

## THEMATIC ISSUES

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In monitoring religious freedom conditions globally, USCIRF often observes transnational issues and trends occurring in multiple countries, including in countries where the overall religious freedom situation does not merit their inclusion in USCIRF's tier system. This section of the 2013 Annual Report highlights and analyzes several such issues and trends, specifically: constitutional changes; severe violations by non-state actors; increasing adoption and enforcement of laws against blasphemy and defamation of religions; imprisonment of conscientious objectors; legal retreat in post-Communist countries; and kidnapping and forced de-conversion in Japan. The section also discusses issues relevant to religious freedom and related rights in international organizations.

### CONSTITUTIONAL CHANGES

Recent world events have spurred renewed interest in how constitutions treat the religion-state relationship and freedom of religion or belief. Over the past several years, new constitutions are being or have been drafted in Egypt, Somalia, Libya, Sudan, and Turkey, among other countries. (For more on the constitutional processes in Egypt, Sudan, and Turkey, see the chapters on those countries in this Annual Report.) These events prompted USCIRF in 2012 to update and re-release a study first issued in 2005, *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* (hereafter the Constitutions Study).<sup>1</sup> The original study was prompted by the constitutional processes then underway in Afghanistan and Iraq.

#### **CONSTITUTIONS STUDY BACKGROUND**

The Constitutions Study is both descriptive and analytical. It compiles, into a long table, the existing constitutional provisions on the religion-state relationship, religious freedom, and related human rights from 56 countries—the 46 countries in the world with majority Muslim populations, plus the 10 other countries that also are members of the Organization of Islamic Cooperation (OIC).<sup>2</sup> This group was chosen because these countries' constitutions are influential sources when other majority Muslim and OIC member countries draft or revise constitutions. The Constitutions Study then analyzes how these existing provisions compare to international human rights standards.

Overall, the Constitutions Study shows that these countries encompass a variety of constitutional arrangements on these issues. The religion-state arrangements range from Islamic republics with Islam as the official state religion to secular states with strict separation of religion and state. The role of religion in the law and the extent of guarantees for internationally-recognized human rights, including religious freedom, also vary.

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<sup>1</sup> The 2012 version of the study is available here: <http://www.uscifr.gov/reports-and-briefs/special-reports/3787.html>. The 2005 version is available here: <http://www.uscifr.gov/reports-and-briefs/special-reports/1887.html>

<sup>2</sup> The 46 majority Muslim countries surveyed are: Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Brunei, Burkina Faso, Chad, Comoros, Djibouti, Egypt, Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates (UAE), Uzbekistan, and Yemen. The 10 other OIC members are: Benin, Cameroon, Gabon, Guinea-Bissau, Guyana, Ivory Coast, Mozambique, Suriname, Togo, and Uganda.

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### **INTERNATIONAL STANDARDS AND THE IMPORTANCE OF CONSTITUTIONAL RELIGIOUS FREEDOM PROTECTIONS**

While the drafting and approval processes, and the resulting constitutional language, will differ in every country, international human rights standards prescribe certain basic elements for constitutional religious freedom protections. These elements include: universal applicability to everyone as individuals; the freedom to manifest a religion or belief, either individually or in community with others, in public or private; no coercion that would impair the freedom to change religion; and limitations on religious freedom only in certain narrow circumstances allowed under international law.<sup>3</sup>

Constitutional text matters, both as a statement of a nation's laws and aspirations and as a way for people to hold their government accountable for protecting their rights. To be sure, enshrining religious freedom in a country's constitution will not guarantee its respect in practice. Religious freedom abuses can still occur in countries whose constitutional provisions compare favorably with international standards. Constitutional text may not reflect actual practice, especially in the field of human rights.<sup>4</sup> But problematic constitutional provisions that limit this right taint legal systems, making respect for religious freedom on the ground extremely unlikely.

### **CONSTITUTIONS STUDY FINDINGS ON THE RELIGION-STATE RELATIONSHIP**

On the religion-state relationship, the Constitutions Study found that 23 of the countries surveyed—all of which are majority Muslim—make Islam the state religion. The remaining 33 either proclaim the state to be secular or make no pronouncements concerning an official state religion.

Under international standards, a state may declare an official religion, provided that basic rights—including the right to freedom of thought, conscience and religion or belief—are respected for all without discrimination. This means that 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. Unfortunately, in practice many states with official state religions do discriminate against non-adherents of that religion.

On the role of religion in the law, the study found that 22 of the countries surveyed provide that Islamic law, principles, or jurisprudence should serve as a source of, or limitation on, general legislation or certain select matters. This is the case 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. The latter four countries are Gambia, Nigeria, Sudan, and Syria.

These arrangements vary among these 22 countries. Some countries establish Islamic law, principles, or jurisprudence as “the basis for” legislation (Oman, the Maldives); “the principal (or chief, or main) source of” legislation (Libya, Egypt) or “a principal (or fundamental) source of” legislation (Bahrain, the UAE, Iraq). The constitutions of Afghanistan and Iraq also include what are often referred to as “repugnancy” clauses. Afghanistan Article 3 states that “no law can be contrary to the sacred religion of Islam and the values of this Constitution.” Iraq Article 2 provides: “A. No law that contradicts the established

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<sup>3</sup> For more detailed discussion, see USCIRF, *International Standards for Constitutional Religious Freedom Protections*, *International Standards for Constitutional Religious Freedom Protections*, Yale Journal of International Law, December 2011, available at <http://www.uscirf.gov/news-room/op-eds/3679-international-standards-for-constitutional-religious-freedom-protections.html>.

<sup>4</sup> Those actual practices are beyond the scope of the Constitutions Study, but are addressed in USCIRF's annual reports and other publications.

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provisions of Islam may be established. B. No law that contradicts the principles of democracy may be established. [and] C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established.”

