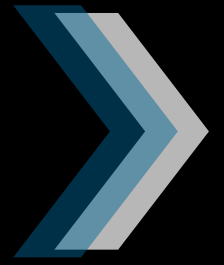


FREEDOM OF RELIGION OR BELIEF AND THE LAW: CURRENT DILEMMAS AND LESSONS LEARNED



Creating a Culture of Justice
International Development Law Organization

The International Development Law Organization (IDLO) is an intergovernmental organization devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Front cover image: Natalie Aldern



FOREWORD



IRENE KHAN

IDLO Director-General

The right to practice one's deeply-held beliefs is a defining issue of our time. Freedom of religion is enshrined in all the major human rights treaties, and is key to building a secure and prosperous society. It is among the few human rights that are fully protected by international law even in times of war.

As the world faces a period of political turmoil and economic uncertainty, rising inequalities and social discontent, freedom of religion or belief is coming under pressure from various sources and for a multitude of reasons.

Democratic governments are grappling with the problem of how to safeguard religious freedom while at the same time protecting other rights and interests, including free speech and gender equality. In many liberal democracies, freedom of religion and freedom of expression are perceived as being in opposition to each other. Secular expressions are challenging religious sensitivities. What is blasphemy and defamation of religion to some is seen as free speech to others.

At the level of communities, tensions between one religious group and another

are rising as large-scale migration and refugee flows force people of different faiths - or of no faith - to live in close proximity. Add to this today's fast changing, volatile communications landscape where the power of social media and a fiercely competitive 24-hour news cycle are being harnessed by unscrupulous political leaders to make intolerant and inflammatory statements about religious minorities.

In certain countries, discriminatory laws and policies are deliberately targeting and shutting out religious minorities, politically, economically and socially. In some parts of the world social tensions are spilling into violent conflict among different religious groups, while in others innocent civilians are being deliberately persecuted, attacked and killed in the name of religion.

The law is not an objective arbiter in many such situations. Religious identity and national security are becoming intertwined in ways that are endangering human rights. Far too often laws are being used to restrict freedom of religion or belief and justify discrimination against minorities. Women are too often the victims of such legal discrimination, denied the right to equality in the name of religious laws, or the right to practice their religious customs, including how they dress, in the name of secularism.

At the same time experience across the world shows that laws and policies that promote diversity over uniformity and advance mutual respect of difference are better able to protect human rights and create more stable societies.

Any effort to accommodate competing rights and freedoms in an increasingly complex world must be grounded in a strong commitment to international norms and subject to review by competent justice institutions. The policy dilemmas surrounding the issue of freedom of religion or belief can best be resolved by upholding the principles of

the rule of law. What is required is adherence to the rule of law - not the rule by law. What is needed is equity, justice and accountability on the basis of equal protection.

IDLO's report, *Freedom of Religion or Belief and the Law* is a modest but important contribution to the debate about religious liberty, human rights and the rule of law. The report analyzes the international legal framework and tests it against a number of contemporary challenges faced by governments in secular as well as religious states. It proposes a broad policy path for governments to build fairer, more inclusive and just societies, where freedom of religion and thought is respected and protected alongside other fundamental human rights.

The basic message of the report is that freedom of religion or belief can only be safeguarded and protected - from others and from itself - when underpinned by a strong legal framework that promotes diversity. Laws, policies and institutions must proactively advance human rights and peaceful co-existence among all people. Agents of religious bigotry must be held accountable for their actions. Discrimination towards religious minorities, or acts of vandalism on their places of worship should not be tolerated. The report goes beyond fair laws and effective institutions to also make the point that governments have an obligation to create the space for more open debate and discussion among people and for religious practices and traditions to evolve over time.

As the report notes, freedom of religion is not a zero sum game where one person's win is another person's loss. We must all work together to build more resilient and secure societies based on tolerance, compassion and mutual respect for all.

Rome, November 2016

FOREWORD



PAOLO GENTILONI
Minister of Foreign Affairs
and International Cooperation
Government of Italy

It is Italy's firm belief that respect for freedom of religion or belief is a fundamental prerequisite to the advancement of peace and stability in the world. Moreover, freedom of religion or belief is at the foundation of our shared notion of human dignity. It is not only one of the most intimate and meaningful characteristics of our being. It is also a crucial element of our individual and collective identities, and a powerful tool of social aggregation and engagement. Freedom of religion may even work as a litmus test to measure

the overall level of freedom, non-discrimination and respect of diversity that exists in a society. And by acknowledging freedom of religion or belief we foster inclusiveness, human rights and crisis prevention. For all these reasons, freedom of religion or belief is at the core of Italy's foreign policy.

Freedom of religion and the protection of persons belonging to religious minorities are more and more relevant in the face of the unprecedented violence affecting the current scenarios of crisis. Brutal attacks often executed by terrorist groups, such as Daesh, against religious communities have led to the fleeing of millions of people, thus jeopardizing the multi-ethnic, multi-religious and multi-confessional character of societies. The Middle East region and the fate of its Christian minority is a case in point.

We have to recognize that even legal restrictions to religious freedom have escalated over the last few years in many areas of the world. This is a trend that confirms as an effective rule of law remains crucial, whether we aim at operationalizing freedom of religion or belief through non-discriminatory legislative acts and policies.

In recent years, the attention of the international community on freedom of

religion has increased. Italy has provided a concrete contribution, by promoting several initiatives, involving key governments, international organizations starting with the European Union and United Nations, civil society and academia. We have been working closely also with partner countries in several transitional settings, to ensure that constitutional reform processes enshrine full compliance with international standards on religious freedom.

The present report, carried out by the International Development Law Organization and sponsored by the Government of Italy, complements these wider efforts by focusing on the legal aspects of freedom of religion or belief. The recommendations highlighted in the report represent a valuable tool for policy-makers to effectively address the multifaceted challenges associated with freedom of religion or belief. Italy will remain committed in order to enable human beings to manifest their religion or belief without fear of violence, discrimination, political pressure, censorship or persecution. We hope others will join us in this important endeavor.

Rome, November 2016

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ACRONYMS

ECtHR	European Court of Human Rights	UN	United Nations
ICCPR	International Covenant on Civil and Political Rights	UNGA	United Nations General Assembly
UDHR	Universal Declaration of Human Rights	UNTS	United Nations Treaty Series



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

➤ AS OF 2010, 84% OF THE GLOBAL POPULATION IDENTIFIED WITH A RELIGIOUS GROUP¹ ◀

Throughout history, religion and belief have been powerful unifying forces, bringing people of different languages and cultures together to share values and traditions. However, beliefs and religion have also been a source of divisions, resulting in religious wars and sectarian violence often targeted at religious minorities. As the proportion of people living as members of minorities grows, the ensuing encounters between different religious groups can result in increased social tensions and conflict over religious practices.

For this reason, the relationship between religion (and its practice) and peace has long been ambivalent. While the tenets of the major religions promote tolerance, compassion and respect for humanity, religion and belief continue to be invoked as a justification for terrorism and serious human rights violations. Further, the politicization of ideology and extremism often prevails over tolerance, interfaith understanding and respect for human rights.

The right to freedom of religion or belief forms an integral part of the catalogue of human rights to which every individual is legally entitled. In practice, however, this right can seem to clash with the religion or belief of others or with other freedoms and human rights, such as freedom of opinion and expression and gender equality. In these situations, the State has the power to safeguard the right to freedom of religion or belief;

often, however, it has instead enacted policies that favor one particular religion over another. Likewise, the law has far too often been used to restrict freedom of religion or belief and, in particular, its exercise by members of minority groups.

Aligning freedom of religion or belief policies with international human rights standards often involves a difficult balancing act among rights, and likewise between religious traditions and national security. These and other complex issues are surveyed in *Freedom of Religion or Belief and the Law*, along with the role of the law in finding solutions that are effective, fair and sustainable.

Informed by consultative workshops with funding support from the Government of Italy, *Freedom of Religion or Belief and the Law* emphasizes the complex issues surrounding law and religion. The increased security concerns of recent years have resulted in greater interference by the State in religious expression. Religious minorities in particular are now facing laws designed to restrict their ability to practice private devotion in public places. The laws need not explicitly target minorities in order to be restrictive: for example, those that prohibit “covering the face” make it virtually illegal for many Muslim women to wear the hijab. In many countries, individuals are also experiencing discrimination in employment (and sometimes in attending school) because of their religious dress. The State also

discriminates against religious minorities in other ways, such as blasphemy and apostasy laws enacted in the name of protecting religion.

Other complex issues arise at the intersection of women’s rights and freedom of religion or belief. Within many religious traditions, women hold marginalized positions and suffer various forms of discrimination. Harmful practices such as female genital mutilation, forced marriage, honor killings, enforced ritual prostitution, or denying girls their right to education are defended in the name of religious traditions. Further, laws steeped in religious beliefs may violate women’s human rights, such as those relating to property and inheritance rights, divorce, freedom to work and freedom of movement.

Just and equitable rule of law frameworks are an essential requirement for societies to safeguard freedom of religion or belief, and to balance this right fairly with other rights and interests. Legal frameworks can also help to reduce the potency of extremist organizations that use politicized religious rhetoric to gain support and legitimacy. Laws that promote diversity over uniformity, and policies that promote mutual understanding of differences, can be effectively used to protect freedom of religion or belief as a fundamental human right.

Lessons Learned

Looking at the challenges and selected issues presented in this report, it is clear that more must be done to respect, protect and fulfil the right to freedom of religion or belief. The following lessons emerge for rule of law strategies:

A. The law should not attempt to regulate religious practices, belief or disbelief

The law should be used to regulate and promote rights and peaceful co-existence among all people.

B. Beliefs and religions are dynamic – dynamism should be harnessed

Law and policymakers must respect that religious beliefs, practices or traditions are not static or permanent.

C. Diversity should be promoted over uniformity

Variations of religious expression are an extension of human diversity that States are called upon to preserve as a fundamental human right.

D. Literacy in relation to religion or belief is a foundation for peaceful coexistence

The ability to understand different practices and perspectives is a foundation by which societies can promote peaceful co-existence.

A Consultative Methodology

Freedom of Religion or Belief and the Law is the outcome of a multi-year process to promote informed dialogue on religious tolerance; support international and regional efforts to ensure full respect for the right to religion or belief; and identify, share and strengthen good rule of law practices relating to this right at national levels. With funding support from the Government of Italy, the method adopted has been both consultative and analytical.

The report is premised on the right to freedom of religion or belief as an integral part of universally recognized human rights. Informed by interactive workshops at the Third International Consortium for Law and Religious Studies Conference, the United Nations Human Rights Council Minority Forum Sixth Session on 'Beyond Freedom of Religion or Belief: Guaranteeing the Rights of Religious Minorities', the 25th session of the United Nations Human Rights Council, the Italian Inter-ministerial Committee for Human Rights Conference on 'Freedom of conscience, thought and religion: what limits to social, economic and cultural progress?', and the United Nations

Office of the Special Adviser for the Prevention of Genocide Conference on "The role of religious leaders in preventing incitement to atrocity crimes", the report highlights the connection between violation of freedom of religion or belief and the risk or onset of serious violations of human rights, including war crimes, crimes against humanity and genocide.

Through expert workshops attended and convened, and using *Freedom of Religion or Belief and the Law* as a catalyst, consultations emphasized the complex issues surrounding law and religion: How should the law address tensions between religious traditions and human rights? How can law help move beyond tolerance towards true coexistence and respect? How can rites be balanced with rights? How to ensure that liberty is used as a shield and not a sword? What does freedom of religion or belief actually look like in society?

Throughout this consultative process, expert participation included: Supriyanto Abdi, the Asia Institute and the University of Melbourne; Heiner Bielefeldt, United Nations Special Rapporteur on Freedom of Religion or Belief; Professor Silvio Ferrari, Università degli Studi di Milano; Brian J.

Grim, Pew Research Center; Rita Izsák, United Nations Independent Expert on Minority Issues; Marco Lapadura, First Secretary, Permanent Mission of Italy to the United Nations Office and other international organizations in Geneva; H.E. Maurizio Enrico Luigi Serra, Ambassador, Permanent Mission of Italy to the United Nations Office and other international organizations in Geneva; and Rodrigo Vitorino Souza Alves, the Federal University of Uberlandia Law and Religion Research Group.

Additionally, through review of available empirical data from the Pew Research Center on freedom of religion or belief linked to government policy in national settings, the report analyzes select examples that illustrate both the complexity of challenges to full respect for the right to freedom of religion or belief and the value of rule of law strategies to help meet those challenges.

Freedom of Religion or Belief and the Law offers informed reflections on the critical importance of religious tolerance in contributing to respect for other human rights and strengthening good governance, the rule of law and peace and security.



PART 1

WHY DOES THE LAW MATTER FOR FREEDOM OF RELIGION OR BELIEF?

WHY DOES THE LAW MATTER FOR FREEDOM OF RELIGION OR BELIEF?

The right to freedom of religion or belief forms an integral part of the catalogue of human rights to which every individual is legally entitled. Serious violations of this right can disrupt the enjoyment of other human rights and undermine the equal protection of law. However, in practice, the right to freedom of religion or belief often involves a complex balancing act. When exercised, this right can seem to clash with the religion or belief of others or with other freedoms and human rights, such as freedom of opinion and expression, and gender equality.

Ensuring that laws and policies concerned with freedom of religion or belief align fully with international human rights standards is not an easy task. Governments around the world are struggling with a wide range of complex issues, which are surveyed in this report, *Freedom of Religion or Belief and the Law*. The issues include secularism; private devotion in public places; the construction and maintenance of places of worship; blasphemy, defamation and apostasy; national security; and the intersection of freedom of religion or belief with other human rights. The challenge is to address these and other issues in an effective, fair and sustainable manner. In some instances, entire communities have suffered discrimination or outright persecution because of their religion or beliefs. Grievances rooted in persistent and serious social, economic, legal or political inequality risk triggering protracted violence and even armed conflict.

In three parts, this report reflects the multifaceted challenges of bringing the right to freedom of religion or belief to life, and reviews the role of law in meeting these challenges. Part One

reviews the content and scope of the right to freedom of religion or belief, State obligations to protect it, and its importance given the dangers of politicization of religious ideology and extremism. Part Two elaborates on a selection of contested issues drawn from history and modern headlines. Part Three offers lessons learned for a way forward to promote intercultural and interfaith understanding using rule of law approaches.

While canvassing issues in a non-exhaustive manner, the report highlights the significance of minority rights protection, democratic rather than authoritarian governance, and adherence to the rule of law rather than rule by law. As distinct from rule by law, the rule of law embraces and operationalizes all human rights, including the right to freedom of religion or belief.

1.1

Freedom of religion or belief: a broad scope of application

The international community has repeatedly recognized the voluntary exercise of the right to freedom of religion or belief by enshrining it in Article 18 of the Universal Declaration of Human Rights (UDHR) in 1948; again in the International Covenant on Civil and Political Rights (ICCPR) in 1966; and by subsequently adopting in the United Nations General Assembly (UNGA) the 1981 Declaration on the Elimination of All Forms of Intolerance and of

Discrimination Based on Religion or Belief (hereafter "1981 Declaration").⁴

The freedom of an individual to choose his or her religion or belief, including to not have any particular religion or belief at all, is central to the catalogue of fundamental rights to which every individual is entitled, and which therefore requires concrete protection through international legal instruments as well as through policy, law and implementation at the regional and domestic levels.

As reflected in the UDHR, all human rights are considered basic and inalienable, and their full enjoyment is essential to "freedom, justice, and peace in the world", which "should be protected by the rule of law" in order to avoid compelling people "to have recourse, as a last resort, to rebellion against tyranny and oppression".

Thus, as will be explored below, the right to freedom of religion or belief cannot be artificially separated from other related rights upon which it depends in terms of actual practice, such as freedom of association, freedom of assembly, freedom of expression, and the principle of non-discrimination.⁵ The right to freedom of religion or belief contains "essential components of free choice, free communication, and free practice".⁶

Article 18 of the Universal Declaration of Human Rights

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

Article 18 of the International Covenant on Civil and Political Rights

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others...”

Commonly shortened to “freedom of religion or belief”, it is important to recall that this human right includes the dimensions of thought and conscience. The terms “belief” and “religion” are construed broadly and not limited to only traditional religions or beliefs, meaning the right extends to subscribing to a different school of thought within a religion⁷ or to “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief”.⁸ Freedom of religion or belief is exercised and enjoyed by individuals and not by “religions” or “beliefs” themselves.

