

This document sets forth the relevant provisions of international instruments, as well as further information concerning international standards concerning the protection of freedom of thought, conscience, and religion or belief.

A. EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

- **Universal Declaration of Human Rights 1948** (UDHR), Art. 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

- **International Covenant on Civil and Political Rights 1966** (ICCPR), Art. 18:
 - Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
 - No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
 - Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
 - The 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.
 - In general, according to the UN Human Rights Committee (HRC), the treaty body that reviews compliance with the ICCPR, Article 18 of the ICCPR protects:

theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

—*Human Rights Committee (HRC) General Comment No. 22 (1993)*

- **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950** (ECHR), Art. 9:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

- **Helsinki Final Act 1975**, Principle VII:

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

- **UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981** (UN 1981 Dec.), 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 belief in worship, observance, practice and teaching. (2) No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. (3) Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Components of the right to freedom of thought, conscience, and religion or belief include:

1. Freedom to Change One's Religion or Belief [UDHR, Art. 18, ECHR, Art. 9(1), OSCE

Copenhagen Document, Art. 9(4)]

2. Freedom to Have or to Adopt a Religion or Belief of One's Choice [ICCPR Art. 18(1)]

- 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;
- No limitations permitted on this freedom; and
- No individual shall be compelled to reveal his or her thoughts or adherence to a religion or belief.

—*HRC General Comment No. 22 (paras. 3, 5)*

3. Freedom From Coercion Which Would Impair an Individual's Freedom to Have or To Adopt a Religion or Belief of His or Her Choice [ICCPR, Art. 18(2) and UN 1981 Dec. Art. 1(2)]

- No limitations are permitted on this freedom.
- The same protection is enjoyed by holders of all beliefs of a non-religious nature.
- Examples of impermissible coercion that would impair the right to have or adopt a religion or belief include:
 - The use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to specific beliefs and congregations, to recant their religion or belief, or to convert; and
 - Policies or practices having the same intention or effect, such as, for example, those restricting political rights protected under article 25 of the ICCPR or access to education, medical care or employment

—*Human Rights Committee (HRC) General Comment No. 22 (para. 5)*

4. Freedom to Manifest Religion or Belief in Worship, Observance, Practice, and Teaching □ [UDHR, Art. 18, ICCPR, Art. 18(1), UN 1981 Dec., Art. 1, OSCE Vienna Document, Art. 16(d)]

- This freedom may be exercised in public or in private, individually or in community with others.
- This freedom, at a minimum, encompasses the following freedoms:
 - To worship or assemble in connection with a religion or belief, and to establish and maintain, including the building of places of worship, freely accessible places for these purposes;
 - To establish and maintain appropriate charitable or humanitarian institutions, and seminaries or religious schools;
 - 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, including the use of ritual formulae and objects, the display of symbols, 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;
 - To write, issue and disseminate relevant publications in these areas;
 - To teach a religion or belief in places suitable for these purposes;
 - To solicit and receive voluntary financial and other contributions from individuals and institutions;
 - To organize, train, appoint, elect, designate by succession, or replace appropriate leaders, priests and teachers called for by the requirements and standards of any religion or belief;
 - To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and
 - To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

5. Permissible Limitations on the Freedom to Manifest Religion or Belief [ICCPR, Art. 18(3) and UN 1981 Dec., Art. 1(3)]

Freedom to manifest religion or belief may be subject to only 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.

- No derogation may be made from freedom of thought, conscience and religion, even during "time of public emergency which threatens the life of the nation." (/*ICCPR, Art. 4(2) and UDHR, Arts. 29 & 30*)
- Limitations must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.
- Paragraph 3 of article 18 is to be strictly interpreted: limitations are not allowed on grounds not specified there, even if they would be allowed as limitations to other rights

protected in the Covenant (for example, a limitation based on national security is impermissible).

- 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.
- Limitations may not be imposed for discriminatory purposes or applied in a discriminatory manner.
- 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 or religion.
- 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.

—HRC General Comment No. 22 (para. 8)

- Nothing in the UDHR shall be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

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B. PERSONS BELONGING TO RELIGIOUS MINORITIES SHALL NOT BE DENIED THE RIGHT, IN COMMUNITY WITH OTHER MEMBERS OF THEIR GROUP, TO PROFESS AND PRACTICE THEIR OWN RELIGION

[ICCPR, Art. 27, OSCE Vienna Document Art. 19, OSCE Copenhagen Document, and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Arts. 1-2 and 4]

- 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

2. All Persons Are Equal Before the Law and Are Entitled Without Any Discrimination to the Equal Protection of the Law. [ICCPR, Art. 26]

3. The Law Shall Prohibit Any Discrimination and Guarantee to All Persons Equal and Effective Protection Against Discrimination on Any Ground, Including Religion. [ICCPR, Art. 26]

- The application of the principle of non-discrimination contained in article 26 of the ICCPR is not limited to those rights which are provided for in the Covenant, and extends to prohibit discrimination in law or in fact in any field regulated and protected by public authorities;

- The term “discrimination” as used in the ICCPR should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms;

- The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance;

- The principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the ICCPR; and

- Not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the ICCPR.

□□□□□□□□□□□□□□□□ —HRC General Comment No. 18 (paras. 7, 8, 10, 12, 13)

4. Protection Against Discrimination by Any State, Institution, Group of Persons or Person on the Grounds of Religion or Other Belief [UN 1981 Dec., Arts. 2(1) and 4]

- 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.

