

Special Report

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM



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

2012 Update

**THE U.S. COMMISSION
ON INTERNATIONAL
RELIGIOUS FREEDOM**

was created by the
International Religious
Freedom Act of 1998
to monitor the status
of freedom of thought,
conscience, and religion
or belief abroad, as
defined in the Universal
Declaration of Human
Rights and related
international instruments,
and to give independent
policy recommendations
to the President,
Secretary of State, and
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Introduction

Current developments in constitutional drafting are spurring renewed analysis of the existing constitutional landscape in majority Muslim countries. New constitutions are being drafted in Egypt, Somalia,¹ Libya, Sudan, Tunisia, and Turkey, among others. Although the drafting and approval processes will no doubt be markedly different in each of these countries, international legal norms are clear about religious freedom standards. In each country, questions will be raised, as they have been in the past, about the relationship between international legal/human rights norms and existing political arrangements in Muslim countries—especially with respect to the internationally recognized right of freedom of thought, conscience, and religion or belief.

This study compiles and analyzes constitutional provisions currently in place concerning the relationship between religion and the state, freedom of religion or belief, and related human rights in the 46 majority Muslim countries and in 10 other countries that, while not majority Muslim, are members of the Organization of Islamic Cooperation (“OIC”).²

Table: Majority Muslim and Other OIC Member Countries

Majority Muslim Countries	Other OIC Member Countries
1. Afghanistan	1. Benin
2. Albania	2. Cameroon
3. Algeria	3. Gabon
4. Azerbaijan	4. Guinea-Bissau
5. Bahrain	5. Guyana
6. Bangladesh	6. Ivory Coast
7. Brunei	7. Mozambique
8. Burkina Faso	8. Suriname
9. Chad	9. Togo
10. Comoros	10. Uganda
11. Djibouti	
12. Egypt	
13. Gambia	
14. Guinea	
15. Indonesia	

¹ On August 1, 2012, the National Constituent Assembly approved the Provisional Constitution of Somalia. The document still requires adoption in a national referendum, at a time to be determined, following citizen consultations. Like the previous constitution, the Provisional Constitution declares Islam the state religion and requires that all laws comply “with the general principles of Shari’ah.” For USCIRF’s analysis of the draft Provisional Constitution, see here:

[http://www.uscirf.gov/images/Somalia%20Policy%20Brief%20Summer%202012%20Final\(1\).pdf](http://www.uscirf.gov/images/Somalia%20Policy%20Brief%20Summer%202012%20Final(1).pdf).

² It is an update of a similar study published by USCIRF in 2005 entitled “The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries,” Tad Stahnke & Robert C. Blitt (March 2005). This study does not address whether the issues raised herein are unique to majority Muslim and other OIC countries, as it was occasioned by constitutional development in several of these countries and does not survey the constitutions of all countries in the world. Religious freedom violations are not limited to Muslim countries, but can be found around the world, including in Europe. USCIRF has and will continue to address violations its work.

16. Iran	
17. Iraq	
18. Jordan	
19. Kazakhstan	
20. Kosovo	
21. Kuwait	
22. Kyrgyzstan	
23. Lebanon	
24. Libya	
25. Malaysia	
26. Maldives	
27. Mali	
28. Mauritania	
29. Morocco	
30. Niger	
31. Nigeria	
32. Oman	
33. Pakistan	
34. Qatar	
35. Saudi Arabia	
36. Senegal	
37. Sierra Leone	
38. Somalia	
39. Syria	
40. Tajikistan	
41. Tunisia	
42. Turkey	
43. Turkmenistan	
44. United Arab Emirates (UAE)	
45. Uzbekistan	
46. Yemen	

The area considered to be the “Muslim world” stretches from Europe to Africa, through the Middle East and into Asia. Indeed, its geographical diversity mirrors a central finding of this study, that majority Muslim countries and other OIC member countries encompass a variety of constitutional arrangements addressing the role of Islam and the scope of the right to freedom of thought, conscience, and religion or belief, and other related human rights. The documents surveyed here establish a broad assortment of constitutional views—ranging from Islamic republics with Islam as the official state religion, to secular states with strict separation of religion and state. Moreover, diversity on the role of Islam and the extent of guarantees for internationally-recognized human rights are also found in the constitutions of those states where Islam is proclaimed the religion of the state.

This wide diversity in the constitutional provisions of majority Muslim and other OIC member countries, and especially in those countries declaring Islam to be the state religion, is not necessarily well understood. Yet despite the diversity of constitutional structures, several important realities come to light through this comparative review:

- The global Muslim population is estimated at over 1.6 billion.³ Of this figure, slightly over 1.3 billion Muslims live in the 56 majority Muslim and other OIC member countries surveyed in this study.⁴
- Approximately 44% of the world’s Muslim population live in countries that have declared Islam to be the state religion,⁵ and the remaining 56% live in countries that either proclaim the state to be secular or make no pronouncements concerning an official state religion.⁶
- Only 6 countries, in all of which Islam is the declared state religion, provide no provision at all concerning religious freedom specifically.⁷ Other countries in which Islam is the declared state religion provide constitutional guarantees of the right to freedom of religion or belief, which comply in varying degrees to international norms.⁸
- Similarly, countries with Islam as the declared state religion may maintain constitutional provisions protecting the related rights to freedom of expression, association and assembly or the rights of equality and nondiscrimination with regard to, *inter alia*, religion or gender, again which comply in varying degrees to international norms.⁹ A number of constitutions of majority Muslim and other OIC member countries incorporate or otherwise reference international human rights instruments and legal norms.¹⁰

³See “The Future of the Global Muslim Population” by The Pew Forum on Religion & Public Life (<http://features.pewforum.org/muslim-population-graphic/>). Accurate and up-to-date population data for many of the countries surveyed either does not exist or varies widely. Figures presented here are estimates and, unless indicated otherwise, are based the percentage of Muslims for each country as set forth in “Mapping The Global Muslim Population: A Report on the Size and Distribution of the World’s Muslim Population,” Pew Research Center (Oct. 2009), and current country-by-country population statistics from CIA World Factbook (<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html#top>).

