

Freedom of Religion or Belief Toolkit

How the FCO can help promote
and protect this human right



Foreign &
Commonwealth
Office



Freedom of Religion or Belief - how the FCO can help promote respect for this human right

“Freedom of religion or belief is not just an optional extra, or nice to have; it is the key human right. It allows everyone to follow their conscience in the way they see fit.”¹

SUMMARY

Freedom of religion or belief is a key human right. The right to adopt a religion, to practice it without hindrance, to share your faith and to change your religion are all key freedoms that everyone should be able to enjoy. Promoting and protecting the right to freedom of religion or belief is an integral part of our human rights work, making a particular contribution to strengthening the rules-based international order, projecting our democratic values and supporting universal human rights, good governance and contributing to conflict prevention.² Moreover, its enjoyment plays an important part in achieving the UK’s vision of a more secure and prosperous United Kingdom. It plays a significant role in building societies which are resilient against extremism. It is a sensitive issue in many countries.

These guidelines, elaborated in 2009 and updated in 2016 with the help of specialist stakeholders, aim to provide a simple introduction to the issues for FCO posts and desks, an analytical matrix to identify problems, some general responses to frequently raised issues, and other resources for those who wish to go deeper into the subject.

¹ Baroness Anelay of St Johns, 16 July 2015

<http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/150716-0003.htm>

² FCO Single Departmental Plan 2015-2020

<https://www.gov.uk/government/publications/fco-single-departmental-plan-2015-to-2020/single-departmental-plan-2015-to-2020>

Front page photo courtesy of Giulio Paletta/CSW 2016, Nepal: Prayers inside the Catholic Church of the Assumption in Lalitpur.

CONTENTS

What is freedom of religion or belief?	Paras 2-9
Why is freedom of religion or belief important to the UK?	Paras 10-12
What is needed to achieve freedom of religion or belief?	Para 13
Vulnerable groups and freedom of religion or belief	Para 14
Women and freedom of religion or belief	Para 15
Children and freedom of religion or belief	Para 16
Freedom of religion or belief and freedom of expression	Paras 17-22
Restrictions on freedom of religion or belief	Paras 23-28
What problems are Posts most likely to encounter?	Paras 29-36
How can Posts help to promote freedom of religion or belief?	Paras 37-42
Regional mechanisms	Para 43
Some common objections and answers	Pages 14-16
Annex One - Analysis of right to freedom of religion or belief	Page 17
Annex Two - Treaties and other international provisions	Page 20
Annex Three - Some useful websites	Page 23
Annex Four - Freedom of religion or belief in Europe, an introductory overview by Prof. Sir Malcolm Evans KCMG OBE	Pages 24-31

Why has the FCO produced these guidelines?

1. The object of these guidelines is to help Posts (a) to understand the human rights issues involved in freedom of religion or belief, and (b) to provide some ideas about how to promote this human right in practice and to combat violations of it. States are bound by the commitments that they have undertaken when ratifying human rights treaties, so Posts should first inform themselves about which of the treaties listed in annex 2 their host State has ratified (with any reservations) in order to determine the extent of their obligations when considering opening a dialogue on this human right.

What is freedom of religion or belief?

2. Freedom of thought, conscience, religion or belief is guaranteed under international law and is set out in more detail in many international human rights documents and treaties (see annex 2 for further details). Under the UN's International Covenant on Civil and Political Rights (ICCPR), this freedom (set out in Article 18) is one that cannot be derogated from, even in times of public emergency.
3. Freedom of religion or belief is far-reaching and profound. It encompasses not just the freedom to hold personal thoughts and convictions, but also being able to manifest them individually or with others, publicly or in private. It also includes the freedom to subscribe to different schools of thought within a religion, and to change one's religion or beliefs, including to leave or abandon religions, or to hold non-religious convictions. It forbids discrimination against individuals who have, or wish to have, different beliefs. It prohibits the use of coercion to make someone hold or change their religion or belief. It also protects the individual from being compelled to state an affiliation with any particular religion or belief.
4. As with all human rights, freedom of religion or belief belongs to individuals, whether alone or as members of a group, and not to the religion or belief itself. This means that it does not protect religions, or religious figures, from criticism. Freedom of religion or belief can be rooted in any cultural context and/or tradition. It is a universal value, not only one that is relevant to democratic societies, as some assert.
5. Of the international monitoring bodies tasked with interpreting human rights treaty provisions on freedom of religion or belief, the European Court of Human Rights (ECtHR – a Council of Europe institution) has the most developed jurisprudence and most of the examples given in these Guidelines are taken from this. These interpretations are binding on States that have ratified the European Convention on Human Rights. While not binding on other States that have ratified other international or regional treaties, the monitoring bodies do have regard to each others' interpretations, and those of the ECtHR are generally considered to be legally persuasive.
6. There is no single agreed definition of what is a religion or a belief for the purposes of human rights law. The word "religion" is commonly, but not always, associated with belief in a transcendent deity or deities, i.e. a superhuman power or powers with an interest in human destiny. The term "belief" does not necessarily involve a divine being; it denotes a certain level of cogency, seriousness, cohesion and importance. So not all beliefs are covered by this protection. For example, if someone believed that the moon was made of cheese, this belief would not be likely to meet the test above. But in general a very wide meaning is given to this term. The following are examples of beliefs considered³ to fall within the protection of this freedom: druidism⁴, veganism⁵, pacifism⁶, the divine light mission⁷, Krishna Consciousness

Movement⁸, humanism⁹, atheism and agnosticism¹⁰. In 1993, the UN Human Rights Committee (which monitors States Parties' implementation of the International Covenant on Civil and Political Rights (ICCPR) described religion or belief as "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or "belief"¹¹ However, the issue is complex and contentious, and involves political and other sensitivities.

7. Not all governments accept the approach to religion or belief given above, in particular in not accepting non-religious worldviews as protected. Additionally, not all governments implement their obligations to protect the freedom of persons to hold or exercise the wide range of religions and beliefs outlined above. Some make distinctions between religions, philosophies and cults, only recognising monotheistic religions as falling within the human rights ambit of freedom of religion. Some base their decision on the perspective of the State or dominant religion. In any event, such positions are contrary to the provisions of international human rights law.
8. The right of an individual to hold religious or other beliefs is absolute. No one can be compelled to disclose or adopt religious or other beliefs. However, the right to manifest one's religion or belief can sometimes be curtailed but only for the limited reasons given in the human rights treaties.¹² Such limitations should be prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Equality and non-discrimination are also core aspects of the enjoyment of human rights, and so no one should be subject to discrimination for exercising their right to freedom of religion or belief.
9. In addition to the many international instruments which expressly provide for the freedom of religion and belief, there are also many other international standards which protect everyone's right to freedom of religion and belief.¹³ Other international standards, such as Article 27 ICCPR, protect the rights of individuals belonging to ethnic, religious, and linguistic minorities. These are relevant to many instances where freedom of religion is violated, but will not be explored in detail in these Guidelines. Care should be taken to avoid the misconception that only minorities suffer freedom of religion and belief violations, as sometimes states seek to control the manifestation of beliefs whose followers in fact constitute the majority. Labelling groups as "religious minorities" can also mark them out as somehow different from the rest of society, rather than treating everyone as equal, regardless of their religion or belief, which is what the human rights treaties envisage.

