

A Primer on International Human Rights Law and Standards on the Right to Freedom of Thought, Conscience, Religion or Belief

Executive Summary and Recommendations
January 2019

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® A primer on international human rights law and standards on the right to freedom of thought, conscience, religion or belief - Executive Summary and Recommendations

© Copyright International Commission of Jurists
Published in January 2019

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to its headquarters at the following address:

International Commission of Jurists
P.O. Box 91
Rue des Bains 33
Geneva
Switzerland

The ICJ is truly grateful to Prof. Heiner Bielefeldt for his insightful comments and advice.

This primer was produced with the generous financial assistance of the International Panel of Parliamentarians for Freedom of Religion or Belief, the support of the Norwegian Ministry of Foreign Affairs and the Norwegian Helsinki Committee.



Norwegian Ministry
of Foreign Affairs



Norwegian
Helsinki Committee

A Primer on International Human Rights Law and Standards on the Right to Freedom of Thought, Conscience, Religion or Belief

Executive Summary and Recommendations
January 2019

Executive summary and recommendations

The right to freedom of thought, conscience, religion or belief is a wide-ranging right encompassing a large number of distinct, and yet interrelated entitlements. International law, including, chiefly, Article 18 of the International Covenant on Civil and Political Rights (ICCPR), provides for and guarantees the right to freedom of thought, conscience, religion or belief broadly, encompassing the right to freedom of thought and personal convictions in all matters, and protecting the profession and practice of different kinds of beliefs, whether theistic, non-theistic or atheistic, and the freedom not to disclose one's religion or belief. International law also guarantees and protects the right not to have a religious confession.

The right to freedom of thought, conscience, religion or belief does not exist in a vacuum, but along a continuum with other rights – civil and political, as well as economic, social and cultural – human rights that, together with the right to freedom of thought, conscience, religion or belief, are all inalienable, inhere to all human beings by virtue of their common humanity, and are universal, indivisible, interdependent and interrelated.

Freedom from discrimination on the grounds of one's religion or belief

The non-discrimination principle applies and is integral to all human rights, whether civil and political or economic, social and cultural. Thus, it applies to the right to freedom of thought, conscience, religion or belief.

States, therefore, have the duty to refrain from discriminating against individuals or groups of individuals because of their religion or belief, as well as the obligation to take necessary measures to prevent discrimination by non-State actors. In this context, it is important to recall that multi-level, intersecting and compounding forms of discrimination, including in respect of age, gender, socioeconomic status, racial or ethnic background, national origin, citizenship, migration status, language, health status, particularly HIV/AIDS, and disability, as well as poverty and sexual orientation or gender identity or expression, are all factors that can exacerbate or otherwise influence the nature of discrimination on the grounds of one's real or imputed religion or belief.

Freedom to adopt, change or renounce a religion or belief

According to international standards, the right to freedom of thought, conscience, religion or belief guarantees and includes the right to adopt a religion of one's choice, as well as the right to change religion, and the right to retain a religion. These entitlements are core elements of the right to freedom of thought, conscience, religion or belief; they have an absolute character, and cannot be subject to any limitation whatsoever, reflecting the nature of the right to freedom of thought, conscience, religion or belief guaranteed under international law.¹

Right to manifest a religion or belief

International standards guarantee the right to manifest one's religion or belief as a fundamental aspect of the right to freedom of thought, conscience, religion or belief.

¹ As the Human Rights Committee has noted, the fact that "this provision [i.e., the right to the right to freedom of thought, conscience, religion or belief guaranteed by Article 18 of the ICCPR] cannot be derogated from, even in time of public emergency" is testament to the fundamental character of the freedom it guarantees. Article 4, ICCPR; UN Human Rights Committee, General Comment 22, para. 1.

This includes the right to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes, as places of worship are an essential element of the manifestation of the right to freedom of thought, conscience, religion or belief to the extent that the great majority of religious communities need the existence of a place of worship where their members can manifest their faith.

The freedom to manifest one's religion or belief also includes the freedom to make, acquire and use necessary articles and materials related to the rites or customs of a religion or belief, as well as the freedom to wear or display religious symbols. The freedom to manifest one's religion or belief, however, is not absolute under human rights law. In certain circumstances, States can legitimately limit the freedom to manifest one's religion or belief, including, for example, by imposing limitations on the right to wear or display religious symbols, but only when they can demonstrate that the restrictions they wish to impose are both prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Moreover, in this context, it should be emphasized that international law allows for restrictions on the freedom to manifest one's religion or belief only in very exceptional cases, and that, even in such cases, in most circumstances the resort to the criminal law would not be necessary, and that limiting measures short of the criminal law may ordinarily be effective and suffice.

International human rights law also recognizes the right to attempt to convince and convert other people, for example through "teaching" and missionary activity, as implicit in the exercise and enjoyment of one's right to manifest one's religion or belief. However, any activity aiming at converting other people must not be coercive. Indeed, acts of coercion, force, undue influence or pressure or other forms of abuse to seek to pressurize and coerce another person into adopting a particular religious belief violate one's right not to be subject to coercion impairing one's right to have or to adopt a religion or belief of one's choice.²

The right to freedom of religion or belief also guarantees: the observance of days of rest to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; the freedom to train, appoint, elect or designate by succession appropriate religious leaders; and the protection of people from being forced to act against their conscience or their beliefs (e.g. conscientious objection to military service), especially regarding the use of weapons or deadly force. The right to freedom of religion or belief also includes the right of parents – and that of legal guardians in certain circumstances – to ensure the religious and moral education of their children in conformity with their own convictions.

