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公民权利和政治权利，包括宗教不容忍问题

宗教或信仰自由问题特别报告员

阿斯玛·贾汗吉尔提交的报告 *

* 本报告的尾注和附件不译，原文照发。

概 述

自 1986 年设立职位以来，宗教或信仰自由问题特别报告员一直在监督和鼓励遵守《消除基于宗教或信仰原因的一切形式的不容忍和歧视宣言》的规定。2004 年 7 月，阿斯玛·贾汗吉尔被任命为宗教或信仰自由问题特别报告员，任期三年。

本报告分为四部分。第一部分陈述了自上一次向委员会递交报告(E/CN.4/2005/61)以来根据任务开展的活动。其中，总结了本报告所审查期间内发出的信函和完成的实地访问，并概述了目前要求各国发出实地访问邀请的情况。

特别报告员认为实地访问是全面透彻地评价一个国家宗教或信仰自由状况的最佳方式。她在本报告所审查期间内对尼日利亚、斯里兰卡和法国各进行了一次访问。她欢迎阿塞拜疆和以色列两国政府最近邀请她于 2006 年前去访问。

2004 年 11 月 12 日至 2005 年 11 月 30 日期间，共向 36 个不同国家发出了 84 份信函。其中，28 份为紧急呼吁，56 份为指控函件。还有 34 份是关于侵犯多种人权的指控，与其他特别程序联合转交。

特别报告员认为必须提高通信的实效性，因此，她在本报告第二部分介绍了自己拟订的一个通信框架。这个框架使她发送的信函能够更为明确，并能提请有关国家政府注意相关的国际标准。该框架以表格的形式列出特别报告员职权范围内需处理的不同类型的情况。表格载于本报告附件。

特别报告员在报告第三部分集中谈了一个问题，即最近引起热烈讨论的展示宗教象征物的问题。这部分从国际人权的角度阐述了在穿戴服饰等宗教象征物方面积极和消极的个人宗教或信仰自由。报告第四部分是结论和建议。

特别报告员在 2004 年 11 月 12 日至 2005 年 11 月 30 日期间发送的函件和到 2006 年 1 月 30 日为止收到的各国政府对函件的回复的概述均载于报告的增编 1。增编 2 至 4 分别是对斯里兰卡、尼日利亚和法国的访问报告。与人人有权享有可达到的最高标准的身心健康问题特别报告员、法官和律师独立性问题特别报告员、酷刑和其他残忍、不人道或有辱人格的待遇或惩罚问题特别报告员、任意拘留问题工作组主席兼报告员联合编写的关于古巴关塔那摩湾美国海军基地拘押犯人人权状况的初步报告将另外在 E/CN.4/2006/120 号文件中提交。

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导 言

1. 本报告系根据人权委员会第 2005/40 号决议提交，陈述了自上一次向委员会提交报告(E/CN.4/2005/61 及 Add.1 和 2)以来在宗教或信仰自由的职权范围内开展的活动。

2. 宗教不容忍问题特别报告员最初是根据委员会第 1986/20 号决议设立的。委员会后来根据其第 2000/33 号决议将这个职称改为宗教或信仰自由问题特别报告员。2004 年 7 月，阿斯玛·贾汗吉尔被任命为特别报告员，任期三年。

3. 本报告分为四部分。第一部分陈述了在报告所审查期间内根据任务开展的活动。第二部分介绍了一个通信框架，特别报告员利用这个自行开发的工具来改进与各国政府通信的实效性。第三部分比较详细地分析了宗教象征物的问题。第四部分是特别报告员的结论和建议。

4. 特别报告员在 2004 年 11 月 12 日至 2005 年 11 月 30 日期间发送的函件和到 2006 年 1 月 30 日为止收到的各国政府对函件的回复的概述均载于报告的增编 1。增编 2 至 4 分别是对斯里兰卡、尼日利亚和法国的访问报告。与人人有权享有可达到的最高标准的身心健康问题特别报告员、法官和律师独立性问题特别报告员、酷刑和其他残忍、不人道或有辱人格的待遇或惩罚问题特别报告员、任意拘留问题工作组主席兼报告员联合编写的关于古巴关塔那摩湾美国海军基地拘押犯人人权状况的初步报告将另外在 E/CN.4/2006/120 号文件中提交。

一、活 动

5. 2006 年是《消除基于宗教或信仰原因的一切形式的不容忍和歧视宣言》(1981 年)通过 25 周年，但特别报告员忧虑地注意到全世界还有许多人没有实现宗教或信仰自由。一些国家存在严重的宗教不容忍现象，导致两极分化，程度令人吃惊。

6. 特别报告员活动的主要重点是保护个人，尤其是监督被指控侵犯宗教或信仰自由的案件和情况。执行任务的主要方式是根据个人和非政府组织等几个来源提供的信息采取行动，以及进行实地访问。

7. 特别报告员希望向协助她工作的人员表示感谢，因为她可利用的人力资源尽管非常有限，但都极其敬业。她呼吁配置更多的资源，使任务得以贯彻。

A. 信函

8. 特别报告员所收到的与似乎属于其任务范围之内的情況有关的资料多得难以应付。资料来自于个人和非政府组织，涉及各种复杂而敏感的问题。特别报告员在这方面开展的重要活动之一是与各国政府进行建设性对话，就收到的可靠控诉致信各国政府，希望它们予以澄清。

9. 2004年11月12日至2005年11月30日期间，共向36个不同国家发送了84份信函。这些国家是：亚美尼亚、阿塞拜疆、孟加拉国、白俄罗斯、比利时、中国、丹麦、埃及、厄立特里亚、希腊、印度、印度尼西亚、伊朗伊斯兰共和国、伊拉克、约旦、哈萨克斯坦、科威特、马来西亚、马尔代夫、荷兰、新西兰、巴基斯坦、韩国、罗马尼亚、俄罗斯联邦、沙特阿拉伯、塞尔维亚和黑山、斯里兰卡、泰国、土耳其、土库曼斯坦、大不列颠及北爱尔兰联合王国、美利坚合众国、乌兹别克斯坦、越南和也门。

10. 84份信函中有49份是发给亚太地区的，21份发给欧洲和北美，10份发给阿拉伯地区，4份发给非洲，拉丁美洲和加勒比地区一份也没有。在这方面，特别报告员注意到，尽管就收到的资料数量而言，国家之间明显存在着不平衡，但某些地区出现的积极趋势仍然令人鼓舞。特别报告员强调指出，如果没有关于某一国家的资料，并不表示该国的宗教或信仰自由情况必定令人满意。相反，这种缺少资料的情况有时候可能是由于该国不存在民间社会，或由于存在阻碍资料传出国境的障碍而造成的。