³By the European Commission and/or Court of Human Rights.

⁴Chappell v. UK 30 March 1989, para. 246

⁵W. v. UK Appl 18187/93 10 Feb. 1993

⁶Arrowsmith v, UK Appl. 7050/75 (1978) 19 DR 5

⁷Omkaranda v. Switzerland Appl 8118/77 (1980) 25 DR 117

⁸Iskcon v. UK Appl 20490/92 (1994) 76 DR 106

⁹Folgero & others v. Norway 29 June 2007

¹⁰Kokkinakis v. Greece 25 May 1993, para. 31.

¹¹http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en The Committees interpretations of the ICCPR published as General Comments are advisory and not binding on States Parties.

¹²See paragraph 8, UN Human Right Committee General Comment 22

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en

¹³See International standards on freedom of religion or belief

<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx>

Why is freedom of religion or belief important to the UK?

10. The UK Government is firmly committed to promoting and protecting the right to freedom of religion or belief around the world, and to being a strong voice internationally in defence of this fundamental right. Freedom of Religion or Belief (FoRB) is a bellwether human right. It is a fundamental freedom which underpins many other human rights and where FoRB is under attack, often other basic rights are threatened too. In societies where freedom of religion or belief is respected, it is much harder for extremist views to take root. The government has made action to promote and protect FoRB one of the key pledges for our campaign for election to the Human Rights Council in both 2014 and 2016.
11. In addition, many conflicts find their roots in, or are exacerbated by, religious differences. Examples include the actions of Daesh, the Taliban or Boko Haram, tensions between Israel and the Palestinians and conflict between different groups in northern Nigeria. Discrimination on the grounds of religion or belief has led to human rights violations against individuals, such as members of the Bahai community in Iran, the Ahmadiyya Muslim community in Pakistan and Indonesia, and Christians, Shia Muslims or Jehovah's Witnesses in many places. Tensions between extremist religious groups and the expression of non-religious values has led to human rights violations against proponents of non-religious views, such as the murders of several rationalists in India, the murders of humanist authors and atheist bloggers in Bangladesh, and the incarceration of so-called "apostates" in Saudi Arabia. Such violations can involve denials of freedom of expression, detention without trial, impunity for attacks on property and people, banning of religious assemblies and unlawful killing. In some cases, people who have been discriminated against because of their religion (often alongside other grievances relating to ethnic or other identity) have turned to violence to assert this right. Further information on recent cases across the world can be found in the FCO's Human Rights Annual Report.¹⁴
12. So it is in the interests of the UK to help people to enjoy freedom of religion or belief and to end discrimination on the grounds of religion or belief. It is also a value that is a key part of the UK's own heritage and its success as a multi-racial and multi-faith democracy, and a human right that the UK is committed to uphold.

¹⁴ <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2015>

What is needed to achieve freedom of religion or belief?

13. In order to exercise freedom of religion or belief, the freedom to carry out the following activities is generally considered to be necessary, subject to such limitations as are permitted in human rights instruments.¹⁵

- To change one's religion, discontinue one's religion or to have or adopt atheistic views;
- To express one's beliefs and to criticise the beliefs of others in a non-threatening manner;
- To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- To establish and maintain appropriate charitable or humanitarian institutions;
- To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- To write, issue and disseminate relevant publications in these areas;
- To teach a religion or belief;
- To solicit and receive voluntary financial and other contributions from individuals and institutions;
- To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

¹⁵ Taken, inter alia, from Article 6, UN Declaration on the Elimination of Discrimination based on Religion 1981

Cross-cutting issues

Vulnerable groups and freedom of religion or belief

14. States also have obligations to respect the right to freedom of religion or belief of members of vulnerable groups like refugees, prisoners, migrant workers and ethnic or linguistic groups.

Women and freedom of religion or belief

15. Women should enjoy equal recognition as persons before the law and should not be treated as the property of their spouses, nor should they be treated unequally because of their marital or any other status, notwithstanding that religious traditions may dictate otherwise.¹⁶

Children and freedom of religion or belief

16. Human rights treaties¹⁷ give parents and legal guardians the right to educate their children in accordance with their religion and philosophical convictions, and children should not suffer discrimination because of this. The state is not obliged to actively participate or provide resources to assist parents in such religious education; parents do not have a right to state funding for confessional religious teaching or religious schools that are in line with their own beliefs. The Convention on the Rights of the Child recognises childhood as ending at 18, noting that the child's views should progressively be taken into account as s/he develops capacity.

Freedom of religion or belief and freedom of expression

17. On a number of occasions in recent years critical comments about religious figures or beliefs, perceived by their adherents as being blasphemous or insulting (e.g. the Danish cartoons involving the Prophet Mohammed and the "Charlie Hebdo" murders), have led to world-wide protests. Such protests have been used by some countries as a reason for retaining "blasphemy laws". The continued existence of these laws and the protests have in turn led to discussion about whether one freedom has, or should have, priority over the other, and whether local cultural and religious factors should influence the application of international human rights standards.
18. There is no hierarchy in human rights: all have equal value. While the freedom to hold a belief is absolute, its manifestation, along with the right to freedom of expression, can be restricted, as mentioned above. Freedom of expression is essential to the exercise of freedom of religion or belief. This includes the right to challenge activities, teachings and beliefs, but within limits.
19. Article 20 ICCPR calls for the advocacy of religious hatred that incites to discrimination, hostility or violence to be prohibited by law. The American Charter on Human Rights has a similar provision.¹⁸ Other regional treaties permit restrictions for the purposes of "protecting the rights of others"¹⁹

¹⁶Articles 15 & 16 UN Convention on the elimination of all forms of discrimination against women

¹⁷Article 14 UN Convention on the Rights of the Child

¹⁸Article 13(5)

¹⁹Article 10 European Convention on Human Rights; Article 22 African Charter on Human and Peoples Rights; Article 32 Revised Arab Charter on Human Rights.

20. The issue has been the subject of several cases before the European Court of Human Rights. The Court has stated that the exercise of freedom of expression involves an obligation to ensure peaceful enjoyment of the right to freedom of religion.²⁰ Expressions that spread, incite or justify hatred based on religious intolerance lose the protection of Article 10 ECHR.²¹ So measures to forbid incitement to religious hatred would be a legitimate restriction of freedom of expression. For further guidance on this difficult balance see the Camden Principles, compiled by the NGO, Article 19.²²
21. In England and Wales it is an offence to use threatening words or behaviour that are intended to stir up hatred against a group of persons defined by reference to their religious belief (or lack of belief).²³ The threat is one that generally involves inducing fear of violence in the victim. But this offence does not apply to words or conduct that are not threatening, such as expressions of antipathy, ridicule, insult or abuse of religions or their practices, or that try to persuade people to adopt or abandon a particular religious belief. These are protected by freedom of expression. A similar offence exists in N. Ireland,²⁴ but Scotland has no such offence, although a court may increase a sentence where an offence is aggravated by religious prejudice.²⁵ A summary of religious offences in other jurisdictions can be found in Appendix 5 of the Report of the House of Lords Select Committee on Religious Offences in England and Wales 2003.²⁶
22. In order to enjoy both rights, there has to be tolerance. Religious believers are free to share their faith but cannot (forcibly or otherwise) impose their views on others, as this would violate their human rights, and vice versa. States have an obligation to uphold the rights of all persons within their jurisdictions, and sometimes this will involve restricting rights for the common good.

