events of 11 September 2001 and the estrangement of communities who earlier lived together without suspicion. While States are obliged to take effective measures to counter terrorism, the Special Rapporteur would like to underline that States must also ensure that counter-terrorism measures comply with their obligations under international law, including international human rights, refugee and humanitarian law.

37. There are also further issues of concern in relation to her mandate, which seem to be more prevalent in particular regions or countries. For example, some domestic registration procedures for religious communities are applied in a discriminatory manner by the authorities, often curbing the freedom of religion or belief of minority communities such as new religious movements or indigenous peoples. In addition, she is concerned about undue State interference in religious teaching and dissemination of related publications, for example when the authorities censor, monitor and write sermons or persecute religious leaders. Furthermore, the Special Rapporteur has noticed a number of restrictions imposed on different forms of religious expression, for example, on the wearing of distinctive clothing or head coverings. At the same time, she is concerned about reports of women who are forced to wear religious dress in public in certain countries.

38. A number of societies are facing obstacles to ending all forms of discrimination on religious grounds and creating informed public opinion that can effectively challenge religious bigotry. The Special Rapporteur has noticed with regret that, as far as her mandate is concerned, denunciation of human rights abuses is often selective; the religion of the victim and of the perpetrator, rather than the act itself, seems to be a determining factor as to who feels obliged to publicly condemn the incident. Where the victim belongs to one religion, but the perpetrator to another, public outrage from the victims' community unfortunately seems to be greater than if the perpetrator and the victim had the same religion or belief. However, in addition to interreligious conflicts, intra-religious violence also warrants close monitoring and condemnation. All perpetrators, regardless of their or the victims' religious affiliation, should be brought to justice.

39. Similarly, the Special Rapporteur has noticed that, while criticism of major religions attracts a lot of attention at the national, regional and international levels, more attention should be focused on addressing the numerous cases of incitement to violence against smaller religions. Article 20, paragraph 2, of the International Covenant on Civil and Political Rights obliges States to prohibit by law any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. However, the right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticism or ridicule. [See A/HRC/2/3, para. 36.] The Special Rapporteur would like to emphasize the important role of an independent judiciary, which needs to adjudicate in each particular case according to its own circumstances and taking into account the specific context. There also have been cases of mob violence as a reaction to expressions of perceived criticism of religions and religious personalities. In this context, several special rapporteurs urged all actors to refrain from any form of violence and avoid fuelling hatred. In addition, States should promote the interrelated and indivisible nature of human rights and freedoms and advocate the use of legal remedies and the pursuance of a peaceful dialogue on matters which go to the heart of all multicultural societies. [See A/HRC/6/5, paras. 38-39].

40. Religious education is another contentious issue which has sparked controversy in many societies. A number of countries have religious instruction in public schools in a particular religion, while other countries provide for school classes about the history of different religions. From a human rights perspective, the latter is less problematic provided that classes on the history of religions are given in a neutral and objective way. However, public education which includes instruction in a particular religion or belief is consistent with article 18, paragraph 4, of the International Covenant on Civil and Political Rights only if provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and legal guardians. In some countries, religious instruction is mandatory, a situation which poses the problem of how to provide the same level of teaching to children belonging to religious minority groups. They are, in some instances, given no option but to receive instruction in the religion of the majority community. Only in a few cases are schools able to provide religious instruction to students of all the different religious or belief communities. During her interaction with Governments and school authorities, the Special Rapporteur has been made aware of the fact that some parents, who demanded that religious instruction be given in schools, often queried the contents of such religious instruction. This has invariably placed school authorities in a difficult situation, particularly where a religious community is itself divided and has no official spokesperson. The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools [Prepared by the Advisory Council of Experts on Freedom of Religion or Belief of the Office for Democratic Institutions and Human Rights (Organization for Security and Cooperation in Europe), available at the address [www.osce.org/publications/odihr/2007/11/28314\\_993\\_en.pdf](http://www.osce.org/publications/odihr/2007/11/28314_993_en.pdf).] provide practical guidance for preparing curricula for teaching about religions and beliefs, as well as preferred procedures for ensuring fairness in the development of such curricula.

## **B. Discrimination and violence in the name of religion or belief**

41. Another worrying pattern is discrimination and violence in the name of religion or belief. As emphasized in the preamble of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the 1981 Declaration is inadmissible.

42. Discrimination and violence in the name of religion or belief is at the heart of many conflicts which are — or are at least perceived to be — based on religious issues, often intertwined with particular ethnic, national, political or historical backgrounds. Since the creation of the mandate in 1986, various instances of discrimination and violence in the name of religion or belief have come to light both in thematic reports and during country visits or in the exchange of communications with States. The following examples from the exercise of mandate are designed to illustrate some forms of militant extremism and religious polarization, as well as the negative consequences that these phenomena may ultimately have for the enjoyment of human rights, including freedom of religion or belief.

43. In his annual report submitted to the Commission on Human Rights in 1993, the first mandate holder, Angelo Vidal d'Almeida Ribeiro, noted "how difficult it is to curb or eradicate the propagation of extremist and fanatical



opinions and overcome the distrust opposing members of certain denominations. Although the phenomena of religious discrimination and intolerance are often caused by a variety of economic, social, political or cultural factors deriving from complex historical processes, they are frequently the result of sectarian or dogmatic intransigence. In view of their adverse effect on the stability of international relations, the Special Rapporteur is of the opinion that States should be vigilant in this regard and make determined efforts to combat religious discrimination and intolerance at all levels". [E/CN.4/1993/62, para. 78.]

44. The second mandate holder, Abdelfattah Amor, emphasized that the nature of religious extremism is such as to jeopardize the right of individuals and of peoples to peace and to prejudice human rights as a whole. [E/CN.4/1995/91, p. 148.] He noted that religious extremism acts as a cancer in a religious group of any denomination and that it affects the members of that religious group just as much as those of other religious groups. [E/CN.4/1996/95, para. 45.] He added that extremism in any religion, wherever it appears, openly or latently, covertly or overtly, and potentially or explicitly violent, merits a hard look at the causes — including economic and social causes — and at its immediate and longer-term effects. [E/CN.4/1997/91, para. 92.] Additional aspects of extremism include such phenomena as collective suicides by followers of certain groups, terrorist acts by new religious movements and the impact of suicide attacks with an alleged religious motivation. [See, for example, E/CN.4/1998/6, para. 151; A/52/477, para. 58; and E/CN.4/2003/66, paras. 93-104.]

45. Recent examples of discrimination and violence in the name of religion or belief can be found in the Special Rapporteur's two latest reports on communications. [A/HRC/13/40/Add.1 and A/HRC/10/8/Add.1.] One of the examples given in those reports, which are obviously not exhaustive, refers to riots and attacks on places of worship perpetrated by members of a group who sought to impose their interpretation of religious law on all other individuals in that region. Another case involved an alleged instance of blasphemy where certain political and religious groups threatened to seal off a whole city and attack a religious minority unless the police arrested five members of this religious minority. In another incident, two members of a religious minority were killed after the perpetrator had requested to see the victims' identity cards, which state the religious affiliation of the bearer. Just before holding national elections in one country, a personal status law for one religious community was passed, which further entrenched discrimination and violence against women, girls and members of religious minorities. In a particular province of another country, a new criminal code was adopted for one religious community, effectively legalizing marital rape. Further examples of sectarian violence, religious persecution and atrocities committed in the name of religion are mentioned in the Special Rapporteur's recent mission reports. [See, for example, A/HRC/7/10/Add.3; A/HRC/10/8/Add.2; A/HRC/10/8/Add.3; and A/HRC/13/40/Add.3.]

46. In many cases, persons in a vulnerable situation, including children, women and converts, are targeted by discrimination or violence in the name of religion or belief. Children have been indoctrinated with religious intolerance and, unfortunately, continue to be used by certain non-State actors to perpetrate violence on others or themselves in the name of religion. Women also remain a constant target of religious intolerance. Their rights are violated in the name of religion or belief in the most self-righteous manner. Laws continue to discriminate against women particularly, for example in the field of personal law, on the insistence that only those laws conform to the religious beliefs of the woman's religious community.

47. Non-State actors, and sometimes even State authorities, continue to threaten or discriminate against individuals who have changed their religion. This problem remains an alarming one in a number of countries, despite the fact that article 18 of the United Nations Universal Declaration of Human Rights explicitly provides that freedom of thought, conscience and religion includes freedom to change religion or belief. Religious leaders and opinion makers should become aware that not only is conversion to their own religion or belief protected, but the decision to replace one's current religion or belief with a different one is too. The possibility of changing, choosing, replacing and retaining one's religion or belief is fundamental to freedom of thought, conscience and religion. No person ought to face intolerance, discrimination or persecution because of his or her decision to change religion or belief or not to have one. In addition, obliging individuals to disclose their religion or belief in official documents might increase their risk of being persecuted. The Special Rapporteur would like to emphasize that theistic, non-theistic and atheistic believers and those who do not profess any religion or belief are equally protected. All of them have important roles to play in building pluralistic societies for the twenty-first century."

## II. DISCRIMINATION

### 2. State religion

#### Human Rights Committee general comment 22

Para. 9: "The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous."

Para. 10: "If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

##### E/CN.4/1996/95/Add.1, para. 81 (country visit to Pakistan):

"81. With regard to legislation, the Special Rapporteur would like to point out that an official or State religion in itself is not opposed to human rights. The State should not, however, take control of religion by defining its content, concepts or limitations, apart from those which are strictly necessary, as provided in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and in article 18, of the International Covenant on Civil and Political Rights. On 20 July 1993, the Committee on Human Rights adopted General Comment No. 22 concerning article 18 of the Covenant, in which it expressed the opinion that the right to freedom of thought, conscience and religion was far-reaching. The Committee also pointed out that limitations on the freedom to manifest a religion or belief are authorized only if prescribed and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, and are applied in such a manner that would vitiate the right to freedom of thought, conscience and religion."

##### E/CN.4/1996/95/Add.2, para. 88 (country visit to the Islamic Republic of Iran):

"88. With regard to the legislation, the Special Rapporteur has indicated that a State religion is not, in itself, in contradiction with human rights. However, this state of affairs - which is consecrated by the Iranian Constitution - should not be exploited at the expense of the rights of minorities and the rights associated with citizenship, which imply that citizens should not be discriminated against on grounds such as, inter alia, religion or belief. From this standpoint, the concept of Islamic criteria as set forth in article 4 of the Constitution should be precisely defined in regulations or legal texts without, however, giving rise to discrimination among citizens."

##### A/51/542/Add.1, para. 132 (country visit to Greece):

"132. With regard to legislation, the Special Rapporteur observes that the existence of a State religion is not in itself incompatible with human rights. However, this situation, which in the case of Greece is sanctioned by the Constitution, must not be exploited at the expense of the rights of minorities and the rights linked to citizenship, which imply prohibition of discrimination among citizens on the grounds, inter alia, of considerations relating to religion or belief."

A/51/542/Add.2, para. 134 (country visit to Sudan):

"134. On the subject of legislation, the Special Rapporteur stressed that the State religion, or the religion of the State, is not inherently incompatible with human rights. However, that fact - which is confirmed by Constitutional Decree No. 7 - should not be exploited to the detriment of the rights of non-Muslims and the rights derived from citizenship, which imply that there should be no discrimination between citizens based, inter alia, on considerations of belief or conviction."

A/CONF.189/PC.1/7, paras. 119-120:

"119. Moreover, aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology. The State religion or the religion of the State is not, of course, a characteristic of the religion, but of the State. However, if in its Constitution the State professes its adherence to a particular faith, some will see the mere profession of that faith - whatever the good intentions of the State - as a form of discrimination against the ethnic or religious minority or minorities. In the area of legislation, moreover, some such States adopt clearly discriminatory provisions, as we have seen, in order to impose the constitutionally established religion or ideology, and therefore a particular vision of society and of the universe, on members of ethnic or religious minorities. [Thus, in national systems, de jure acts of discrimination are not racial, but religious, in nature. However, to the extent that they affect ethnic groups, they are also racial in nature (in the broad sense).] This is no doubt one of the most unacceptable violations of an individual's right to have and practice his religion and that of his ancestors. It is true, as the Special Rapporteur has noted, that "States which are or claim to be based on religion may be either exclusive - for the benefit of the predominant religion alone - or open and respectful vis-à-vis other religions" (E/CN.4/1998/6, para. 42). However, to the extent that everything ultimately depends on the goodwill of the State, the personality of those in office at any given moment, and other unpredictable or subjective factors, there is no serious guarantee in law that the State will at all times respect minority ethnic and religious rights.

120. In States with a range of religious and ethnic identities, the constitutional profession of an official religion, a State religion or a religion of the State, may be politically or historically justified, but by its very nature it carries the seed of aggravated discrimination. [In the *Waldman v. Canada* case of 21 October 1999, the Human Rights Committee rejected the State party's argument that the privileged treatment of a religion (a Catholic school) was not discriminatory because it was a Constitutional obligation. The Committee noted that the fact that a distinction is enshrined in the Constitution does not render it reasonable and objective (para. 10.4).] As Gordon Allport [1954] puts it, a possible root cause of religious intolerance stems from the fact that religion usually encompasses more than faith. Often it is the focus of the cultural tradition of a group [The *Nature of Prejudice*, Cambridge, Mass., Addison-Wesley, 1954, cited by Odio Benito, op. cit., para. 184]. He notes that this applies to the majority of religions. Therefore, when the State itself announces its religion in its Constitution, the law ceases to reflect the ethnic and religious variety of the society, and the way is opened to arbitrary action and intolerance."

E/CN.4/2005/61, paras. 61-62:

"61. Without addressing the question of whether a "State religion" is a system that is compatible with human rights, the Special Rapporteur has noted that in a few States, legislation has been adopted that recognizes certain religions and not others or that institutes a different status among certain categories of religions. While the Special Rapporteur has not been provided with sufficient information suggesting that in any of these cases the legislation actually causes violations of the right to freedom of religion or belief, she is of the opinion that the legalization of a distinction between different categories of religion is liable to pave the way for future violations of the right to freedom of religion or for discrimination on the basis of religion or belief.

62. On this question, the Special Rapporteur would like to refer to a report on a country visit made by her predecessors and according to which "the principle of freedom of religion or belief, as enshrined in international human rights law, is difficult to reconcile with a formal or legal distinction between different kinds of religious or faith-based communities insofar as such a distinction in their status must imply a difference in rights or treatment, which may, in some cases, constitute discrimination that is incompatible with the exercise of human rights" [Report on the visit of the Special Rapporteur on freedom of religion or belief to Romania (E/CN.4/2004/63/Add.2), para. 94.]"

### III. VULNERABLE GROUPS

#### I. Women

##### ICCPR

Art. 5 (1): "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."

Art. 18 (3): "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

##### 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.

14: 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;"

**Human Rights Council resolution 6/37**

9. Urges States [...] "(c) To ensure that appropriate measures are taken in order to adequately and effectively guarantee the freedom of religion or belief of women [...]"

11. "Invites all actors to address in the context of that dialogue, inter alia, the following issues within the framework of international human rights: [...] (b) The situations of violence and discrimination that affect many women as well as individuals from other vulnerable groups in the name of religion or belief or due to cultural and traditional practices;"

12. "Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, at all levels and with a broader participation including of women, to promote greater tolerance, respect and mutual understanding";

18. "Decides therefore to extend the mandate of the Special Rapporteur on freedom of religion or belief for a further period of three years and, in this context, invites the Special Rapporteur: [...] (d) 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".

**Human Rights Committee general comment 28**

Para. 13: "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."

Para. 19: "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."

Para. 21: "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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

#### E/CN.4/2002/73/Add.2

Thematic study entitled " Study on freedom of religion or belief and the status of women in the light of religion and traditions".

#### A/56/253, paras. 139-147:

"Follow-up to resolutions on women

139. The Commission on Human Rights and the General Assembly have always accorded special attention to the situation of women with regard to religion in their resolutions governing the mandate on the freedom of religion and belief. Accordingly, the resolutions have condemned practices which violate women's rights and constitute discrimination, with some resolutions emphasizing the harmful role played in that regard by religious extremism. Resolutions have also echoed the Vienna World Conference on Human Rights in its call upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women.

140. Since 1996, the Commission in its resolutions on the mandate on the freedom of religion and belief has furthermore emphasized that the Special Rapporteur should incorporate a gender perspective in the preparation of reports, including in data collection and the formulation of recommendations, and highlight genderspecific violations. Resolutions not specific to the mandate have also requested all special procedures to adopt a similar approach, for example, Commission on Human Rights resolution 2001/50 of 24 April 2001, on integrating the human rights of women throughout the United Nations system.

141. Accordingly, in the framework of his general reports, the Special Rapporteur, in his review of communications, has created a category devoted to violations against women. The status of women with regard to religion has clearly, however, been an ongoing concern of the Special Rapporteur since the creation of the mandate in 1988, as demonstrated both in communications concerning cases or situations involving intolerance or discrimination against women, and in mission reports (through the examination of legislation, policies affecting women, a review of their situation, and the formulation of recommendations (see above, section II.A)). The Special Rapporteur also appeared before the Committee on the Elimination of Discrimination against Women in February 1998 to outline his approach to the status of women with regard to religion and to engage in an exchange of views. He also focused on this vulnerable group in the context of the international consultative conference on school education in relation to freedom of religion and belief, tolerance and non-discrimination in Madrid (see section III.A).

142. In the two studies submitted to the World Conference against Racism (see section III.A), the Special Rapporteur focused on the status of women. The Special Rapporteur will also submit to the Commission on Human Rights at its next session a study on freedom of religion or belief and the status of women with regard to religion and traditions - currently being edited.

143. In the study, the Special Rapporteur explains that norms inherited from our ancestors and our past tend in all religions to discriminate against women. As one author Katarina Tomasevski points out, we tend to label such norms as "part of the culture" and to accept their discriminatory aspects. When practices or norms that are discriminatory against women are based on or imputed to religion this excuse is considered exculpatory for in such cases there can be no discussion. From the point of view of the victims of such discrimination, however, our behaviour may not appear quite as respectable as we might wish.

144. This study reveals that there are many cultural practices - some similar or comparable, some different - to be found among several peoples having many diverse religious traditions. A number of these practices are contrary to religious teaching. Many religions have combated cultural practices which undermine the status of women. They have managed

either to abolish such practices, or to indicate the path to be followed, by limiting abuses, regulating some and tolerating others, but always taking into account constraints and resistance to change in various societies, localities and eras. In order to take account of this process that is driven and initiated by religions, and also interrelationships between cultures and religions and, consequently, the requirement of the universality of the rights of women, the responsibility of States and the international community is vital.

