



The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief

Freedom of religion

A report with special emphasis on the right to
choose religion and registration systems

Layout, repro, trykk:
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Table of contents

<i>Foreword</i>			5
I	<i>Introduction</i>		7
II	<i>International legal protection of the freedom of religion and belief</i>		9
III	<i>State reports</i>		20
	1 China		20
	2 India		37
	3 Turkmenistan		44
	4 Pakistan		56
	5 Greece		63
	6 Israel and Palestine		68
	7 Egypt		78
	8 Nigeria		85
IV	<i>Conclusions</i>		94
	Appendices		
	Appendix Chapter II	UN-Declarations and Conventions	101
	Appendix China	Documentation regarding repression of underground churches	106
	Appendix Turkmenistan	Documentation regarding registration, prohibiting Christian literature and maltreatment of believers	115
	Appendix Pakistan	Legal texts, documentation of Sharia ordinance	128
	Appendix Greece	Legal texts.	131
	Appendix Israel and Palestine	Problems encountered by Muslim Converts to Christianity	132
	Appendix Egypt	Legal texts.	156

Foreword

This report has been compiled by Forum 18, a network of representatives from different Non-Governmental Organisations who wish to focus on the freedom of religion and belief. Religious freedom is examined on the basis of Article 18 of the UN Declaration of Human Rights. The forum's slogan is a summary of Article 18:

The right to believe, to worship and witness
The right to change one's belief or religion
The right to join together and express one's belief.

The steering committee of Forum 18 consists of Jostein Nesvåg, Ingulf Diesen, Dagfinn Solheim, Ingrid G. de Jimenez and Johannes Østtveit.

In co-operation with attorney Thom Arne Hellerslia, the steering committee wrote a project description with the aim of investigating two elements of Article 18: The right to change religion, and the right to practice religion. The latter area was investigated by looking at systems for registering religion and the limiting effect this has on religious freedom. Eight countries, in different parts of the world, were chosen for closer examination.

Attorney Hellerslia has evaluated the responsibility of individual countries based on international law, and has commented on how the two relevant rights are practised. The steering committee has coordinated the fact-finding efforts. Jan Arvid Kvalevåg was employed for a period to assist this work.

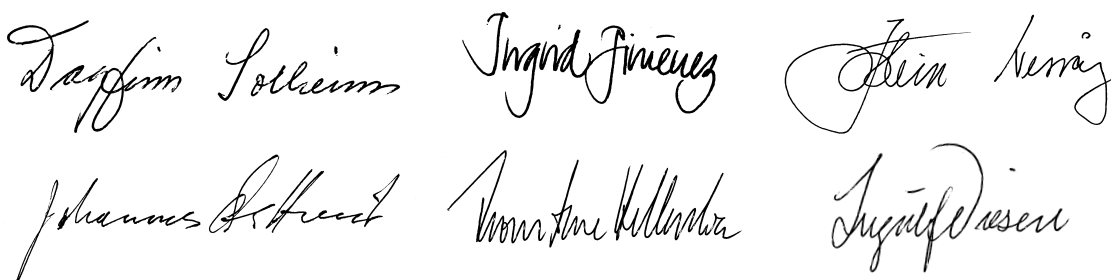
The Royal Norwegian Ministry of Foreign Affairs has financed the project, which also includes an open hearing to coincide with the presentation of the report. Experts and witnesses will be called to highlight the issues. The report will be handed over to the Foreign Ministry. The steering committee hopes that the content of the report will be presented to a session of the UN Human Right's Commission in March/April 2001.

The steering committee is responsible for the content of the country reports. We would like to thank those who have done most of the work compiling these studies:

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No man by nature is bound unto any particular church or sect, but everyone joins himself voluntarily to that society in which he believes he has found that profession and worship which is truly acceptable to God. The hope of salvation, as it was the only cause of his entrance into that communion, so it can be the only reason of his stay there.

John Locke, Letter concerning Toleration, 1693.

I. Introduction

Freedom of religion and belief is one of the fundamental human rights. The European Court of Human Rights has stated that freedom of religion and belief is «one of the foundations of a democratic society».¹ Historically religious freedom was one of the first recognised human rights.² Important sides of the general idea of human rights lie in the history of protecting religious minorities. It can be said that the right to freedom of thought, conscience and religion is the foundation of Western human rights ideology.³

It is normally fruitless to compare basic human rights with each other, to find the most important right, or which interference constitute the most grave attack on the dignity of man. It is however worth pointing out, together with the historical facts, that religion and thought constitute the most inner part of man. In this way interference with the freedom of religion and belief will often be experienced as grave violations. A belief in a specific religion will often include belief in a divine god or other divine objects, with power over the life of each person, in this life as well as in «the next». The choice of religion is therefore not the same as a choice between political and other kinds of opinions. It may literally be a choice between «heaven and hell» if we look at the individuals own grounds for adopting and manifesting a specific belief. The right also protects non-believers, and atheists may have a similar sincere conviction.⁴

Considered against this background and the many grave violations of this human right around the world, it is astonishing to register the following facts: There has been comparatively little political pressure relating to violations in this field by the general human rights NGOs and human rights-friendly states⁵; there have been comparatively little research in this field by general human rights lecturers; there has been few complaints regarding violations of religious freedom to international supervisory organs; and perhaps more disturbingly, there has been a decrease in the international consensus on the specific content of the freedom of religion (see section II and IV of this report).

There are certainly many explanations for these contradictions. One reason is that this right refers to an inner, integral part of man, and that breaches are not always visible. Other explanations may be found in political developments. Unlike the situation when the right to freedom of religion evolved, most western states are now secular with no political involvement in the sphere of religion, besides when it is necessary to protect health, public order or the rights of others. Religious freedom is mostly discussed in the latter context, when problems arise when beliefs are not as tolerant as the secular state. Along side this development, there is a religious revival in many non-western states, with closer connections between state and religion, especially in the Muslim world. There is today, fortunately, a

¹ Kokkinakis v. Greece (25/5/93, A 260-A) para 31.

² See for instance Code of Rhode Island of 1647 and Westfalen Peace Treaty of 1648.

³ Donna Gomien, David Harris and Leo Zwaak, Law and practice of the European Convention on Human Rights and the European Social Charter (1996)

⁴ See the case of Buscarini and others v. San Marino (European Court of Human Rights), regarding oath for MPs that had a religious content.

⁵ USA is an exemption

dialogue rather than "cold war" between different political systems (sharia states, communist states, secular democracies etc.), also in the field of human rights.⁶ These facts, however, may imply that it is more difficult today to be seen and heard as a victim of the violation of the right to religious freedom, and more difficult the more unpopular the belief of the victim is. However, it is in the cases of un-popular beliefs that the real position of the right is tested, as is the case of freedom of expression.

It is our hope that this report will help create a stronger focus from the international community on the state of religious freedom around the world.

The report focuses on two distinct problems regarding religious freedom: The right to choose a religion and belief, and different registration systems. The two aspects have been chosen because they form two «burning» problems of the freedom of religion and belief in the world today. The right to choose a belief of one's own is one of the basics of the freedom of religion and belief. The question of registration systems is not in this way a specific part of the freedom of religion and belief, but it gives rise to a series of questions regarding the right to manifest one's belief.

The report focuses on the situation in nine chosen states or self-rule areas: Egypt, Pakistan, India, Nigeria, China, Turkmenistan, Greece, Israel and the Palestinian self-rule areas. These states have been chosen as examples to highlight the above-mentioned aspects of the freedom of religion and belief. No conclusions should be drawn regarding the states that are not part of this report. For instance small sects with "unpopular" views are easily interfered against in Western secular states.⁷ Also adherents of non-western world religions, like Islam, can face different problems manifesting their belief in such countries, often combined with racial discrimination. Regarding the states covered in this report, it has been easier to gather information on Christians, than information on other minority beliefs. However, the findings on Christians are likely to represent general tendencies regarding minority beliefs in those countries.

⁶ An example in the field of freedom of religion is the Oslo Coalition.

⁷ The National Assembly in France have in June 2000 passed a bill aiming at the activities of certain "sects" (which include baptists and Jehova`s Witnesses), with some problematic aspects regarding the freedom of religion.

II. International legal Protection of the freedom of religion and belief

1. General remarks

The basic elements of the freedom of religion and belief have no doubt the status of *jus cogens*, or international customary law. A state is thus obliged to respect the right regardless of ratification of international texts. This point of view is primarily based on the general acceptance of the Universal Declaration of Human Rights (UDHR), and on the many states who have ratified the International Covenant on Civil and Political Rights (CCPR). There are good reasons for stating that the right to choose a religion of one's own is a part of *jus cogens*. However, this may be contested by some states. Therefore, the protection of the right to choose religion should be assessed more closely, in the light of the different international texts, which the states expressly support or are obliged to follow.

The Universal Declaration of Human Rights (1948) is the main international text on human rights. However, being a declaration, the text is not directly judicially binding, and therefore not «law» in its strictest sense. The Declaration is politically binding, which in practice often is sufficient. And as mentioned above, the text constitutes arguments for stating *jus cogens* or international customary law.⁸

CCPR (1966) is the only international judicially binding text that expressly deals with freedom of religion and the right to choose a religion in a general sense. It is therefore of great importance, also for states which have not ratified it (see above on international customary law).

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) is "soft law", like UDHR, and will be mentioned below together with UDHR.

In contrast to CCPR, international "soft law" is not suited for detailed judicial interpretation. The emphasis in this chapter will therefore be on the CCPR.

The right to change one's religion is also expressed in some regional instruments, such as the European Convention on Human Rights (ECHR) art. 9⁹ and the American Convention on Human Rights art. 12. The International Convention on the Protection of All Migrant Workers and Members of their Families (1990) art. 12 has a wording similar to CCPR art. 18. Many of the specialised conventions of UN and ILO prohibit discrimination on the grounds of religion, like the UN Convention against discrimination in Education art. 1 and the UN Convention against Racial Discrimination art. 5.¹⁰ Such a clause is also a part of the International Covenant on Economical, Social and Cultural Rights, see art. 2.

⁸ Nathan Lerner, *Emory International Law Review*, vol. 12 1998, on Proselytism, Change of Religion and International Human Rights p. 557.

⁹ A similar provision is a part of the CSCE Copenhagen Document para. 9 (4), see also the CSCE Vienna Document para. 16.

¹⁰ Other conventions are the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries art. 3, the ILO Convention on discrimination in Employment and Work art. 1, the UN Convention against discrimination of Women art. 1, and the UN Convention on the Rights of the Child art. 2.

2. The Universal Declaration of Human Rights article 18 and the Declaration on Religious Discrimination

a. The Universal Declaration of Human Rights article 18

The Universal Declaration of Human Rights article 18 states as follows:

"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."

The first part of article 18 declares without reservation that the right to freedom of thought, conscience and religion includes freedom to change religion or belief. The wording leaves no doubt regarding this right.

The travaux préparatoires of this part of the article is of interest: The Commission on Human Rights unanimously recommended a draft with a similar wording to the final text. The draft was then dealt with in the Third Committee of the General Assembly. There, a group of Muslim states, led by Saudi Arabia, tried to delete the sentence on the right to change one's religion. They argued that the right could be abused by missionaries, but did not succeed. The right to change religion was, however, not contested in itself.¹¹

The second part of art. 18 lists some specific rights following from the freedom of religion and belief. The list is not exhaustive.

Art. 29 (2) gives reasons for limitations on the rights and freedoms. Compared with art. 18 (3) of CCPR (see below), there are some differences. Firstly, art. 29 refers to the exercise of the rights in general, while art. 18 (3) only refers to manifestations of belief. However, the «sacred and inviolable» character of the freedom of thought was expressed in the travaux préparatoires by persons from different legal systems.¹² Secondly, art. 29 (2) mentions the general welfare in a democratic society, but not health and public safety, as grounds for limitations.

Regarding art. 29 (2), it is worth noting that a Soviet Union proposal in the drafting work that the freedom in art. 18 to practice religion was subject to the limitations of domestic law, was clearly rejected. After the proposal was rejected, the Soviet representative voted for the present text.¹³ This should imply that art. 29 must be strictly interpreted when it comes to legislation concerning religious practice. Art. 29 demands that limitations solely may be set forth where "meeting the just requirements of morality ...". The article should be interpreted in the same way as CCPR art. 18 (3), demanding a fair balance between the interference of the right and the aims pursued by the domestic law (the principle of proportionality).

According to art. 2 of UDHR, enjoying the freedom of religion and belief, and all other rights and freedoms in the declaration, shall not be subject to any form of discrimination, inter alia discrimination based on religion.

Many of the statements below, on the interpretation of CCPR art. 18 (and ECHR art. 9, which has a wording more similar to UDHR art.18 regarding the right to change religion), are also valid regarding

¹¹ Martin Scheinin, *The Universal Declaration of Human Rights* (ed. by Alfredson and Eide) p. 381. The draft clause was approved by 27 to 5 votes, with 12 abstentions. Art. 18 as a whole was adopted by the Third Committee by 38 votes to 3, with 3 abstentions. The Declaration as a whole was adopted by the General Assembly by 48 votes to 0, and 8 abstentions (Saudi-Arabia, South-Africa and 6 East-European states).

¹² Scheinin. *ibid.*, p. 382 and Lerner, *ibid.*, p. 501. The expression stems from the French Rene Cassin.

¹³ Scheinin, *ibid.*, p. 381-382.

the interpretation of UDHR art. 18. This is for instance the situation on proselytism and blasphemy laws. On registration systems as well, the interpretation of UDHR art. 18 should be the same as for CCPR art. 18. However, as mentioned above, a declaration is not suited for the same detailed interpretation as a convention, and the statements below should therefore be used as "main rules" after UDHR art. 18.

b. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

This declaration was adopted by the General Assembly in 1981. The drafting work started about two decades earlier. Special problems arose regarding the right to change religion. The Muslim states wanted any reference to such a right out of the declaration. They argued that a Muslim is not entitled to change his or her religion. The Western states could not accept this. There had to be a compromise on the subject - the alternative was no declaration at all. The Western states, regarding the last option as worse, accepted a weak formula (art. 2 uses the same formula as CCPR art. 18, but not the words "or to adopt"). On the other hand, art. 8 of the declaration states that nothing in the declaration shall be construed as restricting or derogating from any right defined in UDHR and CCPR. The interpretation of this is clearly that the right to change religion was fully preserved, even though the formula in art. 2 is weak.

The declaration contains different non-discrimination clauses, which are important to the right to manifest a chosen religion (the declaration is attached to this report).

3. The International Covenant on Civil and Political Rights article 18

a. General remarks

CCPR art. 18 states as follows:

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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Some other articles in the Covenant are also of interest. Art. 27 demands that religious minorities shall not be denied the right to profess and practise their own religion.¹⁴ According to art. 2, every party is obliged to "respect" and "ensure" the rights in the covenant, without discrimination, inter alia

¹⁴On this subject, see also the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries and the UN Declaration regarding Minorities (1992).

discrimination based on religion. In this respect, everyone shall have the right to effective remedies to fulfil their rights, including access to the courts. A general prohibition of discrimination before the law is stated in art. 26, which also mentions discrimination on religious grounds. Believers also enjoy the freedoms of expression, association and assembly in art. 19, 21 and 22, but normally the best protection is given by art. 18.

In situations of an officially proclaimed State of Emergency, the state may impose measures which limit the rights, according to the provisions in art. 4. However, para. 2 of that article states clearly that art. 18 is not subject to any such limitations.

In interpreting art. 18, the General Comment on art. 18 from the Human Rights Committee¹⁵, done at its 48th session in 1993, is of high significance. Further, the more developed jurisprudence after the European Convention on Human Rights (ECHR) art. 9 is a valuable source, because of the almost similar wording of the articles.

b. The right to change religion

- The right to change religion as a right derived from the freedom of thought

In the drafting of article 18, the right to change religion was particularly disputed. The opponents of such a right were especially the Islamic states, led by Saudi Arabia. The draft, modelled on proposals by the United States, UDHR art. 18 and ECHR art. 9, had the expression "freedom to maintain or to change his religion". It was not possible to reach agreement on this formula, and the compromise, after long discussions, was the wording "to have or to adopt a religion or belief of his choice" / "d'avoir ou d'adopter une religion ou une conviction de son choix".¹⁶ This was accepted without dissent.¹⁷ No reservations were entered to this part of the article.

The compromise formula is weaker than the draft formula and UDHR art. 18, because it only refers to having or adopting a religion, and does not expressly mention whether this also covers to have or adopt another religion than the religion the person had before. However, it is a right to have or to "adopt" a religion "of his choice", and the right to choose which religion to be adopted is meaningless if it does not include the right to change a religion or belief. Another understanding would have reduced the right to an extent that could not have been the intent of the large number of states that voted for this wording. The intentions of some states cannot change this. This meaning of the article is also expressed in the General Comment (para. 5):¹⁸

"The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."

According to para. 2 of article 18, no one shall be subject to coercion which would impair the right to change religion.¹⁹ Both the prescription as well as the prohibition of a special religion is thus inconsistent with art. 18 para. 2. Two aspects give the paragraph a wide range: Firstly, the word "impair", which deliberately was chosen instead of "deprive". Secondly, it is clear from the travaux préparatoires that the word "coercion" was meant to cover both direct and indirect coercion.²⁰ This means that the paragraph in principle covers all forms of government given privileges or obstacles directed against members of a special religious group.²¹ The General Comment puts it this way (para. 5):

¹⁵ The supervisory organ of CCPR.

¹⁶ The proposal was submitted by Philippines and Brazil, with a supplement from Britain ("or to adopt").

¹⁷ Seventy votes to none, with two abstentions in the Third Committee, art. 18 as a whole was adopted unanimously, and the Covenant as a whole was adopted unanimously by the General Assembly.

¹⁸ The General Comment is from 1993, after the Declaration on Religious Discrimination, see also the Migrant Workers Convention from 1990. This interpretation of art. 18 is also supported by judicial lecturers (among others, see Manfred Nowak,

UN Covenant on Civil and Political Rights, CCPR Commentary (1993), p. 316) and UN special rapporteurs on the freedom of religion.

¹⁹ It is worth noting that the original proposal of this para was set forth by Egypt.

²⁰ Nowak, *ibid.*, p. 318.

²¹ It may be questionable whether para. 2 gives the right a wider range than what in all cases follows from para. 1. However, para. 2 emphasizes this side of the right. This should mean that a breach of the obligation to abstain from prescribing or prohibiting a religion is a special sincere breach of the freedom of religion.

"Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2."

This rule follows partly also from the prohibitions on discrimination in art. 2 and 26 of the Covenant, as well as the Declaration on religious discrimination. However, some positive measures (affirmative actions) to protect a minority culture, and the religion as a part of that culture, are outside the scope of these non-discrimination rules, see art. 27.

The right to change religion is not just a freedom from direct and indirect coercion - the active state. Article 2 gives the state not only the obligation to respect the rights in the convention, but also the obligation to "ensure" them. Therefore, it is not sufficient for the state to be passive, if the right to change religion is not a real right in practice. The state therefore may be obliged to impose measures to protect the right, for instance in situations where converts meet strong reaction from society or where a religious association does not permit to leave the association. The range of these so-called positive obligations may be subject to discussion. The state is not able to hinder all forms of private encroachment of the right to change religion. However, no doubt article 18 provides positive measures where the right is severely infringed upon, and normal measures from the state, such as the active use of penal code provisions, would be important tools to change the situation.²²

One part of article 18 that is of utmost importance is the fact that the limitation clause in para. 3 solely refers to the right to "manifest" one's religion or belief. By this reason, there is no way a state may interfere in the right to change religion as long as this change does not manifest itself in any way. The mere change of religion will always be a "mind operation", and not a manifestation. Therefore, the mere change of a religion may never be interfered with by the state. Even if the belief is considered a threat to the society, the belief itself may not be intervened with. The freedom of thought is non-interferable. This interpretation is clearly supported by the General Comment (para. 3):

"It [article 18] does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally ..."²³

However, the freedom of religion may be of little worth in reality if the person does not have the right to manifest his or her religious conviction. Therefore, it is decisive to determine the meaning of the word "manifest" in para. 3, which are the only acts which may be limited: Do acts of religion which are performed in private - alone or together with other persons, constitute "manifestations"? The answer should at the outset be affirmative, see para. 1 of art. 18, but such acts have to be seen together with art. 17 on the right to privacy thus, there must be stronger reasons for interfering in such manifestations.²⁴ However, pure individual acts in private, inter alia prayers, are hard to call "manifestations".

- The freedom to manifest the chosen religion: The limitation clause

The right to manifest the chosen religion is laid down in para. 1 of article 18, which mentions worship, observance, practice and teaching. Practice covers all the mentioned forms, and also any other thinkable form of manifestation of a religion or belief.²⁵ However, there has to be a certain degree of

²² The state must for instance have rules that protect religious buildings from being destroyed and meetings in those buildings from being interfered with by people outside the congregation (Hans Danelius, *Mänskliga rättigheter i europeisk praxis* (1997), p. 254). The state must also protect against pure indoctrination of belief (Harris, O'Boyle, Warbrick, *Law of the European Convention on Human Rights* (1995), p. 360-361). The European Commission of Human Rights has further held that the state must institute mechanisms that make it possible to leave a state church (4.12.84, DR 40 p. 284). This should mean that the state also must institute mechanisms which make it possible to leave a religion which is affiliated with the state in a similar way as a state church.

²³ The view is repeated in para. 8 of the comment. The view is further supported by case law after the ECHR (Kokkinakis case, para.

18) and judicial theory on CCPR and ECHR (see for instance Harris O' Boyle and Warbrick, *ibid.*, p. 360 and 365-366 and Lerner, *ibid.*, p. 513-514).

²⁴ Nowak, *ibid.*, p. 319, holds the view that the private freedom to practice actively a religion or belief may not be subject to any restrictions pursuant to art. 18 (3), as long as it does not touch upon the freedom and sphere of privacy of others.

²⁵ Worship covers different kinds of rituals, among them prayer and singing. Observance is a wider expression, covering all forms of rites and customs (clothing, processions inter alia). Teaching covers all forms of imparting the religion or belief, including proselytism activities. Art. 6 in the Declaration against religious discrimination mentions some examples of manifestations, see also General Comment para. 4.

connection between the practice and the actual religion or belief, so that the right will not be misused to gain advantage in questions where there is no real religious need or issue of conscience. Further, art. 18 para. 1 mentions only manifestations of "religion or belief". The term "belief" do primarily refer to non-religious and quasi-religious beliefs, such as Atheism and Agnosticism, as well as sincere convictions with a link to conscience, such as pacifism. The term should be compared with the wider phrase "opinion" in art. 19. Yet the phrase itself, "belief", do not open for a strict definition.²⁶ The person or society should in this regard be given the benefit of the doubt.²⁷

It is not sufficient that a person only is allowed to manifest her belief for herself or together with others, or only public or private. The alternatives "either individually or in community with others" and "in public or private" in para. 1 does not leave the choice to the state, but to the individual.²⁸

However, manifestations of religion may be subject to restrictions and limitations, according to para. 3 of art. 18. The limitation clause in art. 18 has intentionally been made narrower than similar limitation clauses in other articles (art. 12, 14, 19, 21 and 22). This should imply an intent from the authors that art. 18 (3) also as a whole should be interpreted in a narrow manner, or more directly that the freedom of religion was meant to be a strong freedom.

Some manifestations may fall under other articles as well, inter alia art. 19 regarding freedom of speech and art. 21 and 22 regarding freedom of assembly and association. Limitations must then fulfil all the articles. If the limitation is general in form and intent (inter alia legislation regarding noise making), it will normally be sufficient to check against art. 19 or 21/22. If the limitation in form or intent is directed against religious speech or religious assemblies/societies (inter alia proselytism laws), it is important to be sure that art. 18 is not interfered with.²⁹

In addition to the provisions in art. 18 on limitations on religious freedom, one has to bear in mind the non-discrimination clauses in article 2 and 26. The state cannot restrict one religion, without doing it to all, without grounds that are justifiable according to those articles. General Comment para. 9 states that the fact that a certain religion is a state religion, official religion, traditional religion or majority religion, shall not result in any discrimination against other beliefs, inter alia discrimination regarding government service, economic privileges and special restrictions on the minority religion. General Comment no. 18 (on art. 26) states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".³⁰

There are, like the other limitation clauses in the CCPR, three provisions that each kind of limitation must fulfil:

Firstly, the limitation must be prescribed by law. This is a part of the broader «rule of law»-principle. As stated in many judgements from the European Court of Human Rights, regarding the same formula in ECHR art. 9, the law must be sufficiently clear, so that it is not open for abuse or arbitrary decisions (see among others the Kokkinakis and the Hasan and Chaush cases).

Secondly, the limitation must be «necessary». The question of necessity is an assessment of the need of the limitation, compared to the sacrifices of the freedom of religion: There has to be a «fair balance» between the aim pursued and the limitation. This leads to a principle of «proportionality», see the General Comment para. 8.³¹ The question of necessity shall not be held up against the political or

²⁶ See General Comment para 2. Where such questions have arisen before the European Commission of Human Rights, the Commission has decided the case on other grounds - they did not for instance decide whether druidism, scientology or Divine Light Zentrum was a "religion or belief".

²⁷ Van Dijk, Van Hoof, Theory and Practice of the European Convention on Human Rights (1997), ch. 9.5.2.

²⁸ The European Commission on Human Rights, in the case of X v. UKC, DR 22, p. 27 (33-37).

²⁹ See the case Hasan and Chaush v. Bulgaria before the European Court of Human Rights (26/10/00).

³⁰ For an example of a breach, see the Thlimmenos v. Greece case before the European Court of Human Rights (6/4/00).

³¹ See also Nowak, *ibid.*, p. 325. This principle of proportionality is also recognized in the jurisprudence of the ECHR, together with the provision that the limitation has to be an answer to a "pressing social need".

religious principles of the state, but against the principles of the Covenant and the freedom of religion itself. In other words, limitations grounded on religion are open for the same scrutiny according to art. 18 as limitations grounded on «secular» norms.³² The General Comment puts it this way (para. 10): "If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

If formal restrictions in reality is used to hinder a certain belief or certain conversions, such application will normally be disproportionate, see the Manoussakis case (mentioned below), para. 48.

Thirdly, the limitation must serve one of the listed purposes. The list is exhaustive. It is therefore worth noting that para. 3 of art. 18 (as ECHR art. 9 para. 2) does not entail «national security», in difference from the similar clauses in other articles, see General Comment para. 8. Only the following purposes may legitimate limitations:

- Public safety: This phrase covers limitations aimed at protecting the security of persons and things, in situations which create a sufficiently clear danger. In the *Serif v. Greece* case before the European Court of Human Rights (14/12/99), the government used the argument of tensions between Muslims and Christians and between Greece and Turkey. The court stated that the role of the authorities is not to eliminate pluralism, but "to ensure that the competing groups tolerate each other" (para. 53). Further, as cited above, the clause does not mention «national security», which implies that the interest of the state alone may not serve as grounds for limitations.

- (Public) order: In the similar clauses in other articles of the Covenant, the broader French phrase «l'ordre public» is used. This means that the used expression only legitimates limitations that serve to avoid disturbances to the order in a narrow sense.³³ It is not necessary for obtaining public order to demand registration of all religious societies or all religious manifestations (see below).

- (Public) health and morals: Rituals which present a sufficiently clear danger to the physical or mental health of persons, or to morals, can be restricted. The official moral in different societies may vary. The state may bring measures to protect morals even though it is not a recognised moral throughout the world, but the General Comment para. 8 states that such limitations "must be based on principles not deriving exclusively from a single tradition" (see below on blasphemy laws, which deserve some special remarks).

- Fundamental rights and freedoms of others: In contrast to similar limitation clauses in other articles of the Covenant, article 18 (3) only mentions the «fundamental» rights and freedoms of others. This implies a strict interpretation of this part of the clause. Examples of such limitations are restrictions which are meant to fulfil the freedom of belief of others. Therefore, the state may forbid proselytism which has a coercive form. Proselytism raises some special questions of the right to change one's religion, and deserves a deeper analysis (see below).

Two special interpretation norms may be led out from the jurisprudence of the ECHR. Firstly, when one voluntarily gets involved in certain activities, with certain regulations, the outset is that one has to follow these rules. For instance, the European Commission on Human Rights has reached the conclusion that Britain could uphold motorcycle helmet laws against a Sikh, against his wishes to wear a turban (DR 14 p. 234). Further, Britain had not broken art. 9 when it did not allow a teacher to

³² See the case *Norris v. Ireland* before the European Court of Human Rights (26/10/88, A 142), and *Harris, O'Boyle and Waarbrick*, *ibid.*, p. 361.

³³ *Nowak, ibid.*, p. 327. The same phrase is used in the ECHR, where it has been suggested that the phrase is only referring to «order in places accessible to everyone» (*Van Dijk, van Hoof, ibid.*, ch. 9.6).

attend religious service in a mosque at Fridays (22 DR 27 p. 37-38). Secondly, the limitation clause leaves the state a wider right to limitations in certain special spheres of the society, where it is clear that one's freedom is narrower otherwise, such as in prisons and in the military.³⁴

- Special remarks about proselytism

The word proselytism is here used to describe different ways of spreading one's belief. The phrase covers informal speaking about one's faith, as well as missionary activities.

There is a clear connection between the right to change one's religion and proselytism. The European Court of Human Rights has stated that failing the right to try to convince one's neighbour, freedom to change one's religion would remain a dead letter.³⁵ CCPR art. 18 does not expressly mention this subject. However, it is clear that proselytism is a manifestation of a persons belief, and that any regulation of it must fulfil the obligations set forth in para. 3 of article 18 (see above).

On the other hand there is also a clear connection between the right to "have" a religion - to not change it, and proselytism. Some forms of proselytizing may constitute a breach of each persons right to maintain his religion or belief, and which the state may have a positive obligation to hinder. As mentioned above, art. 18 (2) forbids the use of both direct and indirect coercion. Also the right to privacy in art. 17 is relevant, together with art. 27 protecting minorities. The question is how to draw the line, because the protection of believers may be misused by majority religions supported by the state.

Arcot Krishnaswami, in his important Study of Discrimination in the Matter of Religious Rights and Practices (1959) before the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, states in Basic Rule 10 that "Everyone should be free to disseminate a religion or belief, in so far as his actions do not impair the right of any other individual to maintain his religion or belief". Rule 16 tells that in situations with conflicts between religions, the state should assure "the greatest measure of freedom to society as a whole". The main parts of these rules were produced as Draft Principles from the Sub-Commission.

The first case in this matter came before the European Court of Human Rights. Since the wording and understanding of CCPR art. 18 (3) and ECHR art. 9 (2) is the same, the case is of interest also for the understanding of CCPR art. 18.³⁶ The case is called the Kokkinakis case, named after the person belonging to the Jehova's Witnesses who brought the claim before the court, against Greece (decision of 25/5/93, A 260-A).

Mr. Minos Kokkinakis had, after becoming a Jehova's Witness, been arrested more than 60 times for proselytizing. In 1986, Mr. Kokkinakis and his wife called at the home of the Kyriakaki family, and engaged in a discussion with the wife, staying there for 10-15 minutes. The husband, who was a cantor at a local Orthodox church, called the police, and Mr. and Mrs. Kokkinakis were arrested. Mr. Kokkinakis was sentenced to three months imprisonment, convertible to a pecuniary penalty.

The European Court of Human Rights concluded that the measure was prescribed by law and was aimed at protecting the rights and freedoms of others. The question was then whether the measure was "necessary in a democratic society". The court states the following (para. 48):
"First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the

³⁴ See for instance Kalac v. Turkey (1/7/97, Reports 1997 IV) and Larissis and others v. Greece (24/2/98, Reports 1998 I).

³⁵ The Kokkinakis case para. 31.

³⁶ Lerner, *ibid.*, p. 554.

World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others. Scrutiny of section 4 of Law no. 1363/1938 shows that the relevant criteria adopted by the Greek legislature are reconcilable with the foregoing if and in so far as they are designed only to punish improper proselytism, which the Court does not have to define in the abstract in the present case."

The court found that the conviction of Mr. Kokkinakis had not shown that he had been using "improper means", and the conviction of him thus constituted a breach of art. 9.³⁷ The court did not define its distinction between bearing witness and improper proselytism, but these criteria will normally be sufficient, when they are seen on the background of the freedom of religion in art. 18 and the facts in the cases before the European Court of Human Rights. It is worth noting that the acts of Kokkinakis had been performed in the private sphere, where the limits for proselytizing should be more narrow than in the public sphere, according to art. 17.

In 1998, the European Court of Human Rights made another judgement in this field (Case of Larissis and others v. Greece, 24/2/98, Reports 1998 I), building further on the Kokkinakis case. The three applicants were officers in the Greek air force, and followers of a Pentecostal church. They had been convicted for proselytism. The court referred to the principles in the Kokkinakis case. It stated that in punishing proselytizing to subordinates in the air force, art. 9 had not been violated by Greece, because of the hierarchical structures and other particular characteristics of military life which give special grounds for limitations. However, with regards to proselytizing to civilians, the conviction constituted an interference with art. 9. The proselytizing had not been proved to be improper in any way, although one of the civilians was in a state of distress because of the breakdown of her marriage.

Regarding activities by foreign missionaries, it is significant that art. 18 para. 3 do not entail "national security", and thus fear of foreign domination, as a valid ground for limitations.

- Special remarks about blasphemy laws

Blasphemy laws give rise to another dilemma. On the one hand it may be a part of one's belief, whether religious or non-religious, to have opinions on other beliefs that adherents to these beliefs may experience as blasphemous. On the other hand, it may be a part of one's freedom of religion to be protected against certain kinds of blasphemy, and regulations may be seen as protecting the moral in the society, see para. 3 of article 18. For this reason, blasphemy laws are not in themselves in contradiction with CCPR art. 18.³⁸

However, there have to be drawn strong limits on such blasphemy laws, because they easily can be abused to hinder the right to change to a minority belief and manifest this belief. Such laws have to be sufficiently clear, so that it is possible to foresee the consequences of different utterances. They also have to fulfil the provision of necessity and proportionality in para. 3 of article 18, as well as the non-discrimination provisions in art. 2 and 26 of the Covenant (see the general principles cited above, specially the use of the necessity provision on limitations with religious grounds). From this it should

³⁷ Three judges made a dissenting opinion, meaning that there was no breach with the convention, and three judges made concurring opinions the other way, stating that the court should strengthen the right to proselytize more than what is cited above. In judicial theory, the concurring opinions have been supported, and the majority opinion criticised. However, compared with the different proselytism regulations in some countries, the court made an important decision regarding the right to proselytize.

³⁸ In the Otto Preminger Institute v. Austria case (19/12/94, A 295-A), the European Court of Human Rights ruled that it may

even be a part of the positive obligation of states to protect believers from improper insults. In the actual case, Austria had seized and forfeited a film supposedly blasphemous for Catholics. The decision has met strong criticism, in leaving too much room to the state for such limitations on expression. In another case, the European Commission on Human Rights found no breach regarding Britain's refusal to bring sanctions against the book *Satanic Verses* by Salman Rushdie (the case Choudhury v. Britain, no. 17439/90 - not published).

be clear that regarding manifestations which are a part of a specific belief, religious or not, the right of the adherents to manifest their belief must at the outset prevail over the right of other believers to be free from blasphemy. When drawing the line against manifestations that may be forbidden, there is to date no settling case like the Kokkinakis case regarding proselytism. There are, however, good reasons for using the same phrase in this respect: "Proper" manifestations of belief, assessed on the background of CCPR art. 18, may not be forbidden on the grounds of protecting the religious feelings of others.³⁹ It follows from this that blasphemy laws have to be applied in a strict and narrow manner.

c. Registration systems⁴⁰

- Registration of the belief of each person

The first question regarding registration systems, is whether the state is allowed to demand that their citizens disclose their religion. Such a demand may be grounded on "public order". Yet it is not a "manifestation" of religion not to reveal one's religion, see CCPR art. 18 (3). Further it is hard to see that such a demand is necessary. The question has been raised against the ECHR art. 9, with, in this respect, the same wording as CCPR art. 18, and it has been concluded that the freedom to have a religion according to ECHR art. 9 includes the right not to disclose it.⁴¹ The same conclusion should be reached regarding CCPR art. 18.

If the religion or belief is registered, only the correct religion or belief must be registered. It seems that the European Commission of Human Rights has deduced this from ECHR art. 9.⁴² Combined with the right to change one's religion, this implies a right to have the registration altered after a change of religion.

- Registration requirements for religious associations and societies

Such registration requirements must also fulfil art. 22 (freedom of association), but it is likely that registrations of religious societies are subject to a closer scrutiny according to art. 18.⁴³ Such rules will be a limitation in religious freedom grounded on «public order», see para. 3 of art. 18, but they must also be lawful and "necessary".

In some states, the registration of a society is mandatory before any religious manifestations can be made. Such laws will obviously not be able to fulfil the necessity and proportionality test according to art. 18 para. 3.⁴⁴ The experience of democratic states which do not have such restrictions shows clearly that such restrictions are not necessary for obtaining public order. In the case of *Serif v. Greece* before the European Court of Human Rights (mentioned above), the court ruled that Greece could not convict the non-recognised *Mufta* of a Muslim community for performing religious acts belonging to a *Mufta*, as long as the acts did not have any relation to governmental responsibilities, such as family law. And the more difficult it is to fulfil the requirements, regarding the number of founders, adherence to specific recognised beliefs, duration of the belief in the country, bureaucratic demands and delays, and so on, the more clear and sincere is the breach of art. 18.

In other states, the registration of a society gives the society certain privileges, but it is still lawful to manifest the religion without such approval. Even such rules may constitute a breach of art. 18:

- The requirements must be neutral and non-discriminatory regarding the different beliefs. There must not be any assessment of the truth or goodness of the belief.⁴⁵
- The privileges given to the registered societies, in contrast to non-registered societies, must be proportional to the aims persuaded by the authorities, and the registration requirements.

³⁹ Regarding expressions that are not a proper part of a religion or belief, art. 19 on freedom of expression will give a better protection than art. 18, and may to some extent hinder restrictions also on such expressions.

⁴⁰ It is a problem when discussing this subject that there are little jurisprudence and judicial theory on registration systems.

⁴¹ See Van Dijk, van Hoof, *ibid.*, ch. 9.1 and Harris, O'Boyle and Warbrick, *ibid.*, p. 361.

⁴² Appl. 16319/90, *H v. Greece* (not published), see van Dijk, van Hoof, *ibid.*, ch. 9.1.

⁴³ In the case of *Hasan and Chaush v. Bulgaria* before the European Court of Human Rights (26/10/00) it was not necessary to apply art. 11 after the Court had applied art. 9.

⁴⁴ See the OSCE ODIHR Background Paper 1999/4.

⁴⁵ See the case *Serif v. Greece* para. 47 and 78.

- The requirements must be lawful, and the law must not open for arbitrary decisions, inter alia include a wide discretion.⁴⁶
- The authorities must not misuse formalities to obstruct manifestations, for instance unreasonable delays, see the Mannoussakis case mentioned below.
- The process must not be open for substantive reviews of the "inner affairs" of the society. In the Hasan and Chaush case before the European Court of Human Rights (26/10/00), the court ruled that Bulgarian authorities could not intervene in this sphere by arbitrarily recognising one of the two conflicting Muftas.

There are good reasons for stating that religious societies a fortiori shall have the right to be a legal entity. See on this subject the OSCE ODIHR Background Paper 1999/4, and the cases Sidiropoulos v. Greece (10/7/98, Report 1998 IV), Catholic Church of Cania v. Greece (16/12/97) and Communist Party v. Turkey (30/1/98, Reports 1998 I) before the European Court of Human Rights.

If registration is required for each manifestation of religion, the principles mentioned here should be applied in the same manner.

- Registration requirements for religious venues and buildings

Many states demand authorisation of buildings, general building laws or special laws for religious buildings. Worshipping together with other members of the congregation is a manifestation of religion, and the regulation of religious buildings and other venues must comply with art. 18 (3). The aim is to secure "public order", but there has to be a line drawn against regulations that are not "necessary" or that are discriminatory in any way. The criteria laid down above, on registration requirements for societies, are also applicable on this subject.

The issue has been discussed in one case before the European Court of Human Rights, which is of interest also regarding CCPR art. 18. In the Mannoussakis v. Greece case (26/9/96, Reports 1996 IV), which vividly portrays the way administrations may handle minority beliefs, the applicants had used a room for worshipping without the compulsory authorisation from the government. The applicants were Jehova`s Witnesses. The congregation had, however, made a request for an authorisation, but the answer had been delayed for many years. The court stated that the authorities were obliged to control only the mere formal conditions regarding an approval, but that Greek law that required authorisation was often used to impose rigid or prohibitive conditions on non-orthodox societies, especially Jehova`s Witnesses. The members of the congregation could therefore not be punished for not waiting for the answer from the government, and the conviction of the applicants constituted a breach of article 9.

⁴⁶ See the Hasan and Chaush v. Bulgaria case para. 86, where Bulgaria was convicted on this point.

III. State reports

1. China

a. Introduction

Among the world's major civilisations the role of religion in Chinese political life is probably the least studied in a comprehensive and systematic way. Religion, however, has been a major concern for the rulers of China from the First Emperor - Chin Shr Huangdi - more than two thousand years ago (and even before), to the Communist Party of today.

In times of social and political upheaval religion often played an important part. History gives ample evidence that religion was not just an instigator, but the driving and unifying force behind the 'great undertaking' of toppling ruling dynasties. The White Lotus rebellion in the 14th century that brought a new dynasty - Ming - into power is a case to the point. The break-up of the imperial era during the Qing dynasty in the 19th century was marked by several rebellions that were inspired by religion, like the Taiping rebellion (mid-19th century) and the Boxer rebellion (at the turn of the 20th century).

For the Chinese rulers, the need to control and regulate religion and religious activities has had a high priority for hundreds of years. During the Qing dynasty (1644 - 1911) the supervision of religion became established policy. A special board, called the Board of Rites - Li Bu - under the central government was introduced to deal with all matters related to religion. In many ways this is not very much different from the Religious Affairs Bureau under the State Council in today's China.

During the Ming and Qing dynasties religions were divided into three main categories:

1. Orthodox and legal religions (which meant Confucianism)
 2. Unorthodox but legal religions (which meant Taoism, Buddhism and Islam)
 3. Heterodox and illegal religions (which meant all others, like Taiping Tiangwo, secret societies etc.).
- This classification has been adopted, with very few changes, by China's Communist rulers. The changes are related to content, otherwise it remains the same. Communism has replaced Confucianism as the orthodox teaching (religion) while Christianity and Catholicism have been added to category two and heterodox and illegal religions, like Falun Gong and Christian sects, are just as much suppressed in today's China as they would have been in the past.

Ideologically speaking, Communism is at odds with religion, and in classical Marxism religion is part of the exploitative system of the old class-society which has to be eradicated. Though this remains the ultimate goal, the approaches to reach this goal have varied during the fifty years of Communist rule. The harsh administrative measures that were applied in the fifties, the sixties and early seventies to curb all religion have been deemed a failure and a deviation from a 'correct' policy that at the time caused alienation of large segments of the Chinese society.

With the 'opening' to the outside world in 1979, all of this changed and a policy of toleration towards religion was introduced, though, under strict government control.

In a way, it was a return to the beginning of the People's Republic when Mao Zedong was exhorting Party members to draw a clear line between political outlook and worldview in their contact with the

masses. He said: "Communist party members can politically set up a united front with idealists and even with religious believers, but they definitely must not agree with their idealism nor their religious doctrine." (Treatise on New Democracy in the Collected writings of Mao Zedong, p. 700). It is this view that lies at the bottom of today's religious policy.

b. The place of religion in the law of the People's Republic

The four guiding principles for the People's Republic of China are:

1. the socialist road
2. the dictatorship of the proletariat
3. the leadership of the Communist party and
4. Marxism-Leninism - Mao Zedong thought.

Translated into today's reality, the 'socialist road' implies by definition state ownership. (Private ownership is tolerated on a limited scale in a transitional period towards the building of a socialist society). 'Dictatorship of the proletariat' is a device to legitimise an autocratic rule by a self appointed clique on behalf of the masses. 'Leadership of the Communist Party' means by implication that there is no room for sharing of power with any other group or political party. CCP is the sole arbitrator and the only legitimate instrument to exercise political power. 'Marxism - Leninism - Mao Zedong thought' means simply that other ideas like democracy will not be tolerated.

It should also be kept in mind that in the final analysis the role of religion in China's socialist society is subject to these four guiding principles.

The PRC Constitution - Article 36 Freedom of Religion

The four guiding principles have been included in the PRC Constitution of 1982. The Constitution is thus solidly imbedded in classical Communist ideology and provides the key to the understanding of the various articles, including article 36 which guarantees freedom of religion.

Article 36 states: "Citizens of PRC enjoy freedom of religious belief. No state organ, public organisation 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 health of citizens or interfere with the educational system of the State.

Religious bodies and religious affairs are not subject to any foreign domination".

China takes pride in the fact that Article 36 guarantees freedom of belief for both believers and non-believers and that they are not to be pressured in either way by State or individuals. On the other hand Party members do not enjoy this freedom. This reflects the fact that Communism is anti-religion and that Communism as an ideology is comprehensive and demands absolute loyalty of its members. For years, it seems, this has not been taken too seriously by a great number of Party members who have had a lax attitude towards ideological orthodoxy. It was also for a long time overlooked by the Party leadership itself. The case of Falun Gong in 2000 changed all this. It was feared that hundreds of thousands of party members, perhaps millions, were affiliated with the movement. This has led to repeated warnings that affiliation with a religion or expression of religious belief on the part of any member would automatically deprive them of party membership. Communism and religion are two worlds apart and they do not easily live side by side.

Further, freedom of religion does not apply to persons under 18 years of age. It is against the law to give religious instruction to children and teenagers. This means, in the case of the Christian church, that activities like Sunday schools and youth work are actually non-existent. In this way Christian parents are deprived of the freedom to raise their children in the Christian faith and the church to exercise 'normal' church activities,

The Article actually guarantees the protection of '*normal religious activities*'. 'Normal, however, is an ambiguous denominator and gives room for various arbitrary definitions by the law enforcing bodies. It allows for different practices by different people at different places. Since there is no uniform rule, there is also a lot of confusion, and it is the believers themselves who suffer under this abnormality.

Equally ambiguous is the use of the three 'no's' in relation to religious activities that '*disrupt public order, impair health and interfere in the educational system of the State*'. Gatherings in non-registered churches could be said to *disrupt public order* and prayers of healing for the sick would be contrary to a scientific approach and therefore open to an accusation of *impairing the health of citizens*, and likewise religious instruction of youngsters would easily be perceived as an *interference in the educational system*. The whole inclusion of the three 'no's' appear to tie religion in a straightjacket without much room for normal activities.

With regard to equal treatment of believers and non-believers, this is not sufficiently protected when it comes to the execution of the law. It is an almost universal experience that religious believers would be discriminated against in relation to job assignment and promotion. An academic career may even be in jeopardy if a person openly confesses his/hers religious belief. This can only be done in a strictly private setting.

The concluding sentence of Article 36 confronts what is called 'foreign domination' of religious bodies and religious affairs. This has a special bearing on China's fear that religion may be used to disrupt the unity of the country. Examples are the Dalai Lama's influence over the religious devotees in Tibet, the support of Islamic separatist movements in Xinjiang from Iran and the Central Asian Republics, the Vatican's tacit support of the underground Catholic church and the missionary activities by Protestant groups from Asia and the western world.

Document 19

The former ban on religious activities and the sudden relaxation that took place with the liberalisation of the economy in 1979 needed some explanation. A thorough discussion of the religious issue took the form of a thirty-page confidential circular, the so-called 'Document 19', issued by the CCP Central Committee, 31 March 1982, preceding the promulgation of the new Constitution just by a few days. There is no doubt a close connection between the two. The document is entitled The Basic Viewpoint and Policy on the Religious Question During Our Country's Socialist Period. Almost 20 years after its publication, it remains the most comprehensive and authoritative statement on religion in China. In recent years this document has been referred to repeatedly by the head of China's National Religious Affairs Bureau,

'Document 19' lays down the long term-control of religious affairs. Religion is subject to Party leadership. In order to implement the Party's religious policy a whole body of government departments and

organisations are to be involved. Most important among these are the United Front Work Department and the Religious Affairs Bureau. On a lower level, but of great importance are the people's organisations (dangpai chuanti). They include the religious associations of the five recognised religions like the Three-Self Patriotic Movement - TSPM. Even though they technically are separated from the Party's control, the five religious associations operate under close direction of CCP.

The document argues that in principal the problem of religion has already been overcome. It is a historic relic that will eventually be eliminated. This will happen "naturally after a long period of development of socialism and communism". This natural evolution excludes measures involving force. The document states clearly that this is "completely wrong and harmful" and "runs counter to the Marxist basic viewpoint on religious questions." In other words, the excesses that took place during the Cultural Revolution (1966-76) are not to be repeated.

The vision for the future is a utopia without religion. It may take several generations before the majority of the people have let go of their religious beliefs and habits and adopted a scientific world view, but at such a time all religions will have lost their power. The CCP is dedicated to work towards this end by involving all the various government bodies and organisations, mentioned above, in order that this magnificent goal may be fulfilled.

Summary

The place of religion in China must be understood within the framework of Communist ideology. Basically there is no room for religion within a Communist society, but since this has of yet not been fully realised in China, the Party has to deal with the reality as it is, and religion is part of that reality. This means that religion for the time being is tolerated for tactical and pragmatic reasons. The religion-free utopia is the long-term goal and all government controlled bodies shall actively work towards that end. In the last analysis even the five religious associations are to be seen as instruments of that policy. Presently the immediate goal, however, is the modernisation of China. This calls for the wholehearted participation of the broad masses, including the religious believers who are also to be mobilised for this end. As a result religion has been given some breathing space. The freedom of religion granted in the Constitution, however, is limited in scope and subject to the interpretation of the Party at any given time. Religion has no freedom of its own. Religion is tolerated only in so far and as long as it serves the State.

c. Management of Religion

United Front Work Department

UFWD has a history prior to 1949 dating back to the time of the War of Resistance against the Japanese. It ceased to function under the Cultural Revolution and was re-established in 1979. The UFWD was established to relate and unify groups and individuals outside CCP under the common goal of constructing a socialist society. Among these groups and individuals are the 'religious masses'. A second department within UFWD has been organised to oversee and deal with important issues related to religion in China.

Religious Affairs Bureau

RAB is a special agency under the State Council, which in turn is under the direction of UFWD. RAB is divided into two departments. One handles the daily affairs of the five religious associations while the second is charged with the responsibility of drafting religious policy documents. (Document 19 was most certainly drafted by this 'second' department).

Both UFWD and RAB are staffed by non-religious people. They may or may not have any knowledge about religion prior to their assignment. It is more or less an 'on the job' training. Sometimes they also send their own people to be trained 'professionally' at a seminary in order to serve in a church office later. Offices of both UFWD and RAB have also been established on provincial, municipal and county level throughout the country. Together UFWD and RAB form a complex and effective network of control of religious activities.

The religious associations

Five religions have been officially recognised in PRC: Taoism, Buddhism, Islam, Protestantism and Catholicism. Chinese folk religions are considered 'superstitious', and therefore illegal. Each one of the recognised religions has its own association. They are: Chinese Taoist Association, Chinese Buddhist Association, Chinese Islamic Association, Protestant Three-Self Patriotic Movement and Catholic Patriotic Association. As already stated, the five religious associations are basically political organisations charged with helping to implement the religious policy of the state. The associations are in the same way as UFWD and RAB organised on national, provincial, municipal, county, township and village level throughout the country. The associations are directly answerable to RAB.

The political nature of the associations can be further illustrated by quoting from the TSPM Constitution, Article 2:

"This Committee is the anti-imperialist, patriotic organisation of Chinese Christians and it has the following objectives: under the leadership of the Chinese Communist Party and the people's Government to unite all Christians in China to foster the love for the motherland, to respect the law of the land, to hold fast the principles of self-governing, self-support and self-propagation...to assist the government in implementing the policy of freedom of religious belief and contribute positively towards building a modernised and strong socialist China ... to promote the return of Taiwan to the motherland and the fulfilment of national unity,...."

The control function of UFWD and RAB

Both UFWD and RAB exercise great influence in the decision-making process at all levels within the religious associations. UFWD and RAB officials attend at all executive meetings, committee meetings and the general assemblies of TSPM/CCC. (CCC = China Christian Council) They have to be informed if any special meetings have been called, and if not personally present, a written report of the meeting has to be presented to the relevant party immediately afterwards. All decisions have to be cleared by the RAB officials before being made public or acted upon - nothing can be done without their approval.

In most of the TSPM/CCC set-up nation wide there are RAB people centrally placed, as general secretaries, head administration officers, or just as plain staff members. The same applies for the Catholic Patriotic Church and the Catholic Bishop's Conference. This is probably also the case with regard to the other religious organisations.

UFWD and RAB also have a decisive hand in the selection of people who are to run for office. When the Standing Committee at the Sixth National Christian Conference was elected in Beijing in December 1996, RAB officials were active in the process from the very beginning. At the initial stage RAB officials on the provincial level suggested names of candidates to the National RAB. On the basis of their recommendations the national RAB presented the final list to the TSPM/CCC. The delegates raised their hands dutifully in the presence of RAB officials when candidates were nominated. The election was a forgone conclusion.

The control, interference and intimidation of RAB extend to all aspects of church life. They approve who are to be ordained as pastors. Very often they will recommend people without proper training and qualification. They also require the list of names of those applying for baptism. As a consequence many who have expressed a desire to receive baptism decline to do so from fear that their names will be reported to their work unit. For the same reasons young people are intimidated not to attend youth gatherings. Schools and work units are being called upon to exercise pressures of various kinds to make sure they withdraw from attending church activities. The local pastor is often forced to collaborate out of fear that he/she would otherwise be accused of being unpatriotic.

RAB is concerned that controversial political issues are given a theological interpretation in defence of official policy. For instance, in particular among Catholics, the priest would argue in favour of the 'one child-policy' by referring to 'Jesus as the only Son of God'. This is not profound theology, but among simple people in the countryside, arguments like this may carry the day.

The number of religious believers has increased all over China to an extent that no one could anticipate 20 years ago. In some ways this is a political embarrassment to the Chinese government. Figures for religious believers are being consciously deflated in official statistics. In the fifties it was officially estimated that there were around 100 million religious believers in all of China. In the White Paper on Freedom of Religious Belief in China (1997) the same figure was quoted, in spite of the fact that the true figure most likely runs in hundreds of millions. This is known to RAB, but they tend to hide the true figures for political and ideological reasons.

The case of the Jinling Union Theological Seminary

Recently (December 1998) Jinling Union Theological Seminary in Nanjing (the only national seminary in China) underwent an appraisal initiated by UFWD. Government officials were heavily represented in the committee, one from the national UFWD, two from Jiangsu provincial UFWD, three from the Central RAB and two from Jiangsu provincial RAB. In addition there was one from TSPM/CCC besides members from the faculty. The committee was chaired by the director of the provincial UFWD. The composition of the committee as well as the appraisal itself had clear political overtones. Theology did not seem to be part of it, but in reality it was a very central issue. What constitutes the right kind of theology to be taught at the seminary? As a first step in this direction a reshuffle of faculty members took place the following months

After the appraisal a government representative was 'planted' at the seminary to supervise the political correctness of students and faculty members. The expulsion of three students in July 1999, who had voiced their opposition to a nationalistic meeting commemorating the 80th anniversary of the May 4th Movement, must be understood in this context. The refusal to renew the contract of a leading faculty member, Ji Tai, early in the summer of 2000 and his subsequent defrocking is part of the same picture.