²⁰Klein v. Slovakia, 31 October 2006, para. 47

²¹ Gunnduz v. Turkey, 4 December 2003, para. 51

²²Article 19 – Global Campaign for Free Expression: The Camden Principle on Freedom of Expression and Equality: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>

²³See the Racial and Religious Hatred Act 2006

²⁴See Public Order (NI) Order 1987

²⁵S. 59A Criminal Justice (Scotland) Act 2003

²⁶<http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelof/95/9501.htm>

Restrictions on freedom of religion or belief

23. Under the ICCPR, States are not allowed to restrict the freedom to hold any religion or belief and they cannot derogate from this provision under any circumstances. Regional human rights treaties have other provisions.²⁷
24. States are permitted to restrict the manifestation of religious or other beliefs, provided that they can demonstrate that the restrictions comply with the criteria set out in international human rights standards.²⁸ The state must ensure that any limitation is necessary on the grounds of public safety, order, health, or morals, or to protect the fundamental rights and freedoms of others, it must respond to a pressing public or social need, it must pursue a legitimate aim and it must be proportionate to that aim. (See Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, Annex, para. 10.)²⁹ It should also be noted that regional human rights treaties may prescribe further tests for limitations, such as the European Convention of Human Rights' requirement that a limitation must be "necessary in a democratic society". Paragraphs 25 to 27 below discuss some of the issues involved.
25. Prescribed by law. The purpose of the term is to ensure that when rights are restricted by public authorities, this restriction is not arbitrary and has some basis in domestic law. The European Court of Human Rights has stated for a restriction to meet the requirement it should be adequately accessible and its effects should be foreseeable.³⁰
26. Necessary to protect public safety, public order, health or morals. Public safety is not the same as national security; it is concerned with protecting individuals against harm. An example is a requirement on motorbike riders to wear a safety helmet³¹, or a prohibition on religious dress during physical education classes³². Public order is concerned with keeping the peace, the phrase being legally expressed in French as "l'ordre publique"³³ so the limitation can only be proportionally and non-discriminatorily invoked by legally authorised public authority where there is an actually existing significant threat to public peace, such as a riot. It cannot be invoked for something merely thought to be an inconvenience to the public. As the concept of morals derives from many social, philosophical and religious traditions, limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. An example of a permitted restriction on grounds of health is a law that forbids parents to allow female genital mutilation of their daughters, in order to protect the health of girls.

²⁷See paragraph 8, UN Human Right Committee General Comment 22
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en

²⁸See paragraph 53 <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3c.aspx>

²⁹p. 125, Professor Sir Malcolm Evans, Manual on the Wearing of Religious Symbols in Public Areas
https://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Manuals_religious_symbols_eng.pdf

³⁰An example was *Kuznetsov v. Russia*, in which the Chair of a regional Human Rights Commission broke up a meeting of a group of Jehovah's Witnesses in a fashion which was attributable to the state (in that she had purported to be acting in her official capacity, and was accompanied by uniformed police officers). The Court noted that 'the legal basis for breaking up a religious event conducted on the premises lawfully rented for that purpose was conspicuously lacking' and so had not been 'prescribed by law' p. 18, Professor Sir Malcolm Evans, Manual on the Wearing of Religious Symbols in Public Areas:

https://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Manuals_religious_symbols_eng.pdf

³¹*X v. UK*, ECHR DR 14

³²*Dogru v France*, ECtHR judgment of 4 December 2008

³³<http://www2.ohchr.org/french/law/ccpr.htm>

27. Necessary to protect the fundamental rights and freedoms of others. “Necessary” suggests that there is an imperative need, and this is a much stricter test than “useful”, “reasonable” or “desirable”. The restrictions must be directly related and proportionate to the specific need identified, and may only be used for that purpose. An example is the State overriding a belief against the use of blood transfusions when the sick children of such believers need a transfusion to save their lives.
28. Restrictions on other grounds are not permitted under international human rights law.

What problems are Posts most likely to encounter?

29. There will be many different issues relating to freedom of religion or belief across the world. Among the most prominent examples are:
30. *Apostasy*. Changing, leaving or abandoning one's religion in certain countries³⁴ is subject to legal sanction. In others, it can lead to discrimination and violation of human rights. In some countries, actions that may lead to people converting are banned.
31. *Manifestation*. In some countries, meeting together with fellow believers or sharing your faith with others is prohibited. Restrictions on manifesting one's religion or belief also raise a large number of issues of discrimination. See examples in the FCO's Annual Human Rights Report.
32. *Legal Status*. Legal recognition is not a precondition for the exercise of freedom of religion or belief. Religious and Belief communities have the right to acquire legal personality in accordance with the law. This is important as without legal personality it may be very difficult, or impossible, for such communities to own property, employ staff, enter into contracts, etc and this may undermine the ability of individuals to exercise their freedom of religion or belief. Some states seek to control religious or belief communities by imposing such burdensome registration requirements – often discriminatory in nature – that they hamper or effectively undermine the right. Any laws on registration of religious communities, or their acquisition of legal personality, must be generic and designed to facilitate, and not limit, their access to legal status.³⁵
33. *Violence*. Large numbers of individuals all over the world are subjected to violence at the hands of state authorities, extremist groups, their communities or families because of their religious affiliation, their non-religious affiliation, or their attempts to manifest or change their religion or beliefs.
34. *Freedom of religion or belief and anti-racism*. Discrimination on the grounds of race or religion is prohibited under international law.³⁶ States must provide legal protection against such discrimination. In some cases, race and religion are perceived to be closely aligned, e.g. Jewish people and Judaism, Sikhs and Sikhism, but this is irrelevant to human rights law. Individuals should not suffer discrimination either because of their race or their religious belief.

³⁴In countries such as Afghanistan, Iran, Mauritania, Saudi Arabia, Sudan and some Malay states it is punishable by death. In others, for example Bahrain, Comoros, Egypt, Jordan, Kuwait, Malaysia, Maldives, Oman, Qatar and Yemen apostasy is a punishable offence. In other countries, like Pakistan and Turkey, apostates have been charged with other offences, such as blasphemy, defaming Islam or insulting their country.

³⁵See OSCE/Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities: <http://www.osce.org/odihr/139046>

³⁶International Convention on the Elimination of Racial Discrimination; Article 2 & 26, ICCPR.