145. Any policy must take the cultural dimension into account; it is possible to modify negative cultural practices, regardless of whether or not they have a religious basis, without undermining the cultural specificities of peoples or the requirement of universality of human rights. However, it must always be borne in mind that the task is complicated by the fact that it is not merely a question of combating laws, regulations and policies, but also of combating cultural practices that are rooted in collective memory and in the deep ancestral beliefs of people, including women themselves, and that, sometimes these harmful practices, although often contrary to religions, are perpetuated in the name of religion, or imputed to religion.

146. Not all traditions are equally valid, and those which run counter to human rights must be combated. It is essential to distinguish between tolerance, which is necessary, and blind acceptance of customs which may involve degrading treatment or blatant violations of human rights. In order to ensure that freedom of religion does not undermine women's rights, it is vital that the right to difference which that freedom implies should not be interpreted as a right to indifference to the status of women. As Eleanor Roosevelt said, "Where, after all, do human rights begin? In small places, close to".

147. Lastly, the Special Rapporteur reiterates his recommendation that all relevant United Nations mechanisms should formulate and adopt a plan of action to combat discrimination against women imputed to religions and traditions."

E/CN.4/2004/63, paras. 138-141:

"138. Since 1996, the Commission has requested in its resolutions on freedom of religion or belief that the Special Rapporteur should, in preparing his reports, take women into consideration and bring out gender-specific abuses. The Special Rapporteur has accordingly introduced a category into his general reports, in the section on the analysis of communications, on violations affecting women.

139. The Special Rapporteur also addressed the Committee on the Elimination of Discrimination against Women in February 1998 in order to set out his approach to the situation of women with reference to religion and to initiate exchanges of views; he gave particular attention to this vulnerable group in the context of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination. In the two studies he submitted to the Preparatory Committee of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Special Rapporteur also drew attention to the situation of women.

140. Lastly, at the fifty-eighth session of the Commission, the Special Rapporteur submitted a study on freedom of religion or belief and the situation of women vis-à-vis religion and traditions (E/CN.4/2002/73/Add.2).

141. The Special Rapporteur has on several occasions recommended that the relevant United Nations mechanisms as a whole should prepare an action plan to deal with discrimination affecting women that can be imputed to religions and traditions."

A/HRC/4/21, paras. 34-39:

"A. Vulnerable situation of women

34. Since 1996, the Commission on Human Rights has persistently stressed in its resolutions the need for the Special Rapporteur to apply a gender perspective, *inter alia*, through the identification of gender-specific abuses in the reporting process, including in information collection and recommendations. Although some countries initially have been reluctant to see the nexus between the discrimination of women and the mandate of the Special Rapporteur on freedom of religion or belief, it is now accepted that the mandate-holder will raise cases or highlight situations that relate to the status of women. Furthermore, resolution 2005/40 of the Commission on Human Rights explicitly invited the Special Rapporteur to address "the situations of violations and discrimination that affect many women as a result of religion or belief".

35. The Special Rapporteur regularly sends joint urgent appeals and allegation letters on this issue together with other special procedures holders, such as the Special Rapporteur on violence against women, its causes and consequences as well as the Special Rapporteur on trafficking in persons, especially women and children. The above-mentioned framework for communications contains a subcategory devoted to the vulnerable situation of women. This subcategory details the applicable international human rights standards, e.g. articles 2 and 3 of the Convention on the Elimination of All Forms of Discrimination against Women and Human Rights Committee general comment No. 28 (2000) on the equality of rights between men and women.

36. In practice, intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims. Many of the Special Rapporteur's communications and urgent appeals concern cases where women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities. Women in many countries appear to be victims of double or triple forms of aggravated discrimination, owing to serious restrictions in the areas of education and employment. Citizenship laws in a number of countries discriminate against women and their children because these regulations stipulate that mothers have fewer rights than fathers to transmit nationality. Denying girls and women the right to wear religious symbols when they freely choose to do so may pose a problem in terms of international human rights law as well as does the forcible imposition of religious dress codes. Discrimination and practices that are harmful to the health of women and girls are also applied within their religious communities for reasons of religious traditions or those ascribed to religion. Furthermore, there have been reports of arrests, flogging, forced conversion and even murders targeted specifically at women in the context of intolerance based on religion or belief. Female members of minority religions also tend to be prone to become victims of rape and violence stirred up by organized groups.

37. The freedom of religion or belief is a fundamental human right of a non-derogable character which can be limited only under restricted conditions. Nevertheless, this right, like other human rights, cannot be used to justify the violation of other human rights and freedoms. That clause is, *inter alia*, provided by article 5 (1) of the International Covenant on Civil and Political Rights and may, in certain cases, address situations of abuses committed in the name of religion. The Human Rights Committee in its general comment No. 28 states that "Article 18 [of the ICCPR] 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." (para. 21)

38. The States' capacity and willingness to guarantee and protect *de jure* and *de facto* freedom of religion of all individuals within its jurisdiction is often the key to developing an appropriate framework for the protection of all human rights, including women's rights. It ensures that individuals can express themselves fully and dissent, even within their own religion; or, indeed, that they can choose not to have any religion at all. No right should be protected at the expense of others. Measures adopted to protect women's rights, the right to freedom of religion or belief and other human rights should take into account all individuals in society. The Special Rapporteur would like to reiterate the importance of ensuring that the right to freedom of religion or belief adds to the values of human rights and does not unintentionally become an instrument for undermining freedoms. In this regard she welcomes recent statements and conference recommendations [See the recommendations of the international conference of scholars concerning a ban on abuse of the female body which was held 22-23 November 2006 at Al-Azhar University in Cairo, Egypt (available online at: [http://www.target-human-rights.com/HP\\_00\\_aktuelles/alAzharKonferenz/index.php?p=beschluss&lang=en](http://www.target-human-rights.com/HP_00_aktuelles/alAzharKonferenz/index.php?p=beschluss&lang=en)). For a discussion of female genital mutilation see Amor's thematic study on freedom of religion or belief and the status of women from the viewpoint of religion and traditions (E/CN.4/2002/73/Add.2, paras. 104-110).] which clarify religious views on female genital mutilation.

39. In 2002, the previous mandate-holder presented his thematic study entitled "Étude sur la liberté de religion ou de conviction et la condition de la femme au regard de la religion et des traditions" to the Commission on Human Rights (E/CN.4/2002/73/Add.2). It lists the different types of discrimination against women, such as practices that are harmful to the health of women, discrimination against women within the family, attacks on the right to life, honour killings, and attacks on their dignity, such as restrictions on the education of women or their exclusion from certain functions. The document is so far only available in the original French language version and the Special Rapporteur would like to reiterate the request by the Commission on Human Rights in resolution 2004/36 that "from existing available resources and if necessary supplemented by voluntary contributions, the [study should] be translated into the other official languages of the United Nations and published as an official document".



A/65/2007, paras. 14-16 and 69:

"Women and freedom of thought, conscience and religion or belief

14. There are a number of practices that discriminate against women or are harmful to their health, such as female genital mutilation, infanticide, cruelty to widows, honour killings and discriminatory personal status laws. Many of the practices are attributable mainly to cultural interpretations of religious precepts or even conflict with the prescriptions of religions. However, certain harmful practices are claimed by religious leaders, communities or States as a religious duty by which they and their ancestors have been bound since time immemorial. All this makes it particularly difficult to challenge and adequately address such harmful practices.

15. The mandate has addressed these issues in communications to Governments, thematic reports and during country missions. [See E/CN.4/2002/73/Add.2; A/64/159, paras. 59-63; and A/HRC/10/8, paras. 25-28.] The Special Rapporteur has recommended enacting legislation to eliminate discriminatory or harmful practices and repealing laws that infringe the rights of women. With regard to female genital mutilation, for example, States should penalize those performing such harmful practices and provide assistance in securing alternative sources of income for practitioners, for example as birth attendants. In terms of preventive domestic measures, States should be encouraged to develop legal literacy and training strategies at all levels of society, with the aim of altering discriminatory cultural norms and attitudes. In this context, dialogue between the authorities and religious leaders and other members of society, including medical practitioners, political leaders, education authorities and the media, is an important prevention measure.

16. States should take effective and necessary steps to ensure enjoyment by women of their rights to equality before the law and equal protection of the law. States should adopt appropriate measures to provide criminal law protection for women against violence stemming from traditional cultural practices that pose a threat to their health and lives. With a view to achieving lasting improvements, action to eliminate violence against women should not only target the effects of the phenomenon but also its root causes. In addition, States should strengthen monitoring mechanisms, official bodies and civil society institutions which play a role in the protection and promotion of women's rights, in the light of harmful cultural practices. States should also be encouraged to withdraw reservations on religious grounds which may adversely affect or restrict international legal instruments concerning the protection of the status of women, in particular the Convention on the Elimination of All Forms of Discrimination against Women. [...]

69. The Special Rapporteur strongly believes that the mandate needs to continue highlighting discriminatory practices that women have had to suffer over the centuries and continue to do so, sometimes in the name of religion or within their religious community. It can no longer be taboo to demand that women's rights take priority over intolerant beliefs that are used to justify gender discrimination. During the Special Rapporteur's missions and interaction with religious leaders she has been repeatedly told that most religions recognize gender equality. Yet, religious zealots and their followers often launch campaigns to discriminate against women rather than support gender equality. Many women are denied basic rights of equality within the most fundamental social unit, the family. In a number of countries, such denial of their rights is supported by discriminatory legislation and justified in the name of religion or tradition. There can never be true gender equality in the public arena if women continue to be oppressed by the weight of discrimination within their homes, all too often in the name of divine sanction."

### III. VULNERABLE GROUPS

#### 2. Persons deprived of their liberty

##### Human Rights Committee general comment 22

Para. 8: "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."

##### Standard Minimum Rules for the Treatment of Prisoners

Rule 41:

"(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.

(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.

(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."

Rule 42: "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."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1999/58/Add.2, paras. 120-121 (country visit to Vietnam):

"120. The religious prisoners belonging to the different religious communities (to the Special Rapporteur's knowledge, Buddhists, Catholics, Cao Dais, Hoa Haos and Protestants) are deprived of their religious freedom in that they are prevented from practising their religion; this is contrary to international standards, in particular the Standard Minimum Rules for the Treatment of Prisoners (rules 41 and 42).

121. The amnesties recently granted by the Vietnamese authorities to prisoners of different denominations (EBUV, Catholics, Hoa Haos, Cao Dais) are welcome developments and hold promise for positive changes. After their release, however, both congregants and clergy must be able to resume their religious activities in full freedom and full citizenship (granting of a residence permit, restoration of property, etc.). The Special Rapporteur also encourages the Vietnamese Government to extend the amnesty measures to all prisoners detained for peacefully and lawfully exercising their right to freedom of opinion, conscience, expression and religion."

A/60/399, paras. 69-91:

" B. The freedom of religion or belief of detainees

1. Situations reported under the mandate

69. Over the past few years, in addition to the alarming reports of persons being arrested and held in custody because of their religious beliefs, the Special Rapporteur has received a growing number of reports of alleged violations of the right to freedom of religion or belief of persons deprived of their liberty.

70. Among the cases that were brought to her attention were complaints about conditions of detention, in particular not being allowed to have a Bible or to receive communion (see A/58/296, para. 79), punishment of Muslims for observing the Ramadan fast, *ibid.*, para. 106) as well as reports of several Muslim women prisoners complaining of "violations of their right to freedom of worship, having been punished for praying, having copies of the Koran confiscated and being forbidden to wear the veil (*ibid.*, para. 107). There were reports of prisoners being subjected to torture or ill-treatment in an attempt to force them to abandon their faith (see A/59/366, para. 30) and reports of individuals who because of their beliefs had been subjected to torture and other inhuman or degrading treatment while detained and who had not been provided with appropriate and effective remedies (*ibid.*, para. 19). Finally, the Special Rapporteur was also informed of situations where clergy were denied access to death row prisoners (*ibid.*, para. 83 (a)).

71. While these forms of violations of the right to freedom of religion or belief constitute per se a matter of great concern for the Special Rapporteur, this concern was heightened by further reports that, in certain circumstances, not only were the prisoners' rights to freedom of religion or belief violated, but their religious beliefs were used against them by prison authorities. For example, there have been reports of interrogation methods designed specifically to injure the religious feelings of persons in detention.

72. The Special Rapporteur considers that the cases reported disclose violations of the basic religious rights of prisoners and other persons in detention. In addition, they disclose acts of impermissible discrimination including torture or other forms of ill-treatment inflicted on detainees on the basis of their religion and other acts aimed at injuring the religious feelings of detainees. Such acts were committed by personnel of detention facilities as well as by other detainees.

## 2. Applicable international standards

73. Persons deprived of their liberty have the right to freedom of religion or belief. Articles 2 and 5 of the Universal Declaration of Human Rights provide, respectively, that the rights and freedoms contained in the Declaration apply to everyone without exception and that no one shall be subjected torture or to cruel, inhuman or degrading treatment or punishment. Article 10, paragraph 1 of ICCPR further provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

74. In its general comment No. 22 (1993) on Article 18 of the Covenant, which uses language similar to Article 18 of the Universal Declaration, the Human Rights Committee has stressed that "[p]ersons 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" (para. 8).

### (a) The principle of non-discrimination

75. The principle of non-discrimination, reaffirmed, *inter alia*, in article 2 of ICCPR, is a fundamental rule of international law. The Special Rapporteur notes that according to commentators,

"The dangers of discrimination become much greater in the closed conditions of a prison. Prison administrations have a responsibility to ensure that they prevent the development of sub-groups that discriminate against minorities, both within their staff and within the prison population. This may require additional vigilance on any occasion when tensions are heightened in the community outside the prison.

"Many of the prejudices which exist in society against minority groups are reflected in the world of the prison. This is no surprise since prisons to a great extent mirror the values of the society in which they exist. Prison authorities have a responsibility to ensure that there is no discrimination against any minority group of prisoners or staff. This includes institutional discrimination which is within the structure of the organisation as well as discrimination which is practised by individuals." [See Andrew Coyle, International Centre for Prison Studies, "A Human Rights Approach to Prison Management: Handbook for prison staff", London, 2002, p. 147. See also at p. 149: "Equality of treatment involves more than ensuring that there is no discrimination. It also means taking positive action to make sure that the special needs of minority groups are met. This can involve providing special diets for some prisoners on either religious or cultural grounds. Such a provision may not involve any additional cost; it may simply mean better organisation. Minority groups frequently have different religious needs. They should always be able to observe the tenets of their religion in terms of such matters as personal or communal prayers, hygiene and clothing requirements."]

76. Article 27 of ICCPR provides that "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 practice their own religion, or to use their own language."

77. The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination are also of particular relevance in this context. Article 5 of the Convention provides that: "In compliance with the fundamental obligations laid down in article 2 of this Convention, 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 [...] right to freedom of thought, conscience and religion."

78. The principle of equal rights without discrimination is confirmed in principle 5, paragraph 1, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: "These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status."

79. In terms of prisons conditions, the Human Rights Committee also affirms in its general comment No. 21 (1992), concerning the human treatment of persons deprived of liberty, that "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule.. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (para. 4).

#### (b) Religious rights of persons in detention

80. Because the opportunity to practise one's religion, either in private or in public, might easily be restricted by the fact of detention, the Standard Minimum Rules for the Treatment of Prisoners make specific reference to the need for prison authorities to allow prisoners to observe their religion and to have access to a minister of that religion.

81. According to rule 41:

"(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.

"(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.

"(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." In addition, rule 42 provides "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".

82. In this regard, one has to take into account that "[t]he status of religious representatives within prison systems can vary from country to country. In some jurisdictions, such representatives may not be allowed any access to prisons. In other jurisdictions, the religious representative or chaplain is second in authority only to the director within the prison." The Special Rapporteur would also like to emphasize that "[t]he international instruments make it clear that all prisoners are entitled to have access to a qualified religious representative." Moreover, "[i]n some systems, only representatives of the main religion in the country are allowed access to prisons. Prisoners of minority religions are not allowed to observe the requirements of their faith." However, "[t]his is in breach of the international instruments. Prisoners should not be obliged to consult a minister of religion if they do not wish to do so." [Office of the United Nations High Commissioner for Human Rights, Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials (United Nations publication, Sales No. E.04.XIV.I), Professional Training Series No. 11, 2004, chap. 20 - Religion, p. 122.]

#### (c) Religious rights and persons deprived of their liberty in the context of an armed conflict

83. The Geneva Convention relative to the Treatment of Prisoners of War and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as well as Additional Protocols I and II to the Geneva Conventions provide for an obligation to respect the religion and religious practices of persons deprived of their liberty in the context of an armed conflict, including prisoners of war, interned persons and other types of detainees. This includes the freedom to practise one's religion, the access to clergy, and the prohibition of discrimination on the basis of religion. [See, inter alia, article 3 common to the four Geneva Conventions: articles 34 and 35 of the Third Geneva Convention;

articles 76, 86 and 93 of the Fourth Geneva Convention; article 75, paragraph 1, of Additional Protocol I and articles 4 and 5 of Additional Protocol II.]

84. The Special Rapporteur also notes that "[S]tate practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts." [Jean-Marie Henckaerts et al., *Customary International Humanitarian Law, Volume I: Rules*, International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005), page 450.]

### 3. Training of personnel of detention facilities and complaint mechanisms

85. A person in custody finds him or herself in a situation of enhanced vulnerability and can therefore be an easy target for persecution. Prison authorities are given total control over the most basic activities of the inmates, from the time they will sleep to what they will eat, and how they will be able to exercise their right to freedom of religion or belief.

86. The Special Rapporteur regrets that, in certain countries, the question of freedom of religion or belief is either neglected or simply not addressed during the training of persons in charge of prisoners. Therefore, she would like to emphasize that it is crucial need to provide the personnel of detention facilities with adequate training, raising awareness and enhancing their sensitivity about their duty to promote and respect international human rights standards for the treatment of prisoners, in particular the right to freedom of religion.