11. 在报告所审查期间内发送的函件中，28份为紧急呼吁，56份为指控函件。特别报告员高兴地看到，有23份紧急呼吁和11份指控函件是与其他特别程序联合发送的。特别报告员再次对这种重要的协作表示欢迎，因为侵犯宗教或信仰自由的行为在多数情况下伴随着对其他人权的侵犯。在报告所审查期间内联合发送函件的有法外处决、即审即决或任意处决问题特别报告员、增进和保护见解和言论自由权问题特别报告员、人人有权享有可达到的最高标准的身心健康问题特别报告员、暴力侵害妇女、其原因及后果问题特别报告员、法官和律师独立性问题特别报告员、任意拘留问题工作组、被强迫或非自愿失踪问题工作组、秘书长人权维护者特别代表、教育权问题特别报告员和酷刑问题特别报告员。

12. 与各国政府谈到的问题如下：信奉、改变或放弃宗教或信仰的自由以及免遭胁迫的自由；表现宗教或信仰的权利；礼拜的自由；礼拜场所；宗教象征物；注册；

任命教士的权利；被拘押人员的宗教或信仰自由。有几份函件还提到出于良心拒服兵役的问题。此外，特别报告员还收到大量报告，指控发生了基于宗教或信仰原因的歧视，包括宗教间歧视、不容忍以及性别歧视。发送的函件中几乎有四分之一与任务范围内的歧视问题有关。如前一时期一样，特别报告员还向一些政府发信请求获得关于立法问题的材料。

13. 发送的信函中有很大大一部分是关于在侵犯宗教或信仰自由权的同时侵犯其他人权的案件。例如，有的案件是言论自由同时受到侵犯，有的案件涉及宗教内冲突及/或煽动宗教仇恨。还有些信函是指控在押人员由于其宗教或信仰的原因而遭受酷刑或虐待，还有一例在押人员致死的案件以及一再发生的出于宗教动机进行惩罚如用石头砸和鞭挞的案件。在处理如上所述涉及侵犯人权的案件时，特别报告员与其他有关的任务机制联合采取行动。

14. 在起草本报告期间，特别报告员收到了下列 25 个国家发来的 38 份答复：亚美尼亚、阿塞拜疆、孟加拉国、白俄罗斯、比利时、中国、希腊、印度尼西亚、伊朗伊斯兰共和国、约旦、哈萨克斯坦、科威特、马尔代夫、新西兰、巴基斯坦、韩国、俄罗斯联邦、塞尔维亚和黑山、斯里兰卡、土耳其、土库曼斯坦、大不列颠及北爱尔兰联合王国、美利坚合众国、乌兹别克斯坦和越南。特别报告员向那些对她的信函作了详尽答复的国家政府表示感谢。特别报告员还向中国、哈萨克斯坦、巴基斯坦、俄罗斯联邦及塞尔维亚和黑山政府对她在前一份提交给委员会的报告中提到的函件给予答复表示感谢。

15. 对特别报告员的函件所作的答复在质量特别是在实质内容方面有所改进。出现这种改进的原因部分是由于特别报告员更加具有针对性地就某一特定情况发出函件，函件中所问的问题也更加具体。特别报告员虽然为这些进展感到高兴，但仍在不断设法改善机制。为此，她开发了一个答复信函的框架。该框架的内容在第三部分中作了介绍，详细内容则见附件。框架主要是作为一个工具，使特别报告员得以提请有关国家政府关注与每个被指控侵权的行为的具体性质有关的国际标准。

16. 特别报告员在 2004 年 11 月 12 日至 2005 年 11 月 30 日期间发送的函件概要和到 2006 年 1 月 30 日为止收到的各国政府对函件的回复均载于报告的增编 1，其中还载有特别报告员对所提各项关切问题的意见。

B. 实地访问

17. 在报告所审查期间内，共对尼日利亚、斯里兰卡和法国进行了三次实地访问。特别报告员借此机会感谢有关国家政府对她的工作给予合作。各次实地访问的报告载于 E/CN.4/2006/5/Add.2 号、E/CN.4/2006/5/Add.3 号和 E/CN.4/2006/5/Add.4 号文件。

18. 有关国家政府一般都对宗教或信仰自由权的基本原则给予尊重，但有些情况，包括由于宗教不容忍而引发的一些情况，却令人担忧。特别报告员尤其注意到存在颁布法律或建议制定法律来限制或制约修行、信奉或传播宗教的现象。国家访问还证实，宗教或宗教自由有时会被用作侵犯其他人权的借口或理由。

19. 特别报告员发现人类社会面临的一个主要挑战是，在按政治路线安排社会结构的同时，如何做到不侵犯个人和团体的信仰或宗教自由或不过于偏重考虑宗教问题而损害其他权利。有必要促进宗教团体之间更好地和谐共处、互相尊重。各国政府不仅要赞许还要鼓励和积极支持为促进各层面的宗教间对话而作的努力。同时，只有各国政府继续以中立和平衡的态度致力于促进宗教或信仰自由，这种和谐才能巩固并发展下去。

20. 特别报告员希望提请注意的是，国家访问对她有效履行职责极其重要，当然对履行所有特别程序的职责也都极其重要。尤为关键的是，希望各国政府在这方面给予合作。特别报告员忆及人权委员会在第 2005/40 号决议中呼吁“各国政府同特别报告员充分合作，答应特别报告员访问其国家的请求，以便她能够更有效地履行职责。”

21. 特别报告员提请委员会注意她向大会提交的报告(A/60/399)。她在报告中具体谈到请求进行访问的情况。此外，她向阿塞拜疆、伊朗伊斯兰共和国和以色列政府对她发出访问邀请表示感谢，并盼望能在 2006 年对这些国家进行实地访问。但她也注意到以色列和伊朗伊斯兰共和国政府仍未就访问日期提出建议。

22. 令人忧虑的是，不愿发出邀请的国家为数日增。这个趋势特别令人担忧，因为她收到的实质性控告或关于侵犯宗教或信仰自由权的材料正是与这些国家有关。对此，特别报告员重申支持建立一个机制，妥善解决坚持不与特别程序机制合作的国家的问题。

23. 她特别关注的是，尽管多次向印度尼西亚和俄罗斯联邦政府发出请求和提醒，但仍未收到这两国政府的邀请。她还忧虑地注意到，埃及、厄立特里亚、塔吉克斯坦、土库曼斯坦和乌兹别克斯坦等国政府没有对访问请求做出回应。她鼓励这些国家的政府立即向她发出邀请，并强调在正式邀请发出后还应建议访问的日期，否则，不论是长期邀请还是临时邀请，都将失去意义。

24. 特别报告员与其他一些特别程序一起请求收到访问古巴关塔那摩湾美国拘留设施的邀请。这一请求的详细情况见下一部分。

C. 请求收到访问古巴关塔那摩湾美国拘留设施的邀请

25. 要求访问古巴关塔那摩湾美国拘留设施的共有五个特别程序：特别报告员本人、酷刑和其他残忍、不人道或有辱人格的待遇或惩罚问题特别报告员、法官和律师独立性问题特别报告员、人人有权享有可达到的最高标准的身心健康问题特别报告员、任意拘留问题工作组主席兼报告员。