As of early spring 1999 a more bold and radical theological thinking was introduced, aimed at replacing the 'politically backward' evangelical theology with a more 'politically progressive' one. The new drive has been called the 'construction of a Chinese theology'. It had been prepared for some time. Patriotism is at the core of this new theology that is now being spread to all the other seminaries throughout China. At the same time it is also creating a deep division among Christians, because basic biblical truths are being reinterpreted or outright rejected.

In an article in the only theological magazine in China, 'Nanjing Theological Review' (April 1999) it was stated that 'justification by faith' is 'politically reactionary and theologically incorrect' because it excludes the many upright people outside the Christian community and creates a dividing line between believers and non-believers. Another article argues that the main emphasis in the Bible is not faith in God, but a moral life. This has been followed up by Bishop Ding Guangxun's thesis of 'justification by love'. Love of neighbour is practised everywhere and is not a prerogative of the church. The practice of love does not need a belief in the Second Coming of Christ or belief in a judgement day. According to Bishop Ding this teaching is " a deception of the masses (and) contains no love of a socialist society."

For Bishop Ding it is a theological program "to weaken all those aspects within Christian faith that do not conform with the socialist society.". The time has come to "make use of the current political conditions (and)...."to promote those elements that do accelerate the transformation of the religious beliefs by causing it to be in step with socialism and contribute to a more advanced cultural and ethical standard."

This is also the program of RAB. Since the mid nineties the need for religion to serve the state and to adopt to a socialist society has been reiterated again and again in speeches, documents and articles. It means that religion should highlight moral teaching and weaken religious doctrines that are inconsistent with Communist thinking. What we now see takes place at Jinling seminary and seminaries elsewhere in China, is an attempt to adjust theology and basic Christian doctrines to the needs of the socialist state.

In the new political and theological environment of Jinling seminary, there was of course, no room for evangelicals like Ji Tai and Wang Wei Fan. They had to be removed or reassigned to unimportant posts. Students had to be made to understand that a simplistic faith in the Bible may be contrary to love of country, and that their theological thinking must adjust accordingly. Very few students dare to oppose this new direction and so they comply with the status quo.

At a time when China is faced with serious problems at home, unemployment and social discontent, the authorities are fearful of the church's potential political influence. Chinese leaders are wary of the role the church played in the downfall of Communism in Eastern Europe. They would not like to see a repeat of this scenario.

In order to secure a correct political view, students at religious institutions are subject to political indoctrination. At least 35% of the curriculum is reserved for subjects in politics and ideology. For instance, at Jinling Union Theological Seminary there is a two year compulsory course in the so-called 'Three Three Education', that is, 1) Government policy on freedom of religion, 2) introduction to current politics, and 3) contemporary Chinese history. As part of the entrance exams students have to pass a course in Communist politics, and even before being admitted for religious training, students have to go through a 'political check-up' ('zheng-shen') by a RAB official.

Heresies

The Chinese government tolerates and co-operates with the five recognised religions. Other religions and religious groups that cannot be classified within one of the five religions are in principle illegal and subject to punishment, but who is to decide which group is outside, and which group is inside?

The definition of what constitutes a sound doctrine is decided by the Religious Affairs Bureau's 'second department' in Beijing. Anything that is perceived as contrary to Communist ideology or official policy runs the risk of being classified as 'superstition' (mixing or 'evil cult (xie jyau) and as such they have no legal protection. It has become an efficient means in controlling and eliminating undesirable movements or groups within China's religious world. Very often the branding of a religious movement as a heresy - evil cult - is arbitrary, like in the case of Men Tu Hui. (See below.)

Summary

By controlling and regulating the religious activities of the five recognised religions in China the CCP has developed a comprehensive and sophisticated system of control mechanisms. The one body vested with most power and influence is apparently the Religious Affairs Bureau at various levels. The five religious associations as people's organisations are nothing more than obedient instruments in implementing the religious policy of the state as formulated by the Central RAB.

Religions have no right of their own, but are called to serve the state. This means that religion must adapt and conform to a Chinese reality. This emphasis on adapting and conformity seriously undermine freedom of religion as guaranteed in Article 36 of the Constitution.

The way RAB operates, allows for a high degree of interference in the actual management of the religious bodies both at the national and the local level. RAB officials are present at all important meetings conducted in the name of the religious associations and major decisions would normally require their approval before being implemented, and it is RAB that defines what is correct religious policy. They will also give direction to doctrinal issues according to the overall political objectives of the state. Presently patriotism is very much in the forefront, and as we have seen, this emphasis on patriotism has had far reaching implications for the theological outlook of the Christian church in China. It is also RAB that decides whether a religion is bona fide or not. A classification of a religious movement as an 'evil cult' means repression and imprisonment of all those who will not change their ways.

d. Regulations governing religious activities in China

Since early 1994 the Chinese government has issued three decrees regulating religious activities. The first two were issued by the State Council at the same day, 31 January 1994 and signed by the Prime Minister Li Peng and the last document was signed by Ye Xiaowen, the director of the State Administration of Religious Affairs (RAB) September 27, 2000.

The two decrees of 1994 are known as 'Decree 144' and 'Decree 145'.

Decree 144 is titled Regulations on the Supervision of Religious Activities of Foreigners in China. Decree 145 on the other hand is concerned with the management and registration of religious places in China and titled Regulations Regarding the Management of Places of Religious Activities. A supplementary set of regulations - Registration Procedures for Religious Activities - was promulgated in May the same year. As to the 'New Rules' of 2000, it is an expansion of rules already laid down in Decree 144 regarding religious activities of foreigners in China. This document is titled Rules for the Implementation of the Provisions on the Administration of Religious Affairs (RAB) of Aliens within the Territory of the People's Republic of China.

Decree 144 and 'New Rules'

Article 1 in Decree 144 states that the regulation is formulated in conformity with the Constitution in order to protect the freedom of religious belief of foreign nationals in China and to safeguard public

interest. It goes on to say that foreign nationals may participate in religious activities in religious venues in China, including monasteries, temples, mosques and churches (Article 3) but that they are prohibited from establishing religious organisations, liaison offices and venues for religious activities or run religious schools and institutions within China ... recruit believers...appoint clergy or undertake evangelistic activities. (Article 8).

In the 'New Rules' of 27 September 2000, the non-permissible activities have been exemplified in even greater details. It states inter alia in article 17 that aliens may not engage:

- in appointing religious personnel among Chinese citizens
- in developing religious followers among Chinese citizens,
- in preaching and expounding the scripture at the sites of religious activities without permission in preaching and expounding the scripture or conducting religious gathering activities at the places outside the lawfully registered sites for religious activities
- in producing or selling religious books or journals, religious audio- visual products, religious electronic goods or other religious materials

In light of the increasing number of foreigners visiting or staying temporarily in China and who are involved in Christian ministry in one way or another, the Chinese government has obviously felt the need to lay down some clear regulations for their activities. Since the first decree was promulgated in 1994 the problem of missionary activities by foreigners visiting or residing in China have exploded. Some are just staying for a few days or weeks, while others have long term assignments as teachers, professors, business people and so on. They all think of themselves as 'tentmaker missionaries' and are involved in various kinds of Christian ministry, preaching, witnessing, organising Bible study groups, training clergy and lay leaders, spreading of Christian literature and the like. All of this is viewed by the authorities as 'interference' in China's internal affairs and as such in breach of Chinese law. In some respects these activities may even be viewed as a hostile act, attempting to destabilise the country by creating division and disunity. This refers in particular to activities of Buddhists and Muslims in the autonomous regions of Tibet and Xinjiang. For nationalistic reasons the Chinese government may apply very strict measures to control activities considered interference or a threat to national security. (Conf. Tibet).

Registration of religious venues

In article 2 of Decree 145 it is stated that registration is required for the establishment of a venue for religious activities and that the registration procedure will be decided by the Religious Affairs Bureau of the State Council. A breach of the regulations is subject to strict punishment according to the law. During the past six years, since the promulgation of the decree, the Chinese authorities have increasingly been citing violations of Chinese law as a pretext for the dismantling of illegal religious structures, monasteries, temples, mosques and churches. They have in addition broken up of religious gatherings and confiscated Bibles, hymnals, videos etc. Individual members and leaders of an unregistered venue for religious activities are often dealt with according to PRC Public Security Administration Penal Code which allows the law enforcing agency to mete out punishment of up to three years in a labour reform camp without going through a court hearing.

In order to register a venue for religious activities six requirements have to be met:

1) a suitable building 2) regular meetings and attendance 3) proper organisation) professional leadership 5) governing rules 6) regular income

In addition a registration fee has to be paid when applying for registration.

For poor and often illiterate Christians in the countryside many of the requirements seem insurmountable, especially with regard to professional leadership and regular income (which also affects their ability to provide money for the registration fee). However, the way registration is being implemented varies from place to place. Some of the local authorities stick to a literal compliance of the law, others are more lenient, others again manipulate the system for personal gain by asking for exuberant registration fees etc. The local RAB office may also deny registration on the grounds that there may be a church some 20 or 30 km away.

As the registration is practised today, law-abiding citizens are often at the mercy of arbitrary decisions from ignorant and sometimes very corrupt officials.

There are also groups that oppose registration because they do not want to be subject to government control. Some refuse for theological reasons, like Little Flock and the Fangcheng Church. The Catholic Underground Church on the other hand oppose registration because they want to maintain direct communion with the Vatican. (See below)

Other churches with a big following, like 'Men Tu Hui' (Disciples' Church) and 'Chong Sheng Hui' (Born Again Group) have repeatedly expressed a desire to be registered, but have been denied the status of bona fide churches since they do not want to be part of TSPM. In the eyes of the authorities this in itself gives cause for suspicion. Further they are charismatic movements with a strong emphasis on the Second Coming of Christ which probably has earned them the label of being 'evil cults'. The leaders and many of the followers have been arrested during 2000 and reportedly sentenced according to an 'anti-cult ordinance'. In spite of this the churches are growing and spreading across the provinces of north-western China.

Summary

The regulations governing religious activities that have seen the light of day in China over the past six years, are no doubt an attempt by the government to contain and control religion. Religious fervour is rampant all over China and religions of all persuasions attract hundreds of millions of people. By their sheer number they constitute a threat to party leadership. The emphasis on 'rule of law' when dealing with religion gives an appearance that religion in China enjoys legal protection. It is true to some degree for the five religions which have been officially recognised and whose monasteries, temples, mosques and churches have been registered with one of their respective religious associations. It does not, however, apply for millions of other people whose groups for various reasons have been denied registration or who themselves have refrained from being registered. On the contrary, as we have seen, regulations very often are being used in an arbitrary manner to curb religious activities. As a matter of fact all unregistered groups have been faced with new waves of persecutions during last year to an extent which is unparalleled since the opening of China in 1979.

e. The Roman Catholic Church - a divided church

The Communist government has been at odds with the Vatican since the founding of the People's Republic. The issues at stake are one of politics and one of communion with the universal church. The result has been a division within the church between the state controlled China Catholic Patriotic Church and the Catholic underground church loyal to the Pope. Normalisation of the relationship between the two states has been blocked by the fact that the Vatican continues to maintain diplomatic ties with Taiwan and that China continues to consecrate bishops without papal approval. However,

with regard to the latter, most bishops in the open church have sought and received recognition from the Vatican. This is viewed by the Communist authorities as a gross interference in China's internal affairs. At a time when China is faced with serious problems at home, unemployment and social discontent, they are fearful of the church's potential political influence. Chinese leaders are wary of the role the church played in the downfall of Communism in Eastern Europe. They would not like to see a repeat of this scenario. In light of these worries the government staged consecration of five bishops in Beijing 6 January 2000 is easier to understand. The government wanted to assert its authority over the church. At the same time it was also clear that the leadership of the church once again had become a tool in the hands of the political bodies charged with executing religious policy in China.

It is cause for considerable concern to the authorities that it is the underground church that has been growing the most over the last twenty years. The figure is probably double that of the officially recognised church. The underground church, however, is completely non-existent in all official documents and papers which means that it is dealt with as an illegal social entity. Persecutions and arrests of clergy and lay people have been the order of the day for years, but during the last 18 months the authorities have intensified their effort in curbing the activities of the church by more arrests. Hundreds of bishops, priests and Catholic believers have been sent to prisons or labour reform camps. Illegal church structures have been torn down. CCPA offices (China Catholic Patriotic Association) have been established in areas where it was unknown before. Party cadres are travelling to the countryside where the impact of the underground church is especially strong to put pressure on bishops to register their church with the CCPA and to promise obedience, and if not, to face the consequences.

There are strong indications that among the five candidates elected for consecration in January some would rather have refrained, but that they were forced to go along as a gesture of patriotism, which is nothing less than an interference in the freedom of conscience of these people. This is also very much the case for the 130 seminarians of the Beijing National Seminary who refused to participate at the politically staged ordination. Their defiance has made them subject to tremendous pressure and 'political re-education'. They will have to admit to a wrong political view-point or be deemed unfit for further theological studies.

The canonisation of 120 martyrs 1 October 2000 has further strained the relationship between China and the Vatican, but more than that it has revealed the lack of independence of the Christian church from that of the State. Most of the martyrs (87) were Chinese citizens, many of them women and teenagers, including children who suffered violent death during the Boxer rebellion (1900). For the Chinese Communists the Boxer rebellion is a patriotic movement against western encroachment of China. The canonisation of the martyrs was therefore a sensitive issue. The Foreign Affairs Ministry expressed "righteous indignation and strong protest" against the canonisation of persons who had "participated in criminal activities". This strong condemnation was also echoed by the leaders of the Catholic and Protestant churches. Some even went further than the government. Luo Guanzhong, the chairman of Three-Self Patriotic Movement, called the canonisation a "distortion of historical truth" and a "farce neglecting the sovereignty of the Chinese church." However, it is difficult to see the justification of this outburst of anger. What about the other 20-30000 unknown martyrs who were massacred by the Boxers? Can all these deaths of innocent people be justified in the name of patriotism? And in view of this, is it possible that the same thing could happen again under the present political system?

f. Suppression of unregistered house churches

The house churches are predominantly a Protestant phenomenon. They constitute an important part of the Christian church in China. Those who have joined the house churches may number as many as 30-40 million, some would say even more. The majority of house churches have for a number of reasons not registered with the TSPM.

They are to be distinguished from 'jiaotang' or 'libaitang', that is the open and registered churches. As to the 'meeting points' many are registered, others await to be registered, while others again refuse to do so for various reasons. An unregistered 'house church' or 'meeting point' (jyuhuidian) is against the law, and therefore subject to closure by the authorities. When disbanded, the Christians, within a very short span of time, will reappear at some other location. As mentioned, many of the house churches are rather small, others in the countryside are quite large, numbering hundreds of people, even in the thousands. Many house churches function as independent churches while still others consider themselves as part of a network of churches stretching across the provinces. In this way 'house churches' constitute large social entities whose activities the authorities are keenly interested in controlling.

The reasons for not registering are many. For instance: the opposition to the so-called 'Three designates' policy, that is, designated location, designated personnel and designated sphere (prohibition to preach outside the assigned areas). Further that the State policy prohibits the preaching of the Gospel to and baptism of those under the age of 18, and that Christians are not allowed to pray for the sick. They also oppose what they see as a direct interference in the internal life of the church, the requirement to supply lists of names of members, to accept the monitoring by government people of all church functions and so on. "Faith," they say, " is incompatible with Party control."

In order to silence the opposition of the house churches, the authorities are using the law to fight religion. Non-registered house churches are accused of illegal religious activities, heterodox teaching and feudal, superstitious practices. All of this calls for closure of the place of assembly and confiscation of Christian literature, bibles, hymnals, equipment etc. Heavy fines are issued and leaders are imprisonment.

In the wake of the nation-wide campaign against Falun Gong the government has become increasingly concerned with religion. The 'religious fever' that has been sweeping over China is perceived as a threat to the authority and the value system of the Communist Party, and the government is therefore prepared to apply harsh methods to get control of the situation. This has become more and more apparent. The latest crackdown on Christians and other religious groups in Wenzhou district, Zhejiang province since mid November is a case to the point.

According to a report in Washington Post 18 December 2000 more than 1500 churches, temples and shrines have been destroyed in or around the city of Wenzhou. Some have even been levelled with explosives. Others have been converted for other usage, like the church in Douxi village, that has become an elementary school after the cross was removed and replaced with a red star over the entrance. The news of the campaign has been covered quite extensively in the local media. For instance in Wenzhou Daily (12 December) it was reported that since mid November 256 churches had been destroyed, 153 banned and 19 others had been confiscated for other purposes in Quhai district alone. In Yeqing City, the paper reported, 62 anti-religion teams had been formed and sent out to destroy churches in the surrounding districts. Along with the anti-religion teams supervision teams

were also formed and they obviously saw to it that the job was executed according to plan. The levelling of churches and confiscation of church property has caused pain and distress among the Christians and they are worried about the future. The crackdown in Wenzhou has already been described as the most destructive campaign against Christians since the opening of China in the late seventies and may signal the start of a nation wide campaign against non-registered churches.

g. Falun Gong

20 March 2000 a commentator in People's Daily gave his views on religion in China today. The article was entitled "Paying close attention to do the national and religious work of the party well". The article clearly reflects the position of the Communist party. One paragraph deals with Falun Gong. It says: "Falun Gong is corrupt religion, it is not religion. Religion is religion, corrupt religion is corrupt religion, these two are different things. As for the legal religious activities, it is necessary with legal protection, but for corrupt religion, which harms the country and wrongs the people, it is necessary to strike and use legal ban. The exposure of the problem of Falun Gong has given us a serious political lesson. We have taken a clear stand and launched a battle to oppose the corrupt religion of Falun Gong, and we have achieved a great victory. This battle will stretch over a long period, it will be complicated, intense, and it is necessary to continue to be on guard." The comments are more than ample proof on how serious the Chinese government view what they call the 'disrupting practices' of Falun Gong.

The appearance in April last year of ten thousand silent Falun Gong protesters outside Zhong Nan Hai in Beijing sent shock waves into the Chinese political echelons. A few months later it was outlawed and branded an 'evil cult'. Since then, according to estimates by the Falun Gong office in New York, several tens of thousands of followers have been arrested and thousands have been sent to labour reform camps without proper legal proceedings, others have received long prison terms, and while others have died mysteriously in police custody.

In 1999 Falun Gong boasted that they had around 70-80 million members in China. That may have dropped to 10 million or less by now. Still the campaign against members of Falun Gong goes on. Members are resilient and there are almost daily short-lived demonstration at Tian An Men. It is obvious that the movement is still alive, and has not succumbed to the harsh measures imposed on its members.

The Chinese leadership considers Falun Gong the greatest threat to the stability of the country since the student demonstration at Tian An Men more than 10 years ago. The fear is that the movement has recruited many members from inside the Communist party, in particular within the police force and military. More than anything it is a sign that Communism is losing its grip, not only among people in general, but even among party members.

h. The situation in Tibet

According to the latest census, China has a population of 1,3 billion of whom 110 million belong to 54 different national minorities. Most of them have their own language, culture and religion. Though all of them are considered Chinese, it is fair to say that China is a multi-ethnic, multi-cultural and

multi-religious society. All the way through China's history this diversity have been a threat to national unity. This is very much the case even today, in particular in the two autonomous regions of Xinjiang and Tibet. In both regions religion is considered the most divisive factor. The Chinese authorities are therefore paying special attention to religious activities among the people in these two regions. Tibet is a particular case.

There are about 4,6 million Tibetans living within Tibet Autonomous Region. In the white paper on 'Development of Tibetan Culture' released 22 June 2000 it is emphasised that "the Central People's Government and the government of the Tibet Autonomous region have all along paid special attention to respect for and protection of the freedom of religious belief and normal religious activities of the Tibetan people." As a proof of this the white paper refers to the large amount of money allocated for the reconstruction of some of the famous religious sites and monasteries since the early eighties. It is, however, a historical fact that China in the first 30 years of their rule of Tibet applied all sorts of means to suppress Tibetan religion by imprisonment of devotees, enforced secularisation of clergy and destruction of sacred sites.

The falsification of history is nothing new when China refers to Tibet. In the 'White Paper - Freedom of Religious Belief' (1997) the invasion of the People's Army is described as "the peaceful liberation of Tibet". It is, however, substantially documented that hundreds of thousands of Tibetans died in the following two decades as result of military resistance, hunger, executions and torture.

Since 1979 all of China, including Tibet, has experienced a change of policy. The enforced sinofication of national minorities has given way to a policy of 'unity within ethnic diversity'. The 'Law of the People's Republic of China on National Regional Autonomy' stipulates with regards to religion: "Organs of self-government in ethnic regional autonomous areas protect the right of freedom of religious belief of the citizens of all ethnic groups." This has, however, not prevented the Chinese authorities from interfering in matters of religious nature. In the previously mentioned white paper on religious belief in China it is openly stated that "in 1992 the Religious Affairs Bureau of the State Council approved the succession of the 17th Karmapa Living Buddha."

One of the most blatant cases of interference in an internal religious matter by the Chinese authorities is the politically motivated selection and enthronement in 1995 of the 11th Panchen Lama. This was in direct defiance of the candidate identified by Dalai Lama who, according to age-old traditions, has the prerogative to decide who is to be the next reincarnation. The boy who had been identified was abducted along with all of his family and their whereabouts are still unknown five years afterwards.

The central role of the political authorities in the affirmation of the so-called 'soul boys' in Tibetan Buddhism has not been denied, on the contrary it is justified by reference to historical practice which origin and general acceptance have been questioned by many. A quotation from the white paper on freedom of religious belief gives the official view that is quite revealing: "The 'soul boy' confirmed through lot-drawing from the golden urn as the reincarnation of a Grand Living Buddha must be reported to the central government for approval prior to his official enthronement," and it is further stated that "the practice of lot-drawing from the golden urn not only upholds the central government's supreme authority and the sovereignty of the State, but religiously displays the 'decision by Sakayamuni's Dharma' as well."

To most Tibetans the interference of the Chinese government in the country's religious affairs is

sacrilegious. The majority of people look to Dalai Lama for spiritual guidance, but for the Chinese, even the name of Dalai Lama is an anathema. They think of him not as a religious leader, but as a 'splittist', whose political aim is to create an independent Tibet in collusion with 'hostile foreign forces'.

For the central government in Beijing the centre of resistance to Chinese rule is to be found in the leading monasteries in Tibet. Public security police enters frequently monastic premises, harass the clergy and devotees. Hundreds of monks have been defrocked, arrested and tortured over the past few years for anti-Chinese activities, and as a result many monasteries have been closed down.

The surveillance of monasteries and the clergy is very tight and strict. In most of the monasteries government officials and security police are stationed day and night. Political education of the monks is very much the order of the day. Early in 2000 the highly respected Agya Rinpoche, who fled to the US in 1998, accused China of oppression of followers. Believers, he said, were forced to study socialism and renounce the Dalai Lama. "We do not have true freedom to practice our religion and uphold our traditions. Under these conditions I could not remain. I had to leave."

In January this year the 14-year old Buddhist leader, Karmapa Lama, who is ranked as the third highest ranking lama in Tibet, fled to India after a dangerous and strenuous crossing of the Himalayas. In his first public statement after his safe arrival to Dharamsala he spoke out against the lack of religious freedom, and warned that Tibetan culture was faced with extinction. Later it has been reported that the parents of Karmapa Lama have been arrested and placed under close surveillance in Chamdo in eastern Tibet. At the same time it was also reported that the monastery of Karmapa had been closed for visitors, and monks in positions of responsibility had been replaced while the others had been warned to improve their 'political attitudes'.

There are many signs that China is deeply concerned with the latest development. A commentator, centrally placed (with RAB?) commented in People's Daily on 20 March 2000 that "the present situation, internationally and nationally, necessarily requires us to strengthen the party work on nationalities and religion. We need to see, that the separatist movement of the clique around Dalai Lama still seriously threatens the security and unity of our country." And in a speech this summer Jiang Dzmin, the president of PRC classified Tibet as one of six danger spots seriously threatening China's political stability. In light of this Tibet may face even tougher measures in the future by the Chinese authorities to curb religious activities.

i. Muslims in China - the situation in Xinjiang province

China's westernmost province is inhabited by a variety of minority groups, mostly of Turkic origin and adhering to Islam. According to the official 1995 census there are:

Uygurs - 7.2 million. (Islam)

Han Chinese - 5.7 million, speak mandarin. (Taoism, Confucianism, Buddhism, Christianity etc)

Kazakhs - 1.1 million. (Islam)

Huis (Chinese Muslims) - 0.68million. (Islam)

Mongolians - 0.14million, speak Mongolian. (Buddhism)

The Kirgiz (140000), Xibes (33000), Tajiks (33500), Uzbeks (15000)

Manchu (18000), Daur (5500), Tartars (5000), Russians (8000).

The last decade has seen rapid economic development in the province, but the main benefactors have mainly been the Han settlers, thereby increasing the feelings of alienation among the Uighurs. Some of the main factors behind the discontent among the Uighurs are:

- assimilation, political oppression and economic exploitation by the Han majority.
- nuclear testing resulting in ecological disaster endangering human life.
- monopolisation by ethnic Han Chinese of not only official ranks of authority and influence, but positions in almost all walks of the life

General Legal Background

The law on regional autonomy for minority nationalities of the People's Republic of China which was adopted by the second session of the sixth National People's Congress on May 31st, 1984, states in its preamble:

The implementation of regional autonomy for minority nationalities has demonstrated the spirit that the state fully respects and protects the rights of minority nationalities to handle their internal affairs and that the state upholds the principle of equality, unity and common prosperity for various nationalities...

Regarding religious freedom, article 11 further states:

Autonomous organs in the areas of national autonomy should protect the freedom of religious belief of citizens of various nationalities.

State organs, social organisations and individuals are not allowed to compel citizens to believe or not to believe in religions. They are not allowed to discriminate against citizens who believe in, or do not believe in religion.

The state protects normal religious activities. No person is allowed to make use of religion to disrupt social order, harm the health of citizens, or obstruct the educational system of the state. Religious organisations and religious affairs should not be controlled by any foreign force.

Religious discrimination of Uighur Muslims

In spite of much effort the State has not been able to stamp out the influence of Islam. Increasing marginalisation of the Uighurs through the 1990s has led to a new awakening of Islam. Since the Uighurs have been denied legitimate means of expressing dissent and giving vent to their anger against the state, they have increasingly been turning to Islam, partly a more militant Islam, producing an escalation of violence and turmoil. The government is very concerned that Islam as practised in e.g. Afghanistan will win favour among the Uighurs, and this has so far resulted in an increasing use of violence from both parts, thus affecting what would otherwise be seen as a peaceful religious observance.

Ban on Government servants attending prayers in mosques.

In May 1996, two regional Communist Party bodies indicated the crackdown on religion was being extended to Party members and cadres. They called for efforts to sternly deal with party members and cadres, especially leading cadres, who continue to be devout religious believers.

In spite of the fact that the law offers religious freedom, many Uighur Party members complain that this crackdown makes it impossible for them practise their religion by e.g. attending the mosques.

Prohibition of religious books not published and printed by the state.

New provincial regulations on the publication of Islamic literature were outlined in the Xinjiang Daily in April 1996. The regulations reportedly state that all books dealing with Islam must be published by the Xinjiang Peoples Publication House, after approval from the authorities.

This is in reality a clear limitation as regards access to religious literature. The amount of religious Islamic literature produced by the State is very limited and is no doubt discouraged.

Closing of mosques and Koran schools and tight control of Muslim clergy.

The 1990s saw an increasing control with Islamic clergy and the places where Islam was preached and taught, i.e. mosques and Koran schools. As Koran schools were closed, religious teachers started teaching their students in private homes. Whenever such classes have been discovered, they have been closed down, and the mullahs as well as the students have been taken into police custody and sometimes detained for longer periods of time.

Summary

The implementation of regulations on religious activities in China results in severe restrictions on peaceful religious activities and in the persecution of members of religious groups.

As for the role of Islam, the government is concerned that it is used by Uighurs as an instrument for gradually undermining national unity and social stability under the cover of religious activity. There have therefore been several crackdowns on crime, nationalists and alleged terrorists in Xinjiang which have also been aimed at restricting religious freedom. It appears to have resulted in the arbitrary detention of people for the peaceful exercise of their right to freedom of religion.

j. Conclusion

Control and surveillance of religion is not a new thing in the history of China. It can be traced back for more than two thousand years. However, the control mechanisms developed during the Communist regime are of a more sophisticated nature than what was possible in the past. A striking feature in the China of today, is the role of the Religious Affairs Bureau. They seem to be omnipresent in all matters related to religion and are involved at all levels. RAB officials formulate the religious policy, they define what is considered a bona fide religion or not, they even theologise religious doctrines according to current and long term political objectives. RAB officials are also involved in day to day decisions that concern the management of religious activities of all the five recognised religions, on the national, provincial, municipal, county and village level. Hardly anything can be done without their prior approval.

Behind of all this are ideological considerations. Communist ideology may have lost its grip on the mind of the Chinese people, but it still constitutes the political superstructure of the state and decides the long-term objectives of the Party. In the interim period between the 'now' and 'then' when the classless society will be established, religions in so far and as long as they contribute to the modernisation of China are being tolerated, but it is anticipated that religions will in the process eliminate themselves.

As a consequence, in the eyes of the party, at this stage of history the main purpose of religion is to serve the state. In the context of China it means mobilising the religious masses for the construction of a new China and to love the country and the Chinese Communist Party. A religion or a religious

movement that is viewed as a threat to public security and national unity has no rights at all, or any claim to legal protection.

Followers of religions or movements branded as 'evil cults' by RAB are subject to harsh treatment. Some are brutally beaten or tortured. There are also reports of people dying while in police custody. Most of the people arrested are being dealt with administratively according to PRC's Penal Code that allows police officials to issue sentences of up to three year's duration in labour reform camps. In the present Chinese climate some religions enjoy a certain degree of freedom, but it is always on the condition that they are willing to be part of the system.

2. India

a. Introduction

India gained independence on 15 August 1947. It is also remembered as the start of the "Partition", with the country being split according to religious divisions: Areas with a non-Muslim majority formed India, and areas with a Muslim majority formed Pakistan (West and East (from 1971 Bangladesh)). India was declared a republic on 26 January 1950.

India's constitution was drafted by the Dalit leader B. R. Ambedkar, who became the country's first Minister of Justice. With its 395 clauses, the Constitution is considered one of the longest and most comprehensive constitutions in the world. The constitution rests on secular and democratic principles, which to a large extent have been upheld by the ruling forces in India. The ideals of Ambedkar, Mohandas (Mahatma) Gandhi, and the first Prime Minister, Jawaharlal Nehru, have often been held high. The state of emergency from 1975 to 1977 is a serious exception from this.

There are now more than a billion people in India, and the country is often considered the largest democracy in the world. There are certain shortcomings in the democratic functioning, linked to illiteracy, strong hierarchical traditions, and corruption. This does distort the voice of the individual in elections. However, the democratic structures are in place at all levels of society. The military has never played any prominent role in Indian politics. The courts are free and have the power to scrutinise new laws. Arguably the best functioning part of the democracy is the press. India has a thriving and free press, which readily expresses harsh criticism of the authorities, and has a strong tradition of exposing abuse of power. Press censorship was in place during the Emergency. The free press is important to this report. Factual information in the press is generally reliable, and there is also reason to believe that incidents of violence are reported. Controversies in India relating to human rights tend to be a question of interpretation of incidents rather than about factual information. For example right wing arguments relating to the recent violence against Christians have primarily been along two lines: (a) Christians do not experience violence because they are Christians (the moderate Hindutva forces) and (b) Christians deserve it (the hard liners).

b. General Background

The partition left India with an 80 per cent strong Hindu majority. Muslims make up 12.7 %, and Christians about 2.3 %. Sikhs make up 2 %, but are a majority in the state of Punjab (Punjab was split

between India and Pakistan in 1947). Though Buddhism originated in India, Buddhists make up only 0.7 per cent, and Jains 0.4 %. "Others", including Parsis, Jews and Baha'is, make up 0.4 %.⁴⁷

Though present day India originated in a split along religious lines, caste divisions are as important as religious divisions. This is also a major concern of the Constitution, which deals with the issue in some detail. The practice of "untouchability" (the system whereby members of the lowest castes are considered "unclean" and denied access to for example many places of worship and public wells, given separate glasses at tea stalls, and assigned particularly degrading jobs such as scavenging), is banned (article 17, cf. 15). To compensate for the disadvantages of the lowest castes (who today are referred to as "dalits" ("downtrodden")), a system of "reservation" was introduced. This system reserves a certain number of seats in the legislative bodies on federal and state level, as well as government jobs and places in schools and universities, for members of the "Scheduled Castes" (SC) and Scheduled Tribes (ST). There are not separate electorates. The "schedules" are long lists specifying the sub-castes (jatis) whose members qualify for reservation. In 1991 SCs made up 16 % of the population, and STs 8 %. The system has been the cause of strong debate and constant pressure.

The issues of caste and of religious freedom interact, and the latter cannot be fully understood without the former. A large proportion, probably far beyond 50 per cent, of the Christians are dalits or tribals. Both Christian and Muslim leaders argue that dalits leave Hinduism to find liberation from the oppressive caste system in other religions.

c. Religion in politics

India saw a rise in religious sentiments in politics in the 1990s, coinciding with the growing influence of the Rashtriya Swayamsewak Sangh (RSS). This umbrella organisation, formed in 1925, includes the Vishwa Hindu Parishad (VHP - the World Hindu Council) and the militant Bajrang Dal. The Bharatiya Janata Party (BJP - Indian People's Party) is the political wing of the RSS. The BJP came to power in India in March 1998, forming a coalition government together with a large number of smaller parties. Central BJP ministers such as Prime Minister A. B. Vajpayee and Home Minister L. K. Advani are RSS members. BJP now controls a number of state governments, particularly in central and northern India.

The ideology of the RSS is called "Hidutva", and may be labelled "Hindu nationalist" (rather than "Hindu fundamentalist"). It combines a revival of certain Hindu traditions with a strong emphasis on India as a Hindu "motherland". Their "pan-Hindu" philosophy emphasises the uniting elements within Hinduism, and officially plays down internal dividing lines such as caste. There is also a tendency towards a centralised Hinduism, including a call for a national Hindu organisation ("a church"). Traditionally Hinduism has been diverse and had no unified organisation.

The unity of all Hindus have been contrasted to other religions being "alien", especially Christianity and Islam, which are understood to have their loyalty outside of the country. This is the background for the call by one central RSS figure, K.S. Sudarsan, for a "national Indian church". The call was applauded by the Home Minister.⁴⁸

Since 1998 there have been more reports of violence against Christians than in the preceding 50 years.⁴⁹ December 1998 saw a wave of violent attacks on churches and church property in several areas, particularly the Dangs district of Gujarat. On 23rd January 1999 Australian Baptist Missionary Graham Staines and his two sons were burnt to death by a mob of activists in Orissa. Later in 1999 a large number of incidents occurred, including the burning of Christian villages, attacks on churches, rape and manslaughter. The violence continued in 2000.

This is the first period in which Christians have been primary targets of religious violence in India.

⁴⁷ Government statistics from 1998

⁴⁸ Newsroom report, October 2000

⁴⁹ Human Rights Watch Report 2000

The violence can be seen within a historical framework spanning the last two decades. In the early 1980s Hindu - Sikh relations were strained related to the demand for independence for Punjab. This climaxed in 1984 with the army's attack on the Sikh Golden Temple in Amritsar, and the assassination of Prime Minister Indira Gandhi by Sikh activists. The subsequent violence left hundreds of people dead on both sides.

In the early 1990s the issue of the Hindu deity Ram's birthplace was raised by the then incipient Hindutva forces. They alleged that a mosque in the town of Ayodhya, the Babri Masjid dating from the 16th century, was built on the site of a former Hindu temple on the birthplace of Ram. On 6 December 1992, a crowd of Hindu activists broke through the barriers and pulled down the mosque. The subsequent violence included massacres on both sides. A low estimate is that 900 people died.⁵⁰

Today Hindu - Muslim relations are more relaxed than in the mid-1990s. Conversions have come in as an additional controversial issue, and Christians have become the prime targets of Hindutva rhetoric. The present violence against Christians fits into a recognisable pattern: The large majority allegedly suffers injustice at the hands of a small minority, which is subsequently attacked.

d. General legal framework.

India's constitution provides the basis for the secular Indian democracy. India is a federal republic with considerable power reserved for the federal authorities in Delhi (the "Centre" in Indian political discourse).

Religious freedom is secured by article 25 of the Constitution, whose clause 1 reads:

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. There are certain laws at state level which may challenge religious freedom (see below), and even some problematic provisions in the Constitution (see below). At the time of writing a number amendments and new laws limiting religious freedom have been proposed but not come into force. However, for the time being the more serious violations of religious freedom seem to be the enforcement of the rights secured by the Constitution, rather than the laws themselves. The latest wave of violence coincides with the BJP's taking power at the Centre. There is a case for arguing that positions taken by RSS and BJP leaders have given legitimacy to attacks on Christians (see below), though violence has been condemned by the government. Police inaction in relation to incidents of violence may have met with some acceptance by the authorities, and there are examples of police taking actively part in violent attacks on both Christians and Muslims⁵¹.

To secure the rights of religious minorities, the authorities in 1992 established a "National Minorities Commission". This has representatives from most religious minority groups, who work full time on the commission, which is located at the Home Ministry. The commission may investigate alleged violence against religious minorities. In the past it has come with harsh criticism of the authorities, including police investigations.⁵² Recently it has come under criticism from Christian groups for being too loyal to the authorities.⁵³ There is also a National Human Rights Commission and a National Commission for Scheduled Castes and Scheduled Tribes.

According to the US State Department, there were no reports of religious detainees or prisoners as of September 1999.⁵⁴

e. The right to change religion

The term "apostasy" does not appear in Indian discourse on these issues, but the issue of "conversion" is at the core of the recent strained Hindu - Christian relations.

⁵⁰ Newsroom report, November 2000

⁵¹ For instance the killing of 18 Muslims in Coimbatore, Tamil Nadu on 30th November 1997

⁵² e.g. its report of 31st January 1999 on the violence in Gujarat

⁵³ Statement 2nd May 2000 by All India Christian Council (not to be confused with National Council of Churches in India, NCCI)

⁵⁴ US State Dept. Report on International Human Rights, 1999

Article 25 of the Constitution gives wider protection of religious freedom than do most constitutions in the world when it states the right to "profess, practise and propagate" one's religion. Violent attacks on Christian places of worship and on Christian individuals, are obvious violations of the right both to profess and practise religion. However these attacks have sought their justification in a debate related to the right to "propagate" religion. This right has included the right to convert, and the right to seek the conversion of others. Even this right is not questioned in principle.⁵⁵ It is the nature of conversions, and "forced conversions", which are debated. Thus also those who seek to limit the rights under article 25 present their case as an issue of "freedom of religion". The logic is that "forced conversions" are violations of religious freedom.

The debate on "forced conversions"

According to a leading Indian Muslim thinker, conversions may fall in four categories: (1) conversion through conviction, (2) conversion on account of one's social situation, (3) conversion through inducements, and (4) conversion through coercion and fraud, of which (1) and (4) are rare in India.⁵⁶ As mentioned above, the greater part of those converting to Christianity or Islam come from low caste (dalit) or tribal background. In the past there are examples of conversion from Hinduism to another religion used as a weapon against oppression: In 1956 B. R. Ambedkar, the dalit leader, declared he converted to Buddhism to escape from the clutches of Hinduism. Many of his followers (the numbers vary, certainly more than 100,000) followed his example, and a considerable proportion of present day Indian Buddhists (Neo-Buddhist) trace their personal religious history to this event. In more recent times, the conversion of about 1000 dalits to Islam in the village of Meenakshipuram in Tamil Nadu in 1981 gained a lot of attention in India. The conversion followed an incident where the dalits had been victims of heavy handed policing in favour of the high caste Thevars in the area. Political leaders and journalists visited the village after the conversions, which caused debates both in the Tamil Nadu state parliament, and in Delhi.⁵⁷

In the present debate, Hindutva groups allege that Christian missionary activity includes the practice of paying poor people to convert. More moderately it is alleged that the Christian institutions for education and health constitute implicit coercion in that poor people may (believe they) get better access to these services if they convert to Christianity. Schools and hospitals set up by missionaries and churches often rank high compared to public or other private institutions. Christians deny the allegations, claiming that their schools and hospitals are open to people of any religion.

Tribal people (Adivasis) represent a special case in the debate about conversion. Their levels of education and health are generally low, and Christian evangelisation has been particularly successful among them. Hindutva groups claim that this is because they are easy victims of evangelists' frauds.

In the wake of the revival of the conversion issue, Hindutva groups have initiated campaigns for "re-conversion". The term obscures the fact that this too is a campaign for conversion. There are attempts to "reconvert" Christians and Muslims who have had their religion for generations. "Re-conversion" campaigns among Adivasis pose a special problem, as Tribals in reality have often been followers of indigenous religion, unrelated to Hinduism. Thus "reconverting" them to Hinduism is as much "conversion" as anything else, and allegations that this is often forced, abound.⁵⁸

After the outbreak of violence against Christians in 1998/1999, Prime Minister Vajpayee called for a "national debate on conversions". This was widely criticised as giving in to the Hindutva violence and diverting attention from the issue of violent oppression of a minority, and may have been taken by right wing groups as justification for violence. In Maharashtra, the government initiated police investigation into alleged forced conversions in March 1999.⁵⁹

⁵⁵ e.g. VHP's international general secretary P.B. Togadiy in Times of India, 26th September 2000

⁵⁶ Asghar Ali Engineer in The Hindu, 20th January 1999

⁵⁷ The Hindu (31st January 1999), and Asghar Ali Engineer

⁵⁸ US state Dept. Report on International Religious Freedom 1999, and Human Rights Watch Report 2000

⁵⁹ The Hindu 16th March 1999

Dalits' loss of rights

The most important legal obstacle to conversion on the Federal level is the loss of reservation rights which dalits suffer if they convert to Christianity or Islam. Article 330 provides reservations for seats in the Lok Sabha (lower chamber in the Union Parliament), and article 332 provides for reservation in the state assemblies. Article 16(4) gives the state power to apply reservation in government jobs and in educational institutions. Article 341 (1) empowers the president to decide which groups belong to the Scheduled Castes and Scheduled Tribes. The president's list may then be amended by an act of parliament (Article 342 (2)). Article 3 of the Presidential Order of 1950 reads:

*Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hindu shall be deemed to be a member of a Scheduled Caste.*⁶⁰

This article was amended in 1956 to read "the Hindu or the Sikh", and again in 1990 to "the Hindu or the Sikh or the Buddhist". (Thus it is inaccurate when reports claim that Sikhs and Buddhists are subsumed under the Hindu religion in all constitutional matters. Jains, however, generally count as "Hindus".)

The logic is that the caste system does not apply to for example Muslims and Christians, and thus there is no need for measures to alleviate disadvantages because of caste. The argument is flawed, since Christians and Muslims to a large extent retain their caste identities, and since poverty and lack of education is as prevalent among Christian and Muslim dalits as among others. There is reason to believe that the number of Christian and Muslim dalits may be underreported due to the great disadvantage a Christian or Muslim identity may mean to individuals in certain situations.

State laws on conversion

Article 25 of the Constitution in a certain sense subjects the provisions to "public order, morality and health" (see quote above). These are areas in which state parliaments may legislate. Especially "public order" has been given a wide interpretation.⁶¹

Orissa is the state which has gone furthest in limiting the right to conversion. Its Freedom of Religion Act of 1967 prohibits "forcible conversion" (section 3). "Force" is understood to include "threats of divine displeasure". Rules framed under the act in 1989 requires a person who converts to give a declaration before a Magistrate about the intended conversion before it actually takes place (rule 4). Priests of any religion are also required to notify the Magistrate about conversion ceremonies in advance, giving the time and place as well as the names of the converts (rule 5).

In 1999 an amendment to the rules introduced a compulsory police inquiry into all conversions in advance (rule 5 (3)). If the police find there are serious objections to the conversion, they may decide against it.

Violation of the act and its rules is punishable with up to one year's imprisonment. If the conversion involves a minor, a woman or a ST or SC, the punishment may be doubled. The rationale for this is that these are groups in particular need of protection. However, the Christian community sees it as a tacit move to discourage conversion to Christianity. Reportedly notification of the new rule was sent to Christian churches only.

The state of Arunachal Pradesh introduced a similar act in 1978, which distinguishes between "conversion" on the one hand, and "re-conversion" to Hinduism on the other.⁶² In 1999 a similar bill was proposed in Gujarat, but at the time of writing it has been shelved.

⁶⁰ Quoted from James Massey, *Dalits in India. Religion as a Source of Bondage or Liberation with Special Reference to Christians*, New Delhi 1995, p.134. (Massey was a member of the National Minorities Commission)

⁶¹ Eg. the Supreme Court ruling in the Ramesh Thappa case in 1950

⁶² Kevin Boyle, Julian Sheen, *Freedom of Religion and Belief*, 1997

Foreign funding

A limitation to the possibility of propagating religion is also presented by regulations on foreign funding of religious activities, which is generally not allowed. The Foreign Contribution Regulation Act empowers the government to ban organisations that violate this. In September 2000 Home Minister Advani asked prominent NGOs to justify their status as non-political under the Act, which was perceived as a threat against their development activities.⁶³ In October 2000, a government minister said amendments under consideration would require all organisations receiving foreign money to obtain permission in advance from the Home Ministry. According to the same minister, Indian organisations will receive approximately USD 930 million from abroad in 2000.⁶⁴

Foreign missionaries

India accepts foreign missionaries, but since the mid-1960s, they have refused to grant visas to new missionaries, though those who have already been working in the country, have had their visas renewed.⁶⁵ Foreign missionaries to India now tend to enter the country on tourist visas. The praxis related to other visas however appears to vary, and there are examples that visas for missionaries have been granted.

Postal Concession

In May 1999 the Government of India decided to withdraw postal concession to a large number of Christian magazines on the pretext that they do not contain news. This concession is generally given to newspapers and magazines.

For the time being, conversion to Christianity is the big issue in the debates. In principle, however, regulations on conversions apply to all religions, with the exceptions outlined above. In practice, Islam and Christianity are the only proselytising religions in India. In 1998 there were reports of violence in the west of India related to Hindu - Muslim marriages and alleged forced conversions of Hindu women to Islam.⁶⁶

f. Registration

There is no system of registration requirements for religions in India. However, one's religion influences one's legal status, and in practice the system of differentiated personal laws may represent a form of registration.

After the first wave of violence against Christians in Gujarat in 1998/1999, the Director General of Police in Gujarat instructed district officials to collect information about Christians and their numbers and funding. Christians obtained a court order barring the census, and eventually the investigation was terminated.⁶⁷

Personal law

Personal law, regulating for instance marriage, divorce, adoption and inheritance, varies for followers of different religions. Muslim personal law for instance in theory accepts polygamy, whereas this is prohibited to followers of other religions. Muslim personal law also gives weak protection to women in the case of divorce. Christian personal law is in many areas archaic, and also gives women a weaker position. At present changes to Christian personal law are considered. There appears to be varying views on whether a unified personal law is desirable. Recently Christians have reacted against changes in the Christian personal law claiming that they have not been heard properly in the process.⁶⁸ Many Christians seem to want more radical changes to the law than those proposed at the moment.⁶⁹

⁶³ Human Rights Watch Report 2000

⁶⁴ Newsroom report, October 2000

⁶⁵ US State Dept. Report on International Religious Freedom 2000

⁶⁶ US State Dept. Report on International Religious Freedom 1999

⁶⁷ US State Dept. Report on International Religious Freedom 1999, and *The Hindu*, 12th February 1999

⁶⁸ All India Christian Council statement 2nd May 2000

⁶⁹ Newsroom report, November 2000

Religion is registered on the birth certificate and is the religion under which the parents married unless they specify otherwise. The registration on the birth certificate cannot be changed, but one is free to marry under the religious law of one's choice. If a marriage ends in divorce, divorce happens according to the law under which the marriage was committed, also if the involved parties belong to another religion at the time of divorce. In principle, what is often referred to as "Hindu personal law" is considered the general Indian law, and thus applies to all who do not fall under another religion's special law, such as non-believers, members of smaller sects etc. Sikhs, Buddhists and Jains are also subsumed under the "Hindu" personal law. To some this seems offensive, as members of these religions may resent being counted among Hindus.⁷⁰

The rights of reservation for SCs and STs are based on separate registers for these groups. A person who declares her/himself a Christian or Muslim cannot register, and loses the reservation rights. The register is however not checked against registration of religious affiliation, which is done only by the religious communities. It is technically possible to register as a Hindu on the SC/ST register even if one belongs to a church or a mosque. This practice is not unknown.

Since certain seats in parliament are reserved for SCs/STs, Christians and Muslims are barred from standing for parliament in the constituencies in question.

Places of worship

The Worship Places Protection Act of 1991 maintains the status quo of religious sites that existed at independence. This protects religious buildings in case of allegations that they may have replaced religious buildings belonging to another religion. The BJP opposed the introduction of the act.⁷¹ The widely reported attempt by the Delhi Union Capital government in 1998 not to give tax exemption to churches on account of their serving wine, was opposed by Prime Minister Vajpayee, and quickly withdrawn.⁷²

In 2000 new laws were requiring state endorsement for construction of religious buildings were introduced in Uttar Pradesh and West Bengal.⁷³

Other issues and other religions:

The primary focus in this report is on Christians. This is justified by the present situation, where undoubtedly Christians are the primary victims of violations of the freedom of religion. As has been pointed out, however, the recent violence against Christians is on a far smaller scale than the violence following strained Hindu - Muslim and Hindu - Sikh relations in the 1990s and 1980s respectively. What is new to the present situation is that the violence is justified by organisations and persons very close to the political leaders of the country.

There are grave human rights issues related to the situation of Muslims in the state of Jammu and Kashmir, where the violent conflict follows religious divides. Whether or not religion as such is the issue here is debatable, and the issue is not under any circumstances one of conversion or registration. Finally it is also important to point out that in many areas relations between religious communities are amicable. In the present situation of violence against Christians, Muslims have come out defending the Christians, and recently there was a report about a Hindu who died when he tried to protect a Christian priest who was attacked. The priest survived.⁷⁴

g. Conclusionⁱⁱⁱ

Religious freedom is protected by the Indian Constitution. The most important legal obstacles to conversion are (1) certain state laws barring "forced conversions", and (2) provisions in the Constitution which limit affirmative action for dalits to Hindus, Jains, Sikhs, and Buddhists.

⁷⁰ US State Dept. Report on International Religious Freedom, 2000

⁷¹ Newsroom report November 2000

⁷² US State Dept. Report on International Religious Freedom, 1999

⁷³ US State Dept. Report on International Religious Freedom 2000

⁷⁴ The Herald, 29-9-00

Though there is no system of registering religious affiliation, personal law, which vary according to religion, may in practice amount to a system of registration.

However, the legal system is at present not the major threat to religious freedom in India. This is rather represented by societal attitudes and a growing number of violent attacks on religious minorities, particularly Christians. Increased tension appears to give rise to new proposals to limit religious freedom by law, whereas politicians' willingness to consider such proposals may serve to legitimise antagonistic attitudes in the society at large.

3. Turkmenistan

a. Introduction

Turkmenistan was one of the constituent republics of the USSR until 1991 when - like the other fourteen Soviet republics - it gained its independence. During the Soviet period, there were tight controls on all religious activity, rendering almost any activity outside worship within the four walls of a registered place of worship a criminal offence. The Council for Religious Affairs (CRA) attached to the USSR Council of Ministers, which had a central apparatus in Moscow and branch offices in individual republics and regions, ensured compliance with legislation and granted registration to approved religious communities. Turkmenistan had a Council for Religious Affairs attached to the Turkmen Council of Ministers (based in Ashgabad). The CRA retained close links to the KGB, which played a leading role in defining Soviet policy on religion.

Towards the end of the Soviet era, discussion of a new law to replace restrictive legislation culminated in a USSR Law on Freedom of Conscience, adopted by the Supreme Soviet in Moscow in October 1990. This was mirrored in individual Soviet republics, most of them enacted their own legislation at about the same time - including Turkmenistan in 1991.

During the Soviet period there were very few registered places of worship functioning within Turkmenistan. For a population of some 3.5 million people in the 1980s, there were just 11 registered places of worship of all faiths (with a further 22 unregistered places of worship known to the authorities). Only four mosques had registration. Just 15 of the 350 or so clergy in Turkmenistan functioned with official permission. By the end of the Soviet period - when religious policy was loosening up elsewhere in the Soviet Union - Turkmenistan lagged behind in political, religious and other freedoms. There were still only 17 registered mosques by 1991. Because of the very short period when religious freedom existed (from the end of the 1980s to the mid-1990s), religious groups - especially minority communities - were unable to build up an extensive infrastructure. Few except the Muslim community were able to build or regain places of worship, establish religious education institutions or publishing houses. This made it easier for the authorities to crush their public activity when religious policy tightened in the mid-1990s.

According to the 1989 Soviet census, Turkmenistan's population was made up of 72% Turkmen, 10% Russians, 9% Uzbeks, 3% Kazakhs and 7% others (including Armenians and Jews). The vast majority of Turkmen, Uzbeks and Kazakhs were of Sunni Muslim origin, while the majority of Russians and other Slavs were of Orthodox origin. Since independence the number of Russians and Russian

speakers has declined considerably and now represents just 2% of the population. As well as Muslims and Orthodox, there are small communities of Baptists, Pentecostals, Adventists and other Protestant Christians, Armenian Apostolic Christians, Jews, Bahais, Jehovah's Witnesses and Hare Krishna devotees.

b. General legal background

Turkmenistan is an authoritarian state ruled by President Saparmurat Niyazov, the former head of the republic in the Soviet period. Parliament has declared him president for life and the personality cult around him has been promoted to an extraordinary level. Statues, portraits and references to him abound. His influence on policy in all areas means that laws are often ignored, especially in the area of human rights and religious liberty.

Turkmenistan adopted a new constitution in May 1992 to replace the Soviet-era constitution. This provides for freedom of religion and does not establish a state religion. Article 11 guarantees religious freedom, the non-interference of the state in religious matters and the freedom "to profess any religion or not profess any either individually or jointly with others, to profess and disseminate beliefs associated with his attitude to religion, and to participate in the practice of religious cults, rituals, and rites." However, it is ignored in practice.

As a member of the United Nations, Turkmenistan is bound by the provisions of the Universal Declaration of Human Rights. As a member of the Organisation for Security and Co-operation in Europe, it is bound by "human dimension" documents, many of which spell out commitments to the free exercising of religious faith.

Turkmenistan has acceded to a number of international human rights conventions, including the International Covenant on Civil and Political Rights (to which Turkmenistan acceded in May 1997). The ICCPR spells out a number of commitments in the area of religious liberty, including the freedom to have or adopt a religious faith and alone or with others in public or private to worship and to observe, practice or teach that faith. Turkmenistan ignores most of these commitments. In 1997 the International Covenant on Economic, Social and Cultural Rights came into force in Turkmenistan, guaranteeing, among other things, that parents can bring up their children according to their religious convictions. However, Turkmenistan has failed to file periodic reports, as required, on how these covenants have been put into practice.

The key law on religion - the Law on freedom of conscience and religious organisations - was adopted in May 1991, and was initially a fairly liberal document. However, it has been repeatedly amended (on 12 April 1993, 31 August 1995 and 6 December 1996), gradually narrowing the freedom to practice one's religion.