The free exercise of the right to freedom of religion or belief encompasses not just the freedom to hold personal thoughts and convictions, but also the ability to manifest them individually or with others, publicly or in private.

The 1981 Declaration makes clear that the right to freedom of thought, conscience, religion or belief includes the freedoms to worship, assemble, establish and maintain places for these purposes; establish and maintain appropriate charitable or humanitarian institutions; make, acquire and use materials for religious rites or customs; write and disseminate publications; teach a religion or belief in places suitable for these purposes; solicit and receive voluntary contributions; prepare for succession of appropriate leaders called for by religious beliefs; observe days of rest, holidays and ceremonies;

and establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.⁹

These religious rights and freedoms must be enshrined in national legislation in such a manner that everyone shall be able to avail him or herself of such rights and freedoms in practice, and in full respect for other human rights.¹⁰

As has been observed, at times “such a broad understanding of freedom of religion or belief causes fear and triggers objections”,¹¹ and such fears and objections, as evidenced by laws and policies, surface repeatedly in history and in the modern day, signaling not only the importance of this right, but the need for rule of law approaches.

State obligations

There is considerable evidence that the UDHR’s provisions, including Article 18 concerning freedom of religion or belief, have obtained the status of customary law, and are therefore binding on all States. States that have ratified the ICCPR are obligated to respect, protect and fulfill the human right to freedom of religion or belief as contained in Article 18. Distinguished as a non-derogable right,¹² any restrictions deemed necessary to protect the rights of others or important public interests must be

enacted in conformity with the provisions in Article 18(3) of the ICCPR. This means restrictions must be legally prescribed and need to pursue an identified legitimate aim: the protection of public safety, order, health or morals, or of the fundamental rights and freedoms of others. In addition, “restrictions must meet the requirements of proportionality; they must be limited to a minimum of interference and furthermore must be enacted in a strictly non-discriminatory manner. All these criteria are important to preserving the substance of the human right to freedom of religion or belief, even in situations of a conflict with other human rights or important public order interests.”¹³

The 1981 Declaration, while non-binding, also articulates the extent of State obligations with respect to the right to freedom of religion or belief, calling on States to take effective measures to prevent and eliminate discrimination and to reform laws to combat intolerance on the basis of religion or belief. In the 1981 Declaration, respect for the right to freedom of religion or belief is linked to the maintenance of international peace and security.¹⁴

1.2

Religion or belief as a unifying yet divisive force

Throughout history, religion and belief have been powerful unifying forces, bringing people of different languages, cultures and historical backgrounds together to share precepts, practices and values. The spread of religions over vast expanses of people and territory is a testament to the power of beliefs and traditions.

A world of diverse religions and beliefs

A 2012 report of the Pew Research Center's Forum on Religion and Public Life found that worldwide, 84% of the 2010 global population of 6.9 billion people identifies with a religious group:¹⁵

- 2.2 billion Christians (31.5%)
- 1.6 billion Muslims (23.2%)
- 1 billion Hindus (15%)
- nearly 500 million Buddhists (7.1%)
- more than 400 million people (5.9%) who practice various folk or traditional religions, including African traditional religions, Chinese folk religions, Native American religions and Australian aboriginal religions
- 58 million people (0.8%) who follow other religions such as the Baha'i faith, Jainism, Sikhism, Shintoism, Taoism, Tenrikyo, Wicca and Zoroastrianism
- 14 million Jews (0.2%)

The study also found that "about one in six people around the globe (1.1 billion, or 16.3%) have no religious affiliation", which made them the third largest religious group after Christians and Muslims, and about as numerous as the world's Catholic population. This group included persons who believed in a God but who did not identify themselves with any particular religion.¹⁶

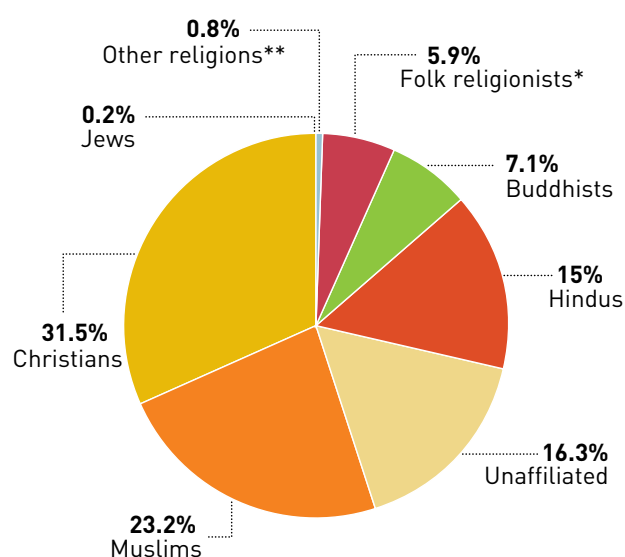
Beliefs and religions are dynamic and in a constant state of flux and evolution.¹⁷ There are also distinctions between religious, ethnic or racial identities with "some religious communities defining themselves by an assumed common ethnic origin, and vice versa, some ethnic groups share [sic] certain religious practices and traditions".¹⁸

In 2015, the Pew Research Center released projections on the size of major religious groups in 2050, based on "the current size and geographic distribution of the world's major religions, age differences, fertility and mortality rates, international migration and patterns in conversion".¹⁹

The study found that during the next four decades, "Christians will remain the largest religious group, but Islam will grow faster than any other major religion." Based on the trends identified, by 2050, "[a]theists, agnostics and other people who do not affiliate with any religion – though increasing in countries such as the United States of America and France – will make up a declining share of the world's total population" and "the global Buddhist population will be about the same size it was in 2010, while the Hindu and Jewish populations will be larger than they are today".

Diagram 1: Size of major religious groups, 2010

Percentage of the global population



*Includes followers of African traditional religions, Chinese folk religions, Native American religions and Australian aboriginal religions.

**Includes Baha'is, Jains, Sikhs, Shintoists, Taoists, followers of Tenrikyo, Wiccans, Zoroastrians and many other faiths.

Percentages may not add to 100 due to rounding.

Source: Pew Research Center's Forum on Religion & Public Life, Global Religious Landscape, 2012

Diagram 2. Size and projected growth of major religious groups

	2010 population	% of world population in 2010	Projected 2050 population	% of world population in 2050	Population growth 2010 - 2050
Christians	2,168,330,000	31.4%	2,918,070,000	31.4%	749,740,000
Muslims	1,599,700,000	23.2%	2,761,480,000	29.7%	1,161,780,000
Unaffiliated	1,131,150,000	16.4%	1,230,340,000	13.2%	99,190,000
Hindus	1,032,210,000	15.0%	1,384,360,000	14.9%	352,140,000
Buddhists	487,760,000	7.1%	486,270,000	5.2%	-1,490,000
Folk religions	404,690,000	5.9%	449,140,000	4.8%	44,450,000
Other religions	58,150,000	0.8%	61,450,000	0.7%	3,300,000
Jews	13,860,000	0.2%	16,090,000	0.2%	2,230,000
World total	6,695,850,000	100.0%	9,307,190,000	100.0%	2,411,340,000

Source: Pew Research Center, The Future of World Religions: Population Growth Projections, 2010-2050, 2015

Many religions emphasize tolerance within the religious community as well as tolerance of other religions and their adherents,²⁰ and their precepts promote peace, humanity and compassion.²¹ Religious communities the world over and their respective adherents have lived for millennia in relative peace and harmony as neighbors, friends and, through intermarriage, as family.²²

However, beliefs and religion can also be a source of divisions. Religious wars and sectarian violence have dotted the course of history, taking an immense toll in human lives and suffering, and involving extensive destruction of the world's cultural heritage.²³ Religious extremism has been an important contributing factor in numerous inter-State and civil wars from the time of ancient Egypt, to the Middle Ages, through the Religious Wars of Europe,²⁴ World War II – during which the Nazis attempted to eliminate all Jews from Europe through the “Final Solution”²⁵ – and the Balkan Wars of the 1990s, to present-day religious violence and terrorism under the guise of Jihad or “Holy War”.²⁶

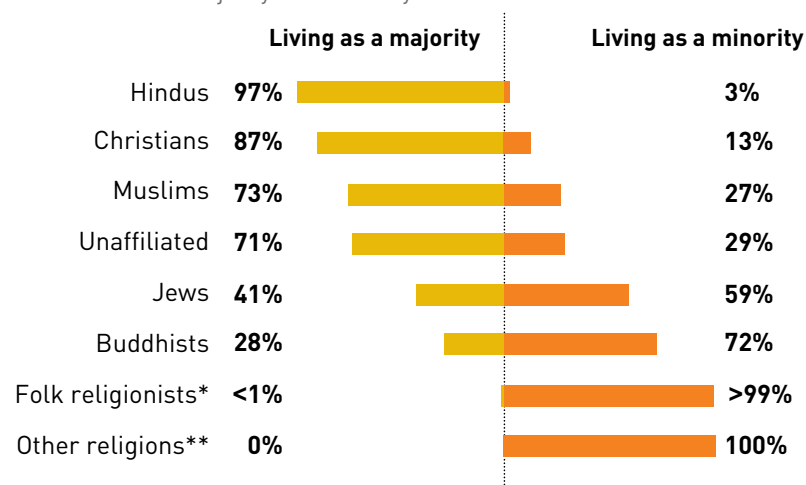
Such wars and sectarian violence often target religious minorities. In an era of mass migration, the proportion of people living as members of minorities has grown markedly. As observed in a 2013 report by the United Nations Department of Economic and Social Affairs: “More people than ever are living abroad. In 2013, 232 million people, or 3.2% of the world’s population, were international migrants, compared with 175 million in 2000 and 154 million in 1990.”²⁷ In short, the intermixing of religions and beliefs is intensifying. More

effective telecommunications, as well as greater movement of capital and ideas in a globalized world of the internet, instant news and social media, accentuate this growing diversity.

hostilities involving religion reached a six-year peak in 2012.²⁸ A third (33%) of the 198 countries and territories included in the study had high religious hostilities in 2012, up from 29% in 2011

Diagram 3: Majority or minority

Percentage of each religious group that lives in countries where its adherents are a majority or a minority



*Includes followers of African traditional religions, Chinese folk religions, Native American religions and Australian aboriginal religions.

**Includes Baha'is, Jains, Sikhs, Shintoists, Taoists, followers of Tenrikyo, Wiccans, Zoroastrians and many other faiths.

Percentages may not add to 100 due to rounding.

Source: Pew Research Center's Forum on Religion & Public Life, Global Religious Landscape, 2012

Intermixing of religious groups and beliefs can result in increased social tensions and conflict over religious practices. This was demonstrated by a 2014 Pew Research Center study, which showed that the share of countries with a high or very high level of social

and 20% as of mid-2007. According to the study, religious hostilities increased in every major region of the world except the Americas. The sharpest increase was in the Middle East and North Africa, with a significant increase in religious hostilities in the Asia-Pacific region.

In early 2015, the Pew Research Center released data for 2013 showing that worldwide, social hostilities involving religion declined slightly, “but roughly a quarter of the world’s countries are still grappling with high levels of religious hostilities within their borders” and because several of these countries have large populations, “about 5.5 billion people (77% of the world’s population) were living in countries with a high or very high overall level of restrictions on religion in 2013, up from 76% in 2012 and 68% as of 2007”.²⁹ For the same year, reports show that “in 2013, the world witnessed the largest displacement of religious communities in recent memory”.³⁰ From these periods to the present day, examples of religiously motivated hostilities, conflict and violence have continued to appear, dominating headlines and displacing people.

Aside from its inherent value, upholding the human right to freedom of religion or belief also shares a close relationship with the protection of other core human rights. Historical and present events show that in times of severe political instability, violence, civil war and international armed conflict, religious minorities in particular bear the brunt of atrocities. In such situations, religious and ethnic criteria often form the basis for widespread and progressive denial of socio-economic rights and classical freedoms.

The direct connection between the Nazis’ extreme violation of the rights of religious minorities within Germany and Adolf Hitler’s use of minority rights to cloak naked intervention and aggression against other States, together with the outbreak of World War II with all its

Religiously motivated social hostilities, conflict and violence

Examples of the extreme violence committed in recent years against religious communities or between different religious groups include:

- Since 2012, in the northern state of Rakhine, Myanmar, violence between the majority Rakhine Buddhists and Rohingya Muslims has resulted in mass death and displacement as well as the destruction of thousands of homes and businesses.
- In April 2012 in Khartoum, Sudan, several hundred Muslims set a Catholic church and school on fire for harboring South Sudanese and Ethiopian refugees.
- In August 2012 in the state of Wisconsin, United States of America, a white supremacist killed six people and wounded four at a Sikh gurdwara (temple).
- In August 2013 in Tripoli, Lebanon, car bombs exploded outside two Sunni mosques in response to the neighboring war in the Syrian Arab Republic.
- In September 2013 in Muzaffarnagar, India, riots between Hindus and Muslims left dozens dead and hospitalized.
- Throughout 2014, in the Central African Republic, sectarian attacks against Christians and Muslims escalated, resulting in widespread displacement and thousands of deaths.
- In January 2015 in Paris, France, the offices of *Charlie Hebdo*, a satirical weekly magazine, were attacked by gunmen reportedly shouting “we have avenged the Prophet Muhammad” while killing 12 people.

In short, the relationship between religion (and its practice) and peace has long been ambivalent. While the tenets of the major religions promote tolerance, compassion and respect for humanity, belief and religion have figured and continue to figure prominently in armed violence, and people continue to invoke religion to justify terrorism and serious human rights violations. Too often, the politicization of ideology drowns out voices promoting tolerance, interfaith understanding and respect for human rights.

immense human suffering, demonstrated in the starkest form possible that the world could not afford to ignore serious violations of minority rights committed anywhere without throwing international peace and security into jeopardy. Unfortunately, the strong association of religious extremism and intolerance with serious human rights violations and an increased risk of genocide, war crimes and crimes against humanity, continues to be amply demonstrated.

Ongoing strife in Nigeria

Nigeria has been increasingly confronted by violence justified in the name of religion. Religious conflict between Christians and Muslims, particularly in the northern Nigerian states of Adamawa, Borno and Yobe, has intensified since the election in 1999 of the Obasanjo Government, which in 2000 and 2001 introduced Shari’a criminal law in 12 of the northern states.³¹ The pattern of intensified violence between Muslims and Christians continued after the elections in 2011.

An insurgent group called the Congregation of the People of Tradition for Proselytism and Jihad (commonly known as Boko Haram, which translates in Hausa as “Western education is sinful”), based in the north of Nigeria, has waged a violent campaign to establish a “pure” Islamic State based on Shari’a law, and to eliminate Christian and secular influences from the country.³² Boko Haram has stepped up its campaign against Western education in particular, which it believes corrupts the moral values of Muslims (especially girls), by attacking two boarding schools – in Yobe in March and in Chibok in April 2014. In the Chibok attack, more than 200 schoolgirls were kidnapped, leading to widespread international condemnation.³³ Boko Haram leader Abubakar Shekau declared that he would enslave the girls and then traffic and sell them outside Nigeria.³⁴ Violence perpetrated by Boko Haram has been met with threats of retaliation from some militant Christian groups in southeastern Nigeria.³⁵ The Council of Foreign Relations Nigeria Security Tracker indicated that some 785 sectarian-related deaths occurred between 29 May 2011 and 30 June 2013 in Plateau state and that between January and June 2013 there were 481 such deaths.³⁶

In practice, the law has far too often been used to restrict freedom of religion or belief and, in particular, its exercise by members of minority groups. There have been many cases where the law was used to justify invidious discrimination, particularly against religious minorities. Rather than rule *of* law approaches, through the centuries rule *by* law approaches, with rules and regulations designed to restrict the expression of various groups and minorities, have been used.



PART 2
RELIGION OR BELIEF AND THE LAW
AND SELECTED CONTESTED ISSUES

RELIGION OR BELIEF AND THE LAW AND SELECTED CONTESTED ISSUES

The study of the history of religious freedom reveals a complicated and at times violent relationship, particularly between religious groups and the State, which is not unique to any one region in the world or to any one point in human history.