26. 2005年10月27日，美国政府邀请五个特别程序中的三个访问拘留设施，这三个特别程序是宗教自由问题特别报告员、酷刑问题特别报告员和工作组主席兼报告员。美国政府把访问时间限制为一天，并明确禁止私下询问或会见被拘留者。2005年10月31日，专家们接受短暂的访问时限及对报告员人数的限制，但表示不能接受禁止私下询问被拘留者的规定，因为那样做不符合特别报告员调查任务的职权范围，也妨碍客观而公平地评价被拘留者的状况。

27. 2005年11月18日，专家被告知美国政府没有接受他们的条件，访问因此无法进行。关于国际人权法对古巴关塔那摩湾被拘押者的适用性以及被拘押者人权状况的联合初步报告将另外在 E/CN.4/2006/120 号文件中提交。

二、通信框架

A. 框架的目的

28. 根据国际标准定义的宗教或信仰自由权是一项范围广泛的权利，涉及众多各不相同而又相互联系的问题。这种多样性充分反映在特别报告员收到的材料和控告上。为了更有效地对收到的信息做出反应，特别报告员拟订了一个通信框架，对提交

给她并在她职权范围内的案件或情况进行分类，并针对每个问题列出相应的国际标准。框架载于本报告的附件。

29. 特别报告员在多个场合表示她的一个活动重点是保护个人的宗教或信仰自由权。因而，利用信函提请各国政府关注对侵犯个人权利的控告，是至关重要的。特别报告员利用框架可以判断每个控告涉及的是宗教或信仰自由职责的哪方面的问题，并能发出更具体且更有针对性的信函。特别是通过框架，能提请各国政府注意有关某一或某些特定问题的具体国际标准，并就有关国家是否遵守标准适当提出问题。

30. 特别报告员强调指出，她收到的信函并非全都能对号入座地归入框架里列出的不同类别中。必须把每个控告的具体事实情况考虑在内。另外，在很多情况下，控告揭示的是宗教或信仰自由权利的多个不同层面的问题。她强调，拟订框架的目的不是要毫无遗漏地列出她职权范围内的所有问题。她的职责在不断发展变化，这一点从人权委员会接连通过的决议的内容中可以看出，所以框架也将在特别报告员继续履行其职责的过程中不断发展改进。

31. 框架载于本报告中，以便读者能够更清楚地了解宗教或信仰自由职权范围内的各种问题以及在职权范围内发送和接受的信函所涉及的不同类型的问题。

B. 框架涵盖的国际标准

32. 框架是在分析了关于宗教或信仰自由的国际标准的基础上拟订的。特别报告员在她前一份给委员会的报告(E/CN.4/2005/61)中阐述了与她履行职责有关的国际法律文书。特别报告员开展活动主要以如下文书为依据：《世界人权宣言》第十八条、《公民权利和政治权利国际公约》第十八条和《消除基于宗教或信仰原因的一切形式的不容忍和歧视宣言》。

33. 她的干预措施还以如下公约中的有关条款为依据：《经济、社会、文化权利国际公约》、《消除一切形式种族歧视国际公约》、《儿童权利公约》、《消除对妇女一切形式歧视公约》、《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》、《保护所有移徙工人及其家庭成员权利国际公约》、《防止及惩罚灭绝种族罪公约》、《关于难民地位的公约》。

34. 她还以人权委员会和联合国其他部门如大会和经济及社会理事会的有关决议为指导。另外，她还会遵循条约机构的一般性评论及结论和法理以及国际人道主义法的有关规定。特别报告员还把区域一级的有关人权文书和法理考虑在内。

C. 框架涵盖的宗教或信仰自由的组成部分

35. 框架分为五个不同门类。第一类是宗教或信仰自由权利及表达宗教或信仰的权利的组成部分。第二类是与宗教或信仰自由有关的歧视问题。第三类是弱势群体的问题，如妇女、儿童、难民、少数民族和被剥夺自由的人等。第四类是关于宗教自由权牵涉到侵犯其他人权的情况，如言论自由权和禁止酷刑和其他残忍、不人道或又辱人格的待遇或惩罚的规定。第五类是贯穿各领域的问题，包括关于限制和克减的国际规定。

三、宗教象征物

A. 事实情况

36. 在处理宗教象征物问题时，需要考虑两方面的情况。一方面，世界不同地方的许多人不准通过展示宗教象征物来表明自己的身份；另一方面，报告员的报告和活动揭示一些国家要求人们在公共场合通过展示象征物(包括穿着宗教服装)来表明自己的身份。特别报告员称前一种情况为积极的宗教或信仰自由，称后一种情况为消极的宗教自由。以下段落从国际人权角度具体讨论了在穿戴宗教象征物如服装和装饰物方面涉及的积极和消极的个人宗教或信仰自由。与此相关的另一个问题是在公共场合如法庭、投票站、教室、公共广场等场所展示宗教象征物的问题。有几个国家的最高法院¹已经就这些情况某些方面的问题做出判决，但本部份不讨论这个问题。

37. 对实施情况的比较分析表明，全世界超过 25 个国家有关于穿戴宗教象征物的规定或禁令。² 一些国家的若干宗教受到影响，宗教象征物问题仍是争论的对象。受到影响的信教者及其宗教服装或装饰物有：穆斯林教徒戴头巾、犹太教徒戴便帽、基督教徒戴十字架、项圈和修女的服装、印度教徒戴宾蒂、佛教徒穿深黄色的法衣、锡克教徒戴头巾或佩剑、奥修教徒穿红衣服等。关于穿戴宗教象征物的规定或禁令分为不同层次，包括宪法规定、国家一级的法律、地区或地方当局的规定和强制性指令、

公共或私人组织或机构的规范(如学校规范)和法院判决。不遵守规定或禁令的人可能在多大程度上受到不利影响,取决于适用的不同领域。小学生和初中生可能会被赶出公立学校,而教师则可能受斥责、被停职并最终被开除。大学生如果不遵守关于宗教象征物的规定,也可能被开除或拿不到学位,而大学讲师若是如此,则一开始就可能不被聘用。在一般工作场所穿戴宗教象征物可能直接导致受斥责、被停职和开除。私营企业员工和公务员及议会成员和军事人员也受此影响。如果身份证照片如长期居留卡、签证、护照和驾驶执照上的照片也适用某些着装法令的话,违反规定的人可能会得不到正式身份证,或为驱逐目的而被强令按要求在身份证照片上戴头巾或帽子。在公共场合,个人或者被禁止穿戴宗教象征物(积极的宗教或信仰自由)或者被强迫穿戴他们认为对其信仰不甚重要的宗教象征物(消极的宗教或信仰自由)。

38. 特别报告员奥马尔突出批评了某些国家把穿宗教服装当成一种义务的现象。他说“妇女是受影响最大的群体之一,因为对她们的教育和就业有严格的限制,还要求她们履行穿所谓伊斯兰服装的义务”(E/CN.4/1998/6,第60段)。有报告称,妇女因为没有穿宗教象征物而被鞭挞和/或罚款(A/51/542/Add.2,第51段),并且越来越多妇女在街上被袭击(E/CN.4/2003/66/Add.1,第59段),甚至在受到威胁后被杀害(E/CN.4/1995/91,第36段)。特别报告员奥马尔在实地访问后提出了可能的解决办法,敦请不把服装作为政治管制的对象,并呼吁在这方面采取灵活和容忍的态度。同时他还强调,传统和习俗应受到尊重(E/CN.4/1996/95/Add.2,第97段,和A/51/542/Add.2,第140段)。他还在专题研究中提到宗教象征物的含义(E/CN.4/2002/73/Add.2,第101至102段),并特别提到公立学校学生的情况(A/CONF.189/PC.2/22,第56至59段)。