87. Moreover, because of the coercive nature of these institutions, States should ensure that detention facilities are the object of intense public scrutiny in order to prevent any potential abuse and put in place effective complaints mechanisms. [See ICCPR, art. 2; Convention against Torture and other Cruel Inhumane or Degrading Treatment or Punishment, art. 13; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 33.] Anyone whose rights and freedoms, including the freedom of religion or belief, have been violated has the right to an effective remedy, determined by a competent court. Every prisoner shall have the right to make a complaint regarding his or her treatment and to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family. [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 33; Standard Minimum Rules for the Treatment of Prisoners, rule 36.]

### 4. Conclusions

88. The Special Rapporteur reiterates that, as a principle, no one should be imprisoned because of his or her religious beliefs or the exercise of his or her right to freedom of religion or belief. Moreover, a person's deprivation of liberty may not include deprivation of his or her right to freedom of religion or belief. These standards must be applied to every prisoner regardless of his or her religion or belief and to all detention facilities.

89. The Special Rapporteur also recommends that the principles pertaining to the right to freedom of religion or belief be brought to the attention of the relevant authorities and that issue be heavily stressed during the training of the officers involved. In this regard, the Special Rapporteur recommends that particular attention be given to the publication *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials* as well as its three addenda, prepared by the Office of the High Commissioner for Human Rights. [*Human Rights and Prisons: A Compilation of Human Rights Instruments concerning the Administration of Justice* (United Nations publication, Sales No. E.04.XIV.4), Professional Training Series No. 11, addendum 1, 2004; *Human Rights and Prisons: Trainer's Guide on Human Rights Training for Prison Officials* (United Nations publication, Sales No. E.04.XIV.6), Professional Training Series No. 11, addendum 2, 2004; *Human Rights and Prisons: A Pocket Book of International Human Rights Standards for Prison Officials* (United Nations publications, Sales No. E.04.XIV.5), Professional Training Series No. 11, addendum 3, 2004.]

90. The religious beliefs of a detainee should under no circumstances be used by the authorities against the detainee in order, for instance, to extract information from him or her.

91. Finally, the Special Rapporteur would like to stress that the respect of religious freedom has an impact that is not limited to the prison walls. Violations of the religious rights of inmates may also have an important impact outside the prison. This is illustrated by recent events that caused the death of several people following allegations of desecration of the Koran in detention facilities. "

E/CN.4/2006/120, paras. 57-65 (report on the situation in Guantánamo Bay):

"A. Applicable international standards

57. The right to freedom of religion or belief is protected by article 18 of ICCPR and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In its general comment No. 22, the Human Rights Committee interprets article 18 to the effect that "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". [Human Rights Committee, general comment No. 22 (1993), CCPR/C/21/Rev.1/Add.4, para. 8.] A person deprived of his or her liberty cannot be deprived of his or her right to freedom of religion or belief. These standards must be applied to every person, regardless of their religion or belief, and in all detention facilities. [In her previous report to the General Assembly (A/60/399), the Special Rapporteur analysed, in the context of her mandate, the international standards applicable to persons deprived of their liberty.]

58. Article 18 (3) of ICCPR provides that "[f]reedom 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". [ICCPR, art. 18 (3). See similarly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, art. 1 (3) (25 November 1981).] On these limitations, 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". [General comment No. 22, supra note 83, para. 8.] Moreover, under article 4 of ICCPR, the right to freedom of religion or belief may in no circumstances be subject to derogation.

59. Finally, the Third and Fourth Geneva Conventions oblige parties to respect the religion and religious practices of persons deprived of their liberty in the context of an armed conflict, including prisoners of war, interned persons and other types of detainees. This includes the freedom to practise one's religion, the access to clergy, and the prohibition of discrimination on the basis of religion. [See, inter alia, article 3 common to the four Geneva Conventions; articles 34 and 35 of the Third Geneva Convention; articles 76, 86 and 93 of the Fourth Geneva Convention; article 75, paragraph 1, of Additional Protocol I and articles 4 and 5 of Additional Protocol II.]

B. Reported human rights allegations

60. The review of a number of official documents and reports as well as information obtained on the basis of interviews reveal that certain interrogation techniques that were especially degrading for members of certain religions were authorized by the United States authorities. [Techniques such as the use of dogs were explicitly authorized as part of the "First Special Interrogation Plan" (pp. 13 and 14) - see in Army Regulation 15-6, Final Report: Investigation into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba Detention Facility (1 April 2005, amended 9 June 2005) (The Schmidt Report).] Other treatments which may have been specifically designed to offend the religious sensitivities of the detainees, were repeatedly used by those involved in the custody, interrogation and treatment of detainees (e.g. use of female interrogators, who performed, inter alia, "lap dances during interrogations"). [A technique that the Schmidt Report, supra note 88, found to be authorized (FM 34-52) and approved by SECDEF as mild, non-injurious physical touching. The same report found the rubbing of perfume to have been authorized, as well as leaning over detainees and whispering in their ears that the situation was futile. In addition, the wiping of menstrual blood on a detainee in March 2003 was considered authorized to show the futility of the situation.] It was also reported that these techniques were used before prayer times and that in some cases, detainees were not allowed to wash themselves before and therefore were not able to pray.

61. The list of officially approved interrogation techniques in force today [Secretary of Defense memorandum for the commander, US Southern command of 16 April 2005 on "Counter Resistance Techniques in the War on Terror". See supra, para. 50.] allows for the removal of religious items (e.g. the Holy Koran). This constitutes an impermissible limitation on the right to freedom of religion or belief of detainees.

62. There was particular concern at reports of possible mishandling of religious objects, such as the Holy Koran. The Special Rapporteur on freedom of religion or belief sent a communication on this matter to the Government of the United States on 23 May 2005. The Government reply of 18 August 2005 provided detailed information on the investigations that were conducted following these allegations, as well as on the existing measures and guidelines for the personnel of the detention facilities. As a result of their investigations, the Government indicated that it had identified five confirmed cases of mishandling of the Holy Koran by guards and interrogators, either intentionally or unintentionally, including kicking and stepping on the Holy Koran. [Response of the United States of America, dated 21

October 2005 to the inquiry of the Special Rapporteurs dated 8 August 2005 pertaining to detainees at Guantánamo Bay, p. 21 et seq.]

63. A number of detainees have alleged that they were subjected to forced grooming, including shaving of beards, heads and eyebrows.

64. Further concerns were raised by the removal of a military Muslim cleric from his position at Guantánamo Bay. He later was arrested on suspicion of espionage and held in solitary confinement for 76 days. It has been alleged that he has not been replaced, leaving the Muslim detainees unattended, in violation of the Standard Minimum Rules for the Treatment of Prisoners. [Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.]

65. Finally, there are also concerns about reports that the United States Government has, either implicitly or explicitly, encouraged or tolerated the association of Islam and terrorism, for example, by interrogating detainees on the extent of their faith in Islamic teachings."

A/64/159, paras. 19-21 and 66:

"19. In the past five years, the Special Rapporteur has received alarming reports about persons being arrested and detained because of their religious beliefs on the basis of discriminatory laws, denial of due process or a strong bias by law enforcement against religious minorities. She has also received worrying reports of alleged violations of the right to freedom of religion or belief of persons who are deprived of their liberty, who find themselves in a situation of enhanced vulnerability and can therefore be an easy target for harassment. The Special Rapporteur has detailed some situations reported under the mandate and the applicable international standards in her report to the General Assembly at its sixtieth session. [See A/60/399, paras. 69-91.]

20. The religious rights of persons deprived of their liberty must be fully respected and protected. There is a real risk that the circumstances of detention, as well as specific policies by prison authorities, may result in undue restrictions of the opportunity of detainees to practise their religion or belief in private or in public. The Human Rights Committee has stressed that 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. [Ibid., para. 8.] Detainees should also be allowed access to qualified representatives of any religion, while they should not be obliged to consult a minister of religion if they do not wish to do so. Furthermore, the religious beliefs of a detainee should under no circumstances be used by the authorities against the detainee in order, for instance, to extract information from him or her.

21. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule which must be applied without distinction of any kind, such as religion. The Special Rapporteur would like to emphasize that the dangers of discrimination, either in an institutionalized form or through discriminatory practices, become much greater in the closed conditions of a detention facility. The relevant authorities have a responsibility to ensure that there is no discrimination against any prisoner or staff member belonging to a minority group. In order to prevent any potential abuse, States should ensure that detention facilities are the object of intense public scrutiny and put in place effective complaints mechanisms. [...]

66. With regard to persons deprived of their liberty, the Special Rapporteur would like to emphasize that it is crucial to provide the personnel of detention facilities with adequate training and raise their awareness about the duty to promote and respect international human rights standards for the treatment of detainees, in particular with regard to their right to freedom of religion or belief. The State needs to bring the applicable standards to the attention of the relevant authorities and personnel of detention facilities and to enhance their sensitivity that the effects of violations of the religious rights of detainees may not be confined to the detention facilities but can also impinge on the overall climate of religious tolerance, even at the international level."

### III. VULNERABLE GROUPS

#### 3. Refugees

##### Convention relating to the Status of Refugees

Art. 4: "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."

Art. 33: "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."

##### General Assembly resolution 65/211

"8. Recognizes with concern the situation of persons in vulnerable situations, including [...] refugees, asylum-seekers and internally displaced persons [...], as regards their ability to freely exercise their right to freedom of religion or belief;"

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/62/280, paras. 38-63:

Situation of refugees, asylum-seekers and internally displaced persons

##### 1. Cases addressed previously by the mandate

38. The mandate frequently receives reports of the violation of the right to freedom of religion or belief of refugees, asylum-seekers and internally displaced persons, who have fled their s or have been expelled from their own country. For illustrative purposes, a non-exhaustive list of cases raised previously with Governments concerning these individuals or groups is given below. Past communications have not always sought to categorize cases strictly. In particular, it is noted that a person is a refugee within the meaning of the 1951 Convention relating to the Status of Refugees as soon as he/she fulfils the criteria contained in the definition, which would necessarily occur prior to the time at which refugee status is formally determined. [See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (HRC/IP/4/Eng/rev.1), January 1992, para. 28.]

##### (a) Bangladesh

39. In 2002, the Special Rapporteur wrote to the Government stating that since the 2001 elections religious minorities, especially Hindus, had been victims of repeated attacks, including dozens of killings and the rape of Hindu girls. Hundreds of families had reportedly been expelled from their land and had found refuge in India, and numerous attacks on Hindu temples were reported. [A/57/274, paras. 17-20 and Government's reply in E/CN.4/2003/66, para. 17.]

##### (b) Bhutan

40. In a letter addressed to the Government in 1994, the Special Rapporteur expressed concern that Christianity was allegedly banned and Christians were reportedly ill-treated, and that some Christians were reported to have been expelled in 1993 and to have sought refuge in Nepal. [E/CN.4/1995/91, communication and Government's reply, p. 21.]

##### (c) India

41. Several communications were sent to the Government regarding inter-religious clashes between Hindus and Muslims in Gujarat, leaving many dead. A communication sent in 1993 to the Government raised the cases of 250,000 Hindus who had been forced to flee their s to camps in northern India and of 50 temples damaged in the course of the conflict. [E/CN.4/1994/79, para. 55 and Government's reply, para. 56.]

##### (d) Indonesia

42. Several communications were sent to the Government regarding the forced conversion of Christians on the islands of Keswui and Teor in the Moluccas (in the context of violence which also left thousands dead and created hundreds of



thousands of internally displaced persons) and attacks on Christians, including destruction of their places of worship in Ambon. [A/56/253, paras. 43-45 and Government's reply, para. 46.]

(e) Kazakhstan

43. A communication sent in 2006 to the Government concerned a citizen of Uzbekistan living in Kazakhstan who was recognized as a refugee under the 1951 Convention on religious grounds. He was reportedly at risk of being returned to Uzbekistan. [A/HRC/4/21/Add.1, paras. 211-213; no reply from the Government.]

(f) Malawi

44. A communication sent in 1992 addressed to the Government expressed concern that 280 refugees from Mozambique who were followers of the Jehovah's Witnesses faith had been expelled from Malawi for reportedly expressing their religious beliefs to others. [E/CN.4/1993/62, para. 43; no reply from the Government.]

(g) Myanmar

45. In 1992, a letter was sent to the Government concerning the Rohingya citizens of Myanmar who, as Muslims, were reportedly subjected to extrajudicial execution, torture, arbitrary detention, forced disappearances, displacement, and the destruction of towns and mosques. Some 300,000 Rohingyas were reported to have fled to Bangladesh by the end of April 1992 and several thousand were said to have been killed by border guards. [E/CN.4/1993/62, para. 45 and Government's reply, para. 46.]

(h) Saudi Arabia

46. In 1994, in a communication to the Government, the Special Rapporteur raised concerns that Iraqi refugees in the Rafha camp were subjected to restrictions on their religious freedom. The camp occupants were reportedly split up according to their religious beliefs and a document claiming that the Shiites were apostates and should be converted to Sunni Islam was said to have been circulated in the camp. [E/CN.4/1995/91, pp. 16 ff.; no reply from the Government.]

(i) Sri Lanka

47. In several communications sent to the Government the issue of attacks on places of worship resulting in deaths and injuries, as well as the expulsion of all Muslims by the Liberation Tigers of Tamil Eelam from areas under their control were raised. [E/CN.4/1995/91, pp. 81-82 and Government's reply, pp. 82 ff.]

(j) Sudan

48. In his country report on the Sudan, the Special Rapporteur noted that in camps for internally displaced persons, mainly in the Khartoum area, the authorities had prohibited unauthorized places of worship for non-Muslims and had proceeded to demolish tents and buildings without providing compensation. [A/51/542/Add.2, para. 87 and Government's reply, para. 89.]

(k) United Kingdom of Great Britain and Northern Ireland

49. In 2005, several mandate holders sent a joint urgent appeal concerning a national of China who was at risk of imminent forcible return following the rejection of his asylum application. He had allegedly been involved in Falun Gong activities prior to his arrival as a student in the United Kingdom and continued to be involved, including in protests against the persecution of Falun Gong practitioners in front of the Chinese consulate in Manchester. In view of allegations of ill-treatment in his country and threats relating to his practice of Falun Gong, the mandate holders expressed concern that he might be at risk of torture or other forms of ill-treatment should he be returned. [E/CN.4/2006/5/Add.1, paras. 390-391 and Government's reply, para. 392.]

(l) Viet Nam

50. Several communications were sent in 2003 and 2004 to the Government concerning a Vietnamese monk recognized as a refugee in Cambodia who was returned to Viet Nam and convicted on charges of fleeing abroad to oppose the Government, having been a member of the outlawed Unified Buddhist Church of Viet Nam. [Summary of the exchange of letters in E/CN.4/2004/63, paras. 101-102 and E/CN.4/2005/61/Add.1, paras. 348-350.]

(m) Yemen

51. A letter was sent in 2000 to the Government concerning a Somali refugee resident in Yemen who was reportedly condemned to death by a court for apostasy, although the court stated that the death sentence would not be carried out if he reconverted to Islam. He was subsequently expelled from the territory of Yemen as an alternative to the continuation of the Yemeni trial proceedings on charges of apostasy. [E/CN.4/2001/63, para. 147 and Government's reply, para. 148.]

## 2. Legal framework

52. Universal human rights set out in the Universal Declaration of Human Rights of 1948, including the right to freedom of religion or belief, apply to all human beings everywhere. In addition, refugees have specific rights and duties in their country of refuge according to international refugee law.

53. The term “refugee” as defined in article 1 A (2) of the 1951 Convention (as amended by the 1967 Protocol) means any person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. A person who is seeking to be recognized as a refugee is an asylum-seeker. Article 4 of the 1951 Convention provides: “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”. Furthermore, article 33 of the 1951 Convention outlines the obligation of non-refoulement: “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.” No reservation is permitted to either article 4 or article 33 of the 1951 Convention.

54. The term “internally displaced persons” refers to persons or groups of persons who have been forced or obliged to flee or to leave their s or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) set out a basic normative framework, applying the provisions of international human rights and humanitarian law, as well as refugee law by analogy, to victims of internal displacement. Principle 5 provides that “[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”. The Principles “shall be applied without discrimination of any kind, such as ... religion or belief” (principle 4). Internally displaced persons, whether or not they are living in camps, shall not be discriminated against, as a result of their displacement, in the enjoyment of “the rights to freedom of thought, conscience, religion or belief, opinion and expression” (principle 22). Furthermore, “[e]ducation should respect their cultural identity, language and religion” (principle 23).

## 3. Interpretative framework for refugee claims based on religion

55. In this section, the Special Rapporteur would like to highlight the existing interpretative framework for refugee claims based on religion. In 2004, the Office of the United Nations High Commissioner for Refugees (UNHCR) issued “Guidelines on international protection: religion-based refugee claims under article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees” (“the Guidelines”, HRC/GIP/04/06). The Guidelines note that although religion was not defined in the 1951 Convention, its use can be taken to encompass freedom of thought, conscience or belief by reference to the pertinent international human rights standards. Furthermore, the Guidelines explain that claims based on religion may involve one or more of the elements of “religion as a belief”, “religion as an identity” and “religion as a way of life” (paras. 5-8). The term “belief” is interpreted in the Guidelines to include theistic, non-theistic and atheistic beliefs. [A general discussion of theistic, atheistic and non-theistic beliefs can be found below in section III. B.] In the context of establishing an asylum-seeker’s “religion or belief”, the Guidelines provide that it may not be necessary for him or her to know or understand anything about religion if he or she has been identified by others as belonging to that group and fears persecution as a result.

56. The Guidelines distinguish between persecution and discrimination, since the latter may not necessarily rise to the level required for recognition as a refugee. A distinction is made between discrimination resulting merely in preferential treatment and discrimination amounting to persecution because, in aggregate or of itself, it seriously restricts the claimant’s enjoyment of fundamental human rights. They also provide that the existence of discriminatory laws will not normally in itself constitute persecution. Moreover, an assessment of the implementation of such laws (for example regarding apostasy or blasphemy) and their effect is in any case crucial to establishing persecution. An age, gender and diversity analysis of the impact of the human rights violation feared on the individual concerned is also necessary (paras. 17-19).

57. The Guidelines provide that persecution for reasons of religion may therefore take various forms. Depending on the particular circumstances of the case, including the effect on the individual concerned, examples could include prohibition of membership of a religious community, of worship in community with others in public or in private, of

religious instruction, or serious measures of discrimination imposed on individuals because they practise their religion, belong to or are identified with a particular religious community, or have changed their faith. Equally, in communities in which a dominant religion exists or where there is a close correlation between the State and religious institutions, discrimination on account of one's failure to adopt the dominant religion or to adhere to its practices, could amount to persecution in a particular case. Persecution may be inter-religious (directed against adherents or communities of different faiths), intra-religious (within the same religion, but between different sects, or among members of the same sect), or a combination of both. The claimant may belong to a religious minority or majority. Religion-based claims may also be made by individuals in marriages of mixed religions (para. 12).