⁴ See Appendix A for estimated population figures. All of the majority Muslim countries surveyed here, with the exception of Kosovo, are members of the Organization of the Islamic Cooperation (OIC). Although the OIC consists of 57 member states (including Palestine, which has not been recognized as a country by the United Nations), only 45 of these countries have a Muslim population greater than 50 percent.

⁵ These countries are Afghanistan, Bangladesh, Brunei, Iran, Malaysia, Maldives, Pakistan, Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, United Arab Emirates, Yemen, Mauritania, and Somalia. (See Appendix A).

⁶ It also should be noted that of the approximately 300 million Muslims not living in majority Muslim and other OIC member countries, the vast majority are found in just a handful of states. In particular, India, China, Russia, Ethiopia, and Tanzania are home to over 240 million Muslims, or nearly 80 percent of those living outside of majority Muslim and other OIC countries. These Muslims live under constitutional structures which are either declared secular or silent with respect to a state religion.

⁷ They are Comoros, Mauritania, Algeria, Saudi Arabia, Yemen, and Maldives.

⁸ See discussion below at pages 13-18.

⁹ See discussion below at pages 19-23.

¹⁰ See, for example, the constitutions of Afghanistan, Libya, Qatar, Yemen, Kazakhstan, Tajikistan, Turkmenistan, Lebanon, Algeria, Morocco, Oman, Sudan, Burkina Faso, Gambia, Guinea, Mali, Somalia, Albania, Kosovo, Mozambique, Uganda, Togo, Guinea-Bissau, and Cameroon.

- Approximately 39% of the world’s Muslims live in 22 countries¹¹ whose constitutions provide that Islamic law, principles, or jurisprudence should serve as a source of, or limitation on, general legislation or, in the case of some countries, certain discrete matters.

Nevertheless, despite constitutional provisions that compare favorably with international standards, religious freedom abuses still occur. In some countries, constitutions have sections that undercut these protections or protections are limited by other laws, such as the criminal or family code. Governments often do not take sufficient action to actualize these protections, which result in abuses by state and/or non-state actors.

Human Rights as International and Universal Legal Norms

The freedom of thought, conscience, and religion or belief protects the rights not only of members of religious minorities within a society, but also protects the rights of individuals within a majority faith to debate and dissent from state-imposed orthodoxies. Promoting religious freedom and related human rights abroad therefore is vital to humanitarian and strategic interests. When observed, freedom of religion or belief is one of the cornerstones of stable, democratic, productive societies in which the rule of law and human rights are respected and accorded value. When denied, generations of intolerance, authoritarianism and resulting societal instability may be sown.

The Universal Declaration of Human Rights, adopted in 1948, recognizes in its first sentence the “inherent dignity and the equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world.” Article 1 provides that “all humans are born free and equal in dignity and rights,” and Article 2 forbids distinctions of any kind, including on the basis of religion, with regard to the enjoyment of the rights and freedoms the Declaration guarantees. Article 18 states, “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.”

The crucial role played by the delegate from Egypt, Dr. Mahmoud Azmi, during the drafting and passage of the Declaration serves as an illustration of the aspired universality

¹¹ The countries whose constitutions provide, at least in part, that Islamic law serves as a source of law or legislation are Afghanistan, Iran, Malaysia, Maldives, Pakistan, Bahrain, Egypt, Iraq, Jordan, Kuwait, Libya, Oman, Qatar, Saudi Arabia, Somalia, Syria, UAE, Yemen, Mauritania, Gambia, Nigeria, and Sudan. (See Appendix A). In some countries, it is difficult to say whether Islamic law serves as a source of law or just as an “inspiration” for legal structures. For example, in the preamble to the Constitution of Comoros, it states that the Comorian people will “draw from Islam the permanent inspiration for the principles and rules that shall govern the union” Similarly, Article 9 of the Constitution of Algeria provides that “[t]he institutions shall not indulge in . . . practices contrary to Islamic morals and the values of the November Revolution.” Although either or both of these countries could arguably have been included in the list of countries whose constitutions provide that Islamic law should serve as the source of law or legislation, neither was included since they did not explicitly state that law or legislation must be based on Islamic law.

of this document.¹² Dr. Azmi was an active defender of human rights for all individuals, including for women and minorities. He fervently advocated the passage of the Declaration and pointed to the long, multi-civilizational and multi-religious history of his own country to demonstrate that commitment to human rights is not a western but a universal human concept.

In the end, out of 58 states then in existence, *no* country voted against the Universal Declaration.¹³ The Declaration thus represents an enduring consensus on the subject of fundamental human rights, including the freedom of thought, conscience, and religion or belief. From the early years of the United Nations, Christians, Jews, Muslims, Hindus, Sikhs, Buddhists and other religious people and groups have worked together and with one another to advance human rights. These religious groups have emphasized the religious bases for human rights within their own traditions.

Now, more than 60 years later, several Muslim majority countries have embarked on their own constitutional re-drafting and approval processes. Three contentious issues, in particular concerning religion, have permeated the constitutional drafting and approval process in other countries in the past: the appropriate constitutional role for Islam; the scope of guarantees for fundamental human rights, including the right to freedom of thought, conscience, and religion; and the equality of rights and freedoms, especially for women. In addressing these issues, guidance should be sought from these universal international norms.

To be certain, actual implementation of constitutional provisions is dependent on a number of diverse factors, including level of state control, system of government, independence of the judiciary, individual access to the courts, and enforcement of judicial remedies. Relatedly, constitutional text alone may not necessarily reflect what is being done in practice, especially in the field of human rights. That said, constitutional text remains important for setting forth aspirational norms. It lays the groundwork for legal and political reconstruction. Even if not fully implemented upon enactment, constitutional text remains fixed as fundamental law and as a statement of national principles, and can be invoked by future generations seeking to fulfill its promise.

¹² See Susan Waltz, "Universal Human Rights: The Contribution of Muslim States," *Human Rights Quarterly* 26 (2004) pp. 800-44.

¹³ Eight states abstained from the UN General Assembly vote on the UN Declaration of Human Rights: Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, the former Soviet Union, Ukraine, and Yugoslavia.