39. 此外,欧洲委员会会议员大会最近在第1464(2005)号决议“欧洲的妇女和宗教”中要求其成员国“确保宗教自由及对文化和传统的尊重不会被当成借口,用来侵犯妇女权利,包括强迫未成年少女服从宗教规范(包括着装规范)”³。

B. 国际层面的法律框架

40. 如特别报告员前一份年度报告(E/CN.4/2005/61,第65段)所述,多数国际司法机构或准司法机构认为,展示宗教象征物的做法是一种宗教或信仰的“外在表现”,而并非不受限制的“内心悔悟”的一部分。若干世界性和地区性人权文书都提到“通过礼拜、持戒、修行和开示体现宗教或信仰”⁴的自由(着重号为附加)。《消除基于宗

教或信仰原因的一切形式的不容忍和歧视宣言》更是特别强调了“有适当制造、取得和使用有关宗教或信仰的仪式或习惯所需用品的自由”⁵。人权委员会关于《公约》第十八条的第 22 号一般性意见指出“对宗教或信仰的持戒或修行可能不仅包括典礼，也包括.....穿戴不同的服饰或头巾”(第 4 段)。

41. 穿戴宗教象征物是属于“修行”还是“持戒”的范畴，这一点还不清楚。委员会在列举需要保护的征特征时，似乎并没有对这两个类别加以明确区分。然而，一些评论家建议，持戒指持守“与一种宗教或信仰必然联系的规定，既保护做某些行为的权利，又保护不做某些行为的权利”；而修行所指的“并不是某种宗教或信仰规定必须做或不做的行为，而只是允许做的行为”⁶。强制性规定和单纯许可之间的这种分别，最终可能导致难以决定应由谁来审议个人宗教或信仰自由在持戒和修行方面的问题。在详尽阐述第 22 号一般性意见时，人权委员会成员罗莎琳德·希金斯说“.....决定什么构成宗教的表现形式，这不是委员会的责任。”她坚决反对“国家有完全的自由决定什么是真正的宗教信仰，而什么不是”，认为“一种宗教的内容应由信教者自己来界定。”⁷ 显现或展示象征物可能与某种宗教感情或信仰有关，也可能无关。因此，由国家来决定有关象征物是否一定就是宗教信仰的体现，是极不恰当的。特别报告员因而采取与人权委员会一样的方式，把穿戴宗教象征物的问题放在“修行和持戒”这个共同标题下讨论。

42. 国际人权法框架下的争论焦点在于可能对表现宗教或信仰的自由加以限制的问题。例如《世界人权宣言》第二十九条第 2 款，《公民权利和政治权利国际公约》第十八条第 3 款、《欧洲人权公约》第九条第 2 款、《美洲人权公约》第十二条第 3 款均在这一点上存在争议。一般而言，这些条款只接受仅受法律所规定的以及为保障公共安全、秩序、卫生或道德或他人的基本权利和自由所必需的限制。值得注意的是，允许的干预理由不包括针对不同人权规定的额外理由，如国家安全或他人的名誉等。另外，《公约》第四条第 2 款和《美洲人权公约》第二十七条第 2 款还规定，即使在公共紧急状态下或战争时期，信仰和宗教自由也不得克减。这项权利的不可克减再次突出了宗教或信仰自由的重要性。

C、国际案例法

43. 人权事务委员会在讨论第 22 号一般性意见的措辞时，还考虑到根据宗教习惯穿衣“需避免敌对或挑衅”⁸。以下案例反映了引发争论的一些典型情况以及有关国际司法机构或准司法机构的不同结论。提交到人权事务委员会的两个案例以及“儿童权利委员会的结论性意见”都与宗教象征物有关。此外，在欧洲人权法院或欧洲人权委员会的案例法中还有一些判例，包括最近一个判例，即 2005 年 11 月 10 日的大审判庭判决。

44. 在第 931/2000 号信函提到的“Hudoyberganova 诉乌兹别克斯坦”一案中，塔什干东方语言学院的一名穆斯林女学生据称被禁止戴头巾。2004 年 11 月 5 日，人权事务委员会过半数成员在该缔约国没有提出任何辩护的情况下判定被告违反了《公约》第十八条第 2 款的规定，并确认“表现个人宗教的自由包括在公共场合穿着符合个人信仰或宗教的服装的权利。并且，禁止在公共场合或私人场合穿着宗教服装的做法违反第十八条第 2 款的规定，即禁止一切足以损害个人维持或改变宗教自由的强迫做法。”⁹但三名委员会成员决定把个人意见附在后面。这些意见提到案情的不确定状况，并根据 Hudoyberganova 女士本人的陈述指出，她被开除还有更为复杂的原因。

45. 在第 208/1986 号信函提到的“宾达诉加拿大”一案中，人权事务委员会在 1989 年 11 月 9 日判定，要求锡克教徒工作时戴安全帽的做法不违反《公约》第十八条第 3 款的规定，但却没有具体说明此案涉及的是哪种限制。此外，委员会未发现存在违反《公约》第二十六条的针对锡克教徒事实上的歧视，因为这项法律规定“被认为是合乎情理的，其目的客观而且符合《公约》”¹⁰。

46. 儿童权利委员会在对法国第二份定期报告所做的结论性意见中关切地注意到，据称歧视现象有所抬头，包括出于宗教原因的歧视有所加剧；并且关于在公立学校穿戴宗教象征物和服装的新法律可能会忽略维护儿童最大利益的原则和儿童受教育的权利。委员会建议该缔约国“考虑采用其他替代性方法，包括调解的方式，以保证公立学校的非宗教性，同时保证个人权利不受侵犯，并使儿童不会由于这种法律的实施而被排除在学校系统和其他机构之外或被边缘化。学校的衣着规范最好在鼓励儿童参与决策的同时由公立学校自行决定。”委员会进一步建议“该缔约国继续密切监测由于新法律的实施而被逐出校门的女童的现状，并确保她们享有受教育的权利。”¹¹

47. 在区域一级，欧洲人权法院似乎更倾向于允许国家限制个人积极的宗教或信仰自由。欧洲人权委员会以前也是这样。在法院案例“沙欣诉土耳其”案中，伊斯坦布尔大学不许头戴帽子或头巾的学生听讲座和参加考试。法院审判庭判决和最近大审判庭的判决都认为非宗教性符合《欧洲人权公约》的基本价值观。关于《欧洲人权公约》第九条，“法院认为，在土耳其的情况中考察伊斯兰头巾的问题，必须考虑戴这种象征物表现为或被认为是强制性宗教义务，而这会对那些选择不戴头巾的人产生什么影响。”¹² 然而，Tulkens 法官对此表示异议，不赞同大审判庭多数人采用非宗教性和平等的原则。她强调，干涉受《欧洲人权公约》保障的权利的行为要成为正当行为，仅以担心为由是不行的，必须要有“不可辩驳的事实和合法性毋庸置疑的理由”才行。