58. The Special Rapporteur has referred to the right to conscientious objection to military service on numerous occasions when examining the application of domestic legislation vis-à-vis persons in their countries of origin seeking to exercise such a right. This right is also addressed by the Guidelines in the slightly different context of when a refusal to perform military service may give rise to a well-founded fear of persecution for the purposes of the 1951 Convention. Citing provisions of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, [See UNHCR Handbook, op. cit., para. 170.] the Guidelines provide that refugee status may be established if the refusal to serve is based on genuine political, religious, or moral convictions, or valid reasons of conscience. A law of general application may be persecutory where it impacts differently on particular groups, where it is applied in a discriminatory manner, or where the punishment is excessive or disproportionately severe or where it cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions (para. 26). [See also *ibid.*, para. 169.] Alternatives to community service would not usually be the basis of a claim unless they are so excessively burdensome as to constitute a form of punishment (*ibid.*).

59. Under international human rights law the legal basis of the right to conscientiously object may derive from article 18 of the International Covenant on Civil and Political Rights. The Human Rights Committee affirmed that "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". [Human Rights Committee, general comment No. 22 (1993), reprinted in HRI/GEN/1/Rev.8, sect. II (para. 11). See also the views of the Human Rights Committee concerning communications Nos. 1321/2004 and 1322/2004 (Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea) (CCPR/C/88/D/1321-1322/2004)]. In 1998, the Commission on Human Rights encouraged States, subject to individuals satisfying the requirements of the definition of a refugee as set out in the 1951 Convention, "to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service. [Official Records of the Economic and Social Council, 1998, Supplement No. 23 (E/1998/23), chap. II, sect. A, resolution 1998/77, para. 7.] Furthermore, international and regional organizations have pointed out that persons performing military service may develop conscientious objections over time. [*Ibid.*, preamble. See also the Special Rapporteur's observations in E/CN.4/2006/5/Add.1, paras. 138-139 as well as Parliamentary Assembly of the Council of Europe recommendation 1518 (2001), para. 5 (i).]

60. A report by the Office of the United Nations High Commission for Human Rights on best practices in relation to conscientious objection (E/CN.4/2006/51, para. 58) states:

UNHCR has observed that a significant number of States are ready to provide international protection to conscientious objectors, draft evaders and deserters. States have recognized that conscientious objection, which may, *inter alia*, be expressed through draft evasion and desertion, can arise from a political opinion or a religious belief, that conscientious objection can in itself be regarded as a form of political opinion and, more rarely, that objectors or a particular class of them can constitute a particular social group.

61. Forced conversion to a religion is a serious violation of the fundamental human right to freedom of thought, conscience and religion. According to the Guidelines, forced conversions would often satisfy the objective component of persecution but the claimant would still need to demonstrate a subjective fear that the conversion would be persecutory to him or her personally, for example if he or she had a clear identity or way of life in relation to a different religion or had chosen to be disassociated from any religious denomination or community (para. 20).

62. Under the subheading "Forced compliance or conformity with religious practice" the Guidelines consider, for example, mandated religious education that is incompatible with the religious convictions, identity or way of life of the child or the child's parents, and an obligation to attend religious ceremonies or swear an oath of allegiance to a particular religious symbol. The Guidelines state that such examples of forced compliance could amount to persecution if it becomes an intolerable interference with an individual's own religious beliefs, identity or way of life and/or if non-compliance would result in disproportionate punishment (para. 21).

63. Individuals converting after their departure from their country of origin may have the effect of creating a refugee sur place claim. The Guidelines provide that in those circumstances particular credibility concerns tend to arise and a rigorous in-depth examination of the circumstances and genuineness of the conversion will be necessary. Self-serving activities do not create a well-founded fear of persecution on a Convention ground if the opportunistic nature of the activities will be apparent to all and serious adverse consequences would not result if the person were returned. The critical assessment is whether the claimant has a well-founded fear of persecution at the time of the examination of the claim and what the consequences of return to the country of origin would be (paras. 34-36). The Special Rapporteur has recently emphasized (see A/HRC/6/5, para. 31) that a post-departure conversion should not give rise to a presumption that the claim is fabricated and the immigration authorities should evaluate the genuineness of the conversion on a case-by-case basis taking into account the applicant's past and present circumstances."

E/CN.4/2005/61, para. 17:

"17. The legal framework includes principles specified in: [...] (g) The Convention relating to the Status of Refugees, in particular article 4, which provides that refugees will be given treatment at least as favourable as that of nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children and article 33, which prohibits the expulsion of a refugee to a country where his life or freedom would be threatened on account of his or her religion;"

A/64/159, paras. 22-24 and 67:

"22. The mandate has also reported about the vulnerable situation in terms of freedom of religion or belief of refugees, asylum-seekers and internally displaced persons, who have fled their homes or have been expelled from their own country. [See A/62/280, paras. 38-63, A/62/280/Corr.1 and A/HRC/6/5, paras. 30-31.] The Special Rapporteur notes that whereas the refugee definition in the 1951 Convention relating to the Status of Refugees refers to "well-founded fear of being persecuted for reasons of [...] religion", the approaches taken seem to differ significantly in applying the term "religion" or when determining what constitutes "persecution" in this context. The Special Rapporteur has received reports indicating that some asylum adjudicators ask faith-testing questions with doubtful validity or limited justification. In this regard, the Special Rapporteur would like to remind that the risk of persecution is not necessarily dependent on detailed substantive knowledge of the applicant's religion because individuals may also find themselves persecuted for imputed religious beliefs.

23. The Special Rapporteur would like to emphasize that religion-based refugee claimants should not be expected by asylum adjudicators to hide their religion or to practise in secret in their countries of origin in order to avoid persecution. It is an integral part of the right to freedom of religion or belief to be able to manifest, publicly and in community with others, one's religion or belief in worship, observance, practice and teaching. The Special Rapporteur also shares the concerns that the concept of internal flight alternative can sometimes prove particularly problematic for religion-based asylum claims and might ultimately lead to undesirable segregation of religious groups in particular areas of the countries of origin.

24. Another particular problem in terms of freedom of religion or belief may arise for those persons who, after having arrived in the country where they are seeking asylum, convert to a religion which would make them prone to persecution in their country of origin if they were to be returned. In the assessment of such asylum applications, suspicions often arise regarding the sincerity and credibility of asylum claims. However, the Special Rapporteur would like to reiterate that such post-departure conversion should not give rise to a presumption that the claim is fabricated, and the immigration authorities should evaluate the genuineness of the conversion on a case-by-case basis taking into account the specific past and present circumstances of the applicant. [...]

67. Refugees, asylum-seekers and internally displaced persons also find themselves in a situation of particular vulnerability. The Special Rapporteur would like to refer to paragraph 80 of the outcome document of the Durban Review Conference which reiterates that the national, regional and international response and policies, including financial assistance, towards refugee and internal displacement situations in different parts of the world, should not be guided by any form of discrimination prohibited by international law. For the whole asylum determination process it seems crucial to have accurate, objective and up-to-date information on the countries of origin of asylum-seekers and on any past or present religious persecution. The Special Rapporteur would like to emphasize that asylum adjudicators should not exclusively base their decisions on preselected sources, especially when the situation in the country of origin or the region in question has allegedly changed since they were last updated. Furthermore, the Special Rapporteur would like to emphasize that well-trained, reliable and impartial interpreters are needed for asylum interviews in order to avoid serious disadvantages for the asylum-seekers."

### III. VULNERABLE GROUPS

#### 4. Children

##### CRC

Art. 14 (1): "States Parties shall respect the right of the child to freedom of thought, conscience and religion."

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;"

Art. 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

##### 1981 Declaration of the General Assembly

Art. 5 (3): "The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men."

Art. 5 (5): "Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1987/35, paras. 67-71:

"67. As far as the organization of family life in accordance with the religion or belief chosen is concerned, and bearing in mind, as specified in article 5, paragraph 1, the moral education in which the parents or legal guardians believe the child should be brought up, several examples clearly show that this principle is not always respected. In a certain country, for instance, parents belonging to a particular ethnic and religious community are forcibly prevented, in spite of their beliefs, from performing certain rites on their children, such as the circumcision of male children, or from giving them names in keeping with their religious traditions. In another country, girls from families of a certain religious minority are sometimes forced, against the wishes of their families and their own will, to marry members of the majority religion and to adopt their faith. A further example is provided by a country where the members of an unrecognized religious community, unable to assert, in the eyes of the authorities, the legitimacy of the marriage ceremony performed in accordance with their religious rites, are in an irregular legal situation, their children being regarded as illegitimate. In the same country, several cases have been reported of the forcible abduction from their parents of children belonging to this religious community. In another country, it would appear that the authorities have separated children from parents belonging to a religious sect not officially registered, in order to prevent parents from bringing up their children in accordance with their religious beliefs.

68. The right of children to have access to education in the matter of religion or belief in accordance with the wishes of his parents or guardians is frequently infringed. Thus, in several countries, the State places certain restrictions on the enjoyment of this right. In one case, religious instruction for children is tolerated only in private within the family; restriction also occur in practice when, for instance, the teaching of the religious language of a minority is not tolerated officially for the members of this religious minority. In another case, religious instruction is strictly controlled by the authorities. Elsewhere, a ministerial decision stipulates that no religious school offering instruction in the precepts of a particular faith may function until it has been assigned a specific location and obtained ministerial permission, and that all such schools are subject to control by the authorities. In another country, the local publication or importation of holy writings forming the basis of religious instruction is forbidden. In yet another country, the ban on all administrative and

community activities relating to a particular faith has brought about the dissolution of the classes in which the followers of this faith taught children the principles and precepts of their religion.

69. Sometimes, children are not only denied access to the religious education in accordance with the choice of their parents, but are also compelled to receive teaching on a religion or belief against their wishes. Thus, in several countries, an attempt is being made to inculcate in children, within the general framework of school programmes, values inherent in a particular ideology or belief, which may be incompatible with the religious beliefs of the parents. Religious indoctrination may at times be taken to an extreme degree. In one country, pupils belonging to a outlawed religious community were abducted by their religious education instructors in school, where instruction is given on the officially recognized faith, and forcibly converted to that faith. In another country, pupils belonging to a religious minority were compelled to attend religious instruction courses in a faith different from their own. Finally, there is the case of a country where religious instruction was made compulsory in kindergarten, arousing protests from many educational organizations.

70. As far as the provisions of article 5, paragraph 3, of the Declaration are concerned, it has already been possible to conclude, when studying a number of examples of discriminatory treatment based on religion or belief, that the children of believers are subject to discrimination of various kinds, such as ill-treatment and humiliation at school, expulsion from school or a ban on embarking on higher education, pressure to deny their faith, and even in certain extreme cases imprisonment, torture and summary execution.

71. The tacit or explicit encouragement of the authorities of certain countries to denigrate the values and ideas embraced by certain religions or beliefs has already been mentioned. It is obvious that such conduct is hardly compatible with the provisions of article 5, paragraph 3, of the Declaration concerning education based on understanding, tolerance and respect for freedom of religion or belief of others."

E/CN.4/2002/73/Add.2, paras. 104-110:

"1. Female genital mutilation

104. Of all practices harmful to the health of women, the most known and the most publicized in the media is female genital mutilation or female circumcision or excision. It has long received the attention of international human rights organizations and bodies and is one of the main focuses of the mandate of the Special Rapporteur on traditional practices affecting the health of women and children. It involves removal of all or part of the female genital organs. WHO figures quoted by the Special Rapporteur indicate that there are estimated to be between 85 and 115 million sexually mutilated women and girls in Africa and Asia. According to the same sources, two million girls are at risk of undergoing genital mutilation each year (E/CN.4/Sub.2/1995/6, par. 21). This practice, whose forms vary from country to country, is reportedly prevalent in 26 African countries, in countries of Asia and among immigrant communities in Europe and America and also in Jewish Ethiopian and Bedouin communities in Israel. [See report on traditional practices ... (E/CN.4/Sub.2/1998/11, paras. 55, 56 and 59).] Yet the historical origins of female genital mutilation are shrouded in mystery. What seems certain is that the practice, which has stood the test of time, is not linked to any particular religion. It is thought to have been invented by the Pharaohs, who performed it to preserve their wife's chastity when they went to war. It appears to have been practised by the Phoenicians, the Hittites, the Ethiopians, pagan peoples in the tropical zones of Africa and in the Philippines, the Incas in Mexico and ethnic groups in Amazonia and Australia. Some peoples believe that humans are naturally born bisexual. The man's prepuce has to be removed to give him his masculinity and the woman's masculine organ, the clitoris, has to be excised to ensure her full femininity. [See Samuel, op. cit. (note 14 above), p. 45. See also the website [www.cam.org/~rqasf/sp07\\_02.html](http://www.cam.org/~rqasf/sp07_02.html).] It was apparently also practised by physicians in nineteenth-century Europe to treat mental disorders in women. [See report on traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/1999/14, paras. 6 and 7).]

105. As observed by the Special Rapporteur on traditional practices, female genital mutilation, which has been performed by peoples and societies across the ages and continents, is rooted more in a "set of beliefs, values and cultural and social behaviour patterns governing the lives of the societies concerned" (E/CN.4/Sub.2/1999/14, para. 8). That no doubt explains the emotional charge surrounding beliefs associated with this practice, the difficulty of speaking about it, including in the countries involved and in relevant international organizations, and hence the need for caution in relation to any measures aimed at its eradication. [On the difficulty of addressing and examining the issue, especially in the context of the Commission on Human Rights, see report on traditional practices ... (E/CN.4/Sub.2/1999/14, paras. 10 ff.).]

106. Female genital mutilation is today practised by diverse communities belonging to different religious traditions. [See, inter alia, the examples of the Sudan, Mali, the Central African Republic and Côte d'Ivoire in Th. Lococh, "Pratiques, opinions et attitudes en matière d'excision en Afrique", *Revue Population*, 1998, No. 6, p. 1,227. Regarding

Cameroon, see Report of the Human Rights Committee (A/55/40, vol. I, para. 197).]. Its most extreme form, infibulation or Pharaonic circumcision, entails the removal of the clitoris and labia minora. This form, which is considered the most cruel and most harmful to the health of girls, [In some cultures, the labia minora are fastened together by means of thorns, silk thread or slivers of wood. The girl has to lie out, legs bound, for forty days to enable scar tissue to form. A tiny opening is retained to allow the passage of urine and menstrual blood. On the wedding night, the woman is opened up by her husband. Women are often reinfibulated after giving birth for as long as the husband so demands.] is believed to be practised in Somalia, Djibouti, the Sudan, Mali, Egypt and Ethiopia. Partial excision or clitoridectomy or Sunna circumcision is reportedly practised in West, Central and East Africa. [Excision is wrongly called female "circumcision". The clitoris is not a piece of skin but a vital part of the female genital organs. The only conceivable masculine equivalent would be removal of the penis!]. Asian countries such as Yemen, Indonesia and Malaysia practise female excision but certain communities follow a symbolic ritual and in some cases make a simple incision without carrying out any mutilation. [See report on traditional practices ... (E/CN.4/Sub.2/1999/14, para. 36).].

107. The age at which female genital mutilation is carried out varies between countries and cultures. In the case of Falasha Jews in Ethiopia and the Sudan, it appears to be when an infant is a few days old, while in many countries the age is between 7 and 15 years depending on the rituals involved, which are sometimes complex. Female genital mutilation is regarded as a rite of passage from childhood to womanhood, i.e. initiation into adulthood, or as a means of reducing sexual desire and preserving the virginity of future brides. In some communities it is viewed as a rite of purification. [Including among Bedouin tribes in the south of Israel. See report on traditional practices ... (E/CN.4/Sub.2/1998/11, para. 56).]. Social pressures and cultural constraints often drive girls and their mothers to subject themselves to such practices in order to be fully accepted into their community. [E/CN.4/Sub.2/1995/6, para. 36.]. According to the Special Rapporteur on traditional practices, it appears that differences between countries in the age at which female genital mutilation takes place are linked to the existence or otherwise of legislation banning the practice. [Ibid., paras. 22 and 23.]. In other countries, it is reported to have totally disappeared as a result of girls' development and education. [For example, in Qatar (E/CN.4/Sub.2/1998/11, para. 66).].

108. Female genital mutilation is wrongly associated with religion, in particular Islam. No religious text requires believers to perform it. It appears to be practised by peoples of different religions, including Muslims, Catholics, Protestants, Copts, Jews and animists, and non-believers. [See the website [www.cam.org/~rqasf/sp07\\_02.html](http://www.cam.org/~rqasf/sp07_02.html)]. It is one of many examples showing that the argument of cultural or religious diversity can be both dangerous and erroneous. When practised by Muslims, female genital mutilation is presented and asserted as a religious act. [This is the case, for example, in the Sudan (see note 11 above)]. The practice is, however, common among non-Muslims and many Muslim communities are not only unaware of it but also shocked at the idea that it can even remotely be regarded as having a basis in religion. [The same reasoning can be transposed to other practices such as dowry, polygamy, treatment of adulterous women, etc.].

109. In Egypt, because of religious extremism, a 1996 Ministry of Health decree banning the medical profession from practising female genital mutilation was revoked in 1997 by an administrative court. The Council of State finally ruled on the matter in an authoritative decision dated 28 December 1997 rescinding the lower court's decision and stating that it was "henceforth prohibited to practise excision even in cases where the girl and her parents give their consent." "Circumcision of girls is not a right of the individual under the Sharia ...; nothing in the Koran authorizes it" (E/CN.4/Sub.2/1999/14, para. 41). Such a decision obviously has important implications since the ban applies even in the case of the victim's or her parents' consent. This is in fact an issue of public policy which conflicts with harmful cultural traditions. Moreover, the Council of State clearly distinguished between religious prescriptions and harmful cultural traditions based on misinterpretation or political manipulation of religion.

110. Female genital mutilation has serious effects on women's health and lives. It carries a high risk of death or disability and often causes vaginal haemorrhage and many genito-urinary and obstetric complications as well as long-term psychological problems. [See report of CEDAW (A/54/38/Rev.1, para. 12) and preliminary report of the Special Rapporteur on traditional practices ... (E/CN.4/Sub.2/1995/6, para. 45).]. Its practice and that of polygamy or marital rape also expose girls and women to an increased risk of contracting HIV/AIDS and other sexually transmitted diseases (A/54/38/Rev.1, para. 18)."