I. The Relationship between Religion and the State

A. Islam as State Religion

The constitutions of 23 majority-Muslim countries proclaim Islam to be the official religion of the state, and 22 of them declare Islamic principles or law as a source for law or legislation. None of the constitutions of the ten OIC member countries that are not majority Muslim has similar provisions. Of course, the practical ramifications of a declaration of Islam as the religion of the state vary from state to state. Within these countries, there exist a range of legal provisions, policies, and practices in the political, social, religious, and economic spheres.

Table: Providing a Defining Constitutional Role for Islam

Declares Islam as the State's Religion	Provides Role for Islamic Law, Principles or Jurisprudence
1. Afghanistan	1. Afghanistan
2. Algeria	2. Bahrain
3. Bahrain	3. Egypt
4. Bangladesh	4. Gambia
5. Brunei	5. Iran
6. Egypt	6. Iraq
7. Iran	7. Jordan
8. Iraq	8. Kuwait
9. Jordan	9. Libya
10. Kuwait	10. Malaysia
11. Libya	11. Maldives
12. Malaysia	12. Mauritania
13. Maldives	13. Nigeria
14. Mauritania	14. Oman
15. Morocco	15. Pakistan
16. Oman	16. Qatar
17. Pakistan	17. Saudi Arabia
18. Qatar	18. Somalia
19. Saudi Arabia	19. Sudan
20. Somalia	20. Syria
21. Tunisia	21. UAE
22. UAE	22. Yemen
23. Yemen	

Approximately 44% of the world's Muslim population lives in the 23 countries that have declared Islam to be the state religion. Under international human rights standards, a state can adopt a particular relationship with the religion of the majority of the population, including establishing a state religion, provided that such a relationship does not result in violations of the civil and political rights of, or discrimination against, adherents of other religions or non-believers. According to the UN Human Rights Committee's General Comment on Article 18 (freedom of thought, conscience, and religion) of the International Covenant on Civil and Political Rights (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, including articles 18 [freedom of thought, conscience, and religion] and 27 [rights of members of religious, ethnic and linguistic minorities], 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 [equal protection of the law without any discrimination].¹⁴

In a similar vein, the European Court of Human Rights has stated that the mere existence of a state religion or established church does not violate the right to freedom of religion or belief as long as individuals are free to leave that religion or church.¹⁵

There are alternatives to constitutional recognition of a state religion. Several countries around the world, Muslim and non-Muslim alike, have made a special recognition of a particular religion in the preamble or body of the constitution, without adopting a state religion or established church or any facially operative constitutional distinction between religions or among adherents of different religions. For example, the constitution of Greece states that the “prevailing religion in Greece is that of the Eastern Orthodox Church of Christ,”¹⁶ the Georgian constitution “recognizes [the] special role of the Apostolic Autocephalous Orthodox Church of Georgia,”¹⁷ and Bulgaria’s constitution asserts Eastern Orthodox Christianity as the “traditional religion.”¹⁸ In addition, the constitution of Thailand requires that the state “shall patronize and protect Buddhism and other religions,”¹⁹ and according to Argentina’s constitution, the “Federal Government supports the Roman Catholic Apostolic Faith.”²⁰

Finally, some constitutions make reference to God or other religious concepts but are otherwise secular in nature. For example, the Indonesian constitution provides that the “State shall be based upon the belief in the One and Only God.”²¹ The range of references to religion demonstrated here results in a variety of constitutional practices that characterize a given state’s relationship with religion. In practice, some of these

¹⁴ Para. 9, Human Rights Committee, “General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)”, UN Doc. CCPR/C/21/Rev.1/Add.4, July 30, 1993 ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument)) (hereinafter General Comment 22).

¹⁵ *Darby v. Sweden*, 187 Eur. Ct. H.R. (ser. A) (1990), [1990] ECHR 24 (October 23, 1990), 13 E.H.R.R. 774 (1991) (<http://hudoc.echr.coe.int/Hudoc1doc/HEJUD/sift/227.txt>).

¹⁶ Article 3(1), Constitution of Greece, 1975 (as amended to 2002).

¹⁷ Article 9, Constitution of Georgia, 1995 (as amended to 2003).

¹⁸ Article 13(3), Constitution of the Republic of Bulgaria, 1991 (as amended to 2003).

¹⁹ Section 79, Constitution of the Kingdom of Thailand, 2007.

²⁰ Article 2, Constitution of the Argentine Nation, 1994.

²¹ Article 29(1), Constitution of the Republic of Indonesia, 1945 (as amended to 2002).

relationships may contribute to violations of the right to freedom of thought, conscience, and religion or belief, and other human rights.

B. Constitutional Role for Islamic Law, Principles, or Jurisprudence

i) Islam as a Source of Legislation

Twenty-two of the 56 majority Muslim and other OIC member countries recognize some constitutional role for Islamic law, principles, or jurisprudence, including by establishing Islamic law, principles, or jurisprudence as “the basis for,” “the principal source of,” “a principal source of,” or “the main source of” legislation. This practice of declaring Islam or Islamic law as a basis for legislation or law occurs in 18 of the 23 countries where Islam is the religion of the state, as well as four majority Muslim countries where Islam is not the declared state religion (see table above). In countries where a constitutional role for Islam is established, that role varies and in some cases may be restricted to specific matters, such as personal status issues or the creation of councils designed to advise the government concerning questions related to religion and religious life.²² (See Appendix A below.)