In April 1994 a Gengeshi (Council) for Religious Affairs was re-established in Ashgabad, reporting to the President. Two of its deputy chairmen were the chief mufti and the senior priest of the Russian Orthodox Church in Turkmenistan. In mid-2000 it had eight staff in Ashgabad and three more in various provincial towns. ¹In addition to the Gengeshi for Religious Affairs, the National Security Committee (KNB, a successor to the KGB) is heavily involved in devising and implementing religious policy, as well as undertaking the more punitive aspects of that policy.

¹ [Keston News Service 13 July 2000.]

Registration requirements

The 1996 version of the religion law requires a community to have 500 adult members before it can apply for registration (by far the highest threshold in all the former Soviet republics). This made it all but impossible in theory and practice for all but the biggest religious communities to gain registration. The law required compulsory re-registration of all religious organisations by 1 March 1997, resulting in the loss of registration of an estimated half the country's mosques and all the minority religious communities (except those of the Russian Orthodox Church).

In March 1997 Christian organisations (except those of the Russian Orthodox Church) were informed in writing that their previous registration had been revoked. Two months later, the authorities informed two Protestant churches in Ashgabad, the Russian Baptist church and the Greater Grace church, that they were being closed down on the basis of the new religion law and that any attempt to meet in the buildings would result in their seizure and forced sale.

c. Civil and Penal Restrictions

Criminal Code

Turkmenistan inherited from the Communist era the Soviet Criminal Code (adopted in Turkmenistan in December 1961). Three discriminatory articles (153, 262 and 263) condemning unlawful religious practice were used during the Soviet era to harass religious dissidents. A new Criminal Code, adopted in June 1997 and which came into force on 1 January 1998, removed these articles. There are two new articles dealing with religion, Article 154 (obstructing the fulfilment of the right to freedom of conscience and religious confession), and Article 177 (inciting social, ethnic or religious hatred). Although Article 154 is designed to protect believers' rights, there are no indications that it has ever been used to prosecute state officials who have harassed religious believers exercising their right to conduct peaceful religious activity.

Administrative Code

Article 205 of the Administrative Code (which punishes lesser offences than those covered by the criminal code) lays down fines for 'violating legislation on religion'. It refers specifically to refusing to register a religious group, violating 'procedures established by law' for the conducting of religious meetings, holding special religious meetings aimed at young people, workers and others, and organising meetings which are not confined to services. This article - adopted in 1986 - is still being applied and has remained unchanged since the Soviet period, except that the fine has been changed from 50 Soviet rubles to 200,000 manats (one month's average wages). This allows local administrations (which handle the cases of people accused of such offences) of punishing, for example, those who use their private homes for religious meetings.

d. Religious freedom in practice

Lack of effective freedom to change religion

By only allowing two faiths - Sunni Islam and Russian Orthodoxy - to function in the country, the government is effectively denying the opportunity to learn about or practice any faith other than these two within the narrow parameters laid down officially. Residents are not prevented from changing their faith, but the ban on any public expression of a faith other than these two state-sanctioned faiths provides a barrier to changing faith.

Government interference in internal religious affairs

Despite the constitutional separation of the state and religious groups, officials systematically intervene in the internal affairs of the two legal, registered religious communities, the Sunni Muslim Board and the Russian Orthodox Church, by selecting, appointing and removing all clergy. In July 2000, Mered Chariyarov, an official of the Gengeshi for Religious Affairs, stated² that much of his time was spent on 'personnel questions' of the two faiths. Chariyarov confirmed that this meant that the CRA decided which Muslim and Russian Orthodox clergy to promote or to sack.

In 1994 President Niyazov, addressing the Conference of religious leaders, clearly and unequivocally warned "his clergymen" of any actions unauthorised by the state. In particular, he stressed "forced performing of religious rites".

In March 2000 President Niyazov expressed his dissatisfaction with the activities of the muftis and announced that the chief imam of the south eastern town of Mary had been removed after accusations of committing economic crimes. This was the first instance of the removal of a highly-placed Islamic religious figure since 1992.

President Niyazov has frequently instructed local governors on whether or not they should build mosques. For example, on 6 October 2000 he told regional governors that it was "compulsory" to have a main mosque in the centre of each region. He made regional governors responsible for the building of mosques.³ It is required that the oath of loyalty to the country and president be recited in mosques at the end of the namaz (daily prayers), although this is reportedly widely ignored.

President Niyazov has also interfered in the religious teaching of the Muslim community. On 10 January 2000, while speaking at a conference on the Turkmen language, he demanded that Muslims renounced the use of the hadiths, sayings attributed to the Prophet Muhammad which do not appear in the Koran. Niyazov claimed that 'there are many contradictions in them'.⁴

Islam is also accepted as the de facto state religion. The chief mufti and the leader of the Russian Orthodox Church in Turkmenistan are two of the deputy chairmen of the Gengeshi for Religious Affairs, thus ensuring that they participate in decisions taken about rival religious groups.

Members of minority faiths have been pressured by state officials to convert to Islam.

Jehovah's Witness Yazmammed Annamammedov was summoned to the KNB branch in his home town of Kyzyl-arbat on 23 July 1999, where local KNB chief Atadjan Myatiyev threatened him and demanded that he renounce his faith and profess Islam.⁵

Artygul Atakova, wife of imprisoned Baptist Shagildy Atakov, was pressured by officials in early 2000 to convert to Islam. Atakova was interrogated in Kaakha by a KNB officer who was specially sent from Ashgabad. 'They held Artygul there for more than three hours,' local Baptists wrote in a 12 February 2000 statement, 'and threatened to send her to prison if she did not renounce her Christian faith. They tried to force her with threats to sign a statement that she was renouncing her Christian faith and that she would confess Islam.' Atakova refused.⁶

When prisoners are due to be freed under amnesty (of which there are usually several every year), they must agree to go to the local mosque and swear the oath of loyalty to the country and president on a copy of the Koran. Two Jehovah's Witnesses due for release in the end of Ramadan amnesty in January 2000 were denied their freedom when they refused.⁷

¹ [Keston News Service 13 July 2000.]

² Keston News Service 13 July 2000

³ Turkmen Radio first programme, 6 October 2000

⁴ Neitralny Turkmenistan 1 March 2000.

⁵ Annamammedov's statement to General prosecutor, 22 October 1999.

⁶ Keston News Service, 14 February 2000.

⁷ Diplomatic sources, January 2000; information from Jehovah's Witnesses.

The oath of loyalty, printed at the top of daily newspapers, reads: 'Turkmenistan, beloved homeland, my native land, both in my thoughts and in my heart I am eternally with you. For the slightest evil caused to you, let my hand be cut off. For the slightest calumny against you may my tongue lose its strength. In the moment of treachery to the fatherland, to the president, to your holy banner, let my breathing cease.'⁸

Religious believers from other groups as well as the Jehovah's Witnesses - including the Baptists - have been punished for refusing to recite this oath on religious grounds in prison and in schools. Baptist prisoner Shagildy Atakov was sentenced to 15 days in the internal prison of labour camp LV-K/12 in Seydy in November 1999 for refusing to swear the oath.⁹

Since the mid-1990s, almost all the Islamic educational establishments have been closed, the last known closure being that of the major madrassah in the eastern town of Chardjou (now Turkmenabad) in June 1999. Restrictions on religious education at mosques have been introduced, affecting thousands of believers. Speaking on 5 April 2000 in his home village of Kipchak near Ashgabad, President Niyazov declared that 'all madrassahs and religious schools which were opened everywhere must be closed' and that it was enough for the country to have one madrassah functioning under the control of the Muftiyat.¹⁰

Refusal to register religious communities

The harsh 1996 amendments to the religion law made it all but impossible to register religious communities, as few can muster the 500 adult citizen members required. The government insists they must be people who live in one urban or rural district and cannot simultaneously be members of another religious community. In 1997 about half the open mosques in the country were not re-registered. All the non-Muslim and non-Russian Orthodox communities were de-registered, thus making all their activities de facto illegal.

The power of officials in the Gengeshi for Religious Affairs and the Justice Ministry to deny registration to groups they do not like is total. Officials can and do pressure some of the 500 signatories of a registration application, and arbitrarily disbar any of the 500 they choose, until there are not enough signatories left for the application to be processed. When the Adventists submitted their re-registration application for the Ashgabad congregation in 1997, officials removed names from the list in just such an arbitrary manner.

Government officials are not solely guided by the provisions of the religion law itself, harsh though they are. Many of their demands go beyond what is stated in the law. Although the religion law does not specifically say so, the state interprets the requirement for a religious organisation to have 500 adult members as 500 adult citizen members who live in one city district or one rural district. In 1997 the Hare Krishna community in Mary collected the required 500 signatures to register a community, but the application was rejected as some of the signatories lived not in the town of Mary but in Mary region. There have reportedly been similar rejections for other religious communities. When the Bible Society, a Christian group, applied for registration it was told that none of the 500 members could simultaneously be members of any other religious community. The application was therefore rejected.

Lack of legal redress

Believers whose rights have been infringed in theory have the right to challenge official rulings, but Turkmenistan is not a state where the rule of law prevails. In practice the subordination of the justice

⁸ Translated from text published at the top left of front page of Russian-language paper Neitralny Turkmenistan.

⁹ Keston News Service 28 January 2000

¹⁰ Keston News Service 3 August 2000.

system to the political leadership means that such recourse to the courts is fruitless. Judges - especially in sensitive cases - work closely with the political leadership and fail to provide independent rulings based solely on the facts of a case and the law.

De facto criminalisation of unregistered religious activity

Although not stated in the religion law, the government treats all unregistered religious activity as illegal. Keston has repeatedly questioned officials of the Gengeshi for Religious Affairs, the Chief Mufti and the dean of the Russian Orthodox Church about this and all assert - without being able to cite conclusive proof - that this is the case. This means that all public activity by all religious communities of all faiths - apart from those of the Sunni Muslim Board and the Russian Orthodox Church's twelve parishes - is treated as illegal, laying individual believers open to administrative or criminal penalties. Such penalties are frequently applied against leaders of Protestant Christian, Jehovah's Witness, Hare Krishna and other communities.

Destruction and confiscation of places of worship

Four places of worship are known to have been demolished by the authorities in 1999 and 2000 (two mosques, a Hare Krishna temple and an Adventist church), while a fifth - a second Hare Krishna temple - was taken down by believers in the wake of an order to demolish it. No compensation has been offered.

The Hare Krishna temple in the village of Budenovskiy just outside the town of Mary was destroyed in August 1999. The local authorities summoned two devotees Kurban Utomyshev and Kuat Utomyshev to the village administration on 12 August. Already present were Murad Karryyev, the deputy chairman of the government's Gengeshi for Religious Affairs, and Imam Nasrullah ibn Ibadullah, another deputy chairman and the leader of the officially-sanctioned Muslims, as well as other Muslim clerics, village elders and local police officers. As soon as the two devotees arrived, those present began to complain about their activity and insult them. Then Karryyev declared that the land on which the temple had been built, which is owned by Kurban Utomyshev, was to be confiscated, as was the adjoining land next to the temple, which is owned by Kuat Utomyshev, and issued an instruction to demolish the temple. The temple - 30 metres by 12 metres in size - was completely destroyed using tractors, despite the devotees' plea to be allowed to dismantle the temple themselves in order to preserve the building material. On 12 August 1999 the KNB and the local authorities forced the Hare Krishna devotees to pull down their temple in Ashgabad, which had been under construction for two years on private land belonging to a devotee and which was almost finished.¹¹

The Adventist church in Ashgabad was demolished by the authorities against the wishes of church members in November 1999. Construction began in 1992 with permission from President Niyazov and was completed in 1996, not long before the congregation lost official registration. [See documentation section.] The city authorities claimed the land was needed to build a new road, but a year after the demolition there was no sign that any new road was under construction.¹²

At the beginning of March 2000, a mosque on the edge of Ashgabad - together with the neighbouring house belonging to Mullah Hoja Ahmed Orazgylych - were demolished by bulldozers and the plot of land was transferred to the Ministry of Energy and Industry. After his deportation to the southern Tedjen district and in the absence of other accommodation, Orazgylych's family moved into the mosque at the cemetery in Govki-Zeren, 20 kilometres from Tedjen, which the head of the family built in the glasnost era under Gorbachev. However, in April 2000 this mosque too was demolished on KNB

¹¹ Keston News Service 8 and 22 September 1999.

¹² Religious freedom on the decline in Turkmenistan, Denise Albrighton, AFP, 29 November 2000.

orders. The authorities explained the demolition of both mosques by the fact that they were not registered as required by law.¹³

The court of the Kopetdag district of Ashgabad ruled on 4 January 2001 that the city's Pentecostal church was to be confiscated without compensation. At the hearing Pastor Makrousov defended his right to use the house that he owns for worship services, but this was ruled illegal by the court. The suit brought by the khyakimlik (local authorities) of Kopetdag district on 24 November 2000, and signed by the acting khyakim Aleksei Razmakhov, claimed that Makrousov had failed to seek or receive permission to use the building for religious services, failed to gain permission for internal remodelling and had failed to obey instructions to halt services in the house. Razmakhov believed the reconstruction violated fire and sanitary regulations and that the building was in a "hazardous condition". He called for the building to be pulled down without granting Makrousov any compensation, but the January 2001 court ruling made no mention of demolition.¹⁴

Arrests, Fines, Beatings

Believers of many faiths have been detained, fined and/or beaten for conducting or attending "illegal" religious meetings. Fines - often of two weeks' or one month's average wages - are handed down by the local administration, usually under Article 205 of the Administrative Code (see above).

Shagildy Atakov is serving a sentence in a labour camp in Seydy near Turkmenistan's north eastern border with Uzbekistan for his involvement in an unregistered Baptist congregation in the Caspian port of Turkmenbashi. He was sentenced in August 1999 to four years' imprisonment for 'swindling' by a court in the capital Ashgabad and was fined an astronomical sum of \$12,000. The charges - which members of his church say were fraudulent - related to his activities as a car trader before he became a Christian and joined the Baptist church. The Turkmenbashi congregation that Atakov joined belongs to the Council of Churches of Evangelical Christians/Baptists, which rejected state control during the Soviet period and continues to maintain this stance.

Jehovah's Witness Yazmammed Annamammedov was convicted on 13 December 1999 by Kyzyl-arbat city court of illegal possession of gun cartridges, gunpowder and explosives and sentenced to four years' imprisonment. He and his family and a neighbour who was present insist they were planted by the KNB. Before his imprisonment he had been arrested, beaten, threatened and subjected to attempted rape several times. Religious items were confiscated during house searches conducted without a warrant. KNB officers tried to pressure him to convert to Islam, but he refused. He is serving his term in a labour camp in Bezmein.¹⁵

Rahim Tashov, pastor of an independent Baptist church in Turkmenabad (formerly Chardjou) which has been suppressed by the Turkmen authorities, was detained on 24 October 1999 after National Security Committee (KNB) officers raided his church during the Sunday service. He was freed the following evening after being severely beaten. He was again arrested on 31 October by Khojaev (first name unknown), the local chief of the KNB in Turkmenabad, and was held in the investigation prison. He was freed on 12 November 1999 after being given an administrative fine of 200,000 manats, one month's minimum wage, under the law on unsanctioned meetings. His passport was kept by the authorities.¹⁶

A religious meeting in the Dashkhovuz home of the Baptist Vitali Tereshin was raided on 13 February 2000. KNB officers burst into his home and declared the meeting 'unlawful', recording the names of

¹³ Keston News Service 3 August 2000.

¹⁴ Keston News Service 4 January 2001.

¹⁵ Executive Summary on Human Rights Violations, Jehovah's Witnesses in Turkmenistan, March 2000.

¹⁶ Keston News Service 21 January 2000.

all those present. They issued a fine under Article 205 of the Administrative Code for 'violation of the legislation on religious organisations'.¹⁷

A recent convert to the Baptist faith in the Caspian port of Khazar (formerly Cheleken) was threatened and beaten by the former KNB after refusing to answer questions about whether he had been baptised and by whom. Baptists in the town reported that Viktor Portnov's life was threatened by a KNB officer who refused to give his name.¹⁸

Deportation of foreign religious activists

Deportation of foreign religious activists became common in the wake of the 1996 tightening of the religion law. According to unconfirmed reports, over 300 Islamic preachers with foreign citizenship (mostly Iranian) were deported in the first half of 2000.¹⁹ Protestants, the Jehovah's Witnesses and the Hare Krishna community have also been affected. In September 1999 an officially-sponsored newspaper spoke of "dozens" of foreign religious activists expelled in the previous two years.²⁰ Most of those summarily expelled were given no deportation certificate and many were dumped over the border with no identity papers.

The last Russian Baptist missionary in Turkmenistan, Vitali Tereshin (a Russian citizen), was expelled to Russia in May 2000, two months after his wife (an Uzbek citizen) and their child were deported. The Tereshins' deportation brought to six the number of Baptist missionary families deported from Turkmenistan between December 1999 and May 2000 as part of a concerted plan by the Turkmen government to expel all foreigners suspected of working with local religious communities. All six families, who belonged to unregistered congregations of the Council of Churches of Evangelical Christians/Baptists, had legal residency in Turkmenistan.

Aleksandr Yefremov and his wife Vera Semina (who are Russian citizens) were deported by train from the town of Turkmenabad (formerly Chardjou) on 22 December 1999 to the Russian town of Saratov. Vladimir Chernov and his wife Olga (who are Ukrainian citizens) were deported by plane from Ashgabad to the Ukrainian capital Kiev two days later.

Anatoli Belyayev, his wife Natalya and their daughter (all Russian citizens) were deported by plane from Ashgabad in March 2000. The same month Yuri Senkin, his wife Tatyana and their young daughter (also Russian citizens), who lived in Mary, were deported by train to Russia, while Vyacheslav Shulgin, his wife Oksana and their four children (also Russian citizens), who also lived in Mary, were deported by train to Russia.

In August 1999 Aleksandr Prinkur, an Uzbek citizen who led the Hare Krishna community in Ashgabad since 1995, was deported. In December 1999 Ramil Galimov, a member of a Jehovah's Witness group in Kyzyl-arbat who held dual Russian-Turkmen citizenship, was summarily deported to Saratov in Russia. His Russian passport was confiscated and he was dumped at Saratov station with just his Turkmen passport and the clothes he was wearing. Galimov's wife, a Turkmen citizen, was eventually allowed out of Turkmenistan to join him in Russia.²¹

Several dozen citizens of Western countries, suspected of contacts with local Christian churches, were expelled or failed to have residence permits renewed in the last few months of 1999 and the first few months of 2000. Officials also routinely threaten Turkmen citizens who are activists of unregistered faiths - including Baptists and Jehovah's Witnesses - with deportation.

¹⁷ Keston News Service 6 March 2000.

¹⁸ Keston News Service 20 November 2000.

¹⁹ Keston News Service 3 August 2000.

²⁰ Adalat, 24 September 1999. See documentation section.

²¹ Fact sheet of Ramil Galimov's Deportation from Turkmenistan, Jehovah's Witnesses, 20 December 1999.

Reports indicate that the homes and vehicles of some deportees are being illegally used by officials. Local Baptists reported in April 2000 that the police appropriated the homes of Anatoli Belyayev and Vladimir Chernov in Ashgabad, as well as Chernov's car. Chernov's home was reportedly occupied by the family of a police officer. Police also changed the licence plates on Chernov's car, a VW Golf, and began to use it for police duties.²²

Loss of jobs

Individual believers have repeatedly experienced threats of dismissal from their jobs unless they agreed to stop participating in worship services, and sometimes these threats have been carried out.

In 1998 a KNB officer visited Djerem Melyaeva, director of a children's nursery in Ashgabad, instructing her to dismiss all staff who were members of unregistered religious communities. Melyaeva asked one staff member, the nurse Svetlana Redjelova, to leave the Jehovah's Witnesses, as she was reluctant to sack her. After Melyaeva failed to sack her, she herself was sacked. In September 1999 the new director, Zamira Mulmeyer, eventually forced her out. Mulmeyer reported that the Education Administration had decreed orally that all Jehovah's Witness teachers and students should be dismissed as they refuse to recite the oath of loyalty to fatherland and president. A week before Redjelova was forced out, the chief of the Education Administration visited all the nurseries where Jehovah's Witnesses were working to seek ways of getting rid of them.²³

Jehovah's Witness Djumagal Amanova, an instructor at the Turkmen Agricultural University, was pressured by the KNB, the head of the university and the dean of the faculty to resign from her job on 27 May 1999. She had been given a salary increase and awarded the title "senior instructor" the previous year for the quality of her teaching.²⁴

Two members of a Baptist congregation in Turkmenabad (formerly Chardjou) lost their jobs as school teachers in 1999 because of their involvement with the church.²⁵

Hare Krishna leader in Ashgabad Aleksandr Prinkur reported in September 1999 of sackings from work on religious grounds. 'Very many devotees and those who associate with devotees have lost their jobs. One woman, Klara, who had just begun to associate with devotees, was fired from her job. Her boss told her that they were firing her because she was connected with Krishna Consciousness and also threatened that they could put her in prison.'²⁶

In one case described to Keston in Ashgabad in summer 2000, a believer lost her job, and then lost her flat as well since she held it as a benefit connected with her job. In another instance a schoolteacher resigned 'voluntarily' after pressure from her school director, who told her orally that if necessary some formal pretext other than religion would be found. Such pressure intensified in summer 2000.²⁷

Slander in the press

The state-controlled media occasionally publish articles or broadcast features attacking named religious believers. Some of these articles state that named individuals have violated the law even if those individuals have never been convicted in a court.

On 14 August 1999 - two days after their Ashgabad temple was forcibly demolished - the Hare Krishna community was subjected to an attack in a programme shown on Ashgabad television. 'The presen-

²² Keston News Service 18 April 2000.

²⁷ Keston News Service 14 July 2000.

²³ Short History of Persecution of Jehovah's Witnesses 1995-1999, December 1999, p. 12.

²⁴ Short History of Persecution of Jehovah's Witnesses 1995-1999, December 1999, p. 10

²⁵ Keston News Service 29 October 1999.

²⁶ Keston News Service 8 September 1999.

ters of the programme conducted open propaganda against our community,' complained Aleksandr Prinkur, the head of the Ashgabad Hare Krishna community until his deportation in 1999.²⁸

On 24 September 1999 the Turkmen-language newspaper Adalat published a detailed attack on foreign religious organisations which it claimed were conducting illegal propaganda in the country. Groups specifically mentioned included the Jehovah's Witnesses, the Baptists and the Society for Krishna Consciousness. In addition to ten named individuals (among them Adventist, Baptist and Hare Krishna representatives) already expelled from the country, the article named 14 individuals who, it alleged, were "involved in such criminal activities as illegal delivery and distribution of [religious literature from abroad] and conducting regular meetings in private flats".

On 16 November 1999 Neitralny Turkmenistan published a letter from a Muslim man in Turkmenabad who claimed his wife and their young daughter had cut off contact with him after she became a Jehovah's Witness. He accused the Jehovah's Witnesses of breaking up families, posing a danger to society, defiling mosques and Orthodox churches and illegally importing religious literature.

In February 2000, coinciding with his arrest on accusations of "swindling", Adalat published an article accusing a 72-year-old mullah Hoja Ahmed Orazgylych of illegal receipt of dollars. A translation of the article was published in the Russian-language newspaper Neitralny Turkmenistan on 12 February 2000. The article, which had strong echoes of Soviet-era press attacks on dissidents who were about to be put on trial, blamed Mullah Orazgylych for the death of his son Seydulla in 1990, allegedly because of his addiction to drugs. The paper also recounted that two childless women, one from Bakharden region and the other from Ashgabad, had allegedly come to him to seek advice on their infertility. The article alleged that the mullah had proposed that the women sleep with him as the only way of conceiving a child. The article, published before any trial had taken place, was prejudicial to any impartial investigation of the charges against him.

Press attacks on religious leaders out of favour with the government cannot be challenged. Believers are unable to gain the right of reply as all media are government-controlled and may only reflect the government position.

Publishing and importing religious literature

Since 1996-7, the importation of religious literature has become all but impossible. Islamic groups have very great difficulties importing books and other literature, with the government complaining the material is 'fundamentalist' and 'extremist'. Other religious groups - including the Baptists, Adventists and Jehovah's Witnesses - have had literature seized by the customs.

In October 1998 the Bible Society of Uzbekistan sent 1256 copies of the Bible to the Ashgabad Adventist Church for believers in Turkmenistan, but the shipment was confiscated by Turkmen customs and neither the Bible Society nor the Adventist church has been able to gain their return.

All religious groups apart from the Sunni Muslim Board and the Russian Orthodox Church have been deprived of legal status and are treated by the government as illegal groups. This has made it impossible for them to try to print or produce books or videos within the country or to import them.

Confiscation and destruction of religious literature

Religious literature has been seized during numerous police or KNB raids on private homes or former

²⁸ Keston News Service 8 September 1999.

places of worship closed since 1997. In some cases all religious literature found in a believer's home has been seized, even holy books of that person's faith, such as Bibles.

Two Baptists, Chariyar Atakov and Anatoli Belyayev were stopped at a police checkpoint along the Ashgabad-Dashkhovuz highway on 17 April 1999, when Turkmen Bibles were discovered in their car. After officials had quizzed the two about their faith, they confiscated all their books and papers. The men were told that the Baptist faith was 'forbidden' in Turkmenistan.²⁹

In the most notable example of government-prescribed censorship of religious literature, in early 2000 President Niyazov ordered the destruction of the complete print-run of a translation of the Koran which had been published five years earlier with government approval. 'Hoja Ahmed Orazgylych, together with the writer Atamyrat Atabayev, translated the sacred Koran into the Turkmen language,' President Niyazov declared in a speech in Mary on 3 March 2000. 'They translated it from Uzbek to Turkmen and as a result it lost any meaning. I have ordered that all [copies of] the new translation be collected and burned. This translation of the Koran is evil.'³⁰ In accordance with this order, 40,000 copies of this edition of the Koran were confiscated in March 2000 from libraries, bookshops and the warehouse of the 'Turkmenistan' publishing house and subsequently burnt.³¹ The mullah was paid by the Turkmen government to undertake the translation of the Koran, which was subsequently approved by Chief Mufti Nasrullah ibn Ibadullah, and published in two volumes in 1995. However, after Orazgylych criticised aspects of official New Year celebrations, he fell out of favour and was accused of 'swindling'. In February 2000, after Orazgylych had been taken into custody, Niyazov publicly questioned his religious qualifications - even though the mullah studied theology at the respected Mir Arab madrassah (Islamic seminary) in Bukhara and claimed to have studied Islam for 24 years. Niyazov himself, as far as is known, has never undertaken any systematic study of Islam. Orazgylych was freed from prison and sent into internal exile in March 2000.

In mid-August 2000, Vasili Korobov, the senior Baptist pastor in Turkmenistan who led the Ashgabad congregation which lost registration in 1997, was returning by car from abroad. When he reached the border with Turkmenistan, Turkmen officials confiscated fifteen Russian-language Bibles, as well as about twenty audio and video cassettes. The cassettes included Russian-language talks from a religious conference in Amsterdam and a copy of the 'Jesus' film. Pastor Korobov and his passenger were each able to keep two copies of the Bible 'for personal use'. Everything else was confiscated. Christian literature was again confiscated from Pastor Korobov on 4 September 2000, just after he had finished leading a service in a private flat in Turkmenbashi. He and a colleague were leaving the town by car when they were stopped at a traffic police check-point. Officers of the KNB were immediately called and the two were taken to the KNB headquarters in the town. The next morning they were taken to the KNB in the regional centre Balkanabad (formerly Nebit-dag). The two were questioned all day and officers told them their case would be sent to the khokimat (local administration), where they would be fined. The officers drew up a protocol detailing the confiscation of 'illegal religious literature'. After Pastor Korobov insisted, the officers changed the text to read 'illegal Bibles'. The officers accused the two of 'spreading illegal religious literature', but Pastor Korobov asked them to clarify which article of the Criminal Code, Administrative Code or the Constitution he and his colleague had violated. When the officers were unable to find a suitable charge they were forced to abandon attempts to have Pastor Korobov and his colleague fined. On 5 September the two Baptists were released. However, all the Christian materials they had with them when they were detained - including 14 Russian-language Bibles and Christian cassettes - were confiscated. On this occasion, even their personal Bibles and hymn-books were seized. Also confiscated were personal notebooks.³²

²⁹ Keston News Service 28 May 1999.

³⁰ Quoted in RFE/RL report by Bruce Pannier, 10 March 2000.

³¹ Keston News Service 3 August 2000.

³² Keston News Service 12 September 2000.

Return of religious property

The return of religious property confiscated during the communist period has been difficult. In Ashgabad, this has been complicated by the fact that much of the city was destroyed during the 1948 earthquake. However, in the Caspian port city of Turkmenbashi (formerly Krasnovodsk), the Armenians have been trying to regain their church built in the early years of the century, consecrated in 1905 and confiscated by the Communist authorities in the 1920s. So far they have had no success. The Turkmenbashi church is only one of five Armenian churches in what is now Turkmenistan to have survived the Soviet period.³³No surviving synagogues or Bahai temples have been returned.

Dialogue rejected

Turkmen officials and diplomats have consistently declined to answer journalistic enquiries (from Keston News Service and others) about the way religious believers are being treated and why Turkmenistan fails to abide by its international commitments to religious liberty and human rights.

Turkmenistan has also denied visas to co-religionists wishing to visit the country to help support local communities and enter dialogue with the government. Nearly seven months after first presenting a proposal to visit Turkmenistan to discuss with the authorities the position of the Jehovah's Witness community, a team of four foreign Jehovah's Witnesses was still waiting for a response from Turkmenistan's Brussels embassy. The team applied to visit in April 2000 and met the Turkmen ambassador to Belgium and to the European Union, Niyazklych Nurklychev, and embassy first secretary Rovshan Bagiyev, when the aims of the visit were discussed.³⁴Adventists and Baptists have been unable to send foreign representatives to the country.

e. Summary

Turkmenistan adopted a new constitution in May 1992 to replace the Soviet-era one. This provides for freedom of religion and does not establish a state religion. Article 11 guarantees religious freedom, the non-interference of the state in religious matters and the freedom "to profess any religion or not profess any either individually or jointly with others," However, it is ignored in practice.

Turkmenistan has acceded to a number of international human rights conventions, including the International Covenant on Civil and Political Rights. The key law on religion was initially a fairly liberal document. It has been repeatedly amended, gradually narrowing the freedom to practice one's religion. The 1996 version of the law on religion required compulsory re-registration of all religious organisations by 1 March 1997. This resulted in the loss of registration of an estimated half the country's mosques and all the minority religious communities (except those of the Russian Orthodox Church).

The government treats all unregistered religious activity as illegal. All public activity by religious communities of all faiths - apart from those of the Sunni Muslim Board and the Russian Orthodox Church's twelve parishes - is treated as illegal.

Despite the clauses in the Constitution the State's office for church affairs controls employment and dismissals in the two registered religions communities. Members of non-registered communities who try to voice their constitutional rights face interrogation, fines, imprisonment and in some cases torture. Their religious buildings are either confiscated or destroyed. The production or import of religious literature is forbidden.

³³ Keston News Service 22 January 1999 and 18 December 1999.

³⁴ Keston News Service 13 November 2000.

4. Pakistan

a. Religious demography

The population of Pakistan is approximately 147 million. The majority are Sunni Muslims, but there is a large population of Shiite Muslims. The percentage given for Shiite Muslims varies much according to the source anywhere between 15 % and 35% of the population. The major concentration of Shiites is found in Karachi with pockets other places in Sindh, in Punjab and one or two places in the North West Frontier Province.

The number of Ahmadis also varies according to the source; the figure of 4 million has been mentioned. An older sect similar to Ahmadiyya is the Zikri sect found mainly in the southern parts of Baluchistan, along the coastal belt, and in Karachi. It is difficult to find verified figures, but half a million might be a reasonable estimate. This sect emerged in the sixteenth century and has somehow survived in the southern part of Baluchistan and in Karachi.

The number of Christians is approximately 2% of the population, but some Christian circles insist on a higher figure. The number of genuine caste Hindus is fairly low, maybe a couple of hundred thousand or lower. However, the number of outcasts with some indirect relationship to the Hindu community and the number of tribal animists influenced by Hinduism may be much higher. No proper census has been taken for many years, but these tribes could total 3 or 4 million.

Among the Mohajirs, immigrants during the Partition, we find a spectrum of different smaller Muslim sects. The biggest among them is the Agha Khani group. In these groups people tend to stick to their own communities and are, on the whole, tolerated. The Parsees (Zoroastrians) are a small, rich, self-sustained group found in the largest cities. In the most northern part of Pakistan, in an area called Kafiristan there are a few animistic groups remaining, popularly referred to as Kafirs (Unbelievers). They are restricted to a few valleys but protected by the government as a popular tourist attraction.

Tensions related to religious differences manifest themselves most strongly between Muslim sects and denominations. In absolute terms, tension between Shiites and Sunnis is the strongest. The Sipah Sahaba, for example, is an organized and trained group whose purpose is to kill Shiites when the leadership deems it necessary. Some of them have had special training in Afghanistan in areas controlled by Sunnis. The Shiites have a parallel group of trained young men called Sipah Mohammed, whose aim is again to kill the Sipah Sahaba leaders. This group is trained in the Shiite areas in Afghanistan.

b. Religious freedom

In the present (1973) Constitution of Pakistan freedom of religion is guaranteed as a fundamental right under Article 20: "every citizen shall have the right to profess, practise and propagate his religion;" (see enclosure 1), even though the freedom to change religion is not mentioned. Pakistan is a signatory to the Universal Declaration of Human Rights where article 18 gives the right to change religion. In the earlier decades of Pakistan the law and the bureaucracy generally upheld this right. It is interesting to note that in two earlier constitutions the freedom to change religion was, if not explicitly, at least implicitly is granted.

In the 1956 constitution Part II 18 (a) states: every citizen has the right to profess, practise and propagate any religion. The 1962 constitution has kept the same wording (1). If every citizen has the right to profess, practise and propagate any religion he would also have the right to change his religion. In the present constitution the wording his religion does not imply the right to convert from Islam to another religion since that is explicitly prohibited in the Shari'ah. In the original text of The Objectives Resolution, an annex to the Constitution, the 6th paragraph originally read: "Wherein adequate provision shall be made for minorities freely to profess and practice their religions and develop their cultures," the word freely has been left out in the 1973 Constitution.

Right to inherit

Before Partition there was a High Court decision that a Muslim who converted to another religion, had the right to inherit his father. A decision by the Rawalpindi High Court changed that. Today a convert from Islam to another religion loses his right of inheritance. This introduction of Shari'ah is perhaps the first limitation by law of the freedom to change religion.

The Enforcement of Shari'ah Ordinance, 1988 (see Appendix Pakistan enclosure 2) started a process where religious freedom was, in principle, limited and the freedom for a Muslim to change his religion in Pakistan could be removed.

Ahmadis

In recent years the situation for the Ahmadis has changed by the new laws against the Ahmadis/Qadianis. The most flagrant breach of freedom of religion in Pakistan is now related to the treatment of Ahmadis.

Under Zulfikar Ali Bhutto they were officially declared to be non-Muslims. Under Zia ul-Haq further enactments in the Penal Code were made against them (Sections 298B and 298C) (see enclosure 3) where they are forbidden to call themselves Muslims, to use Muslim forms of prayers, etc. There is an ongoing, systematic persecution of Ahmadis, but they have a well-organised team of lawyers defending them. The community, which has a strong sense of fellowship, spends much time defending persecuted members, but puts less effort into publicly protesting against the infringements of their fundamental rights.¹

Two additions in the Penal Code were especially aimed at targeting the Ahmadis.² One prescribes life imprisonment for misquoting or defiling the Quran and the other gives imprisonment for life or death penalty for insulting Muhammed. This was later changed to the death penalty as the minimum punishment, plus a possible additional fine when Paragraph 295C came to the Federal Shari'ah Court. Today the only penalty available is death, as Amnesty International reported in 1994. (Enclosure 3). In later years, individual citizens have also used these two last enactments against Christians. It has rendered both Christians and Ahmadis vulnerable to accusations directed against them by personal enemies. As a result, freedom of religious speech is somewhat limited. The government has experienced this as a problem, but it is an issue that has been difficult for the government to control. In this context, there is an aspect of Islamic law that differs from Human Rights jurisprudence. In some areas, the government does not actively attempt to take action against a punishable offence; it is left to the individual citizen to bring charges against another citizen. And once a case is registered by the police then, in principle, the government is obliged to take action. These different laws are often used against the Ahmadis and Christians to settle personal differences. But lately also Muslims have increasingly been targeted.

¹ FUNDAMENTAL RIGHT AND CONSTITUTIONAL REMEDIES IN PAKISTAN by Syed SHARIFUDDIN PIRZADA. ALL PAKISTAN LEGAL DECISIONS Lahore 1966. Page 606 and 596. PP 295B & C

² PP 295B & C

The difficulty with Sections 295C is that it does not differentiate between if the act is done without or with intent. Therefore the blasphemy laws Sections 295B and C in the Penal Code has been a constant threat to the religious minorities, especially to Ahmadis and Christians. Under the present military rule the fundamental rights may be temporally suspended, but for the religious minorities the situation is probably better as far as Sections 295B and C are concerned. The present military regime has followed up the former governments attempts to limit the misuse of Sections 295B and C by not permitting a case to be registered (by the lodging an F.I.R. = First Investigation Report) until a magistrate has approved it. But the negative reaction was so strong that the attempt had to be given up. There are also several lawyers and others who are making an admirable effort in defending individuals accused according to these laws.

One of the reasons for the strong legal attacks on the Ahmadis is that many regard the sect as a falsification of, and thereby an attack on Islam itself. The list of cases against and attacks on Ahmadis is long.^{2b}

The legal situation with respect to the blasphemy law in Pakistan is confusing. This confusion was frequently used by the then government of Prime Minister Nawaz Sharif to confound human rights activists and critics. Following the directive of the Federal Shari'ah Court of 1990, the alternative punishment of imprisonment for life contained in section 295-C is void: the death penalty is the mandatory punishment for blasphemy. But since parliament did not pass the legislation required of it by the Federal Shari'ah Court, the clause allowing life imprisonment is still part of section 295-C of the Pakistan Penal Code, though without force.

Amnesty International has received numerous letters from the Government of Pakistan pointing to the alternative punishment of life even though this punishment can no longer be imposed. For the relevant part of the 1994 report see enclosure 5.

There have been a number of cases against Ahmadis from April 1984 to April 1996.

1. For displaying the Kalima (the tenet which says 'There is no god except Allah and Muhammad is his prophet) - 723
2. For reciting Azan, the Muslim call to prayers - 36
3. For posing as Muslims -366
4. For using Islamic epithets - 112
5. For offering prayers - 93
6. For preaching - 403
7. For celebrating Ahmadiyya Centenary in 1989 - 27
8. For celebrating 100 years' anniversary of the eclipses of the Sun and Moon that occurred in 1984 as a sign of the promised Mahdi - 50
9. For distributing a pamphlet 'Ek Harf-e-Nasihana' i.e. 'A word of Advice' commenting upon anti-Ahmadiyya Ordinance XX(PPC298-B/C) - 27
10. For distributing 'Mubahala' pamphlet,i.e. a challenge to an opponent for a spiritual contest of prayers. - 147
11. For allegedly burning of the Holy Quran - 5
12. Under anti-Ahmadi Ordinance 298-B/C. - 514
13. Blasphemy law 295-C -140
14. The Supreme Head of the Community currently living in London has been charged in his absence in sixteen cases under PPC 298-C, i.e. the anti -Ahmadiyya law.

^{2b} 295-B. Defiling etc. of Copy of Holy Qur'an. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.
295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet. Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or

insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (Peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

15. The entire population of Rabwah, i. e. Ahmadiyya headquarters in Pakistan, was charged under PPC 298-C on 15-12-1989.

During the same period a number of Ahmadis were killed. Nine places of worship were demolished, eleven were sealed by the authorities, others were set on fire or forcibly occupied. The construction of others were barred by the authorities. Graves have been desecrated and burials prevented. "Similar cases are reported by the Jamaat-e-Ahmadiyya in the years 1996-1999. A number of people have been in jail for years."⁵

Most of these cases have some sort of cover under anti-Ahmadiyya laws, but there seems to be a tension with paragraph 20 of fundamental rights a and b. Paragraph 20 is 'Subject to law', but paragraph 8 in CHAPTER I -- FUNDAMENTAL RIGHTS states: Laws inconsistent with or in derogation of Fundamental Rights to be void.-- (1) Any law, or any custom or usage having the force of law, shall, to the extent of such inconsistency, be void. Paragraph 36, which seems to give some protection to minorities does not seem to give much protection to the Ahmadis. And paragraph 4 and 11 of the Enforcement of Shari'ah would influence the result of an appeal.⁶

Christians

The Christian minority, and several other minority groups, have so far not been affected by any law directed specifically against them. On the other hand the situation for most of the minority communities has taken turn to the worse in the last decade in the past century, especially for Ahmadis, Hindus, Zikris and Christians. The number of people who have spent years in jail accused under 295B, 295C and 298C has increased. Kidnapping of women, destruction of places of worship and numbers of murders has increased. Some of the English magazines and newspapers in Pakistan have been very outspoken on Human Rights in the last years. Especially HEROLD and NEWSLINE have been fearlessly outspoken.⁷

The Zikri religion

Until recently the Zikri community has been protected in its far-away corner in Baluchistan. In the last 10 years, however, certain religious pressure groups in Quetta, the capital of Baluchistan, have tried to raise religious sentiment against the Zikris. So far, the government has not permitted the Zikris to be declared to be non-Muslims or be persecuted despite the fact that the Zikris are much further removed from orthodox Islam than is the case for Ahmadis.

Places for worship

There is no prohibition against having places of worship for other minorities than the Ahmadis. For the Christians it has not been difficult to build churches in areas where there is a certain number of Christians living. Repair of churches is not a problem. When needed the government has given protection for church buildings at the time of Christian festivals.

c. Registration

There is no law about registration according to one's religion. On the National I. D. card (identity card) religion is not mentioned. One is not required to report a change of religion. One exception is in passports where religion is stated. Here there is a special difficulty for Ahmadis in whose passport who are called "non-Muslim". This is of course against their deeply held conviction, and they are not allowed to write Ahmadi.

⁴ See pp. 78 -79. State of Human Rights in 1996. Human Rights Commission of Pakistan, Lahore.

⁵ See reports of Human Rights Commission 1997, 1998 and 1999.

⁶ Paragraph 4: Court to decide case according to Shari'ah. Paragraph 11: Laws to be interpreted in the light of Shari'ah. See enclosure 2.

⁷ For the latest strong report see: NEWSLINE, December 2000, Karachi. Pages 74-92.

For a convert who becomes Christian and takes a Christian name instead of his old Muslim name it is not always easy to get his I. D card changed, but it is not impossible.

In the school records religion is mentioned since a Muslim has Islam as a subject. So far there has not been satisfactory teaching of Christianity for Christian students in government schools. And in elections voters are registered according to their religion in the electoral rolls.

d. Supremacy of the Quran and Sunnah

Does the Supremacy of the Quran and Sunnah limit the religious freedom of non- Muslims or is this prevented by paragraph 2B(4): Nothing contained in this Article shall affect the personal law, religious freedom, traditions or customs of non-Muslims and their status as citizens? (See Appendix Pakistan enclosure 4.)

The different Muslim sects shall follow their own interpretation of the Quran and Sunnah in relation to family law and religious practice. In the same way religious minorities are supposed to practise their own family law, marriage laws etc. and their religious practice and worship. The government does not interfere here in any way. But the Hudud ordinance with the special punishments described by Shari'ah applies also to the minorities.

If there is a conflict between two parties where one is a Muslim, it will be decided according to Shari'ah. A Muslim man can marry a Christian girl, but a Christian man can not marry Muslim woman. If minor children become Muslims they will be taken away from their parents, but a Muslim child cannot become a Christian if the father or mother remain Muslims, etc. Only Shari'ah rules regarding shahadat (valid testimony) are allowed. If a Christian girl is raped by a Muslim it will be very difficult to prove it in court. And the girl may be convicted for 'zinna' and the man go free. In the Shari'ah both fornication and adultery is called Zinna, but the punishment differ⁸. Also Muslim women are here in a vulnerable position.

e. Political life

When the separate electoral lists were introduced many of the minorities welcomed it, thinking they would be represented at all levels. There were only some few who saw the possible deeper political consequences. The different minority groups are registered separately and they vote separately for their own representatives with reserved seats in the provincial and federal assemblies. The Ahmadis also have some reserved seats, but nearly all have boycotted the elections. This has become a sort of political apartheid, and there are people working towards a change, but Shari'ah will probably prevent a change.

f. The social position of Christians in Pakistan.

When a Muslim becomes a Christian in Pakistan the family will react for two reasons. First, if the family is religious, as most are to some degree, there will be a religious reaction. Minorities in a Muslim country are by Shari'ah considered to be, in the best case Dhimmis, second class residents - but in Pakistan law this is not at all fully implemented.

⁸ See THE HEDAYA OR GUIDE: A COMMENTARY ON THE MUSSULMAAM LAWS BY CHARLES HAMMILTON. PREMIER BOOK HOUSE. LAHORE 1870. Pages 176--194.

The negative influence of Islam and Shari'ah on the Christians is overshadowed by the influence of the Hindu caste system in the very special Pakistani situation. The whole Pakistani society is deeply influenced by the Hindu caste system. In Pakistan 95% of the Christians come from the outcast community which by the general culture on the Subcontinent is considered to be unclean in the deepest meaning of the word. The majority are still working as sweepers. They are not be served from the same crockery as others, nor allowed to drink from the same water tap. (Often the members of this caste (who have become Muslims) are not called Muslims but musallis = those who pray). Because of this stigma the feeling of shame in the family of the convert will be double, both in the religious and the social sense. Islam is in most countries deeply influenced by the idea of shame. Where this is coupled with the Hindu concept of caste and of being untouchable the social stigma becomes terrible.

There are of course many individual Muslims who know that the Hindu caste system is wrong, but it is deeply ingrained in the Pakistani society. The result is that a Muslim who becomes a Christian finds themselves in an exceptionally difficult situation. This is one of the reasons why the Christian minority often is treated very badly and looked down upon.

The Shanti Nagar happening, where a large Christian village was destroyed with houses and churches etc., occurred because the local police were deeply offended when some Christians dared to protest against mistreatment. (The police organised the riots and provided what was needed to burn the houses etc.)

But on the whole the Christian communities, that is Christians whose forefathers were Christians or non-Muslims, have not experienced much active persecution from Muslims, with some glaring exceptions, like the Shanti Nagar case. They are, of course, in some ways considered to be second-class citizens, but the government and Civil Service have, on the whole, been friendly and offered some measure of protection.

g. Change of religion (Apostasy)

It is quite a different matter, however, when a recognised Muslim becomes Christian or convert to some other religion. Then official Islam and especially those who want to follow Shari'ah are very hostile. A convert will in most cases be cast out from his family, lose his job, and lose his right of inheritance from Muslim parents. He will be beaten up and in some cases be killed. In several parts of Pakistan he will have to leave the area to survive. To the degree that the Shari'ah is introduced the chance of being killed increases. And if some convinced Muslim tries to kill him, there will only be minimal protection by law.

If the convert is married and his wife does not become a Christian, her family can take her from him, and there is no legal protection. There have been some cases of killings, but it must be underlined that the Pakistan Civil Service, has in many cases been helpful and protective of converts. The real problem is that according to the present constitution, no law in Pakistan can contradict the Quran or the Sunna. Under the supervision of the Federal Shari'ah Bench Court the laws are being changed to conform with the Shari'ah. There is here a duality in the Constitution. On one hand the constitution states the right of every citizen to propagate his religion: ' Subject to law, public order and morality.. every citizen shall have the right to profess, practice and propagate his religion; " But this does not, with the present wording, clearly give a Muslim the right to change his religion, only the right to propagate the religion he was born into, if he thereby does not offend the Muslim community.

On the other hand the Ahmadis (Qadianis) who believe they are Muslims are prohibited from professing, practising and propagating their religion in the Penal code: 298-C. "A person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either written or spoken, or by visible representation, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. " Here the law applies even if there is no intention to hurt the feelings of others.

This addition to the penal code can be defended by two additions to the constitution: THE FIFTEENTH AMENDMENT ACT, 1998, (Appendix Pakistan Enclosure 4) where Shari'ah is made the supreme law of Pakistan, and The ENFORCEMENT OF SHARI'AH ORDINANCE, 1988 (Appendix Pakistan Enclosure 2) which has already made the Shari'ah to be the supreme source of law in Pakistan. There may not be any clear explicit law in Pakistan which makes it a crime for a Muslim to convert to another religion. But the Shari'ah is the supreme source of all law and in principle the supreme law in Pakistan. And according to the Shari'ah, as understood in the different fiqas (law schools), it is punishable by death for a man. If he was a convert to Islam he may according to one school of thought save his life by again turning to Islam.

A woman will be punished by confinement until she returns to Islam⁹. It would therefore be nearly impossible for any convert to seek the protection of the law. The result would probably be that the Shari'ah court would decide that the Pakistan Penal code should be changed to make it a punishable offence for a Muslim to change his religion. In addition the laws shall also be interpreted where possible in the light of Shari'ah (See 4 and 11 in Appendix Pakistan enclosure 2). Under the Nawaz Sharif government the movement towards the full implementation of the Shari'ah was moving fast. The present government is not pushing for it, but they are not able to stop it, or to revert the trend.

The manner in which families, individuals, employers, and government agencies behave towards converts differs greatly. Many Muslims will privately and quietly protect a convert. It is, however, very difficult if not impossible for a well-intentioned Muslim to defend a convert publicly since he will inevitably be branded as anti-Islamic. If the convert's family has strong Muslim connections, especially with some of the fundamentalist groups, a convert to Christianity from Islam definitely risks his life. Government help is then very limited since a strict interpretation of the Shari`ah law demands the death penalty.

h. Hindus and tribal religious groups

The treatment of high-caste Hindus has been somewhat similar to the treatment of Christians, but with less sympathy from the bureaucracy and moderate Muslims than that which is afforded to Christians. As far as outcast and animistic groups such as in Sindh are concerned they are a mistreated, abused minority. Most of them work as landless labourers or sharecroppers. Their women are frequently abused and in most cases they have no real protection.¹⁰ The harshness of the treatment varies according to the situation and the attitudes, (indifference or compassion,) of individual Muslims. They are invariably looked down upon as unclean both by high-caste Hindus and Muslims. The same attitude is very often directed against the sweepers (sanitation workers) in urban areas whether they are

⁹ (9) "According to Muslim law, a male apostate, or Murtadd, is liable to be put to death; a female apostate is not subject to capital punishment, but she may be kept in confinement until she recant. (Hamilton's Hidayah, 393,398,179 "Ikramah relates that some apostates were brought to the Khalifa Ali, and he burnt them alive; but ibn abass heard of it, and said that the Khalifa had not acted rightly, for the Prophet had said, "Punish not with God's

punishment (i.e. fire) but whosoever changes his religion, kill him with sword." (Sahih al-Buhari.) (Thomas Patrick Hughes, A Dictionary of Islam, England, 1885, p.564a. For further details see MURTAADD in SHORTER ENCYCLOPEDIA OF ISLAM., pages 413,414 BRILL 1961LEIDEN .¹⁰ For the latest strong report see: NEWSLINE, December 2000, Karachi. Pages 86--88

outcast Hindus or Christians. In later years, however, some Human Rights groups have made a big effort to protect them.

i. Conclusion

Generally it can be said of Pakistani society that regardless of his religion, a person's rights and safety depend on whether he has education, position, money and connections. If he does not have this, his situation is often very difficult. A person who has these privileges is much less in danger of persecution or maltreatment for his religious beliefs. But for Ahmadis there is no real Freedom of Religion. For a Muslim atheist there does not seem to be any special problems, but anyone who converts to another religion will have great difficulty. He will lose his right of inheritance, most often his job etc. If his family does not give him protection he will also be in danger of his life . His only choice is then to either go into hiding or to leave the country.

5. Greece

a. Introduction

b. The majority of Greeks (around 97%) belongs to the Christian Eastern Orthodox Church. Official statistics regarding religious minorities do not exist. The last official census that involved a question on religion was in 1951. In the report of the special UN Human Rights Committee Reporter, Mr Abdelfattah Amor⁷⁵, the various religious minorities in Greece are listed as follows (approximate figures), Christian minorities

	(a) Catholics	21,500
	(b) Protestants	80,000
	(c) Jehovah's Witnesses	70,000
	(d) Old-calendar Orthodox	700,000
II.	Jews	4,000
III.	Muslim	120,000

Approximately 10 million Greeks belong to the Christian Eastern Orthodox Church.

b. General Legal Background

The current Constitution of 1975, in article 13, paragraph. 1 and 2, guarantees religious freedom as an individual right as well as religious tolerance. Also article 4 of the Constitution guarantees the legal equality of all Greeks. Thus the State should be obliged to offer every religious community full autonomy with regard to its practices, as far as these do not contravene public law. This freedom, however, needs to be viewed relative to the Constitution's article 3 recognition of the Christian Eastern Orthodox Church⁷⁶ as Greece's "dominant" religion, in which "Our Lord Jesus Christ" is seen as "its head" (the author's underlining). In this way, intentionally or unintentionally, the constitutional law maker in Greece is identified with the dominant religion, and thus disregards or overlooks the fact that within the Greek populace there are individuals of other faiths or religions, atheists and the irreligious. The Orthodox Church is recognised as a legal body of public law⁷⁷ and the Orthodox

⁷⁵ Report A/51/542/Add., 1.7.1996

⁷⁷ Law no. 590/1977

⁷⁶ In the minutes of the parliamentary debates on constitutional issues, the following is stated regarding this article: "The term 'dominant' is to be understood as an emotional term and not as the State's right to render privileged treatment in comparison with the other faiths and to intervene into her affairs", p. 394-395, 1975

clergy is paid under the State budget. The volatility of this relationship explains the repeated State interventions in matters of the Church and the Church's interventions in matters of the State leading to related conflicts.

Greece was one of the first countries of the UN to vote in favour of the Universal Declaration of Human Rights⁷⁸. It has ratified the International Covenant on Civil and Political Rights⁷⁹, the First and the Second Optional Protocols regarding the abolition of the Death Penalty, as well as the International Covenant on Economic, Social and Cultural Rights⁸⁰. The International Convention on the Rights of the Child was also ratified⁸¹. Greece was among the constituting members of the Council of Europe⁸² and among the first countries to sign the European Convention on Human Rights⁸³, along with its First Additional Protocol. It adopted most of the additional protocols, e.g. The Sixth Additional Protocol⁸⁴ related to the abolition of the Death Penalty as well as the Convention of the Council of Europe on the Individual's Protection against misuse of personal data⁸⁵.

According to article 28, paragraph 1 of the Constitution, international conventions are considered an integral part of Greek law, with supranational legal power, from the moment of their ratification by law and their enactment according to the conditions of each.

With the introduction of special laws⁸⁶, Greek law foresees punishment by imprisonment (determined by case) for everyone who publicly in whatever form intentionally instigates or promotes deeds or actions that may lead to discrimination against individuals or groups because of their racial or ethnic origin. Five years after it was passed law 927/1979 was amended to include under racial and ethnic origin also "religion"⁸⁷.

c. The Right to Change Religion

Freedom of religious conscience, as this is generally understood⁸⁸, includes the freedom to choose, to keep, to change or to abandon a particular religion, as well as to choose or to abandon religion or atheism in general without any disadvantageous consequences. It does not lend itself to any restriction. In Greece it is protected generally by the Constitution, article 13, para. 1.

d. Proselytism

The freedom of religious conscience, as understood above, encompasses the right to persuade others by means of teaching, without which the right to change religion or faith would run the danger of remaining a dead letter. However, the prohibition of proselytism in article 13, para. 2 of the Constitution, and in particular the lack of its definition, constitutes a restriction in the freedom to propagate one's religion or faith⁸⁹. In all previous Greek Constitutions, with exception of the Constitution of 1927 and the current Constitution of 1975, prohibition of proselytism has aimed at protecting the dominant religion in Greece⁹⁰.