A/60/399, paras. 52-54:

"52. [...] Since the choice of religion or belief is part of the forum internum, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual's desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.

53. In the cases where non-State actors interfere with the right to "have or adopt a religion or belief of [one's] choice", the requirements of article 18 of the Covenant and other relevant international instruments also entail a positive obligation for the State to protect persons from such interference. The Special Rapporteur wishes to re-iterate in this regard that States must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practise the religion or belief of their choice free of coercion and fear. If non-State actors interfere with this freedom, and especially the freedom to change or to maintain one's religion, the State is obliged to take appropriate measures to investigate, bring the perpetrators to justice and compensate the victims (see also E/CN.4/2005/61, para. 42).

54. Finally, the Special Rapporteur notes that with regard to children, the choice of religion is restricted by the parents' rights to determine their child's religion up to an age where the child is capable of doing so on his/her own, in accordance with article 18, paragraph 4, of the Covenant."

E/CN.4/2006/5/Add.4, paras. 98-104 (country visit to France):

"The question of religious symbols in the public school system

98. Law 2004-228 of 15 March 2004 on the wearing of conspicuous religious symbols in public schools is widely supported by the political apparatus as well as by the population. Although the law is intended to apply equally to all persons, the Special Rapporteur is of the opinion that it has mainly affected certain religious minorities, and notably, people of a Muslim background. The Special Rapporteur believes that the wide political support for the law has conveyed a demoralizing message to religious minorities in France.

99. The law is appropriate insofar as it is intended, in accordance with the principle of the best interests of the child, to protect the autonomy of minors who may be pressured or forced to wear a headscarf or other religious symbols. However, the law denies the right of those minors who have freely chosen to wear a religious symbol to school as part of their religious belief.

100. The Special Rapporteur is of the opinion that the direct and, in particular, the indirect consequences of this law may not have been thoroughly considered. Although many interlocutors at the governmental level are satisfied with the results of the implementation of the law, she noticed that the figures are often disputed, including because the criteria used for the assessment vary. Moreover, the Special Rapporteur considers that aside from statistics, the issue is one of principle.

101. The concerns of the Special Rapporteur are more serious with regard to the indirect consequences of Law 2004-228 in the longer term. The implementation of the law by educational institutions has led, in a number of cases, to abuses that have provoked humiliation, in particular amongst young Muslim women. According to many sources, such humiliation can only lead to the radicalization of the persons affected and those associated with them. Moreover, the stigmatization of the headscarf has provoked instances of religious intolerance when women wear it outside school, at university or in the workplace. Although the law was aimed at regulating symbols related to all religions, it appears to mainly target girls from a Muslim background wearing the headscarf.

102. The Special Rapporteur encourages the Government to closely monitor the way educational institutions are implementing the law, in order to avoid the feelings of humiliation that were reported to her during her visit. She also recommends a flexible implementation of the law which would accommodate the schoolchildren for whom the display of religious symbols constitutes an essential part of their faith.

103. In all circumstances, the Government should uphold the principle of the best interests of the child and guarantee the fundamental right of access to education, as has been recommended by several United Nations treaty-monitoring bodies.

104. Moreover, the Government should take appropriate measures to better inform school authorities, and more generally the French population, about the exact nature and purpose of the law. It should be made clear that the wearing or display of religious symbols is an essential part of the right to manifest one's religion or belief that can only be limited under restrictive conditions. The Government should also promptly provide redress in any situation where persons have been the victim of discrimination or other act of religious intolerance because of their religious symbols, including by prosecuting the perpetrators of such acts in the relevant cases."



A/64/159, paras. 25-28 and 68:

“25. Children are also vulnerable with regard to their right to freedom of religion or belief. The mandate has reported on various forms of discriminatory treatment which derive both from governmental actions and from incidents provoked by non-State actors. The Special Rapporteur is concerned at the abuse and violence against children who are accused by their families of witchcraft. She has also been informed of a number of cases where children, especially girls, were allegedly abducted by members of a different religious community, forced into marriage and converted against their will to a different religion. In this regard, she would like to emphasize that no one shall be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice, [International Covenant on Civil and Political Rights, article 18, para. 2.] and that the betrothal or marriage of a child shall have no legal effect.[Convention on the Elimination of All Forms of Discrimination against Women, article 16, para. 2.] As reaffirmed by article 3 of the Convention on the Rights of the Child, the best interests of the child shall be a primary consideration in all actions concerning children.

26. The rights of the child concerning freedom of religion or belief remain a complex issue, especially because they touch upon the position of the child but may also concern his or her parents or legal guardians as well as the religious communities involved. The right of the child to freedom of religion or belief is enshrined in article 14, paragraph 1, of the Convention on the Rights of the Child. The parental rights are immediately reaffirmed in article 14, paragraph 2, which requires States parties to 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 to freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child.

27. The Special Rapporteur would like to briefly analyse the concept of “evolving capacities” in the context of the child’s right to freedom of religion or belief. Domestic legal provisions differ largely, for example with regard to the competency to decide when children can themselves be able to adopt a different religion or belief of their choice. In some countries, children who have not yet reached the age of 10 years may convert if both of their parents agree to conversion or if the competent court approves conversion upon the application of one of the parents. Some national laws feature staggered age limits, for example, that children who are older than 14 years may decide their religious affiliation for themselves and that a child from the age of 12 onwards cannot be educated under a different religion than previously against his or her will. Other laws set the age of 15 or 16 years as a legal threshold for reaching full religious maturity.

28. In this regard, the Special Rapporteur would like to caution against strict age limits which may not fully take into consideration the maturity and evolving capacities of the child in all cases. Such strict limits may lead to situations where a child is legally considered as mature while this is not yet the case, or where a truly mature child is denied his or her rights for some time. Consequently, the Special Rapporteur would advocate for a case-by-case approach according to the specific circumstances of each situation. This is also supported by article 12, paragraph 1, of the Convention on the Rights of the Child, which requests States parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. [In this regard, see CRC/C/GC/12, paras. 17, 21, 29, 75 and 84.] [...]

68. The situation of children and their freedom of religion or belief also deserve specific mention. In line with the concept of “evolving capacities” of the child and in order to ensure free and informed choices about his or her freedom of religion or belief, the Special Rapporteur would like to highlight the following approaches. Special attention should be paid to encouraging positive attitudes and, in view of the best interests of the child, to supporting parents to exercise their rights and fully play their role in education in the field of tolerance and non-discrimination. [See E/CN.4/2002/73, appendix, para. 9.] Rather than leading to indoctrination, teaching about religions and beliefs should be carried out in a fair and balanced manner. In this regard, the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools [Prepared by the OSCE/ODIHR Advisory Council of Experts on Freedom of Religion or Belief; text available online at [www.osce.org/publications/odihr/2007/11/28314\\_993\\_en.pdf](http://www.osce.org/publications/odihr/2007/11/28314_993_en.pdf).] provide practical guidance for preparing curricula for teaching about religions and beliefs as well as preferred procedures for assuring fairness in the development of such curricula. In addition, States should endeavour to eradicate prejudices and conceptions incompatible with freedom of religion or belief, and to ensure respect for and acceptance of pluralism and diversity in the field of religion or belief.”

### III. VULNERABLE GROUPS

#### 5. Minorities

##### ICCPR

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

##### CRC

Art. 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

##### General Assembly Declaration 47/135

Art. 1 (1): "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."

Art. 2 (1): "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."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

##### A/55/280, para. 138:

"138. Concerning minorities, the Special Rapporteur wishes to emphasize that States have an obligation under international law and jurisprudence (inter alia, article 27 of the International Covenant on Civil and Political Rights, General Comment No. 23 of 6 April 1994 of the Human Rights Committee, article 30 of the Convention on the Rights of the Child, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) to guarantee the right of minorities to freedom of religion and the practice of religion, within internationally agreed limits. The State remains responsible even when abuses are committed against minorities by non-State entities such as extremist groups. States are also required to create conditions for promoting the identity, including the religious identity, of minorities. Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities emphasizes the role of education in this regard. The 2001 conference on school education will also consider the special place to be given in primary and secondary education to respect for and promotion of the identity, including the religious identity, of minorities and will make recommendations in this regard."

##### E/CN.4/2001/63, para. 181:

"181. First and foremost, such an analysis clearly highlights the situation of minorities in terms of the principles of tolerance and non-discrimination in the field of religion and belief. The concept of a minority, although not really defined in international law, which merely refers to categories such as national, ethnic, religious and linguistic minorities (see the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities), is interpreted in the widest sense in this report, whether in reference to minority groups within the same religion or in relation to other religions, society, non-State entities and the State. More attention should be paid to the situation of minorities in the light of the 1981 Declaration."

A/61/340, paras. 49-51:

"A. Religious minorities

49. Religious minorities remain, by and large, the main victims of violations of the right of freedom of religion or belief and other acts of religious intolerance. In this respect, one must take into account that while a certain religion may be a minority in one part of the world and suffer accordingly, it may constitute the religion of the majority of the population in another part of the world.

50. The problems related to the existence of religious minorities remain as important as ever and the rules pertaining to the principles of freedom of religion or belief have to be constantly re-emphasized. In addition to lack of respect, ignorance of these principles is often at the source of violations. The Special Rapporteur insists on the need to strengthen technical cooperation in order to train governmental officials in several parts of the world in the principles related to her mandate.

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

A/HRC/4/21, paras. 43-47:

"C. Religious minorities and new religious movements

43. As noted in previous reports, religious minorities and new religious movements face various forms of discrimination and intolerance, both from policies, legislation and State practice. Issues of concern relate to obstacles in the official registration procedures as well as inappropriate limitations when disseminating materials and displaying religious symbols. Furthermore, some religious minorities are adversely affected by manifestations of rejection or violence from non-State actors and by threats to their very existence as a specific community. When religious minorities are groups that are considered so-called non-traditional or new religious movements, the members of these communities may be the object of suspicion and suffer greater limitations to their right to freedom of religion or belief.

44. The first mandate-holder, d'Almeida Ribeiro, already in 1990 stated that "aspects having to do with the antiquity of a religion, its revealed character and the existence of a scripture, while important, are not sufficient to make a distinction [between religions, sects and religious associations]. Even belief in the existence of a Supreme Being, a particular ritual or a set of ethical and social rules are not exclusive to religions but can also be found in political ideologies. So far, a satisfactory and acceptable distinction has not been arrived at". (E/CN.4/1990/46, para. 110.) His successor in the mandate, Abdelfattah Amor, added that "[r]eligions cannot be distinguished from sects on the basis of quantitative considerations, saying that a sect, unlike a religion, has a small number of followers. This is not in fact always the case. It runs absolutely counter to the principle of respect and protection for minorities, which is upheld by both domestic and international law and morality. Besides, following this line of argument, what are the major religions if not successful sects? ". (E/CN.4/1997/91, para. 95.) The second mandate holder further emphasized that the issue of sects or new religious movements is complicated by the fact that international human rights instruments provide no definition of the concepts of religion, sect or new religious movement: "Added to this legal dimension is the general confusion regarding the term 'sect' in particular. Although the idea of a sect was originally a neutral one and meant a community of individuals constituting a minority within a religion and having split from it, it often now has a pejorative connotation so that it is frequently regarded as synonymous with danger, and sometimes a non-religious dimension when it is identified as a commercial enterprise. The term 'sect' is therefore in need of further clarification, as are the terms 'religions', 'new religious movements' and 'commercial enterprise'. It is crucial to look at this phenomenon objectively so as to avoid the two pitfalls of either infringing the freedom of religion and belief or exploiting freedom of religion and belief for purposes other than those for which it has been recognized and protected." (E/CN.4/1998/6, paras. 116-117)

45. The Special Rapporteur would like to join her predecessors' analysis concerning the complexity of defining religion and belief. The pertinent international human rights standards seem to take the problem of finding a satisfactory definition of the "protected religion" into account by providing for a broad view of this concept. The Human Rights Committee in its general comment No. 22 (1993) rightly argued: "The terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community." Furthermore, the Human Rights Committee reiterated that article 18 of the ICCPR "protects theistic, non-theistic and

atheistic beliefs, as well as the right not to profess any religion or belief" (para. 2). This formula has already been quoted in various United Nations reports (E/CN.4/Sub.2/1987/26, para. 13; E/CN.4/1990/46, para. 110) and it is also used as a definition in the Madrid Final Document on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination (E/CN.4/2002/73, Appendix).

46. In line with this reasoning, the Special Rapporteur follows the approach of interpreting the scope of application for freedom of religion or belief in a large sense, bearing in mind that manifestations of this freedom may be subject 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. Rosalyn Higgins, who is currently President of the International Court of Justice and was a member of the Human Rights Committee when its general comment No. 22 was drafted, "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; as for manifestations, article 18, paragraph 3, existed to prevent them from violating the rights of others". (CCPR/C/SR.1166, para. 48.) A similar statement was made by Abdelfattah Amor in his 1997 report to the Commission on Human Rights. There, the second mandate-holder emphasized that, apart from the legal courses available against harmful activities, "it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction". (E/CN.4/1997/91, para. 99)

47. In this regard it seems to be particularly worrying when a religious community is empowered - either de jure or de facto - to decide about or to veto the registration of another religious or belief group. The Special Rapporteur would like to reiterate that registration should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. Furthermore, registration procedures should be easy and quick and they should neither depend on reviews of the substantive content of the belief nor on extensive formal requirements. Thus, requiring high minimum membership levels or a lengthy existence in the country concerned are no appropriate criteria for registration."

A/64/159, paras. 29-31 and 69:

"29. The mandate-holders' reports illustrate that persons belonging to national or ethnic, religious and linguistic minorities are in a vulnerable situation with regard to their right to freedom of religion or belief. The identity of many minorities is defined by various aspects, and several instances of discrimination, for example when based both on racial and on religious motives, are aggravated by the effects of these multiple identities. Religious minorities face various forms of discrimination, for example with regard to official registration procedures or undue limitations when disseminating materials and displaying religious symbols. Furthermore, some religious minorities are adversely affected by manifestations of intolerance, threats or acts of violence perpetrated by non-State actors, which are often tolerated or encouraged by the authorities.

30. The Special Rapporteur would like to remind that persons belonging to minorities have the right to profess and practise their own religion, in private and in public, freely and without interference or any form of discrimination, as well as the right to participate effectively in cultural, religious, social, economic and public life. When abuses against members of religious minorities are committed by non-State actors, the human rights obligations of States also consist in ensuring the free exercise of freedom of religion or belief and bringing the perpetrators of discriminatory or violent acts to justice. States should also take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. [See Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, article 4, para. 2.] The outcome document of the Durban Review Conference also affirms that the existence and the national or ethnic, cultural, religious and linguistic identity of minorities shall be protected, and that the persons belonging to these minorities should be treated equally and enjoy human rights and fundamental freedoms without discrimination of any kind. [A/CONF.211/L.1, para. 82.]

31. In many States in different regions of the world, members of so-called non-traditional or new religious movements are the object of suspicion, both on administrative and societal levels, and some of them are subjected to serious limitations of their right to freedom of religion or belief. The Special Rapporteur would like to reiterate that the terms "religion" and "belief" are to be interpreted in a broad sense and that human rights protection is not limited to members of traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The contents of a religion or belief should be defined by the worshippers themselves, while their freedom to manifest their 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. [...]

69. Members of religious minorities also remain vulnerable to violations of their right to freedom of religion or belief and other acts of religious intolerance. The Special Rapporteur would like to point out that a certain religion may be a minority in one part of the world and suffer as a result; however, it may constitute the religion of the majority of the population in another part of the world. Government officials and civil servants should be adequately trained in human rights standards and in this regard particular attention should be paid to freedom of religion or belief. More generally, States should take appropriate measures in the field of education in order to encourage a wider knowledge in the society at large of the history, traditions, language and culture of the various religious minorities existing within their territory. Furthermore, a public policy framework for pluralism and equality should ensure an equitable allocation of resources, including broadcasting frequencies, among public service, commercial and community media, so that together they represent the full range of cultures, communities and opinions in society. [See Camden Principles on Freedom of Expression and Equality, Principle 5; available online at [www.article19.org/advocacy/campaigns/camden-principles](http://www.article19.org/advocacy/campaigns/camden-principles).] While mainstreaming religious minorities, affirmative action is important in some areas in order to empower these minorities and raise awareness about their situation.”

### III. VULNERABLE GROUPS

#### 6. Migrant workers

#### International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Art. 12 (1): "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."

Art. 12 (2): "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."

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."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/CONF.189/PC.1/7, paras. 103-105 (contribution to the Preparatory Committee of the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance):

"(b) Discrimination involving a majority and ethnic and religious groups not defined as a minority

103. As we have said, in the absence of an explicit definition of a minority in treaty law, most authors agree that there are core characteristics that allow us to distinguish a minority from the majority and from other groups of people living in a given territory. One of the criteria that may be lacking is the "objective" one of the absence of a link of nationality between the persons concerned and the State in whose territory they temporarily or permanently reside. This hypothesis concerns persons from immigrant communities. Other criteria may also be lacking, such as the absence of the subjective criterion or, in other words, the lack of a manifest desire on the part of group members to gain acceptance for their own characteristics as a minority, whose members would offer each other mutual support. [This hypothesis can be applied in the opposite sense, that is, if the group concerned would like to gain acceptance for its own characteristics as a minority when these are not recognized as such by the State. This is the case, for example, of certain Protestant religious associations in the Islamic Republic of Iran (see E/CN.4/1996/95/Add.2, para. 71). It is also the case of the Turks in Germany who wish to have the status of "national minority" like the other two national minorities, the Danes and the Swabians (see E/CN.4/1996/72, para. 23).] Of course, the absence of a particular criterion fortunately does not imply the absence of protection. The international instruments protect human rights independently of the existence of a link of nationality or whether the person concerned belongs to a minority in the terms of article 27 of the Covenant.