35. *Blasphemy*. There is no agreed international definition of blasphemy, but blasphemy offences usually range from insulting a religion and/or its adherents to hate speech. The existence of blasphemy legislation in many contexts restricts freedom of expression concerning religious or other beliefs, is often applied so as to persecute, mistreat, or intimidate persons belonging to religious or other groups disliked by those with power, and has a serious inhibiting effect on the interlinked freedoms of expression and of religion or belief. The UK considers that blasphemy offences should be decriminalised if not removed entirely. We also believe that neither the death penalty, nor physical punishment, nor deprivation of liberty can ever be a reasonable or proportionate penalty for blasphemy.
36. *Using the language of religious tolerance to hide violations of freedom of religion or belief*. Some states use the language of religious tolerance and similar concepts as a mask behind which to hide their own practices in violating the freedom of religion or belief. Typical examples include sponsoring conferences of foreign religious leaders. Such attempts to empty the concepts of human rights, tolerance and dialogue of any connection with reality and the implementation and exercise of fundamental human rights, including freedom of religion and belief, should be challenged.

How can Posts help to promote freedom of religion or belief?

37. Assessment - Posts should first assess the situation regarding freedom of religion or belief by using any relevant reports produced by the UN Special Rapporteur on Freedom of Religion or Belief, our own Annual Human Rights Report, the US State Department’s annual report on International Religious Freedom³⁷, the US Commission on International Religious Freedom’s annual report³⁸, the reports of civil society organisations such as those in Annex 3 of this toolkit, and the matrix in Annex 1 to the toolkit. What international obligations has the country undertaken that relate to freedom of religion or belief? Is it observing its commitments?
38. Compliance procedures - Posts may urge governments to carry out their reporting obligations under the human rights treaties and to implement the recommendations of the treaty monitoring bodies and the Universal Periodic Review process regarding freedom of religion or belief.
39. UN Special Rapporteur on Freedom of Religion or Belief - Posts may urge governments to issue an invitation for the Rapporteur to pay a monitoring visit and subsequently to engage constructively on the Rapporteur’s recommendations³⁹
40. Human Rights Defenders and local organisations working on FoRB issues - Individuals or groups who are persecuted for working to promote freedom of religion or belief will qualify as human rights defenders, to whom the EU Guidelines on Human Rights Defenders apply.⁴⁰ Posts may also consider supporting such individuals or organisations by working with them to submit proposals for funding from the FCO’s Magna Carta Fund for Human Rights and Democracy.

³⁷
<http://www.state.gov/j/drl/irf>

³⁸
<http://www.uscifr.gov>

³⁹
<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>

⁴⁰ Available at www.ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf

41. Working with like-minded countries - Several other countries, inside and outside the EU, and including many Commonwealth and Latin American countries, also share the UK' s perspectives on freedom of religion or belief. The EU has itself produced helpful Guidelines on the promotion and protection of freedom of religion or belief.⁴¹ In countries that are members of the Organisation for Security and Co-operation in Europe (OSCE), the OSCE Advisory Panel of Experts on freedom of religion or belief can be a useful resource. Posts may also like to consider the potential benefits of working with diaspora communities in the UK.
42. Public Diplomacy - Posts can publicly promote freedom of religion by supporting reform initiatives in speeches, participating in seminars and events, writing newspaper letters and articles, hosting individuals and groups and their events on Post premises, visiting the victims of violations and attending the trials of human rights defenders. In some countries, it might be more effective to do this in the guise of general "equality and non-discrimination" or, for example, through tackling another human rights violation such as violence against women and girls. Through regular contact with the relevant local NGOs, religious associations and national legal and/or human rights institutions, Posts can identify where public intervention might be helpful and effective, especially where national laws and/or administrative practices result in the non-implementation of international norms, or where private lobbying might be more effective. Public meetings might usefully include exiled groups or minorities whose co-believers are persecuted in a neighbouring state. Lobbying relevant Ministries can also be effective in raising awareness. If key officials or Ministers are visiting the UK, ensuring that they see how an issue is dealt with in the UK may also help the discussion.

Regional Mechanisms

43. All regional human rights treaties⁴² guarantee the right to freedom of religion and belief. These regional treaties reflect regional values, as well as universal ones. They are not "foreign ideas" imposed by others from distant continents but commitments freely undertaken by countries in the region. Posts may usefully follow the work of the regional mechanisms on freedom of religion or belief and use it as a basis for work in countries that adhere to the regional mechanisms. As international mechanisms have regard to the interpretations of each other, it is useful to know how other regional mechanisms have interpreted similar provisions.

⁴¹ http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf

⁴² African Charter on Human and Peoples Rights; American Convention on Human Rights; Revised Arab Charter on Human Rights; European Convention on Human Rights; Asean Human Rights Declaration

Some Common objections relating to freedom of religion or belief

Q. We have a State religion, which we want to protect.

The fact of there being a State religion or dominant ideology followed by the majority of the population does not justify discrimination against individuals who do not share that religion or belief. In the UK, there are two State churches, in England and Scotland, but none in Wales or Northern Ireland. But no-one in the UK is discriminated against because they do not belong to a State church. All people in the UK, whatever their religion or belief, enjoy the same freedom of religion or belief.

Q. Why should we allow foreign cults to exploit the people's ignorance and credulity?

The government does have the responsibility to protect individuals from exploitation. People also have the right to impart and receive information, including on religion. The government and others can provide information to people, but it is individuals who have the right to choose what they believe, not the government, based on a level playing field. The State also has a duty to protect individuals from coercion in their choice of religion or belief.

Q. Religious tensions are high, so we need to control the activities of religious fanatics to preserve communal peace.

If there are real threats to public order, then the government has the duty to preserve peace. But this means imposing only those controls that are necessary, both as to scope and time. A government should not use this as an excuse for wider restrictions than are necessary, nor for a longer period than is needed before tension is reduced. The UK experience in Northern Ireland demonstrates the importance of ensuring that all people enjoy freedom of religion or belief in order to ensure peace and order in the longer term.

Q. Religious fanatics are trying to turn our country into a theocracy, so we need to limit their influence on the democratic process to preserve our liberties.

The political process needs to be made robust enough to withstand this pressure: a just constitution that all have allegiance to; courts that will rule fairly on disputes; and police and armed forces that owe their loyalty to the State. Religious groups are entitled to influence public policy as much as anyone else, and sound state institutions and genuine democracy are the best safeguards of civil liberty. In countries with a with a strong democratic culture, restrictions may occasionally be placed on the activities of those seeking to undermine the democratic process through political means in certain limited circumstances and only if in compliance with established human rights standard and guarantees of political participation. Disbanding a party that advocates the overthrow of democracy and its replacement by a theocracy may be permissible in certain limited circumstances, and if in compliance with human rights standards.

Q. We have to guide our children in our religion and not allow others to tempt them away from the true path.

It is a child's parents who have the right to bring up their child in their own religion and not the State. Nor can the State specify which religion, if any, the parents must teach their children. An

educational system in which religious beliefs are taught should inform children about many different religious beliefs in the world, as well as non-religious beliefs⁴³.