The letter of the law forbids proselytism in general. But the essence of all cases in which this has been applied so far shows that proselytism against the dominant religion is penalised only, as is shown below. Article 4 of case-law no. 1363/1938 was supplemented by article 2 of case-law no. 1672/1939, which

⁷⁸ Law no. 2329/1953

⁷⁹ Law no. 2462/1997

⁸⁰ Law no. 1532/1985

⁸¹ 11.5.1993

⁸² 9.8.1949

⁸³ Law no. 54/1954. Withdrawal on 31.12.1970 with renewed confirmation via legal directive 53/1974

⁸⁴ Law no. 2610/1998

⁸⁵ Approved by law no. 2068/1992, introduced with law no. 2472/1997

⁸⁶ Law no. 927/1979 "Regarding the punishment of deeds or actions aiming at racial discrimination"

⁸⁷ Law no. 1419/1984 "Amendments of provisions of the Penal Code and others", article 24

⁸⁸ Article 18 of the Universal Declaration of Human Rights and article 9 of the European Convention on Human Rights. See also case of Kokkinakis v. Greece of 25.5.1993, A-260, para. 31

⁸⁹ The Penal Code foresees penalties in general for ill-intended

blasphemy (art. 198), insult of religions (art. 199), as well as disturbance of religious gatherings (art. 200)

⁹⁰ The view of Greek Archbishop Christodoulos, in an article published by "To Vima" on 18.10.1992 (at that time still Bishop of Demetrias) should be seen as characteristic in this respect. He wrote: "I do not hesitate to refer to some negligible, as far as their membership is concerned, religious minorities in Greece, e.g. the Evangelicals, the Pentecostals, Jehovah's Witnesses and others, who repeatedly drag our country in front of international fora, accusing her of violating human rights to their disadvantage. This of course is not true. It shows on behalf of those minorities the impertinent and blunt exercise of proselytism by unfair and illegal means against orthodox Christians in our country. Every legal and consequent response on behalf of the Church authorities or of Justice against this practice is conveyed abroad as an alleged infringement in the free exercise of worship of those sects. (the author's underlining)

is still in force today, and in which the notion of proselytism was first explained, but in a rather vague and broad way, and without an exact description of the crime according to criminal law. A few cases are mentioned as examples, using the words "in particular". In this way, courts were left to their own interpretation of the case-laws and to the application of these in the same way as was done prior to the Constitution of 1975, namely to protect the dominant religion in Greece. This is the reason why very often, activities of minority groups to propagate their religious faith are persecuted as proselytism.

For example, the decision of Areopagus⁹¹ no. 1304/82 mentions that improper proselytism is the proselytising against adherents of the dominant religion. Another example is the decision of Areopagus no. 1266/93, which punished a lieutenant because he argued with two soldiers about the truth of what is taught in theological seminaries in Greece. His suggestion that they read the Gospel according to the faith of Pentecostalism, his invitation to visit a Pentecostal Church and the distribution of literature and audio-cassettes were considered an abuse of trust, as force and as a sophisticated attempt to enter into the religious conscience of the other without a proper evaluation of the circumstances⁹². As a third example, Areopagus decision no. 480/92 punished a mother with imprisonment for direct proselytising towards her minor children aged four and eight. She had taken them to her church. The Superior Court of Appeal ruled that proselytising is forbidden against children who have been baptised according to the orthodox tradition.

The continued application of the proselytism law and its explicit mention in the Constitution weakens the right of individuals to freedom of religious conscience, because in practice only adherents of the dominant religion are bound to benefit from it without any restriction.

e. Registration - Identity Cards

Contrary to the constitutional protection of individuals to not be required to reveal their religious beliefs, in reality the opposite happens. A recent example is the conflict between State and Church regarding the inscription of a citizen's religion in public documents, in particular the foreseen issuance of new identity cards in Greece. The official position of the Orthodox Church was to continue the practice of obligatory⁹³ inscription of religion in the identity cards of all Greeks above the age of fourteen. The main rationale for this was the identification of orthodox tradition with the Greek nation. The government decided⁹⁴ to define the conditions under which the new identity cards were to be issued, without the inscription of religion. This was in compliance with the Constitution and the provisions of law no. 2472/1997 regarding the protection of personal data that forbids the registration of "sensitive" personal data (political, religious beliefs etc.) without the person's explicit consent. The Orthodox Church's reaction remained intense, requesting a referendum on this matter. Its adherents were asked to express their "poignant" request for the inscription of religion in the identity cards⁹⁵.

The written protest of a Greek who lives abroad to the Ministry of Education and Religious Affairs exemplifies the attitude of the administrations when it comes to issuing an identity card for a person that does not belong to the Orthodox Church. "I was asked by the Police Department to provide a birth certificate. It characterised my religion as 'Christian Orthodox' whereas my former identity card stated 'Evangelical Christian'. I must say that I have adhered to the Christian Evangelical faith since 1971. I was then asked to submit a certificate by the Church to which I belong, which I did, but the Registry Office refused to implement the change... My last attempt was to ask the Police Department to not write anything under 'religion' in the document. This, however, was impossible according to the law. Thus the 'Orthodox Church' acquired one more 'obligatory member'⁹⁶.

According to Orthodox Church Law⁹⁷, one becomes a member of the Orthodox Church through

⁹¹ Supreme Court of Appeal

⁹² In the same year (1993) the European Court of Human Rights, in its case *Kokkinakis v. Greece* (see above) noted that in their reasoning the Greek courts had established the applicant's liability by merely reproducing the wording of article 4 of the case-law and had not sufficiently specified in what way the accused had attempted to convince his neighbour by improper means. None of the facts they had set out warranted this finding (para. 49).

⁹³ Law no. 1988/1991. The European Parliament reacted vigorously,

after the law was adopted in Greece with the resolution of 21.1.1993 (B3-0574, 06000 and 0613/93 of 22.4.1993) through which Greece is requested to reverse this law, as it is a means to restrict the freedom of individuals

⁹⁴ 17.7.1999

⁹⁵ "To Vima", 14.5.2000, p. A48

⁹⁶ "Free Evangelical Forum" (in Greek), 1.7.2000, p. 31

⁹⁷ S.E. Chinos, *The exit from the Church*, *Journal of Greek Lawyers*, 1988, pp. 551-559 (in Greek)

baptism. The normal practice is baptism in early childhood. There is no formal resignation procedure from the Orthodox faith. The renunciation of the Orthodox faith and conversion to other faiths, e.g. Judaism, Islam, Buddhism, Hinduism, etc. or to atheism constitutes the crime of apostasy (apostasia a fide) according to the Church canon. A Christian Orthodox who becomes a member of another Christian Church thereby leaves the Eastern Orthodox Church and is considered a heretic. Both apostasy and heresy are punished by excommunication from the Church body. However, the excommunication of a heretic as pronounced by the Holy Synod must have the approval of the Ministry of Education and Religious Affairs.

f. Civil Law

Article 1371 of Civil Code regulates marriage issues between members of different beliefs or religions according to the practices a particular faith or religion may require, if it is recognised in Greece. Law no. 1250/1982 introduced civil marriage in Greece on equal grounds with religious marriage. The solution proposed originally, namely to introduce civil marriage as obligatory for all and to leave religious marriage as an additional option, was dismissed because of strong protests from the Orthodox Church. Marriages solemnised under recognised religious communities in Greece have led to a diversity of marriage practices thus leading to an insecurity in law for the affected. The obligation to choose between civil or religious marriage forces individuals to disclose their beliefs, be they religious or not. This is in conflict with the constitutional protection of individuals not to be required to reveal their beliefs, and may cause detrimental social consequences for them, for example in rural areas.

g. Muslim Minority

At this point it is necessary to make a specific reference to the Muslim minority of Northern Greece⁹⁸ (Western Thrace) with small communities in Rhodes, Kos and Athens. This minority group is composed mainly of ethnic Turks, but includes also Pomaks and Roma. In June 2000, the parliament approved a law allowing construction of the first Islamic cultural centre and mosque in the Athens area. Mosques operate freely in Western Thrace and on the islands of Rhodes and Kos. Members of this minority group may, for family and heritage disputes, choose to refer either to Greek courts, as Greek citizens, or to the Mufti, as members of the Islamic community. The Mufti, in his role as judge, prosecutor, and notary applies Islamic law for the members of his community. These laws are often in contrast to fundamental regulations of the Greek Constitution (e.g. article 4, para. 2 regarding the equality between Greek men and Greek women). For example, polygamy under Islamic law is tolerated for those members, although it is in conflict with Greek law⁹⁹. The behaviour of Greek authorities has not always followed the legal framework, perhaps because of claims raised by Turkey regarding the minority's nature as being ethnic (i.e. Turkish) rather than religious. The situation has however improved within the overall bilateral climate.

h. Right to construct and operate places of worship

Manifestation of religious freedom encompasses the freedom of worship which is supported by article 13, para. 2 of the Greek Constitution. The constitutional provision sets the preconditions for its practice. First, it must be a «known»¹⁰⁰ religion. Second, the performance of rites of worship must not prejudice public order or public morals. Third, proselytising is prohibited. The legal framework for the construction and operation of temples that do not belong to the Church of the dominant religion (in this case provisions made by Church Law apply) is set by article of case-

⁹⁸ the Treaty of Lausanne between Greece and Turkey of 24.7.1923 guarantees the respect for religious freedom of the Muslim minority of Northern Greece and characterises this minority as religious (art. 45)

⁹⁹ Court decision of 1613/1981

¹⁰⁰ any religion whose doctrines and worship are clear and not concealed

law no. 1363/1938 as amended by case-law no. 1672/1939. As already mentioned above, these provisions are characterised by an ambiguity which is the cause of several problems. The Court of Cassation¹⁰¹, in its interpretation of the above provisions, ruled originally¹⁰² that authorisation to operate a place of worship has to be given by the Minister of Education and Religious Affairs only, without joint action by the local (orthodox) Metropolitan¹⁰³. Later it ruled that an authorisation by the local Metropolitan was also required for the places of worship¹⁰⁴. The Court of Cassation subsequently confirmed this case-law holding *inter alia* that the "authorisation" of the local Metropolitan was a mere opinion which did not bind the Minister of Education and Religious Affairs¹⁰⁵. It must be noted that the local Orthodox Church seldom gives consent regarding the other Christian faiths. For example, when a member of Jehovah's Witnesses rented, under a private agreement, a room in a building in Crete, for use as a place of worship, he was requested five times to submit justifications to the Ministry of Education and Religious Affairs to receive authorisation for its use without result. Finally, the group of Jehovah's Witnesses were fined because they had used the room as an unauthorised place of worship and were punished with imprisonment. The European Court of Human Rights to which they appealed ruled against Greece for violation of article 9 of the European Convention on Human Rights¹⁰⁶. The Ministry of Education and Religious Affairs subsequently gave authorisation for the use of this place of worship.

The European Court of Human Rights¹⁰⁷ also convicted Greece because the domestic courts had decided that the local Catholic Church was not allowed to appeal to the court since it lacked legal status, i.e. has not been recognised as a legal entity¹⁰⁸, although it has been operating for centuries. With a relevant law¹⁰⁹, passed immediately after the decision, Greece complied with the Court's ruling. In 1997 sixteen leaders of non-orthodox Christian faiths were fined by the local authorities because they were allegedly using places of worship without official authorisation¹¹⁰. Among the accused was the pastor of the Greek Evangelical Church of Thessaloniki, located in the city centre, which is more than 100 years old. On 13 December 2000 the Court announced them all innocent in line with the Prosecutor's stand. The impression remains, however, that all faiths, except for the dominant religion, operate under the suspicion of being illegal.

i. House Gatherings

If an individual aims at worshipping privately, an authorisation can be obtained for himself and his family¹¹¹. In contrast to this, the use of a private place as a place of worship, without authorisation by the relevant authorities, is punishable¹¹². However, a minority supporting view was also expressed in this decision, namely that the laws requesting obligatory authorisation should be regarded as unconstitutional. It was further suggested that "instead of imposing penal restrictions on the leaders of known religions for operating a worship place without authorisation, the relevant State authorities should rather be obliged to protect the manifestation of worship of the believers."

j. Social Attitudes

Greeks tend to link religious affiliation very closely to ethnicity. Many attribute the preservation of Greek national identity to the actions of the Greek Orthodox Church during approximately 400 years of Ottoman rule and the subsequent nation building period. The Church wields significant social, political, and economic influence. Members of minority faiths have reported incidents of societal

¹⁰¹ Supreme Administrative Court

¹⁰² 2274/1962

¹⁰³ a Higher-ranked priest

¹⁰⁴ 721/1969

¹⁰⁵ Court decisions 1444/1991, 1842/1992

¹⁰⁶ Case of Manoussakis and Others v. Greece of 26.9.1996 (59/1995/565/651)

¹⁰⁷ Case of Catholic Church of Chania v. Greece of 16.12.1997 (143/1996/762/963)

¹⁰⁸ To be recognised as a legal entity, according to Greek law, a group must at least consist of 20 members (article 78 Civil Code)

¹⁰⁹ Law no. 2731/1999, article 33

¹¹⁰ Which proved to be untrue due to the fact that authorisation certificates were provided by all accused before the case

¹¹¹ Court of Cassation decision no. 996/1970

¹¹² Areopagus decision no. 421/1991

discrimination, with local bishops warning parishioners not to visit clergy or members of minority faiths. Neighbours have been requesting the police to arrest missionaries for proselytising. Organised interaction between religious communities is infrequent¹¹³.

k. Conclusion

It is true that in recent years Greece has made significant progress in crucial areas regarding the protection of human rights. The institution of the Ombudsman was introduced¹¹⁴ and a National Committee on Human Rights has been put in place. Also, an independent Administration for the Protection of Personal Data has started its work recently¹¹⁵.

Freedom of religion in modern Greece has an Achilles' heel:

On the one hand is the need for authorisation by the relevant administrative body and (according to court rulings) the non-binding opinion of the (orthodox) Metropolitan for the right to construct and operate temples and places of worship. On the other hand is the wide scope of interpretation and application of the notion of proselytism.

The above provisions, not only are they against the Constitution, they are also contrary to the rules of International Law and the Conventions that Greece has signed and approved, which supersede domestic law. Each citizen needs to be able to benefit from these freedoms in practical terms in his daily life. It is necessary, therefore, to abolish the case-laws on proselytising and the need for authorisation for the construction and operation of temples and places of worship. The Constitution's article on proselytism, without a definition, is intolerable and constitutes a Greek peculiarity amongst Western democracies. In a liberal and democratic society proselytising is identical to the freedom of propagating one's own religion and belief.

6. Israel and Palestine

a. Introduction

The State of Israel lacks a Constitution, but the Declaration of Independence of May 14th 1948 proclaims that Israel will be a "Jewish State in the Land of Israel". At the same time the Declaration states that Israel will:

*...maintain complete equality of social and political rights for all its citizens, without distinction of creed, race or sex. It will guarantee freedom of religion and conscience, of language, education or culture. It will safeguard the Holy Places of all religions.*¹¹⁶

The contradiction between these two characteristics of the State - that it will be both a Jewish state and a democratic state based on equality for all its members - is one of the most basic keys to the understanding of the problems concerning religious freedom in Israel and the Occupied Territories. (This terminology is that of the United Nations) In certain instances the one characteristic tends to exclude the other. This is the case, for example, with the particular right of Jews to immigrate to Israel, a right which is provided by the Law of Return from 1950. This law is in accordance with the intention of Israel to be a Jewish state, but at the same time it excludes non-Jewish immigrants from becoming citizens of the State. The Law of Return, therefore, is at odds with the principles of equality that the Declaration of Independence forfeits.

¹¹³ 2000 Annual Report on International Religious Freedom: Greece, released by the Bureau of Democracy, Human Rights, and Labour, US Department of State, 05/09/2000

¹¹⁴ Law no. 2477/1997

¹¹⁵ Law no. 2472/1997

¹¹⁶ Ben-Gurion, David: Israel- A Personal History. New English Library, London 1972:80.

In 1967 the State of Israel occupied the West Bank of Jordan and the Gaza Strip in the Six-Day War. The Occupied Territories were never formally annexed by Israel, except East-Jerusalem which was annexed by the State and is under Israeli jurisdiction, although this was never recognised by the international community. Today, the Occupied Territories are to varying extents administered by Israel and the Palestinian Authority (PA). Since 1995 the responsibilities for civil government in the Territories have to a large extent been in the hands of the PA, while Israel handles the responsibilities for external security, foreign relations, the overall security of Israelis, including public order in the Israeli settlements etc.¹¹⁷ Some parts of the Territories are under exclusive Israeli authority. These are called Area C and include all Israeli settlements. In Area B, the PA has jurisdiction over civil affairs and shared responsibilities with Israel regarding security, and in Area A the PA controls both civil affairs and security.¹¹⁸ These three different types of areas are spread all over the Occupied Territories and make the map look like a patchwork. 95% of the Palestinians live in Area A and B.

The report will be divided in two main parts:

- 1) The issue of religious freedom in the State of Israel.
- 2) The issue of religious freedom in the Occupied Territories.

Demographic figures

Israel has a population of roughly 5.840.000 inhabitants including approximately 370.000 Israeli settlers in the Occupied Territories including East Jerusalem.¹¹⁹ The population consists of 80% Jews and 20% non-Jews, mostly Arabs. Among the non-Jewish population 16% are Muslim, 2% are Christian and 1,5% are Druze.¹²⁰ Approximately 3000 of the Christians are Jews in the ethnical sense - so-called Messianic Jews.¹²¹ In addition there are about 6-700 Baha'i members in Israel, and they have their Headquarters in Haifa.¹²²

The Occupied Territories have a total population of approximately 3.1 million inhabitants altogether.¹²³ In the West Bank the Israeli settlers constitute 17% of the population, the Muslims 75%, the Christians and Druze 8%. The population of the Gaza Strip is predominantly Muslim with 98%, and the Jewish settlers and Christian inhabitants make up 0,6% and 0,7% of the population respectively.

b. Israel

General legal background

The State of Israel's lack of a written constitution results in a patchwork of laws and practices which are difficult to grasp. There is a division of labour between the civil and the religious courts of law in Israel. The religious courts of law governed by each religious community, have jurisdiction in cases concerning personal status, such as marriage and divorce. For the Jewish population the Rabbinical Courts have the responsibility for these cases. Similarly, Muslims and Christians have their religious courts. What is not adequately provided for is secular people's right to have a civil judicial system to which they can turn in matters concerning personal status. The inhabitants are therefore forced to identify and register according to one of the religious communities in Israel, and there is no non-religious alternative in matters of personal status. This will be further investigated later in this report.

The initial report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) submitted by Israel to the United Nations in 1998 characterise the Israeli system as a mixture of "non-intervention in religious affairs" and "interpenetration of religion and Government". In addition to the system of religious courts, the latter also includes government funding of religious

¹¹⁷ U.S. Department of State, 1999 Country Reports on Human Rights Practices. The Occupied Territories.

¹¹⁸ Ibid.

¹¹⁹ CIA - The World Factbook 2000 - Israel.
<http://www.odci.gov/cia/publications/factbook/geos/is.htm>

¹²⁰ U.S. Department of State 2000 Annual Report on International Religious Freedom: Israel.

¹²¹ Interview with Secretary General Rolf G. Heitman of the

Norwegian Mission to Israel. Oslo 06/11/00.

¹²² Initial report of States parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13. Par. 865.

¹²³ CIA - The World Factbook 2000 - West Bank, Gaza Strip. Israeli settlers not included.
<http://www.odci.gov/cia/publications/factbook/geos/we.htm> and -
[gz.htm](http://www.odci.gov/cia/publications/factbook/geos/gz.htm)

authorities in different communities. This means that, in general, the State provides full freedom of religion for its citizens of all religions.

Conversion

Conversion to Judaism

According to Jewish religious law, halakhah, a Jew is a person born to a Jewish mother or a person who is properly converted to Judaism. In Israel there is a distinction between recognition of conversion by secular organs of the State, and recognition of conversion by religious organs which have the jurisdiction in matters of personal status. The Rabbinical Courts are under the supervision of the Orthodox branch of Judaism, and do not recognise non-Orthodox conversions as proper, even if conversion is performed abroad. According to a ruling of the Supreme Court in the late 1980's the secular state organs have no right to refuse to register non-Orthodox converts from abroad as Jews, and they are to be regarded as Jews in cases concerning the Law of Return.¹²⁴ However, the Ministry of Interior has not been specifically ordered to perform such registrations.¹²⁵ The practice may hence be subject to variation depending on which political party that heads the Ministry of Interior. The divergence of registration practices between civil and religious bodies leads in some cases to severe problems for people who are registered as converted Jews in the civil Population Register, but fail to gain acknowledgement for their conversion by the Rabbinate. Since the Jewish population is subject to the Rabbinical courts in matters of personal status, these people are unable to marry in Israel. This situation is likely to persist as long as there is no civil alternative to religious courts.

Conversion from Judaism

Conversion by Jews to other religions is not directly restricted by law, but such conversion sometimes has implications for the apostates. There have been cases of Jewish converts to Christianity who have been denied Israeli citizenship by the Law of Return because of their change of religious affiliation. One of the most famous cases, that of the Catholic Brother Daniel - a converted Jew from Poland who was denied citizenship because he was not regarded as a Jew by the Supreme Court - happened in the 1960s¹²⁶, but there are more contemporary examples as well. In 1993 the families Beresford, Kendall and Speakman were denied citizenship under the terms of the Law of Return by the Supreme Court because they were Messianic Jews (Jews who believe Jesus to be the Messiah).¹²⁷ According to the Secretary General of the Norwegian Mission to Israel, Rolf G. Heitmann, the new Jewish immigrants to Israel usually omit to tell the Ministry of Interior about their conversion to other religions, knowing that this may potentially harm the process of their applications for citizenship.¹²⁸

In 1999 there was a case of three Ethiopian sisters of non-Jewish decent who were adopted by their Jewish "father" in Ethiopia and immigrated with him to Israel in 1991. Their citizenship was revoked eight years later because they had failed to mention upon their arrival in Israel that their adoptive father was not their biological father. Their adherence to a Messianic congregation seems to have caught the interest of the Interior Ministry who started an investigation of their identities and status.¹²⁹ The sisters were not properly converted to Judaism, and their failure to inform Israeli officials about their non-biological relation to their adoptive father makes the decision to revoke their citizenship technically correct. However, as the Messianic Action Committee points out, this selective enforcement of the law, based on someone's religious affiliation, contravenes Israel's obligation to treat its citizens equally.¹³⁰

¹²⁴ The Law of Return was drafted in 1950 and applies only to Jews who want to settle in Israel. Citizenship for non-Jewish residents is available only through birth or naturalization.

¹²⁵ Initial report of States parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13. Par.567.

¹²⁶ Encyclopedia Judaica, Keter Publishing House Jerusalem Ltd., Jerusalem, Israel, 1972:209-210.

¹²⁷ Tre jødiske familier frykter deportasjon (Three Jewish families fear deportation..) Misjonsblad for Israel, Nr.3 1993 - Årgang

162. Den Norske Israelismisjon.(The Norwegian Mission to Israel) See also article about the Beresford case published by the Israeli Ministry of Foreign Affairs: <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0a410>. (16/11/00).

¹²⁸ Interview with Secretary General of the Norwegian Israel Mission, Rolf G. Heitmann. (Oslo 06/11/00)

¹²⁹ Messianic Action Committee Freedom Report #71, February 7, 2000.

¹³⁰ Ibid.

Several reports¹³¹ mention the problem of informal harassment of converts from Judaism. Alleged attacks on Messianic Jews and their congregations performed by ultra-Orthodox groups are reported.

Rolf G. Heitmann, with his knowledge of the situation for Messianic congregations in Israel, is reluctant to direct any severe criticism towards the Israeli police authorities for not protecting the rights of the converted Jews.¹³² Jehova's Witnesses, however, complained over the response of the police to several incidents of theft, break-ins, harassment and vandalism performed by the ultra-Orthodox organisation Yad L'achim. The allegations have not led to any legal persecutions of the ultra-Orthodox activists.¹³³

The ultra-Orthodox usually accuse Jehova's Witnesses, Messianic Jews and other Christians of proselytising, and they also blame the police of not enforcing the articles 174 A and B of the Penal Code of 1977 that prohibit inducement to or acceptance of conversion by means of material benefits. From time to time there have been charges of illegal proselytising activities, but these have never led to any convictions. This seems to provoke some ultra-Orthodox to harm members of these minority religions by accusing them of violating other laws. Mr. Heitmann tells in an interview about the charges filed by Knesset Member Litsman against an active member of the Messianic Action Committee, Baruch Maoz, where the latter is accused of aiding illegal immigrants to enter Israel. These charges are, allegedly, a revenge for Mr. Maoz' struggle against efforts of the ultra-Orthodox to legislate for religious censorship in Israel.¹³⁴

In 1996 a proposal was made by the Knesset Members Nissim Zvili and Rabbi Moshe Gafni to modify the current articles of 174 by amending 174 C containing a prohibition to possess, print, reproduce, disseminate, distribute, import or publicize "things in which there is an inducement to religious conversion"¹³⁵. Any such publications will be confiscated, according to this proposal. The bill passed the preliminary readings in the Knesset in 1997 and 1998, but the law was never, and is not expected to be, enacted.¹³⁶ In November 1999 another attempt to restrict missionary activity was made by a proposition to increase the sentence for violating the articles 174, as well as to prohibit the enticement to conversion by means of virtually any benefits, material or immaterial. It was also proposed to double the sentence, from 5 to 10 years, if the persuasion was directed towards a minor or a needy person, if the persuasion resulted in conversion, or if the one soliciting conversion used deceptive or misleading means.¹³⁷

A new bill, aimed at the Messianic Christian community in Israel, won preliminary approval in the Knesset January 21st 2001.

The bill is a severe restriction of both religious freedom and freedom of expression, which constitutes a serious step backward for democracy in Israel. The new bill, if it becomes law, would prohibit "missionary activity and dissemination of missionary material" such as soliciting to change one's religion by means of the mail, the fax, electronic mail or any other instruments of communication without "prior consent."

¹³¹ http://www.religioustolerance.org/israel_1.htm (26/07/00) and U.N. Economic and Social Council report E/CN.4/2000/65 Civil and Political Rights, Including Religious Intolerance.

¹³² Interview with Secretary General of the Norwegian Israel Mission, Rolf G. Heitmann. (Oslo 06/11/00)

¹³³ U.S. Department of State Annual Report on International Religious Freedom for 1999: Israel. http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_israel99.html (26/07/00)

¹³⁴ Interview with Secretary General of the Norwegian Mission to Israel, Rolf G. Heitmann. (Oslo 06/11/00)

¹³⁵ Proposed Law of the Knesset members Moshe Gafni and Nissim Zvili, P/950.

¹³⁶ U.S. Department of State, 1999 Country Reports on Human Rights Practices: Israel. http://www.state.gov/www/global/human_rights/1999_hrp_report/israel.htm (18.10.00)

¹³⁷ Messianic Action Committee Freedom Report no. 67. November 15, 1999. <http://amfi.org/mac/tluidx.htm> (17/11/00)

The proposed law reads as following:

"The distributor of a document by means of the mail, the fax, the electronic mail or by any other means, that is, enticement to change religion, whether directly or indirectly, without obtaining the prior consent of the addressee thereto, is subject to three months' imprisonment." ^{137b}

Informal discrimination of secular Jewish citizens

The ultra-Orthodox Jews in Israel have a tendency to express negative attitudes towards non-Orthodox or secular Jews. The U.S. Department of State comments that "animosity between secular and religious Jews continued to grow during the period covered by this report."¹³⁸ (Mid-1999 to mid-2000) Their report continues by referring to "instances of ultra-Orthodox Jewish groups verbally or physically harassing Jewish citizens for "immodest dress" or other violations of their interpretation of religious law."¹³⁹ This adds to the difficulties secular oriented Jews already experience in Israeli society.

Registration

There are fourteen recognised religious communities in Israel. Judaism, Islam, Druze, Baha'i and ten different Christian communities are officially recognised in the sense that they have jurisdiction over their members in matters of personal status, and that they receive governmental funding.¹⁴⁰ In addition there are other communities present, such as several Protestant churches and Jehova's Witnesses, that do not have this official status, but, reportedly, they enjoy full freedom to practice their religion.¹⁴¹ The Protestant marriages are recognised and registered by the relevant government agencies, even though they are not performed in officially recognised institutions.¹⁴² It should be noted, however, that Jehova's Witnesses and some Evangelical Christian communities do not have religious courts of law to which they can turn in matters of divorce and other personal status issues.

According to a U.S. Department of State report, the Israeli government "designates religion on national identity documents, but not on passports."¹⁴³

The Concluding Observations report of the UN Human Rights Committee (1998) expresses concern that there is no secular alternative to the religious courts in matters of personal status.¹⁴⁴ The State fails to provide an option of civil marriage to individuals who do not identify with any religion. This constitutes a violation of the citizens' "basic rights [...] to valid marriage."¹⁴⁵ It may be noted that there has been some improvement in the situation of the secular when it comes to civil burial. For Jewish citizens the Orthodox burial services have been the only ones available, but since 1996, "alternative" graveyards have been licensed.¹⁴⁶

The UN Human Rights Committee is also concerned about the "preference given to the Jewish religion in the allocation of funding for religious bodies".¹⁴⁷ In the Initial Report submitted by Israel to the UN Human Rights Committee, it is acknowledged that this is a problem, and the paragraph 544 illustrates this with an example from 1996 when the Muslim community, "which comprises roughly 16 % of the general population, received [...] an amount equal roughly to 2 % of total funding for religious services by the Ministry of Religious Affairs."¹⁴⁸ Equality between the different religious communities in this respect is not practised to a satisfying degree. However, in 1995 a plan was introduced to improve this situation, but the actual implementation of this plan is not yet carried into effect.¹⁴⁹

^{137b} In Penal Law, 5733-1977 (1), after Section 174B will come: Section 174C "Prohibition of 174C: Enticement To Change Religion By Mail"

¹³⁸ U.S. Department of State 2000 Annual Report on International Religious Freedom: Israel. http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_israel.htm (13.12.00)

¹³⁹ Ibid.

¹⁴⁰ Initial report of State parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13 Par. 536.

¹⁴¹ Ibid.

¹⁴² Initial report of State parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13 Par. 541. See also U.S. Department of State Annual Report on International Religious Freedom for 1999:Israel.

¹⁴³ U.S. Department of State Annual Report on International Religious Freedom for 1999:Israel.

¹⁴⁴ U.N. Human Rights Committee Concluding Observations: Israel18/08/98. CCPR/C/79/Add.93. Par.29.

¹⁴⁵ Boyle, Kevin and Sheen, Juliet (eds.) Freedom of Religion and Belief - A World Report. Routledge, London 1997:440.

¹⁴⁶ Initial report of State parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13 Par. 570.

¹⁴⁷ U.N. Human Rights Committee Concluding Observations: Israel18/08/98. CCPR/C/79/Add.93. Par.28.

¹⁴⁸ Initial report of State parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13 Par. 544.

¹⁴⁹ Initial report of State parties due in 1993: Israel 09/04/98. CCPR/C/81/Add.13 Par. 545.

Registration of change of religion

The registration of conversion is based on the laws from the British Mandate Period before the establishment of the State. In short, the procedure for the convert is to obtain a certificate of his or her conversion from the head of the community he or she has entered and then produce this documentation for the proper governmental institution. The latter will then register the change of community of the convert, and hand out a certificate of such registration. A copy of this certificate will also be sent to the head of the community into which the convert has entered and to the head of the community to which he or she formerly belonged.¹⁵⁰ If conversion is registered in accordance with these requirements the change of religion will have legal consequences for the jurisdiction in matters of personal status. This registration procedure applies to citizens of all religions and there are no reports of problems for converts to achieve such change of registration.

Discrimination between citizens

Discrimination against non-Jews occurs at various levels in the Israeli society, but to simply label these offences "religious discrimination" may be a too simple explanation. To fully account for this issue, however, a more profound analysis is required than what this report can provide. On the other hand, the division between Jews and non-Jews may be understood as a historical and ethnical phenomenon. The foundation of this division seems to lie in the historical context out of which the State of Israel was born. After the Holocaust during the World War II, the international community deemed it proper to provide the Jewish people with the national homeland that the Zionist movement had been working for decades to achieve. The Declaration of Independence emphasises the "historical connection of the Jewish people with the Land of Israel"¹⁵¹ and that the new State will be "a Jewish State in the Land of Israel".¹⁵² It also states that it will "maintain complete equality of social and political rights for all its citizens, without distinction of creed, race, or sex. It will guarantee freedom of religion and conscience, of language, education, and culture."¹⁵³ The determination to be a Jewish State sometimes is at odds with these democratic values of equality, as will be shown in the following.

Confiscation of identity cards

A UN report tells of an alleged policy of the Israeli government and the military administrations to force the Christian Palestinian communities out of Jerusalem. Christian Palestinians of East Jerusalem complain of "being stripped of their right of residence by having their identity cards confiscated and very few drivers' licences issued to them."¹⁵⁴ According to the same report, Christian communities are losing members as a result of these practices. The Palestinians of East Jerusalem often seem to be in a difficult position due to the fact that the area they live in has been annexed by Israel, and at the same time these inhabitants are reluctant to accept the offer of Israeli citizenship, since they do not regard the Israeli annexation as legitimate. Another UN report states that: "Palestinian Jerusalemites are considered "visitors" in their home city, unless they agree to become Israeli citizens."¹⁵⁵

From time to time Israel closes its borders to the West Bank and the Gaza Strip, making it difficult for Palestinian worshippers to gain access to holy sites, for example in Jerusalem. When the borders are not totally closed, passage is none the less restricted for Palestinians, and special permits are required in order to pass.¹⁵⁶ The Society of St. Yves, a Roman Catholic organisation that works to provide legal resources and aid to Palestinians in Israel and the Occupied Territories, has reported of Christians being denied access to religious sites in Jerusalem. In a letter to the Ministry of Religious Affairs, the Executive Legal Director Lynda Brayer complains that access to holy sites is not adequately provided

¹⁵⁰ British Mandate legislation: Chapter 127. Religious Community (Change) 16th December 1927 and Supplement No.1 to Palestine Gazette Extraordinary No.1588 of 14th June, 1947: Religious Community (Change) (Amendment) Ordinance, No.15 of 1947.

¹⁵¹ Ben-Gurion, David, *Israel: A Personal History*. New English Library, London 1972:80.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ U.N Economic and Social Council. Civil and Political Rights, Including Religious Intolerance. E/CN.4/2000/65 Par. 57.

¹⁵⁵ U.N. Economic and Social Council. Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine. E/CN.4/2000/25.

¹⁵⁶ *Ibid.*

for. She gives an example from May 13th 1999, Ascension Day to Catholics and Protestants, when Jerusalem Day¹⁵⁷ was celebrated by the Jews, and due to this occasion the "vehicular access to Christian holy sites and churches in and around the Old City were completely blocked."¹⁵⁸ The letter also tells of harassment and humiliating treatment of Arabs trying to make their way to the churches on such occasions. Brayer emphasises that this problem "has been faced on every single feast and Sunday that "collides" with a Jewish or Israeli holiday."¹⁵⁹

Discriminating practices in distribution of land

Another form of discrimination occurs in the distribution of land. According to law the land is defined as being the property of the Jewish people. Land is distributed by quasi-governmental organisations - the Jewish Agency, the World Zionist Organisation and the Jewish National Fund. This system benefits Jewish citizens to the detriment of non-Jews.¹⁶⁰ However, there are signs that Israel is moving in the right direction. A case summary from the Department of Justice tells of the ruling of the High Court in the case of an Arab couple seeking to build a house in Katzir, a settlement built on land allocated by the Jewish Agency. The High Court states that it is impermissible for the State both to "allocate land directly to its citizens on the basis of religion or nationality" and to "allocate land to the Jewish Agency knowing that the Agency will only permit Jews to use the land."¹⁶¹ This case shows that the legal foundation for discrimination in the distribution of land is not present in Israel. However, there is reason to watch closely this situation in the future to prevent the Jewish organisations mentioned from basing their decisions on principles of inequality. The mentioned High Court ruling may be understood as symptomatic for the tendency observed in the current government to push for a secularisation of the Israeli society. Prime Minister Barak is reported to have proposed sweeping social reforms that fuels "the on-going debate over Israel's future as a Jewish state."¹⁶² The inter-penetration between state and religion is thus best to be understood in a dynamic perspective, and hopefully the current trend will prevent further discrimination of religious minorities.

Conclusion

Freedom of religion is generally respected in Israel, but as this report shows, there are exceptions to the rule. The right of non-religious people to have freedom from religion is not sufficiently provided for in the juridical system where only religious courts may rule in matters of personal status. Non-Jews who want to convert to Judaism are not accepted by Rabbinical Courts unless they perform Orthodox conversion. Jews who convert to other religions meet problems in their attempts to immigrate to Israel under the Law of Return. Converted Jews in Israel tend to face varying degrees of resistance in society, most notably from ultra-Orthodox groups who oppose proselytising. Attempts to restrict proselytising activities have been made the last few years by proposing a change of the existing anti-missionary law. If such a law would be passed, it would contravene the freedom of religion.

It is also reason to express grave concern about the discrimination between Jews and non-Jews in the issues of freedom of mobility, access to holy sites and distribution of land.

c. Palestinian Authority (PA)

The violations of freedom of religion described in this chapter are committed both by the State of Israel as the occupying force in the West Bank and the Gaza Strip, and by the Palestinian Authority, and this will be pointed out accordingly in each case.

¹⁵⁷ Jerusalem Day is celebrated in memory of the Six-Day War in 1967 when Israel started the occupation of the Territories including Jerusalem. It is marked in Jerusalem by parades of Jews entering the Old City through all its gates, and is regarded as a provocation by the Palestinian inhabitants in that part of town.

¹⁵⁸ Society of St.Yves' homepage: <http://www.saint-yves.org/christians/accessdenial.htm>

¹⁵⁹ Ibid.

¹⁶⁰ Boyle, Kevin and Sheen, Juliet (eds.) Freedom of Religion and Belief - A World Report. Routledge, London 1997:437.

¹⁶¹ High Court Case summary H.C. 6698/95.

¹⁶² 2000 Worldwide Newsroom: <http://www.newsroom.org> (03.10.00)

In a report by the Israeli human rights lawyer Justus R. Weiner it is argued that although the PA has the responsibility for human rights on a day-to-day basis in considerably large areas, it is not a sovereign state, and hence the ultimate responsibility for the human rights situation is held by Israel.¹⁶³

This interpretation is also substantiated in UN reports investigating the implementation of international human rights legislation in the Occupied Territories. Israel bears the responsibility of the Occupying Power, and this is stated in the Commission on Human Rights resolution 1993/2.¹⁶⁴ Based on these documents one can conclude that Israel has the formal responsibility in the area, but the PA should still be held accountable for their actions when infringing upon the inhabitants' right to freedom of religion.

General legal background

Boyle and Sheen mention in their report that the Constitution of Jordan, which applies partly as the local law in the West Bank, states that "the official religion in the area is Islam".¹⁶⁵ The Gaza Strip is ruled according to the legal arrangements under the Egyptian administration, which have Islamic law as the source of their legislation. Boyle and Sheen claim that "both sets of laws guarantee equality and prohibit discrimination on the basis of religion as well as the right to manifest belief [...] within the normal limitations as found in the ICCPR."¹⁶⁶ They further emphasise that the Palestinian Basic Law draft "does not propose Islam to be the religion of Palestine."¹⁶⁷ This situation has changed, however, in the more recent version of the draft Basic Law.

The U.S. Department of State Annual Report on International Religious Freedom for 1999 reads: "While the draft Palestinian Basic Law proposes that Islam be recognised as the official religion, freedom of worship is to be provided to adherents of other faiths."¹⁶⁸ There is hence reason to suggest that the self-understanding of the Palestinian Legislative Council that makes these drafts is moving in an Islamic direction. Even though the present leadership of the PA is secular in character, a more Islamic religious influence on Palestinian politics may cause problems for religious minorities in the future if the draft Basic Law is signed. The Palestinian Declaration of Independence from 1988 is also a source from which an Islamic basis for the future Palestinian state may be drawn. Even though all the three monotheistic religions from the area are mentioned in the text, special symbolic emphasis is laid on the Islamic tradition in the quotations from the Qur'ân at the beginning and the end of the declaration.¹⁶⁹ One should note that these suggestions of Islam as the official religion of a future state do not in themselves represent a violation of religious freedom as long as the law provides equality and non-discrimination for all religious and non-religious groups.

The PA requires that citizens be affiliated with some religion, which must be declared on identification papers. It is generally unacceptable to declare atheism in public. Legal matters regarding personal status are decided by religious courts: Shari'a (Islamic law) courts for Muslims and ecclesiastical courts for the Christian population.¹⁷⁰ The different Christian churches do not have equal status in this respect. The churches that have been in the area since the Ottoman period have courts whose rulings are considered legally binding in matters of personal status. The PA officially recognises these churches. Another group of churches are those that were established in the area between the late 19th

¹⁶³ Weiner, Justus R.: Human Rights Trends in the Emerging Palestinian State: Problems Encountered by Muslim Converts to Christianity, 1999: Published in Michigan State Journal of International Law, June 2000.

¹⁶⁴ U.N. Economic and Social Council: Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine. E/CN.4/2000/25 and U.N. Economic and Social Council: Mission report on Israel's violations of human rights in the Palestinian territories occupied since 1967. E/CN.4/S-5/3. October 17th 2000.

¹⁶⁵ Boyle, K. and Sheen, J. (eds.): Freedom of Religion and Belief - A World Report. Routledge, London 1997:446.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ U.S. Department of State Annual Report on International Religious Freedom for 1999: Occupied Territories. http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_occterr99.htm 1 (26.07.00) See also U.S. Department of State 2000 Annual Report on International Religious Freedom: Occupied Territories. http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_occterr.htm (13.12.00)

¹⁶⁹ State of Palestine - Declaration of Independence. November 15th 1988. http://www.cyberus.ca/~baker/pal_independence.htm (24/11/00)

¹⁷⁰ U.S. Department of State 2000 Annual Report on International Religious Freedom: Occupied Territories. http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_occterr.htm (13.12.00)

century and 1967, Protestants and evangelical communities. They are not officially recognised by the PA, but fully tolerated, and granted permission to issue marriage certificates. A third, smaller group of churches consists of proselytising communities, such as Jehova's Witnesses and some evangelical Christian groups and the PA does not officially recognise them. These groups have been subject to opposition from both Muslims who disapprove of their missionary activities and Christians who fear that the new groups may disrupt the status quo.

Conversion

Although not prohibited by law, change of religious affiliation is subject to strong societal resistance in Palestine. Boyle and Sheen explain this in the case of Muslims by referring to the concept of "ridda" (apostasy), which is prohibited and punishable by death according to Islamic law. Palestinian Shari'a Courts have addressed this issue indirectly in cases of inheritance disputes where apostates have been denied inheritance because of ridda.¹⁷¹ Even though such cases rarely occur, they constitute a clear example of severe discrimination against converts. Christians who convert are similarly subject to societal resistance.

Cross-community marriages also generally draw negative attention in society. Most problematic are marriages between a Christian man and a Muslim woman, because Muslim women are not allowed to marry non-Muslims. In such cases the man will be allowed to marry the woman only if he converts to Islam. A Muslim man, however, is free to marry a Christian woman, even if she retains her faith.¹⁷² These restrictions on mixed marriages hence also implicates gender discrimination and violation of international Human Right conventions.

Allegations of systematic discrimination against Muslim converts to Christianity (MCCs) are mentioned in several reports. The U.S. Department of State Report from 1999 states that MCCs allegedly have been detained by the PA police for proselytising too openly, but that "it appears that their religious activities were in fact only one of many factors leading to their detention."¹⁷³ In the 2000 Report for International Religious Freedom the U.S. Department of State notes that there have been reports of harassment in the form of mistreatment and threats of MCCs who publicise their religious beliefs. The PA has not taken action against persons accused of such harassment.¹⁷⁴ The same report by the Department of State concludes "there was no pattern of PA discrimination and harassment of Christians."¹⁷⁵

The Israeli international human rights lawyer Justus R. Weiner disputes this conclusion. In a report he states that MCCs suffer both societal discrimination and direct persecution from the PA. The report is partly based on interviews with persons who have been subject to such persecution, but whose identity is concealed in the report by using fictive names. Weiner does not perceive this to affect the credibility of his report, and claims that anonymity was a prerequisite in order to make some of his sources come forward.¹⁷⁶ The Secretary General of the Palestinian Human Rights Monitoring Group (PHRMG), Bassam Eid, claims in an interview with the Norwegian newspaper *Vårt Land* that Weiner's use of anonymous sources seriously weakens his arguments and renders the information of the report unverifiable.¹⁷⁷ The *Vårt Land*-journalist Erling Rimehaug however, has met and interviewed anonymous people in the Occupied Territories who are in the same situation as Weiner's sources¹⁷⁸, and this substantiates Weiner's report.

¹⁷¹ Ibid.

¹⁷² Ibid p.448.

¹⁷³ U.S. Department of State Annual Report on International Religious Freedom for 1999:Occupied Territories. http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_occterr99.htm l (26.06.00) See also U.S. Department of State 2000 Annual Report on International Religious Freedom: Occupied Territories. http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_occterr.htm (13.12.00)

¹⁷⁴ U.S. Department of State 2000 Annual Report on International Religious Freedom: The Occupied Territories (Including Areas

Subject to the Jurisdiction of the Palestinian Authority) http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_occterr.htm (13.12.00)

¹⁷⁵ Ibid.

¹⁷⁶ Weiner, Justus R.: Human Rights Trends in the Emerging Palestinian State: Problems Encountered by Muslim Converts to Christianity. 1999:38.

¹⁷⁷ Rimehaug, Erling: Trakassert for troen. Kristne palestinere utsatt for forfølgelse. *Vårt Land* 12.05.00.

¹⁷⁸ Ibid. See also *Vårt Land* 18.04.00 Levende steiner i det hellige land by Erling Rimehaug.

The following is one of the interviews:

"Salim" was interrogated by the security service Preventive Security Services at the police station in Salfit. He was hit in the chest with fists, rifle butts and sticks. He sustained cuts all over his face and a broken shoulder. The charge against Salim was due to a quarrel between him and another person in the village, who Salim, prior to becoming a Christian, had injured in a fight. Even though he had served prison sentence for this case a number of years back, and has since paid damages to the offended person, Salim was once again arrested in connection with this case, and in addition accused of collaborating with Israel. Salim's brother, Ghassan, was also brought to the police station in September 1999, officially on the grounds of his brother's case. The interrogation was almost exclusively about his brother's Christian faith and the activity of Christian missionaries in the area. Salim is summoned regularly by the security service. According to him they always ask for names of others who have converted and of the leaders in the congregation he attends. In one of the most recent questionings they admitted that they know that he does not collaborate with Israel, because they have kept him under surveillance every single day for a long time. But meetings with foreign Christians make them suspicious...

The Weiner report and the interviews in Vårt Land reveals serious violations of human rights, such as brutal interrogation methods and arbitrary arrests based on fabricated criminal charges against MCCs and their family members. Allegedly the Preventive Security Services have tried to force the converts back to Islam by means of threats and false accusations of criminal activity, generally trying to make life difficult for the MCCs. Weiner states that these actions seem to be motivated by suspicion that the converts are collaborating with Israel to "undermine the legitimacy and security of the PA."¹⁷⁹ The reason for this probably lies in the fact that the MCCs usually join evangelical churches that tend to interpret the Bible literally, believing that the Land of Israel is promised to the Jews by God. Whether PA's suspicion is true or not should not infringe upon the MCCs' right to freely adopt the belief of their choice without being subject to harassment or persecution.

Contrary to the U.S. Department of State and the Palestinian human rights groups LAW and PHRMG, Justus Weiner claims that his findings give reason to conclude that the PA persecution of MCCs forms a systematic pattern. According to the U.S. Department of State, PHRMG and LAW the violation of the rights of the MCCs is not to be seen as more aggravating than the violation of other people's rights under the PA jurisdiction.¹⁸⁰ Weiner criticises this stance and claims that the human rights organisations and the U.S. fail to comply with their roles as "watchdogs and information sources."¹⁸¹

Registration

The Boyle and Sheen report informs that: "Religion is listed in birth certificates and in the Israeli-issued identity card required by law to be carried by each resident of the Occupied Palestinian Territories."¹⁸² This gives way to discrimination on the basis of religion in the granting of permits to enter for example Jerusalem, where a lot of both Muslim and Christian holy places are situated. This discrimination is performed by Israel and generally affects non-Jews.

Although not prohibited by law, "to declare atheism publicly is generally unacceptable."¹⁸³ However, there are formal obstacles that prevent people from stating an atheistic view. In the election held for the National Legislative Council and for a president as head of the executive branch in 1996 there were given "special quotas for religious minorities, i.e. Christians (3) and Samaritans (1)."¹⁸⁴ This system required therefore all the candidates to register according to their religious affiliation and beliefs, and atheistic belief was not an option. The Secretary General of the Norwegian Human-Ethical Organisation Lars Gule states in an interview that the Palestinian society is very much based on deno-

¹⁷⁹ Weiner, Justus R.: Human Rights Trends in the Emerging Palestinian State: Problems Encountered by Muslim Converts to Christianity. 1999:10.

¹⁸⁰ Ibid p.37-38.

¹⁸¹ Ibid p.38.

¹⁸² Boyle, K. and Sheen, J. (eds.): Freedom of Religion and Belief - A World Report. Routledge, London 1997:447.

¹⁸³ Ibid p.448.

¹⁸⁴ Gule, Lars: Article to be published by the Christian Michelsen Institute in a project on citizenship, democracy and human rights in Israel and Palestine. Copy held by author of this report.

mination, and that it has little room for non-religious, secular self-identification.¹⁸⁵

Lars Gule also mentions the lack of a civil alternative to religious marriage in the PA.¹⁸⁶ If such an alternative were provided for it would both be easier for mixed couples to marry without "forcing" one of the spouses to convert, and it would facilitate non-religious people's right not to be affiliated with any particular religion.

The military orders issued by Israel in the Occupied Territories are not equally applied in cases involving Jews and non-Jews. Boyle and Sheen give an example of this by referring to the Military Order 325 that "assures the protection of holy places from 'desecration or any other damage and from anything that might impede the free access of religious followers to their holy places or which might offend their sentiments towards these places'."¹⁸⁷ The report states that the law is not applied to protect holy places from Israeli incursions, because the Jewish settlers in the Territories are not subject to such military laws. This means, in practice, that the inhabitants in the Israeli Occupied Territories are not treated equally before the law.

Conclusion

The overall human rights situation in the Occupied Territories is subject to criticism, and the further development towards an autonomous Palestinian State should be monitored closely. As pointed out in this report, there have been increasing tendencies towards emphasising the role of Islam in the preparations for the State. It is important that these tendencies do not exclude adherents of other religions from participating in the nation-building process. As in Israel, all matters of personal status are handled by religious courts, and the PA does not provide civil options for marriage or divorce. It is also not possible to refrain from identifying with a religion in the PA-issued identity cards or when registering as a candidate in elections. These arrangements conflict with the right to freedom from religion. The allegations of harassment and persecution of converts from Islam to Christianity should be taken seriously, even though the different observers of the situation disagree as to what extent these incidents reflect a systematic policy of the PA.

As the occupying power, Israel has a responsibility to ensure the implementation of human rights in the Occupied Territories. However, Israel neglects this obligation when denying access to holy places, restricting mobility etc. for non-Jewish inhabitants in the West Bank and Gaza Strip.

The issue of religious freedom is obviously not the highest priority of the PA at the moment. However, it is principally important that the laws and practices in this field are developed in accordance with international law and human rights when preparing the establishment of the Palestinian State.

7. Egypt

a. Introduction

Egypt declared itself an Islamic State in 1956 and currently over 85% of the population are Muslim. The Christian population is officially recorded at around 6%, but Egyptian Christians claim to represent nearer 15% or even 20% of society. Of this, by far the largest denomination is the Coptic Orthodox Church to which approximately 7-10 million people are affiliated. This makes the Coptic Orthodox Church the single largest body of Christians throughout the Middle East. Other religious confessions total less than 1% of society. Examples of such groups are Jews, Bahai's and atheists.

¹⁸⁵ Interview with Lars Gule, Oslo 6/11/00.

¹⁸⁶ Gule, Lars: Article to be published by the Christian Michelsen Institute in a project on citizenship, democracy and human rights in Israel and Palestine, p. 54. Copy held by author of this report.

¹⁸⁷ Boyle, K. and Sheen, J. (eds.): Freedom of Religion and Belief - A World Report. Routledge, London 1997:447.

b. General Legal Background

The 1971 Constitution guarantees equality of all citizens before the law, regardless of religion or creed (Article 40). Articles 46 and 47 guarantee freedom of belief and practice of religious rites and freedom of opinion respectively. Articles 160 and 161 of the Egyptian Penal laws protect against the violation of these constitutional principles respecting religious freedom. Article 160 specifically protects against the disruption of religious observance and damaging religious premises or artefacts, whilst Article 161 protects against open attacks on religions by publishing distorted versions of their scriptures or by publicly mimicking their celebrations.

As a member of the United Nations, Egypt has ratified or acceded to numerous international covenants, including the International Covenant on Civil and Political Rights (ICCPR)¹⁸⁸ (which enforces the Universal Declaration of Human Rights), the International Covenant on Economic, Social and Cultural Rights¹⁸⁹ and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishments¹⁹⁰.

Egypt has also ratified (with a reservation) The African Charter of Humans and People's Rights (The Banjul Charter) effective from 1986.

Egypt's Constitution makes such international treaties part of national law, thus her commitment to the protection of religious liberties is clearly embedded both nationally and internationally. But according to the Supreme Court's decision in 1975 only Islam, Christianity and the Mosaic Faith are acknowledged as religions.

However, despite the above mentioned guarantees, there has been a significant erosion of the distinction between Islamic and Civil Law, with ensuing severe consequences on Egypt's non-Muslim population. In 1980, then President Anwar Sadat amended Article 2 of the Constitution so that Islamic law became "the...principal source of legislation" instead of "a...principle source of legislation". In addition, Egypt's ratification of the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁹¹ was made on the assumption that they are compatible with Islamic law.

With Cairo as the intellectual capital of Islam, the ideology that Islam and politics are inseparable is being actively promoted by Islamic thinkers. As Sheikh Al Azhar has commented, 'the theory of separating religion and politics emerged in a non-Islamic environment... Islam does not know secularism in that way because Islam is religion and life and does not separate the two'.¹⁹²

c. The Right to Change Religion (Apostasy)

Religious conversion is an extremely sensitive issue in Egypt. In theory, the State proscribes to a policy of freedom to change religion or belief, as upheld in the Universal Declaration of Human Rights, which states:

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

Indeed, neither the Constitution nor the Civil or Penal codes prohibit apostasy and there are no legal restrictions on the conversion of non-Muslims to Islam. However, Muslims who wish to change their religion face a number of legal restrictions, both Civil and Islamic.

