

## **International Standards for Constitutional Religious Freedom Protections**

Several countries in the world are or soon will be drafting new constitutions. It is vital that these constitutions protect universal human rights, including the right to freedom of religion or belief. Based on its experience analyzing constitutions against international standards,<sup>1</sup> the U.S. Commission on International Religious Freedom (USCIRF) offers the following guideposts for the full protection of religious freedom consistent with international human rights law:

### **Freedom of Religion or Belief is a Universal Right**

The 193 member states of the United Nations have agreed, by signing the UN Charter, to “practice tolerance” and to “promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” These rights and freedoms include the freedom of thought, conscience, and religion or belief, which is protected and affirmed in numerous international instruments, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

Article 18 of the Universal Declaration of Human Rights provides:

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

Article 18 of the ICCPR similarly provides:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

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<sup>1</sup> USCIRF, [“The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Majority Muslim Countries and Other OIC Members,”](#) August 2012; USCIRF, [“The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominately Muslim Countries,”](#) March 2005; USCIRF, [“Iraq’s Draft Permanent Constitution: Analysis and Recommendations,”](#) September 2005; USCIRF, [“Iraq’s Permanent Constitution: Analysis and Recommendations,”](#) March 2006.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **Freedom of Religion or Belief is a Broad Right for Every Individual**

Respecting religious freedom consistent with international human rights law is not only a matter of protecting the freedom of religious communities, as groups, to engage in worship and other collective activities. It also encompasses the freedom of every individual to hold, or not to hold, any religion or belief, as well as the freedom to manifest such a religion or belief, subject only to narrow limitations allowed under international law.

Thus, religious freedom is not only for religious minorities. It affords members of a country's religious majority the freedom to debate interpretations of the dominant religion, as well as to dissent or otherwise refuse to follow the favored interpretation. In addition, religious freedom is not only for religious communities deemed "traditional." It also includes the rights of individuals or communities to hold new beliefs, polytheistic beliefs, non-theistic beliefs, or atheistic beliefs.<sup>2</sup>

Religious freedom also encompasses more than just a right to worship or to practice religious rites; its full enjoyment requires that other rights must also be respected. The full scope of the right to manifest religion or belief includes the rights of worship, observance, practice, expression, and teaching, broadly construed, including property rights regarding meeting places, the freedom to manage religious institutions, and the freedom to possess, publish, and distribute liturgical and educational materials.

Finally, religious freedom is not only for a country's citizens. International human rights standards require a state to extend rights and equal status to "all individuals within its territory and subject to its jurisdiction."<sup>3</sup>

### **Freedom of Religion or Belief Includes Freedom of Religious Choice and Expression**

Religious freedom includes the freedom to keep or to change one's religion or belief without coercion.<sup>4</sup> It also includes the freedom to manifest one's religion or belief through public expression, including expression intended to persuade another individual to change his or her religious beliefs or affiliation voluntarily. Any limitations on these freedoms must be prescribed by a narrowly-construed law, based on a ground specified in ICCPR Article 18, non-discriminatory, not destructive of guaranteed rights, and not based solely on a single tradition.

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<sup>2</sup> See Hum. Rts. Comm., gen. cmt. 22, art. 18, para. 2 (forty-eighth session, 1993), UN Doc. CCPR/C/21/Rev.1/Add.4 (1994), [hereinafter HRC General Comment No. 22].

<sup>3</sup> ICCPR, Article 2(1).

<sup>4</sup> ICCPR, Article 18(2).

### **Permissible Limitations on Freedom of Religion or Belief Are Narrow**

Under international law, the broad right to freedom of religion or belief, including the management of religious institutions, 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. Limitations are not allowed on grounds not specified in ICCPR Article 18, even grounds that may be permitted to restrict other rights protected in the Covenant. For example, national security is not a permissible limitation, and States cannot derogate from this right during a declared public emergency. Limitations also must be consistent with the ICCPR's provisions requiring equality before the law for all and prohibiting any measures that would destroy guaranteed rights.<sup>5</sup> Finally, limitations on the freedom to manifest a religion or belief that rely on morality must be based on principles not deriving from a single tradition.<sup>6</sup>

### **Establishing an Official Religion Cannot Justify Rights Violations or Discrimination**

Under international standards, a state may declare an official religion, provided that basic rights, including the individual right to freedom of thought, conscience, and religion or belief, are respected for all without discrimination. Thus, the existence of a state religion cannot be a basis for discriminating against or impairing any rights of adherents of other religions or non-believers or their communities. Providing benefits to official state religions not available to other faiths would constitute discrimination, as would excepting state religions from burdensome processes required for faith communities to establish legal personality. Under the ICCPR, 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.”<sup>7</sup>

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<sup>5</sup> ICCPR, Articles 2 and 5.

<sup>6</sup> HRC General Comment No. 22, at para. 8.

<sup>7</sup> HRC General Comment No. 22, at para 9.