104. A large number of religions and ethnic groups are concerned here:

- Discrimination and xenophobia directed at North African or Arab nationals or nationals of Arab or North African origin in western Europe and the United States (E/CN.4/1997/71, para. 24) and Turkish nationals or those of Turkish origin in Germany (E/CN.4/1996/72, paras. 21 and 23, and para. 25 ff.), and Austria (E/CN.4/1997/71, para. 55 ff.);
- Discrimination against Palestinians in Israel (E/CN.4/1995/91, para. 69);
- Discrimination and intolerance in the Arab countries of the Gulf directed against foreign nationals whose religion is not sanctioned by the Koran, such as Hindus, Sikhs and Buddhists (ibid., paras. 38-39 and 54; E/CN.4/1998/6, paras. 64 and 68);
- Discrimination in Arab countries against Christians from Western countries (E/CN.4/1995/91, paras. 53-54; E/CN.4/1997/91, para. 19);
- Discrimination and intolerance affecting the Muslim community, particularly Muslims of Indian and Pakistani origin in the United Kingdom (E/CN.4/1998/79, para. 36);

- In the United States of America, Jews identified with a community on religious, cultural and ethnic grounds generally enjoy a privileged position, due in particular to favourable legislation (the clauses on non-establishment and the free exercise of religion; see E/CN.4/1999/58/Add.1, paras. 41-42). However, that should not hide the fact that they suffer from "hate crimes". In January 1998, for example, of the 8,734 crimes classed as "hate crimes", 1,400 were "religion-motivated", and of these more than 1,100 (nearly 80 per cent) were directed against Jews; these crimes mostly take the form of attacks on property and the desecration of cemeteries (*ibid.*, para. 43). In most cases, but particularly those involving discrimination against Arabs, it is important to note, as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has done, that "manifestations of racism and xenophobia against Arabs are increasingly accompanied by a form of 'Islamophobia'. It is therefore difficult to separate acts of racial discrimination from acts of religious intolerance, as each may reinforce or encourage the other" (E/CN.4/1998/79, para. 36).

105. Similarly, the Special Rapporteur on religious intolerance notes that the situation of Muslims in the United States is "problematic"; Muslim representatives have said that they feel that there is both latently and openly a form of Islamophobia and racial and religious intolerance in American society (E/CN.4/1999/58/Add.1, para. 36). This is an extremely important observation and deserves some comment:

(a) A large number of ethnic and religious communities or groups or, a fortiori, minorities also seem to us to be concerned by this overlap between race and religion, independently of their status in the territory of the State (nationals or foreigners) or their numerical relationship with the rest of the population (minority/majority, minority/minorities) or of the definition of a minority;

(b) The fact that it is difficult to establish clear distinctions when dealing with double or even triple (racial/religious/sexist) discrimination is merely proof that those guilty of discrimination are not targeting exclusively the racial or religious identity of the victim. They target both identities because in their minds they completely reject the other, either in a confused way or otherwise, on the grounds of the other's beliefs, religious practices, rites and myths, as much as his racial, ethnic or even cultural origin. [The concept of "Arab" or "Arabness", for example, draws more on referents of a cultural nature, which are themselves the product of an ill-defined combination of both religious (that is, basically Muslim) and ethnic backgrounds.] In fact, it is not simply the superimposition of two single forms of discrimination. The conceptual difficulty pointed out by the Special Rapporteur hides a form of aggravated discrimination that cannot be described in terms of a single identity and thus cannot be governed by an ordinary regime."

A/HRC/4/21/Add.3, paras. 46-48 and 68-69 (country visit to the Maldives):

"Migrant workers, their families and other foreigners

46. There are approximately 53,000 expatriate workers in the Maldives, from a number of countries. Their right to adhere to religions or beliefs of their choice is respected in the Maldives. However, restrictions are placed on their right to manifest their religion or belief. In this regard, the Special Rapporteur emphasizes that it is all persons within a particular country, and not just the citizens of that country, who have the right to freedom of religion or belief, including the right to manifest that belief. Muslim foreigners do not generally suffer any restrictions on their right to manifest their religion or belief, although members of local congregations on some of the islands do not allow foreign manual labourers to attend the mosque.

47. In relation to non-Muslim foreigners, the Special Rapporteur notes that there are practical limitations on their right to manifest their religion publicly, and these limitations are supported by the vast majority of the population. As a matter of practice, they are not allowed to build places of worship or carry out prayers or religious rituals outside of theirs. They are allowed to congregate in their own s to pray and carry out religious rituals, but they are not allowed to invite Maldivians to these gatherings. In the Maldives there is not a single official place of worship for religions other than Islam. Any suggestion of allowing foreign workers, teachers and other non-Muslim residents to worship openly is met with firm resistance. All foreigners are prohibited from propagating their religion or carrying out missionary work.

48. Furthermore, the Special Rapporteur has been informed that expatriate school pupils who choose not to study Islam are unable to pass their end of year school exams. Islam forms an integral part of the school curriculum and it has been alleged that alternative subjects are not offered to expatriate school pupils. The paradox of this situation seems to be that a large percentage of schoolteachers in the Maldives are expatriate themselves. However, the Government maintains that expatriate students who choose not to follow Islamic Studies and Dhivehi language can opt out not to do so. [...]

68. The Special Rapporteur is extremely concerned by the current limitations placed on the right of migrant workers and other foreigners to manifest their religion or belief. She notes that these limitations are implemented as a matter of

practice, and not as a matter of law. As such, they may fail to comply with the requirement in article 18, paragraph 3 of the ICCPR that any limitation on the right to manifest one's freedom of religion or belief must be prescribed by law. Furthermore, the Special Rapporteur questions to what extent these limitations are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, as set out in article 18, paragraph 3, of the ICCPR and article 1, paragraph 3, of the 1981 Declaration.

69. The Special Rapporteur encourages the Government to give serious consideration to amending the current practice to enable non-Muslims to manifest their religion or belief in a manner consistent with human rights law. She recognizes that there is a notable amount of public opposition to any changes in this regard, and as such she would encourage the Government to make serious efforts to raise awareness about freedom of religion or belief. She also strongly recommends that the Government consider acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which contains important provisions on the right to freedom of religion or belief, including the right to manifest one's belief, in public or in private, of migrant workers and their families."

A/64/159, paras. 32-34 and 70:

"32. In many countries all over the world, migrants are vulnerable to discrimination based on their religion or belief and face related prejudices on a societal level. The Durban Declaration explains that the situation of vulnerability in which migrants frequently find themselves is owing, inter alia, to their departure from their countries of origin and to the difficulties they encounter because of differences in language, customs and culture, as well as economic and social difficulties and obstacles to the return of migrants who are undocumented or in an irregular situation. [A/CONF.189/12, chap. I, Declaration, para. 50.] Various Special Rapporteurs have pointed to the discrimination against the children of migrants, for example with regard to their right to education as well as the absence of the promotion of freedom of religion or belief which hampers their capacity of integration and personal development. [E/CN.4/2002/73, para. 28.]

33. The Special Rapporteur would like to emphasize that all persons within a particular country, and not just the citizens of that country, have the right to freedom of religion or belief, including the manifestation of their religion or belief in worship, observance, practice and teaching. In her reports, the Special Rapporteur has pointed to practical limitations imposed on the freedom of migrants to manifest their religion or belief publicly, for example with regard to building places of worship, carrying out religious rituals openly or conducting missionary activities. She would like to recall that limitations on the right to manifest one's freedom of religion or belief must be prescribed by law and must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

34. In her last report to the General Assembly, which focused on citizenship issues and religious discrimination in administrative procedures, [A/63/161, paras. 25-78.] the Special Rapporteur emphasized that immigration policies and citizenship tests must not discriminate on the basis of the applicant's religious background. Together with other mandate holders, she also expressed concerns about the contents of questionnaires and interview guidelines used by domestic naturalization authorities. Finally, the Special Rapporteur highlighted that it would be contrary to the principle of non-discrimination to restrict citizenship to people with certain religious beliefs or to deny official documents based on the applicant's religious affiliation. [...]

70. With regard to the situation of migrants, the Special Rapporteur is concerned at restrictions imposed on their freedom to manifest their religion or belief publicly and she recalls that according to international human rights law any such limitations must be prescribed by law and must be necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. In addition, States should implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their accommodation into social, cultural, political and economic life."



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

### ***1. 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;"

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; "

11: 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;"

#### **Human Rights Committee general comment 22**

Para. 7: "In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its general comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts."
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### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

#### A/HRC/2/3, paras. 22-50:

"22. The use of religious beliefs for political purposes, along with the negative stereotyping of some religions and beliefs, has often posed a challenge to the growth of a tolerant global society. In addition, the phenomenon of globalization has brought with it a series of new challenges. In particular, there is now much more awareness of, and prompt access to, information across borders and cultures. As a result, people of all opinions, beliefs and faiths live in greater proximity, making the need for tolerance even more urgent.

23. In the context of her activities, the Special Rapporteur on freedom of religion or belief has been made aware of numerous situations in which religious communities or beliefs have been the target of critical analysis from a merely theological point of view to the most extreme forms of incitement to violence or hatred against members of a religious group. Between these two extremes, one can find all sorts of expressions, including stereotyping, ridicule, derogatory comments and insults.

24. The Special Rapporteur has noted that these forms of expression target either the content of religious beliefs themselves or members of religious or belief communities because of the beliefs they hold. She has further noted that these forms of expression are directed towards many religious and belief communities, whether they are old or new, big or small. In this regard, the Special Rapporteur has been able to note that, while criticism of major religions attracts a lot of attention, numerous cases of criticism of smaller religions can go relatively unnoticed.

25. Regarding the authors of these forms of expression, the Special Rapporteur notes that they are not necessarily secularists, but also members of religious communities. Religious groups and communities are therefore not only the target of critical forms of expression, but also in many cases the origin.

26. The protection of the rights of religious minorities is central to the mandate on freedom of religion or belief. It should not be compromised even if other members of the community engage in intolerant acts, including defamation of other religions. This approach is particularly relevant when a certain religious community may be in a minority in one part of the world and suffer accordingly, but it may constitute the major religious community in another part of the world and be accused of intolerant treatment towards its own religious minorities.

27. Moreover, individuals who belong to a majority religion are not always free from being pressured to adhere to a certain interpretation of that religion. From a human rights perspective, members of religions or communities of belief should therefore not be viewed as parts of homogenous entities. For that reason, *inter alia*, international human rights law protects primarily individuals in the exercise of their freedom of religion and not religions *per se*.

28. With regard to situations in which certain forms of expression confront religions or beliefs or members of religious or belief communities, it is essential to make a careful distinction between forms of expression that should constitute an offence under international law, forms of expression that are not criminally punishable but may justify a civil suit and forms of expression that do not give rise to criminal or civil sanctions but still raise a concern in terms of tolerance, civility, and respect for the religion or belief of others.

29. From a legal perspective, each set of facts is particular and can only be assessed and adjudicated, whether by a judge or another impartial body, according to its own circumstances. Certain situations will undoubtedly raise an issue in terms of international human rights law but other situations, while not raising a human rights law issue, will give rise to concerns if the circumstances and nature of expression could lead to a climate of intolerance.

30. The challenge is to decide what type of incident justifies action. In this respect, the Special Rapporteur seeks first and foremost guidance from international human rights law in general and the human rights standards that govern her mandate in particular. [For a more detailed description of the legal framework of the mandate, see paragraphs 15 to 20 of the report of the Special Rapporteur to the sixty-first session of the Commission on Human Rights (E/CN.4/2005/61) and the annex of her report to the sixty-second session of the Commission on Human Rights (E/CN.4/2006/5).]

## **1. The scope of the right to freedom of religion or belief**

31. According to article 18 of the International Covenant on Civil and Political Rights, freedom of religion includes freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

32. In its general comment No. 22 on article 18 of the Covenant, the Human Rights Committee provides that: the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) [...] is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others and that Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.

33. The same general comment contains a non-exhaustive catalogue of the different aspects that are covered by the right to freedom of religion or belief (see CCPR/C/21/Rev.1/Add.4, para. 4).

34. Like other fundamental human rights, the right to freedom of religion remains primarily an individual right. However, it is often rightly argued that due to the manifestation aspects of the right, the right to freedom of religion or belief is also a collective right.

35. Acts of religious intolerance or other acts that may violate the right to freedom of religion or belief can be committed by States but also by non-State entities or actors. States have an obligation to address acts that are perpetrated by non-State actors and which result in violations of the right to freedom of religion of others. This is part of the positive obligation under article 18 of the Covenant.

36. As such, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule. Moreover, the internal obligations that may exist within a religious community according to the faith of their members (for example, prohibitions on representing religious figures) do not of themselves constitute binding obligations of general application and are therefore not applicable to persons who are not members of the particular religious group or community, unless their content corresponds to rights that are protected by human rights law.

37. The right to freedom of expression can legitimately be restricted for advocacy that incites to acts of violence or discrimination against individuals on the basis of their religion. Defamation of religions may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.

38. The right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs *per se*. While the exercise of freedom of expression could in concrete cases potentially affect the right to freedom of religion of certain identified individuals, it is conceptually inaccurate to present this phenomenon in abstracto as a conflict between the right to freedom of religion or belief and the right to freedom of opinion or expression.

39. Therefore, the question as to whether criticism, derogatory statements, insults or ridicule of one religion may actually negatively affect an individual's right to freedom of religion or belief can only be determined objectively and, in particular, by examining whether the different aspects of the manifestation of one's right to freedom of religion are accordingly negatively affected.

## **2. Religion and freedom of opinion and expression**

40. Human rights are exercised in a context where rights coexist with each other. In this regard, most international human rights conventions provide that, in the exercise of their human rights, individuals have to respect the rights of others.

41. However, the coexistence of rights does not only imply that rights should be seen in a restrictive manner because of the existence of other rights; it also implies the fundamental notion of interdependency of human rights. The right to freedom of religion or belief needs other human rights to be fully exercised, including the right to freedom of association or the right to freedom of expression. The right to freedom of expression as it is protected by international standards, including article 19 of the Covenant, constitutes an essential aspect of the right to freedom of religion or belief.

42. In a number of States, in all regions of the world and with different religious backgrounds, some forms of defamation of religion constitute a criminal offence. While the different responses to such defamations depend on various factors, including historical and political factors, criminalizing defamation of religion can be counterproductive. The rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash. There are numerous examples of persecution of religious minorities as a result of excessive legislation on religious offences or overzealous application of laws that are fairly neutral. As a limit to freedom of expression and information, it can also limit scholarship on religious issues and may asphyxiate honest debate or research.

43. Criminalizing speech that defames religions, whilst not amounting to forms of expression prohibited by international law, can limit discussion of practices within religions that may impinge upon other human rights. In such a context, criticism of practices - in some cases adopted in the form of a law - appearing to be in violation of human rights but that are sanctioned by religion or perceived to be sanctioned by religion would also come within the ambit of defamation of religion. The dilemma deepens, as independent research on the impact of such laws may not be possible, as a critical analysis of the law may by itself, in certain situations, be considered as defaming the religion itself.

### **3. Religious intolerance and incitement to religious hatred**

44. According to article 20 of the Covenant, "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

45. In its general comment 11, the Human Rights Committee holds that 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. Unfortunately this general comment does not give much more guidance about the interpretation that should be given to article 20 of the Covenant and, in particular, with regard to its threshold of application.

46. Compared to the other provisions of the Covenant, this provision is unusual because it does not provide for a human right but establishes limitations on other rights and requires States parties to enact legislative restrictions. Interestingly, commentators have pointed out that the limitations provided for in article 20 were not included in the provision dealing with freedom of expression, but were made the object of a separate provision. This implies that article 20 contains limitations for other rights, including freedom of religion. The exercise of freedom of religion could therefore potentially give rise to instances of advocacy that are prohibited by article 20.

47. The Special Rapporteur notes that article 20 of the Covenant was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War. The threshold of the acts that are referred to in article 20 is relatively high because they have to constitute advocacy of national, racial or religious hatred. Accordingly, the Special Rapporteur is of the opinion that expressions should only be prohibited under article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.

48. A link is often made between article 20 and the relevant provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, and in particular its article 4 which provides, inter alia, that States parties:

"(a) [s]hall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, [...] against any race or group of persons of another colour or ethnic origin,".

49. However, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief does not contain a prohibition of incitement to religious discrimination similar to article 4 above. The Special Rapporteur cautions against confusion between a racist statement and an act of defamation of religion. The elements that constitute a racist statement are not the same as those that constitute a statement defaming a religion. To this extent, the legal measures, and in particular the criminal measures, adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religion.

50. Domestic and regional judicial bodies - where they exist - have often laboured to strike the delicate balance between competing rights, which is particularly demanding when beliefs and freedom of religion are involved. In situations where there are two competing rights, regional bodies have often extended a margin of appreciation to national authorities and in cases of religious sensitivities, they have generally left a slightly wider margin of appreciation, although any decision to limit a particular human right must comply with the criteria of proportionality. At the global level, there is not sufficient common ground to provide for a margin of appreciation. At the global level, any attempt to

lower the threshold of article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance."

A/65/207, paras. 41-44:

"41. In resolution 64/164, the General Assembly urged States to take all necessary and appropriate action, in conformity with international human rights standards, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all parts of the world. The Special Rapporteur has addressed related issues and presented her conclusions and recommendations in various reports. In a mission report, for example, she voiced concerns at the extended time frame of investigations in cases involving communal riots, violence and massacres. [See the Special Rapporteur's report on her mission to India (A/HRC/10/8/Add.3, paras. 30-41).] She would like to reiterate that communal violence is not merely a "law and order" problem but has serious socio-economic ramifications. It has been noted that sectarian riots are most likely to occur when the following elements are present: (a) severe long-standing antagonism on religious lines in particular villages and urban localities; (b) an emotional response of members of religious communities to a precipitating event; (c) a feeling in the minds of rioters and the larger religious group to which they belong that sectarian violence is justifiable; and (d) the assessment by the rioters that the reaction from the police to sectarian violence will be either absent or partisan or ineffective.

42. Pursuant to Human Rights Council decision 1/107, entitled "Incitement to racial and religious hatred and the promotion of tolerance", the Special Rapporteur submitted a report to the Council together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/2/3), in which the Special Rapporteurs recommended that the Council call upon all Governments to express and demonstrate a firm political will and commitment to combating the rise of racial and religious intolerance. The right to freedom of religion or belief as such does not include the right for one's religion or belief to be free from criticism or all adverse comment. Yet, the right to freedom of expression can legitimately be restricted for advocacy that incites to acts of violence or discrimination against individuals on the basis of their religion. The Special Rapporteurs emphasized that freedom of religion or belief and freedom of expression are interdependent and interrelated.