2.1

Secular v. religious State

History shows that instead of safeguarding the right to freedom of religion or belief, the overwhelming coercive power of the State has often been marshaled in favor of one particular religion over another. Religious minorities have been relegated to inferior status in such situations, and in some instances – particularly where the rule of law and minority rights, democracy and human rights are weak – the alignment of State and religion has paved the way for suppression, harassment, and even systematic, serious and widespread persecution of religious minorities.

Constitutions and freedom of religion or belief

Constitutions play important roles with regard to the protection or denial of the right to freedom of religion or belief. Some constitutions guarantee freedom of religion or belief as a fundamental right. Others refer to the State as a strictly non-religious and secular entity. Still others remain silent on this issue. Many constitutions refer to “God” in some way and identify the State with one or another religion as part of the historical, social and cultural makeup of the country, while also recognizing

the rights of members of other religions. For example, the Sri Lankan Constitution provides that “[the State] shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)”.³⁷

Some constitutions reserve certain offices or positions for members of specific religious affiliations. Others recognize more than one religion as the official State religion, but do not mention others, thereby promoting inequality among adherents of different faiths.

In addition to the countries that cite the Catholic Church, many other countries, such as Armenia, Bulgaria, Cyprus, the former Yugoslav Republic of Macedonia, Finland, Georgia, Haiti and Sweden mention other Christian churches in their constitutions.⁴³

Islam constituted both a majority and/or the State religion in around 60 countries in Asia, Africa and Europe in 2011. This included 24 States in which the State religion was indicated as Islam in a constitutional instrument by way of the name of the country itself, or as part of the preamble or substantive provision found in the constitution.⁴⁴

The diverse place of religion in national constitutions around the globe

Explicitly secular or laic constitutions are found in Angola, Azerbaijan, Benin, Burkina Faso, Cameroon, France, Gabon, Gambia, Guinea-Bissau, Guyana, Kazakhstan, Mali, Namibia, the Russian Federation, Serbia, Tajikistan, Togo, Turkey and Turkmenistan.³⁸

Over 100 of the world’s constitutions refer to “God” without giving a definition, although many refer to attributes of God as the “Almighty” or, in certain Muslim countries, as “merciful and compassionate”.³⁹

Certain constitutions prohibit the establishment of political parties under a religious banner. In certain countries, such as Belarus, China and Kazakhstan, the constitution restricts religion on the basis that it may be used as a pretext for foreign intervention.⁴⁰

The Roman Catholic Church is the most oft-cited religious body in the world’s constitutions.⁴¹ The constitutions of Andorra, Argentina, Guatemala, Palau, Paraguay, Peru, Poland, Spain, Timor-Leste and Uruguay accord it special recognition and privileges. At the same time, many Latin American countries incorporate international and regional guarantees of the right to freedom of religion or belief and have increasingly begun to recognize these guarantees as having superior status in domestic law; furthermore, they consider them self-executing in the sense that the guarantees can be applied directly without the need for statutory incorporation.⁴²

Many constitutions of countries with large Muslim populations refer to Islam either in the preamble, or as the State religion, or to Islam as a requirement for becoming Head of State, or stipulate that legislation must conform to Shari’a law. Standardized formulas in more modern Islamic constitutions tend either to identify Islam as “a” or “the” chief source of legislation, or say that no law or regulation in conflict with Islamic law can be considered legally valid.⁴⁵

In the Maldives, for example, one has to profess Islam in order to be a citizen.⁴⁶ In Saudi Arabia, the defense of Islam is a requirement for all citizens.⁴⁷ In a number of countries, religious leaders are at the same time political leaders. For example, in Saudi Arabia and Bahrain, the kings are the protectors of Islam. In the Islamic Republic of Iran, the Supreme Leader is both the Head of State and the top political and religious authority in the country,⁴⁸ and “all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria”.⁴⁹ In Morocco, the 2011 Constitution states that “[t]he King, Commander of the Faithful, sees to the respect for Islam. He is the Guarantor of the free exercise of beliefs.”⁵⁰ Tunisia’s 2014 Constitution indicates Islam as the State religion, but also protects freedom of religion or belief.⁵¹

Other predominantly Muslim countries have secular constitutions. For example, Turkey’s Constitution is strictly secular and democratic, with strong guarantees of human rights and the rule of law.⁵² It provides extensive guarantees of the right to freedom of religion or belief covering “freedom of conscience, religious belief and conviction”, the freedom of worship, the right not to be compelled to worship or even to reveal religious beliefs and convictions, and rights involving religious education. Constitutional provisions further stipulate that “[n]o one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion” – effectively enshrining a duty upon everyone to respect religion and the religious practices of followers. However, the Constitution also states that “[r]eligious and moral education and instruction shall be conducted under state supervision and control.”⁵³

The Constitution of Indonesia,⁵⁴ the country with the world’s largest Muslim population, specifically provides that “[t]he State shall be based upon the belief in the One and Only God.”

However, the State “guarantees all persons the freedom of worship, each according to his/her own religion or belief”. Freedom of thought and conscience and freedom of religion, among other rights, “cannot be limited under any circumstances”.

State, religion, secularity and human rights

In 2007, the Parliamentary Assembly of the Council of Europe – the governing body of the European human rights system – adopted Recommendation 1804 on State, religion, secularity and human rights.⁵⁵ In this Recommendation the Assembly states that it welcomes and respects religion “in all its plurality, as a form of ethical, moral, ideological and spiritual expression of certain European citizens, taking account of the differences between the religions themselves and the circumstances in the country concerned”, but at the same time reaffirms that “one of Europe’s shared values, transcending national differences, is the separation of church and state” as a “generally accepted principle that prevails in politics and institutions in democratic countries”.

The Assembly underlined that “each person’s religion, including the option of having no religion, is a strictly personal matter” and stated that: “Governance and religion should not mix. Religion and democracy are not incompatible, however, and sometimes religions play a highly beneficial social role. By addressing the problems facing society, the civil authorities can, with the support of religions, eliminate much of what breeds religious extremism, but not everything.”⁵⁶

The 1990 Cairo Declaration on Human Rights in Islam provides: “All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity

and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.” It further states that: “All human beings are Allah’s subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.”⁵⁷

Regardless of whether or not there is a State religion, the State should tolerate all religions and beliefs, including for those who choose not to believe in a religion. Because members of minority religious groups are more vulnerable than those of majority ones, the State and majority religion must take special care to respect minority religions, their followers, and their rights, practices and rites, and also to encourage non-State actors and members of the majority religion to do the same.

The right to change religion or belief/forced conversion

Conversion can be defined as the act or process of changing from one religion or belief to another. Regardless of how many people actually choose to exercise it, the right of every individual to change his or her religion or belief must be respected as a fundamental human right to be upheld and protected by the State.⁵⁸ The Pew Research Center reports fluctuations in State practice regarding limits imposed by governments on conversion, ranging from 16% of countries in 2007 to 23% in 2012 and 20% in 2013.⁵⁹ The same study reports incidents of hostility over conversions from one religion to another as occurring in 23% of countries in 2007, 27% in 2012 and 26% in 2013.⁶⁰

Diagram 4. Government Restrictions Index 2007 – 2013

Is converting from one religion to another limited by any level of government?

	Period ending mid-2008		Period ending mid-2009	
	Number of countries	Percent of countries	Number of countries	Percent of countries
No	162	82%	160	81%
Yes	36	18%	38	19%
	198	100%	198	100%

Source: Pew Research Center, 2015

Diagram 5. Social Hostilities Index 2007 – 2013

Were there incidents of hostility over conversions from one religion to another?

	Baseline year, ending Jun 2007		Previous year, ending Dec 2011		Latest year, ending Dec 2012	
	Number of countries	Percent of countries	Number of countries	Percent of countries	Number of countries	Percent of countries
No	153	78%	149	75%	145	73%
Yes, but they fell short of physical violence	23	12%	23	12%	21	11%
Yes, and they included physical violence	21	11%	26	13%	32	16%
	197	100%	198	100%	198	100%

Source: Pew Research Center, 2015.

Percentages may not add exactly due to rounding.

The right to change religion or belief raised objections during drafting in all three of the major relevant international instruments – the UDHR, the ICCPR and the 1981 Declaration:

Since Muslim law generally considers conversion from Islam to any other religion an act of blasphemy, Muslims objected to language in these instruments that would have made converting from one religion to another an unqualified right ... In drafting the 1981 Declaration, references to the right to change one's religion were deleted from the text in both the preamble and Article 1, departing, therefore, from the language used in the Universal Declaration and the 1966 Covenant. Consequently, the text of the 1981 Declaration was weakened, but to satisfy those who objected to the deletion, a new Article 8 was added, which provides

*that "[n]othing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights."*⁶¹

In 2005, the then United Nations Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir,⁶² indicated that violations of the right to change religion or belief included such actions as attempts by State agents to convert, reconvert or prevent the conversion of persons, or the prohibition and punishment of religious conversion by law. She also underlined that States had a positive duty to protect the right to hold, adopt or change religion or belief from interference from non-State actors, and to take appropriate measures to investigate and bring to trial violators as

well as to compensate the victims. The Special Rapporteur affirmed that States must prevent attempts by members of majority religious groups to convert members of religious minorities or to conduct "unethical" conversions, such as through promise of material benefit or by taking advantage of the vulnerable situation of persons.⁶³

Peaceful coexistence derives from mutual understanding, while acknowledging that understanding need not imply agreement. At the same time, appropriate limits must be set on religious practices that interfere with the rights of others, regardless of whether the State is religious or secular. Stated another way, acts that cause harm should be prohibited or regulated by government, whereas harmless acts should not.

2.2

Bans on private devotion in public places

For decades, governments have struggled to define when and where to grant religious freedom, to whom, and based on what rationale. Administrators in public schools have debated whether students and teachers should be permitted to wear religious garb in the classroom. Employers in the private and government sectors have also struggled to regulate who is eligible or ineligible for employment and whether an employee should be dismissed for private acts of devotion in the workplace.

Since the terrorist attack in the United States of America on 11 September 2001, the pendulum has swung towards greater interference by the State in religious expression. Religious minorities in particular are now facing laws designed to restrict their ability to practice private devotion in public places. New laws, mostly dating from post-2001, in practice affect not only who is allowed to attend public schools, but also who is permitted to run for and hold public office, as well as the rights of individuals to access employment. In many countries, individuals are experiencing discrimination in employment because of their religious dress, for wearing religious symbols on the job, or for requesting days off for religious observance.

There are few signs that this trend towards more restrictive laws on public devotion is abating. In Europe for example, the European Court of Human Rights (ECtHR) has recently invoked, in a series of cases, the limitations on the right of freedom of religion or belief to justify government restrictions on private devotional practices in public places.⁶⁴ However, numerous commentators have noted that the ECtHR has not been consistent in its rulings, as evidenced by *Lautsi v. Italy*, which affirmed Italy's decision to display crucifixes in public schools.⁶⁵

According to the Pew Research Center's Government Restrictions Index, from 2010 to 2011, 49% of countries increased legal restrictions on religions.⁶⁶ From 2012 to 2013, the percentage was 37%.⁶⁷ The study also reported that the "share of countries with high or very high government restrictions on religion

stayed roughly the same ... 27% in 2013, compared with 29% in 2012. Government restrictions on religion include efforts to control religious groups and individuals in a variety of ways, ranging from registration requirements to discriminatory policies and outright bans on certain faiths."⁶⁸

Diagram 6. Changes in government restrictions, 2010-2011

Changes on the Government Restrictions Index (GRI) from the previous year (ending in mid-2010) to the latest year (calendar year 2011)

Point change	Number of countries	Percentage of countries	
2.0 or more increase	2	1%	49%
1.0 to 1.9 increase	10	5%	
0.1 to 0.9 increase	84	43%	
No change	23	12%	12%
0.1 to 0.9 decrease	75	38%	40%
1.0 to 1.9 decrease	3	2%	
2.0 or more decrease	0	0%	
Total	197	100%	

The Government Restrictions Index (GRI) measures government laws, policies and actions that restrict religious beliefs or practices. The GRI is comprised of 20 measures of restrictions, including efforts by governments to ban particular faiths, prohibit conversions, limit preaching or give preferential treatment to one or more religious groups.

Point changes are calculated by comparing GRI scores from year to year.

Percentages may not add exactly due to rounding.

South Sudan was coded only for 2011, so it is not included in the year-to-year comparisons.

Source: Pew Research Center, "Arab Spring Adds to Global Restrictions on Religion", 2013

Diagram 7. Changes in government restrictions, 2012-2013

Changes on the Government Restrictions Index (GRI) from 2012 to 2013

Point change	Number of countries	Percentage of countries	
2.0 or more increase	2	1%	37%
1.0 to 1.9 increase	6	3%	
0.1 to 0.9 increase	66	33%	
No change	38	19%	19%
0.1 to 0.9 decrease	77	39%	43%
1.0 to 1.9 decrease	8	4%	
2.0 or more decrease	1	1%	
Total	198	100%	

Point changes are calculated by comparing GRI scores from year to year.

Percentages may not add exactly due to rounding.

Source: Pew Research Center, "Latest Trends in Religious Restrictions and Hostilities", 2015

Further, from 2011 to 2012, 49% of countries experienced increases in social hostilities – a six-year high.⁶⁹ From 2012 to 2013, 18% of countries experienced increases in social hostilities, ranging from vandalism of religious property and desecration of sacred texts to violent assaults resulting in deaths and injuries.⁷⁰ Overall, the “level of restrictions – whether resulting from government policies or from

hostile acts by private individuals, organizations and social groups ... were high or very high in 39% of countries”.

Social hostilities may be one way to describe why countries have used the law to tighten restrictions on religious expression. Notably, countries with government restrictions have exhibited higher social hostilities.

The United Nations has called upon the international community “to initiate a global dialogue to promote a culture of tolerance and peace based on respect for human rights and religious diversity” and has urged States, non-governmental organizations, religious bodies and the print and electronic media “to support and promote such a dialogue”.⁷¹ Dissemination of accurate and non-biased information is essential for developing religiously literate societies. Research shows that religiously illiterate societies – comprised of residents who do not possess accurate information about one another’s beliefs and practices – can become more prone to civil conflict and religious-based violence.⁷²

One of the more effective ways to help religious groups understand one another is through cross-cultural dialogue.⁷³ The Pew Research Center reported on initiatives in 2011 to reduce religious restrictions or hostilities in 150 of 198 countries, or 76% of all the countries and territories studied. The data highlight that the most common types of initiatives were interfaith dialogue (56% of countries); efforts to combat or redress religious discrimination (38%); educational and training initiatives (20%); and land- or property-related initiatives (15%).⁷⁴

Diagram 8. Changes in social hostilities

Changes on the Social Hostilities Index (SHI) from 2011 to 2012

Point change	Number of countries	Percentage of countries
2.0 or more increase	11	6%
1.0 to 1.9 increase	28	14%
0.1 to 0.9 increase	58	29%
No change	49	25%
0.1 to 0.9 decrease	45	23%
1.0 to 1.9 decrease	7	4%
2.0 or more decrease	0	0%
Total	198	100%

Point changes are calculated by comparing SHI scores from year to year. Percentages may not add exactly due to rounding.

Source: Pew Research Center, “Religious Hostilities Reach Six-Year High”, 2014

Diagram 9. Changes in social hostilities

Changes on the Social Hostilities Index (SHI) from 2012 to 2013

Point change	Number of countries	Percentage of countries
2.0 or more increase	2	1%
1.0 to 1.9 increase	11	6%
0.1 to 0.9 increase	22	11%
No change	45	23%
0.1 to 0.9 decrease	64	32%
1.0 to 1.9 decrease	42	21%
2.0 or more decrease	12	6%
Total	198	100%

Point changes are calculated by comparing SHI scores from year to year. Percentages may not add exactly due to rounding.

Source: Pew Research Center, “Latest Trends in Religious Restrictions and Hostilities”, 2015

Bans on religious garb

Throughout the world, bans on religious garb remain a highly contested topic, affecting not just Muslim women who choose to wear the hijab, but also students, teachers, employees and people of other religions as well.

Research has shown that legal restrictions on wearing religious symbols increased globally between mid-2007 and mid-2010. For instance, “in mid-2010, religious attire and other symbols were regulated in 57 countries (29%), up from 21 countries (11%) in mid-2007”.⁷⁵ Increases in regulations were seen in certain countries, such as Rwanda where the wearing of religious headwear was prohibited in photographs for government identification cards. This trend grew as social hostilities reached record highs.⁷⁶ From 2012 to 2013, government regulation worldwide decreased slightly, from 27% to 24%.