In some countries, it is unclear what body, mechanism, or process is charged with assessing the conformity of legislation with Islamic principles or law. For example, in Egypt this task has fallen to the Supreme Constitutional Court, whereas in Pakistan the constitution specifically assigns this role to the Shariat Court. Also, many of these constitutions do not define the terms Islam, Shari’ah, or the fundamentals, principles, or jurisprudence of Islam or Islamic law.

Other countries restrict the role of Islam or Islamic law to specific legal matters, such as personal status issues (Jordan, Malaysia, Gambia), or the work of special councils designed to advise the government on questions of religion and religious life (Algeria, Mauritania, Comoros).

### **CONSTITUTIONS STUDY FINDINGS ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF**

The Constitutions Study found that only 6 of the countries surveyed, in all of which Islam is the declared state religion, provide no constitutional provision at all concerning religious freedom specifically. These are Algeria, Comoros, Maldives, Mauritania, Saudi Arabia, and Yemen.

Regarding the 50 countries that do provide some constitutional guarantee of the right to freedom of religion or belief, the Study found that these provisions comply in varying degrees to international human rights norms. For example, some provisions compare favorably in clearly specifying that the right to freedom of religion or belief is to be extended to every individual, or in protecting individuals against coercion in matters of religion or belief. (The latter would include guarantees against being forced to join a particular religious group, to profess a particular religion or belief publicly, to receive religious instruction or education, to take a religious oath, or to pay a religious tax). Other provisions do not compare favorably with international norms, for example by only protecting particular religions or classes of religions, only encompassing worship or the practice of religious rites, or allowing non-permitted limitations.

For example, in terms of the individual nature of the right, Pakistan and Senegal’s religious freedom clauses apply to “every citizen” and “all citizens,” respectively, and Indonesia’s covers “every person.” At the same time, however, other provisions in Pakistan’s constitution basically disenfranchise the Ahmadi community and repress their religious freedoms.

Other constitutions include the right, but do not frame it individually. For example, Bahrain’s constitution provides: “Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.” This is also an example of a provision that only protects certain religious activities, as well as one that allows limitations based on grounds not specified in international law.

Some other countries’ provisions only reference specific religious groups. For example, Iran’s only covers “Zoroastrian, Jewish, and Christian Iranians,” and Afghanistan’s only applies to non-Muslims. This means that in these countries, individual members of the majority religion are not afforded the freedom to debate interpretations of the dominant religion, or to dissent from or otherwise refuse to follow the favored interpretation.

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Under international law, the broad right to manifest one's 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. Limitations are not allowed on other, non-specified grounds, even grounds that may be permitted to restrict other rights (such as national security). 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. 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.

Many of the countries surveyed allow for limitations beyond those permitted under international human rights law. For example, in Afghanistan, the right to manifest religion is contingent upon "provisions of the law," which may enable limitations of the right based on non-enumerated grounds. Provisions in other countries also introduce limitations on grounds not recognized under international standards including "public policy" (Kuwait), "custom" (Bahrain, Kuwait), "decorum" (Jordan), or state sovereignty and national security (Gambia, Kyrgyzstan, Turkmenistan, Turkey).

### **SEVERE RELIGIOUS FREEDOM VIOLATIONS BY NON-STATE ACTORS**

Particularly severe violations of religious freedom are increasingly perpetrated by non-state actors in failing or failed states. Given this troubling reality, the U.S. government must develop strategies for countering these violent groups and protecting religious freedom. Non-state actors vary greatly and include individuals, mobs, vigilante groups, anti-government insurgents, militant organizations, and recognized terrorist groups. While they all act without the color of law, they can differ significantly in ideology, purpose, end goals, and level of international and domestic recognition. The groups discussed in the 2013 Annual Report and in this section are generally motivated by a violent religious ideology to impose their religious beliefs on local populations and harshly punish those who do not abide by their religious edicts. Some of these groups are U.S.-designated Foreign Terrorist Organizations (FTOs) or are members of the al-Qaeda terrorist network. Others are local militias whose domestic political agendas are pushed forward within a religious framework.

In countries where these organizations operate, central and local government authorities often lack the capacity to stop the groups and need international assistance. To date, governmental responses to these groups have been primarily military, with little attention given to addressing political, societal, or economic policies that drive conflict and allow such groups to gain a foothold in society. Situations of impunity are particularly difficult to address, because they often involve circumstances where a government is unable to bring perpetrators of violence to justice. However, when violent non-state actors remain unchallenged, they pose not only a threat to human rights, but also to the stability of the government in the country, as well as to regional security if they undertake cross border actions.

It is important to note that while governments may not be directly involved in these groups' actions, governmental action can foster violence. USCIRF has found that violence from non-state actors often arises in countries where the government exhibits hostility towards particular religious communities, either religious minorities or dissenting members of the religious majority. When discriminatory government laws or policies signal that certain groups are disfavored, non-state actors feel empowered to carry out violent attacks with little fear of reprisal. A government may also sponsor radical teachings or propaganda through education that speaks against certain religious communities. The government's devaluation of certain groups as the religious "other" can make them viewed as deserving of attack.

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In several of the countries addressed in USCIRF's 2013 Annual Report, non-state actors perpetrated particularly severe violations of religious freedom. This section provides details on non-state actors that perpetrate religious freedom violations that were not fully addressed in other report chapters.

### SOMALIA

From 2008 to 2012, al-Shabaab, a U.S.-designated foreign terrorist organization allied with al-Qaeda, controlled central and southern Somalia. While it has lost territory to the recognized Somali government and supporting African Union forces, al-Shabaab is actively working to establish Somalia as a base for terrorism. Its goal is to turn Somalia into an Islamic state, build a greater Somalia by incorporating regional areas with large ethnic-Somali populations such as Djibouti and areas of Ethiopia and Kenya, and spread its radical version of Islam. Al-Shabaab continues to control territory in central Somalia and near the border with Puntland and to fight a guerrilla war in major towns and cities controlled by the government or African Union forces. Al-Shabaab is also engaging in suicide attacks and other violence in Kenya.