In several of these cases, no additional constitutional guidance is given to address the question of what governmental body, process, or mechanism, if any, is charged with assessing the conformity of legislation with Islamic principles or law. Moreover, many of these constitutions fail to provide any further definition of the terms “Islam,” “sharia” (Islamic law) or the “fundamentals,” “principles,” or “jurisprudence” of Islam. In Egypt, this role has fallen to the Supreme Constitutional Court, whereas in Pakistan, the constitution specifically assigns this role to the Federal Shariat Court. The ramifications of establishing a constitutionally-mandated legislative role for Islam vary from country to country.

ii) Other Provisions for Recognition of Islamic Principles

Other examples of how various constitutions lend meaning to or implement a function for Islamic principles demonstrate that diverse arrangements exist. Article 3 of Afghanistan’s constitution features a “repugnancy clause” that provides “no law can be contrary to the sacred religion of Islam and the values of this Constitution.” Moreover, under the constitution, ordinary legislation may be used to restrict or trump the rights of individual Afghans, since the scope of many of these rights are made subject to “provisions of the law.”²³ In a related vein, Afghanistan’s constitution also requires that courts render

²² For example, both the constitutions of Jordan and Malaysia limit the role of Islamic law. Under Jordan’s constitution, Islamic law applies only to personal status law and matters pertaining to *waqfs* (Muslim religious endowments or trusts). Arts. 104-190, Constitution of the Hashemite Kingdom of Jordan, 1952 (as amended). Likewise, in Malaysia, the application of Islamic law is restricted to certain enumerated areas, and in most cases falls within state jurisdiction under the federal division of powers. See Ninth Schedule, List II—State List, Constitution of Malaysia, 1957 (as amended). Although the constitution of Gambia does not declare Islam as the state religion, it similarly restricts the application of Sharia as a source of legislation to “matters of marriage, divorce and inheritance among members of the communities to which it applies.” Gambia, art.7.

²³ For example, under art.2, freedom to perform religious rites is permitted only “within the limits of the provisions of law.” See also arts. 23, 27, 35, 37, 39, 40, and 50.

decisions based on “provisions of the Hanafi jurisprudence” when “there is no provision in the Constitution or the laws with respect to a case under consideration”²⁴

For other countries, Islamic principles are constitutionally recognized, but neither self-executing nor judicially enforceable. Under Algeria’s constitution, state institutions are not permitted to engage in “practices contrary to Islamic morals.”²⁵ This provision is supported by a constitutionally mandated High Islamic Council charged with: (a) encouraging and promoting *ijtihad*, or interpretation of Islamic law; (b) providing its opinion on religious rules; and (c) presenting periodic reports of its activity to the President.²⁶ The constitutions of Mauritania, Comoros, and Pakistan also establish advisory bodies that assess laws or other official matters in light of Islamic principles.²⁷

²⁴ Afghanistan, art.130.

²⁵ Algeria, art.9.

²⁶ Algeria, art.171.

²⁷ Mauritania’s constitution establishes a High Islamic Council (art. 94), the Comoros constitution establishes a Council of the Ulemas to assist the government “in formulating decisions that affect the religious...life of the country” (art. 36), and Pakistan’s constitution creates a Council of Islamic Ideology (art. 228).

II. Guarantee of the Right to Freedom of Religion or Belief

A. Minimum International Standards for Constitutional Provisions

The minimum international standards required for an effective constitutional guarantee of the right of freedom of religion or belief can be found in the UDHR and the ICCPR. These minimum standards include:

- Universal applicability to everyone as individuals, regardless of religion or belief;
- The freedom to manifest a religion or belief, either individually or in community with others, in public or private;
- Freedom to manifest *all aspects* of a religion or belief, including worship, teaching, practice, and observance;
- No coercion that would impair the freedom to change, have or to adopt a religion or belief of one's choice. (Aspects of a constitution that could constitute coercion include: (a) no provision for equality or the prohibition of discrimination on the basis of religion; or (b) separate political rights for citizens of different religions); and
- Limitations on the right to freedom of thought, conscience, and religion or belief only in certain circumstances as provided for under international law.²⁸

According to the UN Human Rights Committee, “Article 18.2 [of the ICCPR] 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 [political rights] 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.”²⁹

B. Relevant International Human Rights Instruments

i) Universal Declaration of Human Rights (UDHR)

Article 18 of the UDHR 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

²⁸ For a more detailed discussion of these standards, see “International Standards for Constitutional Religious Freedom Protections,” Yale Journal of International Law, December 2011 (<http://www.uscirf.gov/news-room/press-releases/3679-international-standards-for-constitutional-religious-freedom-protections.html>).

²⁹ Para. 5, General Comment 22.

alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.³⁰

ii) International Covenant on Civil and Political Rights (ICCPR)

Article 18 of the ICCPR 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.
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.³¹

C. Implementation of International Standards in Majority Muslim Countries

i) Freedom of Religion or Belief as a Right of Every Individual

Several countries with majority Muslim populations have constitutions that clearly specify that the right to freedom of religion or belief is to be extended to either every citizen or every individual. For example, Pakistan and Senegal extend the right of freedom of religion and belief to “every citizen” and “all citizens,” whereas Indonesia’s provision covers “every person.”³²

However, other constitutional provisions in many countries where Islam is declared to be the state religion are less clear, raising the possibility that only groups, rather than individuals, are afforded protection. Failure to provide explicit protection for individuals means that—depending upon interpretation and application—the group or the state may define the exact parameters of the right to freedom of religion or belief rather than the individual. Consequently, individuals may not be protected fully in their freedom to

³⁰ *Universal Declaration of Human Rights*, adopted and proclaimed by General Assembly resolution 217A (III), December 10, 1948 (<http://www.un.org/Overview/rights.html>).

³¹ *International Covenant on Civil and Political Rights*, adopted by General Assembly resolution 2200A (XXI), December 16, 1966, entry into force March 23, 1976 (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (hereinafter ICCPR).