Q. Our religious beliefs recognise natural hierarchies, with mutual obligations. These are designed to ensure peace and harmony at the home and in society.

Religious hierarchies are as valid as any other. But they cannot take away the human rights of individuals who are lower in the religious hierarchy, or justify inequality in the enjoyment of these rights. So, women enjoy the same human rights as men, and members of one group are entitled to the same human rights as members of another group in a 'higher' religious echelon.

Q. We require all religions to be registered and only recognise those that are registered.

Governments are entitled to take appropriate measures to ensure the proper running of society, provided that these do not deny the legitimate exercise of human rights. This can include a registration process. But any registration requirements should be applied without discrimination and the process should not impose unreasonable burdens (such as a high minimum number of adherents, or excessive registration fees).

Q. All citizens have to be prepared to defend their country and so we insist on the obligation of young people to undertake military service.

Conscientious objection to military service is recognised by human rights bodies as being a potential manifestation of religion or belief. So the State should allow some civilian service alternative to military service.

Q. Some religious groups tolerate members who commit crimes and agitate against the peace and order, so we are justified in banning these groups.

Individuals who commit crimes should be prosecuted and punished according to the law. Group punishments are neither acceptable under human rights law, nor an effective way to ensure peace and order, nor to create an inclusive society. In Northern Ireland, the Government tried hard not to alienate those in the minority community who were opposed to the existing constitutional settlement, and only sought to punish the individuals who had perpetrated crimes, even when they claimed to act on behalf of their community. This is the right approach under international human rights law.

Q. Many people in the West are Islamophobic and deny respect to our religion.

Phobia language, including "Islamophobia" and "Christianophobia", has been used in some international human rights fora. This emphasises "feelings" rather than "actions", whether or not a human right has actually been violated. Human rights allows restrictions on inciting hatred against religious (or non-religious) believers, but it also requires a proper balance to be struck to safeguard freedom of expression. It is therefore important to ensure that freedom of religion or belief itself, not feelings about it, remains the primary focus of concern.

⁴³ See OSCE Toledo guiding principles on teaching about religion in schools:
<http://www.osce.org/odihr/29154?download=true>

Q. Our religion should be protected from defamation by those hostile to it.

The quasi-legal phrase *defamation of religion* does not identify what states are obliged to do under their human rights obligations and has been used to suggest that disagreement about, and criticism of, religion or belief is unacceptable. As the right to disagree about and criticise religion or belief is itself part of the right to freedom of religion or belief, the UK contests use of the phrase “defamation of religion”. In the UK, we prohibit the use or display of threatening words or behaviour but only if it is intended to stir up religious hatred against individual religious or non-religious believers. Human rights law protects the individuals, not their particular beliefs.

Q. We need a law against blasphemy to protect public order

Where they exist, blasphemy laws should not be used to muzzle opposition and silence minorities or to reinforce a dominant religion or belief. Freedom of religion or belief includes space for vigorous debate about ideology and should be properly balanced against freedom of expression. The application of any blasphemy law should not discriminate (in law or in fact) in favour of, or against, adherents of any particular religion or belief.

Annex 1 Analysis of the right to freedom of religion or belief

In using this matrix, please remember that state authorities, some religious leaders, some lawyers and other organisations in some states may neither understand nor support everyone’s right to freedom of religion and belief. They may also feel under constraint to state only what they think those in power would wish them to say. This can limit interlocutors’ ability to provide accurate information. Great care should be taken to ensure that full consideration is given to everyone’s right to this freedom – not only those perceived as minorities – and to the constraints imposed on interlocutors by the overall human rights situation.

1. Legal Recognition

Questions	Pointers	Sources of Information
1.1 Does the law allow freedom of religion or belief? Does the law restrict such freedom to specific branches of a religion?	Is there a provision in the Constitution to this effect? Or the legal codes?	The Constitution. Legal codes.
1.2 Are any restrictions on manifesting a religion or belief established by law? Are they compatible with international human rights law?	Is it necessary to get permission from the authorities to practice a religion? Is this requirement unreasonably applied? Are there legal penalties directed at people who practice any particular religion (or branch of a religion) or belief ?	Consultations with religious leaders and/or lawyers working in this area.
1.3 Does the law unduly favour one religion over others?	Can one religion engage in activities that others are not allowed or hindered from doing?	Consultations with religious and/or lawyers working in this area.
1.4 Do members of any religion or belief suffer direct discrimination on account of their religion or belief?	Do people have difficulty accessing public services, such as education or health, or obtaining work or identity documents because of their beliefs? Do they have to declare their religion or belief in order to access such services, or to vote? Does membership of a religion limit civil liberties, such as voting, access to public employment or public service?	Press or web-based information. Consultations with religious and civil liberties groups.

2. Exercise of other necessary freedoms

2.1 Can people assemble freely to worship, discuss their religion and teach it?	Can they rent or purchase places of assembly? Are worshippers and places of worship subject to harassment?	Media reports. Discussions with religious leaders. Human rights organizations.
2.2 Are there unreasonable obstacles to setting up religious charitable institutions, including for studying religion?	<p>Does the law permit this for religions on the same basis as other charities?</p> <p>Is the cost of setting up institutions prohibitive?</p> <p>Are the general minimum requirements excessive?</p> <p>Does membership entail any personal risk? Are the rules concerning registration consistently applied?</p>	<p>Analysis of legal documents relating to creating such institutions by experts.</p> <p>Interviews with religious leaders.</p>
2.3 Are religious believers or non religious people able to publicise information and promotional materials about their beliefs without unreasonable interference by the authorities?	Are there legal or administrative obstacles? Are discriminatory charges or fees levied on such materials? Do people suffer adversely if found in possession of these materials?	Censorship laws applied to distributing religious materials. Media reports. Discussion with religious leaders and NGOs.
2.4 Can religious organisations solicit and receive financial contributions?	Are there legal or practical restrictions? Can they use ordinary banking facilities? Do they suffer any discrimination in the taxation regime? Can they receive foreign donations?	Analysis of laws and regulations.
2.5 Do religious organisations have the power to elect their leaders without unreasonable State interference?	Does the State require a religion to get approval before leaders can be appointed? Do leaders suffer any adverse consequences by being chosen without State approval? Are members able to influence the choice of leaders in the case of State religion?	Media reports. Discussions with religious leaders.
2.6 Can religious adherents celebrate holy days and celebrations?	Do educational establishments allow children to observe these days? Do employers allow their employees to celebrate these days? Does the law discriminate against particular religious adherents who seek to celebrate their holy days?	Assess the laws and practices of educational establishments and the workplace.
2.7 Can people freely choose and change their religion or openly hold no religion or adopt a non-religious belief?	Does changing, or relinquishing, any religion involve a penalty? Does the law provide protection against discrimination caused by such change?	Analysis of the laws and reports of legal cases. Discussion with NGOs and relevant organisations.