Al-Shabaab engages in systemic and egregious violations of religious freedom, and violently implements its interpretation of Shari'ah law in the territories it controls. Somalis accused of committing crimes or who al-Shabaab deems to have deviated from accepted behaviors are punished through stoning, amputation, flogging, and/or detention. With its Wahhabi/Salafi leanings, al-Shabaab views Sufi Islamic interpretations and practices as un-Islamic and has killed Sufi clerics, attacked Sufi followers, destroyed Sufi mosques, and desecrated the tombstones of Sufi saints. It has arrested Sufi clerics and prevented them from conducting classes or attending mosques, and prevented pilgrimages to Sufi shrines.

Al-Shabaab requires women to be fully covered in public and forbids them from engaging in commerce that brings them into contact with men. Men are forbidden to shave their beards, and those deemed with "inappropriate hairstyles" have had their heads shaved. Al-Shabaab orders businesses to close during Islam's five daily prayer times. A number of activities, such as playing soccer or listening to music, are forbidden. The terrorist organization also executes persons accused of working with the central government or the African Union peacekeeping force, calling them apostates and "enemies of Islam." Al-Shabaab also targets the very small and extremely low-profile Christian and Christian convert community, and has executed dozens of Christians in the past five years.

### NIGERIA

The violent religious extremist organization Boko Haram started in northern Nigeria's Yobe and Borno states in 2002 and became a dangerous threat to Nigeria's stability in 2011. Boko Haram (a Hausa-language name meaning western education is a sin, given to the militants by Northern Nigerians) sees the federal and northern state governments, as well as the country's political and religious elites, as morally corrupt. It rejects the West and the secular state and seeks the universal implementation of "pure" Shari'ah law to resolve the ills facing northern Nigerian Muslims. While Shari'ah is already applied in the 12 northern Nigeria states, Boko Haram believes that it has been corrupted by politicians for their own gain.

Boko Haram has grown in numbers in the past two years with scores of economically and politically-marginalized northerners joining the group. Boko Haram is known to receive training from and have connections with al-Qaeda in the Maghreb. The U.S. government designated three of its leaders terrorists in June 2012.

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Boko Haram targets include police stations, government buildings, churches, politicians, newspapers, banks, and schools throughout northern Nigeria. Tactics include drive-by shootings on motorcycles, the use of improvised explosive devices, and starting in 2011, suicide bombings. In August 2011, individuals claiming to be affiliated with Boko Haram took responsibility for bombing the United Nations' main office in Abuja, an attack that killed 34 people. International Criminal Court prosecutor Fatou Bensouda has said that there is a "reasonable basis" to believe that Boko Haram has committed crimes against humanity in Nigeria.

In addition to attacks on state institutions, Boko Haram attacks have targeted the northern Christian population. In 2012, Boko Haram, or people thought to be affiliated with or sympathetic to the group, attacked at least 25 churches, killing and injuring hundreds; three attacks led to Christian reprisals. Boko Haram has attacked churches on Christmas Eve or Christmas day three years in a row from 2010 to 2012. It also killed individual Christians and called on Christians to leave northern Nigeria. It also seeks to further destabilize Nigeria by striking churches in cities with histories of Muslim-Christian tensions to exacerbate that hostility.

Boko Haram is also responsible, or is suspected of being responsible, for a number of attacks on Muslim clerics critical of the group. Victims include the second most prominent Islamic leader in Nigeria, the Shehu of Borno State Alhaji Ibn Abubakar Umar Garbai Elkanemi and the Emir of Fika. Boko Haram also is believed to have assassinated a number of clerics critical of the religious extremist group in 2012. In efforts to "purify" northern Nigeria, Boko Haram kills those engaged in what it deems un-Islamic behavior, such as gambling and drinking alcohol in bars.

In response to the Boko Haram attacks, President Goodluck Jonathan declared a state of emergency in Borno, Yobe, Niger, and Plateau states on December 31, 2011, allowing the Nigerian army to enter those states. However, rather than stop Boko Haram, the army's use of excessive force exacerbated the problem. Hundreds of suspected Boko Haram members are in detention, with trial dates yet to be determined. The Nigerian government has also entered into failed peace negotiations with the group and on November 25 announced hundreds of thousands of dollars of rewards for information leading to the capture of suspected Boko Haram leader and U.S.-designated terrorist Abubakar Shekau and other senior commanders. The Nigerian government has also taken steps to try to protect churches, including stationing police and erecting barriers at church entry points. While this has not stopped all attackers, it has prevented a number of them from reaching their targets, thereby reducing the number of deaths and injuries.

### **MALI**

Mali, once a model for democracy and freedom of religion and belief in Africa, experienced a dramatic rise in severe religious freedom violations in 2012 due to the activities of several violent religious extremist groups in the ungoverned northern part of the country. A March 2012 coup d'état led to a breakdown of government in northern Mali, leaving it vulnerable to militias already rebelling against the central government and religious extremist groups operating in the region, including: al-Qaeda in the Lands of the Islamic Maghreb (AQIM), Ansar al-Din (Defenders of the Faith), and the Movement for the Unity and Jihad in West Africa (MUJWA).

AQIM is a U.S.-designated FTO whose initial objective was to overthrow Algeria's secular military government and establish an Islamic caliphate. It is composed of Arabs and has sworn its allegiance to al-Qaeda and declared that it shares its goals of an Islamic Caliphate. Until 2012, however, most of AQIM's operations were kidnappings for ransom and smuggling, not trying to impose its extremist

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interpretation of Islamic law. With its long-standing presence in northern Mali and ties to local populations, AQIM had presences in the main northern cities of Gao, Kidal and Timbuktu.

Ansar al-Din is a Malian violent religious extremist group formed in November 2011 after its founder, Iyad Ag Ghaly, was rejected as the leader of a secular Tuareg militia. Predominately composed of members from the Tuareg Ifoghas tribe of Kidal and other Tuareg soldiers returned from Libya after that country's civil war, Ansar al-Din controlled Kidal as well as parts Timbuktu. Its goal is for Mali to be an Islamic state. Leaders of Ansar al-Din have connections, including familial, with AQIM.