Diagram 10. Government Restrictions Index 2007-2010:
Legal or governmental restrictions on the wearing of religious symbols

Is the wearing of religious symbols, such as head coverings for women and facial hair for men, regulated by law or by any level of government?

	Baseline year, ending mid-2007		Previous year, ending mid-2009		Latest year, ending mid-2010	
	Number of countries	Percent of countries	Number of countries	Percent of countries	Number of countries	Percent of countries
No	176	89%	152	77%	140	71%
Yes	21	11%	45	23%	57	29%
	197	100%	197	100%	197	100%

Source: Pew Research Center, 2012

Diagram 11. Government Restrictions Index 2007-2013:
Legal or governmental restrictions on the wearing of religious symbols

Is the wearing of religious symbols, such as head coverings for women and facial hair for men, regulated by law or by any level of government?

	Baseline year, ending Jun 2007		Previous year, ending Dec 2012		Latest year, ending Dec 2013	
	Number of countries	Percent of countries	Number of countries	Percent of countries	Number of countries	Percent of countries
No	176	89%	144	73%	150	76%
Yes	21	11%	54	27%	48	24%
	197	100%	198	100%	198	100%

Source: Pew Research Center, 2015

Very few laws in European countries and elsewhere explicitly ban women from wearing a hijab. Instead, laws ban the “covering of the face” or “conspicuous demonstrations of religious expression”, or simply religious garb in public places.

Generally, such laws are adopted either on the grounds of secularism or on the grounds of defense of public safety. Nonetheless, because of the belief among some Muslim women that they are religiously obliged to cover the face or the head, these laws

disproportionately restrict their expression of religious devotion in public places. In turn, court decisions upholding these laws can make women more vulnerable, creating an environment in which attackers can be legitimized.

Decisions by the European Court of Human Rights (ECtHR)

In 2001, the ECtHR affirmed Switzerland's decision to dismiss Lucia Dahlab, a Muslim convert, for failing to remove her hijab while teaching in a State-run school. The Court's rationale was that young students in her classroom (ages 4–8) were "more easily influenced" by this "powerful external symbol" than were older students.⁷⁷

In 2008, the ECtHR ruled that Turkey had not violated the European Convention on Human Rights when it prevented Leyla Sahin, a Muslim medical student, from wearing a hijab while on a university campus. The court argued that the "freedom to manifest one's religion could be restricted on public-order grounds to defend the principle of secularism" and that the ban was seen as proportional to these aims, and could be considered "necessary in a democratic society".⁷⁸

In 2008, the ECtHR unanimously affirmed France's decision to expel two 12-year-old Muslim girls for refusing to remove their hijabs during physical education class, finding no violation of the European Convention related to freedom of religion or belief.⁷⁹ The following year, the Court issued six rulings that upheld the French Government's dismissal of Muslim and Sikh students for wearing religious garb.⁸⁰ These cases followed the enactment of a 2004 law preventing both teachers and students from wearing religious symbols and garb in public schools, on the grounds of the need to protect laicism in France.⁸¹ It led to public protest and a number of legal challenges. More recently in France, a law adopted in 2010 and in force since April 2011 bans the covering of the face in public places, which applies to wearing a burqa (if it covers the face) and the niqab (which covers the face). In 2014, the ECtHR found this 2011 law did not violate the European Convention on Human Rights, accepting that the interference pursued legitimate aims of "public safety" and the "protection of the rights and freedoms of others", while acknowledging that the 2011 law was overly broad in application and upset the Muslim community.⁸²

In the judgment, the ECtHR indicated that the 2011 law does not affect the freedom to wear any garment or item of clothing (with or without religious connotation) which does not have the effect of concealing the face. The Court also distinguished the case from a 2010 decision where it held that Turkey had violated the European Convention on Human Rights for convicting a number of individuals for, among other things, refusing to remove their turbans after being warned pursuant to proceedings for breaching anti-terrorism legislation.⁸³

Even without laws banning expression of religious devotion in public spaces, women expressing their religion in public places or wearing religious garb have become a popular target for harassment. Women are disproportionately impacted by social hostilities over religious garb. In 2011, cases of women being harassed for religious dress were found in 50 countries (25%), a more than threefold increase in five years (7% in 2007).⁸⁴ In 2013, the number was 52 countries (26%) worldwide.⁸⁵

Recent and historical experience has amply demonstrated that restrictions on religious expression, often defended by the State on grounds relating to national security, public order, or even human rights, could in fact be intended to target and marginalize particular religious minorities on a discriminatory basis.

The United Nations has made it clear that "[t]he 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."⁸⁶

2.3

Restrictions on the construction and maintenance of places of worship

Whether threatened by explicit acts of violence or implicit acts of resistance, the ability to assemble and maintain places for religious observance is an integral part of the right to freedom of religion or belief. In practice, however, religious minorities often struggle to construct and maintain houses of worship as a result of legal obstacles and social discrimination. Throughout the world, places of worship – temples, synagogues, churches, mosques, gurdwaras and so on – have been defaced, sacred objects destroyed and religious symbols desecrated.

As an example, in the United States of America, Muslims have experienced a great deal of public hostility, specifically when leasing or purchasing property and receiving building permits to build mosques or even religious education centers. The primary rationales given by opponents of the construction of new mosques include traffic, noise, parking and property values. Other opponents expressed fears about Islam, Shari'a law and terrorism. The American Civil Liberties Union reports that by August 2011, 30 states had had at least one anti-mosque incident, and 14 states had had three or more anti-mosque incidents.⁸⁷

These trends concerning attacks on religious sites coincide with opposing legal and civic interventions that seek to support and uphold the right to assemble and maintain places of religious worship. According to the Pew Research Center, in 2011, legal and civic interventions were initiated in 29 countries involving speaking up for, and defending, religious groups that had struggled to purchase land or obtain building permits.⁸⁸ The Government of Kuwait, for instance, gave the Coptic Orthodox Church a parcel of land on which to construct a worship facility for its thousands of members in the country. Also in 2011, unlike the previous year, the Greek Government provided worship space for the Muslim community of Athens. In Denmark, after a vigorous public debate on whether mosques with domes and minarets should be permitted, the Copenhagen city council approved plans for the construction of two major mosques.⁸⁹

Religious groups in some countries have been able to rebuild properties that had previously been destroyed in religion-related violence. In 2011, the Serbian Orthodox Church’s seminary reopened in Prizren, Kosovo. The seminary building had been evacuated in 1999 due to security concerns, and later destroyed during riots in 2004. In Indian-administered Kashmir, Muslims rebuilt a Christian school destroyed during religion-related violence in 2010. Some governments have taken steps to restore religious properties seized in previous decades. In 2011, the Lithuanian Parliament passed a law mandating compensation to the Jewish community for properties taken during the Holocaust, and in 2011, Turkey adopted a new policy allowing non-Muslim communities to apply for compensation or the return of properties confiscated by the State in 1936.

In accordance with the ICCPR, States must not only refrain from violations of the freedom to establish and maintain places of worship and assembly, but must also protect against sacrilege, damage or destruction, ensuring effective remedy through competent legal authorities for rights or freedoms violated.⁹⁰

2.4 Laws criminalizing blasphemy, defamation of religion and apostasy

The Pew Research Center reports that in

2011, nearly half (47%) of all countries around the globe had laws penalizing blasphemy, defamation of religion and apostasy.⁹¹ Blasphemy can be understood as profane acts or speech against “God” or sacred matters. Defamation of religion includes disparagement or criticism of a religion, including hate speech that disparages, vilifies or intimidates a person or group based on religion. Apostasy is the renunciation of religious belief.

Blasphemy and defamation of religion

In 2011, over 32 countries had laws or policies that penalized blasphemy and 87 countries had laws prohibiting the defamation of religion.⁹²

Diagram 12. Laws against blasphemy, apostasy or defamation of religion, 2011

Question: Does any level of government penalize the defamation of religion, including penalizing such things as blasphemy, apostasy, religious hate speech and criticism of a religion or religions?

	Number of countries	Percent of countries
No laws	104	53%
Yes - any of the following laws*	94	47%
Blasphemy	32	16%
Apostasy	20	10%
Defamation of religion, including religious hate speech	87	44%
	198	100%

Numbers add to more than the total and percentages add to more than 100 because countries can penalize in multiple ways.

* This line represents the number or percentage of countries in which laws against blasphemy, apostasy or defamation of religion were present in calendar year 2011

Source: Pew Research Center’s Forum on Religion & Public Life, 2012

Diagram 13. Laws penalizing defamation of religion, 2011

Europe (36)		Asia-Pacific (17)	Middle East-North Africa (15)	Sub-Saharan Africa (13)	Americas (6)
Austria	Macedonia	Armenia	Algeria	Burundi	Brazil
Belarus	Malta	Bangladesh	Bahrain	Central African Rep.	Canada
Belgium	Moldova	Bhutan	Egypt	Congo	Chile
Bosnia-Herzegovina	Montenegro	Brunei	Jordan	Ethiopia	El Salvador
Croatia	Netherlands	Cambodia	Kuwait	Gambia	Trinidad & Tobago
Czech Republic	Norway	India	Lebanon	Guinea	Venezuela
Denmark	Poland	Indonesia	Morocco	Mali	
Finland	Portugal	Iran	Oman	Mauritania	
France	Romania	Kyrgyzstan	Saudi Arabia	Republic of Congo	
Germany	Russia	Malaysia	Sudan	Rwanda	
Greece	Serbia	Maldives	Syria	Seychelles	
Hungary	Slovakia	Pakistan	United Arab Emirates	Tanzania	
Ireland	Spain	Singapore	Western Sahara		
Latvia	Sweden	Thailand	Yemen		
Liechtenstein	Switzerland	Turkey			
Lithuania	Ukraine	Uzbekistan			
Luxembourg	United Kingdom				

Total number of countries: 87

Countries with a law, rule or policy at some level of government penalizing defamation of religion, including hate speech, during calendar year 2011.
Source: Pew Research Center's Forum on Religion & Public Life, 2012

Diagram 14. Laws penalizing blasphemy, 2011

Middle East-North Africa (13)	Asia-Pacific (9)	Europe (8)	Sub-Saharan Africa (2)
Algeria	Afghanistan	Denmark	Nigeria
Bahrain	India	Germany	Somalia
Egypt	Indonesia	Greece	
Jordan	Iran	Ireland	
Kuwait	Malaysia	Italy	
Lebanon	Maldives	Malta	
Morocco	Pakistan	Netherlands	
Oman	Singapore	Poland	
Qatar	Turkey		
Saudi Arabia			
Sudan			
United Arab Emirates			
Western Sahara			

Total number of countries: 32

Countries with a law, rule or policy at some level of government forbidding blasphemy during calendar year 2011.
Source: Pew Research Center's Forum on Religion & Public Life, 2012

As noted, freedom of religion or belief is exercised and enjoyed by individuals, not by particular religions or beliefs. Nonetheless since 2005, the UNGA, the United Nations Commission on Human Rights, and its successor body, the United Nations Human Rights Council, have adopted a number of controversial resolutions on “defamation of religion”.⁹³ The last resolution of this kind was adopted in 2010 by the Human Rights Council.⁹⁴ These resolutions have focused mainly on protecting religions from defamatory remarks by restricting freedom of speech, opinion and expression.

The underlying controversy relates to depictions of the Prophet Muhammad in cartoons or satirical images triggering an outcry in large parts of the Muslim world, with many Muslims offended and perceiving these depictions as forbidden and insulting to their religion.

The Danish cartoons case

In 2005, the Danish newspaper *Jyllands-Posten* published 12 cartoons of the Prophet Muhammad. One of them portrayed the Prophet with a bomb in his turban; another, the Prophet greeting dead suicide bombers with a sign saying “Stop, stop, we have run out of virgins!”⁹⁵ The cartoons sparked protests against Denmark (some of them violent) in Egypt, Pakistan, Lebanon, Libya and Nigeria.⁹⁶ In January and February 2006, there were many more protests, which resulted in more than 200 reported deaths, attacks on Christians, churches and Danish embassies, and a number of assassination attempts on the Danish cartoonists and publishers.⁹⁷

In response to such incidents, there have been political calls to combat this kind of defamation, while parallel calls have been made to defend the right to freedom of expression and any intrusion on this right due to the freedom of religion or belief. For example, Human

Rights Council Resolution 13/16, adopted in 2010, “deplores the use of the print, audio-visual and electronic media, including the Internet, and any other means to incite acts of violence, xenophobia or related intolerance and discrimination against any religion, as well as the targeting of religious symbols and venerated persons”.⁹⁸ It recalls that both the UDHR and ICCPR recognize special duties and responsibilities with regard to freedom of opinion and expression as well as the possibility of limiting these freedoms by law “for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and general welfare”.⁹⁹ The resolution “urges all States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions and incitement to religious hatred in general, and to take all possible measures to promote

tolerance and respect for all religions and beliefs”.¹⁰⁰

This 2010 resolution, and others that seek to protect religion by imposing heavy restrictions on freedom of opinion, speech and expression, have been strongly criticized for lending support to blasphemy laws and to harsh punishments for their breach. The detractors of these resolutions have also pointed out that blasphemy laws have been misused in many countries to harass and target members of minority religions on grounds that their dissident views offend the State religion.¹⁰¹

As was noted by Asma Jahangir, former United Nations Special Rapporteur on Freedom of Religion or Belief, there is no right to freedom from criticism or even ridicule: “Freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”¹⁰²

The 2008 Joint Declaration on Defamation of Religions

The 2008 Joint Declaration on Defamation of Religions, and Anti-terrorism and Anti-extremism Legislation emphasizes that there is an important difference “between criticism of a religion, belief or school of thought, and attacks on individuals because of their adherence to that religion or belief”. It welcomed the fact that an increasing number of countries had abolished blasphemy laws that restricted freedom of expression in order to protect religion, noting that such laws are “often used to prevent legitimate criticism of powerful religious leaders and to suppress the views of religious minorities, dissenting believers and non-believers, and are applied in a discriminatory fashion”. The Joint Declaration states that:

- › “The concept of ‘defamation of religions’ does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.
- › Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.
- › Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- › International organizations, including the UNGA and Human Rights Council, should desist from the further adoption of statements supporting the idea of ‘defamation of religions’.”¹⁰³

Recent empirical research indicates social hostilities occur at higher rates in countries with anti-blasphemy laws. Among the 44 countries that enforce anti-blasphemy laws, legal restrictions were up in ten and down in only one in 2011.¹⁰⁴ More recent Human Rights Council resolutions depart from the “defamation of religion” approach and instead focus on promoting and protecting the rights and freedoms of

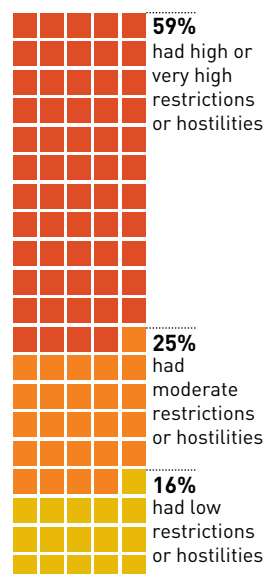
religious adherents, which aligns more closely with international human rights law.