Relationship with other rights

The right to freedom of thought, conscience, religion or belief may come into conflict with other rights, including, with the right to freedom of expression – a right with which the right to freedom of thought, conscience, religion or belief is closely interrelated – and which guarantees the right of everyone to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice.

While freedom of expression is not an absolute right and, thus, may be subject to State regulation in a few enumerated areas, protection of a particular religion or religious belief per se – or someone's religious sentiments for that matter – do not constitute legitimate grounds recognized under international human rights law and standards for the lawful imposition of certain restrictions on the exercise of the right to freedom of expression.

Furthermore, prohibitions of displays of lack of respect for a religion or other belief systems, including "blasphemy laws", are impermissible under international human

² See, e.g., Article 18(2) of the ICCPR.

rights standards, as are laws that discriminate in favour of or against a particular religion or belief system, or their adherents over others or religious believers over non-believers. It is also impermissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

Recommendations

In light of the analysis of international human rights law and standards on the right to freedom of thought, conscience, religion or belief presented in this primer, the ICJ recommends that States should:

- Repeal any legislation prohibiting or limiting “conversion”, “apostasy”, or that otherwise curtails one’s right to abandon, change or retain one’s religion or belief;
- Ensure that any limitation on the right to freedom of thought, conscience, religion or belief, including the freedom to manifest one’s religion through, for example, the display of religious symbols or the wearing of religious clothing, be based exclusively on the legitimate grounds recognized by international human rights law, namely, to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others; that any such limitations be prescribed by law and be necessary; that they pursue at least one of the above-mentioned legitimate aims; and that they be proportionate.
- Repeal any prohibitions on “proselytism” or religious teaching, except where such prohibitions meet the requirements of “necessary restrictions” under international human rights standards, as outlined in this primer;
- Ensure that places of religious worship, sites and shrines be fully respected and protected and take additional measures to ensure their protection when they face foreseeable risks of desecration or destruction;
- Adopt legislation to guarantee the right to conscientious objection, particularly in connection with the legitimate exercise of the right to freedom of thought, conscience, religion or belief;
- Ensure that the right to freedom of thought, conscience, religion or belief and respect for culture and tradition are never used as pretexts to justify discrimination and violence and, in particular, human rights violations against women and girls or anyone else for that matter;
- Enact legislation or amend existing legislation in order to prohibit all discrimination based on the identification of individuals with certain groups, including, *inter alia*, groups defined by religion or belief, ethnicity, race, gender, sexual orientation and gender identity;
- States where “blasphemy” is criminalized or otherwise prohibited by law should repeal such laws, as they are inconsistent with the rights to freedom of thought, conscience, religion or belief and freedom of expression, and have a chilling effect on the enjoyment and exercise of these rights; and
- States should become parties to all core international human rights instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention Relating to the Status of Refugees. They should also withdraw existing reservations, including any reservations purporting to ensure compliance with religious tradition.

Commission Members

October 2018 (for an updated list, please visit www.icj.org/commission)

President:

Prof. Robert Goldman, United States

Vice-Presidents:

Prof. Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

Executive Committee:

Justice Sir Nicolas Bratza, UK

Dame Silvia Cartwright, New Zealand

(Chair) Ms Roberta Clarke, Barbados-Canada

Mr. Shawan Jabarin, Palestine

Ms Hina Jilani, Pakistan

Justice Sanji Monageng, Botswana

Mr Belisário dos Santos Júnior, Brazil

Other Commission Members:

Professor Kyong-Wahn Ahn, Republic of Korea

Justice Chinara Aidarbekova, Kyrgyzstan

Justice Adolfo Azcuna, Philippines

Mr Reed Brody, United States

Justice Azhar Cachalia, South Africa

Prof. Miguel Carbonell, Mexico

Justice Moses Chinhengo, Zimbabwe

Prof. Sarah Cleveland, United States

Justice Martine Comte, France

Mr Gamal Eid, Egypt

Mr Roberto Garretón, Chile

Prof. Michelo Hansungule, Zambia

Ms Gulnora Ishankanova, Uzbekistan

Ms Imrana Jalal, Fiji

Justice Kalthoum Kennou, Tunisia

Ms Jamesina Essie L. King, Sierra Leone

Prof. César Landa, Peru

Justice Ketil Lund, Norway

Justice Qinisile Mabuza, Swaziland

Justice José Antonio Martín Pallín, Spain

Prof. Juan Méndez, Argentina

Justice Charles Mkandawire, Malawi

Justice Yvonne Mokgoro, South Africa

Justice Tamara Morschakova, Russia

Justice Willly Mutunga, Kenya

Justice Egbert Myjer, Netherlands

Justice John Lawrence O'Meally, Australia

Ms Mikiko Otani, Japan

Justice Fatsah Ouguergouz, Algeria

Dr Jarna Petman, Finland

Prof. Mónica Pinto, Argentina

Prof. Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Mr Michael Sfard, Israel

Prof. Marco Sassoli, Italy-Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Mr Wilder Tayler, Uruguay

Justice Philippe Texier, France

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Prof. Rodrigo Uprimny Yepes, Colombia



**International
Commission
of Jurists**

P.O. Box 91
Rue des Bains 33
CH 1211 Geneva 8
Switzerland

t +41 22 979 38 00
f +41 22 979 38 01
www.icj.org