MUJWA is a splinter group of AQIM that seeks to implement an extremist interpretation of Shari'ah across West Africa. Its African leaders split from AQIM believing that organization's Arab leadership was racist toward its African members. MUJWA's members are non-Malian Africans and ethnically-African northern Malians. Previously operating in northern Mali and southern Algeria, MUJWA gained control over the city of Gao following the March coup d'état.

All of these groups commit gross religious freedom violations in the territories they control. They violently imposed their extremist interpretation of Islam on the populations despite local protests, including use of floggings for violations of behavioral and dress codes. Ansar al-Din and MUJWA used hudood punishments, including stoning, amputation and flogging, for alleged violations of Islamic law and crimes. Additionally, Ansar al-Din and AQIM waged war on Mali's Sufi heritage in the World Heritage site of Timbuktu, desecrating nearly a dozen historic Sufi shrines and burning the Ahmed Baba Centre for Documentation and Research in an attempt to destroy the Centre's 60,000 to 100,000 ancient Muslim and Greek manuscripts. Fearing for their safety, Mali's northern Christian population fled that region as the religious extremists took control.

As the international community trained for a UN-sanctioned peacekeeping force, the extremist groups expanded the territory under their control, leading France to militarily intervene in the country on January 11, 2013. Within weeks, AQIM, Ansar al-Din, and MUJWA were pushed out of all major northern cities, although they are expected to continue to attack cities and military forces for the foreseeable future. French forces are now planning their withdrawal and replacement by the African peacekeeping force. Political negotiations with Ansar al-Din and its offshoots continue.

### SOUTH ASIA

Several groups of non-state actors that perpetrate severe violations of religious freedom can be found in Afghanistan and Pakistan. The chapters on Afghanistan and Pakistan detail the specific attacks perpetrated by these groups.

In Afghanistan, the Taliban are internationally-known abusers of human rights and religious freedom. During their rule of Afghanistan from 1996-2001, they repressed religious freedoms and human rights through the enforcement of their vision of religious law, which resulted in gross abuses. Non-Muslim religious statues were destroyed, women were forced to wear the burqa and prevented from attending school. They also banned social and recreational activities, such as music, television and kite flying. While the Taliban were initially welcomed in some quarters because they brought a form of rule of law, their implementation of "justice" was swift, violent, and without appeal.

Because of these violations, conditions in Afghanistan during this period met the statutory threshold for a "country of particular concern" due to the systematic, ongoing and egregious violations of religious freedom. However, since the United States did not recognize the Taliban as the legitimate representatives of the Afghan people, they were not recognized as the governing power. This led the State Department to designate the Taliban as a "particularly severe violator of religious freedom" in 1999 and 2000.

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Upon the Taliban's removal from power in 2001 by the United States and international partners, the "particularly severe violator" designation was dropped. Notably, the Taliban has never been designated an FTO by the State Department, although the group was subject to UN sanctions due to its connections with al-Qaeda. While the Taliban lost on the battlefield, they have continued to wage asymmetrical attacks against the Afghan government and U.S. and international forces, while enforcing their religiously-inspired worldview upon people in areas they control.

There were several examples of Taliban attacks during the reporting period. In July, the Taliban executed 11 women for their advocacy work, and in August they beheaded 15 men and two women for dancing at a party. They also continued their sectarian violence, including targeting of places of worship. In August, the Taliban bombed a mosque in Nangarhar province killing 19, and in October, a Taliban suicide bombing killed at least 42 at a mosque during Eid.

In Pakistan over the past several years, the level of religiously-motivated violence has steadily increased, both against minority religious communities and members of the majority faith whose views run counter to those of extremists groups. Violence has been perpetrated by individual actors and by spontaneous mob attacks. In addition, a number of violent militant groups operate with significant freedom in Pakistan and perpetrate attacks in the name of religion. Two of the worst violators are Lashkar-e-Jhangvi (LeJ) and Tehrik-e Taliban Pakistan (TTP).

The Pakistani government has banned LeJ and TTP and the State Department has designated them as FTOs—LeJ in January 2003 and TTP in September 2010. Both organizations are driven by an extremist religious agenda and openly take credit for attacks on religious minorities. For instance, the TTP took credit for the March 2011 assassination of Shahbaz Bhatti, the Federal Minister for Minority Affairs and an outspoken critic of Pakistan's blasphemy laws. LeJ has claimed credit for a series of bombings targeting Shi'i Muslims in January.

The government of Pakistan is at times unable, but also often unwilling, to enforce its laws and prevent attacks by non-state actors. Pakistan's laws and policies discriminate against religious minorities, which fosters an environment where vigilante violence is accepted. Furthermore, the Pakistani government has proven unable and unwilling to crack down on groups like LeJ and TTP, as well as other organizations that use violence to advance their agenda.

### **INCREASING ADOPTION AND ENFORCEMENT OF LAWS AGAINST BLASPHEMY AND DEFAMATION OF RELIGIONS**

Many countries around the world have laws that punish expression deemed blasphemous, defamatory, or insulting to religion or religious symbols, figures, or feelings. These laws are incompatible with international human rights standards, as they protect beliefs over individuals. In addition, they often result in violations of the freedoms of speech and religion, or at least a chilling of these rights, as they empower governments, majorities, and extremists to enforce particular religious views against individuals, minorities, and dissenters. Though often justified as needed to promote religious harmony, these laws in fact have the opposite effect, exacerbating religious intolerance, discrimination, and violence.