In 2011 for example, Human Rights Council Resolution 16/18 condemned “advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual or electronic media or any

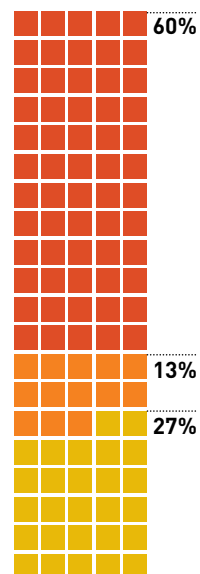
other means” without referring to “defamation of religion”. The Council recognized “that the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels, can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred”, noting that “a continuing dialogue on these issues can help overcome existing misperceptions”.¹⁰⁵ Human Rights Council Resolution 22/20 of 2013 on freedom of religion or belief emphasizes at the outset that “everyone has the right to freedom of thought, conscience and religion or belief, which includes the freedom to have or not to have, or to adopt, a religion or belief of one’s choice and the freedom, either alone or in community with others and in public or private, to manifest one’s religion or belief in teaching, practice, worship and observance, including the right to change one’s religion or belief”. It also highlights the interdependence, interrelatedness and mutually reinforcing character of freedom of religion or belief and freedom of expression, as well as “the role that these rights can play in the fight against all forms of intolerance and discrimination based on religion or belief”.¹⁰⁶ Human Rights Council Resolution 22/31 (on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief), also adopted in 2013, focuses on various aspects of discrimination – and how to combat them – in relation to the rights of individuals and groups, instead of attempting to hold religion itself above criticism, which again is more in line with freedom of thought, speech, opinion and expression.¹⁰⁷

Diagram 15: Restrictions and hostilities are higher in countries with anti-blasphemy laws*

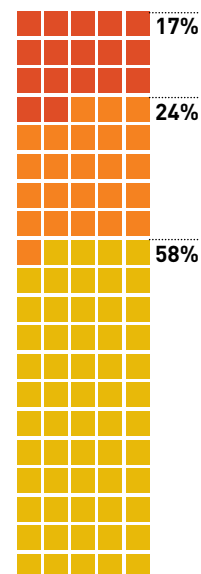
Among the 44 countries that have anti-blasphemy laws and **enforce penalties for violating them**



Among the 15 countries that have such laws but **do not enforce the penalties**



While among the 139 countries that had **no anti-blasphemy laws or policies**



*Refers to laws, policies and rules that prohibit blasphemy, apostasy or defamation of religion. Percentages may not add to 100 due to rounding.

Source: Pew Research Center’s Forum on Religion & Public Life, Rising Restrictions on Religion, 2011

The Rabat Plan of Action

Although the “defamation of religion” approach towards protecting religious freedom has fallen into disfavor at the Human Rights Council, hate speech laws raise issues concerning the limits of free speech and religious expression. While fighting against discrimination and the incitement to racial or religious hatred, States must exercise care not to impose excessive restrictions on the right to freedom of expression. The “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” sets forth a number of valuable guidelines for striking this difficult balance. For example, limitations on freedom of expression should have a high threshold, meaning that incitement to hatred should relate only to severe instances of hatred. Criminal prohibition of freedom of expression should be guided by the following criteria:¹⁰⁸

- the likelihood that the statements in question incited or could incite discrimination, hostility or violence against a targeted group
- the position or status of the proponent of the speech in relation to the audience
- the intent of the speech
- the content or form in terms of directness and degree to which it could provoke hatred
- the extent of the speech in terms of its public nature and the size of its audience
- the likelihood that the speech caused or could cause actual harm to the targeted group

In 2014, the United Nations Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, elaborated:

*The Rabat Plan of Action places great emphasis on the need to uphold a climate of free communication and public discourse based on freedom of expression, freedom of religion or belief and other freedoms. It establishes a high threshold for defining limitations on freedom of expression, for identifying incitement to hatred ... This implies that restrictive legal measures can play an indispensable and yet only limited role in preventing or reacting to incidents of incitement. As a consequence, States and other stakeholders should develop holistic policies which also include non-restrictive and non-prohibitive activities.*¹⁰⁹

In essence, “what is lost in such antagonistic constructions is the positive interrelatedness of freedom of religion or belief and freedom of expression as mutually complementary safeguards of communicative freedom ...the best and most useful way of countering hate speech is ‘alternative speech’: public statements of solidarity, fair media reporting, and clarifications aimed at eliminating negative stereotypes”.¹¹⁰

National decriminalization and repeal of blasphemy laws

In England and Wales, common law offenses for blasphemy were abolished in 2008. Lord Carey, former Archbishop of Canterbury, supported the reform along with Richard Dawkins, a leading advocate of atheism.¹¹⁹

The Netherlands, in 2012, took the first steps to revoke its blasphemy law, which allowed for up to three months in prison for anyone who “publicly, orally or in writing or depiction, offend[ed] religious feelings by scornful blasphemy”.¹²⁰ By 2013, the Dutch Senate had accepted the proposal to remove blasphemy from the Criminal Code.

In Ireland, also in 2013, elected officials took initial steps to remove from the Constitution a blasphemy provision that “criminalizes the publication or utterance of material which is grossly abusive or insulting to individuals on religious grounds”.¹²¹ The Irish Constitutional Convention recommended replacing the general blasphemy provision with one that would prohibit “incitement to religious hatred”, as well as a “new set of detailed legislative provisions to include incitement to religious hatred”.¹²²

Iceland and Norway have also repealed provisions or put into effect legislation decriminalizing blasphemy.¹²³

Apostasy

Apostasy laws are also closely associated with increased levels of social hostility among religious groups.¹¹¹ As of 2011, 20 countries had laws that penalized apostasy.¹¹² These have resulted in suspension of employment contracts, denial of inheritance rights, property confiscation, annulment of marriages and removal of legal custody of children.

Once found guilty, an apostate can be prohibited from receiving a public-issued identity card, which could result in the denial of economic, social and cultural rights, such as the right to health or education, or social security benefits.¹¹³ In 2013, it was reported that residents in 13 countries were liable to receive the death penalty if found guilty of having expressed atheistic views.¹¹⁴

The case of Meriam Yahia Ibrahim in Sudan

In a case that made international headlines, a pregnant Christian woman, Ms. Meriam Yahia Ibrahim, was sentenced to hang for apostasy in Sudan on 15 May 2014, and sentenced to 100 lashes for her marriage to a Christian man.¹¹⁵ The 27-year-old had been raised an Orthodox Christian, her mother's religion, after her Muslim father left the family when she was six years old. The Court found, however, that she should have followed her absentee father's religion. Having taken the position that Ms. Ibrahim's proper religion was Islam, the Court then ruled her marriage to a non-Muslim invalid and concluded she was therefore guilty of adultery.¹¹⁶ Following protests in Khartoum and widespread international condemnation, both the apostasy and adultery convictions were overturned on appeal and Ms. Ibrahim was released. Ms. Ibrahim spent over five months in prison before she was released, part of this time in shackles, and gave birth to her second child in prison.¹¹⁷ Although no individual has been executed for apostasy in Sudan since the 1991 law took effect, Sudanese courts have allegedly forced people accused of leaving Islam to renounce their new faiths.¹¹⁸

Violence is often associated with the enforcement of blasphemy, defamation and apostasy laws around the globe. Most favorably, however, some governments have begun to reconsider the effectiveness of such laws. It is important to refrain from taking penal measures that seek to protect religions from defamation,

insult or ridicule. Only people, not religions, can be subject to such treatment, and government measures to protect religion in this way invariably end up enforcing uniformity at the cost of individual human rights and fundamental freedoms, including the freedom of speech, opinion and expression.

2.5

Religious profiling and national security

One of the more understated issues in law and religion, and potentially one of the more consequential, has been that of religious and ethnic classifications on national identity cards and government-sanctioned religious profiling. According to the United Nations, religious profiling "is understood to be the invidious use of religion as a criterion in conducting questioning, searches and other law enforcement investigative procedures".¹²⁴ This practice has been used by over a dozen countries to track religious and ethnic minorities.¹²⁵

As of 2013, nine countries included a religious classification on national identity cards, down from 20 countries in 2001.¹²⁶ For instance, Iran issued a special stamp for Christians, Saudi Arabia and Pakistan classified non-Muslims as foreigners, and the Syrian Arab Republic issued stamps for Jews.¹²⁷

Diagram 16. Laws penalising apostasy, 2011

Middle East-North Africa (11)	Asia-Pacific (5)	Sub-Saharan Africa (4)
Egypt	Afghanistan	Comoros
Iraq	Iran	Mauritania
Jordan	Malaysia	Nigeria
Kuwait	Maldives	Somalia
Oman	Pakistan	
Qatar		
Saudi Arabia		
Sudan		
Syria		
United Arab Emirates		
Yemen		
Total number of countries: 20		

Countries with a law, rule or policy at some level of government forbidding apostasy during calendar year 2011.

Source: Pew Research Center's Forum on Religion & Public Life, 2012

Diagram 17. Religious classifications on national identity cards as of 2013

Afghanistan	Between 1996 and 2001, the Taliban issued government identification cards that included religious affiliation. ¹²⁸ In 2001, the Taliban mandated that Hindus wear saffron tags, or yellow patches. ¹²⁹
Egypt	Identification cards include identification of Muslim, Coptic, Catholic or Orthodox Christians. Until 2009, ID cards were denied to Baha'is, and now a "dash" is listed instead of their religion. ¹³⁰ In 2009, the Cairo Administrative Court denied Maher al-Gohary, a Muslim-born convert to Christianity, an ID card indicating his chosen religion. ¹³¹
Indonesia	In 2006, an Indonesian law mandated the inclusion of one of six religions on the national identification card: Islam, Catholicism, Christianity, Buddhism, Hinduism and Confucianism. In 2010, these religious classifications were upheld by the Constitutional Court along with the blasphemy law. ¹³²
Jordan	Religious affiliation is mandated on all birth certificates, national identification cards and marriage certificates, but not on passports. Atheists must list themselves as an affiliate of a recognized religion; Baha'is are listed as a "dash". ¹³³
Myanmar	National identification cards often conflate race, religion and ancestry, resulting in Muslims being listed as foreigners from Pakistan or India, even though they have never lived in either country. ¹³⁴ Religious and ethnic minorities, specifically Muslims, face discrimination when applying for national registration cards. ¹³⁵
Pakistan	In 2012, the National Database Authority changed the national identity card to require applicants to choose either Muslim or Qadiani, a pejorative term referring to outlawed Ahmadi Muslims. Hindus, Christians, Sikhs, etc. are required to check Qadiani. This practice is replicated in applications for school admissions and is required to be listed on students' examination slips. ¹³⁶
Turkey	Turkey's Constitution provides that no one shall be compelled to reveal religious beliefs; however, religious affiliation is a mandated classification on national identity cards. Options include: Muslim, Greek Orthodox, Christian, Jew, Hindu, Zoroastrian, Confucian, Taoist, Buddhist, Religionless, Other or Unknown. ¹³⁷
Saudi Arabia	Saudi Arabia requires non-citizen legal residents to list either "Muslim" or "non-Muslim" on national identification cards. Previous residency cards that are still in use include religious designations. ¹³⁸
Syrian Arab Republic	Jews are the only religious group required to indicate their affiliation on identification cards. ¹³⁹

The 2013 Human Rights Council Resolution on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief "expresses deep concern at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programs and agendas pursued by extremist organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments".¹⁴⁰ The Resolution calls on States to "make a strong effort to counter religious profiling".

As noted in the 2006 United Nations Global Counter-Terrorism Strategy, "the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective

counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing".¹⁴¹ The Strategy also detailed measures "to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism".

2.6

Intersection of freedom of religion or belief with other human rights

Every government has a legal responsibility to promote and protect the human rights of those within its jurisdiction. However, difficulties sometimes arise where religious

communities feel that the State is using human rights to interfere in their long-practiced traditions and rites, some of which are said to be justified in the name of religion. In the name of religious freedom, laws have been used to deny freedom to others.

Children

Both religious and State institutions have taken inadequate measures to end longstanding practices of forced or child marriage and genital alterations, which are claimed to be supported by religious doctrine.

The United Nations Convention on the Rights of the Child obliges States parties to "respect the right of the child to freedom of thought, conscience and religion" as well as "the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the

child in the exercise of his or her right in a manner consistent with the evolving capacities of the child".¹⁴² However, as in other international human rights instruments, the Convention clarifies that such rights are not absolute: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."¹⁴³

The 1981 Declaration states that "[p]ractices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development", thereby affirming that the best interests of the child must take priority over harmful religious practices.¹⁴⁴

Women

Nearly all religions in the world developed in the context of systemic patriarchy, with religion in most historical contexts perpetuating structures of inequality between men and women. On the one hand, some religious groups have come to recognize this and have committed to reform, drawing on extracts of key religious texts to support women religious leaders, and to support women's education and employment and overall right to equality. On the other hand, many continue to interpret religious texts in such a way as to deny women the opportunity to serve as religious leaders, to work, to be educated and to participate in civic life.

The intersection of women's rights and freedom of religion or belief has led to tensions. Within many religious traditions, women hold marginalized positions and suffer discrimination. Harmful practices such as female genital mutilation, forced marriage, honor killings, enforced ritual prostitution or denying girls their rights to education are defended in the name of religious traditions. Further, laws steeped in religious beliefs may violate women's human rights: for example, those relating to property and inheritance rights, divorce, freedom to work and freedom of

movement. Discriminatory practices need to be addressed and "freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls".¹⁴⁵

In international human rights law, the principle of non-discrimination includes the prohibition of discrimination based on gender or sex, which appears in the UDHR, is further corroborated in the ICCPR, and is reinforced in detail in the Convention on the Elimination of All Forms of Discrimination Against Women.¹⁴⁶

Although freedom of religion or belief has been associated with gender empowerment and higher incomes for women,¹⁴⁷ the relationship between religion and women's empowerment has been an uneasy one, even when religious institutions have tried to move towards more equal participation for women in traditionally male-dominated religious rites.

For example, for a period of ten years, the "Women of the Wall" in Jerusalem were arrested for staging non-violent prayer vigils. In May 2013, women dressed in tallitot (prayer shawls traditionally worn by men) were legally permitted to pray at the newly constructed female section of the Western Wall Plaza in Jerusalem for the first time, also known as the Wailing Wall or the Kotel. Thousands of people demonstrated against these women, including several thousand Haredi schoolgirls.¹⁴⁸ Ultra-Orthodox protestors threw chairs and water bottles at the women and stoned the buses that carried them to and from what many consider to be Judaism's most sacred site.¹⁴⁹ This issue has divided the Jewish community for a long time.¹⁵⁰ In 2013, the Jerusalem District Court ruled in favor of the women, clarifying that arrests can only take place if there are reasonable grounds to protect the public's safety.¹⁵¹ Meanwhile, ultra-Orthodox Jews were arrested for having violently protested against the women's demonstrations.¹⁵²

Also in 2013, Heiner Bielefeldt, United Nations Special Rapporteur on Freedom of Religion or Belief, issued an interim report that emphasized ways in which "women suffer from multiple or

intersectional discrimination".¹⁵³ He stated that some of these human rights violations "stem from stereotypical gender roles which are frequently also defended in the name of religion or belief". The case of the Western Wall serves as an example.

Other forms of human rights violations, however, "may originate from stereotyped perceptions of individuals based on their religion or belief". As discussed above, an example is the prohibition of religious garb such as the headscarf in certain areas of public life. This is sometimes politically justified as a security measure or as support for women's rights, although "many women obviously wear such religious head coverings from their own convictions".¹⁵⁴

As further noted by Mr. Bielefeldt, "[g]ender warrants special attention, as women frequently suffer from complex and intersectional stigmatization which renders them particularly vulnerable – to hate propaganda and concomitant manifestations of contempt."¹⁵⁵ He recommends advancing an integrated gender perspective into human rights strategies,¹⁵⁶ but also cautions against overly broad approaches:

Women's emancipation vis-à-vis religious or belief-related traditions can take very different paths. While some women may see their way in abandoning their religious heritage as an insubstantial obstacle on their way towards personal autonomy, others may decide to work on behalf of improving the situation of women from within their respective religious traditions ... Indeed, human rights appreciate diversity not only in terms of the results but also concerning the processes, particularly because there are a number of ways to reach emancipation... Therefore, the requirement to work for the elimination of gender-related stereotypes should coincide with attempts to overcome stereotypical perceptions of religious or belief tradition, in particular essentialist views that wrongly present religious traditions as being frozen against any meaningful changes and reforms ... To be sure, freedom of religion or belief is a human right to which liberals and conservatives, feminists and traditionalists can equally refer to promote their causes.¹⁵⁷



PART 3
PROMOTING MUTUAL
UNDERSTANDING OF DIFFERENCES
THROUGH THE RULE OF LAW

PROMOTING MUTUAL UNDERSTANDING OF DIFFERENCES THROUGH THE RULE OF LAW

Just and equitable rule of law frameworks, based on strong human rights principles, are an essential requirement for societies to safeguard freedom of religion or belief, and to balance this right fairly with other rights and interests. These legal frameworks can also help to reduce the potency of extremist organizations that seek to draw public support and legitimacy from politicized religious rhetoric. Without the rule of law, religious strife and violence may well ensue, and the law itself can easily become an instrument of oppression. As distinct from rule *by* law, the rule *of* law embraces and operationalizes human rights through non-discriminatory laws and policies.