2.8 Do women suffer discrimination on account of their religion?	Do women enjoy equal rights with men on issues like the right to inheritance or the right to divorce?	Legal analysis. Discussions with women's rights organisations.
2.9 Does the State permit persons in its care and control to practice their religion?	Can detained persons, members of the security forces, persons in compulsory care, or hospitals, practice their religion?	Reports of civil society organisations involved with such persons. Ombudsmen reports. Discussions with relevant Ministries.
2.10 Is the media free to comment on issues of religion or belief?	Are media subject to censorship on such issues, whether official or unofficial?	Discussions with journalists, religious and human rights groups.
2.11 Do other individuals in potentially vulnerable categories or situations, like migrant workers, refugees and asylum seekers, enjoy freedom of religion or belief?	Can they establish places of worships? Can they celebrate rituals and holy days? Do they enjoy State protection if others object to them manifesting their beliefs?	Newspaper reports; discussions with members of these groups; reports of NGOs and other monitoring bodies.

Annex 2 Treaties & other international documents mentioning freedom of religion or belief

United Nations

Treaties:

- 1951 - Convention Relating to the Status of Refugees
 - Article 3 Non-discrimination
 - Article 4 Religion

- 1954 - Convention relating to the Status of Stateless Persons
 - Article 4

- 1966 - International Covenant on Civil and Political Rights
 - Articles 2, 18, 20, 24, 26

- 1966 - International Convention on the Elimination of Racial Discrimination
 - Article 5

- 1966 - International Covenant on Economic, Social and Cultural Rights
 - Article 2

- 1989 - United Nations Convention on Rights of the Child
 - Articles, 2,14

- 1990 - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families⁴⁴
 - Articles, 12,13

Declarations:

- 1948 - Universal Declaration of Human Rights
 - Articles 2, 18

- 1981 - Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief

- 1986 - Declaration on the Right to Development
 - Article 6

- 1992 -Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

⁴⁴The UK is not a party to this treaty.

Resolutions

EU Sponsored resolutions on Freedom of Religion or Belief at the Human Rights Council every 6 months. See example from 2013 here:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/136/50/PDF/G1313650.pdf?OpenElement>

OIC-sponsored resolutions on combating religious intolerance. See example here:

http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf

Reports of the UN High Commissioner for Human Rights on Actions taken by Member States to combat religious intolerance

See example here:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_47_en.doc

Action Plans

Rabat Plan of Action 2012

http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

Council of Europe

1950 - Convention for the Protection of Human Rights and Fundamental Freedoms.

- Articles 9 - Freedom of thought, conscience and religion

1952 - First Protocol (to above)

- Article 2 – Right to education

2000 - Twelfth Protocol (to above)

- Article 1 – General Prohibition of Discrimination⁴⁵

1995 - Framework Convention for the Protection of National Minorities

- Articles 5, 6, 7

⁴⁵ The UK has not ratified this Protocol

European Union

2000 - Charter of Fundamental Right of the European Union

- Article 10 – Freedom of thought, conscience and religion
- Article 21 – Non-discrimination
- Article 22 – Cultural, religious, and linguistic diversity

2013 EU Guidelines on Freedom of Religion or Belief

Organisation for Security and Co-operation in Europe (OSCE)⁴⁶

Helsinki Final Act 1975 Basket 1, principle 7

Concluding document of Vienna follow-up meeting 1989 Articles 16 & 17

Organisation of American States (OAS)

1969 - American Convention on Human Rights (P'act of San José ,Costa Rica)

- Article 1 – Obligation to respect rights.
- Article 12 – Freedom of Conscience and Religion
- Article 16 – Freedom of Association

1988 - Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador)

- Article 3 – Obligation of Non-discrimination

1994 - Intern-American Convention on the Prevention, Punishment and Eradication of Violence against

Women ('Convention of Belé Do Para)

- Article 4

African Union (AU)

1969 - Convention Governing the Specific Aspects of Refugee Problems in Africa.

- Article 4, Non-discrimination

1981 - African Charter on Human and Peoples Rights.

- Article 2, 8

1990 - African Charter on the Rights and Welfare of the Child

- Article 9, Freedom of thought, conscience and religion

⁴⁶OSCE commitments are politically binding, not legally binding. It is also the only regional security organisation to have agreed that pluralistic democracy based on the rule of law is the only system of government that can effectively guarantee human rights, and hence national and international security. An updated list of commitments on freedom of religion and belief is at: http://www.forum18.org/archive.php?article_id=1351

Annex 3 Some useful websites for further information

Oslo Coalition on Freedom of Religion or Belief; a network formed by Norwegian academic, religious and belief communities and NGOs, based in the Norwegian Centre for Human Rights, to work on international religious freedom and tolerance: www.oslocoalition.org/

OSCE; the Office for Democratic Institutions and Human Rights (ODIHR) webpage on freedom of religion or belief: www.osce.org/odihr/20056.html

Forum 18; an initiative providing original reporting and analysis on violations of freedom of thought, conscience and belief of all people - whatever their belief or non-belief - in Central Asia, the South Caucasus, Russia, Belarus and Crimea, as well as publishing analyses on Turkey: www.forum18.org

US Commission on International Religious Freedom; an agency funded by the US Congress providing independent policy recommendations to the US President, the State Department, and the Congress: www.uscirf.gov

UN Special Rapporteur on Freedom of Religion and Belief
<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>

European External Action Service policy on freedom of religion and belief:
http://eeas.europa.eu/human_rights/frb/index_en.htm

US State Department on freedom of religion and belief: <http://www.state.gov/j/drl/irf/>

Christian Solidarity Worldwide; a human rights organisation that specialises in religious freedom for all: www.csw.org.uk

FoRB in Full blog <https://forbinfull.org/> : A blog by Christian Solidarity Worldwide

All-Party Parliamentary Group for International FoRB (www.freedomdeclared.org) is a good resource for equipping individuals working thematically on the issue of FoRB. The approx 24 stakeholders all stemming from different religious beliefs or none provide a wide basis of information on FoRB issues around the world.

International Center for Law and Religion Studies; Expanding knowledge and expertise on the relationship between law and religion; facilitating the growth of networks between scholars, other experts and policy makers; contributing to law reform processes worldwide. www.iclrs.org

Religlaw; Religion and Law Consortium: A Research Forum for Legal Developments on International Law and Religion or Belief Topics. www.religlaw.org

Strasbourg Consortium; Reporting and commenting on FoRB issues in the member states of the Council of Europe www.strasbourgconsortium.org

IPPFoRB; International Panel of Parliamentarians for FoRB: <http://ippforb.com/>

CIFoRB: Commonwealth Initiative for freedom of religion or belief: <http://www.ciforb.org/>

In addition, there are many websites dedicated to specific religious and other, non-religious or ethical organisations.

Annex 4

Freedom of Religion or Belief in Europe: An Introductory Overview⁴⁷

The leading human rights bodies have placed a high value on both the freedom of religion or belief and the freedom of expression. In its General Comment No 22, the UN Human Rights Committee said that ‘the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18(1) is far-reaching and profound the fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency...’⁴⁸

Structurally, the European Convention on Human Rights (ECHR) follows the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) all of which set out the right which is to be enjoyed by the individual person⁴⁹, whilst providing for it to be subject it to a range of potential limitations intended to safeguard the interests of other individuals or a variety of community interests. Some of those limitations are expressly provided for in the texts themselves whilst others can be derived from the interplay of broader convention principles with the specific rights in question, as developed by and illustrated through the jurisprudence of the Court.