The existence and enforcement of these laws contradict consensus UN resolutions recognizing that religious intolerance is best fought through positive measures, such as education, outreach, and counter-

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speech, and that criminalization is only appropriate for incitement to imminent violence.<sup>5</sup> They also contradict the views of the UN Human Rights Committee, which has stated that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the [International] Covenant [on Civil and Political Rights],”<sup>6</sup> as well as the conclusions of an international group of experts convened by the Office of the UN High Commissioner for Human Rights. Those experts recently recommended that “[s]tates that have blasphemy laws should repeal the[m] as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion.”<sup>7</sup>

Several of the countries USCIRF reported on in the 2013 Annual Report have these types of laws and are enforcing them. The most egregious example is Pakistan, where, as discussed in this report’s Pakistan chapter, USCIRF knows of 17 individuals currently on death row on blasphemy convictions and 20 serving life sentences, and where individuals have been murdered in vigilante violence associated with blasphemy allegations. Specific cases of religious blasphemy, defamation, or insult also are reported in the chapters on Egypt, Indonesia, and Saudi Arabia. In some of these countries, such as Egypt, the number of blasphemy-type cases in this reporting period increased from previous years. In addition, as discussed in the relevant chapters, during this reporting period both Russia and the Kurdistan region of Iraq considered enacting new laws of this type.

USCIRF also is aware of cases of blasphemy, defamation of religion, or religious insult during this reporting period in the following countries:

- **Greece:** In September 2012, Philippos Loizos was arrested and charged with blasphemy for setting up a Facebook page criticizing a deceased Greek Orthodox monk as close-minded and xenophobic and mocking the monk’s name, which was similar to the Greek word for a pasta dish. The blasphemy charge was later dropped, but replaced with a charge of insulting religion, which remains pending. Under the Greek penal code, blasphemy or insulting religion is subject to imprisonment for up to two years.

In November, blasphemy charges were brought against the director and cast of a play, *Corpus Christi*, which portrays Jesus and his apostles as homosexuals living in Texas. The play had been cancelled after weeks of sometimes violent protests against it. The charges remain pending. The play’s director said in the press that he received death threats for several months, including threats sent to his parents.

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<sup>5</sup> 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); General Assembly, “Resolution 66/167: Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,” UN Doc. A/RES/66/167 (2011); 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); General Assembly, “Resolution 67/178: Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,” UN Doc. A/RES/67/178 (2012).

<sup>6</sup> Human Rights Committee, “General comment no. 34, Article 19: Freedoms of opinion and expression,” UN Doc. CCPR/C/GC/34, para. 48 (2011).

<sup>7</sup> “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR in 2011, and adopted by experts in Rabat, Morocco on 5 October 2012,” available at [http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf).

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In both cases, members of the ultra-nationalist Golden Dawn party, including Golden Dawn members of parliament, stirred up outrage against the expression at issue and called for the charges, as did some Greek Orthodox clergy. In the case of the play, the charges were filed by the Orthodox bishop of Piraeus.

- **India:** In March 2012, two lay Catholic organizations filed charges of “insulting religion” against the head of the Indian Rationalist Association, Sanal Edamaruku, after he questioned whether water dripping from a statue of Jesus in a Catholic church was a miracle or a plumbing issue. The charges are under Section 295A of the Indian Penal Code, which criminalizes “[d]eliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs,” subject to imprisonment of 3 years, or a fine, or both. Edamaruku also received death threats. He has left India for Finland, where he remains.

In November, police in Mumbai arrested two women, Shaheen Dhada and Renu Srinivasan, and charged them under Section 295A of the Penal Code and Section 66A of the Information Technology Act for posting and liking a post on Facebook complaining about the city coming to a standstill after the death of a Hindu-nationalist leader, Bal K. Thakeray. (Section 66A penalizes sending a “grossly offensive” message through a computer resource or communication device with three years’ imprisonment and a fine.) Shortly after she made the post, Dhada received a harassing phone call and a mob of Thackeray supporters descended on her neighborhood, demanding her arrest and vandalizing her uncle’s medical clinic. Both women were released on bail the next day. The charges against the women were later dropped, and several police officials and the magistrate involved in the case were disciplined. Ten individuals involved in the violence also reportedly were arrested.

- **Kuwait:** During the reporting period, the Kuwaiti parliament voted to increase the criminal penalty for blasphemy to the death sentence. USCIRF wrote the Kuwaiti ambassador to the United States to highlight that blasphemy laws violate international standards and UN resolutions that the Kuwaiti government had supported. In addition, USCIRF engaged the U.S. Embassy in Kuwait and the State Department about these concerns, and encouraged Members of Congress to write the Kuwaiti Emir. In June, the Emir vetoed the change in Kuwaiti law.

However, also in June 2012, in the midst of the Saudi military intervention in Bahrain to help quell Shi’i protests, a Kuwaiti court sentenced Shi’i blogger, Hamad al-Naqi to 10 years in prison for Twitter messages insulting Islam, the Prophet Mohammed, his wife, his companions, and Saudi and Bahraini leaders. Al-Naqi has said he did not write the messages and his account was hacked. An appeal is ongoing.

- **The Philippines:** In January 2013, a Manila trial court convicted Carlos Celdran under a penal code article that criminalizes “offending the religious feelings of the faithful.” In 2010, to protest the Catholic church’s opposition to a then-pending reproductive health bill, Celdran, dressed as author Jose Rizal, held up a sign reading “Damaso” and shouted “you bishops, stop getting involved in politics” during a service at Manila Cathedral, before being removed by police. Damaso is the last name of a villainous character, a corrupt and abusive priest, in Rizal’s 1887 novel *Nolo Me Tangere*. Celdran is out on bail awaiting sentencing, which could be up to 13 months imprisonment.
- **Poland:** In October 2012, the Supreme Court of Poland reversed the acquittal of a heavy-metal rock musician, Adam “Nergal” Darski, on criminal charges of “offending religious feelings” for ripping up a Bible and criticizing the Catholic Church during a concert performance in 2007. A trial court found him not guilty in 2011, holding that what he had done was artistic expression,

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but prosecutors appealed. The Supreme Court held that a person may be convicted of offending religious feelings even if he had not directly intended to do so, as long as he was aware that his actions may lead to offense being taken. The case will now return to the trial court for further proceedings. The potential penalties are a fine, restriction of liberty, or up to two years' imprisonment.