As already seen in this report, laws and policies have been used throughout history as tools to suppress freedom of religion or belief and to discriminate against minorities; however, laws and policies can also be effectively used to promote mutual understanding of differences. Promoting diversity over uniformity is the first step in helping societies move toward peaceful coexistence.

Freedom of religion or belief is a fundamental human right, and laws must go beyond merely tolerating difference. States have an obligation and legal responsibility to promote and protect, and laws that promote diversity over uniformity can be effectively used to protect freedom of religion or belief as a fundamental human right, rather than to coerce or harm.

3.1 Lessons learned

Looking at the challenges and selected issues described, the following lessons emerge for rule of law strategies:

A. The law should not attempt to regulate religious practices, belief or disbelief

The law should be used to regulate and promote rights and peaceful coexistence among all people, intervening in religious matters only when religion is being used to justify harm to others. This means avoiding the placement of religious rights in opposition to other human rights – i.e. the realization that freedom of religion or belief is not a zero sum game where one person's win is another's loss.

B. Beliefs and religions are dynamic – dynamism should be harnessed

Beliefs and religions are dynamic, ever-changing organisms in a constant state of flux and evolution based on new teachings, new leaders and new social and political climates. Even the most traditional of religions have reformed, and continue to do so at different speeds. If lawmakers and policymakers assume that religious beliefs, practices or traditions are static or permanent, the result can be fundamental misrepresentations of religion, to the detriment of peace, security and non-discrimination. Freedom of religion or belief should be viewed as a shield that protects individuals and minority groups, not a sword that harms or coerces.

C. Diversity should be promoted over uniformity

Variations in religious expression are an extension of human diversity that States are called upon to preserve as a fundamental human right. Freedom of religion or belief is eroded when laws are misused to force uniformity, whether that uniformity comes in the form of religion or non-religion. Just because some States choose not to base (or legitimize) their governance system on religious tradition or with reference to spiritual or religious

authority, does not mean that these secular societies are exempt from the legal responsibility to protect their residents' right to adopt or practice a religion of their choice. Failing to protect freedom of religion will result in government-endorsed hostility toward religion. Wholesale rejection of religion in public life results in the secular State relinquishing the legal obligation to preserve and protect freedom of religion or belief as a fundamental human right.

The same is true for States that have adopted a theocratic framework for governing their societies. Even though a particular religion may have been legally established to help govern the State, this does not mean that the rights of religious minorities or non-religious residents are any less important than those of the religious majority. Theocracies have proven capable of protecting and promoting religious freedom as a fundamental human right. Nearly every theocracy has provisions for protecting religious minorities. State-forced religious beliefs and practices are a violation of the human right to choose or not to choose to practice religion.

D. Literacy in relation to religion or belief is a foundation for peaceful coexistence

Literacy in relation to religion or belief and the ability to understand different practices and perspectives is a foundation by which societies can promote peaceful coexistence. Peaceful coexistence derives from mutual understanding, while recognizing that understanding need not imply agreement.

3.2

Recommendations

The selection of contested issues featured in this report not only highlights challenges that States face in relation to the right to freedom of religion or belief, but also signals where rule of law approaches can contribute to upholding this right. In meeting the multifaceted challenges related to bringing freedom of religion or belief to life, Governments should:

1. Refrain from unjustly interfering with the right to practice religion or belief.
2. Protect the right of an individual to change their religion or belief.
3. Tolerate and protect religious practices that do not accord with the dominant or State religion.
4. Set appropriate limits on religious practices that interfere with the rights of others.

Communicate

5. Maintain open, transparent and regular consultations with representatives of religious institutions and non-governmental organizations who are knowledgeable about the right to freedom of religion or belief, and involve them in the reform of law, policy and regulations affecting the enjoyment of the right to freedom of religion or belief.
6. Work at the international level, including through the United Nations and regional organizations, to promote intergovernmental dialogue on the right to freedom of religion or belief.

Collaborate

7. Work with religious leaders to support positive messages in religious beliefs and practices that promote peace and seek to reduce and resolve conflict.
8. Work in partnership with national human rights bodies, civil society organizations, trade unions and businesses to identify challenges and help strengthen universal enjoyment of the right to freedom of religion or belief.

Respect

9. Explore new and innovative ways to turn back the rising tide of religious restrictions and hostilities.
10. Avoid adopting laws and policies that prevent or hinder the freedom of religious individuals and institutions to adapt, change and evolve their beliefs and practices.
11. Avoid adopting laws and policies that determine religious belief or disbelief.

Protect

12. Ensure that religiously motivated actions are not exempted from civil and criminal law designed to prevent harm.
13. Identify, monitor, document and use all appropriate educational, administrative and penal measures to end harmful traditional or religious practices.
14. Prosecute criminal violations of the right to freedom of religion or belief fairly and effectively, and codify recognition that crimes perpetrated with an intention to harm an

individual or group on the basis of their religion or belief – where discriminatory motive forms an aggravating factor of the offense – should attract harsher punishment. This should be complemented with comprehensive efforts at rehabilitation, as appropriate, for both offender and victim.

15. Prosecute entities that target and violate the rights of individuals and groups who may have voluntarily changed their religion or belief.
16. Ensure that victims of discrimination based on religion or belief can access the courts or other dispute resolutions and obtain adequate, prompt and effective redress.
17. Establish or strengthen national human rights institutions in line with the “ [p]rinciples relating to the status of national institutions” (also known as The Paris Principles),¹⁵⁸ and vest their mandates with the capacity to promote and protect the right to freedom of religion or belief, including the power to address individual complaints and provide redress to individuals or groups whose rights have been violated.
18. Ensure that religious laws that discriminate against women or children, or in any way violate international human rights law – for example, those relating to age of marriage, property and inheritance rights, freedom to work and freedom of movement – are reformed to promote and protect human dignity in line with all applicable international human rights standards.
19. Devote sufficient and regular attention to gender issues relating to the right to freedom of religion or belief.

20. Eliminate differences between men and women in the minimum age of consent to marry. Ensure that married men and women enjoy equal rights during and following divorce proceedings; have equal rights to own and dispose of property, enter into contracts, receive inheritance and exercise freedom of movement; and enjoy all civil rights and access to justice (without having to obtain permission from anyone else) in case these rights are violated.

Provide equal treatment

21. Ensure that national laws regarding registration procedures and religious institutions are applied on a non-discriminatory, even-handed basis with regard to different religions or beliefs.

22. Exercise care not to disenfranchise, relegate to inferior status, or disadvantage individuals and institutions from minority religions, whether or not the State officially recognizes one or more religions.

23. Ensure that the right to freedom of religion or belief is guaranteed effectively for all individuals and groups in society, giving special attention to those who are more vulnerable, such as indigenous, minority or disadvantaged cultural, linguistic, racial or religious groups. In case of persistent, structural or entrenched inequalities in the enjoyment of religious groups' (or their followers') human rights, it might be necessary to adopt temporary special measures to assist under-represented groups in achieving equality.

24. Ensure that legislatures, courts and their public administrations recognize and value the distinctiveness of both religious minorities and cultural differences and practices, by adopting policies that promote interreligious sensitivity and respect.

25. Work continuously to monitor, identify and remove legal and

practical barriers, whether intended or not, that prevent or hinder individuals of religious minorities from participating fully in the social, cultural, economic, political and legal life of the country, on a par with members of majority religions.

26. Encourage religious communities to take full ownership of the well-being of all their members, so that laws enacted to protect the human rights of their followers are understood not as outside impositions, but as guarantees to which everyone is entitled.

27. Take all effective measures to ensure the protection of all religious sites in line with UNGA Resolution 55/254, which "[c]alls upon all States to exert their utmost efforts to ensure that religious sites are fully respected and protected in conformity with international standards and in accordance with their national legislation and to adopt adequate measures aimed at preventing such acts or threats of violence, and invites relevant intergovernmental and non-governmental organizations to contribute to those efforts by developing appropriate initiatives in this field."

28. End any practice that requires residents in the territory of the State to identify their religion or belief, including by way of identity cards, passports or any other official documents, except where there is a justifiable and compelling reason that conforms to international human rights law (including the principle of non-discrimination).

Preserve positive rights

29. Protect the rights of individuals to express themselves religiously, including the wearing of religious garb.

30. Adopt general, neutral dress codes that do not invidiously discriminate against certain religious adherents.

Abolish coercive laws

31. Refrain from taking penal measures that seek to protect religions from defamation, insult or ridicule.

32. Repeal laws against apostasy and blasphemy, recalling that apostasy and blasphemy need not be considered legal matters.

Educate

33. Systematically review and reform all school curricula to ensure they do not promote the superiority of one religion or belief over another, or promote intolerance against one or other religious traditions or beliefs. Review and reform school textbooks to promote inclusiveness of all religious groups and respect for diversity, pluralism and the right to freedom of religion or belief.

34. Develop and apply primary and secondary school curricula that inculcate respect for the right to freedom of religion or belief, drawing on good practices from other countries and existing regional and international toolkits, as available.

35. Encourage and support universities to hold regular workshops and seminars that promote respectful, meaningful intellectual dialogue and informed discussion on topical issues relating to the right to freedom of religion or belief, including doctrine, practice and conflict.

36. Feature programs in State media broadcasts that promote respect for all religions, faiths and beliefs, and promote respect for diversity of religion or belief.

37. Encourage independent media institutions to feature accurate news stories that proactively combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief.

NOTES

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- ¹ See: Pew Research Center, *The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010, 2012*, available at: <http://www.pewforum.org/global-religious-landscape.aspx>.

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- ² United Nations General Assembly (UNGA), Universal Declaration of Human Rights, Res. 217 (III), UN Doc. A/810 (10 December 1948). It must be noted that as a resolution of the UNGA, the UDHR has no legally binding force. All the same, the UDHR, to quote its preamble, provides a "common standard of achievement for all peoples and all nations", and has in fact charted the path for the subsequent development of international human rights law. Its importance in this regard cannot be understated. See: Gudmundur Alfredsson and Asbjørn Eide, eds., *The Universal Declaration of Human Rights: A Common Standard of Achievement*, Martinus Nijhoff Publishers, 1999.
- ³ International Covenant on Civil and Political Rights (ICCPR), opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), at 171. The ICCPR was adopted as a legally binding multilateral treaty.
- ⁴ UNGA, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Res. 36/55, UN Doc. A/RES/36/55 (25 November 1981). The right to freedom of religion or belief is also protected in other important multilateral human rights instruments: the International Convention on the Elimination of All Forms of Racial Discrimination, for example, obliges States Parties to prohibit and eliminate racial discrimination with regard to the right to freedom of thought, conscience and religion, and the Convention on the Rights of the Child obliges States Parties to respect the rights of the child to freedom of thought, conscience and religion. See: Article 5(d)(vii), International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969); and Article 14(1), Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- ⁵ It is also important to recognize that some advocacy groups have advocated freedom from religion as a way to justify government restrictions on religious practices. In other contexts, it could be construed to mean freedom of religion, which might be used to justify the deregulation of bans on religious expression. In still other contexts, the term "religious freedom" has been employed to portray the idea that one person's religious rights should trump another's civil rights, thereby setting up a false duality where one's religious rights are used to diminish another's right to equal protection under the law.
- ⁶ Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2013, p. 41.
- ⁷ By way of example, in 2011, the Center for the Study of Global Christianity identified a global sum of 41,000 Christian denominations. Even though these denominations are present in more than one country, the ethnic and regional differences among them can be strikingly different. Pew Research Center, *Global Christianity: A Report on the Size and Distribution of the World's Christian Population, 2011*, Appendix B, p. 95.
- ⁸ Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), UN Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993). This same formulation was also used in the Final Document of the International Consultative Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination [E/CN.4/2002/73, Appendix, footnote 1].
- ⁹ UNGA, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Res. 36/55 (25 November 1981), Article 6.
- ¹⁰ *Ibid.*, Article 7.
- ¹¹ Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2013, p. 38.
- ¹² Article 4(2) of the ICCPR designates certain rights, including the right to freedom of thought, conscience and religion, as "non-derogable rights", which means that the State is legally obliged not to deny, abrogate, infringe or suspend these rights, even in times of public emergency such as war or other major calamity threatening the life of the nation.
- ¹³ UNGA, Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, A/HRC/19/60 (22 December 2011), para. 37.
- ¹⁴ While protecting the right to freedom of religion or belief, the 1981 Declaration also recognizes that this right could be legitimately subject to limitations. Such limitations, however, should be as narrow as possible, based on law and "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others". See: UNGA, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Res. 36/55 (25 November 1981), para. 1(3). The point is explicitly underlined in Article 2 of the 1981 Declaration, which establishes that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief", which means "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis", as per Articles 2(1) and (2). Article 3 adds that "[d]iscrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations."
- ¹⁵ See: Pew Research Center, *The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010, 2012*, available at: <http://www.pewforum.org/global-religious-landscape.aspx>. The report explains in its preface that its estimates are based on a country by country analysis of data from more than 2,500 censuses, surveys and official population registers, which were collected, evaluated and standardized by the staff of the Pew Center. Researchers at the International Institute for Applied Systems Analysis (IIASA) in Laxenburg, Austria, and at the Vienna Institute of Demography, collaborated on the analysis.
- ¹⁶ Estimating the number of religions in the world is a difficult task that depends on the definition of "religion", which itself involves the use of statistical surveys to discover whether followers identify themselves as belonging to a particular religion (and if so which one), as well as a partly subjective judgment on the part of researchers. See generally: Thomas A. Idinopulos and Brian C. Wilson, eds., *What is Religion? Origins, Definitions, and Explanations*, Brill, 1998; and Peter B. Clarke, ed., *The Oxford Handbook of the Sociology of Religion*, Oxford University Press, 2009. See also: T. Jeremy