¹⁸⁸ 4th August 1967

¹⁸⁹ 4th August 1967

¹⁹⁰ 25th June 1986

¹⁹¹ 16th July 1980

¹⁹² Sheikh Al Azhar Interviewed on Religion and Politics (FBIS-NES-93-109, 9th June 1993):4 cited in Pedro C Moreno, ed., Handbook on Religious Liberty Around the World, Rutherford Institute, 1996.

Civil and Penal Restrictions

Penal Code - Article 98f

Article 98f of the Penal Code, which prohibits any person from degrading or disdaining any of the holy religions or any of its religious sects with the intention of harming national unity and social peace, has often been interpreted to discourage Muslim conversions.¹⁹³ For example, in 1986, a family (husband, wife and two of the wife's sisters) were detained under this law (Case No. 444 of 1985).¹⁹⁴ The detainees had converted to Christianity ten years prior to their arrest. In October 1994, Nashwa Abdul Aziz Saleem was arrested at Cairo International Airport and held at Qanatar Women's Prison until January 1995 when she was released to her family. In at least one court appearance she was charged under Article 98f for denigrating Islam.¹⁹⁵

Identity Cards

Non-Muslims who convert to Islam are able to obtain new documents recording their change in religious status. However, Egyptian courts have upheld the principle that Muslims who wish to alter their identity papers to record a change in religious affiliation are not permitted to do so.¹⁹⁶ Thus, Christian converts who try to alter their ID cards and other official documents themselves, in order to avoid government harassment, risk facing criminal charges of violating laws prohibiting the falsification of documents - as was the case for Nashwa Abdul Aziz Saleem, cited above. This inability to register a change in religion not only has consequences for the individual convert, but also for their offspring, who are automatically registered as Muslims. Once registered, the children must receive Islamic instruction in school, however contrary to their parents' wishes. These circumstances directly contravene the Convention on the Rights of the Child, of which Egypt is a signatory.¹⁹⁷

In 1997, Mamdouh Nakhla, a human rights activist, filed suit seeking the removal of the religious affiliation category from identification cards. The court referred the case to the State Commissioner's Office, which issued an opinion in May 2000, noting that the legal challenge had not been filed within 60 days of the decree's issuance, as required by law.¹⁹⁸ However, the advisory opinions of the State Commissioner's Office are not binding and the court is now expected to try the case.

Personal Status Laws

Several personal status laws from the first half of the 20th century negatively affect the legal status of converts from Islam. For example, a Muslim wife is required to divorce an apostate husband; converts from Islam lose all inheritance rights; they also lose custody of their children (Law no.25 of 1920, Law no. 52 of 1929 and Law no. 77 of 1943). Muslim judges rule in civil cases related to Christians, taking notice only of Islamic religious law. In the case of a civil marriage between a Muslim and Christian couple, the courts' ruling is said to be usually in favour of the Muslim partner. The Muslim partner is granted the right to keep the children, allegedly because Islam is 'the best religion' and because other religions 'develop pagan practices'.¹⁹⁹ No similar legal consequences befall converts from Christianity to Islam.

State Security Investigators (SSI)

If converts to Christianity are public about their religion, such as attending church services or speaking about their beliefs, they may attract the attention of the State Security Police. As well as the possibility of being charged under Article 98f of the Penal Code, as described above, police may accuse converts of causing religious division and unrest, treating them on a par with terrorists. For example, in 1990 Mustafa El Sharkawy and Mohammed Hussein Sallam were arrested by the SSI in separate incidences, accused of converting to Christianity, interrogated and tortured.²⁰⁰

¹⁹³ US Department of State, Report 1993

¹⁹⁴ Egypt's Converts, A Middle East Concern Publication, 1995.

¹⁹⁵ Egypt's Converts, A Middle East Concern Publication, 1995.

¹⁹⁶ US Department of State, Report 1993

¹⁹⁷ 5th February 1990.

¹⁹⁸ US Department of State, Annual Report on International Religious Freedom: Egypt, 2000.

¹⁹⁹ Freedom of Religion and Belief, A World Report, Ed. Boyle and Sheen, Routledge: London and New York, 1997.

²⁰⁰ As interviewed by the Centre for Religious Freedom, Freedom House, June 1998, cited in Egypt's Endangered Christians, CFRF/FH, 1999, p71-72.

Similar action has been taken against those suspected of proselytism. In June 2000, Aziz Tawfik Rezkalah was arrested by the SSI for the fourth time in as many years, and accused of preaching Christianity to Muslims. He was interrogated, stripped, blindfolded, insulted and beaten.²⁰¹

Islamic Law (Sharia)

The Quran, Sunna (record of the Prophet Mohammed's behaviour) and Hadith (biographical traditions uttered by the Prophet) together make up Islamic scripture. Al-Bukhari, recognised as the most authoritative collector of Hadith, relates that "the Prophet said: 'He who forsakes his religion, kill him'".²⁰² This and other verbal traditions form the basis of Islam's attitude towards those who become apostate - namely that the apostate should be given the opportunity to repent but if he or she persists in his or her apostasy they should be put to death. This view is upheld by prominent Islamic thinkers in Egypt. Sheikh Tantawi of Al-Azhar University, appointed by the Egyptian President, said that, "it is forbidden for any Muslim to change his religion in Egypt"²⁰³. Muslim preacher, Sheikh Mohammed El-Ghazali of Al-Azhar University, one of Egypt's most prominent Islamic clerics testified that, "any person or group of people who kill an apostate should not be liable for punishment since they would be fulfilling the legitimate punishments proscribed by Islam and should be treated with leniency"²⁰⁴. These remarks were labelled 'a clear invitation to murder' by the Egyptian Organisation for Human Rights.

One of the principle threats a Muslim apostate faces is from his family. This is because it is usually considered a great disgrace for an Egyptian Muslim family to have a member regarded as an apostate. A family may disinherit the apostate, kill him or, especially in the case of women, imprison her until she reconverts. The greatest threat often comes from uncles or cousins with less personal attachment who may resort to killing the apostate as proscribed by sharia law.

Thus the fundamental tenet of freedom of religion which the Egyptian Constitution and International Conventions nominally protect does not lie in harmony with Islamic law, the principle source of legislation in Egypt. This results in outright discrimination against converts from Islam. Even so, government ministers have attempted to iron out the inherent dichotomy with statements such as: "there is no discrimination, but the authorities have some laws regulating conversion from one religion to another...We allow every religion in Egypt and have an authority for each religion assisting those who wish to change from one religion to another...Egyptians don't want people to shift from one religion to another to gain some personal benefit"²⁰⁵

Converts to Islam

By and large, converts to Islam do not face any harassment from the State and are able to change their religious affiliation on Identity Cards. However, often problems arise in the case of Christian women or girls who convert to Islam. Since the conversion of a Christian to Islam also brings shame upon Christian families, there may be reluctance to admit that, typically a daughter, has in fact converted voluntarily to Islam because she wishes to marry a Muslim. Consequently there have been reports of kidnap or rape when in fact the girl in question has eloped.

However, there have been credible reports of militant Muslims kidnapping Christian women, often with the co-operation of the local police, in order to force them to convert to Islam. They may offer the girl financial or property incentives, especially in economically underprivileged areas. In some cases there have been reliable reports of physical coercion, including rape. The following example illustrates a case of police complicity in the attempted conversion of a young girl after holding her incommunicado and the subsequent probable false conviction of her older brother:

²⁰¹ B. Baker, Compass Direct Press Release, July 6th 2000, Egyptian Security Police Threaten, Torture Local Christian.

²⁰² The Codification of Islamic Law, Al-Azhar University, Cairo 1982, cited in Egypt's Converts, A Middle East Concern Publication, 1995.

²⁰³ Interview with Sheikh Tantawi, August 1998, cited in Egypt's Endangered Christians, a report by the Centre for Religious Freedom, Freedom House, p70.

²⁰⁴ News Network International, 28 July 1993 and US Department of State, Country Reports on Human Rights Practices for 1993: Egypt.

²⁰⁵ Muhammad Ali Mahjub, Minister of Religious Affairs, in an interview with Pedro C. Moreno, International Co-ordinator of the Rutherford Institute, Sept 10th 1994, cited in Pedro C Moreno, ed., Handbook on Religious Liberty Around the World, Rutherford Institute, 1996.

In March 1997, 13-year old Theresa Shakir, a Coptic Christian, was taken by her teacher, believed to be an Islamic extremist to a nearby police station where they tried to force her to convert from Christianity to Islam. It took Theresa's family nine days to secure her release from the police station, having to approach Pope Shenouda III, head of the Coptic Orthodox Church, the office of President Mubarak and several human rights organisations in the meantime. When she was finally released, police told the family that she had changed her religion to Islam.

In November of that year, Adly Shakir, Theresa's older brother, returned home late one night to find his parents and younger brother shot to death, his sister Nadia, wounded by gunshot. Theresa had also been killed, with her stomach cut open and disembowelled (a method said to be used by the extremist Islamic Group Al Gama'at Al Islamiya for those it accuses of apostasy). When he ran to the police station to report the incident, Adly was immediately arrested and accused of the murders. He was subjected to severe torture to force a confession. He was convicted and sentenced to death by hanging.²⁰⁶

Theresa's sister, Nadia Shakir, was hospitalised for nine days for her wounds. Although Izzat, another brother, says that he asked that she be returned to him, she was released to an uncle on the condition that the surviving members of her immediate family not be allowed to see her. The uncle died shortly after and the police took custody of her. At this time, her whereabouts are not known to her family.

Freedom House is concerned that Adly Shakir may have been falsely convicted and that he has been subjected to torture. Freedom House is also deeply disturbed by the police's refusal to allow the family access to Nadja Shakir. Finally they are concerned that the police were complicit in declaring a thirteen-year-old girl a convert after holding her incommunicado.

The state of other beliefs

Atheism

Through the definition of Penal Code paragraph 98f atheism is forbidden in Egypt. December 14th 2000 the atheistic author Salaheddin Mohsen was sentenced to six months in jail because of atheistic viewpoints in his books. He was "guilty of holding Islam and the Prophet Mohammed in contempt and questioning the divine sanctity of the Holy Qu'ran." Transferred to a Civil court Mohsen got a more "lenient" suspended six month sentence.

Bahai

Egypt has a very small number of Baha'is. They are viewed as illegal according to a decree of President Nasser (Law 263 of 1960) "banning Baha'i institutions and community activities. All Baha'i properties, including Baha'i centres, libraries and cemeteries, were confiscated. This ban has not been rescinded."^{206b}

Jews

The Jewish community currently numbers fewer than 200 persons. Before 1952 it was a substantial minority of Jews in Egypt, but they emigrated in a great scale when the State of Israel came into being. However, today the few Jews still living in Egypt can only gather freely in the only existing synagogue in Maadi. The nice art nouveau synagogue in Cairo has been closed for decades.^{206c}

²⁰⁶ Source: "Egypt's Endangered Christians" Center for Religious Freedom, Freedom House 1999. Police reports and other related documents are on file at Freedom House www.freedomhouse.org/religion

^{206b} US State annual report 2000

^{206c} US State Annual Report 2000.

d. Registration Requirements

The problem of registering a change in religious affiliation has been discussed in the previous section. This section shall focus on the registration difficulties associated with the building and maintenance of places of worship.

State Control of Church Property

The legal foundation for the Egyptian state's control of church property is the Ottoman Hamayouni Decree of 1856. This decree severely restricted the new construction and repair to Christian churches by requiring non-Muslims to obtain what is now a presidential decree to build a place of worship. In 1934, the Hamayouni Decree was amplified by the Interior Ministry as the Alazabi Decree. This included a set of 10 conditions to be considered by the government before the issuance of a presidential permit. The conditions include the location of the proposed site, the religious composition of the surrounding community and the proximity of other churches and mosques. Human rights monitors have upheld that the conditions of the decree are in contradiction with the 1971 Constitution.

Regarding repairs to church property, progress has been made over the past two years following considerable criticism of the decree. In January 1998, an amendment was made which delegated presidential authority to issue permits for church renovation to the country's 26 provincial governors. On December 28th, 1999, President Mubarak decreed that church repairs no longer required a presidential, governors or federal ministry permit. Instead, the repair of all places of worship was to be subject to a 1976 civil construction code, symbolically placing the repair of mosques and churches on equal footing before the law. However, leading Coptic Orthodox clergy have testified that performing repairs to church property is still largely obstructed by local government officials who take pains to delay authorisation by bureaucratic means.²⁰⁷

The need for presidential assent in order to build a new church is still required. No such permission is necessary for the building of mosques. In accordance with the Alazabi Decree, churches may not be built within 100 metres of a mosque, nor within an Islamic locality. This latter criterion creates a loophole for the refusal of an application to build a church since any locality may be considered Islamic. It also theoretically promotes the ghettoisation of Christians.

In practice, the State systematically obstructs the construction of new Christian churches, halls, offices and parsonages, leaving many parishes without adequate facilities for worship and other congregational activity. The Coptic Orthodox Church has particularly suffered in this regard. Very few of their applications for building permission have been accepted, and a successful application has been known to take up to thirty years before Presidential approval is granted. In Baliana Diocese, Upper Egypt, there are just 25 church buildings servicing a community of approximately 250,000 Coptic Christians and only 3 of these buildings are officially licensed with a Presidential permit.²⁰⁸

The current government boasts that since President Mubarak came to power, he has not once denied permission for a church to be constructed. In 1993, the President himself declared that "Copts are treated exactly as Muslims... We do not restrict the building of churches. How can we do this in places of worship? The accusations... are groundless".²⁰⁹

However, the Christian community maintain that many applications have never even reached the President, becoming delayed in the offices of the Interior Ministry. In the circumstance where an

²⁰⁷ CSW Interview with Bishop Wissa of Baliana Diocese, London, October 2000.

²⁰⁸ CSW Interview with Bishop Wissa of Baliana Diocese, London, October 2000

²⁰⁹ Sherry, 720 as cited in Pedro C Moreno, ed., Handbook on Religious Liberty Around the World, Rutherford Institute, 1996.

application does receive Presidential approval, utilisation of the permit can be blocked at the level of the Interior Ministry or by the State Security Forces. In some instances, after the issuance of a Presidential decree for church construction, the declaration by local Muslims of a small mosque within the 100 metre limit of the construction site, has resulted in obstruction to church building.

In January 1996, human rights activist, Mamdouh Naklah, filed a suit challenging the constitutionality of the Ottoman Decree. In December 1998, the case was referred to the State Commissioner's Office by an administrative court. This decision was considered a setback as the State Commissioner's Office is not required to issue an opinion quickly and its advisory opinions are not binding. Once an opinion is issued, the court is expected to try the case.

Examples of church closure; localities without churches; churches which have been burned down; churches without official presidential permits.

Unfortunately the available evidence seriously questions President Mubarak's statement quoted above. There are countless examples of churches which are without a Presidential permit or have been forcibly closed or burned down. In addition there are many localities which do not have sufficient facilities to service the local Christian population or are without church buildings altogether. Some examples are cited below:

In March 1989, the Church of the Virgin Mary and the Martyr Abanoub in Ezbet Al Akbat, Qaliouba District was forcibly barricaded by police after parishioners tried to carry out some minor repairs. Despite enormous efforts by the clergy, including the Bishop, to try to gain permission to reopen the church, it remains closed to this day. In 1998, plans to build a new church in a nearby location were initiated and "semi-official" approval was given in March 2000. However, in early June, local Muslims began Friday prayers 15 metres in front of the new construction, declaring the site a mosque. The local Christian community view this action as a deliberate attempt to obstruct church construction and intimidate the congregation. The local authorities made no intervention.²¹⁰

The town of Nasr, comprising 12 districts has only one church. In New Miniut and New Assiut towns and in New Teba town, Luxor, there are no churches. There are no churches along 375km of coastline from Alexandria to Marsa-Matrouh. In Al Sadat city there are no churches and in the state of south Sinai, six major cities are without a single Coptic Church, forcing some Copts to travel approximately 280km to the nearest one. The Egyptian government has refused time and time again to grant the Coptic Church permission to build churches in these cities.²¹¹

The Church of the Virgin Mary and Mar Girgis in Giza and the Church of Shaheed Abu-Seifein in Al-Fayoum have both been burned down. Most recently, St George's Church in Awlad Tok Gharb was burned in the El-Kosheh violence in early January 2000.

In 1967, an application was made in Mamoura district for an official presidential permit for a church. It has still not been granted 33 years later. In 1979, a presidential permit was issued to build the Church of St Michael in Luxor. No building permit has been granted by the local authorities since.

e. Conclusion

There is a large discrepancy existing between the official position of the Arab Republic of Egypt

²¹⁰ Information provided by the Australian Coptic Association, PO Box 571, Sydney, Australia NSW 2148

²¹¹ Information provided by the US Copts Association, 4918 Casimir St, Suite 100, Annandale, VA 22003, USA

towards religious freedom and actual practice. The Christian community faces systematic discrimination from the government and from sections of the Muslim population in the areas of the right to change religion and over church registration requirements as detailed in this report.

To summarise, while Egypt has no law against apostasy, the increasing influence of Islamic sharia law on the Civil Code has tended to create a de facto law. Converts from Islam to Christianity face torture and imprisonment by the police and can be charged with insulting religion or disrupting national unity. Converts are often unable to avoid identification by the authorities since they are not permitted to change their religious affiliation on identity cards. There have also been credible reports of the forced conversion of Christian women to Islam.

The outdated Ottoman Hamayouni Decree and subsequent Alazabi Decree have placed severe restrictions on the maintenance and construction of non-Muslim places of worship. Although it appears that these decrees are being gradually relaxed from the level of central government, Christian communities are still experiencing obstruction at a local level.

However, these are not the only areas where Christians are disadvantaged. There is a very poor representation of Christians in senior positions in the government, in particular the National Assembly, and few Christians find their way to senior positions in the educational sector or the military. The Coptic era in school history lessons is frequently omitted and a Christian presence or voice is barely heard on national television or in the press.

The Supreme Courts decision in 1975 acknowledging only Islam, Christianity and Judaism as religions, is also a grave breach of religious freedom.

The Egyptian government has a fundamental responsibility to see that the principles outlined in its Constitution and in international conventions relating to freedom of religion are properly practised within Egypt, for the benefit of all Egyptian citizens.

8. Nigeria

a. Introduction

Nigeria, with its 110 million people, can be roughly divided into the feudal, predominantly Muslim North and the entrepreneurial, mainly Christian South. Nigeria is comprised of an estimated 400 ethnic groups. The predominant groups are the Hausa/Fulani (North), Yoruba (Southwest) and Igbo (Southeast). Religious affiliation is often linked with ethnic identity. Traditionally Hausa/Fulani are predominantly of Muslim background while Yoruba and Igbo are Christian or Animist.

This report examines the position of Christian communities in the Northern Nigerian states. While constitutionally Nigeria is a secular state, religion has always been a key factor, and a source of violent conflicts, in the country's political life. Nigeria Inter-Religious Council (NIREC), an NGO comprising of 50 Muslim and 50 Christian leaders, was recently set up to try defuse religious tension through peace initiatives.

Christian communities in the North have faced repression and discrimination from successive Federal and State governments. The full impact of the recent introduction of Sharia law by northern states is

yet to be determined. However, there are indications that this severely restricts the freedom of religion of non-Muslim communities living in the north.

b. A brief political background

Nigeria has been mostly under military rule since its independence from Great Britain in 1960. A majority of the military governments were from a Northern Muslim background. On 17 November 1993, General Sani Abacha (a northern Muslim), then Minister of Defence, seized power in a coup and remained the Head of State until his death in June 1998. General Abacha dissolved all democratic institutions and set up the military Provisional Ruling Council, which ruled by decree and oversaw the Federal Executive Council (civilian and military).

His successor General Abdulsalami Alhaji Abubakar announced a new transition programme for the return to civilian rule by 29 May 1999. He established an Independent National Electoral Commission (INEC), which promptly announced an election timetable for local, national and presidential elections.

Until May 1999, Nigeria was ruled by a military junta without a constitution or a legislature. The suspended 1979 Constitution provided for freedom of religion, but the military Government restricted this right in certain respects. In May the military transferred power to an elected civilian Government that rules subject to a new Constitution that took effect on May 29, 1999 and is based largely on the 1979 constitution.

The new civilian government generally has respected religious freedom, although its ability to enforce respect for religious freedom or to prevent violence between Muslims and non-Muslims remains uncertain. Although the Government has never outlawed proselytising, it continued to discourage and criticise it publicly, in the belief that it stimulates religious tensions. Both the 1979 and the never-implemented 1989 constitutions prohibit state and local governments from adopting an official religion. (US Department of State, annual Report on International Religious Freedom for 1999)

Olusegun Obasanjo, a Christian from the South, was inaugurated as a civilian president on May 29, 1999. President Obasanjo's government has embarked on a number of democratic and human rights reforms. The legacy of years of corruption and mismanagement has not only left the country destitute, despite possessing vast oil reserves, but has also created a number potentially explosive issues for the new government. Corruption, lack of public confidence in the police and security forces, unequal distribution of revenue derived predominantly from Southern oil-rich areas, ethnic tensions and the adoption of Sharia law in the north, are some of the key threats hindering Nigeria's democracy.

President Obasanjo's reforms have not been without opposition. The northern Muslim ruling elite has been unhappy about being sidelined after wielding power both in the military and in the government for much of Nigeria's independence. The Northern elite is believed to be particularly concerned with President Obasanjo's drive to tackle financial mismanagement and corruption in government and to bring those responsible for embezzlement of state funds under the former military government to justice. The recent adoption of Sharia Law has provided the North with a welcome distraction from these issues as the government's attention has been occupied with the ensuing ethnic and religious tensions.

c. Legal system

Nigeria has ratified the ICCPR, ICESCR and the African Charter on Human and People's rights.²¹² There are 36 states in Nigeria. Whilst governors have autonomy in decision-making and the state assembly have a right to pass minor legislation, they are subject to the constitution and the federal legislation. Federal government provides the state revenues.

Nigeria's legal system is modelled on English Common Law. However, the constitution provides for customary Sharia courts at local state level, which have over jurisdiction over personal and family law matters. Sharia courts may apply to non-Muslims. In a dispute between a Christian and a Muslim in a predominantly Muslim area, these courts will deal with the majority of these cases.

d. The Constitution and religious freedom

The secular status of Nigeria has been the subject of dispute between Christians and Muslims for a number of years. Christians regard Nigeria as a secular state and support its secular status given the diversity of religions in Nigeria. A majority of Muslims on the other hand find it unacceptable to separate state from religion.

The Constitution of 1999 states the following regarding the protection of freedom of religion:

- a) prohibition of a state religion; that is a particular religion should not be taken as an official religion in the country (chapter I, article 10);
- b) everyone has the freedom to practise their religion according to their conviction (chapter IV, article 37); and
- c) while teaching of religion is allowed in schools, there should be no compulsion in matters of religious education (chapter IV, article 38);
- d) the composition of state agencies should promote national integration by ensuring there is no predominance of persons from a particular ethnic or religious group and discrimination on those basis should be prohibited (chapter II, article 14).

Both Islam and Christianity have prominent roles in the nation's political, social, cultural and economic life. They are represented by co-ordinating bodies, the Nigerian Supreme Council for Islamic Affairs (NSCIA) and the Christian Association of Nigeria (CAN) respectively.

e. Religious repression

The 44th Council of Evangelical Churches of West Africa (ECWA) meeting in April 1997 noted "with great concern that in some states and parts of Nigeria, Christians are denied the God given rights to worship and practice their religion as they see fit."

During the last 10 years there have been numerous incidents of religious conflict between Christians and Muslims. Many pastors and members of congregations have been killed and church buildings destroyed. Although both Christians and Muslims express a desire to live peacefully together, Christians are concerned about the perceived islamisation of the country. Many feel they are treated like second-class citizens in the Northern States. The uneasy co-existence of the Christian and the

²¹² ICCPR is the International Covenant on Civil and Political Rights. ICESCR is the International Covenant on Economic, Social and Cultural Rights.

Muslim communities has been strained further by violent attacks and day-to-day persecution of the Christian communities in the North.

Christians living in the North are assumed to be 'non-indigenous' (non-Hausa) and in most Northern states the government does not recognise the existence of indigenous Christians. Despite the severe persecution suffered by the indigenous Christians, including threats to their lives should they convert from Islam, there has been a significant growth of Christianity amongst the indigenous population. This has made it a sizeable minority, larger than the 1% - 2 % often claimed by leaders of the Northern States.

The Sharia controversy

On 28 October 1999, despite the protests of the government and the religious community, Governor Sani declared that Zamfara State would adopt and implement a comprehensive Sharia law, including a Sharia penal code.

Seven other states (Sokoto, Niger, Kano, Katsina, Jigawa, Yobe and Borno states) have since either adopted or fully implemented Sharia Law. Violent clashes followed a proposed introduction in Kaduna state leaving over 1000 people dead, including 20 pastors from various denominations.

The general human rights situation has greatly deteriorated in the 'Sharia states' with reports of Sharia law being used to suppress members of political opposition groups. Sharia punishments such as floggings, amputation and beheadings, have also been introduced. Women have been particularly affected. In Zamfara, the state has introduced a segregated school, public transport and health system.

Some observers argue that the introduction of Sharia law is an attempt to destabilise President Obasanjo's government and to re-assert the dominance of the northern Muslim elite in the government. Whilst undoubtedly there are political motives behind the recent declarations, one should not discount the overwhelming public support this move enjoys among the people in the north. There is widespread discontent with rising levels of crime and the inability of the current criminal justice system to cope with the situation. The north has a disproportionately high level of illiteracy and poverty with the majority of the population engaged in subsistence agriculture. The business sector is mainly comprised of non-indigenous Christians. The infrastructure has suffered from years of neglect and corruption. Most of the state revenue sustains the lifestyles of the elite. Education has suffered with majority of the children only receiving a rudimentary Koranic education. The introduction of Sharia law is therefore widely welcomed as a cure to political and social problems.

Ahmed Sani Yerima, the Zamfara State Governor, and other Muslim leaders have tried to address the fears of the Christian community by stating that non-Muslims and the non-indigenous population will not be affected and will not be forced to appear before the Sharia courts. Dr. Lateef Adegbite, the Secretary General of NSCIAN, in an effort to alleviate concerns, stated that the full implementation of Sharia would not be possible as elements of it are contrary to the Nigerian constitution.

However, according to Bishop Kwashi, the Anglican Bishop of Jos and an active human rights advocate, "one can only guess at the reasons behind the declaration. This will focus the direct attack on the indigenous Christians in the North and will create a class system within a democracy that will be detrimental to the adherence of other faiths." The Primate of the Church of Nigeria, the Most Reverend Peter Akinola, has called on the government to suspend monetary allocations and fuel supplies to those states, which have implemented Sharia law. He stated it would be wrong to use taxpayer's

money to promote a particular religion. "We know from experience that wherever you invoke Sharia, you have no power to practise Christianity."

Their fears are borne out by the evidence of harassment of Christians in states such as Zamfara, which have already implemented Sharia law. A Muslim vigilante group charged by the state to observe and report incidents of Sharia-violations has attacked Christian women.

f. Minority religious groups

According to the CIA The World Fact Book 2000 almost a quarter of Nigeria's population hold indigenous and traditional African beliefs, none of which are officially recognised by the state as a religion. There are in addition small urban-based religious movements such as the Grail Message Lodge, Krishna Consciousness and the Guru Maharaji.

The traditional religions are closely related to local culture and traditions. Adherents believe that inanimate and natural phenomena have souls and that certain great people can have a divine status. The phenomenon of secret societies is also associated with traditional beliefs. The societies have a strong standing at certain universities.

Few traditional believers are however exclusively so. The same person may adhere to either Christianity or Islam and at the same time practice traditional beliefs. Surveys among Catholics have shown that there is still a widespread belief in witchcraft.

In a country with more than 400 ethnic groups traditional rituals are an integral part of the identity of many communities. The widespread use of traditional medicine and the large value of this informal trade is an indication of the attraction of traditional beliefs.

Due to the lesser status of traditional beliefs and its prevalence among the uneducated and poorer groups in society, such beliefs are tolerated at a community level, while experiencing discrimination at official levels. The main religions regard the practitioners of traditional beliefs as "unbelievers" and therefore actively try to get them to change their religion. At the same time traditional beliefs are not registered and not supported by government funding.

Recently traditional believers have started to make their voices heard. They criticise the fact that the government only funds the building of mosques and churches, and that traditional land has been violated by oil companies in the south-west of the country. There is also a demand for recognition of traditional healing traditions.

g. The right to change religion

Legal restrictions/rights

Article 38 (chapter IV) of the Nigerian states that;

1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Social restrictions - local government authorities and security forces, local community, other religious communities

Any form of evangelism amongst the indigenous population, whether by churches or by individual Christians is dealt with severely by Muslim leaders and local security forces. Converts from Islam, face the penalty of death for apostasy, and have to be sent to safer locations in the South.

Impact of introduction of Sharia law on conversions i.e. apostasy

Dr. Lateef Adegbite, the Secretary General of (SCIAN):

"For example in Sharia, you are not allowed to change your religion. If you convert from Islam to another religion, you are guilty of apostasy and therefore it makes it a serious offence that could even earn a death penalty so you cannot apply that in Nigeria because the constitution says there is freedom of religion and that freedom does not only says that you are free to practice your religion, it also gives the freedom to change one's religion so there is no state in Nigeria where Sharia is being practised now that has said apostasy is an offence."

Harassment and physical threats resulting from conversions and government response

So-called 'honour' killings of apostates by family members are accepted, and frequently encouraged, by local authorities. In May 98 a whole community consisting mainly of converts was moved to another safer location due to the severe persecution they were suffering. The community consisted of 120 families, around 1000-2000 people.

A former Nigerian Ambassador to the US, John Mamman, related in his book "Time Has Come" how he had to trek over 100km on foot from Maiduguri to safety after his conversion to Christianity.

Some cases

KANO state: In 1990 Reinhard Bonnke's mission to the area sparked off riots in which hundreds of people died. In December 1994 the Emir of Kano received the head of an Igbo Christian, Gideon Akaluka, who was killed while in prison on charges of blasphemy.

ABUJA city (federal capital): (December 1997) Alhaji Mohammed Ali Biu, a Muslim convert to Christianity, received several death threats after openly testifying about his conversion on a Christian television and radio programme, "World Reach-Nigeria", produced by Dr. Pat Robertson's Christian Broadcasting Network. Muslims who were unhappy about his conversion also reportedly assaulted him. According to the Nigerian co-ordinator of World Reach, Pastor Ina Omakwu, several participants in the programme have been harassed and assaulted due to their faith.

Impartiality of judiciary

The Christian community remains concerned over the disparity in the judiciary between Christian and Muslim held posts. The disproportionate representation favouring Muslims raises questions concerning the impartiality of the judiciary, in particular when ruling on religious matters, which in the past seemed to have favoured the Muslim community.

Sharia courts have been utilised in particular in Northern states with property disputes. For example, in Kano prosperous Christian farming communities face a constant danger of land take-over by the local Muslim communities. The Sharia courts have invariably ruled in favour of the Muslim.

Some cases of repression

December 1998 riots - Borno State

Christians in Borno state were forced to take the state government to court (with the help of CAN) for its refusal to teach Christian religious knowledge in the primary schools of the state. In 1983, a settlement was reached whereby, in any state school with 10 Christian pupils, CRK should be taught and Islam would be taught separately; in addition, 10,000 Nairas were to be paid to CAN in compensation. Subsequently, a circular was issued contravening this settlement and the decision proved to be an empty promise.

However, in November 1998, Group Captain (now Wing Commander) Lawal Ningi Haruna met CAN officials and agreed that the time was now ready for CRK and announced so on November 3. Radio and TV broadcasts explained the provisions for separate Muslim and Christian tuition and asked the people to show religious tolerance. Immediately the Muslim leaders, led by the Emir, went to the Governor and asked 'for the sake of peace', that CRK should not be implemented.

On 11 December, an Imam gave an address calling for attacks on churches and Christians in the city. In the subsequent riots three churches were burned and numerous Christian shops and other properties were destroyed.

Christians received advance warning of the attack and duly informed all the state security officials but no response was forthcoming. Fortunately the Deputy High Commissioner, who is a Christian, was able to mobilise some security forces thus averting a more serious situation. Miraculously no one was killed or severely injured. However, the resulting devastation has left many Christian families destitute, unable to provide even the basic foodstuffs.

The Federal Government was concerned enough to send a delegation on the day of the riot and another delegation, including the Chief of Defence Staff and the Inspector General of the Police, on 18 December. They affirmed the position of the Federal Government, recognising the constitutional requirement for freedom of religion and the teaching of religious education in schools.

Access to state media to propagate one's faith

Access to state-owned media remains restricted to Christian community. Restrictions range from exclusion of Christian programmes, whilst Islamic religious programmes are aired frequently, to banning of commercials and paid advertisement containing Christian literature.

Impact of introduction of Sharia law

Despite reassurances by Muslim leaders that other faith communities would not be affected by the introduction of Sharia law, there has been a serious deterioration of religious freedom in the North. In fact Dr. Rabi'u, the governor of Kano, one of the most politically influential states in the North, stated that Christians would not be exempted from Sharia in Kano.

As Christian leaders have predicted, this has created a class system with non-Muslims treated as second-class citizens.

Some cases of religious repression

ZAMFARA State: August 2000, Mr. Ugbaja, a Christian businessman, was sentenced for 6-months imprisonment for possession of alcohol despite the fact the assurances by the governor that Sharia would not be applicable to non-Muslims.

CAN reported that a Christian lady was dragged from her motorcycle and beaten up together with her mother who came to her assistance by the 'Sharia Aid Group', a Muslim vigilante group, for riding a motorcycle. Both Christians were reportedly hospitalised for over two weeks.

KADUNA State: During sectarian rioting resulting from plans to implement Sharia Law in February and May 2000, twenty pastors were reportedly killed, some of which were killed in their churches.

OYO State: On April 25 2000, two Baptist churches were burned by the by Muslim extremist in Saki town.

KATSINA State: May 2000, Anglican Bishop of Katsina James Kwasu states that Christians had suffered repression and discrimination in providing religious knowledge for their children, not being allowed to build new churches and being denied access to burial grounds.

KANO State: 2 July 2000, 30 Christians were reportedly arrested under Sharia law on charges of drinking alcohol. The Christians were arrested by Muslim vigilantes. They were also reportedly attacking Christian women in the company of their husbands or parents stating that Islam forbids women being seen in public with men. In addition they attacked Christian families travelling together in the same vehicle.

KWARA state, Ilorin - On 15 July 1998, the Director of Adult Education was burned alive in his car whilst he was waiting to take fuel at a fuel station. He was the Chairman of CAN and the Chairman of the Christian Indigenous Association, which was about to celebrate its 10th anniversary.

KEBBI state- (February 1998) Loans are reportedly being denied to Christians for the construction of churches, whilst at the same time existing churches are being destroyed. According to Rev C.T. Magaji, the Kebbi State Chairman of CAN, two churches in Jeba town were attacked and damaged by Muslims and the Christ the Answer Church in Sabon Gari was burned down.

h. Registration requirements that impact on the life and work of the church

Legal restrictions/rights. Please see above.

Religious Education

Article 38 (chapter IV) of the Nigerian states that;

- 2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.
- 3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

Christians are not allowed to provide Christian Religious education for their children in either primary and secondary schools. They are frequently denied access to burial grounds; they are denied any access to media to propagate their faith while members of other faiths have the freedom to do so without hindrance. They are discriminated against in matters of employment and recruitment to the police and government agencies; the local authorities discriminate against Christian communities in the provision of resources and facilities.

Restrictions of activities/rights guaranteed to registered religious group

Religious education in state schools and private schools

Chapter IV, article 38 of the constitution maintains that no religious communities or communities shall be prevented from providing religious instruction for pupils of that community or denomination. It also states that no person attending any place of education is required to receive religious education in a faith other than his own.

Prior to 1960 most schools were operated by foreign missionary organisations. Since then the government has taken control of the schools. Whilst state maintained schools are meant to teach both Christian and Islamic Religious Education in all primary and secondary schools, in practise the prevention of teaching Christian Religious Knowledge (CRK) by state authorities is widespread.

Building/restoring places of worship - restrictions at local state level

Local state authorities

Christians in Kano have faced restrictions in building new churches in the area for a number of years. Kano is a historic walled city. When the missionaries first came to the area in the 19th century, they agreed not to build churches within the city limits. The city has now grown far beyond its original limits. However, Christians are allowed to build churches only in the traditionally proscribed areas. They are prohibited from building churches in the vast new suburbs, as the authorities have extended the definition of the old city limits to include the whole of Kano city contrary to the earlier agreement.

In 1999 over 150 churches in Kano were designated for demolition by the Kano State Environmental Protection Agency (KASSEPA).

i. Conclusions

There is clearly cause for concern over the predicament of Christians in Nigeria, especially in the northern areas. These include the threat of persecution, especially for converts to Christianity; restrictions on Christian religious education in some regions; prohibition of building of new churches; and a history of destruction of churches and Christian owned property.

Christians also suffer discrimination in spheres such as employment and promotion; access to government and security posts.

People who convert to Christianity risk abduction and/or death. Many have been taken to safe locations, where they create communities of converts, living often in very harsh conditions, with no access to clean water. The situation remains tense and there is a constant fear of harassment and attack.

Sources:

CSW sources

Compass Direct

ICCAF Human rights report 1999/2000

HURILAWS

US State Department Human Rights reports

Nigerian news sources, BBC news

IV. Conclusions

1. The right to change religion

Conclusion 1: Strong links between the state and the majority religion or belief often cause difficulties for persons leaving that religion or belief, in the form of discrimination or even violent attacks.

In all the states covered in this report where the right to change religion is interfered with, the state itself is linked with the majority religion or belief. The links with the state varies:

Egypt, Pakistan, northern states of Nigeria: Constitutional provisions - Islam

Greece: Constitutional provisions - Christianity

Israel: The Declaration of Independence - Judaism

PA: Draft Basic Law - Islam

India: The ruling party - Hinduism

Turkmenistan: The absolute president - Islam

China: The absolute communist party - Atheism²¹³

There seems to be a general trend towards more state-religion affiliations in non-western states. Based on the state reports above, there are reasons to emphasize two grounds for this development. Firstly, there is a growing trend of nationalism, with the partition, or fear of partition, of pluralistic states as a result. Religion, as an important part of a person's identity, is often closely connected to ethnicity, or has a strong potential for such connection. Religion is used to unify the nation (**India, Egypt**) and in independence movements (**PA and northern Nigeria**). Chinas repression of Islam in **Xinjang** and Buddhism in **Tibet** are attempts to be ahead of the last-mentioned development. Secondly, in the last decades the world has seen an Islamic revival, with a radicalisation of Islam as a result - not only with a nationalistic background. Islam do not separate state and religion. It varies what kind of links with the state which is enforced in states with an Islamic majority, but in its strictest sense Islam implies that Shariah law is implemented at all levels of society.

A state religion or official religion is not par se in contradiction with the international human rights obligations,²¹⁴ but it is harder in such a situation to fulfil the non-discrimination requirements (see the General Comment to CCPR art. 18, para. 10, quoted in chapter II 3 b). And it becomes more difficult the more the state wants to make religion a basic part of the identity of the nation. Proselytising activities and conversion from the official religion constitute a special tense situation in such states, for the government policy as well as for the adherents to the officially «true» religion. Converts are discriminated against in different ways, by the law or de facto treatment by the government:

India: Loss of reservation rights for dalit (out-caste) and tribal converts from Hinduism

Israel: Loss of possibility to obtain Israeli citizenship for converts from Judaism. Non-orthodox converts to Judaism unable to marry in Israel

Greece: Only proselytism against the official religion is penalised in practice

Egypt: Not possible for converts from Islam to change their ID papers, which has consequences for the religious instruction of the children etc.

China: Deprivation of party membership for converts from Atheism

²¹³ It may be contestable whether atheism is the majority belief in China.

²¹⁴ Although the freedom of religion at the outset presupposes that the state refrains from involvement in religious affairs.

The situation in **India** is illustrative, where there is a «battle of souls» regarding dalits and tribals. The policy implemented in the state of Orissa, with compulsory state approval of conversions, follows a legitimate aim (the protection of the right to freedom of religion for the dalits and tribals), but will as a general rule be unnecessary and disproportionate, especially when one looks on the possibilities to misuse such rules, and thus inconsistent with CCPR art. 18. And, as pointed out in chapter II 3 b above, such measures may only be imposed on manifestations of conversion, not the change of religion in itself.

When registration requirements make unregistered religious societies illegal (**Turkmenistan** and **China**, see below), this constitutes a hinder for conversion to these societies. **Egypt** has a similar situation, since only Islam, Christianity and Judaism are accepted by the authorities as religions. Some states have a policy which in reality is a specific ban on certain beliefs, which also constitutes a severe breach of human rights standards (see CCPR art. 18 (2)), and the converts to these beliefs face grave problems (**China**: Falun Gong, **Pakistan**: Ahmadis, **Egypt**: Atheism and Baha`i).

Further, the existence of a form of official religion, coupled with a majority religion, creates favourable conditions for the growth of negative societal attitudes towards converts, which may take violent forms. Such attacks may be accepted, or even encouraged, by the police.

Egypt: Converts from Islam face societal attitudes and mistreatment, incidents of grave persecution by the state security police

Northern states of Nigeria: Violent attacks on Christians, especially converts, sometimes accepted or supported by local authorities

India: Violent attacks on mostly Christians, incidents with passive police and even with the police taking part in the attack

Israel: Harassment of converts from Judaism, especially Christians, non-believers and Jehova`s Witnesses - allegations of passive police regarding the last group

PA: Societal attitudes against Atheists and Christians. Persecution from the authorities of converts to Christianity (false accusations, arbitrary arrests, brutal interrogation)

Pakistan: Converts from Islam risk their lives - with little protection from the law. Especially grave persecution of Ahmadis.

There are also attempts of forced conversions to the majority religion (**Egypt, Turkmenistan, PA**).

It is indisputable that attacks on converts from private parties raise questions regarding the fulfilment of the international human rights obligations of the state, as long as the state has not made enough reasonable efforts, also at the local level, to hinder such attacks, including persecution of private parties as well as local officials (see chapter II 3 b on the positive obligations of the state to "ensure" the freedom of religion).

Conclusion 2: When the state is linked with Islam, this causes special human rights problems regarding converts from Islam, since Shariah does not accept such conversions

The adoption of Islam as the official religion raises a special problem regarding conversion, since Shariah is understood not to accept conversion from Islam to another religion. The penalty for conversion is, in its strictest sense, death (for men) and confinement (for women), according to Shariah. A convert will thus risk his life as well as mistreatment and harassment, first of all from his family. This is a problem in states where either Islam is stated as the official religion in the constitution (**Egypt**,

Pakistan, northern states of Nigeria) or is a de facto official religion (**PA, Turkmenistan**). The dogma easily becomes a hinder for such states to use effective measures to protect converts from private persecution, and local officials may take part in the attacks without fear of being persecuted by the state, see above. In **Nigeria**, for instance, honour killings of apostates are accepted, and encouraged, by local authorities. In the most radical Shariah states (not yet in the reported states) one may see that the state itself forbids conversion from Islam to another religion. There is, however, no doubt that this dogma of the Shariah law is not compatible with the international human rights standards - when Shariah is implemented in the internal law system, as well as when the dogma in any other way is supported by the authorities. In this aspect, it is of course a special human rights problem when the state declares that the Sharia law is "the" source of legislation, as in **Egypt, Pakistan and the northern states of Nigeria**.

Other problems arise in these states as well. Although Shariah is said not to affect adherents of other religions, in fact its implementation has problematic consequences in this regard. The family law will normally give preference to Islamic rules in the cases of mixed-religious families. Converts will normally lose inheritance rights and the custody of the children. A non-Muslim man must convert to Islam to marry a Muslim woman, and a Muslim wife is required to divorce an apostate husband. The experiences of adherents to other religions are that the implementation of Shariah sharpens religious tensions, and leads to discrimination on a wide spectrum.

Most of the states mentioned in this report, Islamic states and others, have separate family law systems for each religion. This situation causes problems for adherents (including converts) to small religions with no own family law system and to sects within a recognised religion, for non-believers where there is no secular option, and for mixed families. The system of religiously separated family law should be diminished to a degree where it is only used by free consent from all the affected parties, and for the other there should be a general secular family law system. Another problem is that religious family law often entails provisions discriminatory to women.

Conclusion 3: The right to proselytize and to perform missionary activities is closely linked to the right to convert, but is even less respected

The right to proselytise is closely linked to the right to change religion - the last right would be likely to be a dead letter without the right to try to convince one's neighbour.²¹⁵ Some states have constitutions that secure the right to propagate or disseminate religion (**India, Pakistan, Nigeria, Turkmenistan**), but in general the right to proselytize is little respected, also in these states. The Kokkinakis and Larissis cases (see chapter II 3 b) show the content of the right, and there is a far way to go for many states to reach this level of freedom. One particular aspect is that many states restrict or forbid foreign missionary activities, out of fear for foreign domination (**India, China** and especially **Turkmenistan**), without grounds that are justifiable after CCPR art. 18, see chapter II 3 b above. Greece has a special situation regarding proselytism: Proselytism is forbidden in the Constitution, without it being defined. Furthermore, only proselytism against the majority religion (Greek Orthodoxy) is penalised in practice. Convert parents may not proselytize against their own children, if the children were baptised according to the orthodox religion (see CCPR art. 18 (4)). In **Israel**, there has recently been a law proposed that will seriously limit the right to proselytize.

²¹⁵ The expression was used by the European Court of Human Rights in the Kokkinakis case (see above), para. 31.

Conclusion 4: Unclear blasphemy laws are used against converts

One special tool used to attack minority beliefs and converts, are blasphemy laws. The laws on blasphemy in **Pakistan** (Penal Code art. 295 B and C) and **Egypt** (Penal Code art. 98 f) are not sufficiently clear to avoid arbitrary use, and also seem to aim at hindering manifestations that are proper according to CCPR art. 18. The situation in **Pakistan** is especially severe, since capital punishment is the mandatory penalty according to art. 295 C. Furthermore, since private parties can lay charges this makes it possible to misuse the law to settle personal conflicts.

2. Registration systems

Conclusion 5: In many states it is impossible to not reveal one's religion to the authorities

Many states have a system of registration of religion on identity cards, passports or birth certificates, or some kind of registration in connection with the use of family law or elections (**Egypt, Pakistan, Israel, PA, Greece**), see chapter II 3 c on the right not to reveal one's religion. There is always a danger that such registration can be misused, and the history of registration of colour and race should be remembered. Also the system in **Turkmenistan** and **China**, where the government demands lists of the adherents to the society seeking approval, and the individual approvals for conversion in Orissa state in **India**, should be abandoned for this reason. If implemented, registration requirements must allow all kinds of beliefs to be registered, including sects which are not accepted by the official religion (like Ahmadis in Pakistan) and Atheism/Agnosticism. It must also be a mere formal procedure to change the registration. **Egypt** does not in this respect conform with CCPR art. 18, since it is not possible for converts from Islam to change their identification papers.

Conclusion 6: Registration requirements are used to de facto ban proper manifestations of religion or belief

Another form of registration system, is when state approval has to be given before a religion or belief may be manifested. This system is used in totalitarian states where the state wants to control all spheres of society. It is these states that have the most severe level of oppression of religious believers.

Turkmenistan: The law on religion requires a community to have 500 adult members before it can receive registration. Non-registered communities are illegal. Previous registrations have been revoked. Only Russian Orthodoxy and Sunni Islam are now registered religions. Applications are arbitrarily denied. Penalties are imposed on leaders of non-registered societies. Unregistered activities face destruction and confiscation of places of worship, as well as arrests, fines, beatings, loss of jobs and slander in the press.

China: Only five religions are officially recognised (Taoism, Buddhism, Islam, Protestantism and Catholicism), with their own completely state-controlled organisations, which are tools for the religious policy of the state. Other religions are illegal and risk punishment as «evil cults». Approval is also necessary for all religious venues, and submissions are treated arbitrarily. Use of venues without approval can be punished by law of up to three years imprisonment in a labour reform camp without a court hearing. There are many cases of imprisonment, fines, torture, confiscation of literature and destruction of places of worship for non-registered religious societies/venues, including Protestant house churches, the Catholic underground church (which is loyal to the Pope) and Uighur islamists. Members of the Falun Gong and «non-loyal» buddhists in Tibet face specially severe persecution.

The situation in **Turkmenistan**²¹⁶ and **China** has worsened the last years, and strong monitoring is required. Total loyalty is demanded, and the authorities fear that religious believers have their loyalty elsewhere. This causes a difficult dilemma for adherents who place "God before the authorities", and yet do not want to act illegally. Such registration requirements form a clear and grave breach of general human rights standards. It is an undeniable part of the freedom of religion to have the right to manifest one's religion, independent of which religions that are accepted by the state (chapter II 3 c above).²¹⁷

Other registration systems of religious societies, as in **Israel**, does not imply a ban on manifestations from non-registered societies. The registration system must however be reasonable and non-discriminative, see chapter II 3 c above. Financial support from the state should be distributed on an equity basis. Building legislation must fulfil the same requirements. Bureaucratic delays hindering approvals to minority religions (**Egypt** and **Greece**), is a de facto breach of CCPR art. 18 (see the Mannoussakis case, chapter II 3 c above).

Conclusion 7: States try to change religious dogmas to make religions tools for the policy of the state

A dangerous «next step» in the above-mentioned policy is visible: Not just the approval of only loyal religious societies, but also active involvement from the state in the inner part of the approved religion. The involvement by the state in the appointments of priests, muftas and other religious leaders is known both in **Turkmenistan** and **China**, but the tendency reaches further:

China: The authorities control the seminaries. Political issues, like the one child-policy, are furthered in the preaching. Attempts of construction of a Chinese theology, implying change of central religious dogmas (like justification by love, instead of justification by faith, in Christianity). Politically motivated elections of holy men in Tibet.

Turkmenistan: President Niyazov has demanded that Muslims renounce the use of the hadhiths (specific religious texts). Islamic educational establishments have been closed except for one madrassah.

The aim seems to be to change the religious dogmas to be in harmony with the dogmas of the state - to make the dogmas themselves "loyal". Ultimately the beliefs are then no longer religions, but tools used by the state to strengthen its power in all spheres in the lives of its citizens. Thus it becomes a de facto prohibition of religion, under the guise of freedom of religion based on a wrong interpretation of CCPR art. 18 (3).

3. Final remarks

Conclusion 9: To fulfil human rights obligations, the protection of the law has to equal the human rights standards, and the internal law system must be able to remedy breaches

When pointing at human rights interferences, many states argue that the freedom of religion is secured and respected in general - both in the constitution and by laws protecting religious freedom. However, most of the constitutional provisions mentioned in this report do not explicitly cover the right to change religion (except the constitution of **Nigeria**). There is also a problem in this respect when Shariah law in the constitution is made "the" main source of law (**Egypt, Pakistan**). Laws protecting

²¹⁶ The tendency in other former Soviet republics is also negative.

²¹⁷ Turkmenistan has ratified CCPR, and is a member of the OSCE.

religious freedom are often "sleeping laws", as in Turkmenistan. Further, the protection depends on the independence of the judiciary. In some states, among them Egypt and India, the courts seem to be used, to some extent, to fulfil one's rights. Greece is in this issue ahead of the other states in the report. Pakistan, on the other hand, has a separate Shariah bench of the Supreme Court, that is supposed to effectively secure that Shariah law will prevail over human rights considerations. Turkmenistan has no independent judiciary. If the judiciary solely have members from the majority religion, this may undermine confidence in the independence of the judiciary (northern states of Nigeria). There is also a question of access to the courts, financially and socially. Therefore, it is not sufficient for the government to argue with law provisions alone - it has to be shown in practice that the law system as a whole gives effective remedies for the solution of human rights problems (see CCPR art 2), and that the law gives a protection which is at the level of the international human rights standards. China seems to illustrate that there is a lot lacking in this respect, despite the emphasis on the law.

Conclusion 10: Neither tensions between religions and/or ethnical groups nor official links with a specific religion and its dogmas are an sufficient excuse for not respecting the freedom of religion

Many states have tensions between different religious groups, in some cases combined with independence movements. Restrictions on religious freedom still have to meet the necessity and proportionality test, see chapter II 3 b. In the case *Serif v. Greece* before the European Court of Human Rights (mentioned in chapter II 3), the court stated: «The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other».

As pointed out above, there has been a decrease in the international consensus regarding the right to change religion (compare the clear wording of UDHR art 18 from 1948, the weaker compromise formula in CCPR art 18 from 1966, the even weaker compromise in the Declaration on Religious Discrimination from 1981, and the silence of the Convention on the Rights of the Child from 1989²¹⁸). The international obligations regarding the right to change religion has not diminished, as described in chapter II, but this development causes a worse international climate regarding this right. It is important that our respect for other religions and cultures does not hinder us demanding the fulfilment of basic human rights, also in situations where the dogmas of the official religion are in contradiction with these rights.²¹⁹

The freedom of thought, conscience and belief cannot be interfered with. No government is able to hinder either prayers or blasphemous thoughts. It is a paradox that both the idea of human rights and the different religions, as well as systems for political and religious oppression, all stem from this de facto freedom of the mind - a gift and a challenge for mankind that neither governments nor religions can escape.

Conclusions:

- 1) Strong links between the state and the majority religion or belief will often cause difficulties for persons leaving that religion or belief, in the form of discrimination or even violent attacks
- 2) When the state is linked with Islam, this causes special human rights problems regarding converts from Islam, since Shariah does not accept such conversions

²¹⁸ See art 14. The right to change religion is an important part of the independence and integrity of elder juveniles, and this right follows from CCPR art 18, see Nowak, *ibid.*, p. 331. However, the Convention does not limit the rights in the CCPR, see art 41. The Maldives made a reservation to art. 14, stating that "all Maldivians should be Muslims".

²¹⁹ The Cairo Declaration of Human Rights (1990) art 24 and 25 put Shariah above the human rights in cases of contradiction.

- 3) The right to proselytise and to perform missionary activities is closely linked to the right to convert, but is even less respected
- 4) Unclear blasphemy laws are used against converts
- 5) In many states it is impossible to not reveal one's religion to the authorities
- 6) Registration requirements are used to de facto ban proper manifestations of religion or belief
- 7) States try to change religious dogmas to make religions tools for the policy of the state
- 8) To fulfil the human rights obligations, the protection of the law has to equal the human rights standards, and the internal law system must be able to remedy breaches
- 9) Neither tensions between religions and/or ethnical groups nor official links with a specific religion and its dogmas are an sufficient excuse for not respecting the freedom of religion

Appendix - Chapter II

Universal Declaration of Human Rights (1948)

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 18

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 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

International Covenant on Civil and Political Rights (ICCPR)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right hereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 18

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. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

ICCPR General comment 22

The right to freedom of thought, conscience and religion (Art. 18) ***(Human Rights Committee, Forty-eighth session 1993)***

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

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

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

4. The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

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

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

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

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

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

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

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

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Proclaimed by General Assembly resolution 36/55 of 25 November 1981

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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 a religion or belief of his choice.
3. Freedom to manifest one's religion or belief 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.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" 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.

Article 3

Discrimination between human being 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.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.
5. Practices 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, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;

- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing 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.

Appendix - China

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RELIGIOUS INTOLERANCE: CHRISTIANS IN CHINA JUNE 2000

1. Introduction

1.1. The predominant theme of state activity in relation to religion in China is control. The predominant method is that of registration. Taken together, these two themes ensure that Chinese practice in the area of religious freedom is at best restrictive and at worst egregious. All sites of religious activities are required to be registered and all unregistered religious activity is held to be illegal.