- **Tunisia:** In March 2012, a Tunisian court sentenced two men—Ghazi Ben Mohamed Beji and Jaber Ben Abdallah Majri—to seven years in jail for publishing writings and caricatures perceived as offensive to Islam. In July, an appeals court upheld the verdict and prison terms.

In May 2012, a TV-station executive, Nabil Karoui, was fined 2,400 dinars (around \$1,500) for “violating sacred values” and “disturbing the public order” by airing the film *Persepolis* on his channel in October 2011. Tunisian Salafi Muslims deemed the animated film, about a young girl growing up during the Iranian revolution, blasphemous because of a dream scene depicting God. After the film aired, armed mobs attacked Karoui’s home and the Prime Minister’s office, and during Karoui’s trial, individuals opposed to the film attacked peaceful demonstrators supporting Karoui outside the courthouse. No charges have been brought against perpetrators of the violence. Karoui plans to appeal the fine.

- **Turkey:** In June 2012, an Istanbul court indicted Fazil Say, a prominent pianist and composer, on charges of “publicly insulting religious values that are adopted by a part of the nation.” The charges are based on tweets in which Say, a self-declared atheist, allegedly insulted Islam. The trial began last autumn and will next resume in April. The potential penalty is up to 18 months in prison.

### IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

Conscientious objection to military service is closely tied to freedom of religion or belief. In USCIRF’s global monitoring of religious freedom, we have observed how many conscientious objectors are motivated by deeply-held religious beliefs. In countries not providing a civilian alternative service regime, the conflict between religious beliefs and forced conscription into military service has resulted in lengthy prison sentences for individuals.

The UN Human Rights Council, and its predecessor the UN Human Rights Commission, repeatedly have recognized “the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience, and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.” As recently as July 2012, the Human Rights Council called on all states to review their laws, policies and practices relating to conscientious objection to military service.

The Parliamentary Assembly of the Council of Europe repeatedly has called on member states to provide alternative civilian service, and recognition of conscientious objection is required for Council of Europe (CoE) membership. In 2011, the European Court of Human Rights (ECtHR), in a case against Armenia, ruled that the failure to recognize conscientious objection violates the European Convention’s guarantee of the freedom of thought, conscience and religion or belief. As the CoE’s Human Rights Commissioner has said, “[p]eople should not be imprisoned when their religious or other convictions prevent them from doing military service. Instead they should be offered a genuinely civilian alternative.”

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Nevertheless, some countries continue to imprison Jehovah's Witnesses and other individuals who object, based on conscience or religion, to compulsory military service. As discussed in the relevant country chapters in this Annual Report, there currently are conscientious objectors in prison in Eritrea, Turkmenistan, and Azerbaijan. In recent years, conscientious objectors also have been imprisoned in Belarus and Turkey.

Armenia and South Korea are two countries not on either of USCIRF's tiers that have imprisoned significant numbers of conscientious objectors and continue to struggle with balancing national security concerns with their international human rights obligations.

When it joined the CoE in 2001, Armenia committed itself to introduce a civilian alternative service by 2004. However, the law it enacted—which has been criticized by experts from the UN, the CoE, and the Organization for Security and Cooperation in Europe—leaves alternative service under Defense Ministry oversight, making it unacceptable for most conscientious objectors. Moreover, the 42-month duration of alternative service is the world's longest. The ECtHR has issued four decisions along with fines against Armenia in conscientious objection-related cases. In its most recent ruling, in November 2012, the ECtHR found that Armenia had violated the rights of 17 jailed Jehovah's Witness conscientious objectors and for the first time in such a case, the Armenian judge on the court did not dissent. Also in November 2012, two Jehovah's Witnesses were imprisoned in Armenia, bringing the current total of conscientious objectors in prison to 31, most of whom are serving terms of two to three years. An additional 15 have been convicted but are not in prison pending appeals, according to Forum 18.

Since 1950, over 17,000 Jehovah's Witnesses and other conscientious objectors have served eighteen-month sentences for violating South Korea's Military Service Act (MSA), which requires all 19 to 35-year-old Korean men to serve a two-year military commitment. National military service is a national duty stipulated in Article 39 of the Constitution. There are around 800 Koreans currently serving 18-month sentences for refusing military service. The UN Human Rights Committee has repeatedly ruled that South Korea is violating the basic human rights of conscientious objectors, contrary to its commitments under the International Covenant on Civil and Political Rights, particularly Article 18.

There have been several attempts to create a system of alternative civilian service for conscientious objectors in South Korea. South Korea's Supreme Court and National Human Rights Committee have recommended an alternative civilian service system for conscientious objectors. In 2007, the outgoing administration of President Roh Moo-hyun announced a program offering objectors three years of civilian service. However, that program was postponed indefinitely by the administration of President Lee Myung-bak, citing heightened conflict with neighbor North Korea. South Korea's Ministry of Defense views mandatory military service as a matter of both national security and social cohesion. This view was supported by the Constitutional Court in August 2011, which upheld the law penalizing conscientious objectors who refuse military service. The incoming President, Park Guen-hye, continues to face the twin dilemmas of heightened security concerns and the imprisonment of individuals who object by conscience and religion to any military service.

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### LEGAL RETREAT FROM RELIGIOUS FREEDOM IN POST-COMMUNIST COUNTRIES

In recent years, various post-Communist countries have enacted increasingly restrictive laws relating to religion and religious groups, and have applied them to limit rather than promote religious freedom. This negative trajectory is discussed in this Annual Report's chapters on Azerbaijan, Belarus, Kazakhstan, Russia, Tajikistan, Turkmenistan, and Uzbekistan.

This trend is also evident in Ukraine and Kyrgyzstan.