48. 在“Dahlab 诉瑞士”案中，欧洲人权法院在受理阶段就驳回了一名小学教师的立案申请，她指称被禁止在履行职业义务时戴头巾。法院认为教师戴头巾这类“强大的外在象征”可能会在某种程度上影响幼童改变宗教。本案涉及的幼童年龄在 4 至 8 岁。因此，法院维持瑞士联邦法院的判决，认为禁止申请人在以教师身份开展活动时戴头巾是“正当的，因为戴头巾可能会干扰她自己的学生、同校其他学生和学生父母的宗教信仰，并违反学校教派中立的原则”¹³。

49. 在“福利党和其他人诉土耳其”一案中还强调了要保护他人的信仰和公共秩序。欧洲法院大审判庭指出“大学为防止某些原教旨主义宗教运动向不信奉那种宗教或属于另一宗教的学生施压而采取的措施，根据《欧洲人权公约》第九条第 2 款属于正当行为。”¹⁴

50. 欧洲人权委员会还受理了两个申请，即“Karaduman 诉土耳其”（第 16278/90 号）和“Bulut 诉土耳其”（第 18783/91 号）。两者涉及的是大学拒绝给申请人发学位证书，原因是他们上交的照片戴着帽子或头巾。委员会在 1993 年 5 月 3 日的判决中认为，拒绝发学位证书的做法不构成对申请人宗教或信仰自由的干涉，因为非宗教性的大学可以对表现宗教仪式和象征的行为加以管理，目的是保证有不同信仰的学生之间能和谐共处，并维护公共秩序和保护他人的信仰。

D. 拟订一套旨在平衡相互冲突的人权的一般性标准

51. 一般而言，对引发争议的情况进行评价时应就事论事，例如：要在教师表现自己宗教的权利与根据具体情况维护宗教和谐以保护小学生的需要之间寻求平衡。然而，为平衡相互冲突的人权，似乎有必要制定一套一般性标准，以在适用国际人权标准及其范围方面提供一定指导。与欧安组织民主体制和人权事务处(民主人权处)在2004年制定的指南一样，¹⁵ 这些一般性标准的目的是帮助国家和国际机构分析和审议与宗教或信仰自由有关的法律和立法草案。特别报告员邀请有意管理穿戴宗教象征物问题的国家政府考虑向人权事务高级专员办事处寻求咨询服务。

52. 在拟订这样一套一般性标准时，需要考虑国家和国际论坛上提出的相互冲突的人权和公众利益。宗教或信仰自由既包括穿戴或展示宗教象征物的积极自由，又包括不受强迫穿戴或展示宗教象征物或不会因此遭受刁难的消极自由。另一项冲突的人权是男女有权平等享有一切公民权利和政治权利，以及这项权利不受任何形式歧视的原则，包括出于种族、肤色、性别、宗教、政治或其他观点、国家或社会出身、财产、出生或其他地位等理由的歧视。因穿戴符合宗教或信仰习惯的宗教象征物而被开除的学生，可行使人人受教育的权利。另外，与此有关的还有父母或法定监护人根据他们的宗教或信仰并依据他们认为孩子在成长过程中应受的道德教育安排家庭生活的权利(见《宣言》第5条第1款)。另一方面，国家可能会努力保持“学校系统的教派中立”和“维护学校的宗教和谐”(见瑞士联邦法院对 *Dahlab* 案的判决)。根据人权事务委员会成员露丝·韦奇伍德对 *Hudoyberganova* 案的个人意见，“可以允许国家对直接干扰有效儿童教育的着装形式加以限制”¹⁶。此外，最近欧洲法院对沙欣案的大审判庭判决提到，有必要“维护公共秩序并保障内部和平和真正的宗教多元主义，这对于民主社会的延续至关重要”。

53. 然而，任何限制的出发点都必须是为了维护公共安全、秩序、健康或道德，或他人的基本权利和自由；必须应对紧迫的公共需求或社会需求；必须追求一个合法目标；必须与此目标相称。¹⁷ 此外，应由国家来证明对表现个人宗教或信仰的自由加以限制的行为是正当行为。所以，禁止穿戴宗教象征物的规定如果仅仅是建立在假定或推测的基础上，而不是建立在可论证的事实基础上，则被认为侵犯了个人的宗教自由。¹⁸

54. 关于允许的限制条款的适用范围，人权事务委员会第 22 号一般性意见强调，《公约》第十八条第 3 款“要作严格解释：不是出于此处指明理由的限制是不允许的，哪怕这种限制可适用于其他受《公约》保护的权利，如国家安全。施加限制的目的在于限于明文规定的目的，并且必需同载述的特定需要直接有关或者相称。施加的限制不得基于歧视性的目的或采取歧视性的做法(第 8 段)。”

55. 在上述事实、法律框架和国际案例法的基础上，特别报告员努力拟订了一套一般性标准，以便从人权法的角度评价关于穿着宗教象征物的限制性规定和禁令。下列“恶化指标”表示典型的与国际人权法不符的立法和行政举措，而后面的“中立指标”本身不违反这些标准：

(a) 恶化指标：

- 有关限制导致个人表现宗教或信仰的自由被取消；
- 有关的限制意图制造或结果导致出于宗教或信仰原因的公然歧视或伪装的差异化；
- 仅根据某单一教派的原则，以保护道义为目的对表现宗教或信仰的自由施加限制；¹⁹
- 公开或心照不宣地根据主导或压倒性宗教或信仰的情况而专门制定不受宗教象征物穿着禁令约束的例外规定；
- 国家机构在实践中以歧视性方式或出于歧视目的施加限制，例如随意针对妇女等一定群体或团体施加限制；
- 没有对宗教或信仰的具体特征加以应有考虑，例如规定要穿宗教服装的宗教受全面禁令的影响似乎远比不特别强调着装的宗教或信仰受到的影响大；
- 对不愿穿着宗教服装或特别象征物的个人采用强迫手段并进行制裁被看作宗教对之进行的制裁。这可能包括制定法律规定或国家政策允许个人包括父母非法施加压力、进行威胁或采用暴力胁迫个人遵守这种规定；

(b) 中立指标：

- 限制或禁令条款的措辞中立并具包容性；

- 禁令在适用时并未发生不一致的情况，也不存在对一定宗教团体或其他少数民族或弱势群体的偏见；
- 身份证件照片由其定义可知，要求能根据照片适当识别佩戴证件者，所以如果国家能预见到个人的宗教表现形式能为此做出合理的调整，则相应的对身份证照片上允许戴的头饰加以限制，似乎是合法的；
- 所作的干涉对保护妇女、宗教少数派或弱势群体的权利至关重要；
- 根据了解到的有关人员的脆弱性而随不同情况作相应调整，在一定情况下也可以被看作合法，例如为保障小学生及父母或法定监护人的自由，以保证他们能根据自己的信仰对其子女进行宗教和道德教育。