- Gunn, "The Complexity of Religion and the Definition of 'Religion' in International Law", *Harvard Human Rights Journal*, 16: 189–215, 2003, pp. 189–190, who points out that "[a]lthough many international and regional human rights instruments guarantee rights related to freedom of religion or belief, none attempts to define the term 'religion'."
- ¹⁷ Important distinctions have been drawn between "trivial interests" and beliefs demonstrating "a certain level of cogency, seriousness, cohesion and importance". See: Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2013, p. 39, where it is noted that this distinction is important for understanding the application and protection of freedom of religion or belief as different from freedom of opinion and expression.
- ¹⁸ Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2012, p. 44.
- ¹⁹ Pew Research Center, *The Future of World Religions: Population Growth Projections, 2010-2050*, 2015, available at: http://www.pewforum.org/files/2015/03/PF_15.04.02_ProjectionsFullReport.pdf.
- ²⁰ See for example: Gustav Mensching, *Tolerance and Truth in Religion* (trans. H. J. Klimkeit), University of Alabama Press, 1971; Jacob Neusner and Bruce Chilton, eds., *Religious Tolerance in World Religions*, Templeton Foundation Press, 2008; Jay Newman, *Foundations of Religious Tolerance*, University of Toronto Press, 1982; R. Balasubramanian, ed., *Tolerance in Indian Culture*, Affiliated East-West Press, 1992; Cardinal Joseph Ratzinger, *Truth and Tolerance: Christian Belief and World Religion* (trans. Henry Taylor), Ignatius Press, 2004; Adriano Bausola and Mario Sina, *La Tolleranza religiosa: indagini storiche e riflessioni filosofiche, Vita e Pensiero*, 1991; Michel Cornaton and René Pomeau, *La tolérance au risque de l'histoire: de Voltaire à nos jours*, Aléas, 1995; Ole Peter Grell and Roy Porter, eds., *Tolerance in Enlightenment Europe*, Cambridge University Press, 2000, p. 270; Adel Théodor Khoury, *Toleranz im Islam*, Kaiser, 1980; Steven D. Smith, "The Restoration of Tolerance", *California Law Review*, 78(March): 305–356, 1990; Tayyab Mahmud, "Freedom of Religion and Religious Minorities in Pakistan: A Study of Judicial Practice", *Fordham International Law Journal*, October: 40–100, 1995; and Matthias Mahlmann, "Freedom and Faith: Foundations of Freedom of Religion", *Cardozo Law Review*, 30: 2473–2493, 2009.
- ²¹ See for example: Paul L. Heck, *Common Ground: Islam, Christianity, and Religious Pluralism*, Georgetown University Press, 2009; Ram Ramakrishnan, *Many Paths, One Destination: Love, Peace, Compassion, Tolerance, and Understanding through World Religions*, Wheatmark, 2009; and Anindita Balslev and Dirk Evers, eds., *Compassion in the World's Religions: Envisioning Human Solidarity*, Lit Verlag, 2010, p. 192.
- ²² See: Michael Pye et al., eds., *Religious Harmony: Problems, Practice, and Education*, Walter de Gruyter, 2006, p. 363; Janet Penny and Siew-Ean Khoo, *Intermarriage: A Study of Migration and Integration*, Australian Government Public Service, 1996; and Gavin W. Jones, Chee Heng Leng and Maznah Mohamad, eds., *Muslim-non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia*, Institute of Southeast Asian Studies, 2009, p. 322.
- ²³ See for example: Jack David Eller, *Cruel Creeds, Virtuous Violence: Religious Violence Across Culture and History*, Prometheus Books, 2010; and Joseph B. Gittler, ed., *Ideas of Concord and Discord in Selected World Religions*, JAI Press, 2000, p. 426.
- ²⁴ See for example: Ted Hodges, *Religion and World Conflict*, Lucent Books, 2006; Richard K. Betts, ed., *Conflict After the Cold War: Arguments on Causes of War and Peace* (4th ed.), Pearson, 2013, p. 671; Stephen Ellis, *The Mask of Anarchy: the Destruction of Liberia and the Religious Dimension of an African Civil War*, New York University Press, 1999; Jonathan Fox, *Religion, Civilization, and Civil War: 1945 Through the Millennium*, Lexington Books, 2004; Leonard Swidler and Paul Mojzes, eds., *Attitudes of Religions and Ideologies Toward the Outsider: the Other*, E. Mellen Press, 1990, p. 202; Kerry Muhlestein, *Violence in the Service of Order: the Religious Framework for Sanctioned Killing in Ancient Egypt*, Archaeopress, 2011; Anna Sapir Abulafia, ed., *Religious Violence Between Christians and Jews: Medieval Roots, Modern Perspectives*, Palgrave, 2002, p. 205; Henry Jacob, *An Humble Supplication for Toleration and Libertie* (originally published in 1609), W.J. Johnson, 1975; Agnes Mure Mackenzie, *The Scotland of Queen Mary and the Religious Wars: 1513-1638*, A. Maclehose, 1936; Martin Philippon, *The Religious Wars*, Lea Bros. & Co., 1905; Franklin Charles Palm, *Calvinism and the Religious Wars*, H. Holt and Company, 1932, p. 117; Daniel H. Nexon, *The Struggle for Power in Early Modern Europe: Religious Conflict, Dynastic Empires, and International Change*, Princeton University Press, 2009; Luc Duerloo, *Dynasty and Piety: Archduke Albert (1598-1621) and Habsburg Political Culture in an Age of Religious Wars*, Ashgate Publishing Company, 2012; Jonathan Duncan, *The Religious Wars of France: From the Accession of Henry the Second to the Peace of Vervins*, J. Rickerby, 1840; Richard S. Dunn, *The Age of Religious Wars: 1559-1689*, Norton, 1970; and Peter R. Erspamer, *The Elusiveness of Tolerance: the "Jewish Question" from Lessing to the Napoleonic Wars*, University of North Carolina Press, 1997.
- ²⁵ See: the Minutes of the Wannsee Conference, held in Berlin, am Grossen Wannsee, No. 56/58 on 20 January 1942 concerning the Final Solution of the Jewish Question, translation in English in John Mendelsohn, *The Holocaust: Selected Documents in Eighteen Volumes*, Vol. 11, Garland Publishing Inc., 1982, pp. 18–32, available at: <http://www.writing.upenn.edu/~afilreis/Holocaust/wannsee transcript.html>.
- ²⁶ Alexandru Madgearu, *The Wars of the Balkan Peninsula: Their Medieval Origins* (Rev. ed.), Scarecrow Press, 2008; Alfonse D'Amato, *Religious Intolerance in Europe Today: Hearing Before the Commission on Security and Cooperation in Europe, One Hundred Fifth Congress, First Session, 18 September 1997*, p. 164; Christopher Catherwood, *Why the Nations Rage: Killing in the Name of God*, Rowman & Littlefield, 2002; J. Harold Ellens, ed., *The Destructive Power of Religion: Violence in Judaism, Christianity, and Islam*, Praeger Publishers, 2007, p. 261; Michael Newton and Judy Ann Newton, *Racial & Religious Violence in America: A Chronology*, Garland, 1991; Charles Selengut, *Sacred Fury: Understanding Religious Violence*, Altamira Press, 2003; Philip Oluwole Ukanah, *In God's Name: the Story of Nigeria's Religious War and its Brutal Killings*, Divine Press, 2011; Leonard Weinberg and Ami Pedahzur, eds., *Religious Fundamentalism and Political Extremism*, Frank Cass, 2004; Scott Atran, *Talking to the Enemy: Faith, Brotherhood, and the (Un)Making of Terrorists*, Ecco Press, 2010; Mirza Tahir Ahmad, *Murder in the Name of Allah* (trans. Syed Barakat Ahmad), Lutterworth Press, 1989; Mark Juergensmeyer, *Terror in the Mind of God: the Global Rise of Religious Violence*, University of California Press, 2000; Hans G. Kippenberg, *Violence as Worship: Religious Wars in the Age of Globalization*, Stanford University Press, 2011; Aftab Ahmad Malik, ed., *The State We Are In: Identity, Terror and the Law of Jihad*, Amal Press, 2008, p. 163; and Martin Tolchin and Susan J. Tolchin, *A World Ignited: How Apostles of Ethnic, Religious, and Racial Hatred Torch the Globe*, Rowman & Littlefield Publishers, 2006.
- ²⁷ See: Press Release of the United Nations Department of Economic and Social Affairs Population Division, "232 Million International Migrants Living Abroad Worldwide – New UN Global Migration Statistics Reveal," 11 September 2013, available at: <http://esa.un.org/unmigration/wallchart2013.htm>. See further: International Organization for Migration, *World Migration Report 2013*, 2013.
- ²⁸ Pew Research Center, *Religious Hostilities Reach Six-Year High*, 2014, available at: <http://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high/>.
- ²⁹ Pew Research Center, *Latest Trends in Religious Restrictions and Hostilities*, 2015, available at: <http://www.pewforum.org/2015/02/26/religious-hostilities/>.
- ³⁰ U.S. Department of State, *International Religious Freedom Report for 2013*, Bureau of Democracy, Human Rights and Labor, available at: <http://www.state.gov/documents/organization/222225.pdf>.
- ³¹ Jana Krause, *A Deadly Cycle: Ethno religious Conflict in Jos, Plateau State, Nigeria*, Geneva Declaration Working Paper, Geneva Declaration Secretariat, 2011, at 31, available at: <http://www.genevadeclaration.org/fileadmin/docs/regional-publications/GD-WP-Jos-deadly-cycle.pdf>.
- ³² Between 1 January 2013 and May 2014, Boko Haram carried out and claimed responsibility for numerous attacks on civilians. On 19 February 2013, Boko Haram kidnapped a French family of seven in Cameroon and released a video of the hostages to press demands upon the governments of Nigeria and Cameroon. On 7 May 2013, around 100 Boko Haram operatives killed two soldiers in Borno state in coordinated attacks, using machine guns and rocket-propelled grenades, as well as vehicle-mounted anti-aircraft weapons. The incident left dozens dead. In June 2013, Boko Haram claimed responsibility for an attack on a school in Yobe, which killed seven students and two teachers. On 6 July 2013, an attack at another school in Yobe left 20 students and

one teacher dead. On 11 August 2013, gunmen killed at least 44 people in an attack on a mosque in Borno state. On 29 September, suspected Boko Haram militants attacked a college dormitory in Yobe, killing at least 40 students. On 2 December 2013, Boko Haram militants attacked an Air Force base and military checkpoint in Maiduguri city. On 26 January 2014, militants fired upon a village market and burned homes in Kawuri in Borno state, killing at least 45 people. On 11 February, suspected Boko Haram militants set houses on fire in a village in Borno state, killing at least 23 people. On 15 February 2014, Boko Haram killed at least 106 people in two separate attacks in northeastern Nigeria. On 26 February 2014, Boko Haram was suspected of killing 29 college students in an attack in Yobe state. On 14 April 2014, Boko Haram took their violent campaign to the capital city of Nigeria, bombing Abuja's central bus station and killing more than 70 people. On 2 May 2014, the group bombed a motor park in Abuja, killing 19. Will Ross, "Abuja Blast: Car Bomb Rocks Nigerian capital", BBC News, 2 May 2014, available at: <http://www.bbc.com/news/world-africa-27249681>.

³³ Farouk Chothia, "Who Are Nigeria's Boko Haram Islamists?" BBC News, 20 May 2014, available at: <http://www.bbc.com/news/world-africa-13809501>.

³⁴ Monica Mark, "Missing Nigerian Schoolgirls: Boko Haram Claims Responsibility for Kidnapping", The Guardian, 6 May 2014, available at: <http://www.theguardian.com/world/2014/may/05/boko-haram-claims-responsibility-kidnapping-nigeria-schoolgirls>.

³⁵ "Nigeria Christians Threaten Religious War", United Press International, 23 April 2013, available at: http://www.upi.com/Top_News/Special/2013/04/23/Nigeria_Christians_threaten_religious_war/UPI_73101366742735/#ixzz2zWjZIQy8.

³⁶ John Campbell and Asch Harwood, "Why a Terrifying Religious Conflict Is Raging in Nigeria in the Country's So Called Middle Belt", The Atlantic, 10 July 2013, available at: <http://www.theatlantic.com/international/archive/2013/07/why-a-terrifying-religious-conflict-is-raging-in-nigeria/277690/>. See also: S. Awoniyi, "A Discourse on Religious Conflict and Tolerance in Multi faith Nigeria", European Scientific Journal, 9(20): 124–142, 2013.

SECTION 2 WHY DOES THE LAW MATTER FOR FREEDOM OF RELIGION OR BELIEF?

³⁷ Article 9, Chapter II, The Constitution of the Democratic Socialist Republic of Sri Lanka.

³⁸ Gerhard Robbers, "Church and State Relations in the Constitutions", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 57–66, Ashgate Publishing Company, 2013, pp. 63–64.

³⁹ Ivan C. Iban, "God in Constitutions and Godless Constitutions", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 37–55, Ashgate Publishing Company, 2013, pp. 37–38.

⁴⁰ On a possible relationship between religious conflict and foreign military intervention, see: Rosemary Durward and Lee Marsden, eds., *Religion, Conflict and Military Intervention*, Ashgate Publishing Company, 2009, p. 186; Jonathan Fox, "Religious Causes of International Intervention in Ethnic Conflicts", *International Politics*, 38: 515–532, 2001; and Jonathan Fox, Patrick James and Yitan Li, "Religious Affinities and International Intervention in Ethnic Conflicts in the Middle East and Beyond", *Canadian Journal of Political Science*, 42(1): 161–186, 2009. In China, according to government estimates, there are more than 100 million religious adherents, most of whom self-identify as Buddhists. The Constitution of the Peoples' Republic of China guarantees the right to freedom of religion or belief in Chapter II on "The Fundamental Rights and Duties of Citizens". Article 36 provides that "No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination." The Constitution of the Peoples' Republic of China, amended on 14 March 2004, available at: http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm. However, the government recognizes only Buddhism, Catholicism, Islam, Protestantism and Taoism as entitled to legal protection, and only as entities independent of foreign organizations and subject to Communist Party control and supervision. See: Liu Peng, Brett G. Scharffs and Carl Hollan, "Constitutional, Legislative and Regulatory Change regarding Religion in China", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 247–266, Ashgate Publishing Company, 2013, p. 266.

⁴¹ Ivan C. Iban, "God in Constitutions and Godless Constitutions", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 37–55, Ashgate Publishing Company, 2013, pp. 41–42.

⁴² Carmen Asiain Pereira, "Religion and Religions in the Latin American Constitutional Framework", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 125–149, Ashgate Publishing Company, 2013, p. 126.

⁴³ Ivan C. Iban, "God in Constitutions and Godless Constitutions," in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 37–55, Ashgate Publishing Company, 2013, pp. 41–42.

⁴⁴ Tahir Mahmood, "Religion in Contemporary Legal Systems", *Brigham Young University Law Review*, 605–612, 2011, p. 608.

⁴⁵ *Ibid.*, pp. 90–92.

⁴⁶ Ministry of Legal Reform, Information and Arts, Functional Translation of the Constitution of the Republic of Maldives, 2008, available at: <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf>. Article 9(d): "Despite provisions of article (a) a non-Muslim may not become a citizen of the Maldives."

⁴⁷ Saudi Arabia, The Basic Law of Governance, Royal Decree No A/90 (1 March 1992), available at: http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx. Article 34: "It shall be the duty of every citizen to defend the Islamic Creed, the society and homeland."

⁴⁸ See: Said Amir Arjomand and Nathan J. Brown, eds., *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran*, State University of New York Press, 2013.

⁴⁹ Gianluca P. Parolin, "Religion and the Sources of Law: Shari'ah in Constitutions", in W. Cole Durham, Jr., Silvio Ferrari, Cristiana Ciannitto and Donlu Thayer, eds., *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, 89–104, Ashgate Publishing Company, 2013, p. 92. It should be noted that the Iranian Constitution recognizes and protects members of three additional minority religions: Zoroastrians, Jews and Christians. Members of these religions have reserved seats in the Iranian parliament.

⁵⁰ *Ibid.*

⁵¹ Constitution of the Tunisian Republic, Final Version, 26 January 2014, available at: <http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf>.

⁵² Article 2 of the Constitution of the Republic of Turkey provides that "[t]he Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble." See: Constitution of the Republic of Turkey, available at: http://global.tbmm.gov.tr/docs/constitution_en.pdf.

⁵³ Article 24 of the Constitution of the Republic of Turkey provides that: "Everyone has the freedom of conscience, religious belief and conviction. Acts of

worship, religious rites and ceremonies shall be conducted freely, as long as they do not violate the provisions of Article 14. No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions. Religious and moral education and instruction shall be conducted under state supervision and control. Instruction in religious culture and morals shall be one of the compulsory lessons in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives. No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political interest or influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.”