43. In this regard, the Special Rapporteur would like to distinguish between the expression of opinions, even when they are deemed offensive by some believers, and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. To protect the integrity of individuals, advocacy of religious hatred must be prohibited by law if it reaches the threshold of article 20, paragraph 2, of the International Covenant on Civil and Political Rights. However, each case has to be examined on its own merits so that freedom of expression and freedom of religion or belief are not undermined. In this regard, the judiciary plays a vital role in striking a delicate balance on a case-by-case basis. As indicated in one of the Special Rapporteur's recent country reports, [Report on the mission to the former Yugoslav Republic of Macedonia (A/HRC/13/40/Add.2, paras. 46-48 and 60).] there is a risk that domestic laws prohibiting hate speech may be interpreted loosely and applied selectively by the authorities, which underlines the importance of having unambiguous language and of devising effective safeguards against abuses of the law. She would like to reiterate that legislation on religious issues should not be vague but rather must be all-inclusive, carefully crafted and implemented in a non-biased manner. [See the report on the 2008 expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: "Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence" (A/HRC/10/31/Add.3, para. 24).]

44. The Special Rapporteur would like to refer to positive developments in this regard. Subsequent to her recommendations in a country visit report, the Parliament introduced new legislation which ultimately abolished the discriminatory common-law offences of blasphemy and blasphemous libel in 2008. [See the Special Rapporteur's report on her visit to the United Kingdom of Great Britain and Northern Ireland (A/HRC/7/10/Add.3, paras. 73-75), the Government's replies to the list of issues in connection with the consideration of the sixth periodic report to the Human Rights Committee (CCPR/C/GBR/Q/6/Add.1, para. 165) and the Committee's concluding observations (CCPR/C/GBR/CO/6, para. 4).] In addition, recent voting patterns in the Human Rights Council suggest that support for the concept of "defamation of religions" is on the decline at the international level. The Special Rapporteur would like to reiterate that criminalizing so-called defamation of religions as such can be counterproductive and may have adverse consequences for members of religious minorities, dissenting believers, atheists, artists and academics. [See A/62/280, paras. 70-71 and 76-77.] Instead of trying to shield religions per se against criticism or ridicule, States should rather focus their attention on the protection of believers and non-believers against discrimination and violence. In some countries, however, there still appears to be resistance to abandoning the criminalization of blasphemy or to repealing discriminatory provisions that purport to combat "defamation of religions". [On 19 April 2010, for example, the Constitutional Court of Indonesia upheld the country's anti-blasphemy law (No. 1/PNPS/1965), which imposes criminal penalties of up to five years' imprisonment on individuals who deviate from the basic teachings of the official religions. See also the Special Rapporteur's urgent appeals of 21 April 2008 and 12 June 2008, as well as the response by the Government of Indonesia dated 27 June 2008 (A/HRC/10/8/Add.1, paras. 55-68).]"

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

### 2. Right to life, right to liberty

#### ICCPR

Art. 6:

"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.

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."

Art. 9 (1): "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."

#### **Commission on Human Rights resolution 2005/40 (paragraph 4 (f)) and Human Rights Council 6/37 (paragraph 9 (i))**

Urges States to ensure that on account of religion or belief "no one within their jurisdiction is deprived of the right to life, liberty, or security of person, [...] subjected to torture or arbitrary arrest or detention [...] and to bring to justice all perpetrators of violations of these rights;"

#### **Economic and Social Council resolution 1984/50**

Para. 1: "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."

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1993/62, para. 79:

"79. The Special Rapporteur has noted, for example, that the reward for the killing of Mr. Salman Rushdie, the author of *The Satanic Verses*, in pursuance of the religious ruling (fatwa) which had been issued against him, has been increased, a concern which is also shared by the Special Representative of the Commission on Human Rights on the human rights situation in the Islamic Republic of Iran. Countries which are parties to the International Covenants on Human Rights are obliged to respect the freedom of thought, conscience, religion and belief of all persons. Since the Islamic Republic of Iran is a party to both Covenants, the Special Rapporteur would like to recall article 6 of the International Covenant on Civil and Political Rights and emphasize that a decision which has not been issued by an independent tribunal where the accused would be entitled to defend himself with the assistance of legal counsel, to call witnesses and to exercise the right of appeal cannot be accepted. Offering a reward for the killing of such a person constitutes an incitement to crime and a call to religious hatred which is liable to legal prosecution in all countries where the rule of law prevails. "

E/CN.4/2005/61, paras. 41-42:

"41. On the basis of the information submitted to her, the Special Rapporteur notes that in a number of countries violations of freedom of religion or belief are due to interreligious tensions or conflicts or to situations where one religion is predominant and does not tolerate the presence of religious minorities. Whether the acts committed in these situations constitute violations of freedom of religion or belief only, or are also other forms of human rights violations,

their perpetrators are often non-State actors even if, in many cases, State authorities have been implicated to varying degrees.

42. The Special Rapporteur insists in this respect that the human rights obligations of States are not limited to abstaining from committing direct violations of the right to freedom of religion or belief. Their obligations also consist in ensuring the free exercise of freedom of religion or belief by protecting religious minorities and enabling them to practise their faith in all security. States also have an obligation to bring the perpetrators of acts of violence or of other acts of religious intolerance to justice and to promote a culture of religious tolerance."

A/65/2007, paras. 11-13:

"11. As evidenced in the Special Rapporteur's reports on cases transmitted to Governments and replies received, [A/HRC/13/40/Add.1, A/HRC/10/8/Add.1, A/HRC/7/10/Add.1, A/HRC/4/21/Add.1, E/CN.4/2006/5/Add.1 and E/CN.4/2005/61/Add.1.] many individuals have been deprived of their right to life, liberty or security of person because of religion or belief and have been subjected to arbitrary arrest or detention and torture on that account. Those human rights violations seem to particularly affect members of religious minorities. Their vulnerable situation is aggravated when Governments target religious minorities by registering names and harassing those individuals. States are not only obliged to protect their own citizens; they also must ensure that no one within their jurisdiction suffers from human rights abuses and must bring to justice all perpetrators of violations of these rights.

12. Interreligious or intrareligious tensions, if not adequately addressed, may lead to large-scale communal violence. Such tensions have unfortunately caused the death of numerous individuals. While noting that the reasons for such violence may be manifold and complex, the Special Rapporteur has also observed that the violence often unfolds along religious lines and that the instigators of this violence find that they can gain more support if they put their arguments in religious terms. The Special Rapporteur would like to reiterate that States are obliged to investigate any violence that occurred, including the identification and prosecution of alleged perpetrators, and allow victims to file claims for the damage they have suffered. States must also ensure the protection and security of members of religious communities which may be targeted and which should be entitled to practise their religions freely and without any obstacles, including those placed by non-State actors.

13. Religious convictions are occasionally put forward to justify certain harmful practices and in some States these are incorporated in domestic legislation. For example, in a mission report the Special Rapporteur analysed certain forms of punishment contained in sharia penal codes. She came to the conclusion that the punishments of stoning or amputation constitute at least cruel, inhuman and degrading treatment that is prohibited in absolute terms by various international conventions. [See report on the Special Rapporteur's mission to Nigeria (E/CN.4/2006/5/Add.2, paras. 68 and 100) and her follow-up table ([www2.ohchr.org/english/issues/religion/docs/followup/FUNigeria.pdf](http://www2.ohchr.org/english/issues/religion/docs/followup/FUNigeria.pdf)).]"

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

### *3. 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."

#### **Human Rights Committee general comment 20**

Para. 5: "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."



**Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)**

E/CN.4/2002/73/Add.2, paras. 168 and 228:

168. Marital rape is still to some extent linked to patriarchal patterns and to a reactionary view of the image of women within the marital relationship. From that perspective, the deep-seated origins of such perception are, irrespective of a society's stage of development, rooted in ancient religious practices fostered by a culture that relegates women to a subservient position. Some States do not recognize marital rape and treat women's complaints against their husbands as void. [This applies to India, Malaysia, Papua New Guinea and Serbia. See the website [www.penelopes.org/pages/beijing/textes/tradit9.htm](http://www.penelopes.org/pages/beijing/textes/tradit9.htm). It is also true of Mongolia, Report of the Human Rights Committee (A/55/40, vol. I, para. 323).] Marital rape is a form of domestic violence or torture against women and should thus be dealt with accordingly. [...]

228. As rightly noted by the Office of the United Nations High Commissioner for Refugees (UNHCR) in a memorandum for its field staff, while cultural or religious traditions of refugee communities must be respected, victims of female genital mutilation in particular suffer a form of torture. UNHCR encourages States to consider that persecution faced by women because of perceived transgressions of social mores should be recognized as a ground for refugee status, which some States already do. [See UNHCR/IOM/83/97. See also the examples of Denmark, Canada, Sweden and the United States of America, which have taken measures to that effect (A/53/354, paras. 37, 38, 41 and 45).] This applies also to women who fear for their lives in cases of honour crimes or forced marriage. Such women should be entitled to the right of asylum and to the protection of other States. "

E/CN.4/2006/5/Add.2, paras. 67-68 and 100 (country visit to Nigeria):

"Torture and other cruel, inhuman or degrading treatment or punishment

67. Probably the most often addressed question is the compatibility of certain forms of punishment prescribed by sharia penal codes with international human rights law, in particular those provisions that prohibit torture or cruel, inhuman and degrading treatment or punishment.

68. In this regard, in addition to the Human Rights Committee which stated in its general comment No. 20 that the prohibition of torture and cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights extends to corporal punishment, other United Nations human rights mechanisms have, on numerous occasions, declared the incompatibility of such forms of punishment with human rights provisions prohibiting torture and other forms of ill treatment. [See for instance, the report of the Special Rapporteur on torture submitted to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/7, para. 6); concluding observations of the Committee against Torture on the initial periodic report of Saudi Arabia, 12 June 2002 (CAT/C/CR/28/5, para. 4 (b)); report of the Special Rapporteur on violence against women, its causes and consequences, submitted to the Commission on Human Rights at its fifty-ninth session (E/CN.4/2003/75, para. 68) and (E/CN.4/2003/75/Add.1, para. 460).] The Special Rapporteur is of the opinion that punishments such as stoning or amputation constitute, if not torture, at least cruel, inhuman and degrading treatment [The Special Rapporteur emphasizes in this regard that she does not wish to make a distinction between torture and other forms of ill treatment, including because such a consideration is outside the scope of her mandate. She would limit herself to consider these acts as contrary to article 7 of the ICCPR.] that is prohibited in absolute terms by various international conventions to which Nigeria is a party and which allow for no exception whatsoever. [...]

100. The Special Rapporteur considers that the legal systems such as have been adopted by a number of states in Nigeria contain provisions that raise concern in terms of human rights. Certain forms of punishment contained in the sharia penal codes, such as amputation or stoning, constitute treatment that is contrary to universally recognized norms prohibiting torture and other degrading, cruel and inhuman treatment or punishment, including international conventions to which Nigeria is a party. Moreover, it was underlined above that certain provisions as well as the practice of some sharia courts appeared to be in contravention of the principle of *nulla poena sine lege* and of equality before the law. Finally, the possibility, at least in theory, that Muslims could be convicted and sentenced to death because they converted to another religion would constitute a clear violation of the right to freedom of religion or belief."

## V. CROSS-CUTTING ISSUES

### 1. Derogation

#### ICCPR

Art. 4 (1): "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

Art. 4 (2): "No derogation from articles [...] 18 may be made under this provision."

#### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1998/6, para. 115:

"115. As the Special Rapporteur's reports, including mission reports, have shown, the issue of "sects" or "new religious movements", is complicated by the fact that international human rights instruments provide no definition of the concept of religion and do not mention the concepts of sect and new religious movement. The Special Rapporteur recalls that, in its general comment 22 of 20 July 1993 concerning article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee states that the right to freedom of thought, conscience and religion is far-reaching. It notes that freedom of thought and conscience are protected equally with freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant. The Committee also points out that restrictions on the freedom to manifest religion or belief are permitted 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 and are not applied in a manner that vitiates the rights of freedom of thought, conscience and religion. The Committee also states that "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". "

A/58/296, para. 134:

"134. First, many States have taken the simplistic view that, since religions are at the root of many terrorist acts, the most direct means of preventing such acts is to limit the existence of religion and have focused their genuinely or purportedly counter-terrorist activities on limiting the exercise of civil and political rights, including the right to freedom of religion or belief. By choosing that path, these States have clearly misinterpreted the non-derogable nature of the right to freedom of religion or belief under article 4 of the International Covenant on Civil and Political Rights, which states that even "in time of public emergency which threatens the life of the nation" no derogation is permitted from article 18 of the Covenant (see also General Comment 22 of the Human Rights Committee). Specifically, it appears that, by imposing restrictions which in practice were equivalent to actual derogations, at least in their effects, various State authorities have often failed to understand the essential difference between the restrictions that can be made under specific conditions and for specific purposes under article 18, paragraph 3, of the Covenant and the non-derogable nature of the right to freedom of religion or belief."

E/CN.4/2005/61, paras. 59-60:

"B. Anti-terrorist legislation

59. Over the last few years, many States have adopted legislation and other measures designed to fight against terrorism. Some of these laws and measures have, however, presented a simplistic link between terrorism and religion which, in turn, may have contributed to provoking even more acts of religious intolerance leading to violence.

60. The Special Rapporteur underlines that freedom of religion or belief is a fundamental right that is not susceptible of derogation, even in time of emergency or because of national security concerns, as is clearly stated in article 4 of ICCPR. This aspect of freedom of religion or belief not only implies that no individual can be deprived of this right

even in time of emergency, but also that States should avoid equating certain religions with terrorism as this may have adverse consequences on the right to freedom of religion or belief of all members of the concerned religious communities or communities of belief."

E/CN.4/2006/5, para. 42:

"42. The controversy under international human rights law [concerning religious symbols] 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."

A/HRC/16/53, para. 53:

"53. In this context, it is worth emphasizing that practices which forcibly expose students to religious instruction against their own will violate article 18, paragraph 2, of the International Covenant on Civil and Political Rights which states that "no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice". This *forum internum* component of freedom of religion or belief enjoys particularly strong protection under international human rights law as no derogation from article 18 of the Covenant may be made, not even in a time of public emergency which threatens the life of the nation. In addition, coercive practices may also violate the rights of parents "to ensure the religious and moral education of their children in conformity with their own convictions" (art. 18, para. 4, of the Covenant)."

## V. CROSS-CUTTING ISSUES

### 2. *Limitation*

#### ICCPR

Art. 18 (3): "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others."

#### CRC

Art. 14 (3): "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

#### Migrant Workers Convention

Art. 12 (3): "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

#### Commission on Human Rights resolution 2005/40 (paragraph 12) and Human Rights Council resolution 6/37 (paragraph 14)

"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;"

#### Human Rights Committee general comment 22

Para. 8: "Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. [...]"

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/51/542/Add.1, para. 133 (country visit to Greece):

"133. In that regard, from a constitutional point of view, although freedom of conscience is guaranteed, the Special Rapporteur notes that there are limitations on freedom of worship which are inconsistent with internationally

established human rights norms. Article 13 of the Constitution limits freedom of worship to "known" religions, but the lack of any legal definition of the concept of "known religion" seems to be prejudicial; in particular, it does not seem to be in accord with the legal restrictions on religious freedom provided for in article 1, paragraph 3, of the 1981 Declaration. The Christian religious minorities are particularly affected by this situation; their legal recognition is often called in question, mainly in connection with matters relating to places of worship and conscientious objection. The Special Rapporteur recommends that the concept of a "known religion" should be defined precisely - either in the Constitution or, failing that, in legislation - in a manner consistent with the legal restrictions provided for in the 1981 Declaration; alternatively, if appropriate, the concept should be eliminated altogether."

E/CN.4/1999/58/Add.2, paras. 102-103 (country visit to Vietnam):

"102. However, whereas the two international instruments list the restrictions necessary for public safety, order, health or morals, or the fundamental rights and freedoms of others, article 70 of the Constitution also refers to "the policies of the State". The concept of policy of the State appears, at first glance, to be quite vague and extendable: it may of course include State policies designed to guarantee public safety, order, health or morals, or the fundamental rights and freedoms of others, but it can also go further, to include restrictions not provided for under international law.

103. Even greater concern is raised by article 4 of the Constitution, which sets forth the principle of the Vietnamese Communist Party as the "guiding force" of the State and of society (para. 9). State policies are therefore those of the Communist Party, which has its own ideology with regard to religion, initially perceiving religion to be the opium of the people and therefore to be combated, and later evolving towards a special recognition of religion. In this connection, the Directive of 2 July 1998 recognizes religious belief as fulfilling a spiritual need and establishes guidelines for its control."

A/55/280/Add.1, para. 125 (country visit to Turkey):

"124. The Special Rapporteur is pleased to note that Turkey's legislation, and particularly its constitutional legislation, provides absolute guarantees of freedom of religion and belief and protects its manifestations (in particular freedom of worship), while imposing certain limitations (article 14).

125. Some of these constitutional limitations contain vague expressions that lend themselves to very broad interpretation which, in turn, may lead to extensive intervention by the State and hence excessive restrictions on freedom of religion and belief. This applies to the expression "violating the indivisible integrity of the State with its territory and nation" as well as the phrase "destroying fundamental rights and freedoms".

126. The Special Rapporteur recommends that precise terminology be devised and that legislation, including constitutional provisions, be interpreted in a manner consistent with international standards of human rights and with the jurisprudence and general comments of the United Nations Human Rights Committee. The Committee, in its General Comment No. 22 (48) of 20 July 1993, on article 18 of the International Covenant on Civil and Political Rights, declared that restrictions on the freedom to manifest religion or belief are permitted only if they are prescribed by law, are necessary to ensure 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. The Committee has also stated that restrictions must only be applied for the purposes for which they were prescribed and they must relate directly to the specific objective they are to serve, and be proportional to that objective. Restrictions may not be imposed for discriminatory purposes or in a discriminatory manner."

A/60/399, para. 62:

"62. Whereas the scope of freedom afforded to persons for the practice of their religion or belief by producing and distributing information about their religion or belief is wide, certain limitations can be imposed in accordance with article 18, paragraph 3, of the Covenant. However, it should be noted that this article allows for restrictions only in very exceptional cases. In particular the fact that it mentions the protection of "fundamental rights and freedoms" (emphasis added) of others as a ground for restriction indicates a stronger protection than for some other rights whose limitation clauses refer simply to the "rights and freedoms of others" (e.g. article 12, 21 and 22). It could indeed be argued that the freedom of religion or belief of others can be regarded as such a fundamental right and freedom and would justify limitations to missionary activities, but the freedom of religion and belief of adults basically is a question of individual choice, so any generalized State limitation (e.g. by law) conceived to protect "others'" freedom of religion and belief by limiting the right of individuals to conduct missionary activities should be avoided."