56. 为了顾及不同类别的个人的具体情况，允许的限制在细节上会有争议。一般而言，考虑到他们的年龄、不成熟性和教育的强制性，学校的儿童一般被认为是脆弱的。此外，父母的权利也被提出来，以证明对教师表现他们的宗教或信仰的积极自由加以限制是合理的。在所有涉及儿童的行动中，儿童的最大利益应是考虑的首要因素。而大学生一般已经达到成人的年龄，并一般被认为不象小学生那么容易受影响，而且通常也不再涉及父母的权利。

57. 早在 1959 年，当时的防止歧视及保护少数小组委员会特别报告员 Arcot Krishnaswami 就已经在他对宗教权利和实践中的歧视问题所做的基本研究中暗示了上述对于某些机构场合的具体问题的争论：“在一些机构例如公立学校中禁止穿戴宗教服饰，其动机可能是想保持这些机构的非宗派特征。所以尽管有些人的信仰规定教徒必须如何穿着，对这些人不应毫无理由地不准她们穿宗教服装，但要针对穿戴宗教服饰的权利制定一条普遍适用的规范却是困难的。”²⁰

58. 在国家一级做出政策决定，就穿戴宗教象征物的问题对表现宗教或信仰的自由加以干涉时，政府以及在可能进行的法律审查中都需要全面重视是否相称的问题。为此，应给予下列问题肯定的答复：

- 所作的干涉除了必须能够保护处于危险境地的合法权益外，是否适当？
- 选用的措施是否是在最低程度上限制了有关权利或自由？
- 措施是否有分寸，即是否平衡相互冲突的权利？
- 选用的措施是否有利于促进宗教容忍？
- 措施执行的结果是否避免给任何宗教群体加上污名？

59. 在处理禁穿宗教象征物问题时，务须记住两个一般性问题：穿戴宗教象征物的意义以及它与相冲突的公共利益特别是与世俗主义和平等原则的关系如何？由谁来最终决定这些问题，例如应由个人自己还是由宗教当局、国家政府和法院或国际人权机制来决定？尽管“自由裁量”理论允许根据民族、文化或宗教的具体情况而自行决定执行细节，但采取这种方式不应导致质疑“一切人权均为普遍、不可分割、相互依存、相互联系”²¹的国际共识，这是1993年世界人权大会通过的《维也纳宣言和行动纲领》中申明的共识。

60. 基本目标应是既保障积极的宗教或信仰自由，即通过自愿穿戴或显示宗教象征物来持戒和修行的自由，又保障消极的免于被强迫穿戴或显示宗教象征物的自由。同时，还需要平衡与之冲突的人权并严格采用限制措施保护公共利益。特别报告员完全同意欧洲法院 *Tulkens* 法官的结束评语：“总之，需要一再强调的信息是，防止和打击狂热主义和极端主义的最好办法就是拥护人权。”²²

四、结论和建议

61. 2006年是《消除基于宗教或信仰原因的一切形式的不容忍和歧视宣言》(1981)通过25周年。但特别报告员忧虑地注意到，全世界还有许多人没有实现宗教或信仰自由。她希望通过这次周年纪念活动重申促进宗教或信仰自由的重要性，并提请各方关注与其任务有关的问题的进展情况。她鼓励各国政府和非政府组织支持将提出的倡议，在1981年以来所取得成绩的基础上组织活动，找出《宣言》中那些在今天引起特别关注的规定，并向正在抬头的宗教不容忍趋势发起挑战。

62. 虽然她注意到宗教领袖们在国际层面定期组织高级别会议，以促进宗教间对话，但令她忧虑的是，各国政府虽在保护人们的宗教或信仰自由权免遭侵犯方面负有主要责任，却很少举办政府间活动讨论宗教不容忍趋势抬头的问题，特别是很少在区域一级进行讨论。特别报告员鼓励就与其任务有关的问题开展更多的政府间对话，以使有关政策制定者更大程度地参与进来。

63. 特别报告员感谢斯里兰卡、尼日利亚和法国政府在她于本报告所审查期间内进行访问时给予合作。她认为这种合作最终将有利于这些国家，因为改善宗教容忍和宗教自由状况是有益于所有国家的。因此她鼓励所有国家都积极回应她提出的进行国家访问的请求，使她能更有效地完成任务。

64. 然而，实在令人忧虑的是，越来越多国家不发出实地访问的邀请。这一趋势尤其令人担忧，原因是她所收到的关于侵犯宗教或信仰自由权的实质性控告正是与这些国家有关。对此，特别报告员重申支持建立一个机制，妥善解决坚持不与特别报告员机制合作的国家的问题。她鼓励各国和其他各方在与联合国改革有关的各项活动中考虑这个问题。特别是在考虑新机构的成员组成时，不考虑那些没有在国家访问方面给予特别报告员合作的国家。

65. 特别报告员欢迎一些国家政府对报告所审查期间内发送的信函给予答复。她重申必须启动与有关国家政府的对话，讨论针对这些国家内侵犯宗教或信仰自由的情况提出的控告。因此，她拟订了一个通信框架，以改进发给各国政府的信函的针对性和质量。她希望各国政府能相应地做出努力，全面、及时地对她信函中提出的具体问题予以答复。

66. 特别报告员制定了一套关于宗教象征物的一般性标准，包括“中立指标”和“恶化指标”，以期就适用的人权标准及其范围提供一定指导。她希望强调的是，不得出于歧视目的或以歧视性的方式施加限制。所作的限制必须同载述的特定需要直接有关或者相称。国家有责任证明对表现宗教或信仰的自由施加限制是正当的。选用的措施应促进宗教容忍并避免给任何宗教群体加上污名。另外，政府及在可能进行的法律审查中都应完全遵守适当性和比例性原则。

67. 特别报告员在报告所审查期间内仍收到关于蓄意冒犯他人宗教的案件或情况的报告。她注意到在许多案件中，声明或其他形式的言论可能是行使言论自由权的结果，但她也关注到在某些案件中，这种言论揭露的是对他人的宗教缺少容忍，而这可能会威胁到一个社会的宗教和谐，因为这种不容忍常常以定型观念为基础，并可能引发更严重的两极分化。她计划在以后的活动中进一步发展其任务的这一方面的内容。

68. 最后，注意到各特别程序由于其工作的细化而无可争议地给联合国人权机制带来利益，并注意到这些特别程序面临的新挑战和不断增加的需要，特别报告员极力鼓励给人权事务高级专员办事处特别程序处配置更多资源。在这方面，她指出，她职权范围内需要处理的案件和情况的范围越来越大，需要加强可供她执行任务用的资源，特别是人员的配置。

附注

¹ Cf. US Supreme Court, judgments 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, judgment of 13 December 2004 on crucifixes in schools (Ordinanza N.389 Anno 2004); Swiss Tribunal fédéral suisse/Schweizerisches Bundesgericht/Tribunale federale svizzero, judgment of 18 January 1995 on crucifixes in courtrooms (see official collection of jurisprudence, ATF 121 I 42) and judgment of 26 September 1990 on crucifixes in classrooms (ATF 116 Ia 252); German Bundesverfassungsgericht, judgment of 16 May 1995 on crucifixes in classrooms (see official collection of jurisprudence, BVerfGE 93,1) and judgment of 17 July 1973 on crucifixes in courtrooms (BVerfGE 35, 366)。

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

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

⁴ 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)。

⁵ 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; ”。

⁶ 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.