- ⁵⁴ Constitution of the Republic of Indonesia, amended in 1999, 2000, 2001 and 2002, available at: <http://www.embassyofindonesia.org/wordpress/wp-content/uploads/2014/03/IndonesianConstitution.pdf>. Indonesia also has large numbers of followers of minority Islamic variants including Shia, Ahmadiya, Sufis and others. See: John Richard Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, Cambridge University Press, 2003. Despite Indonesia's well-established climate of religious diversity and tolerance, there have been some worrying developments involving the targeting of many of Indonesia's religious minorities. See: International Crisis Group, *Indonesia: Implications of the Ahmadiyah Decree*, Asia Briefing No. 78 of 7 July 2008, available at: <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/B078-indonesia-implications-of-the-ahmadiyah-decree.aspx>; Andreas Harsono, "Sufi Muslims Feel the Heat of Indonesia's Rising Intolerance", *The Jakarta Globe*, 15 August 2013, available at: <https://www.hrw.org/news/2013/08/15/sufi-muslims-feel-heat-indonesias-rising-intolerance>; and Human Rights Watch, *In Religion's Name: Abuses against Religious Minorities in Indonesia, 2013*, available at: http://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf. See generally: Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia*, Cambridge University Press, 2004. Despite constitutional guarantees, in some Indonesian provinces atheism appears to be illegal. See: Kate Hodal, "Indonesia's Atheists Face Battle for Religious Freedom", *The Guardian*, 3 May 2012, available at: <http://www.theguardian.com/world/2012/may/03/indonesia-atheists-religious-freedom-aan>.
- ⁵⁵ Council of Europe Committee on Culture, Science and Education, *Debate on State, Religion, Secularity and Human Rights*, Doc. 11298 (8 June 2007). Rapporteur: Mr. de Puig. Text adopted by the Assembly on 29 June 2007 (27th Sitting).
- ⁵⁶ *Ibid.*, para. 10.
- ⁵⁷ See Article 1(a) and (b). Adopted at the Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Egypt, 9–14 Muharram 1411H (31 July to 5 August 1990). Available at: <http://www.oic-oci.org/english/article/human.htm>.
- ⁵⁸ Empirical research shows that while in most countries children stay within the religion of their parents, in a significant minority of countries reviewed, a substantial percentage of individuals choose to switch religions, or to become unaffiliated with any particular religion. The Pew Research Center observed in 2012 that: "In many advanced industrial countries, religious switching is producing substantial changes in the religious landscape. While there is evidence of many different types of religious switching, in many countries one of the profound shifts is a net movement toward being religiously unaffiliated. In a few of the countries that were projected to 2010 for this report (specifically, Austria, Germany and Italy), there was evidence that substantial religious switching was occurring and data were available to model switching in the population projections." See: Pew Research Center, *The Global Religious Landscape: A Report on the Size and Distribution of the World's Major Religious Groups as of 2010, 2012*, p. 62, available at: <http://www.pewforum.org/global-religious-landscape.aspx>.
- ⁵⁹ Pew Research Center, *Latest Trends in Religious Restrictions and Hostilities, 2015*, p. 68, available at: http://www.pewforum.org/files/2015/02/Restrictions2015_fullReport.pdf.
- ⁶⁰ *Ibid.*, at 85.
- ⁶¹ Derek H. Davis, "The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration On the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief", *Brigham Young University Law Review*, 217–236, 2002, p. 229.
- ⁶² Further to Resolution 1986/20, the United Nations Commission on Human Rights appointed a Special Rapporteur on Religious Intolerance. In 2000, the Commission on Human Rights decided to change the mandate title to Special Rapporteur on Freedom of Religion or Belief, which was subsequently endorsed by ECOSOC (Economic and Social Council) Decision 2000/261 and welcomed by UNGA Resolution 55/97. On 18 June 2010, the Human Rights Council adopted Resolution 14/11 which, inter alia, extended the mandate of the Special Rapporteur for a further period of three years.
- ⁶³ However, there is evidence to suggest that restricting "unethical" conversion in fact might be associated with a higher rather than lower level of religious conflict – in other words, that the government's efforts to protect religion can cause more harm than good to intercommunal harmony and peace. See: Brian Grim's Ted Talk, available at: <http://theweeklynumber.com/1/post/2013/04/tedx-talk-the-numbers-of-religious-freedom.html?>
- ⁶⁴ The ECtHR used Article 9 of the European Convention on Human Rights to justify legal restrictions on religious expression. The first part of Article 9 uses the language from Article 18 of the UDHR, and the second part guarantees that "[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." Cases include *Dahlab v. Switzerland* (No. 42393/98), 15 January 2001; *Leyla Şahin v. Turkey* (No. 44774/98), 10 November 2005; *El Morsli v. France* (No. 15585/06), 4 March 2008; *Dogru v. France* (No. 27058/05), 4 December 2008; *Kervanci v. France* (No. 31645/04), 4 December 2008; *Aktas v. France* (No. 43563/08), 17 July 2009; *Bayrak v. France* (No. 14308/08), 17 July 2009; *Gamaleddyn v. France* (No. 18527/08), 17 July 2009; *Ghazal v. France* (No.29134/08), 17 July 2009; *J. Singh v. France* (No. 25463/08), 17 July 2009; and *R. Singh v. France* (No. 27561/08), 17 July 2009.
- ⁶⁵ *Lautsi v. Italy* (No.30814/06). Ms. Soile Lautsi brought a case arguing that the presence of crucifixes in state schools was a violation of Article 9 and Article 2, Protocol 1 of the European Convention on Human Rights. The Grand Chamber held 15–2 that while the presence of crucifixes in state-school classrooms does allow for greater visibility of Italy's majority religion in the school environment vis-à-vis other belief systems, the higher visibility is not in itself sufficient to denote a process of indoctrination, and therefore a breach of the Convention. The Court added that "[a] crucifix on a wall is an essentially passive symbol and...cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities". For commentary, see: Alicia Cebada Romero, "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam", *New Zealand Journal of Public and International Law*, 11(1): 75–102, 2013; and Linda Ragep Powell, "The Constitutionality of France's Ban on the Burqa in light of the European Convention's *Arslan v. Turkey* Decision on Religious Freedom", *Wisconsin International Law*, 31(1): 118, 2013.
- ⁶⁶ Pew Research Center, *Arab Spring Adds to Global Restrictions on Religion, 2013*, p. 25, available at: <http://www.pewforum.org/files/2013/06/RestrictionsIV-web.pdf>. The Government Restrictions Index (GRI) "measures government laws, policies and actions that restrict religious beliefs or practices. The GRI is comprised of 20 measures of restrictions, including efforts by governments to ban particular faiths, prohibit conversions, limit preaching or give preferential treatment to one or more religious groups."
- ⁶⁷ Pew Research Center, *Latest Trends in Religious Restrictions and Hostilities, 2015*, pp. 11–12, available at: http://www.pewforum.org/files/2015/02/Restrictions2015_fullReport.pdf.
- ⁶⁸ Pew Research Center, *Latest Trends in Religious Restrictions and Hostilities, 2015*, available at: <http://www.pewforum.org/2015/02/26/religious-hostilities/>.
- ⁶⁹ Pew Research Center, *Religious Hostilities Reach Six-Year High, 2014*, available at: <http://www.pewforum.org/2014/01/14/religious-hostilities-reach->

- six-year-high/. The Social Hostilities Index (SHI) "measures acts of religious hostility by private individuals, organizations and social groups. This includes religion-related armed conflict or terrorism, mob or sectarian violence, harassment over attire for religious reasons and other religion-related intimidation or abuse. The SHI includes 13 measures of social hostilities."
- ⁷⁰ Pew Research Center, Latest Trends in Religious Restrictions and Hostilities, 2015, available at: <http://www.pewforum.org/2015/02/26/religious-hostilities/>. This study finds that the share of countries with high or very high levels of social hostilities involving religion dropped from 33% in 2012 to 27% in 2013.
- ⁷¹ United Nations Commission on Human Rights, Combating Defamation of Religions, Res. 2005/3, UN Doc. E/CN.4/2005/3 (12 April 2005), p. 3.
- ⁷² Diane Moore, *Overcoming Religious Illiteracy*, Palgrave Macmillan, 2007; and Stephen Prothero, *Religious Literacy: What Every American Needs to Know — And Doesn't*, HarperOne, 2008.
- ⁷³ Silvio Ferrari and Fabio Petito, *Promoting Religious Freedom and Peace through Cross-Cultural Dialogue*, Italian Institute for International Political Studies, 2013.
- ⁷⁴ Pew Research Center, Arab Spring Adds to Global Restrictions on Religion, 2013, pp. 43–44, available at: <http://www.pewforum.org/2013/06/20/arab-spring-restrictions-on-religion-findings/>.
- ⁷⁵ Pew Research Center, Rising Tide of Restrictions on Religion, 2012, available at: <http://www.pewforum.org/2012/09/20/rising-tide-of-restrictions-on-religion-findings/>.
- ⁷⁶ In the fall of 2013, thousands of Canadians demonstrated against a bill, modeled on French anti-garb laws, aiming to ban government employees from wearing religious garb in the province of Québec. See: Monique Muise, "Demonstrators Protest against Values Charter in Park Ex", *The Montreal Gazette*, 6 October 2013.
- ⁷⁷ *Dahlab v. Switzerland* (No. 42393/98), 15 January 2001.
- ⁷⁸ *Leyla Şahin v. Turkey*, Application No. 44774/98, Judgment (Merits and Just Satisfaction), before the Grand Chamber, 10 November 2005, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956#%22itemid%22:%22001-70956%22>).
- ⁷⁹ *Dogru v. France* (No. 27058/05) and *Kervanci v. France* (No. 31645/04).
- ⁸⁰ *Aktas v. France* (No. 43563/08), *Bayrak v. France* (No. 14308/08), *Gamaleddyn v. France* (No. 18527/08), *Ghazal v. France* (No. 29134/08), *J. Singh v. France* (No. 25463/08) and *R. Singh v. France* (No. 27561/08).
- ⁸¹ *Loi no 2004-228 du 15 mars 2004*, "encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics". The term laïcisme was first used in 1842 to describe "a doctrine which tends to give institutions a nonreligious character". Caroline C. Ford, *Divided Houses: Religion and Gender in Modern France*, Cornell University, 2005, p. 6. See also: Guy Bedouelle and Jean-Paul Costa, *Les laïcités à la française*, Presses Universitaires France, 1998, p. 10. In 1871, the term laïcité (secularism) was used to justify the dismissal of religious teachers and religious education from public elementary schools. Similar actions were taken throughout the twentieth century. See: General Ordinance No. 45-1708 of 31 July 1945; Decree No. 53-934 of 30 September 1953; the French Constitution of 4 October 1958, Articles 57–11 to 57-13 added to Decree No. 63-766 of 30 July 1963, as amended by Decree No. 88-905 of 2 September 1988; Law No. 83-634 of 13 July 1983; Law No. 87-1127 of 31 December 1987, in particular Article 12; Law No. 89-486 of 10 July 1989; and Law No. 87-1127 of 31 December 1987.
- ⁸² *S.A.S. v. France* (No. 43835/11).
- ⁸³ *Arslan and Others v. Turkey* (No. 41135/98).
- ⁸⁴ Pew Research Center, Headscarf Incident in Sudan Highlights a Global Trend, 2013, available at: <http://www.pewresearch.org/fact-tank/2013/09/18/headscarf-incident-in-sudan-highlights-a-global-trend/>.
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- ⁸⁶ Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), UN Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993). See also a six-point legal framework for understanding the scope of the right to religious observance: Noel G. Villaroman, "The Right to Establish and Maintain Places of Worship: The Developments of its Normative Content under International Human Rights Law", in Silvio Ferrari and Sabrina Pastorelli, eds., *Religion in Public Spaces: A European Perspective*, Ashgate Publishing Company, 2012.
- ⁸⁷ American Civil Liberties Union, Map — Nationwide Anti-mosque Activity, 2011, available at: <https://www.aclu.org/print/maps/map-nationwide-anti-mosque-activity>.
- ⁸⁸ Pew Research Center, Arab Spring Adds to Global Restrictions on Religion, 2013, p. 49, available at: <http://www.pewforum.org/2013/06/20/arab-spring-restrictions-on-religion-findings/>.
- ⁸⁹ U.S. Department of State, International Religious Freedom Report for 2011, Bureau of Democracy, Human Rights and Labor, 2012, available at: <http://www.state.gov/j/drl/rls/irf/2011/eur/192803.htm>.
- ⁹⁰ Article 2, ICCPR.
- ⁹¹ Pew Research Center, Laws Penalizing Blasphemy, Apostasy, and Defamation of Religion are Widespread, 2012, available at: <http://www.pewforum.org/2012/11/21/laws-penalizing-blasphemy-apostasy-and-defamation-of-religion-are-widespread/>. A number of these countries have since repealed their blasphemy laws: see below.
- ⁹² *Ibid.*
- ⁹³ See: General Assembly Resolutions 60/150, 61/164 and 62/154; Commission on Human Rights Resolutions 1999/82, 2000/84, 2001/4, 2002/9, 2003/4, 2004/6 and 2005/3; and Human Rights Council Resolutions 4/9 and 7/19.
- ⁹⁴ United Nations Human Rights Council, Combating Defamation of Religions, Res. 13/16, UN Doc. A/HRC/RES/13/16 (15 April 2010), adopted 25 March 2010 by a recorded vote of 20 to 17, with eight abstentions.
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- ⁹⁶ J. Klausen, *The Cartoons that Shook the World*, Yale University Press, 2009.
- ⁹⁷ For selected articles about the Danish cartoon controversy, see: Patricia Cohen, "Danish Cartoon Controversy", *The New York Times*, available at: http://topics.nytimes.com/top/reference/timestopics/subjects/d/danish_cartoon_controversy/; and "Muslim Cartoon Fury Claims Lives", *BBC News*, 6 February 2006.
- ⁹⁸ *Ibid.*, para. 10.
- ⁹⁹ *Ibid.*, para. 11.
- ¹⁰⁰ *Ibid.*, para. 14.
- ¹⁰¹ See: Paul Marshall and Nina Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide*, Oxford University Press, 2011; and Venice Commission, *Blasphemy, Insult and Hatred: Finding Answers in a Democratic Society*, Science and Technique of Democracy, No. 47, Council of Europe Publishing, 2010, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(2010\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2010)047-e).

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- ¹⁰⁵ United Nations Human Rights Council, *Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief*, Res. 16/18, UN Doc. A/HRC/RES/16/18 (12 April 2011), paras 3 and 4.
- ¹⁰⁶ United Nations Human Rights Council, *Freedom of Religion or Belief*, Res. 22/20, UN Doc. A/HRC/RES/22/20 (12 April 2013).
- ¹⁰⁷ United Nations Human Rights Council, *Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief*, Res. 22/31, UN Doc. A/HRC/RES/22/31 (22 March 2013). Significantly, the Sixth Session of the United Nations Forum on Minority Issues, held in November 2013, was dedicated to the theme "Beyond Freedom of Religion or Belief: Guaranteeing the Rights of Religious Minorities".
- ¹⁰⁸ "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", Conclusions and recommendations emanating from the four regional expert workshops organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2011 (adopted by experts in Rabat, Morocco on 5 October 2012), available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.
- ¹⁰⁹ Statement of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, during the 25th session of the United Nations Human Rights Council, 11 March 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14398&LangID=E#sthash.U5sOIIINP.dpuf>.
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- ¹¹¹ See: Brian J. Grim, "Religion, Law and Social Conflict in the 21st Century: Findings from Sociological Research", *Oxford Journal of Law and Religion*, 1(1): 249–271, 2012.
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- ¹¹³ Report of the Special Rapporteur on Freedom of Religion or Belief, Ms. Asma Jahangir, on the Elimination of All Forms of Religious Intolerance, UN Doc. A/60/399 (30 September 2005).
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- ¹²¹ "Constitutional Convention Reviews Blasphemy", *RTE News*, 2 November 2013.
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- ¹³⁸ U.S. Department of State, "Saudi Arabia" in International Religious Freedom Report for 2012, Bureau of Democracy, Human Rights and Labor, 2013, p. 7.
- ¹³⁹ Michael D. Peabody, "How Would an Attack on Syria Affect the Religious Liberty of the Syrian People?" Religious Liberty, 7 September, 2013.
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- ¹⁵⁰ For over three decades, the question of whether women can pray at the Western Wall in Jerusalem has divided Israelis. Since 1981, it has been forbidden to express religious rituals that were "not according to local custom" or that "may hurt the feelings of [an Orthodox] worshiper". In 2001, it was made explicit that women could not approach the Western Wall and imitate Orthodox religious practices traditionally reserved for men. Those rites include praying, reading from a Torah scroll, wearing tallitot, strapping leather around their arms, or securing tefillin – small black leather boxes containing passages of the Torah – to their arms or heads. §2(a)(1a) and §5, Regulations for the Protection of Holy Places to the Jews, 1981.
- ¹⁵¹ *State of Israel v. Bonnie Riva Ras*, Lesley Sachs, Valerie Stessin, Sylvie Rozenbaum, Sharona Kramer, Arrest Appeal 23834-04-13, The Jerusalem District Court, 14th day of Iyyar 5773, 24 April 2013.
- ¹⁵² "Arrests as Women Pray at Jerusalem's Western Wall: Israeli Police Officers Arrested Three Ultra-Orthodox Protestors", *BBC News*, 10 May 2013.
- ¹⁵³ Interim Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, on the Elimination of All Forms of Religious Intolerance, UN Doc. A/68/290 (7 August 2013), pp. 6–22.
- ¹⁵⁴ Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2013, p. 63.
- ¹⁵⁵ Statement of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, during the 25th session of the Human Rights Council, 11 March 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14398&LangID=E#sthash.U5sOIINP.dpuf>.
- ¹⁵⁶ *Ibid.*, p. 20.
- ¹⁵⁷ Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief", *Human Rights Quarterly*, 35: 33–68, 2013, p. 64.

SECTION 3 PROMOTING MUTUAL UNDERSTANDING OF DIFFERENCES THROUGH THE RULE OF LAW

- ¹⁵⁸ The Paris Principles were adopted as the conclusions of a workshop held in October 1991. These conclusions were transmitted by the Commission on Human Rights to the General Assembly, in Resolution 1992/54, as the "Principles relating to the status of national institutions". The General Assembly adopted the Principles in 1993 as the Annex to Resolution 48/134.

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