## V. CROSS-CUTTING ISSUES

### 3. Legislative issues

#### ICCPR

Art. 2 (2): "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."

#### ICESCR

Art. 2 (1): "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."

#### CEDAW

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."

#### 1981 Declaration of the General Assembly

Art. 4 (2): "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination."

Art. 7: "The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice."

#### Commission on Human Rights resolution 2005/40 (paragraph 4 (a)) and Human Rights Council resolution 6/37 (paragraph 9 (a))

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;"

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

A/CONF.189/PC.1/7, paras. 119-120 and 140-143:

"119. Moreover, aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology. The State religion or the religion of the State is not, of course, a characteristic of the religion, but of the State. However, if in its Constitution the State professes its adherence to a particular faith, some will see the mere profession of that faith - whatever the good intentions of the State - as a form of discrimination against the ethnic or religious minority or minorities. In the area of legislation, moreover, some such States adopt clearly discriminatory provisions, as we have seen, in order to impose the constitutionally established religion or ideology, and therefore a particular vision of society and of the universe, on members of ethnic or religious minorities. [Thus, in national systems, de jure acts of discrimination are not racial, but religious, in nature. However, to the extent that they affect ethnic groups, they are also racial in nature (in the broad sense).] This is no doubt one of the most unacceptable violations of an individual's right to

have and practice his religion and that of his ancestors. It is true, as the Special Rapporteur has noted, that "States which are or claim to be based on religion may be either exclusive - for the benefit of the predominant religion alone - or open and respectful vis-à-vis other religions" (E/CN.4/1998/6, para. 42). However, to the extent that everything ultimately depends on the goodwill of the State, the personality of those in office at any given moment, and other unpredictable or subjective factors, there is no serious guarantee in law that the State will at all times respect minority ethnic and religious rights.

120. In States with a range of religious and ethnic identities, the constitutional profession of an official religion, a State religion or a religion of the State, may be politically or historically justified, but by its very nature it carries the seed of aggravated discrimination. [In the *Waldman v. Canada* case of 21 October 1999, the Human Rights Committee rejected the State party's argument that the privileged treatment of a religion (a Catholic school) was not discriminatory because it was a Constitutional obligation. The Committee noted that the fact that a distinction is enshrined in the Constitution does not render it reasonable and objective (para. 10.4).] As Gordon Allport [1954] puts it, a possible root cause of religious intolerance stems from the fact that religion usually encompasses more than faith. Often it is the focus of the cultural tradition of a group [The Nature of Prejudice, Cambridge, Mass., Addison-Wesley, 1954, cited by Odio Benito, op. cit., para. 184]. He notes that this applies to the majority of religions. Therefore, when the State itself announces its religion in its Constitution, the law ceases to reflect the ethnic and religious variety of the society, and the way is opened to arbitrary action and intolerance. [...]

## 2. Internal protection

### (a) Improvement of legal protection, in particular under criminal legislation

140. With regard to States' attitude to legislation in this area, a number of the general recommendations formulated at the United Nations Seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief (Geneva, 3-14 December 1984) (ST/HR/SER.A/16, para. 102) are still of relevance today. They need, however, to be adapted very specifically to the potential discrimination situations with which this study is concerned. For example, high priority should be given to action to implement international standards on the protection of freedom of religion or belief and against racial discrimination. Each State should provide, if necessary and in accordance with its constitutional system, constitutional and judicial guarantees to ensure that freedom of religion or belief and membership of a minority or an ethnic and religious group are protected in a concrete manner by explicit provisions. It would be highly desirable for some States to enact general legislation based on international standards (see, for example, E/CN.4/1999/58/Add.1, para. 72).

141. States must make efforts to enact legislation or to modify existing legislation, as appropriate, in order to prohibit all discrimination based on identification of individuals with multiple groups. Most importantly, positive criminal legislation should be enacted, not only imposing severe penalties on single forms of discrimination, but above all defining a new offence of concomitant racial and religious discrimination, which should carry a specific penalty, and naturally one that is heavier than that imposed for single forms of discrimination, whether religious or racial. [See, for example, article 20, paragraph 2 of the Covenant, which provides that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Note that this refers to measures that should be adopted by States in their domestic legislation. See likewise article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination.] United Nations bodies (General Assembly, Commission on Human Rights, etc.) could prepare model legislation for the guidance of States in enacting domestic legislation, as has already been done in the area of racial discrimination. [Model legislation was prepared in response to the call by the General Assembly in its resolution 40/22 of 29 November 1985.] A similar initiative in the area of aggravated discrimination is strongly recommended.]

142. These guarantees must be followed by the establishment of effective remedies for the victims of acts of aggravated discrimination. The effectiveness of remedies depends on a number of criteria that are very well known. [The independence of the body to which the victim appeals, the accessibility of the authority and the flexibility of the procedure, the extent to which the authority enjoys the confidence of the public and of the complainant, the competence and power of the body to restore the right, the appeal to a higher body if the complainant is not satisfied, the rapidity of the procedure and the results of the complaint. See Expert Seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in this field (Geneva, 16-18 February 2000) (background paper prepared by the secretariat, HR/GVA/WCR/SEM.1/2000/2).]

(b) Establishment of an independent authority to ensure equal opportunity and to monitor racial and religious discrimination

143. States should consider establishing, as several countries have already done (Australia, Belgium, India, Norway, United States), an independent authority to monitor racial and religious discrimination and, more particularly, aggravated discrimination, and to make proposals for legislative, economic and social reforms. This authority should have genuine autonomy, i.e. its members should be independent of Government, and it must be given guarantees of security and inviolability. Its task would be, inter alia, to receive and consider complaints relevant to its work. It may also initiate and pursue inquiries on its own motion, entrusting them to one of its members or independent specialists. Lastly, it would be responsible for conciliation or mediation, in cooperation with domestic judicial bodies, among the parties belonging to different ethnic and/or religious groups, and for dealing with disputes arising from acts of religious and racial intolerance. [See also A/50/440, para. 22; and Jenö Kaltenback, HR/GVA/WCR/SEM.1/2000/BP.6 (document presented at the seminar referred to in note 143 above).]"

A/65/207, paras. 6-10:

"6. At the outset, the Special Rapporteur would like to emphasize that constitutions and domestic legislation must guarantee freedom of religion or belief and non-discrimination. In this context, she notes with regret that in recent years some States have adopted provisions that are openly discriminatory against religious minorities.

7. The new Constitution adopted in one State in 2008, for example, includes a clause which limits citizenship only to those who adhere to the State religion. [See A/HRC/10/8/Add.1, paras. 146-148, and the Special Rapporteur's report on her mission to Maldives (A/HRC/4/21/Add.3).] The Special Rapporteur is deeply concerned that the implementation of this constitutional clause could have a significant negative impact on human rights in the country, including for converts, who risk losing their citizenship and becoming stateless. Measures that discriminate on the basis of religion or belief, or lead to de facto discrimination on such grounds, violate human rights standards. Consequently, it is contrary to the principle of non-discrimination to restrict citizenship to people with certain religious beliefs.

8. In another State, subsequent to a referendum in 2009, the construction of minarets was banned and the national Constitution was amended accordingly. In a press statement, the Special Rapporteur voiced her deep concerns at the negative consequences of the vote's outcome and she urged the State's authorities to abide by all its international obligations. [See the Special Rapporteur's press release of 30 November 2009, "Switzerland: UN expert on religious freedom regrets outcome of vote to ban construction of minarets".] The Special Rapporteur indicated that a ban on minarets amounted to an undue restriction of the freedom to manifest one's religion and constituted clear discrimination against members of the Muslim community. She would also like to highlight the need to continue raising awareness and educating people about religious diversity, thus eliminating the grounds for fears which are prone to be exploited for political purposes.

9. In addition, the Special Rapporteur is concerned that some domestic laws oblige those who wish to take up posts in the public service or become part of the judiciary to take an oath declaring their allegiance to a certain religion. [See A/63/161, para. 38.] Moreover, several constitutional provisions require the president, the prime minister or members of parliament to be affiliated with a certain religion and to publicly take an oath to that effect. The Special Rapporteur would like to reiterate that restricting public posts to members of certain religions or particular religious denominations may constitute de facto discrimination. Furthermore, States should in their personal status laws provide the possibility to have an interreligious marriage for individuals who have different religious affiliations or no religion at all.

10. In addition to non-discriminatory provisions in constitutions and other domestic laws, it is vital to put in place effective remedies for cases of human rights violations. The Special Rapporteur has sent numerous communications to Governments on individual cases in which freedom of religion or belief, including the right to change one's religion, was allegedly violated. In one case, for example, a convert to Christianity approached the national registration department, requesting that the religious status be changed on her identity card. However, the administration rejected her application and national courts held that the religious sharia court had complete jurisdiction on conversion to Islam and, by necessary implication, would have jurisdiction on apostasy and conversion out of Islam. [See the Special Rapporteur's communication of 12 October 2005 and the response from the Government of Malaysia dated 28 July 2008 (A/HRC/10/8/Add.1, paras. 135-143).] The Special Rapporteur would like to reiterate 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. Article 18 of the International Covenant on Civil and Political Rights protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief."



## V. CROSS-CUTTING ISSUES

### **4. Defenders of freedom of religion or belief and non-governmental organizations**

**Commission on Human Rights resolution 2005/40 (paragraph 17) and General Assembly resolution 64/164 (paragraph 13)**

"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;"

### Excerpts of relevant paragraphs of 25 years mandate reporting practice (1986-2011)

E/CN.4/1993/62, para. 73:

"73. The Special Rapporteur was also very pleased and grateful to note the continued cooperation extended to him by non-governmental organizations during the period under review. The detailed information they have provided has been of considerable assistance to him in carrying out his mandate. The information gathered by the Special Rapporteur attests to the continued interest on the part of the international community in problems of religious intolerance and discrimination and the genuine efforts of many Governments to restrict them. As the Special Rapporteur pointed out in his report to the Commission on Human Rights at its forty-seventh session, "My role is not to make accusations or value judgements, but to help arrive at a better understanding of the circumstances surrounding (religious) intolerance and discrimination ... to mobilize international public opinion and to establish a dialogue with the Governments and all other parties concerned."

A/56/253, paras. 151-156:

"Cooperation with non-governmental organizations

151. The Special Rapporteur wishes to emphasize the essential role of nongovernmental organizations, which have continued their efforts, devoted initially to the elaboration and adoption of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, to promote observance of that Declaration, making an invaluable contribution to the fulfilment of the mandate relating to freedom of religion and belief.

152. The General Assembly and the Commission on Human Rights have applauded this contribution in their respective resolutions (55/97 and 2001/42), and have welcomed and encouraged the continuing efforts of non-governmental organizations and religious bodies and groups to promote the implementation of the Declaration, to foster freedom of religion and belief and to highlight cases of religious intolerance, discrimination and persecution.

153. Those non-governmental organizations, some of which represent a religion or a belief, while others have a general mandate relating to human rights or a specific mandate relating to freedom of religion or belief, play a dynamic role both as regards day-to-day information management and as regards the preparation and realization of in situ visits and the progress made in the fulfilment of the mandate.

154. Their collaboration is both institutional, through the Committee on Non-Governmental Organizations at the United Nations in New York and Geneva, with regard specifically to the mandate relating to freedom of religion or belief, and informal, through ad hoc consultations.

155. The non-governmental organizations are also especially active in providing support for bolstering the human and financial resources allocated to the mandate. In August 1998, for example, the Oslo Conference on Freedom of Religion or Belief was organized on the initiative of non-governmental organizations for the specific purpose of supporting the cause of freedom of religion or belief.

156. They are thus serious partners in furthering the realization of the mandate; their enriching contribution must be emphasized and welcomed."

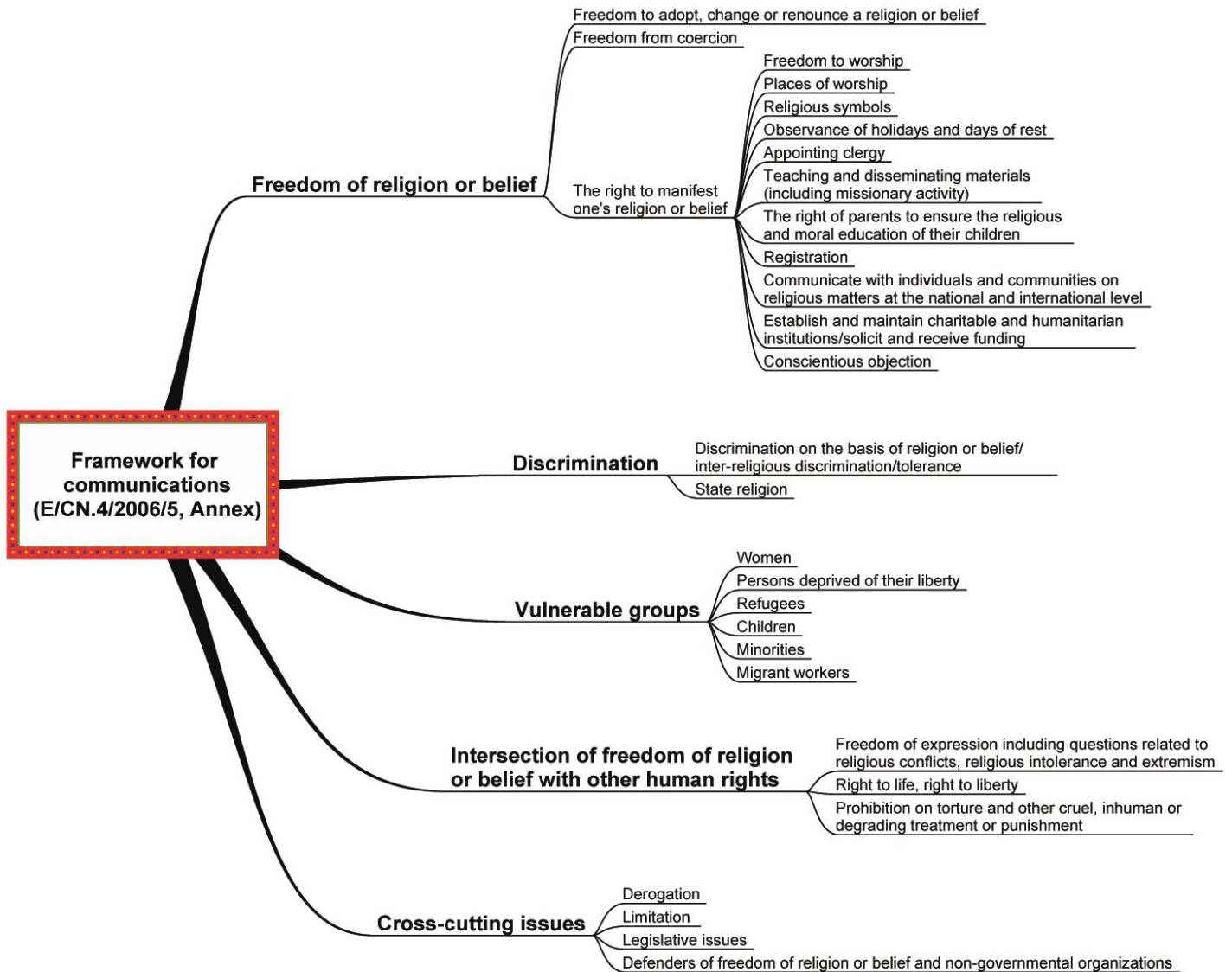
E/CN.4/2006/5/Add.2, para. 7 (country visit to Nigeria):

"7. The Special Rapporteur is particularly grateful for the very positive attitude that representatives of religious groups and non-governmental organizations (NGOs) demonstrated during the visit. In this regard, she was impressed by the level of analysis and research that is carried out by NGOs on human rights issues and, in particular, on those related to her mandate. She considers that the high quality and dynamism of Nigerian NGOs constitute an indisputable advantage, including for the Government, in the realization of the measures that will be needed to bring the country's religious communities to an acceptable level of harmony. Moreover, while she acknowledges that the analyses carried out by NGOs will help in addressing the root causes of religious tensions, she would encourage the civil society to provide the United Nations and other human rights mechanisms with more factual information on cases and situations of human rights violations."

A/HRC/6/5, paras. 47-48:

"47. Members of non-governmental organizations (NGOs) and groups based on religion or belief play an essential and dynamic role in promoting freedom of religion or belief. The Special Rapporteur is particularly grateful for the information she receives from NGOs as well as for their input during country visits, highlighting cases of religious intolerance, discrimination and persecution. The Special Rapporteur's model questionnaire, which is available online, is designed to facilitate and tailor to the mandate the submission of information with regard to potential or actual violations of the right to freedom of religion or belief. Furthermore, NGOs may also help in ensuring an effective follow-up to the Special Rapporteur's observations in her communications reports and to the mandate holder's recommendations in country reports.

48. The terms of reference for fact-finding missions by Special Rapporteurs (see E/CN.4/1998/45, appendix V) provide, inter alia, for "assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings". However, there have been cases of reprisals against persons cooperating with representatives of United Nations human rights bodies, including the Special Rapporteur on freedom of religion or belief. Since 1993, these cases as well as incidents where private individuals have been hampered in their efforts to avail themselves of United Nations human rights procedures have been documented in reports of the Secretary-General. [See the reports of the Secretary-General (E/CN.4/1993/38, E/CN.4/1994/52, E/CN.4/1995/53, E/CN.4/1996/57, E/CN.4/1997/27, E/CN.4/1998/57, E/CN.4/1999/27, E/CN.4/2000/101, E/CN.4/2001/34, E/CN.4/2002/36, E/CN.4/2003/34, E/CN.4/2004/29, E/CN.4/2005/31, E/CN.4/2006/30) and A/HRC/4/58.] It is imperative that Governments abide by their assurances and the Special Rapporteur will remain vigilant in order to protect individuals who try to cooperate with her mandate. Furthermore, she hopes that all incidents of intimidation or reprisals against human rights defenders will be scrutinized persistently by the judiciary, the media and civil society."



Специальный докладчик по вопросу о свободе религии или убеждений

宗教或信仰自由问题特别报告员

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Special Rapporteur on freedom of religion or belief

المقرر الخاص المعني بحرية الدين أو المعتقد