1.2. The head of the Religious Affairs Bureau has identified registration of all religious sites as the first priority for religious work and has clarified that the purpose is not registration for its own sake, but 'control over places for religious activities as well as over all religious activities themselves'.

1.3. The registration policy has been particularly rigorously implemented over the last four years, making it the main vehicle for state control and oppression of religious activities. This has resulted in severe violations of religious freedom and other core human rights.

1.4. The registration campaign is accompanied by destruction and confiscation of property, imposition of fines, arrests, beatings, torture, imprisonment and 're-education through labour'. There are also reports of maimings and deaths resulting from the ill treatment.

2. Restrictions on Registered Groups

2.1. Those within the registered organisations operate within restrictions which constitute an unjustifiable interference with and violation of the right of religious freedom. These restrictions vary for different places and affect many areas of religious affairs, including the selection and training of clergy, the location of venues, publications, finances and relationships with co-religionists abroad. Teaching on certain topics is prohibited, including the Second Coming and judgement day, the gifts of the Spirit, creation and abortion. There are also restrictions on working with certain classes of persons, including those under 18 years of age.

3. Results of Non Registration

3.1. Many believers are not able to accept such restrictions on their faith and thus practice their belief outside the official church. The penalties for such conduct take the forms of harassment, fines, forceful dispersal of meetings, confiscation of property, destruction of structures, detention and torture. Religious groups suffer from a lack of protection and arbitrary treatment at the hands of local officials. It is a common practice for the PSB to extort money from Christians by arresting them and refusing to release them until they pay a fine.

3.2. The implementation of these repressive policies has a broad impact as the fear engendered discourages possible adherents from engaging in religious activity. Each act of intolerance is intended to have a ripple effect, far beyond the individual concerned, causing many others to desist from such practices.

4. The Pattern of Repression in the Last Year

4.1. Pressure applied through the registration campaign has continued unabated and there have been complaints of increased repression of Christians in the past year. In addition to the many incidents of individuals being detained and mistreated, there has been an increase in the use and amount of fines this year. The crackdown on the Falun Gong and the tight security surrounding the preparation for the celebration of the 50th anniversary led to increased control on Christian and other religious activity during the year.

4.2. There have been innumerable incidents of persecution of Christians over the year. The vast majority of these have not been reported. This is both due to the fear of the individuals and the difficulty of transmitting information. However, there are continual reports of detentions and penalties being imposed on believers. The incidents described below are recent examples of such cases.

5. The House Churches

5.1. Whilst the number of Protestants in the Three Self Patriotic Movement is given as about 10 million, it is estimated that the House Church constitutes around 60 to 80 million. Until recently the house churches had sought to maintain a low profile as they were concerned that publicity would result in harsh penalties. However, in August 1998, the house churches issued an unprecedented and courageous appeal, in which they called on the government to recognise and dialogue with them and to cease persecuting and detaining their members. In November 1998 they issued a statement expressing their patriotism, setting out their grounds for not registering, demonstrating their place within mainstream Christianity and calling on the government to cease classifying them as cults, persecuting them and detaining them.

5.2. Groups that refuse to register with the authorities are liable to be designated as cults. The term is therefore a political rather than a theological one, indicating only that a group does not submit to state control of its affairs. The November statement was designed to counter such categorisations of the house churches and independent scholars have declared that the statement proves the essential orthodoxy of the house churches.

5.3. The house churches are overtly non-political. They are focused solely on spiritual growth and their teaching encourages individuals to be good citizens and promotes a high level of morality. Experience and research has shown that where there is a high concentration of Christians, there is a higher level of law and order and a drop in the crime rate. However the authorities continue to punish the house church leaders as criminals.

5.4. Police use spies from the Three Self Church to report on house church meetings or leadership training sessions. Spies are normally paid RMB 300 per year, with additional bonuses if their information leads to income from fines and the confiscation of property or to the arrest of house church believers. Arrests normally take place at night, with several carloads of police surrounding the meeting place and blocking the entrance to the property. The police accuse the believers of conducting illegal religious activities and operating as 'cults'. Raids are normally accompanied by house searches, without warrants, and the confiscation of cash and valuables.

5.5. Those arrested are taken to the police station and subjected to interrogation, which is often accompanied by violence in order to exact a confession. Abuse takes the form of slapping, kicking, and beating with sticks and electric anti riot batons. Draconian fines of between 2,000 and 5,000 RMB are often then imposed on the believer. This is equal to one to two years of a farmer's salary. Those who do not pay are normally sent, through administrative rather than court procedure, to labour education camp for one to three years. At the educational camps they are kept alongside hardened criminals, who often beat and humiliate them. For example, one church elder was put next to the urinal and forced to drink his own urine, mixed with detergent and his own excretions. This is one of the many ways used to try to force believers to give up their faith and ministry. Another is the use of solitary confinement, in which the individual is held in a cubical so small that it is impossible to stand up or stretch his legs fully.

6. House Church Leaders Arrested and Subjected to Labour Education

6.1. A number of the signatories to the House Church documents were arrested and detained in the latter half of 1999. On 23rd August over thirty house church leaders were arrested during a raid which took place at a believer's home west of Tanghe, a county seat in south-western Henan Province. Alongside the police, national security officers were involved in the arrests and interrogation, pointing to high level involvement in the raids.

6.2. One of those arrested, Wang Xincai, had been released from Labour Reform Camp only four days prior to this arrest after serving two and a half years in detention since his arrest on 16th March 1997. He had previously been arrested along with a number of other key leaders, including Peter Xu Yongze, one of China's most prominent underground Protestant leaders.

Wang Xincui, was eventually released after forty days. Most of those initially detained were also released after payment of fines of RMB 3,000 to 5,000 (US\$ 370 - 620).

6.3. However, six of the detainees were given labour education camp terms in December 1999. They were reportedly sentenced according to an 'anti-cult ordinance'. Zhang Rongliang and Zheng Shuqian of the Fangcheng Church were each given terms of 3 years, Shen Yiping and Wang Jiasheng of the China Evangelistic Fellowship were given 2 years and Feng Jianguo and Jing Rongqi, also of the China Evangelistic Fellowship were both given one year. However, Zhang Rongliang and Feng Jianguo were released on temporary medical leave early this year.

6.4. Zhang Rongliang and Shen Yiping were two of the four signatories to the House Church Confession of Faith which was issued in November 1998 and which had the August appeal attached. The third signatory, Zheng Xianqi, who leads a group in Anhui, was arrested on 7th September, as he left a train in Bangpu City. He was detained in Li-Xin Prefectural Public Security Bureau Detention Centre in Anhui and is believed to remain in detention to date.

7. Persecution in Tianjing

7.1. On 23rd November last year nineteen Christians from Inner Mongolia gathered in the home of Pastor Wang Li Gong in Han Ku, Tianjing for fellowship. At 9.00 am the police surrounded the meeting and arrested the nineteen, together with Yang Jing Fu, a local associate pastor, who was also in the meeting. Pastor Wang was away from the house at the time, but he was arrested when he subsequently went to the police station to enquire about his guests.

7.2. Two of the Inner Mongolians were held for fifteen days, three were held for ten days and the rest were released within five days of their arrest. Wang and Yang were not released and are now in labour education camps in Tianjing. All but one of the detainees were beaten by the police. One woman was beaten very severely by a police officer who was drunk. The baton with which he beat her snapped and flew off due to the force used to attack her. The police abused, humiliated and threatened the detainees. For example, one of the women was told that if she did not confess she would be given over to the criminals in the detention centre to be raped. A witness reported that: "Only one woman was not beaten. The rest were all beaten cruelly, with various degrees of savagery. All but one of them had obvious black marks and swellings on their faces and bodies." The Inner Mongolian believers were also fined and were accused of disturbing social order.

7.3. During and following the arrests the police conducted extensive searches of the homes of Wang and Yang. They confiscated over 2,000 yuan in cash, cash machine cards, national stock certificates worth 2,000 yuan, bank deposit books, Bibles, books, tracts and audio and video cassettes, as well as personal belongings. They also confiscated valuable electrical equipment and in many cases gave no receipt for the confiscated goods.

7.4. Wang and Yang were accused of being cult leaders. When their families enquired after them they were told that they had conducted illegal meetings, brought in believers from other provinces and been in contact with foreigners, so their crimes were greater than those of the others. Yang and Wang were given administrative sentences of one and one and a half years labour education camp respectively. Yang is held in Qing Bo Lai Labour Education Farm, Xi Qing District, Tianjing City. Wang is held in Shuang Kou Labour Education Farm, Bei Chen District, Tianjing City. Wang is forced to produce hand-sown footballs. The work is very tough physically and his hands are reported to be injured and bleeding every day because of the work. He has to labour for long hours to fulfil a high quota set by camp authorities. He is also reported to be denied sleep and tortured frequently.

7.5. The details of the two detainees are:

Wang Li Gong, Han Chinese, born 24th May 1966, ID: No.: 120108660524101, held in Shuang Kou Labour Education Farm, Bei Chen District, Tianjing City.

Yang Jing Fu, Han Chinese, born 9th October 1963, ID: No.: 120108631009001, held in Qing Bo Lai Labour Education Farm, Xi Qing District, Tianjing City.

8. Persecution of Pastor Li Dexian

8.1. In Guangdong Province there has been a revived campaign of persecution against the prominent House Church figure Li Dexian. Pastor Li has been the subject of religious persecution for over ten years and has been targeted extensively in the last eight months, during which period he has been arrested fifteen times. Pastor Li is a mainstream Protestant Christian evangelist and preacher whose meetings in Huadu, west of Guangzhou, in Guangdong Province, have attracted crowds of

around six hundred every Tuesday until they were closed by the police this month. Pastor Li is overtly unpolitical and has stated that mainland churches should steer clear of involvement in political or social issues.

8.2. On 11th October 1999 around two hundred uniformed soldiers arrived at Pastor Li's meeting place in Huadu and illegally destroyed the shelter where people gathered to hear him preach. Pastor Li described the destruction as the worst that he had experienced so far, saying that the police had previously confiscated property such as generators, but that the scene on this occasion 'looked like the aftermath of an earthquake'.

8.3. The following day the police returned and disrupted a meeting of around two hundred believers and arrested Pastor Li, his wife, Australian missionary John Short and two church members named Mr Yong and Mr Maan. Pastor Li, Mr Yong and Mr Maan were all beaten in detention.

8.4. The following Tuesday, 19th October, two hundred police officers came to the meeting place at eight o'clock in the morning and arrested Pastor Li, together with his wife and three other Christian women. One of the women, Mrs Kung, was forced to the ground with her arms behind her back and her face was pushed into a drain as she was kicked by four policemen. She was forced into a police car bleeding badly from her face. During detention Pastor Li was threatened more severely than ever before and was told in a matter-of-fact way that if he preached again on the coming Tuesday the police would beat him until he collapsed. The five were released the next morning. Undaunted, Pastor Li continued to preach the following Tuesday and was arrested by the police. However he was released without the threat being executed.

8.5. On 9th November around one hundred police officers arrived as the Tuesday morning meeting commenced. They proceeded to arrest Pastor Li and six others and took them to the police station where they were held overnight. Three of the detainees were released on the Wednesday, but Pastor Li and the remaining three, Mr Yung, Ms Fan and Ms Ling, remained in detention. Pastor Li was confined to his cell and denied visits by his family and friends during the detention. He was released on Wednesday 24th November, 15 days after his arrest. The three others held with him were released later that day. While Pastor Li was in detention, three women who were teaching at the Tuesday meeting were arrested on 16th November.

8.6. On 28th November police arrested four Christians at an unregistered church service in the village of XinHe, approximately 20 miles from Pastor Li's meeting place. Three of those arrested, Mr Kong, his sister and Mr Leong were held for 15 days. Mr Kong has been arrested for leading an unregistered church on several previous occasions. His daughter has been denied a place in the local school and his electricity has been arbitrarily cut off. The police told the detainees that they were very foolish as "your head has been dealt with, yet you still open the church meetings". This was a clear reference to the measures and intimidation used against Li and the comment shows the significance attached by the authorities to their crackdown on him.

8.7. Since that time Li has been arrested, and at times beaten, on eleven further occasions, on 7th December, 14th December, 28th December, 11th January, 18th January, 22nd February, 14th March, 21st March, 11th April, 9th May and 17th May.

8.8. On 11th April Li was arrested and sentenced to fifteen days detention. He was bound with his ankles and wrists chained and then his wrists chained to his ankles. He was held in this excruciating position, unable to straighten his back for five days. His left hand started to turn black as the circulation was cut off. He was not given any toilet facilities, and as a result could eat no more than a couple of spoonfuls of rice, in order to stop his bowels from moving. After five days his wrists were released and he was sent to carry out forced labour. He was given an assignment of assembling 4,000 Christmas decorations a day. The labour was long and it was hard to fulfil the quotas given. Li saw those who failed to fulfil their quotas beaten. Their trousers were pulled down and their bare buttocks were beaten with a belt until the skin was shredded and their clothes were covered in blood. During the detention Li was told that he would be sentenced to three years in labour education camp if he did not desist from his religious activities. He was released on 26th April.

8.9. On 8th May the police arrested another Christian leader in Guangdong, Mr Yiu, and his wife. The arrest was significant as Yiu had been operating in an area without an official church. This indicates that the persecution was not arising from the Religious Affairs Bureau's concern about competition, but from other forces.

8.10. In the second and third week of May the authorities broadened their attack on the unregistered church in Guangdong Province, sentencing 13 Christian leaders to fifteen days detention. Those detained included Mr Yung and Mr Kong, two co-workers in Pastor Li's work in Huadu, as well as others in the areas of Li Xi, Tian Wei, Fo Gang, Xiang Shan, Ping Shan and Xin Hua. Li was arrested for the fifteenth time in the eight month period, but was released after twelve hours. At the same time the police welded up the entrances to the meeting place in Huadu, preventing further meetings from being held at that

location. The situation remains tense, with believers currently detained and the threat of further serious punishment hanging over Li and the Christian community in the province.

8.11. Pastor Li is closely associated with veteran pastor Samuel Lamb, who was imprisoned for twenty years and who runs a house church nearby in Guangzhou. During the initial action against Li, police visited Pastor Lamb's church on October 12th, broke up a meeting and urged him to register the church. Pastor Lamb is due to move to a new building and police have visited that building and asked questions about it, raising concern amongst believers about what will happen when he seeks to move.

8.12. A source close to Pastor Li has stated that the scale and intensity of the attacks demonstrate the beginning of a new programme of religious control, arising out of policy recently articulated at the highest levels. It is believed that the area is being used as a testing ground for the programme, which could spread through China.

8.13. Another veteran house church leader who has been under constant surveillance throughout the year is Sze Chuen Ching of Kunming. He is around eighty years of age and was detained for his belief for about 16 years. He has been experiencing increased pressure and has recently been warned about his religious activities a number of times. His house was searched in November and materials were taken from his home.

8.14. There have been numerous other reported incidents of persecution of house church leaders and detention of house church members in labour education camps.

9. The Catholic Church

9.1. Representatives of the Catholic Church report an increase in the pressure and level of abuses against the underground Catholic Church, which remains loyal to Rome. It is estimated that there are 10 million Catholics in the underground Catholic Church whilst there are only 4 million in the official Catholic Patriotic Association.

9.2. The ordination of five bishops on 6th January this year was carried out as a clear challenge to Papal authority. The Holy See responded with 'surprise and disappointment ... at a time when hopes were raised in various quarters of moves towards a normalisation of relations between the Holy See and Beijing'. Those ordained were subjected to strong pressure to accept ordination and the strength of feeling against the act was clearly expressed in a boycott of the ceremony by Catholic clergy and faithful.

9.3. A secret document of 17th August 1999 disclosed plans for large-scale suppression of the underground Catholic Church. The document states: "The underground Church ... must be eliminated by means of the destruction of seminaries and convents; the underground church ... must be eliminated by re-education, forced labour, dismissal and isolation of 'stubborn' priests and bishops ... All seminaries and convents which are funded by the underground church will be publicly dismantled. All members of the novitiate, whether men or women ... who do not behave well will be sent back to their home province... Those underground churches that have already been destroyed (by government authorities) will not be allowed to rebuild."

9.4. The document also claims that the government has the authority to greatly strengthen the organisational structure of the Patriotic Association so that its independence and autonomy from the Vatican will be maintained. According to the Cardinal Kung Foundation, the document shows that if a diplomatic relationship were established with the Vatican, the Chinese authorities would destroy the underground Roman Catholic Church, by either absorbing it into the official Catholic Patriotic Association or suppressing it.

10. Recent Incidents of Intolerance Against the Underground Catholic Church

10.1. There are numerous reports of severe violations of the right of religious freedom and other fundamental human rights, resulting from religious intolerance against underground Catholics.

10.2. The Cardinal Kung Foundation reports that there are at least sixty known underground Catholic bishops, priests and adherents in jail, under house arrest or under strict surveillance. It estimates that there are hundreds imprisoned who are not known of outside China.

10.3. On 17th May 2000 Fides reported that an underground Catholic priest in Zhejiang, Fr. Jiang Sunian, was sentenced to six years imprisonment for printing Bibles and other religious materials. A court of appeal confirmed the sentence earlier imposed by the Wenzhou Court. The sentence describes Fr. Jiang as a common criminal, following the normal Chinese line of avoiding specifying religion as the basis for punishment.

10.4. Fr. Jiang had been arrested several months earlier in the Cangnan region, along with six other priests. Fides reports that the authorities in Wenzhou launched a new campaign against the unregistered Catholic Church in September 1999. Since February the police have destroyed seven underground churches and arrested several priests and followers. The 81 year old bishop of the region, Lin Xili, has been kidnapped several times and subjected to indoctrination and other forms of pressure to register with the Catholic Patriotic Association.

10.5. The underground Catholic Church is plagued by continual arrests. The Cardinal Kung Foundation reports that Fr. Ji Zengwei of Qingyang County, Hebei was arrested in March this year. On 10th February, 81 year old Archbishop John Yang Shudao of the Archdiocese of Fuzhou in Fujian Province was arrested by around 150 police. He has subsequently been released. His arrest followed a number of cases of abduction and disappearance in the last three months of 1999: the arrest of Rev John Gao Kexian of Yantai diocese in October; the arrest and subsequent disappearance of Rev. Jiang Sunian of Wenzhou diocese on 23rd November; the arrest and disappearance of Bishop John Han Dingxiang of Yongnian, Hebei at the end of November and the arrest and subsequent incarceration of Wang Chengqun in Hebei's Gaoyanxian labour camp in December.

10.6. On 13th May 1999 Father Yan Weiping of Yixian in Hebei was dragged away by security forces in front of his congregation as he celebrated Mass in a private home in Beijing. The Cardinal Kung Foundation reported that his battered corpse was found on a street in Beijing at eight o'clock that evening. It appeared that he had been beaten and thrown out of a window. He was only 33 and was not known to be in ill health. There was no post-mortem and his congregation and others in the underground Catholic Church have concluded that he was murdered.

10.7. At around the same time, in mid-May 1999, an underground Roman Catholic seminarian, Wang Qing, originally from Qinghai Province, was arrested in Baoding in Hebei. He was tortured and was hung by his hands with his toes hardly touching the ground for three days. He was severely beaten and suffered extensive injury. He was also forced to drink a filthy liquid which caused serious gastric-intestinal illness and severe diarrhoea. He was released after three days without medical care.

11. China's Religious Practice and International Standards

11.1. Chinese officials often state that there are no arrests for belief, only for breaking the law. However it is clear that when the law itself makes the exercise of human rights illegal, arrests under such law are still breaches of human rights.

11.2. The policy and practice of the Chinese authorities on religion reveal severe discrepancies with the international standards on religious freedom.

11.3. The most important international document in this area is the 1981 United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, parts of which are very close in substance to the guarantees of the ICCPR. China's policy and practice veers sharply away from many of these standards.

Article 1

11.4. Article 1 of the Declaration provides an overall definition of religious liberty:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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 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.

Article 1(1)

11.5 The policy that all religious activity must take place within government sanctioned organisations is a clear violation of the freedom to be able to choose a religion or whatever belief of one's choice. The distinction made between the recognised religions and the so-called 'sects' and 'cults' is a further breach of this provision, as are the restrictions, including those relating to doctrine, placed upon government sanctioned groups.

11.6. There are many violations of the right to manifest religious belief. The Chinese authorities approach religious freedom as a personal right, but fail to recognise it as a group right. The restrictions on the non-official religious groups are directly contrary to this provision and affect all forms of corporate practice of religious belief. Such restrictions are also in breach of the rights of freedom of peaceful assembly and association and freedom from compulsion to belong to an association and the right to freedom of expression, as provided by Articles 20 (1) and (2) and 19 of the Universal Declaration of Human Rights.

Article 1(2)

11.7. The penalties against those outside the official churches are a blatant form of coercion. The pressures placed upon the official groups are also in breach of this provision.

Article 1(3)

11.8. China does not operate according to the strict limitations which are required under international standards, but uses broad and arbitrary limitations of religious freedom. It is important that China recognises in both law and practice that all parts of the limitation requirements must be satisfied, namely that the limitation is prescribed by law, is necessary in the exigencies of the situation and is exercised for one of the reasons given in the exhaustive list of grounds.

11.9. International instruments provide suitable objective means for ensuring that religious activity does not become dangerous. Arbitrary and inconsistent judgements on theological orthodoxy are not necessary and are contrary to the principles of freedom of religion. Concern about cults and sects can be dealt with through the means of the normal criminal and civil law and there is no need for specific legislation or policy to distinguish between religious groups.

Article 5

11.10. Article 5, guaranteeing the right of the child to religious freedom, is clearly not respected as religious work amongst those under 18 is restricted. The treatment of children in religious matters is also in breach of China's obligations under the 1989 United Nations Convention on the Rights of the Child, in particular Articles 2, 12, 14 and 17.

Article 6

11.11. Article 6 is specific in providing that freedom of religion encompasses specific rights, including:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

11.12. Many of the restrictions on both the official and unofficial religious groups are in clear contravention of these standards. These include the disruption of 'illegal' meetings, the restrictions regarding religious publications, the control of appointments and venues and the restrictions on maintaining links with co-religionists abroad.

11.13. If China is to ratify the International Covenant on Civil and Political Rights, she will need to bring about significant changes in law, policy and practice regarding religious freedom, to satisfy the obligations set out in Article 2, in particular in relation to Articles 2 (1), 18, 19, 21 and 27.

11.14. Once ratified, the Covenant would make many of the standards set out above binding upon China and the concerns described above would also be applicable under the Covenant. In addition to the clear breaches of the provisions set out in substantively the same form in the Covenant and Declaration, China's religious freedom record would fall short of many of the principles established by the Human Rights Committee, in particular in its General Comment Number 22 of 1993. In many cases China's law and practice are in direct conflict with the principles detailed in this document.

11.15. The discrimination against new or minority religions and measures taken against groups which are not registered and those classified as sects would raise concern, as expressed in paragraph 2 of the General Comment.

11.16. The definitions given in paragraph 4 of worship and observance would bring Chinese practices restricting religious activities into conflict with the views of the Human Rights Committee in many respects. In the same paragraph the Committee specifically establishes that the practice and teaching of religion includes acts integral to the conduct by the group of their religious affairs. Thus Chinese policies such as those imposing restrictions on the right to choose leaders, establish seminaries or religious schools and prepare and distribute religious texts, would again bring Chinese practice into conflict with the principles contained in the General Comment.

11.17. Further difficulties would arise under other paragraphs, such as paragraph 5 which expands on Article 18(2) of the ICCPR regarding coercion. It specifies that certain practices, including physical force and penal sanctions, which are used by the Chinese authorities to control religious activities, are contrary to the Covenant.

12. Recommendations

12.1. China should be urged to bring her law and practice into line with international standards on religious rights.

12.2. *Following his visit to China in 1994, the United Nations Special Rapporteur on Religious Intolerance made a number of recommendations which would assist in achieving this goal. These recommendations are from an authoritative impartial source and China should be urged to implement them. They include the recommendations that China should:*

I. Provide an explicit guarantee of the right to manifest religion and, accordingly, amend the pertinent legal texts, including Article 36 of the Constitution, to provide constitutional guarantees of religious liberty that accord with the definition of religious freedom provided in the 1981 Declaration.

II. Adopt a specific provision clearly stating that persons under the age of eighteen have the right to freedom of belief, in accordance with China's obligations under the 1989 United Nations Convention on the Rights of the Child, particularly those arising under Article 14.

III. Adopt a text explicitly recognising the right to freedom of belief for everyone, including members of the communist party and other socio-political organisations.

IV. Abandon the practice of distinguishing between 'normal' and 'abnormal' religious activities and respect the right of all individuals to freely follow their chosen belief, without interference. The only limitations permitted should be those laid out in international standards, most notably in Article 1(3) of the 1981 Declaration, namely only those that are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

V. Release all those detained for religious reasons.

VI. Provide human rights training, particularly on religious freedom, to state officials and judges.

VII. Post the principle texts on religious freedom in the relevant administrative services concerned, compile and distribute a compendium of texts on religious freedom together with implementation instructions, distribute human rights materials to religious organisations and inform citizens and organisations of appeal procedures available in the event of refusal to register religious organisations.

VIII. Provide education on religious freedom, including at the university level.

12.3. In addition it is recommended that China:

I. Recognise the right of freedom to choose any religion, including those outside the official organisations and the five recognised religions.

II. Rescind the registration system in its present form so that it is no longer a mechanism for controlling religious activity.

III. Cease the policy of imposing penalties, including administrative and criminal detention, fines, confiscation of property and destruction of premises, for religious behaviour.

IV. Establish a dialogue with representatives of the house churches, as requested in the appeal issued by house church leaders on 22nd August 1998.

V. Maintain follow up contact with the United Nations Special Rapporteur on Religious Intolerance.

VI. Ratify the International Covenant on Civil and Political Rights and amend legislation and practice to conform to the rights laid out therein.

VII. Implement effective protection for religious believers from arbitrary detention and abuse by officials and address the impunity of officials who abuse individuals and groups due to their religious beliefs.

VIII. Allow the free movement of religious materials and personnel into and within the country.

Appendix - Turkmenistan

(Copies of the original documents in this appendix are on file at Keston Institute, Oxford England.)

1. LEGAL TEXTS

Decree of the President of Turkmenistan

3595

On state registration of religious organisations

In accordance with article 13 of the Turkmenistan Law 'Law on Freedom of Conscience and Religious Organisations in Turkmenistan', I decree that:

1. The proposed procedures for the state registration of religious organisations are confirmed.
2. Religious organisations, registered before the issuing of this decree, must be reregistered by the Ministry of Justice of Turkmenistan before March 1997.
3. In order to obtain state registration, a registration fee, based on multiples of average national earnings in Turkmenistan, will be collected from each religious organisation. The amount levied to be dependent on their area of activity:
 - in the whole of Turkmenistan: three times average national earnings
 - in a region, and in Ashgabad: twice average national earnings
 - in a district or town district: a fee based on average national earnings

Previously registered religious organisations applying for reregistration will pay a charge representing 50% of the fee payable. A fee representing 10% of the original levy will be charged for making subsequent alterations or additions to the statutes of a religious organisation, and for providing duplicates of the registration documents.

1. Registration fees collected from religious organisations will be paid into the state budget of Turkmenistan.
2. The state committee for the media at the Cabinet of Ministers of Turkmenistan will produce the necessary forms for the state registration of religious organisations in both the state language and Russian by 10 January 1997, as required by the Ministry of Justice. The Ministry of Economics and Finance and the Ministry for Trade and Resources are to release the necessary funds and materials for the completion of this task.
3. Presidential Decree no 1659, 'Issues relating to the registration of religious organisations' of 21 January 1994 is declared null and void.

Signed

Saparmurat Turkmenbashi [Niyazov]
President of Turkmenistan

Ashgabad
6 December 1996
No. 2906

Rules for the state registration of Religious organisations

(endorsed by the President of Turkmenistan by decree no 2906, 6 December 1996)

1. These rules establish the procedures for the state registration of religious societies, administrations and centres, of religious educational establishments, mosques, churches as well as unions made up of religious organisations (to be referred to generally in this document as religious organisations).
2. Religious unions, centres, administrations, monasteries, religious brotherhoods, missions and theological institutes established by religious organisations must also be registered by the state.

3. The Ministry of Justice of Turkmenistan will conduct the state registration of religious organisations.
4. A religious organisation must apply for registration using form no.1 (example appended to this document). An application for registration will be considered legally viable if it is signed by no fewer than 500 members. Only those who have reached the age of 18 can be considered members of a religious organisation.
The application for registration must contain the following documentation:
 - a) the statute of the organisation
 - b) a declaration by a central religious organisation or administration confirming that the applicant belongs to their registered organisation. If such confirmation is lacking, or if the centralised religious organisation is situated in a country which does not have official government ties with Turkmenistan, the Ministry of Justice will request additional material and refer to the Presidential council for religious affairs for a decision. (This process may take up to three months.)
 - c) the minutes of the meeting which approved the statute of the religious organisation
 - d) a list of citizens belonging to the religious organisation, using form no.2 (appended)
5. Documents may be submitted to the Ministry of Justice in the state [i.e. Turkmen] and the Russian languages.
6. The statute of a religious organisation must include details of the nature of the organisation, its location, denominational affiliation, its place in the organisational structure of the centralised religious organisation to which it belongs, its property. It must state whether it has authorisation to establish a commercial enterprise, publishing outlets or educational establishments as well as whether there is an intention to found other religious organisations. It must include details on how issues of property and other questions will be resolved in the event of cessation of its activity, as well as other information relating to the specific activities of the organisation.
7. The Ministry of Justice of Turkmenistan will respond to applications for registration within a month. In cases relating to point 4, item b above, the ministry will give a response within three months. Following examination of the documents, one of the following decisions will be issued:
 - state registration of a religious organisation is granted
 - state registration is refused.
8. When state registration has been granted, the representative of the religious organisation will be given documentation confirming this (example form 3, attached). Registration documents will only be issued on presentation of a receipt confirming payment of the registration fee. The size of the fee and procedure for collection of fees is determined by the government of Turkmenistan.

The registration documents (forms 4 and 5, attached) include official confirmation of registration and information relating to the religious organisation. Two copies of a registration card are also sent within seven days to the Council for Religious Affairs at the Presidential Administration.

The registered organisation is allocated an official number and is included on the Register of state-registered religious organisations, held by the Ministry of Justice of Turkmenistan.

Information about religious organisations registered by the Ministry of Justice will be published in the press.

9. A religious organisation may be refused registration if it has not complied with the procedures for the establishment of a religious organisation set down by the Law on Freedom of Conscience and Religious Organisations in Turkmenistan, or if its statutes do not comply with the norms established by the laws of Turkmenistan.

Religious organisations cannot be registered using the same name.

Applicants will be informed in writing of the decision to refuse registration within three days, indicating the grounds for refusal.

A decision to refuse to register a religious organisation must include an indication of which legal norms have been infringed by the creation of a religious organisation or by its founding documents.

A court appeal may be made against the refusal to register a religious organisation.

Information received about changes and additions to the statutes of a religious organisation, as well as about the dis-

solving of a religious organisation, must be sent to the Council for Religious Affairs by the Ministry of Justice within one week of its receipt.

10. Religious organisations, which have reorganised their structures, are registered on the same grounds, following these procedures.

On amendments to the Law of Turkmenistan on Freedom of Conscience and Religious Associations in Turkmenistan.

In order to regulate the activity of religious organisations in Turkmenistan, the following amendments are to be made to the Law on Freedom of Conscience and Religious Associations in Turkmenistan:

1. In article 11, and the first paragraphs of article 12, the second paragraph of article 13 and on the heading and text of article 14, the word 'registration' is to be replaced by the words, 'state registration'.
2. In article 13, the heading and the first section to contain the following alterations to the text:
'Article 13. State registration of religious organisations.
State registration of religious organisations is conducted by the Ministry of Justice of Turkmenistan.;
In sections three, four and five, the word 'registration' is to be replaced with the words 'state registration'.
The sixth section is to contain the following amendment:
'A state registration fee will be levied from the religious organisation, the scale of the fee and the procedures for collection to be determined by the government of Turkmenistan.'
3. In the second section of article 15 the words, 'by the registering organisation', should be replaced with the words 'by the Ministry of Justice of Turkmenistan'.

President of Turkmenistan
Saparmurat Turkmenbashi [Niyazov]
Ashgabad
6 December 1996

Administrative Code. Article 205

(In force since 1986)

Violation of the legislation on religious associations:

- 1) the refusal by leaders of religious associations to register associations with the organs of state administration;
 - 2) violation of the procedure established by legislation of the organisation and conducting of religious meetings, processions and other cult ceremonies;
 - 3) the organisation and conducting by cult servants and members of religious associations of special child and youth meetings, as well as labour, literature and other circles and groups not associated with the performance of the cult,
- attracts the imposition of a fine of up to fifty roubles.

2. RESTRICTIONS ON IMPORT OF RELIGIOUS LITERATURE

[All religious groups with the exception of the officially-sanctioned Muslim Board and the Russian Orthodox Church have been denied permission to import religious literature on the grounds that they are not registered.]

Seventh Day Adventist Church
Ashgabad
15 October 1998

Our Ref: 36

To: A.I. Sapunov
Council for Religious Affairs at the Presidency of Turkmenistan

Respected Andrei Ivanovich,

On 10 October 1998 a consignment of religious literature and Bibles was sent from Tashkent at the request of believers in Ashgabad. The consignment had been declared but it was halted at the Ashgabad freight customs post and the religious literature was retained by customs officials. We received no official explanation for this action. The Turkmenistan Law on Freedom of Conscience and Religious Organisations, section 4, article 20 guarantees the rights of citizens 'freely to obtain and use religious literature in the language of their choice'.

We are therefore appealing to you for your help in ensuring that this consignment of literature is delivered to us.

Wishing you God's blessings in your difficult work.

P.N. Fedotov
Pastor, Seventh Day Adventist Church, Ashgabad.

Bible Society of Uzbekistan, Tashkent

Our ref: 279
2 November 1998

To: M.O. Karriyev
Chairman of the Council for Religious Affairs at the Presidency of Turkmenistan

Respected Murat Orazkulievich,

On 9 October 1998 the Bible Society of Uzbekistan sent 1256 copies of the Holy Scriptures to representatives of the Seventh Day Adventist Church for the use of believers in Turkmenistan.

All the necessary formalities regarding the dispatch of this consignment of Bibles were completed at the Farap customs post. However, when the consignment reached Ashgabad the Bibles were retained at the Ashgabad freight customs post without any official notification being given for this action.

The pastors of the Seventh Day Adventist Church in Ashgabad have several times appealed for your help in obtaining the release of these Bibles from customs. However, the Turkmenistan authorities have so far issued no official notification of the reasons for the halting of this consignment.

We urge you to help in the resolution of this incomprehensible situation, which has arisen over the import of these Bibles into Turkmenistan. These Bibles were intended for the use of Christian believers, citizens of Turkmenistan. Moreover, we are informed that the import of these Bibles does not contravene Turkmenistan law.

We hope and pray that you will make a wise decision in relation to this question and request that you grant us an official response.

May God bless you in your responsible and high-ranking position,

Respectfully,

Sergei Ivanovich Mitin
Executive Director, Bible Society of Uzbekistan.

Attached: Copy of a letter to the President of Turkmenistan, 2 November 1998

Council for Religious Affairs
Turkmenistan

Our ref: 110
3 November 1998

To: Sergei Ivanovich Mitin
Executive Director, Bible Society of Uzbekistan

Respected Sergei Ivanovich,

The Council for Religious Affairs of Turkmenistan wishes to inform you that the Bible Society of Uzbekistan may not be involved in the distribution of religious literature on the territory of Turkmenistan, because it has no juridical status in our country.

Religious communities who wish to receive your literature may do so providing that they have been registered by the Turkmenistan Ministry of Justice, in accordance with the Turkmenistan Law on Freedom of Conscience and Religious Organisations.

With respect,

M.O. Karriyev
Deputy Chairman

3. DEMOLITION OF PLACES OF WORSHIP

[The Adventist church in Ashgabad - built with official permission - was demolished by the authorities in November 1999, against the wishes of church members, who sought in vain to prevent the demolition. The demolition was witnessed by foreign diplomats based in the city.]

Khakim (local administration), Kopetdag district, Ashgabad
11 November 1999

To the Pastor of the Community of the Seventh day Adventists

The Khakim of the Kopetdag district notifies you that in accordance with the Decree of the Ashgabad Khakim of 9 November 1999, No. 1450, the church building is subject to demolition. In connection with this we command that within a period of one week you are to take measures for demolition.

Davlit Annamuradov
architect of Kopetdag district

Seventh Day Adventist Church
Ashgabad
12 November 1999

To: A. Cherkezov, Chairman, Ashgabad town administration.

According to Resolution no 1450 dated 9 November 1999, the church building currently located at 2nd proezd Podvoisko-vo, dom 10, is to be removed.

We were allocated land and given permission to build a church by the Ashgabad city executive committee by decree no 33/-3018 dated 25 May 1992. Since this time members of the church have been building a church through their own efforts. The building costs have been met by the voluntary contributions of citizens. We were not very far from the completion of the building works as per the agreed plans.

We now have a number of questions related to this matter and would like to receive an official response from you.

Will the town administration allocate an alternative plot of land to the church?

Will we be able to receive compensation in connection with the costs we have incurred during the construction of the church at its former address?

May God bless you in your work,

P.N. Fedotov
Pastor

TO: Saparmurat Turkmenbashi, President of Turkmenistan

Most esteemed President,

On 9 November 1999 the Ashgabad town administration passed resolution 1450 regarding the removal of the Seventh Day Adventist Church building, currently located at 2nd proezd Podvoiskovo, dom 10.

The news of the removal of this church building deeply wounded the feelings of the citizens of our town at a time when our democratic independent state stands on the threshold of a golden age and of the spiritual rebirth of the nation.

We request that you look into this question personally and prevent the removal of our church.

Pavel Nikolaevich Fedotov and 72 others.

Council for Religious Affairs at the Presidential Administration
Ashgabad

Our ref: 125
23 November 1999

To: Pastor P.N. Fedotov

Respected Pavel Nikolaevich,

We have received your collective letter addressed to his excellency Saparmurat Turkmenbashi, President of Turkmenistan, in which you appeal against the decision of the Ashgabad town administration (no 1450, 9 November 1999) to remove your church building. We have been informed that according to the general plan for Ashgabad, the 8th March cinema and your church are both to be removed in order to make way for a road-widening scheme.

With respect

Ya. Atamuradov
Chairman

Ashgabad Town Administration
Our ref: 3/1312
24 December 1999

To: Pastor P.N. Fedotov, Pastor of the Seventh Day Adventist Church
Your ref: No 16, 12 November 1999

The Ashgabad town administration has examined your letter and informs you that:

In view of the fact that the church building was never officially put into use, and given that there are no registration documents, the question of compensation for the removal of the church building cannot be considered. The question of the allocation of a building plot will be addressed after completion of the general town plan for Ashgabad.

Signed
Head of the Ashgabad town planning department
G.A. Saparov

Head of the department for liaison between administrative and legal organs
A.I. Khodjiev

4. CONFISCATION OF PLACES OF WORSHIP

[After much pressure on Ashgabad's Pentecostal church from 1998, in late 2000 the local authorities began an action to confiscate the building where the church met, a private house belonging to Pentecostal Pastor Viktor Makrousov. The action to confiscate - and demolish - the house was initiated by Aleksei Razmakhov, the acting head of the administration of Kopetdag district of Ashgabad.]

No. 749, 24 November 2000

Kopetdag District Court
Plaintiff: Kopetdag District Administration
Respondent: Viktor Evgenievich Makrousov, ul. Kemine, block 131, flat 47

STATEMENT OF CLAIM

(regarding eviction from place of residence)

V.E. Makrousov exercised his right to property ownership by purchasing part of a house on ulitsa Koltsova , 21A.

As soon as he took up residence at this address V.E. Makrousov began to hold gatherings of various fellow citizens belonging to the Evangelical Christian faith, without having the necessary permission from the Ministry of Justice. The religious rites which took place in Makrousov's house contravene the norms of Turkmenistan law, in particular Presidential Decree No 2906, dated ... [left blank in original] , 'On the registration of religious organisations', as well as articles 178 and 205 of the Administrative Code of Turkmenistan. These religious rites, which were taking place on a regular basis, did not observe the requirements of public order and made it impossible for neighbouring residents to lead a normal life. Makrousov was warned on several occasions, as the leader of this religious organisation, that these meetings which were an infringement of public order should stop, but this had no effect. (See orders of the administrative committee of the Kopetdag district administration to fine Makrousov No. 483, 1 March 1999; No. 1343, 4 July 1999; and No. 2102, 20 October 2000).

As can be seen from the evidence given above, it is obvious that when V.E. Makrousov bought this property he had no intention of making it his permanent residence, given that he had already had his own home for several years, where he occasionally resides. He is still registered as living at this address (ulitsa Kemine, block 131, flat 47). The afore-mentioned property is generally used for the conduct of religious rites, which are usually attended by over thirty people. This cannot fail to disturb neighbouring residents. Moreover, V. E. Makrousov arbitrarily undertook building alterations (the removal of walls etc) in order to increase the space available for the holding of religious meetings, in contravention of order no. 2291 dated 26 November 1997 of the Kopetdag district administrative committee and without first seeking planning permission from the town planning authorities. These works were undertaken without the prior approval of building plans, which would have had to include constructive measures to ensure the stability and safety of the planned works as well as adherence to fire and public health regulations. As a result, these arbitrary actions have left Makrousov's property, designated as his permanent residence and where religious services also take place in the presence of a large number of people, in a ruinous state, posing a threat to public safety.

On the grounds of the above, and governed by articles 94, 100, 101 point 2, 103 and 108 of the Residence Code of Turkmenistan
We request that:

1. The court evicts V.E. Makrousov from his place of residence at ulitsa Koltsova 21A, without the provision of alternative

accommodation and the house be declared unfit for habitation.
2. The court inform us immediately of the time when our claim is to be considered.

Enclosures (15 pages of documentary material)

Signed on behalf of the District Administration
A.K. Razmakhov

DECISION IN THE NAME OF TURKMENISTAN

4 January 2001

Kopetdag district court, Ashgabad.

Present: Presiding Judge D. Sopiaev

Jury members O. Atayeva and N. Maravayev

Secretary D Yailanova

The court, having considered in open session the case brought by the Kopetdag district procuracy on behalf of the Kopetdag district administration against Viktor Evgenievich Makrousov regarding eviction from his place of residence, decrees:

The suit had been brought on the basis that the defendant, V.E. Makrousov, had in accordance with the right to property ownership, purchased part of a property at house 21a, ulitsa Koltsova, Ashgabad. He used the property to hold meetings of fellow citizens belonging to the Baptist/Evangelical persuasion without the necessary permission from the Ministry of Justice. These religious rituals took place on a regular basis without any observance of the requirements of public order, making it impossible for residents of neighbouring properties to lead a normal life. V.E. Makrousov, as the leader of this religious organisation, was given several warnings that these meetings, which were an infringement of public order, should stop. This had no effect (See Order No. 483, 1 March 1999; No. 1343, 4 July 1999; and No. 2102, 20 October 2000 of the Kopetdag district administrative committee, imposing fines on the defendant for his activities). Moreover, V.E. Makrousov undertook building work to enlarge his flat for the purposes of holding religious services, in contravention of order No 2291, 26 November 1997, of the district committee of Ashgabad, neither had he obtained the permission of the town planning authorities. As a result the house where Makrousov lives and where religious services are conducted in the presence of a large number of people is in a ruinous state, representing a threat to public safety.

At the hearing, A. Meretdurdiyeva, representative of the Kopetdag district procurator's office, and A. Gochmuradov, representative of the Kopetdag district administration, asked that the suit against Makrousov be upheld by the court. They based their conclusions on the evidence brought to the court as well as on the decision of the Kopetdag district administrative committee to fine Makrousov for public order offences.

At the hearing Makrousov acknowledged that he had entered into a contract to purchase part of a property (house 21a, ulitsa Koltsova, Ashgabad) on 9 December [1997] and confirmed that he is registered as living at block 131, flat 47, ulitsa Kemi-ne. He did not deny that he invited Christian believers to his flat and that he held religious services there, but these caused no disturbance to the neighbours. He admitted that he had made some building alterations in the flat (removal of internal walls etc) without obtaining the necessary planning permission from the Ashgabad town planning authorities. He stated however that he had fully observed fire and public health regulations. He has applied for his religious organisation to be registered by the department for the registration of religious organisations at the Ministry of Justice. He believes in the meantime that the holding of religious services in his flat does not contravene Turkmenistan law.

Having heard the evidence of the representatives of the district procuracy and administration, as well as that of the defendant, and having examined the documentary materials brought to the court, the court considers that the suit brought against the defendant be upheld on the following grounds.

As the court hearing has established, defendant Makrousov bought house 21a ulitsa Koltsova, Ashgabad, not for the purposes of residence but to conduct religious services there without the necessary registration. These religious services regularly took place without due observance of public order, making it impossible for neighbouring residents to live a normal life. Moreover, Makrousov broke article 94 of the Residence Code of Turkmenistan by undertaking building work in his home, including the removal of interior walls, without obtaining the necessary planning permission from the Ashgabad authorities. This also contravenes Presidential Decree No 3970, 2 December 1998, point 21, regarding building work in individual residential properties. It significantly reduces the degree to which the building is earthquake-proof and therefore poses a

threat to the safety of citizens living in this house. In addition fire and public health regulations have not been complied with. Makrousov also conducts religious services without the required registration, and is not using the property in accordance with its designated use. Therefore, in accordance with article 108 of the Turkmenistan Residence Code V. E. Makrousov is to be evicted from his property without the provision of alternative accommodation.

In accordance with the above and governed by articles 193-96, 198-199 of the [?Code of Administrative Law] of Turkmenistan, the court decided:

- to uphold the complaint against V.E. Makrousov
- to evict him and all the members of his family from 21a, ulitsa Koltsova Ashgabad, without the provision of an alternative place of residence.

Appeals and protests against the decision can be lodged at the Ashgabad municipal court through the district court within 10 days from the date of this ruling.

[signed by Judge Dovlet Sopiev]

5. DENIAL OF REGISTRATION OF RELIGIOUS ORGANISATIONS

[Among the many non-Muslim and non-Orthodox religious organisations that have sought registration in vain are the Ashgabad Adventist community and the Bible Society.]

TO THE MINISTRY OF JUSTICE, TURKMENISTAN

Our ref 4, 26 August 1997

Following your letter dated 27 June 1997 (your ref 4/611), which we received on 18 August 1997, regarding the return of our application for registration, the Seventh Day Adventist Church in Ashgabad informs you that:

In accordance with the law of Turkmenistan on freedom of conscience and religious organisations and following your comments we have introduced the necessary changes to sections 2.1.1. and sections 3.3.1. of our Statute.

On the question of founder members of the church not resident in Ashgabad: in accordance with article 13 of the law on freedom of conscience and religious organisations in Turkmenistan 'An application from members of a religious organisation is legally viable if it contains no fewer than 500 signatures.' Therefore, persons who are citizens of Turkmenistan may be founder-members of our church.

The Seventh Day Adventist Church has been working on a definition of the aims and religious foundations of our church and of the rights and responsibilities of its members.

Further: A.A. Orazberdiev, d.o.b. 1974, Khabarovskaya ulitsa 63, Ashgabad, is not a member of the Seventh Day Adventist Church. He has not converted to the Christian faith and is a Muslim believer. However, A.A. Orazberdiev expressed a willingness to become a founder-member of our church, which does not contravene article 8 of the law.

On the basis of the above, we are submitting an application to reregister the Seventh Day Adventist Church having taken into account your previous comments.

Enclosures:

1. Application for registration
2. Minutes of the founding meeting
3. Statute with amendments
4. List of founder-members (52 pages)
5. Appeal from the Conference of the Southern Union
6. Letter from the President of the Central Asian Conference, R. Geibel

Ministry of Justice of Turkmenistan
Our ref: 4/929
5 October 1999

To: P.N. Fedotov

The Ministry of Justice has examined your letter of 6 September 1999 and informs you that:

In accordance with the law of Turkmenistan of 29 May 1991 'On freedom of conscience and religious organisations in Turkmenistan' the registration of religious organisations is conducted by the Ministry of Justice of Turkmenistan. In order to obtain the registration of a religious organisation citizens belonging to it must submit an application including the statutes of the organisation and indicating its planned location. Citizens who have reached the age of eighteen may be members of a religious organisation. The application for the registration of a religious organisation is considered valid if it has no fewer than 500 signatures.

Taking into account the above and governed by articles 13 and 14 of the Turkmenistan law 'On freedom of conscience and religious organisations' the Ministry of Justice refuses to grant state registration to the Seventh Day Adventist religious organisation on the grounds that its founding documents and Statute do not comply with the law on freedom of conscience and religious organisations.

K. Kasimov
Minister of Justice

Seventh Day Adventist Church, Ashgabad
18 October 1999

To the general procurator of Turkmenistan, K.S. Atadzhanova
Copy to: Minister of Justice of Turkmenistan, K.K. Kasimov

Respected Kurbanbibi Singrenovna

On 18 April 1990 the executive committee of the regional council of people's deputies in Ashgabad registered the religious community of Seventh Day Adventists (SDA). On 25 May 1992 the executive committee of the Ashgabad town council of people's deputies granted permission for the Ashgabad SDA congregation to commence a church building project.

Following Turkmenistan's declaration of independence all religious organisations in the country were obliged to apply for reregistration.

From 1994-97 our community made many attempts to reregister: each time the Ministry of Justice returned our documents, giving various reasons for refusal - either our application for reregistration was premature (1994), or we were refused on the grounds that the draft law 'on religion' was not yet in effect (1996). Our documentation was said to be incomplete in some way, or we did not have the necessary quorum of believers at our founding meeting (1997).

On 6 September 1999 we lodged an application for registration with the Ministry of Justice. This application, in accordance with article 8 of the Law 'On Freedom of Conscience and Religious Organisations in Turkmenistan', contained the necessary information about the formation of the religious community of Seventh Day Adventists and included details of preparatory work being undertaken for the collection of the required number of signatures necessary for the granting of state registration. In our application we also requested clarification of the number of believers required for our founding meeting to be legally valid, which we needed in order to prepare our founding documents correctly.

However, the Ministry of Justice of Turkmenistan gave only cursory attention to our application. Our questions were not answered in any detail - in effect a contravention of the law of 14 January 1999 'On citizens' appeals and procedures for response'. Moreover, the response received from the Ministry of Justice preceded events and contravenes the constitutional rights of believers since it refused to register the Seventh Day Adventist community on the grounds that 'its founding

documents and statutes do not comply with the law on freedom of conscience and religious organisations'. However, we had not yet sent any founding documents to the Ministry of Justice, so how, therefore, could Ministry of Justice officials have found any discrepancies in them?

Respected Kurbanbibi Singrenovna!

We firmly request that you investigate this situation and defend the constitutional rights of believing citizens by obliging the Ministry of Justice to give due attention to the applications it receives.

Wishing you God's blessings

P.N. Fedotov

Pastor, Church of the Seventh Day Adventists.

Enclosures:

1. Application to the Ministry of Justice, ref. no.9, dated 6 September 1999
2. Reply from the Ministry of Justice, ref. 4/929, dated 5 October 1999

To the Minister of Justice of Turkmenistan,

K.K. Kasimov

18 October 1999

Respected Kurban Kadjarovich,

On 6 September 1999 Christians from various confessions informed you about preparatory work being undertaken for an application to register the Bible Society of Turkmenistan, including a list of the required number of signatures of founder-members, as well as drafts of the necessary documents.

In view of the fact that Turkmenistan law does not give an indication of the quorum required at the founding meeting of a religious organisation for it to be legally valid, we request that you inform us what proportion of delegates from the list of founder-members is required for the decision of the Founding meeting to have legal force in order that the Bible Society of Turkmenistan be granted registration.

Minister, since the founders of the Bible Society of Turkmenistan live all over the country and it is therefore difficult for us to convene a full founders' meeting, we request that you allow the quorum of the founding meeting to be represented by one delegate to every ten signatures.

With our respect and wishing you God's blessings

V.E. Makrousov , Pastor of the Full Gospel Christian Church

V.P. Korobov, Pastor of the Evangelical Christians Baptists

P.N. Fedotov, Pastor of the Seventh Day Adventist Church

Ministry of Justice of Turkmenistan

Our ref: 4/1059

1 November 1999

To: V.E. Makrousov and colleagues

The Ministry of Justice has received your letter of 18 October 1999 requesting clarification of the procedures for the registration of the Bible Society of Turkmenistan and informs you that:

In accordance with the law of Turkmenistan of 29 May 1991 'On freedom of conscience and religious organisations in Turkmenistan' state registration of religious organisations is conducted by the Ministry of Justice of Turkmenistan.

A religious community in Turkmenistan is made up of citizens for purposes of the joint confession of their faith and the satisfaction of other religious needs and operates on a voluntary basis.

A citizen can only be a member of one organisation or community.

In accordance with article 13 of the law on freedom of conscience and religious organisations in order to obtain state registration of a religious organisation citizens who are founder members of the organisation must submit an application including the statutes of the organisation, indicating where the proposed activity is to take place. Citizens of Turkmenistan who are over the age of eighteen may be members of a religious organisation.

An application for registration is only legally viable if it contains no fewer than 500 signatures.

Therefore a founding meeting of a religious organisation must have a quorum of at least 500 people.

Head of the department for the registration of religious organisations,
D. Kurbanov

6. MALTREATMENT OF RELIGIOUS BELIEVERS

[Account of a raid on the home of Vladimir Chernov, a Baptist in Ashgabad, and the maltreatment of a fellow-Baptist Dmitry Melnichenko, who was present in Chernov's home. Melnichenko's account is dated 18 December 1999]

At 10.30 pm on 16 December I, Dmitry Melnichenko, was at the home of brother Vladimir Chernov when I heard the sound of the gates opening. I went up to the gates and asked «Who's there?» In reply I heard threats and demands to open the gates. I refused. Then up to 15 people began climbing over the fence. The house was completely surrounded. They tied up my hands and led me into the kitchen. There they began to kick me and hit me, each one in turn. One, dressed in civvies, asked me if I drink or smoke. I told him I didn't. He then took a cigarette, lit it and began to force it into my mouth. He said he would get a bottle and they would give me some to drink. They demanded the keys for the living quarters. I did not reply. They searched me, but did not find the keys. They asked me about Chernov, where he had gone and why. They insisted I was in the house to steal. I denied this accusation, telling them I was present with the permission of the owner. They said they had witnesses. «Now we'll collect up some things, spare parts for the car and other things, and we'll pin it on you.»

After this they took me to the local police station and began to search me again, but did not find the keys this time either. They demanded I hand them over, but I refused. They began to beat me, some six of them. I fell to the ground and they started to kick me, then they pulled me up by the hair and started to throttle me, beat me. They again pulled me by the hair, banged my head on the wall and demanded that I tell them where Chernov was. Although they already knew this, they wanted to hear it from me. Again they took me to Chernov's house and demanded I should unlock the doors myself, but I refused. After climbing over the fence and lifting the latch they themselves opened the gates. They broke open the two doors of the house with an axe. Once they were sure Chernov was not in the house they took me back to the police station.