³² Pakistan, art.20(a); Senegal, art.8; and Indonesia, art.28E(1)&(2)). Other countries with similar individual guarantees include Albania, Bangladesh, Malaysia, and Kyrgyzstan (see Appendix B).

dissent from established religious teachings (i.e., an individual's right to have a religion or belief that differs or dissents from the rules or doctrines of a religious group with whom that individual might be associated).³³

ii) Constitutional Safeguards Against Coercion in Matters of Religious Belief

Several constitutions contain provisions designed to protect individuals against coercion that would impair the freedom to have or to adopt a religion or belief, further bolstering protections for the freedom of thought, conscience, and religion or belief. Examples of countries that include such provisions in their constitutions include Albania, Bangladesh, Pakistan, Azerbaijan, Sierra Leone, Turkey, Malaysia, Uzbekistan, Iraq, and Sudan.³⁴

These provisions cover a wide range of areas and generally seek to protect individuals from being compelled to:

- Participate in religious practices or become a member of a religious community;
- Reveal or profess a religion or belief publicly;
- Receive religious instruction or education of a religion that is not one's own;
- Take an oath contrary to one's religion; or
- Pay a tax that is used for the purposes of a religion other than one's own.

iii) Constitutional Provisions that Do Not Comply with International Standards

Conversely, several countries where Islam is the state religion have constitutional provisions regarding the right to freedom of religion or belief that, on their face, do not appear to comply with all aspects of international standards. Examples include provisions:

- (a) Limited to worship or the practice of religious "rites" (Afghanistan, Morocco);³⁵
- (b) Limited to one or more religions or class of religions (Afghanistan, Iran);³⁶ or
- (c) Allowing limitations on freedom of religion by any ordinary law rather than only those limitations permitted under international law (Afghanistan, Kuwait).³⁷

³³ Several majority Muslim countries have constitutions that provide for freedom of religion and belief but which do not frame freedom of religion and belief specifically as an individual right, including Bahrain, art.22 (see Appendix B).

³⁴ Albania, art.24(3); Bangladesh, art.41(2); Pakistan, art.21; Azerbaijan, art.71(IV); Sierra Leone, art.24; Turkey, art.24; Malaysia, art.11(2); Uzbekistan, art.31; Iraq, art.35; and Sudan, art.38 (see Appendix B).

³⁵ See for example, Morocco (art. 6) and Afghanistan (art. 2).

³⁶ For example, under article 13 of Iran's constitution, "Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies..." Under art.2 of Afghanistan's constitution, recognition of religious freedom is granted to non-Muslims, although it is limited to the ability "to perform their religious rites within the limits of the provisions of law." (See Appendix B).

³⁷ See for example, Afghanistan, art.2; Kuwait, art.35 (see Appendix B).

Table: Comparison of Constitutional Provisions on Freedom of Religion to International Standards

Establish Specific Safeguards Against Religious Coercion	No Provisions or Provision only for the Right to Worship	Provisions that Do Not Define Rights on an Individual Basis or Limit Rights to One or More Enumerated Groups	Provisions that Permit Limitations Not Enumerated Under International Standards
<p>Africa Nigeria Sierra Leone Sudan</p> <p>East Asia and the Pacific Malaysia</p> <p>Europe and Eurasia Albania Azerbaijan Kosovo Turkey</p> <p>Near East and North Africa Iraq</p> <p>South and Central Asia Bangladesh Pakistan Uzbekistan</p> <p>Western Hemisphere Guyana</p>	<p>Africa Comoros* Mauritania*</p> <p>East Asia and the Pacific Brunei</p> <p>Near East and North Africa Algeria* Bahrain Iran Kuwait Lebanon Libya Morocco Oman Qatar Saudi Arabia* Syria United Arab Emirates Yemen*</p> <p>South and Central Asia Afghanistan Maldives*</p> <p>(*) Countries with no constitutional provisions specifically concerning freedom of religion</p>	<p>Africa Burkina Faso</p> <p>Near East and North Africa Bahrain Iran Jordan Lebanon Libya Oman Syria United Arab Emirates</p> <p>South and Central Asia Afghanistan</p>	<p>Africa Benin Burkina Faso Djibouti Gambia Guinea Ivory Coast Guinea-Bissau Mali Niger Sierra Leone Somalia Togo</p> <p>East Asia and the Pacific Brunei Malaysia</p> <p>Europe and Eurasia Azerbaijan Turkey</p> <p>Near East and North Africa Bahrain Iran Iraq Jordan Kuwait Oman United Arab Emirates</p> <p>South and Central Asia Afghanistan Bangladesh Kazakhstan Kyrgyzstan Tajikistan Turkmenistan Uzbekistan</p> <p>Western Hemisphere Guyana</p>

D. Constitutional Restrictions on the Right to Freedom of Religion or Belief

Several countries with constitutions establishing Islam as the state religion either do not contain guarantees of the right to freedom of religion or belief, or they contain guarantees that, on their face, do not comply with all aspects of international standards. Examples of such countries include Iran, Libya, and Oman. Some countries, such as Saudi Arabia, assert that these restrictions flow from the position of Islam as a declared state religion and/or the role of Islam or sharia in the legal system.³⁸ Nevertheless, the United Nations Human Rights Committee (HRC), the body that assesses compliance with the International Covenant on Civil and Political Rights (ICCPR), has concluded that restrictions made on this basis constitute violations of the ICCPR. For example, the HRC expressed concern about “infringements of the right to freedom of religion or belief” in Egypt, deplored “the ban on worship imposed on the Bahai community,” and called on the government to ensure that “its legislation and practice are consistent with article 18 of the Covenant.”³⁹ In the case of Yemen, the HRC called on the government to “ensure that its legislation and practice are in line with the provisions of the Covenant and in particular that the right of persons to change their religion...is respected.”⁴⁰ In addition, the Committee noted “with concern the situation of discrimination against women in matters of personal status, more particularly in marriage and divorce as well as the rights and duties of spouses,” and requested that the government ensure that “in all fields in the life of society, women enjoy complete equality with men, both in law and in fact.”⁴¹ (see Part E below).

In all cases, it should be emphasized that differences may exist in practice between written provisions and actual enforcement of rights. Indeed, violations of the right to freedom of religion or belief are not restricted to countries with a declared state religion; similar violations likewise may occur in countries where the constitution does not provide for a state religion or established church.⁴²

³⁸ See UN Committee on the Elimination of Racial Discrimination, “Summary Record of the 1558th Meeting: Consideration of Reports, Comments and Information Submitted By Saudi Arabia Under Article 9 of the Convention,” UN Doc. CERD/C/SR.1558, March 10, 2003.

³⁹ Para. 17, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Egypt” UN Doc. CCPR/CO/76/EGY, November 28, 2002.