ECHR Article 9(1) provides that:

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

Believing what one wishes does not necessarily carry with it the right to act or to say what one wishes and the second element of Article 9(1) of the ECHR moves beyond private, personal convictions (the *forum internum*) and addresses situations which arise when adherents of a belief seeks to act in accordance with what they consider to be appropriate in the light of their belief. First, it expressly protects⁵⁰ the right of a person to change their religion or belief - something which follows naturally from the opening words of the article safeguarding the freedom of thought, conscience and religion itself.

⁴⁷ By Professor Sir Malcolm Evans KCMG OBE, University of Bristol. He is a former member of the OSCE’s Advisory Panel on Freedom of Religion and Belief. The views expressed in this annex are personal and do not represent the views of HMG. Whilst written in 2009 and not updated for the revised edition of this Toolkit, the points made remain of current validity.

⁴⁸ UN Human Rights Committee, General Comment No 22, adopted 30 July 1993, para. 1.

⁴⁹ It is clear from the case law of the Court that these rights are to be enjoyed by both natural and legal persons and person should be understood to be referring to both.

⁵⁰ A contrast might be drawn at this point with Article 18 of the ICCPR which does not expressly mention change but speaks of the right to have or adopt. In General Comment No 22 (1993), para 5, however, the Human Rights Committee has made it clear that this includes the right to replace one’s current religion or belief with another or to adopt atheistic views...’

Secondly, and in common with Article 18 of the ICCPR, it expressly recognises the right of believers and belief communities to manifest their religion or belief and lists four particular forms that such manifestations may take: worship, teaching, practice and observance. However, the Court has hinted on several occasions that this is not necessarily a definitive list and it has interpreted Article 9 in a way which offers protection to a wide range of interests and which suggests that these terms should be broadly construed. Once again, the Human Rights Committee has taken a similar view, commenting that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and the concept of worship extends to rituals and ceremonial acts giving expression to belief, as well as various practices integral touch acts⁵¹. It is important to stress that it is the 'manifestation' of religion or belief which may be subjected to limitations in accordance with the provisions of Article 9(2), and not the freedom of thought, conscience and religion itself.

i) the nature of the opinion or belief

It is both unhelpful and unnecessary to seek to distinguish those patterns of thought and conscience which are religious in nature from patterns of belief which are not since all those systems of thought and conscience which fall within the scope of the article are to be equated with 'beliefs', the manifestation of which is to be protected.

Difficulty has also been occasioned by less well established patterns of thought, or by beliefs which, though sincerely held, do not offer up an overall 'guiding outlook' of a similarly encompassing nature. For example, in the case of *Pretty v. the United Kingdom*⁵² the applicant suffered from a terminal illness and wished to die but needed assistance in order to commit suicide. Her husband was unwilling to do so since this would be a criminal offence under domestic law. Mrs Pretty argued that this breached her rights under Article 9 of the ECHR since she 'believed in and supported the notion of assisted suicide'. The European Court rejected this, saying that 'not all opinions and convictions constitute beliefs in the sense protected by Article 9(1) of the Convention'⁵³, choosing to see the issue as being one of personal autonomy under Article 8 of the Convention (concerning respect for family and private life).

⁵¹ *Boodoo v. Trinidad and Tobago*, Communication No. 721/96 (views of 2 August 2002), UN Doc. A/57/40 vol.2 (2002), p. 76 at para 6.6.

⁵² *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III.

⁵³ *Ibid*, para. 82

Some forms of opinions or ideas may, however, be considered incompatible with Convention values altogether and so be unable to benefit from its protection at all. For example, Article 17⁵⁴ expressly seeks to prevent its provisions being used to undermine essential Convention values and in the case of *Norwood v. the United Kingdom*, the Court found that the display of a poster by a member of an extreme right wing party that identified Islam with terrorism amounted to a 'vehement attack on a religious group 'which was 'incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination' and so did not benefit from the protection of Article 10, the freedom of expression, at all.⁵⁵ This approach is consonant with the UDHR, Article 30 of which provides that 'Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein' .

ii) the question of a manifestation

Assuming that the opinion or idea has attained the threshold of significance so as to qualify as a form of religion or belief, a number of other questions need to be asked before it can be decided that a 'manifestation' of that belief is at issue.

If it is asserted that an action is the product of a religion or belief, is it possible simply to deny that this is so on the basis of a scrutiny of the facts, or is it necessary to accept an applicant's' subjective' characterisation of their actions? It is difficult to see on what basis a court can determine that a person does not understand an issue to be of a religious in nature if they say that, for them, it is. This does not mean that an applicant's characterisation of an act as a manifestation must be accepted in an unquestioning fashion. For example, if a person is seeking to take advantage of a privilege or exemption which is available only to adherents of a particular religious tradition or belief system it may be necessary to consider whether that person is a genuine adherent of the belief system in question.⁵⁶

Even when it is clear that the activity in question is to be taken as a *bona fide* form of manifestation by an applicant, this does not necessary mean that it is to be taken as a form of manifestation *for the purposes of human rights protection*.⁵⁷

⁵⁴ Article 17 provides: Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided from in the Convention

⁵⁵ *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI.

⁵⁶ See, for example, *Kosteski v. the former Yugoslav Republic of Macedonia* no. 55170/00, 13 April 2006 where the Court said that it is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation when the claim concerns a privilege or entitlement not commonly available (para 39). Care needs to be taken, however, since compelling a person to prove their religious allegiance might become oppressive

⁵⁷ *Arrowsmith v. UK*, no. 7050/77, Commission decision of 12 October 1978, Decisions and Reports 19, p. 5, para 71.

As has been seen, in order to be protected as a form of manifestation an activity must be a form of worship, teaching, observance or practice and, as the former European Commission on Human Rights, in a passage still regularly cited by the Court, concluded, ‘the term “practice” as employed in Article 9(1) does not cover each act which is motivated or influenced by a religion or a belief.’⁵⁸

The human rights framework permits the exercise of the freedom of religion or belief to be subject to a variety of limitations.

i) Common limitations

A first source of common restraint are those articles which place overarching limits on the forms of belief or forms of expression which may be protected by the human rights framework. Reference has already been made to Article 17 of the ECHR and Articles 30 of the UDHR and 20(2) of the ICCPR also exclude the expression of certain forms of beliefs, ideas or opinions from the scope of protection altogether. Such provisions should, however, be approached with caution and as a last resort. Although this is not, strictly speaking, a limitation on the enjoyment of a right so much as a limitation of the extent of a right, it has much the same practical effect.