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

⁸ *Id.*, para. 27 (Human Rights Committee member Mr. Sadi).

⁹ CCPR/C/82/D/931/2000, para. 6.2.

¹⁰ CCPR/C/37/D/208/1986, para. 6.2.

¹¹ 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.

¹² *Şahin v. Turkey*, application no. 44774/98, ECtHR Chamber judgment of 29 June 2004, para. 108 and ECtHR Grand Chamber judgment of 10 November 2005, para. 115.

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

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

¹⁵ "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.

¹⁶ CCPR/C/83/D/931/2000, OP.cit.

¹⁷ 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.

¹⁸ 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 No. 6 and 7, available at www.irla.org/documents/reports/symbols.html.

¹⁹ *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.

²⁰ See e.g. Ms. Dahlab's submission in ECHR 2001-V at p. 460.

²¹ E/CN.4/Sub.2/200/Rev.1, p. 33.

²² Dissenting opinion of Judge Tulkens in the ECtHR Grand Chamber judgment of 10 November 2005 in the case of *Şahin v. Turkey*, para. 20.

Annex

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

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

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| | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 1 (2)</u>: “No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 5</u>: “Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.”</p> |
| <p>The right to manifest one’s religion or belief</p> | <p>ICCPR</p> <p><u>Art. 18 (1)</u>: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”</p> <p><u>Art. 18 (3)</u>: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”</p> <p>1981 Declaration of the General Assembly</p> <p><u>Art. 1 (1)</u>: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”</p> <p><u>Art. 1 (3)</u>: “Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 4</u>: “The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose</p> |

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

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| | <p>adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;”.</p> <p>Commission on Human Rights resolution 2005/40</p> <p>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;”.</p> |
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| | <p>Human Rights Committee general comment 22</p> <p><u>Para. 4:</u> “The concept of worship extends to [...] the display of symbols”.</p> <p><u>Para. 4:</u> “The observance and practice of religion or belief may include not only ceremonial acts but also such customs as [...] the wearing of distinctive clothing or head coverings [...]”.</p> |
| Observance of holidays and days of rest | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 6 (h):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 4:</u> “The concept of worship extends to [...] the observance of holidays and days of rest.”</p> |
| Appointing clergy | <p>General Assembly Declaration 36/55 1981</p> <p><u>Art. 6 (g):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To train, appoint, elect or designate by succession appropriate leaders [...]”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 4:</u> “In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers [...]”.</p> |
| Teaching and disseminating materials (including missionary activity) | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 6 (d):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To write, issue and disseminate relevant publications in these areas;”.</p> |

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| <p>activity)</p> | <p><u>Art. 6 (e)</u>: The right to freedom of thought, conscience, religion or belief includes the freedom, “To teach a religion or belief in places suitable for these purposes.”</p> <p>Commission on Human Rights resolution 2005/40</p> <p><u>4.d</u>: The Commission on Human Rights urges States, “To ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications in these areas, taking into account the limitations contained in article 29 of the Universal Declaration of Human Rights;”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 4</u>: “In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”</p> |
| <p>The right of parents to ensure the religious and moral education of their children</p> | <p>ICCPR</p> <p><u>Art. 18 (4)</u>: “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.”</p> <p>CRC</p> <p><u>Art. 14 (2)</u>: “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child [...] (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;”.</p> <p>ICESCR</p> <p><u>Art. 13 (3)</u>: “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.”</p> <p>Migrant Workers Convention</p> <p><u>Art. 12 (4)</u>: “States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”</p> <p>1981 Declaration of the General Assembly</p> |

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| | <p><u>Art. 5:</u></p> <p>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.</p> <p>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.</p> <p>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.</p> |
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| Registration | <p>Commission on Human Rights resolution 2005/40</p> <p><u>4 (c):</u> The Commission on Human Rights urges States, “To review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private;”.</p> <p><u>4 (e):</u> The Commission on Human Rights urges States, “To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”</p> |
| Communicate with individuals and communities on religious matters at the national and international level | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 6 (i):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”</p> |
| Establish and maintain charitable and humanitarian institutions/solicit and receive funding | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 6 (b):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To establish and maintain appropriate charitable or humanitarian institutions;”.</p> <p><u>Art. 6 (f):</u> The right to freedom of thought, conscience, religion or belief includes the freedom, “To solicit and receive voluntary financial and other contributions from individuals and institutions.”</p> |

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| | <p>financial and other contributions from individuals and institutions.”</p> <p>Commission on Human Rights resolution 2005/40</p> <p>4 (e): The Commission on Human Rights urges States, “To ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”</p> |
| Conscientious objection | <p>Human Rights Committee general comment 22</p> <p><u>Para. 11</u>: “Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.”</p> |
| DISCRIMINATION | |
| Discrimination on the basis of religion or belief/inter-religious discrimination/tolerance | <p>ICCPR</p> <p><u>Art. 2 (1)</u>: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]”</p> <p><u>Art. 5 (1)</u>: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”</p> <p><u>Art. 26</u>: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...]”</p> <p><u>Art. 27</u>: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be</p> |

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 [...].”

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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.”

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| | <p>Commission on Human Rights resolution 2005/40</p> <p><u>4 (g)</u>: 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;”.</p> <p><u>7</u>: 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;”.</p> <p><u>8</u>: 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;”.</p> <p><u>9</u>: The Commission on Human Rights, “Recognizes that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization of the aims of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and invites Governments, religious bodies and civil society to continue to undertake dialogue at all levels to promote greater tolerance, respect and understanding;”.</p> <p><u>10</u>: The Commission on Human Rights, “Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding;”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 2</u>: “The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”</p> |
| <p>State religion</p> | <p>Human Rights Committee general comment 22</p> <p><u>Para. 9</u>: “The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant,</p> |

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| | <p>including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.”</p> <p><u>Para. 10</u>: “If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.”</p> |
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VULNERABLE GROUPS