In December 2012, Ukrainian President Viktor Yanukovich signed controversial amendments to the country's 1991 Law on the Freedom of Conscience and Religious Organizations. Ukrainian civil society and religious communities criticized the amendments as overly broad and vague and the amendment process as non-consultative. The leaders of Ukraine's largest religious communities, Patriarch Filaret of the Ukrainian Orthodox Church-Kyiv Patriarchate (UOC-KP) and Major Archbishop Sviatoslav of the Ukrainian Greek Catholic Church, separately joined in this appeal. Some observers expressed concern that the amendments would provide opportunities for President Yanukovich to favor the UOC-KP.

The amendments complicate the registration process for religious groups by introducing two unclear and separate processes. The number of state regulatory bodies also was increased to include the Prosecutor's Office, the central body on religious matters (the Ministry of Culture), other ministries, and local authorities. Other issues of concern include requirements that religious groups must obtain prior permission to hold peaceful assemblies and that the Ministry of Culture must approve the activities of foreign religious personnel, including students and volunteers. The amendments have already taken effect and Ukrainian religious groups have expressed concern about a possible destabilizing effect on civil society. Ukraine's major Muslim organization also has criticized the autonomous Crimean government for disregarding Ukrainian laws, including using textbooks that promote religious discrimination.

In Kyrgyzstan, before 2009, both registered and unregistered religious groups could function quite freely. The 2009 Religion Law, however, sets numerous restrictions, including a complex and cumbersome registration process required for all religious communities to complete by 2010. To register, at least 200 adult citizens (a major increase from the previous requirement of 10) must submit detailed personal and other data. The registration application must include written permission from local officials to use local meeting premises, and if a religious community has administrative centers outside Kyrgyzstan or foreign citizens on its executive board, it is classified a "mission" and must re-register annually. The State Committee on Religious Affairs (SCRA) can recommend rejection of a registration application if it deems the group a threat to national security, inter-ethnic and inter-religious harmony, public order, health, or morality. Religious groups must submit financial data to the State Agency for Statistics, tax authorities, the SCRA, and the Prosecutor's Office. If they do not comply, the SCRA can seek a court order to close down the organization.

By early 2012, only 135 Muslim communities and three Russian Orthodox parishes had been registered, leaving hundreds of mosques, Protestant churches, Jehovah's Witnesses and Hare Krishna communities unregistered. Reportedly, the SCRA often refused to inform religious organizations why their registration or re-registration was denied. Unregistered religious groups are banned from renting space and holding religious services, although many hold regular services without official interference. As of December 2012, Ahmadi Muslims had gone to court to challenge denials of registration at the local and national

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levels and Jehovah's Witnesses had taken consistent state registration denials to the UN Human Rights Committee.

The law also allows the government to examine any religious materials, including in libraries and imported literature which must also be examined by the National Security Service. The law also restricts distribution of religious materials to a religious group's legal property, or in places allocated by local authorities. Under the religion law, local cemeteries are controlled by local officials who often deny non-Muslims burial sites. The 2009 law also bans involvement of minors in religious groups, "insistent attempts to convert followers of one religion to another (proselytism)," and undefined "illegal missionary activity." It allows for the teaching in public schools of religious courses only if the state deems them mainstream.

During the its Universal Periodic Review before the UN Human Rights Council in 2010, the Kyrgyz government agreed to review the 2009 law, but it has not done so. Yet, during the reporting period, the Kyrgyz parliament considered amendments to the 2009 law that would: authorize the National Security Services to request assistance from the Russian Orthodox Church and the Spiritual Board of Muslims in examinations of religious literature; require state permission to send students for foreign religious education; and require a state license for all foreigners exercising freedom of religion or belief. Additionally, in January 2013, new and higher administrative penalties for violations of religion laws were part of proposed Justice Ministry amendments to the Kyrgyz code of administrative offenses, Forum 18 reported.

### **KIDNAPPING AND FORCED RELIGIOUS DE-CONVERSION IN JAPAN**

Japan is a thriving democracy with an advanced judicial system, both of which have generally promoted and protected the freedom of religion and belief. Nonetheless, over the past several decades, thousands of individuals belonging to the Unification Church, the Jehovah's Witnesses, and other new religious movements (NRMs) have been kidnapped by their families in an effort to force them to renounce their chosen beliefs. In some extreme cases, as with Unification Church member Toro Goto, individuals were confined against their will for a decade or more. Those abducted describe psychological harassment and physical abuse by both family members and "professional deprogrammers." Police and judicial authorities have neither investigated nor indicted those responsible for these acts, often citing lack of evidence.

The Japanese Constitution guarantees the freedom of religion and also protects citizens against false imprisonment. In addition, Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which Japan has ratified, protects the freedom "to have or to adopt a religion or belief of his choice" and provides that "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion of belief of his choice." Nevertheless, Japanese authorities continue to see these cases as family matters in which they will not intervene.

The number of abductions for the purpose of forced de-conversion has dropped dramatically since the 1990s, though they have continued to occur each year, particularly targeting Unification Church members. For the Jehovah's Witness, forced de-conversions stopped after an August 2002 court case declared their "deprogramming" illegal and several other cases resulted in civil judgments against parents and "professional deprogrammers." However, in a 2003 Supreme Court case involving the alleged

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kidnapping and forced de-conversion of Unification Church members, the Court rejected the appeal, stating that the facts of the case did not violate the Constitution. Other criminal cases, including the 12-year abduction and torture of Toro Goto, have been dropped because of “lack of evidence.” The Unification Church alleges that dozens of cases of forced de-conversion still occur each year in Japan, including in the past year, when five cases were confirmed by human rights groups working on this issue.

A civil case brought by Toro Goto against his kidnapers will proceed this year. The case has garnered media attention in Japan, as well as the attention of Japanese legislators. Religious and human rights groups that have worked to expose the practice of forced de-conversion hope that the number of abduction cases will continue to decline and that in the future police and judicial authorities will pursue criminal charges against family members and “professional deprogrammers” who kidnap and mistreat members of the Unification Church or other NRMs.