- States shall make all efforts to enact or rescind legislation where necessary to prohibit

any such discrimination.

- States shall take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

—UN 1981 Dec., Arts. 4(1) and 4(2)

- Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups

□□□□□□□□□□□□□□□□ —UDHR Art. 26(2)

- State parties will “foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers.”

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D. STATES SHALL PROHIBIT BY LAW ANY ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED THAT CONSTITUTES INCITEMENT TO DISCRIMINATION, HOSTILITY OR VIOLENCE □□□ [ICCPR, Art. 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... [and] States parties are under the obligation to enact laws to prohibit such acts.

□ —HRC General Comment No. 22 (para. 7)

- State parties should take the measures necessary to fulfill the obligations contained in article 20 of the ICCPR, and should themselves refrain from any such propaganda or advocacy.

International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion —HRC General Comment No. 11 (para. 2)

- Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.

International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion —United States reservation to ICCPR Art. 20

- States will take effective measures, including the adoption of laws, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism.

International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion —OSCE Copenhagen Document

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

International Human Rights Standards: Selected Provisions on Freedom of Thought, Conscience, and Religion —OSCE Copenhagen Document

E. THE RIGHTS OF PARENTS IN RELATION TO FREEDOM OF RELIGION OR BELIEF

[ICCPR Art. 18(4), OSCE Vienna Document Art. 16(f) and 16(g)]

- State Parties undertake to respect the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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- The liberty of parents and guardians to ensure religious and moral education cannot be restricted.

- Public school instruction in subjects such as the general history of religions and ethics is permitted if it is given in a neutral and objective way.

- Public education that includes instruction in a particular religion or belief is inconsistent with ICCPR Art. 18 (4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

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- Parents or legal guardians have the right to organize family life in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

- 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 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.

- The child shall be protected from any form of discrimination on the ground of religion or belief.

- 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.

- 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(3) of the present Declaration.

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F. FURTHER ELABORATION ON SELECTED TOPICS

1. Obligation to Ensure Rights/Provide Remedies for Violations [ICCPR Arts. 2(2) and 2(3), UDHR Art. 8, UN 1981 Dec. Art. 7]

The ICCPR requires State parties to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant. This obligation includes ensuring:

- effective remedies for any person whose rights or freedoms are violated;
- that such remedies are determined by competent judicial, administrative or legislative authorities; and
- that such remedies are enforced when granted.

2. Relationship between Religion and the State

- The fact that a religion is recognized as a state religion or 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 ICCPR, nor in any discrimination against adherents to other religions or non-believers.
 - In particular, 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 ICCPR article 26.
 - 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 ICCPR nor in any discrimination against persons who do not accept the official ideology or who oppose it.

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- State parties are required to grant communities of believers, practicing or prepared to practice their faith within constitutional boundaries, “recognition of the status provided for them

in their respective countries.”

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3. Women’s Equal Right to Freedom of Religion or Belief

- The principle of non-discrimination is so basic that each State party is obligated to ensure the equal right of men and women to the enjoyment of the rights set forth in the ICCPR.

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- Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all ICCPR rights.

- State parties should report and provide data on a number of issues related to religion and women’s rights, including:

- pregnancy- and childbirth-related deaths of women, as well as gender-disaggregated data on infant mortality rates;
- information on the extent of any practice of genital mutilation, and on measures to eliminate it;
- measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings;
- regulation of clothing to be worn by women in public; and
- whether women may give evidence as witnesses on the same terms as men; whether measures are taken to ensure women equal access to legal aid, in particular in family matters; and whether certain categories of women are denied the enjoyment of the presumption of innocence.

- Freedoms protected by Article 18 must not be subject to restrictions other than those authorized by the ICCPR 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;

- The commission of so-called “honor crimes” which remain unpunished constitutes a serious violation of the ICCPR and laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment.

□□□□□□□□□□□□□□□□ —HRC General Comment No. 28 (paras. 5, 10, 11, 13, 18, 21, 31)

- Certain religious practices have an adverse effect on women’s rights. These practices include :

- cultural stereotypes, including preference for male children, religious extremism, and regulation of women’s clothing;
- discrimination in medical well-being, including genital mutilation, traditional childbirth practices, and dietary restrictions;
- discrimination resulting from the condition of women within the family, including practices related to marriage and divorce (e.g.: polygamy, family planning, division of responsibilities);
- discrimination related to transmission of nationality;
- discrimination related to inheritance and independent management of finances;
- discrimination related to right to life, including infanticide, cruel treatment of widows, and honor crimes,
- attacks on dignity, including sexual abuse;
- social ostracism, including denial of the right to education, and denial of access to professional fields such as politics and religion; and
- aggravated discrimination against women who also are members of a minority community.

- To ensure that freedom of religion does not undermine the rights of women, it is essential that this freedom not be understood as a right of indifference with respect to the status of women.

—UN Special Rapporteur on Freedom of Religion or Belief, *Study on Freedom of Religion or Belief and the Status of Women with Regard to Religion and Traditions (Amor Report)*

See Para. 4, UN HRC General Comment No. 22; Art. 6, UN 1981 Dec.; Art. 16(h-j), Vienna Document.

Derogation of rights is different than a limitation. Under the ICCPR, a state can, in a case of

war or serious public emergency, take measures that limit the applicability of certain rights for the period of the emergency. Such measures could go well beyond the scope of limitations to rights that are permissible at any other time.

Commission staff translation.