⁴⁰ Para. 20, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Yemen” UN Doc. CCPR/CO/75/YEM, July 26, 2002 ([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/83b4694b87b1f1abc1256c0500253d65?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/83b4694b87b1f1abc1256c0500253d65?Opendocument)).

⁴¹ Para. 7, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Yemen” UN Doc. CCPR/CO/75/YEM, July 26, 2002.

⁴² After reviewing the state party report submitted by Uzbekistan, the HRC concluded that the government must abolish legislation that requires “religious organizations and associations to be registered to be entitled to manifest their religion and beliefs,” as well as a Penal Code provision “which penalizes the failure of leaders of religious organizations to register their statutes,” since those provisions were found to violate article 18 of the ICCPR. Para. 24, Human Rights Committee, “Concluding Observations of the Human Rights Committee: Uzbekistan,” UN Doc. CCPR/CO/71/UZB 26/04/2001 April 24, 2001 ([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.UZB.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument)).

That said, several countries with a declared state religion or an established church provide generally effective protection in law and in practice to the right to freedom of religion or belief and related human rights.⁴³ The circumstances under which such protection occurs include:

- (a) Constitutional and/or legislative guarantees in line with international standards for upholding freedom of thought, conscience, and religion or belief and related human rights, as well as effective mechanisms to enforce these guarantees in practice;
- (b) Enforceable prohibitions of discrimination on account of religion or belief; and
- (c) Strong adherence to rule of law and international human rights norms, including access to enforcement mechanisms for these norms through international institutions such as the European Court of Human Rights.

E. Permissible Limitations on Freedom to Manifest a Religion or Belief Under International Law

Under international standards, no limitations whatsoever are permitted on the freedom to *change, or have or adopt* a religion or belief of one's choice. The guarantee of freedom from coercion to change a religion or belief and the liberty of parents and guardians to ensure religious and moral education also cannot be restricted.⁴⁴ However, the freedom to *manifest* a religion or belief may be limited in certain circumstances according to ICCPR Art. (18)(3). In the words of the UN's HRC:

- Article 18.3 [of the ICCPR] *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.*
- 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.*
- 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

⁴³ Examples would include Iceland (official church is the Evangelical Lutheran Church), Monaco, Malta, and Luxembourg (official church in those three countries is the Roman Catholic Church).

⁴⁴ Para. 8, General Comment 22.

- 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.⁴⁵

Despite these principles laid out by the HRC, a number of majority Muslim countries that have ratified the ICCPR have constitutional provisions that, on their face, permit limitations that are not consistent with international standards.⁴⁶ For example, in Afghanistan, the right to manifest religion is contingent upon “provisions of the law”,⁴⁷ which may enable limitations of the right based on non-enumerated grounds. In addition, provisions in other countries introduce limitations not recognized under international standards including recognition of a limited list of religious communities,⁴⁸ “public policy,”⁴⁹ “established customs,”⁵⁰ “decorum,”⁵¹ “the order established by law and the regulations,”⁵² and state sovereignty and national security.⁵³

⁴⁵ Para. 8, General Comment 22 (emphasis added).

⁴⁶ At the same time, specific limitations not in accordance with the views of the HRC also exist in countries such as Maldives, which has not signed the ICCPR. Under the Maldives constitution, the rights to freedom of conscience and expression may only be exercised “in a manner that is not contrary to any tenet of Islam.” Maldives, art.27.

⁴⁷ Afghanistan, art.2.

⁴⁸ Iran, art.13.

⁴⁹ Kuwait, art.35.

⁵⁰ For example, Bahrain, art.22; Jordan, art.14; Kuwait, art.35; and Oman, art.28.

⁵¹ Jordan, art.14.

⁵² For example, Djibouti, art.11; Ivory Coast, art.9; Togo, art.14; Turkey, art.33; and Kosovo, art.55(1).

⁵³ For example, Gambia, art.25; Ivory Coast, art.9; Togo, art.14; Kyrgyzstan, art.22(2); Turkmenistan, art.21; and Turkey, art.33 .

III. Related Rights: Freedom of Expression, Association, and Assembly

A. Overview

Many manifestations of religion or belief also fall within the scope of the related rights of freedom of expression, association, and assembly. Thus, protection of the right to freedom of religion or belief is enhanced by effective constitutional guarantees of these related rights.

As with the freedom to manifest religion or belief, the rights to freedom of expression, association, and assembly also are subject to restriction only in limited circumstances under international standards such as the ICCPR. Restrictions on these rights may be imposed only as prescribed by law and where necessary “in the interests of national security or public safety, public order...the protection of public health or morals or the protection of the rights and freedoms of others.”⁵⁴

B. Application of Related Rights

In several countries where Islam is the religion of the state, the constitutional provisions on the rights to freedom of expression, association, and assembly provide that the right can be circumscribed by any ordinary act of the legislature, rather than under the specific circumstances envisioned under international law.⁵⁵ However, other countries having Islam as a state religion do maintain provisions on these rights that, on their face, comply with international standards.⁵⁶

From among the related human rights discussed above, the right to freedom of religion or belief is intimately linked with the right to freedom of expression. For example, enforcement of offenses of blasphemy and injury to religious feelings may conflict with both of these rights. Governments and extremist groups often use these types of laws against minorities and dissenting members of the majority faith, to suppress and punish the expression of unpopular religious beliefs and opinions. This not only violates universal rights, it exacerbates religious intolerance, extremism, and violence.

The UN Human Rights Council addressed this issue in 2011 and 2012 through Resolutions 16/18 and 19/25 on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or

⁵⁴ See articles 19, 21 and 22, ICCPR.

⁵⁵ See for example Pakistan, art.19, which subjects the right of freedom of expression to, *inter alia*, “any reasonable restrictions imposed by law in the interest of the glory of Islam,” Bahrain, art. 23, which allows for freedom of expression “provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused,” and Yemen, art. 41, which provides that “The State shall by law secure freedom of thought and expression whether orally, in writing or in pictures and as provided for by law.”