### RELIGIOUS FREEDOM ISSUES IN INTERNATIONAL ORGANIZATIONS

The International Religious Freedom Act of 1998 (IRFA) specifically cites U.S. participation in multilateral organizations as an avenue for advancing religious freedom. Both the United Nations (UN) and the Organization for Security and Cooperation in Europe (OSCE) have conventions and agreements that protect freedom of religion or belief and related rights, including assembly and expression. In addition, both the UN and OSCE have mechanisms that can be used to advance religious freedom or call attention to violations. Continued strong U.S. support for religious freedom and related rights in these institutions is critical.

#### UNITED NATIONS

The United States should continue to participate actively in the UN Human Rights Council, including its Universal Periodic Review (UPR) process. The UPR, which currently is in its second cycle, allows states to assess the human rights performance of every UN member state. USCIRF urges the United States to seek to ensure that each country’s compliance with international religious freedom standards constitutes an important part of the UPR, including by asking probing questions and making strong recommendations concerning religious freedom. This is particularly important when countries designated as “countries of particular concern,” or CPCs, under IRFA are reviewed. The U.S. government also should seek to highlight religious freedom concerns in country-specific resolutions in both the Human Rights Council and the UN General Assembly, particularly regarding CPC countries.

Further, the United States should continue firmly and unequivocally to support the mandate and work of the Human Rights Council’s independent expert, or Special Rapporteur, on Freedom of Religion or Belief, including by working to secure sufficient assistance to help the Rapporteur carry out this volunteer position. The Special Rapporteur—currently Professor Heiner Bielefeldt of Germany—monitors freedom of religion or belief worldwide, communicates with governments about alleged violations, conducts country visits, and brings religious freedom concerns to the UN and public attention through reports and statements. The United States also should encourage the Special Rapporteur to pay particular attention to CPC countries, including by seeking visits. In addition, the U.S. government should seek the appointment or continuation of country-specific Special Rapporteurs for states violating religious freedom and related human rights, particularly CPC countries.

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Finally, the United States should continue vigorously to oppose efforts seeking legal limitations on offensive or controversial speech. The Human Rights Council and General Assembly have been centers of such activity for more than a decade by the Organization of Islamic Cooperation (OIC), with its annual resolutions focused on “combating defamation of religions.” These sought—in violation of the individual rights to freedom of religion and expression—to establish what would be in effect a global blasphemy law. Years of effort by USCIRF, the State Department, members of Congress, and NGOs helped bring about a marked decrease in the support for these flawed resolutions between 2008 and 2010. As a result, in 2011 and 2012 both UN bodies instead adopted consensus resolutions on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief.” The new resolutions properly focus on protecting individuals from discrimination or violence, instead of protecting religions from criticism; protect the adherents of all religions or beliefs, instead of privileging one religion; and do not call for legal restrictions on peaceful expression, but rather for positive measures, such as education and outreach. In fact, the new resolutions call for criminalization only in the case of incitement to imminent violence, which is the U.S. First Amendment standard.

USCIRF welcomes this new approach, and commends the efforts that led to these new formulations. Nonetheless, USCIRF remains concerned that the OIC has not abandoned its global anti-blasphemy efforts. As discussed elsewhere in this Annual Report, OIC member states continue to have and enforce repressive domestic blasphemy and defamation-of-religion laws that result in gross human rights abuses. In addition, the OIC and leaders of OIC countries continue to refer publicly to the defamation-of-religions concept and call for laws against it, including in high-level statements at the UN after the YouTube video about the Prophet Mohammed. Similar statements were made in the context of the “Istanbul Process,” a series of international meetings launched in 2011 to discuss the implementation of the new resolutions.

The United States and other UN member states that support universal human rights must remain vigilant, including in the Istanbul Process, against any efforts to erode the new resolutions’ language or to expand existing international incitement norms—which comprise only narrow exceptions to the freedom of expression—to include speech “defaming” religions. Not only would such efforts undermine universal rights, they would exacerbate religious intolerance, discrimination, and violence, the very problems that the OIC claims that it is trying to address.<sup>8</sup>

### **ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE**

The Organization for Security and Cooperation in Europe (OSCE), comprised of 56 participating States from Europe, the former Soviet Union, the United States, and Canada, continues to be an important forum for holding its member countries to extensive international standards on freedom of religion or belief and to combat discrimination, xenophobia, intolerance, and anti-Semitism. In recent years, however, some participating States, led by Russia, have sought to curtail or derail the organization’s focus on human rights activities. In light of this, USCIRF continues to urge the United States to protect and revitalize the OSCE’s human rights and religious freedom activities.

In 2012, the OSCE undertook efforts to “reform” its Advisory Panel of Experts on Freedom of Religion or Belief, a consultative resource that can provide expert opinions on proposed or enacted legislation to OSCE governments. The Panel previously was composed of 60 persons nominated by OSCE countries, including a 15-member Advisory Council appointed by the Director of the OSCE’s Office of Democratic Institutions and Human Rights (ODIHR). Now, like other ODIHR advisory bodies, the new panel has 12 members representing an equitable geographical distribution of the OSCE region. The new U.S.

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<sup>8</sup> For more information, see Leo, Gaer, and Cassidy, “Protecting Religions from ‘Defamation’: A Threat to Universal Human Rights Standards,” 34 Harv. J. Law & Pub. Pol. 769 (2011).

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representative is Ms. Engy Abdelkader, who is also Vice-Chair of the ABA Committee on National Security and Civil Liberties and Vice President of KARAMAH: Muslim Women Lawyers for Human Rights.

USCIRF recommends that the U.S. government encourage the OSCE to utilize the Advisory Panel more effectively, for example by enhancing the transparency of its activities and funding it to provide training seminars for OSCE missions and Mediterranean partner states about OSCE commitments on freedom of religion or belief. In addition, to ensure and maintain the independence of the new Advisory Panel, it should be empowered to act independently and issue reports or critiques without undue interference or review by ODIHR or participating States.