

THOUGHT, CONSCIENCE AND RELIGION - FREEDOM OF

II. GENERAL COMMENTS AND RECOMMENDATIONS

- ICCPR General Comment 22 (Forty-eighth session, 1993): Article 18: The Right to Freedom of Thought, Conscience and Religion, A/48/40 vol. I (1993) 208 at paras. 1-11.

1. 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; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. 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, as stated in article 4.2 of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

4. The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain

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stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all

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grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any

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discrimination against persons who do not accept the official ideology or who oppose it.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.

- ICCPR General Comment 31 (Eightieth Session, 2004): Article 2: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, A/59/40 (2004) 175 at para. 9.

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9. The beneficiaries of the rights recognized by the Covenant are individuals. Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, many of the rights recognized by the Covenant, such as the freedom to manifest one's religion or belief (art. 18), the freedom of association (art. 22) or the rights of members of minorities (art. 27), may be enjoyed in community with others. The fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the Optional Protocol) does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights.

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- ICESCR General Comment 13 (Twenty-first session, 1999): Article 13: The Right to Education, E/2000/22 (1999) 111 at para. 28.

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28. Article 13(3) has two elements, one of which is that States parties undertake to respect

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the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. ^{14/} The Committee is of the view that this element of article 13(3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13(3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

Notes

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^{14/} This replicates article 18(4) ICCPR and also relates to the freedom to teach a religion or belief as stated in article 18(1) ICCPR. (See Human Rights Committee General Comment 22 on article 18 ICCPR, forty-eighth session, 1993). The Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2) of that Covenant.

- CEDAW General Recommendation 25 (Thirtieth session, 2004): Article 4, Paragraph 1: Temporary Special Measures, A/59/38 part I (2004) 78 at para. 12.

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12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

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- CERD General Recommendation XX (Forty-eighth session, 1996): Article 5: Non-Discriminatory Implementation of Rights and Freedoms, A/51/18 (1996) 124. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.

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- CERD General Recommendation XXIX (Sixty-first session, 2002): On Article 1, Paragraph 1, of the Convention (Descent), A/57/18 (2002) 111 at para. a. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.

- CERD General recommendation XXXI (Sixty-seventh session, 2005): The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, A/60/18 (2005) 98 at paras. 5, 26, 32 and 38. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.

- ICCPR General Comment 23 (Fiftieth session, 1994): Article 27: The Rights of Minorities, A/49/40 vol. I (1994) 107. For text of General Comment, see **EQUALITY AND DISCRIMINATION - MINORITY RIGHTS**.

- ICCPR General Comment 24 (Fifty-second session, 1994): Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant, A/50/40 vol. I (1995) 119 at para. 8. For text of General Comment, see **RESERVATIONS AND DECLARATIONS**.

- ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000) 133 at paras. 13 and 21. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.

- ICCPR General Comment 29 (Seventy-second session, 2001): Derogations from provisions of the Covenant during a state of emergency, A/56/40 vol. I (2001) 202 at paras. 7, 8, 11, 13(c) and (e). For text of General Comment, see **DEROGATIONS**.

- ICESCR General Comment 16 (Thirty-fourth session, 2005): Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116 at paras. 5 and 10. For text of General Comment, see **EQUALITY AND DISCRIMINATION - GENDER DISCRIMINATION - General**.