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| Women | <p>ICCPR</p> <p><u>Art. 5 (1)</u>: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”</p> <p><u>Art. 18 (3)</u>: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”</p> |
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| | <p>CEDAW</p> <p><u>Art. 2</u>: “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:</p> <p>(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</p> |
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| | <p>principle;</p> <ul style="list-style-type: none">(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.” <p><u>Art. 3:</u> “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”</p> <p>ICESCR</p> <p><u>Art. 2 (2):</u> “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”</p> <p>1981 Declaration of the General Assembly</p> <p><u>Art. 8:</u> “Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the UDHR and the Covenants;”.</p> <p>Commission on Human Rights resolution 2005/40</p> <p><u>5.b:</u> In which the Commission on Human Rights invites the Special Rapporteur to address situations of violence and discrimination that affect many women as a result of religion or belief.</p> <p><u>14:</u> The Commission on Human Rights, “Stresses the need for the Special Rapporteur to continue to apply a gender perspective, inter alia through the identification of gender specific abuses, in the reporting process, including in information collection and in</p> |
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| | <p>recommendations;”.</p> <p>Human Rights Committee general comment 28</p> <p><u>Para. 13:</u> “States parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve a violation of a number of rights guaranteed by the Covenant, such as: article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.”</p> <p><u>Para. 19:</u> “The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.”</p> <p><u>Para. 21:</u> “States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one’s choice - including the freedom to change religion or belief and to express one’s religion or belief - will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion; States parties should therefore provide information on the status of women as regards their freedom of thought, conscience and religion, and indicate what steps they have taken or intend to take both to eliminate and prevent infringements of these freedoms in respect of women and to protect their right not to be discriminated against.”</p> |
| <p>Persons deprived of their liberty</p> | <p>Human Rights Committee general comment 22</p> <p><u>Para. 8:</u> “Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties’ reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.”</p> |

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

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| | 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.” |
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| <p>Minorities</p> | <p>1981 Declaration of the General Assembly</p> <p><u>Art. 5 (3)</u>: “The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.”</p> <p><u>Art. 5 (5)</u>: “Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.”</p> <p>ICCPR</p> <p><u>Art. 27</u>: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”</p> <p>CRC</p> <p><u>Art. 30</u>: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”</p> <p>General Assembly Declaration 47/135</p> <p><u>Art. 1 (1)</u>: “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”</p> <p><u>Art. 2 (1)</u>: “Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”</p> |
| <p>Migrant workers</p> | <p><u>Art. 12 (1)</u>: “Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.”</p> |

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| | <p><u>Art. 12 (2)</u>: “Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.”</p> <p><u>Art. 12 (4)</u>: “States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”</p> |
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| <p align="center">INTERSECTION OF FREEDOM OF RELIGION OR BELIEF WITH OTHER HUMAN RIGHTS</p> | |
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| <p>Freedom of expression including questions related to religious conflicts, religious intolerance and extremism</p> | <p>ICCPR</p> <p><u>Art. 19</u>:</p> <p>“1. Everyone shall have the right to hold opinions without interference.</p> <p>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.</p> <p>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 (<i>ordre public</i>), or of public health or morals.”</p> <p><u>Art. 20</u>:</p> <p>“1. Any propaganda for war shall be prohibited by law.</p> <p>2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”</p> <p>Commission on Human Rights resolution 2005/40</p> <p><u>5 (a)</u>: 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.</p> <p><u>5 (c)</u>: In which the Commission on Human Rights invites the Special Rapporteur to address the issue of the use of</p> |

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| | <p>religion or belief for ends inconsistent with the Charter of the United Nations and other relevant instruments of the United Nations.</p> <p><u>6</u>: 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;”.</p> <p><u>9</u>: The Commission on Human Rights, “Recognizes that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization of the aims of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and invites Governments, religious bodies and civil society to continue to undertake dialogue at all levels to promote greater tolerance, respect and understanding;”.</p> |
| | <p><u>10</u>: The Commission on Human Rights, “Emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs, encompassed by the dialogue among civilizations, to promote greater tolerance, respect and mutual understanding;”.</p> <p><u>11</u>: The Commission on Human Rights, “Also emphasizes that equating any religion with terrorism should be avoided as this may have adverse consequences on the enjoyment of the right to freedom of religion or belief of all members of the religious communities concerned;”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 7</u>: “In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its general comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.”</p> |
| <p>Right to life, right to liberty</p> | <p>ICCPR</p> <p><u>Art. 6</u>:</p> <p>“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p> <p>2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”</p> |

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| | <p><u>Art. 9 (1)</u>: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”</p> <p>Commission on Human Rights resolution 2005/40</p> <p><u>4 (f)</u>: The Commission on Human Rights urges States, “To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights;”.</p> <p>Economic and Social Council resolution 1984/50</p> <p><u>Para. 1</u>: “In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”</p> |
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| <p>Prohibition on torture and other cruel, inhuman or degrading treatment or punishment</p> | <p>ICCPR</p> <p><u>Art. 7</u>: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”</p> <p>Convention against Torture</p> <p><u>Art. 1</u>: “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.”</p> <p><u>Art. 16</u>: “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.”</p> <p>CEDAW</p> <p><u>Art. 5 (a)</u>: 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.”</p> |
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| | <p>Commission on Human Rights resolution 2005/40</p> <p>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;”.</p> <p>Commission on Human Rights resolution 2005/39</p> <p>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;”.</p> <p>Commission on Human Rights resolution 2003/32</p> <p>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;”.</p> <p>General Assembly Declaration 48/104</p> <p><u>Art. 4 (c)</u>: States should, “Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”</p> |
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| | <p>Human Rights Committee general comment 20</p> <p><u>Para. 5</u>: “In the Committee’s view, moreover, the prohibition [of torture] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”</p> |
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CROSS-CUTTING ISSUES

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| Derogation | <p>ICCPR</p> <p><u>Art. 4 (1)</u>: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”</p> <p><u>Art. 4 (2)</u>: “No derogation from articles [...] 18 may be made under this provision.”</p> |
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| Limitation | <p>ICCPR</p> <p><u>Art. 18 (3)</u>: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.”</p> <p>CRC</p> <p><u>Art. 14 (3)</u>: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”</p> <p>Migrant Workers Convention</p> <p><u>Art. 12 (3)</u>: “Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”</p> <p>Commission on Human Rights resolution 2005/40</p> <p><u>12</u>: The Commission on Human Rights, “Further emphasizes that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion;”.</p> <p>Human Rights Committee general comment 22</p> <p><u>Para. 8</u>: “Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. [...]”.</p> |
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| <p>Legislative issues</p> | <p>ICCPR</p> <p><u>Art. 2 (2)</u>: “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”</p> <p>ICESCR</p> <p><u>Art. 2 (1)</u>: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”</p> <p>CEDAW</p> <p><u>Art. 3</u>: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”</p> <p>1981 Declaration of the General Assembly</p> <p><u>Art. 4 (2)</u>: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination.”</p> <p><u>Art. 7</u>: “The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.”</p> |
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| | <p>Commission on Human Rights resolution 2005/40</p> <p><u>4 (a)</u>: The Commission on Human Rights urges States, “To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, the right to practise freely one’s religion, including the right to change one’s religion or belief, is violated;”.</p> |
| <p>Defenders of freedom of religion or belief and</p> | <p>Commission on Human Rights resolution 2005/40</p> |

**non-governmental
organizations**

17: The Commission on Human Rights, “Welcomes and encourages the continuing efforts of non-governmental organizations and bodies and groups based on religion or belief to promote the implementation of the Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief, and further encourages their work in promoting freedom of religion or belief and in highlighting cases of religious intolerance, discrimination and persecution;”.