⁵⁶ See for example Algeria, art. 36 (“The freedom of conscience and the freedom of opinion shall be inviolable.”).

belief.”⁵⁷ These resolutions provide that, consistent with international human rights standards, intolerant speech should be addressed through counter-speech and positive measures, including education and outreach. They emphasize that criminalization is only appropriate for incitement to imminent violence.⁵⁸

⁵⁷ Human Rights Council, “Resolution 16/18: Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or belief,” UN Doc. A/HRC/RES/16/18 (2011) (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/18); Human Rights Council, “Resolution 19/25 : Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against, persons based on religion or belief,” UN Doc. A/HRC/RES/19/25 (2012) (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/25).

⁵⁸ See also Leo, Gaer, and Cassidy, “Protecting Religions from ‘Defamation’: A Threat to Universal Human Rights Standards,” 34 Harv. J. Law & Pub. Pol. 769 (2011).

IV. Equality and Prohibition of Discrimination

A. Overview

Many of the constitutions of majority Muslim countries contain provisions addressing:

- (a) Equality before the law;
- (b) Equality of rights and freedoms (including in some cases specific provision of equal rights for men and women); and
- (c) Non-discrimination in rights or other official activities on the basis of, *inter alia*, religion or gender.

Article 26 of the ICCPR addresses religious and other forms of discrimination:

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 race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

According to the HRC, 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, colour, 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.” In the same respect, the HRC also found that article 26 of the ICCPR does not “merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”⁵⁹

B. Constitutional Provisions on Equality and Nondiscrimination

Not all countries with Islam as a declared state religion have opted to make equality subject to Islamic law. Several countries with Islam as the state religion maintain equality provisions that reflect international standards.

For example, Oman’s constitution states that “All citizens are equal before the Law and share the same public rights and duties. There is no discrimination between them on the ground of gender, origin, colour, language, religion, sect, domicile, or social status.”⁶⁰ Similarly, Algeria provides

⁵⁹ Para. 7 and 12, Human Rights Committee, “General Comment No. 18: Non-discrimination”, CCPR/C/21/Rev.1/Add.1 (1989), 10 November 1989

(<http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>).

⁶⁰ Oman, art.17.

that “citizens shall be equal before the law without any discrimination on the basis of birth, race, gender, opinion or any other personal or social condition or circumstances.”⁶¹

The constitutions of some majority Muslim countries go even further in asserting the right of equality and protection from discrimination. For example, Syria’s constitution guarantees “for women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life” and provides that “citizens are equal before the law in their rights and duties.”⁶² Likewise, Chad’s constitution ensures that “Chadians of both sexes have equal rights and duties” and extends “to all equally before the law without distinction of origin, race, sex, religion, political opinion, or social position.”⁶³

C. Constitutional and Other Limitations on the Rights to Equality and Nondiscrimination

At least four constitutions of countries where Islam is the religion of the state explicitly make equality subject to Islamic principles or the rules of Islamic jurisprudence regarding the treatment of men and women.⁶⁴ Depending on the prevailing interpretation of Islamic principles or jurisprudence in a particular country, qualifying equality in this way may subject women to discriminatory treatment in law and practice, particularly with regard to personal status issues such as marriage, divorce, and inheritance. Typically, this issue does not arise in secular states, where the principle of equality is expressed without qualification, although the actual application of that principle in secular states may still be problematic.

Still other majority Muslim countries’ constitutions provide exceptions from general nondiscrimination provisions for personal status issues such as adoption, marriage, and divorce,⁶⁵ or limit the application of equality to specific rights,⁶⁶ or do not address the issues of equality and discrimination altogether.⁶⁷

Finally, the constitutions of a number of majority Muslim countries may restrict to Muslim citizens the right to serve in government positions, and particularly to hold executive power.⁶⁸ This is achieved by requiring a specific Islamic oath or by stipulating that only Muslims can hold a given position. For example, in Yemen, the president, vice-president, members of the House of Representatives, prime minister, and other ministers must take the following constitutional oath: “I solemnly swear to God the Almighty that I shall abide by the Holy Koran and the Sunnah of Prophet Muhammed....”⁶⁹ Alternatively, according to the Tunisian constitution, only a Tunisian citizen “of Moslem religion... may present himself as a candidate for the Presidency of the

⁶¹ Algeria, art.29.

⁶² Syria, arts. 45 and 25(3).

⁶³ Chad, arts. 13 and 14.

⁶⁴ Bahrain, art. 5(b); Iran, arts. 20-21; Saudi Arabia, art.8; and Yemen, art.31.

⁶⁵ Sierra Leone, art.27(4)(d), and Gambia, art.33(5)(c).

⁶⁶ For example, compare the Moroccan constitution’s provision “Men and Women enjoy equal political rights” (art. 8), with Azerbaijan’s more broadly formulated, “Men and women have equal rights and freedoms” (art. 25(II)).

⁶⁷ See, for example, Brunei.

⁶⁸ USCIRF is aware that several non-Muslim countries also restrict certain offices to persons of a particular religion.

⁶⁹ Yemen, art.159.

Republic,” in Syria, “the religion of the President of the Republic shall be Islam,” and in Pakistan, “A person shall not be qualified for election as President unless he is a Muslim.”⁷⁰ In other majority Muslim countries, an Islamic oath is required by individuals before being permitted to take office.

This restriction also may manifest itself in more specific forms, whereby practice of a *particular strand* of Islam is established—often in favor of another Muslim community—as a prerequisite to political office. For example, in the Maldives, a the President must be “a Muslim and a follower of a Sunni school of Islam;” and in Brunei, “No person shall be appointed to be Prime Minister unless he is a Brunei Malay professing the Muslim religion *and belonging to the [Shafeite] sect of that religion.*”⁷¹

⁷⁰ Tunisia, art.40; Syria, art.3(1); and Pakistan, art.41(2).

⁷¹ Maldives, art.109(b), and Brunei, art.4(5) emphasis added.