On the way back, at about 1 am, we went to the home of Anatoly Belyayev. After climbing over the fence, they forced him into the car without any explanation. When we reached the police station they separated us. I was again beaten around the ears and throttled. I started to choke. They threatened to put me into a cell with criminals for them to commit an outrage on me. They took me to the holding centre, but they would not accept me. Then they took me to another police station and there I spent the rest of the night. In the morning they took me to the KNB station for a meeting with the KNB chief. There they again threatened to put me in a cell to be violated. They insisted I should admit I was guilty of theft and that it was only the «sharp eyes» of the police officers who were passing at that moment which prevented it. They pressured me to collaborate - to report on believers and give them names and addresses. I refused. They threatened that when I reach the age of 18 and am called up for the army they will deal with me and put me in prison. They gave me time to think this all over. But I told them firmly that I would not collaborate. One of them told me: «You will suffer.» I replied: «For me life is Christ, and death is gain.» He replied: «You have made your choice.»

They added that all those who had come to Turkmenistan from outside will be expelled from the country, while «we will suffocate you locals, we will cut off your oxygen».

My mother discovered where I was and came along, demanding that they let me go. Three hours later, after her insistent demands, they released me after warning me not to tell anyone that they had beaten me.

7 SLANDER OF BELIEVERS IN THE MEDIA

[Excerpts from article in the Turkmen newspaper Adalat, p.3, 24 September 1999]

Even the door of a mosque is open...

[Quotation from the Turkmen president] Saparmyrat Turkmenbashy: All people are dear to us here in Turkmenistan, and we consider them equal regardless of whether or not they believe in religion.

The people of Turkmenistan under the leadership of our great Saparmyrat Turkmenbashy Niyazov declared its Independence on 27 October 1991. So a new democratic and secular state with its own national peculiarity has joined the world community.

[passage omitted: all religions equal in Turkmenistan; special presidential council set up on religious affairs; state and religion separated in Turkmenistan]

However, recently certain outside visitors, so-called missionaries, are trying to interfere with local governments under the guise of religion, in violation of existing laws and regulations. The representatives of various foreign religious sects are trying to influence vulnerable individuals, especially youngsters.

[passage omitted: outside visitors try to shake national traditions]

Dozens of foreign visitors were extradicted from our country in the last two years for abusing our «open doors» policy, and violating relevant regulations. This was their punishment for attempting to turn our people against our sacred beliefs. At the same time, despite measures taken to prevent such activities, complete success mostly depends on the vigilance of the people themselves. The number of various religious sects and organisations all over the world is more than 700 in recent years. In order to achieve their miserable goals they do not hesitate in spending large amounts of money. With a wide use of propaganda materials and extensive financial means, they persuade the weak, especially the young. Unfortunately, some of our compatriots are also involved in these illegal activities. Followers of religious trends, like Jesus Christ [as written, possibly The Church of Jesus Christ of Latter-day Saints, otherwise known as the Mormons], Jehovah's Witnesses, Baptists and [the Society for] Krishna-Consciousness, who consider themselves as supreme over other religions, do not care if they are dishonest in order to fulfil their goals.

[passage omitted: Turkmen forefathers and women's heroism recalled; some visitors try to bring in religious books and other items]

Over 80,000 copies of religious books and many thousands of audio and video products designed for mass distribution were brought into Turkmenistan illegally during last year alone. Most sorrowful is the fact that together with foreign distributors, like [the Adventist] A. [Andrei] T. Ten, D. M. Timokhin, V. G. Shankov, A. [Aleksandr] V. Prinkur [Hare Krishna leader], P. [Pyotr] M. Kashin [Baptist], A. V. Bukhalov, L. [Lydia] Achilova [Baptist], V. [Vitali] V. Tereshin [Baptist], A. [Anatoli] Belyayev [Baptist], V. N. Malakhov and others (who were expelled from the country) there are some citizens of Turkmenistan like D. J. Kakabayev, Ch. Atakov, F. Z. Mustakimov and his wife M. V. Mustakimova, T. N. Shukurov, I. O. Berkeliyeva, Kh. Tashev, B. Annamyradov, Sh. Piriyeu, U. Kochkarov, Ya. Sakhedov, Ch. Annanyazova, E. Atabayeva, G. Togtamyradova who are involved in such criminal activities as illegal delivery and distribution of such materials and conducting regular meetings in private flats.

[passage omitted to end: Turkmen people will strictly protect their belief]

Appendix - Pakistan

Enclosure 1

THE CONSTITUTION OF PAKISTAN

2. Islam shall be the State religion of Pakistan .

[2A. Objectives Resolution to form part or substantive provision.-- The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly].
Part II Fundamental Rights and Principles of Policy.

CHAPTER I FUNDAMENTAL RIGHTS

8. Laws inconsistent with or in derogation of Fundamental Rights to be void.

(1) Any law, or any custom or usage having the force of law, in so far as it inconsistent with the rights conferred by this Chapter, shall to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the right so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

20. Freedom to profess religion and to manage religious institutions. Subject to law, public order and morality.

(a) every citizen shall have the right to profess, practice and propagate his religion;

Enclosure 2

ENFORCEMENT OF SHARI'AH ORDINANCE, 1988

No.F.17 (2)/88-Pub. dated 15-6-1988.-- The following Ordinance made by the President on 15.6.1988 is hereby published for general information:--

- 3. Supremacy of Shari'ah.-- Shari'ah shall be the supreme source of law in Pakistan and Grund Norm for guidance for policy-making by the state and shall be enforced in the manner and as envisaged hereunder .

4. Court to decide case according to Shari'ah.-- (1) If a question arise before a court that a law or provision of law is repugnant to Shari ' ah, the court shall, if it is satisfied that the question needs consideration, make a reference to the Federal Shari ' at Court in respect of matters which fall within jurisdiction of the Federal Shari'at Court under the Constitution and the court may call for and examine the record of the case and decide the question within sixty days:

11. Laws to be interpreted in the light of Shari'ah. For the purpose of this Ordinance:

(i) while interpreting the statute law, if more than one interpretation is possible, the one consistent with the Islamic principles and jurisprudence shall be adopted by the Courts; and

(ii) Where two or more interpretations are equally possible, the interpretation which advances the Principles of policy and Islamic provisions in the Constitution shall be adopted by the Courts.

12. Exeditious codification of Islamic Law.(1) The Council of Islamic Ideology shall take urgent steps to fulfil its functions as envisaged in sub-clauses (c and (d) of clause (1) of Article 230 of the Constitution.

(2) The State shall take early steps to place the recommendations made to it by the Council of Islamic Ideology before the Parliament for the purpose envisaged in clause (4) of Article 230 of the Constitution.

Enclosure 3

PAKISTAN PENAL CODE

298-- B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any persons of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation;

(a) refers to, or addresses, any person other than a caliph or companion of the Holy Prophet Muhammad (Peace be upon him), as "Ameer-ul-Mumineen", "Khalifat-ul-Muslimeen", "Saha-abi" or "Razi Allah Anho";

(b) refers to, or addresses, any person, other than the wife of the Holy Prophet Muhammad (Peace be upon him), as "Ummul-Mumineen";

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (Peace be upon Him), as "Ahle-bait"; or

(d) refers to, or names, or calls, his place of worship as "Masjid";

shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani group or the Lahori group (who call themselves "Ahmadis" or by any other name) who by words, either spoken or written, or by visible representation, recites to the mode or form of call to prayers followed by his faith as "Azan", or refers Azan, as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

298-C. Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either written or spoken, or by visible representation, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Enclosure 4

THE CONSTITUTION (FIFTEENTH AMENDMENT) ACT, 1998

A Bill further to amend the Constitution of the Islamic Republic of Pakistan.

Whereas sovereignty over the entire universe belongs to Almighty Allah alone and the authority which He has delegated to the State of Pakistan through its people for being exercised through their chosen representatives within the limits prescribed by Him is a sacred trust; And Whereas the Objectives Resolution has been made a substantive part of the Constitution.

And Whereas Islam is the State religion of Pakistan and it is the obligation of the State to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principals and basic concepts of Islam as set out in the Holy Quran and Sunnah;

And Whereas Islam enjoys the establishment of a social order based on Islamic values, of prescribing what is right and forbidding what is wrong (amr bil marroof wa nahi ani munkar);

And Whereas in order to achieve the aforesaid objective and goal, it is expedient further to amend the Constitution of the Islamic Republic of Pakistan;

Now, Therefore, it is hereby enacted as follows:

(1) This Act may be called the Constitution (Fifteenth Amendment) Act, 1998.

(2) It shall come into force at once.

2. Addition of new Article 2B in the Constitution. In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, after Article 2A, the following new Article shall be inserted, namely:

2B. Supremacy of the Qur'an and Sunnah. (1) The Holy Prophet (peace be upon him) shall be the supreme law of Pakistan. Explanation: In the application of this clause to the personal law of any Muslim sect, the expression Qur'an and Sunnah shall mean the Qur'an and Sunnah as interpreted by that sect.

(2) The Federal Government shall be under an obligation to take steps to enforce the Shari'ah, to establish salat, to administer zakat, to promote amr bil marroof and nahi ani munkar (to prescribe what is right and to forbid what is wrong), to eradicate corruption at all levels and to provide substantial socio-economic justice, in accordance with the principles of Islam, as laid down in the Holy Qur'an and Sunnah.

(3) The Federal Government may issue directives for the implementation of the provisions set out in Clauses (1) & (2) and may take the necessary action against any state functionary for non-compliance of the said directives.

(4) Nothing contained in this Article shall affect the personal law, religious freedom, traditions or customs of non-Muslims and their status as citizens.

(5) The provisions of this Article shall have effect notwithstanding anything contained in the Constitution, any law or judgment of any Court.

Enclosure 5

The words "or imprisonment for life" are void according to a decision by the Federal Shariat Court.

See "THE BLASPHEMY LAW" FROM ORDINANCE TO MURDER pp. 206 and 207. IDARA -E-AMN-O-INSAF. KARACHI 1994. :

2.3. The blasphemy law: section 295-C PPC In 1986 the penal code was amended by Criminal Law Amendment Act, 1986, which added the blasphemy law under section 295-C to the Pakistan Penal Code. It provided the death penalty or life imprisonment for the criminal offence of defiling the name of the Prophet Mohammad. It reads:

295-C: Use of derogatory remarks etc. in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet (peace be upon him), shall be punished with death, or imprisonment for life, and shall also be liable to fine.

In October 1990, the Federal Shariat Court, a court set up in 1980 to examine and decide the question whether any law or provision of law is repugnant to injunctions of Islam (Article 203-D of the Constitution) ruled that the penalty for contempt of the Holy Prophet is death and nothing else. It also noted that no one after the Holy Prophet exercised or was authorized the right of reprieve or pardon.

The Court directed the government of Pakistan to effect the necessary legal changes and added, in case this is not done by 30 April 1991 the words or punishment for life in section 295-C, PPC, shall cease to have effect on that date. Decisions by the Federal Shariat Court are binding on the government under Article 203-D(3) of the Constitution. The Government has the possibility to appeal against such decision to the Shariat Appellate Bench of the Supreme Court before any directive of the Federal Shariat Court takes effect. The government of Prime Minister Nawaz Sharif did not file an appeal against the decision making the death penalty the only punishment available for blasphemy. In July 1991, it announced that it had decided to amend section 295-C as directed by the court. A bill to that effect was placed before parliament in 1992. While the Senate, the upper house of parliament, unanimously adopted the bill in July 1992, the lower house of parliament discussed it at length but did not pass it. Opposition parties considered it to be too vague and liable to abuse. In 1993, a new bill was reportedly introduced in parliament which sought to enlarge the scope of section 295-C to include the names of the Prophet's companions and family members; it has not so far been passed. In April 1994, the Lahore High Court extended the application of the blasphemy law when it ruled that defiling the name of all the true prophets of Allah mentioned in the Koran, including Abraham and Jesus, constitutes blasphemy. The Federal Shariat Court in its judgement of 1990 had already recommended that the words "any prophet" be substituted for the "Holy Prophet", meaning the prophet Mohammad, in section 295-C. However, no parliamentary legislation has been enacted to amend the section accordingly. Commentators in Pakistan have pointed out that the recent decision of the Lahore High Court could open the door to further litigation as the ruling reflects the Muslim interpretation of such prophets who may be viewed differently in other faiths.

In February 1994, the Pakistan Law Commission, presided over by the Chief Justice of Pakistan and attended by the Minister for Law, Justice and Parliamentary Affairs, the Chairman of the Council of Islamic Ideology and the Chief Justices of the four provincial High Courts, decided to send a draft of the blasphemy law amendment bill to the Council of Islamic Ideology for further scrutiny. According to reports, the Law Commission expressed concern about the abuse of authority by the police when dealing with blasphemy cases and the misuse of the law for ulterior purposes by various political and sectarian organisations. The Law Commission reportedly also noted with concern the negative international reaction to the abuse of the blasphemy law in Pakistan. Maulana Kausar Niazi, Chairman of the Council for Islamic Ideology, said to the press that "the law needs modification to ensure that it is not abused by unscrupulous elements for their selfish ends" The procedure for police registration of a case, the judicial level at which it should be considered and suitable criteria for admission of witnesses have all to be looked at thoroughly?

(Agence France Press, 18 February 1994)

The legal situation in respect of the blasphemy law in Pakistan is confusing and this confusion was frequently used by the then government of Prime Minister Nawaz Sharif to confound human rights activists and critics. Following the directive of the Federal Shariat Court of 1990, the alternative punishment of imprisonment for life contained in section 295-C is void: the death penalty is the mandatory punishment for blasphemy. But as parliament did not pass the legislation required of it by the Federal Shariat Court, the clause or imprisonment for life is still part of section 295-C of the Pakistan Penal Code, though without force. Amnesty International has received numerous letters from the Government of Pakistan pointing to the alternative punishment of life imprisonment on the statute book to counter its concern about the death penalty as the only punishment available for anyone convicted of blasphemy but this punishment cannot be imposed any longer.

(Amnesty International July 1994)

Appendix - Greece

Greek Constitution

Article 3 [Relations of Church and State]

(1) The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Church of Greece acknowledging as its head Our Lord Jesus Christ is indissolubly united in doctrine with the Great Church of Constantinople and every other Church of Christ of the same doctrine. It observes steadfastly, as they do, the holy apostolic and synodical canons and the holy tradition. It is autocephalous, exercising its sovereign rights independently of any other church, and is administered by the Holy Synod of Bishops and the Parliament Holy Synod which emanates from the former and is constituted in accordance with the Constitutional Chart of the Church and the provisions of the Patriarchal Document of 29 June 1850 and the Synodal Deed of 4 September 1928.

(2) The religious status prevailing in certain parts of the State is not contrary to the provisions of the previous paragraph.

(3) The text of the Holy Scriptures shall be maintained unaltered. The official translation thereof into any other linguistic form, without the sanction of the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

Article 4 [Citizenship and Equality]

(1) All Greeks are equal before the law.

(2) Greek men and Greek women have equal rights and obligations.

(3) Greek citizens are those who possess the qualifications specified by the law. No one shall be deprived of his citizenship save in the case of persons assuming on their own free will another citizenship or joining a service in another country which is contrary to the national interests, in accordance with the conditions and procedure laid down by the law in detail.

(4) Only Greek citizens shall be eligible for public service save in those cases where exceptions are introduced by specific legislation.

(5) Greek citizens shall, without discrimination, contribute towards sharing the burden of public expenditure according to their ability.

(6) Every Greek able to bear arms shall be obliged to assist in the defense of the nation, as provided by law.

(7) Titles of nobility or distinction shall neither be conferred upon, nor recognized in Greek citizens.

Article 13 [Religion]

(1) The freedom of religious conscience is inviolable. The enjoyment of civil and individual rights does not depend on the religious conviction of each individual.

(2) Every known religion is free and the forms of worship thereof shall be practiced without any hindrance by the State and under protection of the law. The exercise of worship shall not contravene public order or offend morals. Proselytizing is prohibited.

(3) The ministers of all religions are subject to the same obligations towards the State and to the same state supervision as the ministers of the established religion.

(4) No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws.

(5) No oath shall be imposed without a law specifying the form thereof.

Appendix - Israel and Palestine

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**HUMAN RIGHTS TRENDS IN THE EMERGING PALESTINIAN STATE:
PROBLEMS ENCOUNTERED BY MUSLIM CONVERTS TO CHRISTIANITY**
Justus R. Weiner²²⁰

I. Religious Demographics in the West Bank and Gaza: Muslims, Christians and Converts

- A. The Palestinian Authority and the Traditional Christians
- B. Muslim Converts to Christianity--Outside the Fold of Traditional Christianity

II. Human Rights Violations Against Muslim Converts to Christianity

- A. Societal Persecution
- B. Direct Palestinian Authority Persecution
 - i. Fabricated Criminal Charges
 - ii. Bribes and Court Proceedings

III. Understanding the Sources of the Problem

- A. The Multiplicity of Palestinian Authority Security Forces
- B. The Palestinian Authority's Security Courts
- C. The Palestinian Authority's Judicial System
- D. Islamic Law and Apostasy
- E. Sulha as a Means of Conflict Resolution in the Palestinian Authority

IV. Ultimate Responsibility for Addressing Human Rights Violations: The Palestinian Authority or Israel?

V. Freedom of Worship in International Law

- A. United Nations Conventions
 - i. Freedom of Religious Adherence and Choice
 - ii. Freedom of Religious Observance
 - iii. Freedom of Religious Propagation
 - iv. Obligation of the State
- B. United States Statute Protecting the Freedom of Religion Abroad: The International Religious Freedom Act
- C. Other Donor Community Responses
- D. U.S. Department Of State Annual Report on International Religious Freedom for 1999

Conclusions and Outlook

Introduction

Israeli-Palestinian negotiations under the framework of the Oslo Peace Process began in 1992.²²¹ Vexing questions like Palestinian statehood, Jewish settlements, security, redeployment, terrorism, the future of Jerusalem, refugee claims, and economic viability have dogged Mideast diplomacy. Largely ignored by the media is the fact that Israel no longer controls Palestinian civil life on a day-to-day basis. In its place, the Palestinian Authority ("PA"), the entity created and empowered by the interim peace agreements to manage the local affairs of the Palestinians, is now accountable for the local governance of approximately 98 percent of Palestinians in the West Bank and Gaza Strip.²²² Attention has been paid in some areas (e.g., security), but not human rights. Unfortunately, scant regard has been paid to how the PA conducts its internal affairs.

²²⁰ The author is an international human rights lawyer and a member of the Israel and New York Bar Associations. He is currently a Scholar in Residence at the Jerusalem Center for Public Affairs and an adjunct lecturer at Hebrew and Tel-Aviv Universities. The author expresses his indebtedness to Michael Ottolenghi, Victoria Wagner, Tina Ham and Hayden Small for their assistance in this project. This report is published in Michigan State Journal of Law, June 2000.

²²¹ The first interim agreement, the Declaration of Principles ("DOP") was signed at the White House on September 13, 1993. The DOP stated that the two groups agreed to recognize each other and would settle their differences through peace negotiations.

²²² As of the writing of this article, the territories officially handed over to the Palestinian Authority ("PA") total about 38 percent of the West Bank and Gaza Strip. These territories included all but one (Hebron) of the major cities which are the Palestinian population centers. While the debate on further redeployment carries on, the areas currently requested by the PA are not Palestinian population centers. The whole territory was divided into the categories of Areas A, B and C. Area A is fully under the local jurisdiction of the PA, Area B's civil government is controlled by the PA while the security is handled by the Israel Defense Forces ("IDF"), and in Area C (which has few Palestinian residents) both civilian matters and security are managed by Israel.

Yasser Arafat, PLO Chairman and Rais (President in Arabic) of the PA, claims to base his rule on Western democratic principles. Protection of human rights is considered one of the fundamentals for the effectiveness of this model. In a 1994 address to the UN Human Rights Commission in Geneva, Arafat spoke of the PLO's belief in the peace process and the need to improve the observance of human rights:

It is my pleasure to inform you from this solemn rostrum that out of our commitment to human rights, democratic freedoms, international laws and the UN Charter, and out of our concern for edifying a healthy, dynamic, open and active society...²²³

Yet, contrary to Arafat's professional commitment to democratic principles, which embody respect for the protection of human rights, corroborated reports have emerged from a variety of sources revealing widespread human rights violations perpetrated by the PA. Despite some PA efforts to suppress information, Palestinian, Israeli and international human rights workers and journalists report flagrant abuses²²⁴ denying freedom of expression, movement, religion and assembly.²²⁵ Journalists, professors and human rights workers have been arrested and newspapers closed down for publishing articles critical of the PA.²²⁶ There are gross inconsistencies with due process of law, such as arbitrary arrests,²²⁷ incommunicado and prolonged detentions (sometimes for years) without charges,²²⁸ a paucity of legal representation and a court system that lacks political independence. In the absence of a Supreme Judicial Council the PA President and Minister of Justice have assumed its powers to, "appoint, promote, demote, transfer, dismiss and retire judges at all levels."²²⁹ Moreover, when the Court does come into conflict with the PA its rulings are blatantly ignored. Adequate legal representation is often denied and hasty trials have been held in the middle of the night by the special 'security courts' which are only accountable to Arafat himself. There are also violations of basic human rights, such as the right to life and freedom from torture, evidenced by numerous reports of torture in jails which has resulted in death in 21 known instances since 1994, as well as extrajudicial executions.²³⁰

Even if the peace negotiations successfully navigate the numerous obstacles ahead, the level of protection afforded human rights in the Palestinian autonomous areas during the interim period may be a harbinger of what will eventuate when, and if, a final settlement is achieved. One independent report stated that "[t]he risk is that if present structures and practices go unreformed, they will shape and even predetermine future ones in negative ways."²³¹ The above mentioned reports of flagrant human rights violations call into question the very nature of the emerging Palestinian state, making the slogans 'path to peace' and a 'two state solution' no longer the obvious answer to the human rights predicament inherent in the Israeli administration of the West Bank and Gaza Strip.

While reports and allegations of human rights violations within the PA raise a panoply of troubling issues, the principal focus of this article is the problem of religious freedom in the emerging state. Freedom to choose and practice one's religion is at the very core of any democratic system of government. Yet, while the traditional Palestinian Arab Christians are officially tolerated as recognized minorities by the PA. Muslims who choose to convert to Christianity ("MCCs") are treated very differently by the officials of the PA. While it's difficult to ascertain if the PA has a policy of persecution, the MCCs face not only a multiplicity of societal problems, but also endemic problems with PA institutions.

This article examines and evaluates the reports of violations committed against MCCs without any illusions. It should be cautioned at the outset that in every democracy, fledgling or established, critics make wholesale unjustified allegations in order to defame their political opponents, routinely accusing them of destroying the nation's religious freedom, democratic fabric and the like. The author is especially sensitive to the problem of unsubstantiated, politically motivated allegations, which are legion in the Middle East. This article, therefore examines and cross-checks evidence from a variety of human rights groups and other relevant sources, such as diplomats, Swiss International Committee of the Red Cross ("ICRC") delegates, church officials, clergy, members of the Israeli Foreign Ministry, lawyers in private practice, PA officials and others.

²²³ Arafat's address to UN Human Rights Commission in Geneva, BBC Short Wave Broadcasts, Feb. 4, 1994, ME/1913 MED/12.

²²⁴ See Introduction: Death in Custody, THE PALESTINIAN HUMAN RIGHTS MONITOR, Issue No. 5, Dec. 1997 at 4; THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.1, Jan. 1998 at 3; Public Statement on the Human Rights Situation in the PA., THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.4, June 1998 at 19.

²²⁵ See THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.3, May 1998.

²²⁶ See THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.3, May 1998; A Prisoner in Ramallah, THE JERUSALEM POST Magazine, (Jan. 23, 1998); Steve Rodan, PA Arrests Journalist After Torture Report, THE JERUSALEM POST, Oct, 28, 1997; Why Is Jenin Newspaper Closed? THE PALESTINIAN HUMAN RIGHTS MONITOR, Issue #1, Jan. 1997; SAID ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR, pp. 310-312 (1998).

²²⁷ Steve Rodan, PA High Court Orders Explanation for Arrest of

Hamas Activist, THE JERUSALEM POST, Sept. 30, 1997, at B3; Making a Farce Out of a Tragedy, THE JERUSALEM TIMES, Feb, 20, 1998, at 5; LAW - the Palestinian Society for the Protection of Human Rights and the Environment, LAW Protests Illegal, Arbitrary Arrests by PA, Apr. 13, 1998, (visited Apr. 22, 1998) <http://www.lawsociety.org/>.

²²⁸ See SAID ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR, at 309 (1998).

²²⁹ 10. See REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 57 (1999)

²³⁰ See Torture: A State's Tyranny, THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.6, Oct. 1998.

²³¹ 13. REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL OF FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 7, (1999).

To obtain information it was frequently necessary to interview people on a confidential basis. The objective throughout has been to evaluate the situation in its entirety in order to present an objective legal and factual assessment.

This article is divided into five sections. Section I addresses the religious demographics of the West Bank and Gaza Strip and differentiates between the attitude of the PA toward traditional Christians, on the one hand and toward MCCs, on the other. The second section considers the sources, nature and extent of human rights violations suffered by MCCs living in the areas under the control of the PA. Section III offers an overview of the underlying reasons why Palestinian Arabs born and raised in traditional Christian homes are recognized as "Christians," but MCCs are not categorized as belonging to the "Christian" group. They are a distinct group that is neither recognized by Muslim Community nor even by many Palestinians born into Christianity as "Christians." Their numbers are difficult to ascertain because the majority of the MCCs practice their new found faith in secrecy, attending clandestine prayer and worship meetings. Their fear of adverse consequences from their Muslim neighbors and the PA, has compelled them to adopt a surreptitious religious life. Section IV addresses the distinct character of the limited administrative sovereignty of the PA and debates who should be held accountable for human rights violations. This section raises question of deciding which leadership should assume the task of protecting human rights during this period of transitional. The last section offers an international legal study of the freedom of worship, providing a broader perspective of the issue. An examination of freedom of worship in international law enables a better understanding of the international community's involvement, reactions, and expectations concerning the PA's behavior and attitude towards human rights.

A. Palestinian Authority and the Traditional Christians²³²

Although Arafat has continued to propagate to the world that amiable relations exist between Muslims and Christians in the territories under the PA, tension and even animosity is increasing between the two groups. Approximately 2.9 percent of the population under PA control is Christian, with the most belonging to the Greek Orthodox and Greek Catholic traditions. In recent years, disputes between Muslims and Christians have led to violent clashes, which necessitated the intervention of the PA police. The Arab Christians have complained that the PA police force, which is overwhelmingly Muslim, has a proclivity to side with Muslims while ignoring the concerns of Christians. For example, in the summer of 1997 a violent clash broke out in the village of Bet Sahour, an 80 percent Christian town near Bethlehem.²³³ During the ensuing fracas, the PA police opened fired on the crowd of Palestinian Christians, wounding six people.²³⁴ In July 1999, in nearby Bet J'allah, 30,000 Christians began which some referred to as an intifada, general strike, in July 1999 to protest against the PA's unjust policies toward Christians. Of major concern to the Christians was the firing of nine Christian members of the City Council.²³⁵ Christians in Bet J'allah also expressed the fear that they would become a minority, "like what occurred in Bethlehem."²³⁶ This trend can be, at least in part, explained by social and economic factors. Usually the Palestinian Christians are middle class and better educated, and move abroad to find better opportunities.²³⁷

In the summer of 1997, the International Christian Embassy Jerusalem ("ICEJ") published a report on the PA's persecution of Christians. Then, in October, a report from the Israeli Prime Minister's Office claimed that Christians under the PA were being systematically persecuted. The Palestinian Human Rights Monitoring Group ("PHRMG") issued its own report in February 1998, which concluded that there is no systematic religious persecution under the PA and that while human rights abuses abound, Christians in general remain unmolested.²³⁸

The growing dominance of the Muslim population and the predominantly Muslim PA administration has intensified the tension between the two groups, leaving the Arab Christian minority in exposed circumstances. Social discrimination against Christians has become rampant in recent years, creating frictions between the two groups. The Beit Sahur incident was initiated when an Islamic militant in the village sought to enforce a strict Islamic dress code on a young Christian woman.²³⁹ It is not uncommon to find mosques being utilized as forums for sermons, which malign Christianity and its Arab adherents. Religious hatred such as "all the deeds that the Christians talk about are deeds of deception" resonate from loudspeakers of numerous mosques in the greater Bethlehem area.²⁴⁰ It adds fuel to the extant tension between the two groups. Ramadan, a month-long dawn-to-dusk fast for Muslims, has also been a time of tension for Palestinian Christians. Chairman Arafat has instituted strict adherence to the observance of Ramadan, which forbids eating, drinking and smoking until sundown during the period of Ramadan.²⁴¹ It has also been reported that, "Christian cemeteries have been destroyed, monasteries have had

²³² The conditions of traditional Christians residing in PA controlled areas will be explored only for background purposes. An in-depth look into the relations between the PA and traditional Christians is beyond the scope of this paper.

²³³ Carl Alpert, Letter from Israel, JEWISH TELEGRAPH, Nov. 21, 1997.

²³⁴ See Israeli government report, The Palestinian Authority's Treatment of Christians in the Autonomous Areas, <http://www.tzemach.org/fyi/docs/chrstper.htm>.

²³⁵ Chaeled Abu-Toamah, Christian Intifada Against Arafat, JERUSALEM PAPER, July 16, 1999 (Hebrew).

²³⁶ Chaeled Abu-Toamah, Christian Intifada Against Arafat, JERUSALEM PAPER, July 16, 1999 (Hebrew).

²³⁷ For the Record: The 'Persecution' of Christians under the Pales-

tinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, (Dif. Date format?)Feb. 1998, at 12.

²³⁸ For the Record: The 'Persecution' of Christians under the Palestinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No. 2, Feb.1998, at 14.

²³⁹ See Christopher Walker, Tensions Darken Festive Mood in Bethlehem, London Times, Dec. 22, 1997, <http://www.thetimes.co.uk/cgi-bin/backissue?999>.

²⁴⁰ See Christopher Walker, Tensions Darken Festive Mood in Bethlehem, London Times, Dec. 22,1997, <http://www.thetimes.co.uk/cgi-bin/backissue?999>.

²⁴¹ PA Says it Will Punish Ramadan Offenders, THE JERUSALEM POST, Jan. 12, 1997, at 1.

their telephone lines cut and break-ins [have been perpetuated] to convents.²⁴² There was also a seizure by some Muslims of an apartment, belonging to a Greek Orthodox Monk, located in the Christian Quarter of the Old City of Jerusalem. The intruders, who came from a nearby mosque, threw out the monk's belongings and annexed the space to the mosque.²⁴³ Christians believe that the seizure was initiated with the full knowledge of the Muslim religious trust officials that the PA oversees.²⁴⁴

Although subjected to harassment and worse by Muslim extremists, Palestinian Christians have usually opted not to report incidents to the PA police. Christians have felt unprotected due to the failure of the PA police to intervene on their behalf in confrontations with Muslims.²⁴⁵ Their insecurities were re-enforced during the clashes in the villages of Bijanan and Beit Sahur, when the PA police refrained from protecting in the Christian community.²⁴⁶ It is the fear of adverse repercussions by Muslims and inaction by the PA that keeps Palestinian Christians in silence.²⁴⁷

The growing tension has led to a conclusion among many Palestinian Christians, that Muslims are trying to "kick [the] Christians out."²⁴⁸ That perception is further augmented by the fact that Muslims are no longer selling land to non-Muslims, including the Palestinian Christians.²⁴⁹ The Arafat appointed mufti (religious leader) in Jerusalem--Sheikh Ekrima Sabri--has issued a fatwa, a decree punishable by death, that it is forbidden for Muslims to sell land to non-Muslims.²⁵⁰ According to a Protestant clergyman in the territories, these circumstances have left the Palestinian Christians in fear of their future under the PA.²⁵¹ One feasible solution is for Christians to abide by the rules of Islam according to Father Louis Hazboun, Head of the Latin Community in Zababdeh. It is a way to be accepted into Palestinian society.²⁵²

Aside from a few voices of apprehension, many church leaders interviewed--Bishop Munib Yonan from the Lutheran Church of the Redeemer,²⁵³ Bishara Awad,²⁵⁴ President of the Bethlehem Bible College, Louis Hazboun,²⁵⁵ Head of the Latin Community in Zababdeh and Tom 'i Dawod,²⁵⁶ head of the Greek-Orthodox community in Zababdeh, as well as others who preferred not to be identified in this article--depicted an amicable picture. They portrayed their relationship with the PA and the Palestinian Muslims as being "good." They cited the fact that Arafat is married to a Christian woman²⁵⁷ and that Christmas Day and Easter Sunday are official holidays in the territories under the PA local administration.²⁵⁸ It was also indicated that Arafat encourages Muslim-Christian dialogue through his participation in annual Christmas Eve services at the Church of Nativity in Bethlehem and New Year's dinner with Christian church leaders.²⁵⁹

Bishara Awad claimed that Christians can now, under the PA rule, enjoy more freedom because the PA seeks to protect and assist the church leaders.²⁶⁰ Labib Madanat, Executive Secretary of the Jerusalem Bible Society, an organization active in distribution and publication of Christian holy texts, insisted that he has not encountered any problems with the PA. He remarked that "the relationship with the PA [has been] very positive because the Bible Society has no political stand."²⁶¹

Despite the putative religious freedom under the PA administration, the church leaders interviewed admitted that none of them would violate the unspoken boundary against engaging in evangelistic activities. Bishop Munib Yonan maintained that his community would abstain from doing evangelical work, such as distributing bibles to Muslims or converting Muslims to Christianity.²⁶² Father Louis Hazboun remarked, that he refused to convert a family to Christianity four years ago, in order to protect them from the social and institutional difficulties they would suffer as a consequence.²⁶³ He told them to perform their Christian belief in secrecy, read the Bible and lead a Christian life, but to refrain from baptism or going to church.²⁶⁴ It is accepted by most Palestinian Christians, living as a minority, that the local concept of freedom of religion does not extend to activities that may endanger the status quo between Muslims and Christians.

²⁴² See Israeli government report, The Palestinian Authority's Treatment of Christians in the Autonomous Areas, <<http://www.tzemach.org/fyi/docs/chrstper.htm>>.

²⁴³ Yossi Klein Halevi, Squeezed Out, JERUSALEM REPORT, July 10, 1997, at 14, 19.

²⁴⁴ Yossi Klein Halevi, Squeezed Out, JERUSALEM REPORT, July 10, 1997, at 14, 19.

²⁴⁵ Interviewee requested anonymity in this interview. All references to this source will thus be cited as follows: Confidential Interview with the Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

²⁴⁶ Confidential Interview with the Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

²⁴⁷ See Carl Alpert, Letter from Israel, JEWISH TELEGRAPH, Nov. 21, 1997.

²⁴⁸ Confidential Interview with a Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

²⁴⁹ Confidential Interview with a Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

²⁵⁰ Yossi Klein Halevi, Squeezed Out, JERUSALEM REPORT, July 10, 1997, at 14, 18.

²⁵¹ Confidential Interview with a Protestant Clergyman in the PA, in Jerusalem (Sept. 24, 1998).

²⁵² Interview with Father Louis Hazboun, in Zababdeh, Jenin district (Nov.14, 1998).

²⁵³ Interview with Bishop Munib Yonan from the Lutheran Church of the Redeemer, in Jerusalem (Oct. 13, 1998).

²⁵⁴ Interview with Dr. Bishara Awad, in Bethlehem (Oct. 23, 1998).

²⁵⁵ Interview with Father Louis Hazboun, in Zababdeh, Jenin district (Nov.14, 1998).

²⁵⁶ Interview with Father Tom'i Dawod, in Zababdeh, Jenin district (Nov.14, 1998).

²⁵⁷ Suha Arafat is a Greek Orthodox Christian from Ramallah but their daughter is being raised as a Muslim.

²⁵⁸ Interview with Bishop Munib Yonan, in Jerusalem (Oct.13, 1998).

²⁵⁹ Interview with Ibrahim Kandalaft, Deputy Minister for Christian Religious Affairs, in Eastern Jerusalem (Oct. 20, 1998).

²⁶⁰ Interview with Dr. Bishara Awad, in Bethlehem (Oct. 23, 1998).

²⁶¹ Interview with Labib Madanat, Executive Secretary of the Jerusalem Bible Society, in Jerusalem (Sep.14, 1998).

²⁶² Interview with Bishop Munib Yonan, in Jerusalem (Oct.13, 1998).

²⁶³ Interview with Father Louis Hazboun, in Zababdeh, Jenin district (Nov.14, 1998).

²⁶⁴ Interview with Father Louis Hazboun, in Zababdeh, Jenin district (Nov.14, 1998).

Although the Palestinian Christians are a recognized minority under the PA, maintaining religious autonomy must be within the constraints of an Islamic society that is increasingly tolerant of its Christian members. Although cursory attempts have been made to adhere to democratic principles, Bishop Munib Yonan from the Lutheran Church of the Redeemer pointed out that, "Western standards cannot be applied [to] Palestinian society."²⁶⁵ Thus it appears to this author that Western democracy, which is the accepted ideal in the Christian world, is an important tool for the PA. Arafat's ostensible friendliness toward Christians can be attributed to two things, according to a Protestant clergyman in the territories. First, Arafat is interested in maintaining good relations with the Western world, in which most of the population happens to be Christian. Second, in a prospective Palestinian state the economy could draw major benefits from Christian pilgrims and tourists.²⁶⁶ Moreover, Arafat's diplomatic efforts in pursuit of statehood on advantageous terms involves seeking support from Christians around the world. Palestinian Christians understand this dynamic and can, in certain circumstances, use it to gain leverage, as they did when they threatened to spoil millennium celebrations in the PA territories.²⁶⁷

B. Muslim Converts to Christianity--Outside the Fold of Traditional Christianity

While the Palestinian Christians, who are born into traditional Christian families and raised as Christians, have preserved their religious and cultural autonomy in the PA controlled areas, the converts into Christianity from the Muslim population have been subjected to threats. In various venues, a small percentage of Muslims have embraced Christianity, abandoning their Islamic beliefs and tradition. Converts from Islam to Christianity have not been accepted by most Muslims nor, for the most part, by traditional Christians, due to fears upsetting the status quo.²⁶⁸ These fears compel MCCs to attend clandestine Christian gatherings and to live their faith in a covert manner, fearful of their fate if their conversions are disclosed.

II. Human Rights Violations Against Muslim Converts to Christianity

MCCs have been subjected to persecution at two levels: first from private individuals and secondarily by the Palestinian police and security forces.²⁶⁹ Research by the author has provided some interesting clarification of what some of these Christians are actually being subjected to. A few trends can be discerned.

A. Societal Persecution

In an Islamic environment where conformity is the norm, the MCCs are frequently viewed as "betrayers of the faith." As such, the converts have been harassed, beaten and threatened by various elements²⁷⁰ in their community. As a rule the MCCs are afraid to disclose their new found faith to friends, family and neighbors due to their legitimate concerns of adverse consequences. An electrician from a village near Ariel (a Jewish town in the West Bank) known by the pseudonym "Mustafa" who is a MCC, was subjected to frequent verbal abuse and threats from Muslims in his community.²⁷¹ Another MCC from the Nablus area, "Ali," claims that his tire shop was burned down on two occasions and his car was vandalized by persons residing in his village in reaction to his conversion to Christianity. According to Ali, his seven-year old daughter was intentionally run over by a car. While she was walking on the sidewalk, a car swerved off the road, hit her and drove off. Immediately thereafter Ali received an anonymous phone call about the hit-and-run. The caller threatened that this was a warning--a "first sign."²⁷² A MCC from Tulkarem, "Nasser," was forced to flee his village and seek refuge in the Israeli city of Ramle for fear of being physically attacked by Islamic extremists in his village or by persons working for the PA.²⁷³ Nasser claims that leaflets threatening him were distributed by other persons in his village, warning people to stay away from him because he had converted to Christianity. In spite of threats and admonitions to return to Islam by his wife's family, who are active in the PLO, Nasser distributed Bibles. Apparently as a consequence, his house was vandalized.²⁷⁴

An MCC, referred to herein as "Abdullah," lost his restaurant, as the landlord refused to continue renting it to him upon learning about Abdullah's baptism.²⁷⁵ In addition Abdullah was attacked by masked men on his way home from work.

²⁶⁵ Interview with Bishop Munib Yonan, in Jerusalem (Oct.13, 1998).

²⁶⁶ Confidential Interview with a Protestant Clergyman in the PA, in Jerusalem, (Sept. 24, 1998).

²⁶⁷ Chaeled Abu-Toamah, Christian Intifada Against Arafat, JERUSALEM PAPER, July 16, 1999.

²⁶⁸ Interview with Jonathan Miles, Coordinator of the "Light to the Nations" Organization in Gaza, in Jerusalem (Oct. 22, 1998).

²⁶⁹ The Palestinian Human Rights Monitoring Group ("PHRMG") found in their February 1998 report that of the six cases of MCCs being persecuted as described in the Israeli Prime Ministers Office report, only two of the cases were definitely attributable to the MCCs conversion. This is why the PHRMG does not believe that there is officially sanctioned and systematic persecution of MCCs. For the Record: The 'Persecution' of Christians Under the Palestinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No. 2, Feb. 1998 at 5-6. However, it was suggested by David Parsons, on the staff of the International Christian Embassy Jerusalem ("ICEJ"), that the PA allows the police unfettered freedom of action. If they want to harass people due to their faith, whether based on a personal dispute, the PA

will give them free range without punishment. This is viewed by Parsons as part of the PA's policy to persecute MCCs. What the PHRMG calls disproportionate harassment of the MCCs, ICEJ calls the de facto policy of the PA, because all these human rights violations are ignored and go unpunished. Interview with David Parsons --the International Christian Embassy in Jerusalem ("ICEJ"), June 9, 1998.

²⁷⁰ The attacks come from various sources including Hamas, Muslim religious council leaders, sheikhs, PA officials, friends and even family members.

²⁷¹ Confidential interview with Mustafa the electrician from Ariel, in Jerusalem (Aug.18,1998).

²⁷² Confidential interview with Ali, in Ariel (July 27, 1998); Confidential interview with Ali, in Jerusalem (Aug. 26, 1998).

²⁷³ Confidential interview with a Muslim believer from Tulkarem, in Jerusalem (Sept.. 16, 1998).

²⁷⁴ Confidential interview with Nasser, an electrician from the Ramallah area, in Jerusalem (Sept.16,1998).

²⁷⁵ Confidential interview with Abdullah, a cook from Jenin, in Jerusalem (Oct.19, 1998).

According to Abdullah, the men surrounded him and beat him, accusing him of being a Moltad - the Arabic term for "betrayer of the faith." They threatened to shoot him and his children. He believes that the attackers were members of the Hamas.²⁷⁶ Afraid for his life, he limits his travel to going to work and returning home.²⁷⁷ Similar threatening situations have been reported among those born Christian.²⁷⁸ This phenomenon reflects the general derogatory attitude towards Christians which is exaggerated in MCC communities.

Another MCC, "Youssef" from the Nablus area, lives in fear for his life because his Christian practices. Although he attempts to keep his Christian practices covert, they have aroused suspicions among his neighbors. His residence is located in a Hamas dominated village and many of his family members belong to the Hamas organization. He also has two brothers who work in the PA's Preventive Security Services, which is responsible for internal security. His father has threatened Youssef that he will kill him if the rumors about Youssef's conversion are proven to be true.²⁷⁹

Significantly, none of the above victims of harassment, abuse and persecution received any protection from the PA police or numerous security services. In some cases this is due to a failure to report the incidents. Abdullah never reported the attack to the PA because "they are all the same."²⁸⁰ Many of the interviewees evinced that the PA chooses not to intervene to protect MCCs. When some do seek help, they are discouraged from involving the police. When Ali went to the PA police to report that his daughter had been intentionally run over by a car, the policemen conveyed to him that it was in Ali's interest not to open a file by registering a complaint.²⁸¹ Some MCCs believe that their situation is so precarious that they resort to living in hiding or seeking refuge in Israel or the Israeli administered parts of the West Bank.

As a foundation of any democratic system, the police is established to protect its citizens and to promote their safety. By choosing to ignore these incidents, the police force is abdicating its quintessential responsibility -- that of protecting the members of the public. It is an act of omission that endangers the public and portends the breakdown of public order. Moreover, it permits the spread of religious intolerance with dangerous societal consequences. But as serious is the problem of the PA police or security service's unwillingness to prosecute complaints against people who attack MCCs, far more serious is the active involvement of these uniformed forces in egregious violations of the rights of MCCs.

B. Direct PA Persecution

The MCCs are perceived as threats by many members of the PA police and security forces. Their conversion is regarded as act of collaboration with Israel rather than as a personal act of faith. Their contacts often with foreign Christians and Christian organizations is viewed with suspicion. Any evangelical efforts that lead to the conversions of Muslims are seen as acts that undermine the legitimacy and security of the PA. An American evangelical pastor who oversees the Church of Samaria and who has been based in Israel for the last thirty years, was hence told to his face by Ziad Abu Ziad, a Minister of State in Arafat's Cabinet and a prominent member of the Palestinian Legislative Council, that his evangelical work was a threat to the security of the Palestinian State.²⁸² Persecutions of MCCs are induced by the same perception that converted Muslims have not only betrayed the faith but the "nation" as well.

Mounting evidence from various independent sources illustrates how the PA police and security forces utilize inhumane and brutal means of interrogation to extract information regarding the MCCs' conversion to Christianity and false confessions to various criminal charges. Abdullah received an anonymous threatening letter shortly after he was baptized in 1996. The letter inquired into his conversion to Christianity and offered an enticement for his return to Islam: a promising job with the PA. The letter also specified that if he did not comply, Abdullah and his children would be killed. Abdullah believes that the letter came from Jihad Musseimi's PA Secret Service.²⁸³ According to Abdullah, when he did not acquiesce to their demand and return to Islam, he was arrested in October 1996. Abdullah was interrogated for twenty days in the Nablus prison. He was tortured regularly during the interrogation, beaten with electric pipes and with fists. Cigarettes were extinguished all over his body and he was burned with a piece of hot metal on his Achilles tendon. After the interrogation, he was placed in a small 1 x 1 meter cell without food and medical treatment for days.²⁸⁴

Youssef was also arrested by the PA and was interrogated for twenty days in 1997. During the interrogation he was shackled to the wall and beaten. The interrogators placed his head in the toilet while the security forces took turns urinating on him.

²⁷⁶ "Hama" is an Arabic acronym meaning "zeal" or "fervor". The movement's full Arabic name is Harakatr al-Muquwama al-Islamiyya, which means "the Islamic Resistance Movement."

²⁷⁷ Confidential interview Abdullah, in Nablus (Apr. 17, 1999).

²⁷⁸ A Christian woman from a village near Bethlehem was attacked for teaching the Bible. She was accused of being a "Zionist agent" and was frequently cursed and spat on in the market place. According to her, an attempt was made to burn down her house while she and her family were sleeping and she was also stabbed in the market place. Afraid for the lives of her children, she sent them to North America to study. These events occurred in a Muslim surrounding during the Intifada. Confidential interview with a Christian woman from Bet Sahur, in Jerusalem (Aug. 17, 1998).

²⁷⁹ Confidential interview with Youssef from the Nablus area, in Jerusalem (Sept. 23, 1998); Confidential interview with Youssef from the Nablus area, in Ariel (Apr. 16, 1999).

²⁸⁰ Confidential interview with Abdullah, in Nablus (Apr. 17, 1999).

²⁸¹ Confidential interview with Ali, in Ariel (July 27, 1998); Confidential interview with Ali, in Jerusalem (Aug. 26, 1998).

²⁸² Interview with Dr. Ray Register, Baptist pastor and admissions supervisor in Jerusalem (Sep. 7, 1998).

²⁸³ Confidential interview with Abdullah, in Jerusalem (Oct. 19, 1998).

²⁸⁴ Confidential interview with Abdullah, in Jerusalem (Oct. 19, 1998).

They also burned his chest by pouring boiling margarine on him. Without proper medical treatment he was then immediately placed in a small isolation cell for two months.²⁸⁵

Another MCC, Salim, was interrogated by the Preventive Security Service ("PSS")²⁸⁶ at the Salfit police station. He was also beaten in his case with fists, rifle butts and clubs. He suffered from gashes all over the face and a broken shoulder.²⁸⁷

"Razi," from a village near Nablus, was interrogated by the PSS at Salfit in 1997. During his interrogation, his hands were tied behind his back and he was, using the same rope, hung from the ceiling with his feet in the air for thirteen nights and days.²⁸⁸

Mustafa was beaten for two or three days during interrogation in 1995 by the PSS and frequently rearrested until 1997. Mustafa claims that he fled the PA administered areas after an attempt was made to stab him in his village and, thereafter, despite his relocation an attempt was made to run him down with a car near Jerusalem. In both cases, he recognized the perpetrators as the PSS agents who had interrogated him.²⁸⁹

i. Fabricated Criminal Charges

The interviewed MCCs claim that their arrests and subsequent interrogations were in response to their conversion. They indicate that during interrogation the security forces inquired about their conversion and their activities with other Christians. Yet the criminal charges brought against the MCCs are different altogether -- they are fabrications having nothing to do their conversion.

The interrogators from the PSS continually asked Razi if he was a Christian. According to Razi when he denied his conversion for fear of repercussions, the security men confronted him with evidence that he had distributed Bibles to people in his village.²⁹⁰ Yet, when it came to lodging legal charges against him, Razi was accused of land dealing (selling land to Jews). He was imprisoned for eight months despite offering proof that he owns no land and lives in a tiny, very rudimentary residence with his large family.²⁹¹ In Razi's case other members of his family have been interrogated, beaten and either jailed or detained in connection with Razi's faith. Although not a Christian himself, Razi's father, Fawzi²⁹² was arrested on May 26, 1997 and subsequently kept in detention for thirty-one months. A sixty-five year old man, Fawzi claims he was tortured twenty-four hours a day for eighteen days at Qalqilya interrogation center by agents of Jabril Rijoub, the Preventive Security Service. After his first trial Fawzi was urged to confess to the crime of land-dealing and when he did not, he was tortured for another ten days in order to force him to confess, this despite the fact that two of the three judges at the trial ruled for his release. During interrogations Fawzi was repeatedly asked about his faith and was even told that his treatment was due to the fact that his son is a Christian and, as his father, he is responsible for his son's conversion.²⁹³ Fawzi was never formally charged or convicted of any crime. Presently Razi's seventeen-year-old brother is in detention. The family has not been allowed to visit him and the authorities have not released details of his alleged crime. He was arrested on the day that he was to be inducted into the police force and has been under arrest now for two months. Razi said that his son had been arrested because "they said his family was Christian".²⁹⁴ Despite being the victim of an attack by his classmates, Razi's thirteen-year-old son was taken to the police station where he was kept for two weeks. He was beaten and interrogated over allegations his father was a land-dealer, a collaborator and a Christian. Essentially Razi's family has been blacklisted. As an additional impediment imposed upon those who convert to Christianity they are unable to obtain identity cards from the PA and Razi cannot even register the birth of his newborn child.²⁹⁵ During his time in prison Razi stated that there were "six or seven other converts there."²⁹⁶

²⁸⁵ Confidential interview with Youssef from the Nablus area, in Jerusalem (Sep. 23, 1998); Confidential interview with Youssef from the Nablus area, in Ariel (Apr. 16, 1999)

²⁸⁶ The PSS is headed by Jibril Rajoub. A number of MCCs interviewed for this article expressed particular fear of this force. See Interview with Muhammed (full name remains confidential), January 5, 2000.

²⁸⁷ Confidential interview with Salim, in Jerusalem (Nov. 18, 1998).

²⁸⁸ Interview with Razi, a building worker from the Nablus area. He prefers a pseudonym due to ongoing persecution against him and members of his family by the PA, in Jerusalem (Aug. 26, 1998). The ICEJ claims that the PA police are conducting a violent campaign against MCCs, intensifying in the spring of 1998. They cited the first clear instance of this PA policy, coming two years before when Shak'r Saleh, was imprisoned in Jericho on false charges. He was beaten on the soles of his feet with rubber rods which, as a result tore the muscles in his feet so badly he required hospitalization at Meir hospital. On his documentation for release he had to sign a paper saying he had never converted to Christianity. Internet, Tortured for Their Faith, MIDDLE EAST DIGEST, Aug. 1997, (visited Mar. 30 1998), <http://www.cdn-friends-icej.ca/medigest/jan98/threat.html>. at 1.

According to the ICEJ, the PA often denies work certificates and travel permits to MCCs. In one case, David Parsons said, one MCC tried for a year to get a travel permit, and got so tired of the intimidation that he gave up on the Christian faith. The PHRMG detailed six cases registered as victims, but the ICEJ say that those are not the only cases, just the only ones who were jailed.

²⁸⁹ Interview with Mustafa the electrician from Ariel, in Jerusalem (Aug.18,1998).

²⁹⁰ Interview with Razi the building worker from the Nablus area, in Jerusalem (Aug. 26, 1998).

²⁹¹ Interview with Razi the building worker from the Nablus area, in Jerusalem (Aug. 26, 1998).

²⁹² Confidential interview with Fawzi, the night-watchman from Nablus, prefers a pseudonym, in Jerusalem (Jan. 13, 2000).

²⁹³ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)
²⁹⁴ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

²⁹⁵ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

²⁹⁶ Confidential interview with Razi, in Jerusalem (Jan. 13, 2000)

Abdullah was also questioned about his conversion to Christianity during interrogation, but was later charged with illegal gold dealing. According to Abdullah, the security officers used his daughter's gold necklace as 'evidence' of his illegal gold dealing. When Abdullah provided evidence to prove that the necklace was purchased legally and that it was a present from his daughter's grandfather, his house was searched by the police. They didn't find any additional gold but instead confiscated all his Christian books and his Bible.²⁹⁷ Abdullah remembers his interrogators, Assam Ijbara, Fouad Yunis, Jamal Abu Miriam and Muhammed Taoufik specifically declaring that they did not want anything from him, except for him to return to Islam.²⁹⁸

Youssef also asserted that during his interrogation the security police repeatedly called him a "bad man" because he had converted to Christianity. Out of fear and desperation, Youssef signed a document denying that he was a Christian. When he was being released, the security police officer told him that he would be watched to see if he associated with any Christians. According to Youssef, in court records, however, he was accused of having collaborated with Israel and causing problems for the PA.²⁹⁹ As an additional punishment, Youssef's family, working with the police, had him thrown out of the village, telling him that he could only come back if he agreed to go to an Islamic school and forsake his "foolish ways." This he refused to do. Eventually Youssef was only able to return to the village when he agreed to sign a document at the police station promising not to meet with Christians.³⁰⁰

When Mustafa was called in by the PSS for questioning, he was continually asked about his conversion and about David Ortiz, with whom he has regular Bible studies.³⁰¹ When their attempts to coerce him to return to Islam failed, he was beaten by the interrogators for two to three days. The trumped up accusation brought against him was "collaboration with Israel."³⁰²

In Salim's case the charge brought against him arose out of a previous conviction during the Israeli administration of the West Bank, before the creation of the PA. It involved a feud between Salim and another person residing in the same village whom Salim injured in self-defense. Despite the fact that he was tried, convicted and served his sentence in an Israeli jail and paid the sum agreed in a sulha, Salim was arrested based upon this previous conviction and charged with being a collaborator.³⁰³ Salim's, brother, Ghassan, was also taken in for questioning in September 1999, in relation to the same feud. The interrogators, however, only asked him about the feud on the first day of forty in detention. They then proceeded to question him about his brother's Christianity and the whereabouts and activities of David Ortiz. They asked how his brother had met David Ortiz and what kind of relationship they have.³⁰⁴

Nasser was rearrested and questioned in 1995 about his conversion and relations with Christians. When he was summoned for the second time, the interrogators accused him of land dealing. Nasser claims that he denied the allegations and he was beaten and detained for two days. Before his release, one of the interrogators, named Mohammed, conveyed to Nasser that the cause of his troubles was his conversion to Christianity and because he was friends with suspicious people -- Christians.³⁰⁵

Since the release of these men from prisons, they have been frequently been summoned back to the offices of PA security services for questioning. The interrogations continue to revolve around their Christian faith and various religious activities. Abdullah reports to the PSS approximately three times a month. They ask him to name other MCCs and ask questions about the activities of the MCCs. After each questioning session, they place him in an isolation cell for 3 to 4 days. Abdullah thinks that they are trying to force him back to Islam by "driving me crazy."³⁰⁶ Salim is also summoned back to the security services frequently. According to Salim, they continually ask for the names of other converts and the leaders in the church that he attends. Recently the security service men have admitted to him that they are aware that Salim is not a collaborator because they have been watching him everyday, however, they are suspicious about his meetings with foreign Christians.³⁰⁷ Youssef also receives frequent orders to report to the local police station. He also claims that during each visit, the interrogators ask him to name other MCCs.³⁰⁸ Youssef is convinced that the PA has him blacklisted as a convert to Christianity, a suspect individual. He tried to cross the border to Jordan to visit a sister who resides there. After checking the computer, the Jordanian border patrol did not permit him to cross the bridge. The guards mocked him for being a "traitor" -- a convert to Christianity.³⁰⁹ Nasser was also summoned back to the Salfit office by the PSS in 1997 and questioned for two hours. According to Nasser, the interrogators wanted nothing from him but to inform on the other MCCs in his village.³¹⁰

²⁹⁷ Confidential interview with Abdullah, in Jerusalem (Oct. 19, 1998).