A further common limitation is that it is possible to derogate from those rights under strictly defined circumstances. There is a difference of approach between the ICCPR and the ECHR in this respect. Article 4(2) of the ICCPR makes the freedom of religion or belief a non-derogable right. Article 15 of the ECHR, however, does permit states to derogate from the freedom of religion or belief “in times required by the exigencies of the situation”.

ii) The specific limitation clauses

The specific limitations on the freedom of religion and belief in both the ICCPR and the ECHR are very similar and, as has already been explained, relate only to the freedom to manifest religion or belief, rather than the freedom of thought, conscience or religion *per se*. Both require that any limitation be ‘prescribed by law’ and that they be ‘necessary’ in order to achieve one of a number of limited purposes which are essentially the same: in the ICCPR these are ‘to protect public safety, order, health, or morals or the fundamental rights and freedoms of others’ whilst in the ECHR these are public safety, the protection of public order, health or morals and the protection of the rights and freedoms of others. The chief difference is that in the ICCPR reference is made to the ‘fundamental’ rights and freedoms of others but it is unlikely to be a meaningful distinction in practice. The only other difference between these limitation clauses is that the ECHR expressly refers to the need for limitations to be necessary *in a democratic society* which underscores the need to ensure that such restrictions are indeed being imposed to serve the interests of all, rather than of a segment of political society with a state. In essence, however, there is a high degree of similarity between these provisions.

⁵⁸ *Idem.*

B. The limitation clauses

Article 9(2) requires that limitations be both ‘prescribed by law’ and ‘necessary in a democratic society’. The ‘prescribed by law’ requirement captures two ideas: first, that ‘the law must be adequately accessible; the citizen must be able to have an indication that is adequate in the circumstances’ and secondly, that the law must be ‘formulated with sufficient precision to enable the citizen to regulate his conduct ... to foresee to a degree that is reasonable in the circumstances, the consequences which a given action may entail’.⁵⁹

Whether a restriction is ‘necessary in a democratic society’ turns on two issues. First, a restriction must pursue one of the legitimate aims set out in those articles. The second is whether the nature of the interference is proportionate to the legitimate aim which is being pursued and it is at this point that doctrine of the ‘margin of appreciation’ comes into play. The rationale for the ‘margin of appreciation’ was set out in the case of *Handyside v. the United Kingdom* in the following term.⁶⁰

By reason of their direct and continuous contact with the vital forces of their countries, ‘State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the ‘necessity’ of a ‘restriction, or ‘penalty’ intended to meet them.

- *Neutrality/impartiality*

The European Court calls on States to act in a neutral fashion as between religions and as between religious and non-religious forms of belief.⁶¹ It inevitably flows from this that the State is not to privilege religious expression over other forms of expression, or to sub-ordinate the expression of religion or belief to the non-religious. The duty to remain neutral and impartial has been re-iterated on many occasions⁶² and it is clear that any evidence that the State has failed to act in such a fashion will require justification under Article 9(2) if it is not to amount to a breach of the Convention.

⁵⁹ *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, para 49.

⁶⁰ *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, para 48.

⁶¹ See, for example, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, para 78, ECHR 2000-XI.

⁶² See, for example, *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, para 116, ECHR 2001-XII.

This duty has a number of facets, perhaps the most important being that the 'State's duty of neutrality and impartiality is incompatible with any power on the States part to assess the legitimacy of religious beliefs *or the ways in which they are expressed*'.⁶³ Limitations of the freedom of religious expression, in whatever form this may take, require close scrutiny to ensure that they do not breach this duty by favouring one group at the expense of another. From a practical perspective, this makes it important that any restrictions be generic in nature and not focused upon a particular form of religion or belief. Given the difficulty in establishing the proportionality of generic restrictions upon the freedom of expression or the freedom of religion or belief, the duty of impartiality and neutrality becomes a powerful background factor which supports a maximalist approach to the enjoyment of these freedoms and a minimalist approach to their limitation.⁶⁴

This approach emphasises the responsibility of the State to ensure the realisation of all Convention rights within the broader context of democratic society.

- fostering pluralism and tolerance

Fostering of pluralism and tolerance is not an 'incidental outcome' but is a goal which is to be achieved in its own right. This raises some difficult and delicate issues. Most religious belief systems advance truth claims which are, in varying degrees, absolutist in nature and reject at least elements of the validity of others. In addition, the need to allow for the 'market place' of ideas requires that there be exchanges of views, expressions of beliefs, ideas and opinions which may be unwelcome and, perhaps, offensive, to others. This is both necessary for the realisation of pluralism and tolerance yet at the same time runs the risk of compromising it.

Whilst respect for the freedom of religion and belief cannot require others to respect the doctrines and teachings of faith traditions other than one's own (if any), it can, and does, require that one be respectful of them. The role of the State in such cases is to ensure that both believers and non-believers are able to continue to enjoy their Convention rights, albeit that they may be troubled or disturbed by what they see and hear around them. It is only when the manner in which the views, ideas or opinions are expressed are akin to a malicious violation of the spirit of tolerance⁶⁵ that it is for the State to intervene.

⁶³ *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, para 47.

⁶⁴ This is reinforced by the suggestion found in *Leyla Sahin v. Turkey* where the Court saw the role of the state as being one of ensuring that religious life within the state *is* neutral and impartial, which is a subtle, but important difference. In principle, this should make it more rather than less difficult to justify restrictions on forms of religious expression.

⁶⁵ *Otto-Preminger Institut v. Austria*, judgement of 20 September 1994, Series A no 295-A, para. 47

- *Respect*

The principle of respect which has emerged as the single most important element in determining the scope of the limitations clauses. The Convention itself does not directly refer to 'respect'⁶⁶ but its centrality to the practical operation of the Convention framework was made clear in the very first case which was decided by the Court on the basis of Article 9, this being *Kokkinakis v. Greece*. This case concerned a member of the Jehovahs Witnesses who had been convicted for unlawful proselytism, a criminal offence under Greek law. At the heart of the case lay the question of balancing the right of the applicant to practice his religion by seeking to share his faith with others against the right of the State to intervene to protect others from unwanted exposure to his point of view. Although on the facts of the case it was decided that the interference had not been shown to be justified, the Court argued that it may be 'necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and to ensure that everyone's beliefs are respected'.⁶⁷ The key, then, is to ensure that when exercising its responsibilities the State adopts an approach which reflects the degree of respect which is to be accorded to the beliefs in question, which may of course be religious or non-religious in nature.

The principle of 'respect' is, then, a key factor when balancing the respective interests which are engaged; both believers and non-believers are entitled to the respect of those who express themselves on matters pertaining to their opinions, ideas and beliefs. Of course, there may be profound disagreement regarding the *content* of those views, since respect for the believer does not necessarily entail respect for what is believed. It is the freedom to believe and to manifest beliefs, subject only to those limitations strictly necessary to protect the rights and interests of others, which is the subject of human rights protection, and not the beliefs themselves.

⁶⁶ Respect for parental wishes in matters concerning the education of their children is expressly referred to in Article 2 of the First Protocol to the ECHR.

⁶⁷ *Kokkinakis v. Greece*, judgement of 25 May 1993, Series A no 260-A, para 33.



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