V. Constitutional Law: Supremacy, Remedies for Rights Violations, and Revisions

A. Laws Inconsistent with Fundamental Rights May Be Void

The constitutions of some majority Muslim countries which have established Islam as the state religion contain a provision that makes void any law inconsistent with fundamental rights as set out in the constitution. For example, article 26 of Bangladesh's constitution provides:

- (1) All existing law inconsistent with the provisions [on fundamental rights] shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
- (2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

Pakistan's constitution also provides safeguards for protection of fundamental rights under article 8:

- (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter [on fundamental rights], shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.⁷²

Malaysia's constitutional provision, while not as specific as Bangladesh's, still provides that the constitution:

is the supreme law of the Federation and any law passed... which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.⁷³

B. Constitutionally Recognized Rights May be Superseded by Ordinary Law

Some constitutions do not entrench supremacy for human rights guarantees and as a consequence, in certain situations these guarantees may be superseded by an ordinary act of legislation. As noted above, Afghanistan's constitution, on its face, permits ordinary legislation to restrict or trump fundamental individual rights. Other countries with similar provisions include Senegal, Yemen, and Iran.⁷⁴

⁷² It should be noted that Pakistan's constitution gives the Federal Shariat Court the authority to determine if a law is repugnant to Islamic injunctions. See Pakistan, arts. 203(D)(1) and (D)(3)(b).

⁷³ Malaysia, art.4(1).

⁷⁴ Senegal, art.8; Yemen, art.41; and Iran, art.13.

C. Review of Constitutionality May Implicate the Conformity of Legislation with Islam

In some states where Islamic principles, law, or jurisprudence are established in the constitution as a basis or standard of legislation, a judicial or other body empowered to assess the constitutionality of laws may also have the authority to review legislation for its conformity to Islam. If interpreted and applied to prioritize a strict interpretation of Islamic law over human rights guarantees, these provisions can become problematic and result in abuses.

For example, Iraq's constitution provides that, "No law that contradicts the established provisions of Islam may be established" and also provides that the Federal Supreme Court has jurisdiction to interpret the Constitution and to provide oversight of the constitutionality of laws and regulations.⁷⁵ Similarly, Afghanistan's constitution, which establishes that "no law can be contrary to the sacred religion of Islam and the values of this Constitution,"⁷⁶ empowers the Supreme Court to review legislation for conformity to the constitution, provided such a review is made at "the request of the Government and/or the Courts."⁷⁷ As noted above, the Afghan constitution also requires courts to apply Hanafi jurisprudence where the constitution or existing laws are silent.⁷⁸

Pakistan's constitution also tasks a Federal Shariat Court with examining "whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam." If such a law is determined to be repugnant to those injunctions, "such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect."⁷⁹

D. Prohibitions on Certain Revisions to the Constitution

Another notable provision found in several constitutions seeks to entrench certain state-defining elements by preventing their modification. In some cases, such as Chad, these protected provisions guarantee the secular nature of the state and the fundamental rights of its citizens. The Chadian constitution specifies that:

- No amendment procedure may be commenced or continued if it affects:
- territorial integrity, independence or national unity;
 - the republican form of government, the principle of separation of powers and secularism;
 - fundamental rights and freedoms of citizens...⁸⁰

⁷⁵ Iraq, arts. 2(First)(A) and 90.

⁷⁶ Afghanistan, art.3.

⁷⁷ Afghanistan, art.121.

⁷⁸ Afghanistan, art.130. See Part I(B)(ii) above.

⁷⁹ Pakistan, arts. 203(D)(1) and (D)(3)(b).

⁸⁰ Chad, art.225.

In contrast, the prohibition on revisions found in the constitutions of several countries where Islam is the religion of the state protects the Islamic character of the state. According to Iran's constitution:

The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria; the religious footing; the objectives of the Islamic Republic of Iran...and the...official religion of Iran [Islam]...are unalterable.⁸¹

Finally, Algeria's constitution demonstrates that both fundamental rights and Islam as a state religion may be considered essential state characteristics that cannot be subject to revision. According to the constitutional text, there can be no constitutional amendment with respect to "the role of Islam as the religion of the State [or] the fundamental liberties, on the rights of man and of the citizen."⁸²

⁸¹ Iran, art.177. See also Morocco, art.106.

⁸² Algeria, art.178(3) and (5). See also Qatar, arts. 145-146, and Afghanistan, art.149. Kuwait's constitution permits revisions with respect to the role of Islam; however, it prevents amendments with respect to "the principles of liberty and equality... [unless such an amendment serves] to increase the guarantees of liberty and equality." Kuwait, art.175.

VI. Reference to International Agreements and Human Rights Instruments

A. Overview

Protection of the right to freedom of religion or belief can be enhanced by constitutional references to international human rights instruments, including human rights treaties to which the country is a party. The application of these international human rights protections, if considered part of the domestic law of the state and enforceable through the courts or other means, can supplement other constitutional provisions on human rights.

B. Affirmative Obligation or General Reference to International Human Rights Instruments

The constitutions of predominately Muslim and other OIC countries address in a variety of ways international human rights documents such as the UDHR and other international agreements to which the state is a party, including the UN Charter and the ICCPR. Some of these constitutions may contain an affirmative obligation to abide by specific international human rights instruments. For example, article 7 of Afghanistan's constitution declares that the state "shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights." In a similar manner, article 6 of Yemen's constitution provides that the state "shall abide by the United Nations Charter, the Universal Declaration on Human Rights, the Arab League Charter and the universally recognized rules of international law."⁸³

States with constitutions that lack any specific affirmative obligation to abide by international human rights instruments may, nonetheless, make reference more generally to "international...treaties and the generally recognized norms of international Law conducive to the promotion of peace and security,"⁸⁴ subscribe "to the principles and objectives of the Charter of the United Nations,"⁸⁵ or respect "the international agreements, charters and treaties to which it is a party."⁸⁶ Other constitutions may allude to such documents in their preambles,⁸⁷ whereas others make no reference at all to any international documents or treaties.

⁸³ See also Guinea-Bissau, art.29; Togo, art.50; Kosovo, art.22; and Mozambique, art.43.

⁸⁴ Oman, art.10. See also Somalia, art.19.

⁸⁵ Algeria, art.28.

⁸⁶ Qatar, art.6.

⁸⁷ See for example, Lebanon, Guinea, Gabon, Cameroon, and Mali.