²⁹⁸ Confidential interview with Abdullah, in Jerusalem (Oct. 19, 1998).

²⁹⁹ Confidential interview with Youssef, in Ariel (Apr. 16, 1999).

³⁰⁰ Interview with Leah Ortiz, wife of a Christian Pastor living in the city of Ariel and teaching the bible, in Jerusalem, (Jan. 18, 2000).

³⁰¹ David Ortiz, a Christian lay pastor from the US lives in the city of Ariel and teaches the Bible.

³⁰² Confidential interview with Mustafa, in Jerusalem (Aug. 18, 1998). The PHRMG reported that some of these 'collaborators' are Christian Zionists. Thus the spread of Zionist evangelical beliefs undermines the appeal of Palestinian nationalism. Since they interpret the Bible literally, they often take political positions similar to the Israeli right-wing. This may explain why three of the six evangelical converts above were accused of collaboration.

³⁰³ Confidential interview with Salim, in Jerusalem (Nov. 8, 1998); Confidential interview with Salim, in the West Bank (Apr. 17, 1999)

³⁰⁴ Interview with Leah Ortiz, in Jerusalem, (Jan. 18, 2000)

³⁰⁵ Confidential interview with Nasser, in Jerusalem (Sep. 6, 1998).

³⁰⁶ Confidential interview with Abdullah, in Nablus (Apr. 17, 1999).

³⁰⁷ Confidential interview with Salim, in West Bank (Apr. 17, 1999).

³⁰⁸ Confidential interview with Youssef, in Ariel (Apr. 16, 1999).

³⁰⁹ Confidential interview with Youssef, in Ariel (Apr. 16, 1999).

³¹⁰ Confidential interview with Nasser, in Jerusalem (Sept. 16, 1998).

ii. Bribes and Court Proceedings

In order to secure release from prison, some of the MCCs have been compelled to pay exorbitant sums of money to the police and security services. Salim paid 3000 Jordanian Dinars, the equivalent to roughly \$526, for bail.³¹¹ Razi was released after he paid 10,000 Dinars, equivalent to roughly \$1,755.³¹² Razi's father, Fawzi, was required to pay 30,000 Israeli (new) Shekels (about \$7,400).³¹³ Razi's son needed to pay 3000 Israeli (new) Shekels (about \$740) to obtain release after being taken by the Palestinian police from school.³¹⁴ Nasser was also forced to pay 3000 Israeli (new) Shekels in order to be released after his arrest in 1995.³¹⁵ Unfortunately corruption is not limited to the police or security services. Both Razi and Fawzi claim that their lawyer required them to furnish additional large sums to pay off the police, the security services, judges, government officials and even members of the court clerical staff.³¹⁶

Frequently the trials of MCCs on trumped-up charges never actually take place. Salim's original court date was January 31, 1999. When he showed up, it was postponed. His next scheduled court date was May 11, 1999.³¹⁷ Abdullah is in the same predicament; each court date is postponed and then rescheduled when he arrives for a trial.³¹⁸ No reason is ever given for the delays. Fawzi, as a condition of his release, had to obtain guarantees from prominent local merchants that he would not abscond before his trial date, which according to Fawzi, will never eventuate.³¹⁹ The practice of obtaining a guarantee involves paying a merchant for their signature, which they then present to the police. If the individual absconds the merchant must pay the guarantee to the authorities.³²⁰ This type of arrangement is illustrative of the types of inappropriate relationships that the PA police and security services have with businessmen in the private sector. An independent task force sponsored by the Council on Foreign Relations highlighted the scope for abuse of position by police officers, stating that "Police force facilities have also on occasion been constructed with donations from local merchants...[this could]...lead to corrupt practices and a culture in which members of the public come to expect preferential treatment."³²¹ In the interim the MCCs continue to incur legal fees and fear that they will never be exonerated from false charges.

Despite these problems and many other similar cases, a report was published by the Palestinian Human Rights Monitoring Group ("PHRMG") concluding, "it is doubtful that there is a PA policy to harass this fraction of the small evangelical community."³²² It has been suggested that the persecution one suffers when there is a premise that conversion will result in imprisonment, belongs to a category of arrest that exists, "for a reason unknown to anyone except their persecutors."³²³ The small number is not sufficient, for the PHRMG, to establish that an official policy of persecution against the MCCs exists and is practiced by the PA. According to PHRMG, the alleged MCCs who have suffered must be in a pool of a "society in which rule of law is continually flouted, in which thousands of people have had their human rights violated."³²⁴

Terry McIntosh -- founder of the Jesus House of Prayer in Jericho -- does not think that there is an official policy against converts or Christians. According to him, his evangelical ministry has "enjoyed unprecedented favor from the PA. He does however claim that there are "radical individuals," "criminal types" in government uniform that have abused their power. The converts that attend have encountered threats and have been warned not to attend the meetings at the House of Prayer by these vigilantes, but they are the exception and not the norm, according to McIntosh. It is not the "government," (the PA) but individuals in police and security uniforms.³²⁵

III. Understanding the Sources of the Problem

The PA is a state in the making, emerging from decades as an underground movement to take on the attributes and responsibilities of a legitimate state. It is useful to understand the inner workings of the PA to gain insight into the problem of persecution against the MCCs. Virtually every PA institution answers to Chairman Arafat himself. Arafat's Palestinian biographer noted:

Not only did the chairman of the PLO [Arafat] become the president of the PNA [Palestinian National Authority³²⁶], he was also its Prime Minister, the commander of the armed forces and president of the legislative council and had the power to appoint, promote and fire members of the judiciary. The executive, legislative and judicial powers of the PNA were thus vested in the person of Yasser Arafat.³²⁷

³¹¹ Confidential interview with Salim, in West Bank (Apr. 17, 1999).

³¹² Confidential interview with Razi, the building worker from the Nablus area, in Jerusalem (Aug. 26, 1998).

³¹³ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

³¹⁴ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

³¹⁵ Confidential interview with Nasser, in Jerusalem (Sep. 6, 1998).

³¹⁶ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

³¹⁷ Confidential interview with Salim, in the West Bank (Apr. 17, 1999).

³¹⁸ Confidential interview with Abdullah, in Nablus (Apr. 17, 1999).

³¹⁹ Confidential interview with Fawzi, in Jerusalem (Jan. 13, 2000)

³²⁰ Interview with Leah Ortiz, in Jerusalem (Jan. 17, 2000).

³²¹ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, AT 116 (1999).

³²² For the Record: The 'Persecution' of Christians under the Palestinian Authority, THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.2, at 7, Feb. 1998.

³²³ For the Record: The 'Persecution' of Christians under the Palestinian Authority, THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.2, at 7, Feb. 1998.

³²⁴ For the Record: The 'Persecution' of Christians under the Palestinian Authority, THE PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.2, at 7, Feb. 1998.

³²⁵ Email from Terry McIntosh, Oct. 11, 1998 (USAJOURNEY@aol.com).

³²⁶ Palestinians generally refer to the PA as the PNA, there by likening their non-state entity to a sovereign entity, despite the absence of the word "national" or the initial "n" from the texts of the interim peace agreements.

³²⁷ SAID K. ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR, 276, (1998).

In addition, Arafat also appointed himself head of the Palestinian Economic Council for Development and Reconstruction ("PECDAR"), which oversees much of the donor funds intended to assist the emerging Palestinian entity.³²⁸ This centralization of authority in one person is indicative of the power structure within the PA and its institutions.³²⁹

A. The Multiplicity of Palestinian Authority Security Forces

As part of the Oslo Accords of 1993, security and police forces were established by the PA. The exact number of security organizations within the PA is not certain, although human rights groups and foreign media have attempted to unravel this enigma. Dr. Sami Musallam, Director General of Yasser Arafat's office in Jericho, claimed that five PA Security Services exist. Eric Marclay, head of the ICRC Delegation in Jerusalem, stated that there are at least eight Security Services. The author of Arafat's biography, Said Aburish, identified nine security organizations which all report directly to Arafat. In Aburish's opinion Arafat effectively holds the position of "chief of chiefs of police."³³⁰ Bassem Eid, head of the Palestinian Human Rights Monitoring Group admitted, "nobody really knows."³³¹ He is cognizant of ten Security Services: the Civil Police, the Presidential Security Service (a.k.a. Force 17), the General Intelligence Service, Military Intelligence, the National Security Service, the Naval Police, the Preventive Security Service, the University Police, the Border Crossings Security Service and the Public Security Service.

In the hierarchical structure of the PA, the responsibilities and tasks of each security service are unclear. According to Bassem Eid, "the security services hold a position of excessive power within the PA and are involved in everything that happens under PA rule, even in ministerial work."³³² Decisions within the PA cannot be made without the consent of the Security Services, of which the PSS and the General Intelligence Service are the most influential. According to Bassem Eid, the security services' tasks are not legally specified and their power is unrestrained. He defines their work as "arresting and torturing." Almost all human rights violations have been committed by the PSS and the General Intelligence Service.³³³

Part of the problem is that the PA security officers are not fully cognizant of the law and proper procedures for arrests, detention, interrogation and even basic human rights standards.³³⁴ The 1998 report by the U.S. Department of State's Bureau of Democracy, Human Rights and Labor indicated that the PA security officials often do not follow existing laws in the West Bank nor in Gaza regarding arrest and detention procedures.³³⁵ According to the law only the PA civil police force is invested with the authority to make arrests, however all the ten or more security forces have been known to make arrests.³³⁶ Staffed arbitrarily, based upon personal connections and Fatah membership³³⁷, abuse of power has been flagrant. Additionally, there are no clear regulations for the training of officers. The average officer may be trained by his service or not at all.³³⁸

The number of PA security and police personnel has been one of the issues of contention in the stalemated negotiations in the peace process. The PA was empowered by the Oslo Accords and reaffirmed with the Wye Memorandum to have a police force comprised of six operational branches.³³⁹ Arafat claims that the large size of the police and security forces are necessary not only to maintain order and fight against terrorism but also to reduce the problem of unemployment in the West Bank and Gaza. In a recent report by an independent task force, which analyzed challenges facing the public institutions of the emerging Palestinian State, it was argued that, the Oslo framework provided no guidance as to the rights of or limits to the powers of the police forces. The centralization of power over the police and security forces by Arafat has led to the "perception among the Palestinian public and international community that there is an uncontrolled and ad hoc proliferation of security forces. This leaves the door open for intra branch rivalry, human rights abuses and poor procedural practice."³⁴⁰

³²⁸ SAID K. ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR, 276, (1998).

³²⁹ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, AT 44 (1999) for a detailed list of the extensive range of agencies directly attached to Arafat's executive office by executive decree.

³³⁰ SAID K. ABURISH, ARAFAT: FROM DEFENDER TO DICTATOR, 308-309, (1998).

³³¹ Interview with Bassem Eid, Head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov.30, 1998).

³³² Interview with Bassem Eid, Head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov.30, 1998).

³³³ Interview with Bassem Eid, Head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov.30, 1998). Bassem Eid gave the example of the Supreme Court issuing releases of prisoners, but the Security Services refused to implement the Supreme Court's ruling.

³³⁴ US Department of State, Occupied Territories Report on Human Rights Practices, Released by the Bureau of Democracy, Human Rights and Labor, (Jan. 30, 1998).

³³⁵ US Department of State, Occupied Territories Report on Human

Rights Practices, Released by the Bureau of Democracy, Human Rights and Labor, (Jan. 30, 1998).

³³⁶ US Department of State, Occupied Territories Report on Human Rights Practices, Released by the Bureau of Democracy, Human Rights and Labor, (Jan. 30, 1998).

³³⁷ Fatah is the largest faction of the PLO. The literal meaning of the Arabic word fatah is "opening" although its popular meaning is "the Muslim conquest of non-Muslim lands." Arafat is the head of the Fatah. Harris Schoenberg, A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO 11 (1989).

³³⁸ Interview with Bassem Eid, head of the Palestinian Human Rights Monitoring Group, in Eastern Jerusalem (Nov. 30, 1998).

³³⁹ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 111 (1999)

³⁴⁰ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 114 (1999)

According to the PHRMG, most arrests conducted by the PA are illegal and do not conform to any body of law.³⁴¹ An Amnesty International delegation was told by an official at the Palestinian Authority's Ministry of Justice that, "those concerned with justice knew that 80 percent of those we arrested had committed no offence either under Palestinian or under Israeli law."³⁴² In a 1997 report examining 42 representative cases of illegal arrest, detention and torture, none of their interviewees were brought to court within 48 hours for an extension of their arrest, nor were they ever brought to court to be charged during their period of detention and interrogation.³⁴³ The PHRMG has also documented cases of suspects held for over a year without any legal proceedings being instituted against them. In a few cases of mass arrest or crackdown which occurred after suicide bombings. According to the PHRMG, at least 125 Palestinians were held in prison for months without being officially charged or brought to trial.³⁴⁴

One American columnist writing for the New York Times, Neil MacFarquhar, alluded to the original Palestinian hope for and subsequent despair over, judicial fairness and proper policing following the Israeli withdrawal and transfer of control to the PA. "They [Gazans] were ecstatic to get Israeli troops off their streets, but dismayed to find the Palestinian troops who moved into the same barracks are eager to throw people in jail for even perceived slights against the PA."³⁴⁵ In fact the PA has abused its powers by detaining outside the judicial process, "anyone thought to have criticized the Palestinian Authority, including journalists and human rights defenders."³⁴⁶

Numerous articles have been published in Israeli and Palestinian newspapers detailing illegal arrests and detentions for months on end. Human rights activists, such as Bassam Eid, have been abducted by PA security agents,³⁴⁷ Another human rights activist and current director of the Gaza Community Mental Health Program, Dr. Sarraj was arrested for the fourth time on August 5, 1999 for his association with an article critical of the PA.³⁴⁸ During his previous three arrests in 1995-96, he was "unlawfully" detained, beaten during interrogation and indicted with trumped up charges alleging that he possessed illegal drugs and had struck a police officer.³⁴⁹

Two of the better-publicized cases of arbitrary arrest and detention by the PA concern Professor Fateh Subuh and journalist Daoud Kuttab. Professor Subuh was arrested in July 1997, shortly after he posed exam questions to his university students regarding PA corruption. Subuh was not brought to court within the legally mandated 48 hours time limit. He was ultimately released on bail after 5 months, probably due to his deteriorating health, which resulted from a 5-week hunger strike, and his being tortured.³⁵⁰ No charges were ever brought against Professor Subuh.³⁵¹ In a recent and due to well-publicized controversy, signatories of a petition, which accused the PA executive of "opening the door wide for the opportunists to spread corruption," were jailed, and in two cases, assaulted. The Jerusalem Post reported that, "within two days of the petition becoming public knowledge, 10 out of 11 personalities who signed it were either in prison or under house arrest."³⁵² A member of the PLC, who signed the petition, Mouawayah Masri, was wounded by a gunman only hours after refusing to denounce the petition,³⁵³ and on December 16, 1999 Abdel Jawwad Saleh, another member of the PLC, was assaulted by General Intelligence officers.³⁵⁴

In the PA legal system both security and political detainees are seldom convicted. Indeed most of the inmates are held without a charge and without a court hearing.³⁵⁵ They are confined in the 152 prisons, detention and interrogation centers operated by the security services on the territory administered by the PA before the Wye Agreement (3 percent of the West Bank). The largest prisons are situated in Ramallah, Nablus, Jenin, Tulkarem, Shneid and Bethlehem. Bassem Eid estimated the number of prisoners and detainees currently held at 1500 of which 500 are security prisoners (held for land dealing and collaboration), 500 are criminal prisoners and about 500 are held for political reasons (Hammas, Islamic Jihad members).

³⁴¹ Bassem Eid, The State of Human Rights in Palestine, PALESTINIAN HUMAN RIGHTS MONITOR, Issue No.3 May 1997 at 3. Generally speaking, there are four categories of prisoners in Palestinian jails: suspected collaborators, suspected Muslim militants, suspects in non-political crimes and finally individuals who have been arrested for a reason unknown to anyone except their persecutors. Because there is little rule of law in the PA, the individuals in the last category are often arrested due to a personal disagreement with a member of the security forces or a senior PA official. For the Record: The 'Persecution' of Christians under the Palestinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, V.2, No.2, Feb. 1998, at 6-7.

³⁴² AMNESTY INTERNATIONAL, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW: POLITICAL DETAINEES, AT 7 (1999)

³⁴³ Bassem Eid, THE PALESTINIAN HUMAN RIGHTS MONITOR, May 1997, at 6.

³⁴⁴ Bassem Eid, The State of Human Rights in Palestine, PALESTINIAN HUMAN RIGHTS MONITOR, Issue No.3, May 1997 at 3.

³⁴⁵ Neil MacFarquhar, Gaza: The Sullen Zone, NEW YORK TIMES OP-ED. Aug. 16, 1997.

³⁴⁶ AMNESTY INTERNATIONAL, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW: POLITICAL DETAINEES, AT 6 (1999) .

³⁴⁷ Press Bulletin, Jerusalem, 25 Oct. 1996, at 4.

³⁴⁸ Hebcom Middle East Bureau (hebcom@actcom.co.il)

³⁴⁹ Hebcom Middle East Bureau (hebcom@actcom.co.il)

³⁵⁰ Suzanne Ruggi, Illegally Detained Teacher Released, THE JERUSALEM TIMES, Nov. 28, 1997 at 3.

³⁵¹ Suzanne Ruggi, Illegally Detained Teacher Released, THE JERUSALEM TIMES, Nov. 28, 1997 at 3.

³⁵² Ben Lynfield, Qurei blocks PLC bid to discuss fate of jailed PA critics, THE JERUSALEM POST , Dec. 15, 1999 at 5

³⁵³ Ben Lynfield, Gunman wounds PA legislator critical of Arafat, THE JERUSALEM POST, Dec. 2, 1999 at 1.

³⁵⁴ TJT Staff, Signatories of "Manifesto 20" released; two still in custody, THE JERUSALEM TIMES, Dec. 24, 1999 at 2

³⁵⁵ Interview with Bassem Eid, head of the Palestinian Human Rights Monitoring Group, in Eastern Jerusalem (Nov. 30, 1998).

B. The Palestinian Authority's Security Courts

The State Security Courts were established by Yasser Arafat in February 1995 to try cases involving security issues.³⁵⁶ The judges and prosecutors are all military officers of the PLO directly appointed by Arafat.³⁵⁷ Prior to trial the defendant is typically held incommunicado for an extended period of time. The trials are usually convened in secrecy at about midnight. If a defense counsel is appointed and some claim that the defendant must appear pro se,³⁵⁸ the lawyer is assigned to the case only immediately before the hearing. Trials are conducted so quickly as to preclude reasonable procedural guarantees for the defendants.³⁵⁹ No right of appeal exists and the verdict can only be ratified or overturned by Arafat. The PA has in fact used the State Security Court to circumvent orders from the High Court to release detainees.³⁶⁰ The argument is that, as the case is before the State Security Court then the detainee has not been prosecuted before the High Court and therefore the case is outside their jurisdiction. Problematically the case is not usually prosecuted before the State Security Courts either, which results in the individual being detained indefinitely.³⁶¹

According to the 1997 report of the Bureau of Democracy, Human Rights and Labor, "The PA usually ignores the legal limits on the length of prearrest detention of detainees suspected of security offenses. Defendants are often brought to court without knowledge of the charges against them or sufficient time to prepare a defense."³⁶² Amnesty International asserted that "in the first cases held by the court, pre-trial and trial procedures fell far short of international standards for a fair trial."³⁶³

C. The Palestinian Authority's Judicial System

The judicial system under the PA is very complicated. In addition, it is entangled in a web of bureaucracy and the ebb and flow of a power struggle. A June 1999 UN report indicated that the Palestinian legal system is underdeveloped and that the judicial system is weak. In spite of legislation to empower the judicial system as a separate body, discrete from the executive branch, Arafat is still personally the primary source of power.³⁶⁴

The lack of independence of the judicial system has often resulted in an ongoing conflict between the PA security forces and the High Court. An Amnesty International report in May/June 1999 indicated that "[t]he PA has defied the orders of its own High Court to release prisoners and has ignored calls from the Palestinian Legislative Council to free those being held without due process." The rulings from the judiciary are virtually ignored by the PA security forces.³⁶⁵

Negation of other branches of power also extends into the legal representation of the prisoners. PA prisoners' access to legal representation is, at best, limited and sporadic. At its worst, legal representation is entirely restricted, leaving detainees in jail with no legal assistance to aid them in their difficult and typically unjust predicament.

The US State Department cites in its 1997 Country Report on Human Rights Practices that the PA has denied detainees access to lawyers.³⁶⁶ The Palestinian Human rights group LAW, which provides legal counsel for detainees, asserts that it has been denied access to clients for months at a time with no explanation from PA officials. According to LAW this is an outright violation of existing Palestinian law. In addition, the director of LAW, Khaled Shkirat has been threatened by the PA General Intelligence Service's chief, after he attempted to visit a client.³⁶⁷ The PHRMG reports that Palestinian law stipulates that prisoners are entitled to legal access and representation, although the proper procedures to guarantee prisoners such access is not clear. The PHRMG suggests that the procedural confusion is intentional -- in order to keep prisoners from gaining legal aid.³⁶⁸

The denial of legal counsel puts prisoners in a precarious position, effectively denying them legal recourse to counter their illegal detention. In the rare circumstance that prisoners are brought to court, inadequate legal representation (or none at all) adversely affects the outcome of the trial.

Another obstacle to detainees' receiving proper legal assistance in jail is that it is difficult for lawyers to aid detainees who have yet to be charged with anything. They typically claim that there is little they can do until charges are brought and are

³⁵⁶ AMNESTY INTERNATIONAL, HUMAN RIGHTS: A YEAR OF SHATTERED HOPES, at 22B23 (1995); see also Hilary Appleman, Palestinians See "No Logic, No Law," THE JERUSALEM POST, May 17, 1995, at 5; Palestinian/Kennedy Centers Joint Statement, supra note 26, at 5.

³⁵⁷ AMNESTY INTERNATIONAL, HUMAN RIGHTS: A YEAR OF SHATTERED HOPES, at 5 (1995).

³⁵⁸ Election Update, (Palestinian Center for Human Rights, Gaza), [hereinafter PCHR Election Update] No. 2, Jan. 12, 1996, at 9.

³⁵⁹ Election Update, (PCHR, Gaza), No. 2, Jan. 12, 1996 at 9.

³⁶⁰ According to Torge Larson, a political officer at the Norway Representative Office, security centers are a major area of concern for Norway and the Norwegians have raised this repeatedly with Arafat.

³⁶¹ Amnesty International, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW; POLITICAL DETAINEES, AT 9 (1999).

³⁶² Bureau of Democracy, Human Rights and Labor, U.S. Department of State: The Occupied Territories Report on Human Rights Practices for 1997 (visited Dec. 15, 1997). http://www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html.

[//www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html](http://www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html).

³⁶³ Amnesty International, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW; POLITICAL DETAINEES, AT 2 (1999).

³⁶⁴ Judicial System in Palestine Weak, THE JERUSALEM TIMES, June 11, 1999, at 2.

³⁶⁵ Amnesty international, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW: POLITICAL DETAINEES, AT 9 (1999).

³⁶⁶ Bureau of Democracy, Human Rights and Labor, U.S. Department of State: The Occupied Territories Report on Human Rights Practices for 1997 (visited Dec. 15, 1997). http://www.state.gov/www/global/human_rights/1997_hrp_report/occterr.html.

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³⁶⁸ Bassem Eid, The State of Human Rights in Palestine II: The Judicial System, THE PALESTINIAN HUMAN RIGHTS MONITOR, Issue No. 4, Aug. 1997 at 7.

reluctant to take action on the behalf of such illegally detained prisoners,³⁶⁹ probably out of fear of being perceived as challenging the authority of the PA.

D. Islamic Law and Apostasy

Aside from the judicial system, Palestinian society is still heavily influenced by traditional Islamic law and, in particular, a traditional method of judicial reconciliation. Islamic law, Sha'aria and the conflict resolution known as sulha operate in parallel with the PA legal and judicial system. Much of the societal discrimination and persecution suffered by MCCs can be attributed to Islamic law and the sulha procedure.

The Islamic law, Sha'aria, is the code of religious law that governs the lives of Muslims. It has been utilized for centuries by Muslims as the basis for the rules of individual and group behavior. The Sha'aria law is based on the Qu'ran, the Muslim equivalent of the Bible and on the teachings of prophet Muhammed. At the very core of the Qu'ran and the teachings of Muhammed is the commandment that Muslims are not to worship anyone but Allah (God). This view stems from the perception that Islam is the one true religion, enjoying a higher status than either Judaism or Christianity. Although Jews and Christians are revered as the "Peoples of the Book," and adherents of religions that predate Islam, the youngest of the three monotheistic religions, Islam insists that it alone is the highest divinity.

To leave Islam for another religion, after having received the divine truth, is regarded as riddah, turning away from God. Allah's punishment for apostasy is severe. The Qu'ran says that apostates' punishment will be in the hereafter, where they will dwell in hell.³⁷⁰ However, their disbelief will result in misfortune also in this world, "such are they whose works have fallen both in the world and the Hereafter."³⁷¹ In Surah III, the divine right to punish apostates is given, "Allah guideth not wrongdoing folk. As for such, on them rests the curse of Allah and of the angels and of men combined."³⁷²

While the Qu'ran does not prescribe any worldly punishment for apostates but describes their suffering in hell in the hereafter, the prophet Muhammed is quoted to have said that apostates should be killed, "whoever changed his Islamic religion, then kill him."³⁷³ Following this prescription, the Sha'aria law stipulates the death penalty for apostates, as they have rejected the divine truth of Islam. Apostasy is one of the Hudud³⁷⁴ offenses, for which God has posed absolute prohibitions and absolute punishments. According to Islamic Criminal Law a male who commits one of these offenses will be beheaded and a female will be imprisoned until she repents.³⁷⁵

According to Dr. Sami Musallam, the PA has not enacted Islamic law and no official document proves that it has incorporated Sha'aria law within its legal system. However, as in other Arab countries, the religious laws are recognized by the PA. Dr. Musallam adds that it would be a disadvantage for the PA's bilateral relations with Arab states to emphasize the secular civil character of its legal system and ignore the Sha'aria law.³⁷⁶ Thus, the two systems of law, Islamic religious and secular "democratic" laws are implemented in the Palestinian territories.³⁷⁷ The PA's unofficial acceptance of Sha'aria law is loosely based on the balance of power between Islam and Christianity in light of the fact that Muslims comprise more than 95 percent of the population.³⁷⁸

The religious courts which deal with inheritance, marriage and death base their rulings upon the Sha'aria law. While Palestinians can petition the civil PA courts for these matters, many choose to turn to the Sha'aria courts. Although the decisions from the Sha'aria courts possess no legal power, because Palestinian society is deeply traditional, the Sha'aria courts' decisions are highly respected.³⁷⁹

There are no provisions in either the Sha'aria or in the PA civil law which regulate the relationship between Muslims and Christians or concern Christians in particular. However, Sha'aria specifically forbids conversion from Islam to another religion³⁸⁰ and cases of this nature fall under the jurisdiction of the religious courts. According to Sha'aria law, apostasy and conversion, or riddah,³⁸¹ are capital crimes. Thus proper punishment is described as follows:

³⁶⁹ Bassem Eid, *The State of Human Rights in Palestine II: The Judicial System*, THE PALESTINIAN HUMAN RIGHTS MONITOR, Issue No. 4, Aug. 1997 at 7.

³⁷⁰ See <http://members.xoom.com/essilam/deathandspirit.htm>.

³⁷¹ See <http://members.xoom.com/essilam/deathandspirit.htm>.

³⁷² QU'RAN, Surah III, 86-87, 76.

³⁷³ QU'RAN, Surah III, at 43.

³⁷⁴ Al-Hudud is the plural of Hadd. Al-Hudud are the limits which Allah has set. If somebody violates them, he is to be punished according to certain penalties prescribed by Allah. These penalties are also called Hudud." DR. MUHAMMAD MUHSIN KHAN, *THE TRANSLATION OF THE MEANINGS OF SAHIH AL-BUKHARI*, Vol XIII, 503 (n.d.).

³⁷⁵ See Lippman-McCoville--Yerushalmi, *Islamic Criminal Law and Procedure*, 42 (1988).

³⁷⁶ Interview with Dr. Sami Musallam, Director General of Yasser Arafat's Office in Jericho (Oct. 13, 1998).

³⁷⁷ In the author's opinion another factor which may influence the unofficial recognition of traditional law is the role it provides in nation-building, in fostering a common and identifiable set of rules and morals which engender a sense of unity.

³⁷⁸ Interview with Labib Madanat, Executive Secretary of the Jerusalem Bible Society, in Jerusalem (Sept. 14, 1998).

³⁷⁹ Interview with Dr. Bishara Awad, in Bethlehem (Oct.23, 1998); Interview with Sami Musallam, in Jericho (Oct.13, 1998).

³⁸⁰ Interview with Ibrahim Kandalaft, Deputy Minister for Christian Religious Affairs, in Eastern Jerusalem (Oct. 20, 1998).

³⁸¹ In the religious sense, "riddah" means "to cut off from Islam". see MUHAMMAD ASLAM, *MUSLIM CONDUCT OF STATE BASED UPON THE SULUK--UL--MULUK*, 492 (1974); Sami Musallam explained that riddah means "the one who turns away from Islam."

When a Muslim turns his back to Islam, the authorities should ask him to accept Islam. If he has some doubts, they must be removed and he should be sent to prison for three days. If during this period he accepts Islam, it is well, but if not, he must be slain... If he does not repent it is an obligation of the Muslim to slay him."³⁸²

The religious courts can publish a decree of riddah concerning a convert from Islam to Christianity.³⁸³ This decree will condemn the conversion, publicly declare the convert to be an outcast of society. The convert will lose all social and religious protection. Extrajudicial killing exercised on the stigmatized individual, while not explicitly promoted, will not be prosecuted by the Sha'aria courts. According to Mr. Musallam, in the eyes of the public, someone who kills an apostate from Islam will be regarded as a hero.³⁸⁴

E. Sulha as a Means of Conflict Resolution in the Palestinian Authority

Aside from the civil courts administered by the PA in the territories, there exists a traditional form of conflict resolution called sulha that is common in Muslim societies. The sulha procedure has no foundation in PA law but is conducted according to traditional and ancient rules. Sulha even antedates Islam and is based upon tribal traditions.³⁸⁵ It was, however, adopted throughout the Arab Muslim world, incorporated and elaborated upon in the Sha'aria.³⁸⁶ Sulha can be applied to any criminal matter or civil dispute, including conflicts between neighbors and even capital offenses such as murder. Dr Musallam stated that sulha is "the principal means of conflict resolution in Palestinian society. It is not only used for minor offenses but also for crimes such as murder."³⁸⁷ In Palestinian society, sulha settlements are more respected by society than legal proceedings which can be a protracted process.³⁸⁸ While a sulha can be concluded within three months, the civil courts typically process cases much more slowly. In many respects sulha is a desirable method of dealing with disputes within the context of a traditional community.

Torge Larson, Political Advisor at the Norwegian Representative Office has three years experience in Gaza and the West Bank, working on democracy, human rights and rule of law issues. He argues that in a society where the judiciary is often ineffective, a society that while under Israeli jurisdiction distrusted the Israeli court system, it is natural to turn to traditional systems, like sulha.³⁸⁹ Most importantly for the purposes of this article, sulha can be employed to resolve conflicts between Muslims and Christians. Problematically however MCCs are automatically disadvantaged as, even if they wanted their dispute resolved by a sulha settlement they would not be able to. David Ortiz argues this is because under Islamic law "they basically have a fatwa on all the MCCs."³⁹⁰ Larson suggests that MCCs would not be able to take part in a sulha due to the degree of hostility directed towards MCCs in their communities. "[T]he situation is so inflamed within the community that it makes it difficult for MCCs."³⁹¹

Sulha is aimed at reconciling the parties in conflict. A mediator or Jaha, who is usually a revered elder in the community or village acquainted with sulha rules, proposes to the injured party conflict settlement using the sulha method.³⁹² However, often the parties do not agree to pursue the sulha procedure immediately and "generally the Jaha must return to the household several times before obtaining consent. Despite the initial rejection of mediation, this persistence is necessary in order to demonstrate proper respect for the honor of the injured family."³⁹³

According to Bassem Eid, the PA has the power to determine if a sulha can be implemented in a given conflict. If the injured party is a Fatah member, the PA will acquiesce to his wishes, but if the aggrieved is not a Fatah member, it will deny him a sulha settlement.³⁹⁴ As soon as both parties have agreed to entrust the case to the Jaha and accept his ruling, the sulha procedure begins with a Hodna, a truce intended to prevent revenge attacks. The Hodna usually lasts three to six months, as is specified by the Jaha. During this period, the assessment of damages takes place, injured victims can recover and both parties agree not to attack each other.

During the Hodna, a kind of bail is paid to the victim's family by the offender, called 'Atwa. This is a gesture to show the offender's readiness to settle the conflict and to reestablish peace. 'Atwa can also be given in the form of a pledge, a commitment to sulha and the truce, but a monetary payment is the norm. Subsequently there is a period of investigation. The Jaha ascertains the damages, how the conflict came about and who was responsible. After the completion of these procedures, the actual sulha ritual takes place. The conflicting families and leading members of the community come to a meeting at which

³⁸² Muhammad Aslam, *Muslim Conduct of State*, 495 (1974).

³⁸³ Interview with Sami Musallam, in Jericho (Oct.13, 1998).

³⁸⁴ Interview with Sami Musallam, in Jericho (Oct.13, 1998).

³⁸⁵ Darwish Musa Darwish, Mukhtar of Isawiya in Eastern Jerusalem, "Sulha Conflict Resolution", Address at the Yakar's Center for Social Concern, Jerusalem (Dec. 16, 1998).

³⁸⁶ Darwish Musa Darwish, Mukhtar of Isawiya in Eastern Jerusalem, "Sulha Conflict Resolution", Address at the Yakar's Center for Social Concern, Jerusalem (Dec.6, 1998).

³⁸⁷ Interview with Dr. Sami Musallam, in Jericho (Oct.13, 1998).

³⁸⁸ Interview with Ibrahim Kandalaf, Deputy Minister for Christian Religious Affairs, in Jerusalem (Oct.20,1998).

³⁸⁹ Interview with Torge Larson, Political Officer at the Norwegian

Representative Office, in Dahil Bared, (Jan. 26, 2000).

³⁹⁰ Interview with David Ortiz, in Jerusalem (Jan.13, 2000).

³⁹¹ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bared, (Jan. 26, 2000).

³⁹² Ryad Salhab, a family elder from Eastern Jerusalem, "Sulha-- Conflict Resolution", Address at Yakar's Center for Social Concern, in Jerusalem (Dec.6, 1998); interview of Bassem Eid in Jerusalem (Nov.30, 1998); interview of Sami Musallam, in Jericho (Oct.13, 1998).

³⁹³ The Role of the Jaha, information sheet (Wi'am Palestinian Conflict Resolution Center), Mar. 19, 1998.

³⁹⁴ Interview of Bassem Eid, head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov.30, 1998).

the parties confirm their readiness for a peaceful agreement, make pledges and reach agreement as to how the damages should be paid. According to Darwish Musa Darwish, the Mukhtar of Isawiya in East Jerusalem, intentional murder, for example, according to traditional rules, requires the payment of 100 camels. Today this is the equivalent of 100,000 Jordanian Dinars, approximately \$135,000 (U.S.). Furthermore, the murderer must leave the country.³⁹⁵ It is up to the victim's family to request money or to accept only a verbal pledge. The sulha ritual is normally ended by a common meal at the offender's house.

Under the PA, a sulha agreement can replace a civil legal judgement (or out of court settlement). If both parties inform the court that an agreement has been reached, no legal procedure will be undertaken in that matter. Sami Musallam indicated however, that in regard to serious crimes such as murder, the courts will take the sulha judgement into consideration primarily dealing only with those aspects of a crime which were unresolved by sulha.³⁹⁶

Ibrahim Kandalaft, the PA's Deputy Minister for Christian Religious Affairs, stated that the sulha is mainly applied to serious crimes such as murder. In the case of a murder, the murderer would pay a sum of money to the victim's family in order to re-establish peace. The subsequent criminal trial would take the sulha judgement into account and probably issue only a light sentence.³⁹⁷ Mr. Musallam and Mr. Kandalaft concurred that in many ways, sulha procedures are preferred by the Palestinians and its rulings are "more respected" than PA legal procedures.³⁹⁸ Therefore it is quite common to employ a sulha rather than a conventional legal process for conflict resolution in the PA territories. Certainly it is a procedure that is deeply embedded in society, having been practiced for hundreds of years. It is also a more expeditious mechanism than the PA civil courts.³⁹⁹ With a court system "in a state of disrepair," part of the burden at the local level, "has been taken up by traditional social institutions and practices."⁴⁰⁰

It is suggested that the sulha mechanism discriminates against MCCs in two respects. In the first instance, sulha, in conjunction with Sha'aria law, serves to foster (among Muslims) a sense that the convert is "outside" of the wider community. They are therefore an easy target to blame for any perceived shortcomings in society. Secondly MCCs are denied the opportunity to resolve their disputes in the way that the rest of the community can, even if they want to. While traditional courts may in some cases provide a system of alternative dispute resolution, "excessive virtue should not be made of necessity."⁴⁰¹ Without a competent judicial system MCCs are left with few options when seeking justice under a regime which often singles them out for adverse treatment.

IV. Ultimate Responsibility for Addressing Human Rights Violations: The Palestinian Authority or Israel?

It is important to remember that the PA is a pre-state entity, which derives its existence and authority from the interim peace agreements. While the PA has assumed administrative responsibilities in designated areas of the West Bank and Gaza, it is not a sovereign state and the Israeli military rule over the territories is still in effect.⁴⁰² This has been recognized by the senior Palestinian peace negotiator and senior deputy to Arafat, Mahmoud Abbas, who referring to the DOP stated that, "[w]e do not claim that we signed an agreement that created an independent Palestinian State; none of the provisions of the Declaration of Principles make such a claim."⁴⁰³ Similarly, in response to the PA's declaration that it would adhere to the Geneva Conventions of 1949 and the subsequent two Protocols, the Swiss Federal Council stated that "it was not in a position to decide whether the letter constituted an instrument of accession," and deferred from making a decision "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine."⁴⁰⁴

As a non-sovereign entity, commitments to International Conventions, i.e., on human rights, are not strictly binding on the PA.⁴⁰⁵ The PA has a responsibility to demand from its population (and especially its security forces, police officers and other officials) to respect the rights of MCC's. There should be no tolerance for expressions of societal hostility towards minority populations. In the opinion of this author, although on a day-to-day basis this matter is (or rather, should be) dealt with by the PA, ultimate legal responsibility falls on Israel, which empowered the PA to act on its behalf during the interim period. All human rights violations should, if necessary, as a last resort, be addressed in the Israeli Supreme Court sitting as the High Court of Justice until, at the end of the permanent status negotiations, the legal vacuum is filled by a recognized Palestine state.⁴⁰⁶

³⁹ Interview of Bassem Eid, head of the Palestinian Human Rights Monitoring Group, in Jerusalem (Nov.30, 1998).

³⁹⁶ Interview with Dr. Sami Musallam, in Jericho (Oct.13, 1998).

³⁹⁷ Interview with Ibrahim Kandalaft, Deputy Minister for Christian Religious Affairs, in Eastern Jerusalem (Oct. 20, 1998).

³⁹⁸ Interview with Dr. Sami Musallam, in Jericho (Oct. 13, 1998);

Interview with Ibrahim Kandalaft, Deputy Minister for Christian Religious Affairs, in Jerusalem (Oct. 20, 1998).

³⁹⁹ Interview with Father Tom'i Dawod, in Zabadeh, Jenin district (Nov. 14, 1998).

⁴⁰⁰ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, AT 14 (1999).

⁴⁰¹ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, AT 14 (1999).

⁴⁰² See Justus Weiner, An Analysis of the Oslo II Agreement in light

of the expectations of Shimon Peres and Mahmoud Abbas, 17 MICH. J. INT'L L., 667, 671 (1996).

⁴⁰³ MAHUOD ABBAS, THROUGH SECRET CHANNELS 218 (1995).

⁴⁰⁴ Geneva Convention, Aug. 12 1949 and Additional Protocols of June 8 1977: Ratifications, Accessions and Successions, DD/JUR 98/820 -- CPS 32 (Dec. 31, 1998).

⁴⁰⁵ The PA resurrected a British Mandate-era law which bans missionizing, under this law, missionizing to Muslims will be considered a crime. A member of the Palestinian Legislative Council and advisor to Arafat told the ICEJ that missionizing to Muslims was considered threatening to the PA. For the Record: The 'Persecution' of Christians under the Palestinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, Feb. 1998, at 7. No one has ever been specifically charged with violating this law.

⁴⁰⁶ See Justus Weiner, Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process, 27 N.Y.U. J. INT'L L. & POL. 761 (1995).

V. Freedom of Worship in International Law

A. United Nations Conventions

The main sources of international law protecting the freedom of religion are referenced in the following declarations of human rights: the 1945 UN Charter,⁴⁰⁷ the 1948 UN Universal Declaration of Human Rights,⁴⁰⁸ the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms,⁴⁰⁹ the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,⁴¹⁰ the 1966 International Covenant on Civil and Political Rights,⁴¹¹ the 1969 American Convention on Human Rights,⁴¹² the 1975 Final Act of the Helsinki Conference on Security and Cooperation in Europe,⁴¹³ the 1981 African Charter on Human and Peoples' Rights⁴¹⁴ and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion.⁴¹⁵

It is important to note that freedom of religion specified in the international human rights conventions, covenants and declarations has a special standing, a permanent status. Pursuant to Article 4(2) of the International Covenant on Civil and Political Rights and Article 27(2) of the American Convention, the guarantee of religious freedom is non-derogable (it cannot be suspended at any time) under any circumstances, including war.⁴¹⁶

Among the above-mentioned international human rights instruments, the relevant articles pertaining to the MCCs will be highlighted in this section: freedom of religious adherence, freedom of religious choice, freedom of religious observance, freedom of religious propagation and the obligation of the state to prevent discrimination based upon religious beliefs.

A. Freedom of Religious Adherence and Choice

The Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR") includes articles that specifically address freedom of religion. Article 18 in the UDHR specifies the following:

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 a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁴¹⁷

The UDHR's reference to freedom of religion encompasses not only the freedom to adhere to any existing religious faith of choice, but furthermore, everyone is at liberty to choose and to "change" a religion or belief.⁴¹⁸ No one shall be forced to adhere to a religion. Professor Yoram Dinstein has underscored the freedom to "challenge received beliefs and to have a completely different theological outlook."⁴¹⁹

The ICCPR extends the UDHR's right to "change" one's religion to specifically include the right to "adopt" a religion. It states that freedom of religion "include[s] freedom to adopt a religion or belief of his choice and [specifies that] No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."⁴²⁰ The Human Rights Committee further clarified its position in the General Comment of Article 18, that the "freedom to have or to adopt a religion or belief" entails the following:

the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.⁴²¹

⁴⁰⁷ Article 18 in G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948), reprinted in 43 Am.J.Int'l L., Supp.at 127 (1949).

⁴⁰⁸ G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948), reprinted in 43 Am.J.Int'l L., Supp.at 127 (1949).

⁴⁰⁹ See Yoram Dinstein, "Freedom of Religion and the Protection of Religious Minorities," *The Protection of Minorities and Human Rights*, at 145-169 (1992).

⁴¹⁰ See Lerner, Nathan. *The UN Convention on the Elimination of All Forms of Racial Discrimination*. London: The Institute of Jewish Affairs, 1970.

⁴¹¹ G.A. Res.2200A (XXI), Annex, U.N. GAOR, 21st Sess., Supp. No. 16, 1496th plen. mtg. at 49, U.N.Doc. A/6316 (1967); entered into force on Mar. 23, 1976, reprinted in 993 U.N.T.S 3; 6 I.L.M. 360 (1967).

⁴¹² Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS*, pp. 145-169 (1992).

⁴¹³ See Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities, , THE PROTECTION OF MINORITIES AND HUMAN RIGHTS*, pp. 145-169 (1992).

⁴¹⁴ Yoram Dinstein, *Freedom of Religion and the Protection of Reli-*

gious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 146 (1992).

⁴¹⁵ G.A.Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, 73d plen. mtg. at 171, U.N. Doc. A/36/51 (1982), reprinted in 21 I.L.M. 205 (1982).

⁴¹⁶ Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities, , THE PROTECTION OF MINORITIES AND HUMAN RIGHTS*, see at 146 (1992); see BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF*, at 87-88 (1996).

⁴¹⁷ See BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF*, at 71-72 (1996) (emphasis added).

⁴¹⁸ The phrase "freedom to change his religion" was objected by Islamic states but passed during a vote by roll call. See BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF*, at 75 (1996).

⁴¹⁹ Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities, , THE PROTECTION OF MINORITIES AND HUMAN RIGHTS*, at 147 (1992).

⁴²⁰ BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF*, at 84 (1996) (emphasis added).

⁴²¹ BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF*, at 87 (1996) (emphasis added).

ii. Freedom of Religious Observance

Beyond the right to choose a faith, one has the right to manifest that faith through prayer and worship meetings, dietary laws, days of rest, celebrations, festivities and fasting.⁴²² Article 18 of the ICCPR entitles everyone to "manifest his religion or belief in worship, observance, [and] practice either individually or in community, in public or in private."⁴²³

Practicing religious observance is subject to limitations, prescribed by law, only if it infringes upon "public safety, order, health, or morals or the fundamental rights and freedoms of others."⁴²⁴ These limitations only apply to religious observance and not to the right to convert non-believers.⁴²⁵

iii. Freedom of Religious Propagation

The UDHR allows for teaching, practice, worship and observance of one's religious belief. UHDR protects the right to teach one's belief to others who may or may not be members of the same religion. Teaching means passing on the ideology and ideas of a religion or belief to others who may be attracted to a new belief system and consequently change their religion. So Article 18 also allows for missionizing activities, "the teaching of religion can be done in public or in private, either individually or in community."⁴²⁶ According to Dinstein, "the right to teach ... embraces the right to propagate the faith among the uninitiated."⁴²⁷ In other words, to gain converts.

iv. Obligation of the State

According to article 20 (2) of ICCPR, "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."⁴²⁸ Not only are direct attacks (physical violence, discriminatory laws, psychological pressure) on members of a religious community prohibited, but also such actions that aim to promote the discrimination or persecution of a religious community or individuals of a different faith. Propaganda against certain individuals or a religious group by the government, the press, other religious communities or political parties which results in persecution, antagonism or discrimination against another religious community would fall within the purview of this prohibition. Article 27 deals with minority rights, in those States in which ethnic, religious...minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.⁴²⁹ Again Article 27 grants autonomy to religious groups and guarantees their right to assemble and practice their religion, which differs from the religion of the majority. No individual or group shall be subject to a forced assimilation to the dominant religion.

The Declaration on the Elimination of Religious Intolerance and Discrimination⁴³⁰ ("DERID") represents the most recent attempt to advance international legal protection of freedom of religion or belief. Comprising the general statements made in the previous instruments on freedom of religion (or belief) and freedom from discrimination based on religion (or belief), it is more specific about the protection of freedom of religion or belief. Article 4 states that, "all states shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief...and all states shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter." The declaration has a binding effect on those states which voted for it.⁴³¹ This is also confirmed by Article 7 which states, "[t]he rights and freedoms set forth in the present Declaration shall be accorded in national legislation." Article 3, in very strong language, provides that, "[d]iscrimination between human beings on the grounds of religion or belief constitutes...a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights and the fundamental freedoms proclaimed in the Universal Declaration of Human Rights." Article 1, paragraph 2, "clearly forbids the use or threat of physical force to compel believers to recant or convert."⁴³² Sullivan however, interprets the term coercion as including "mental or psychological means of compulsion."⁴³³

⁴²² Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS at 150 (1992).

⁴²³ Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 150 (1992).

⁴²⁴ Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 151 (1992).

⁴²⁵ Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 151 (1992).

⁴²⁶ Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 153 (1992).

⁴²⁷ Yoram Dinstein, Freedom of Religion and the Protection of Religious Minorities, THE PROTECTION OF MINORITIES AND HUMAN RIGHTS, at 154 (1992).

⁴²⁸ International Covenant on Civil and Political Rights adopted December 19, 1966 entered into force March 23, 1976, G.A. Res

2200 (xxi), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Dec. A/6316 (1966).

⁴²⁹ International Covenant on Civil and Political Rights adopted December 19, 1966 entered into force March 23, 1976, G.A. Res 2200 (xxi), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Dec. A/6316 (1966).

⁴³⁰ G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, 73d plen. mtg. at 171, U.N. Doc. A/36/51 (1982), reprinted in 21 I.L.M. 205 (1982).

⁴³¹ see Brice Dickson, The United Nations and Freedom of Religion, INT.COMPLAW QUART., 345 (1995). see also BAHIIYIH G. TAHZIB, FREEDOM OF RELIGION OR BELIEF, at 186.

⁴³² Article 18 in G.A. Res. 217 A (III), U.N. GAOR, 3rd Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948), reprinted in 43 Am.J.Int'l L., Supp. at 127 (1949).

⁴³³ Donna J. Sullivan, Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination, 82 AM. J. OF INT. L.

B. United States Statute Protecting the Freedom of Religion Abroad: The International Religious Freedom Act

Representative Frank R. Wolf (R-VA) took the first step toward drafting US legislation for protecting the freedom of religion abroad in August 1996 with a resolution addressing the problem of Christian persecution abroad, introduced in the House of Representatives.⁴³⁴ The initiative of August 1996 led to the introduction of a bill entitled the Freedom from Religious Persecution Act, in the House on May 20, 1997⁴³⁵ and the Senate on May 21, 1997,⁴³⁶ sponsored by Representative Wolf and Senator Arlen Specter (R-PA) respectively.

An amended version of the bill, H.R.2431,⁴³⁷ passed the House of Representatives on May 14, 1998 but was not acted upon in the Senate. The Clinton administration strongly opposed the bill which provided for the imposition of severe and automatic economic and political sanctions as soon as a government is identified as allowing religious persecution, saying that "it would make it impossible for the US to put national security and trade concerns ahead of fighting religious persecution,"⁴³⁸ and threatened that the President would veto the bill if it reached Clinton's desk.⁴³⁹

Due to the Administration's pressure and doubt about the effectiveness of the bill,⁴⁴⁰ Senator Don Nickles (R-OK) introduced an alternative and less stringent bill, the International Religious Freedom Act,⁴⁴¹ on March 26, 1998 to the Senate. Representative Frank R. Wolf introduced the bill to the Congress on September 8, 1997 with the support of 131 co-sponsors.⁴⁴² The bill was passed by the Congress and the Senate on October 10, 1998⁴⁴³ and signed into law by the President on Oct. 27, 1998.⁴⁴⁴

In contrast to the Freedom of Religious Persecution Act, the International Religious Freedom Act creates a presidential monopoly on determining and applying appropriate sanctions to countries violating freedom of religion. Economic sanctions are not to be implemented automatically, but a broad range of diplomatic, political and economic means are placed at the disposal of the President who is empowered to tailor them to the specific situation of the country practicing religious persecution. This satisfied not only the Clinton Administration's concern about protecting US national interests and security policy, but also the fear of evangelical groups abroad that severe economic sanctions could trigger a backlash and result in an increase in the persecution of religious minorities.

This enactment commits the US to "condemn violations of religious freedom and to promote and to assist other governments in the promotion of the fundamental right to freedom of religion, ...and to [stand] for liberty and [to stand] with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational and cultural channels, to promote respect for religious freedom by all governments and peoples."⁴⁴⁵ The law makes a distinction between two levels of persecution that would initiate sanctions: first, the "severe violations of religious freedom" including "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges ...or other flagrant denial of the right to life, liberty, or security of persons."⁴⁴⁶ Secondly, "violations of religious freedom" including "arbitrary prohibitions on, restrictions of, or punishment for assembling for peaceful religious activities such as worship, preaching and prayer; speaking freely about one's beliefs; changing one's religious beliefs and affiliation; and possession of religious literature, including Bibles."⁴⁴⁷

⁴³⁴ (1998).

⁴³⁴ The resolution called the President to expand US efforts to combat the growing problem of Christian persecution and initiate an examination of US policies that affect persecuted Christians. The President was also urged to appoint a special advisor on religious persecution. See Internet site

⁴³⁵ See H.R.1685, 105th Cong., 1st Sess. (1997).

⁴³⁶ See S.772, 105th Cong., 1st Sess. (1997).

⁴³⁷ See H.R.2431, 105th Cong., 2d Sess. (1998). The bill calls for the establishment of an Office on Religious Persecution Monitoring ("ORPM") at the State Department, which shall submit annual reports on religious persecution about those countries listed in the State Department's Country Reports on Human Rights Practices. The Director of the ORPM who is appointed by the President shall make recommendations, in consultation with the Secretary of State, to the President. Two categories of persecution will be considered. Category 1 Persecution is religious persecution with the government involved whereas Category 2 Persecution addresses governments who do not take measures against religious persecution. If the ORPM can determine religious persecution of Category 1 or 2 in any one country, following sanctions shall be applied on this country automatically: ban on non-humanitarian foreign aid, ban on visas to known persecutors, ban on US support for loans by international financial institutions, ban on the export of torture and crime control goods to those countries and the export of goods to governmental units that directly carry out persecution. Sanctions will be lifted 45 days after a country is no longer considered a violator in the ORPM's report. The President may waive the imposition of the sanctions only in extraordinary circumstances, e.g., if the national security interests of the US require it or the waiver serves the purpose of this act.

⁴³⁸ See Internet, Tony Carnes: Religious Persecution Bill Drops Trade Sanction Clause, CHRISTIANITY TODAY, Apr. 27 1998 (visited Dec. 14, 1998) <<http://www.christianity.net/ct/8T5/8T5025.html>>, at 1.

⁴³⁹ See Internet, Religious Persecution Bill Could Die in Senate, (visited on Dec. 10, 1998) <<http://www.naaa.net/voice/jul98/bill.html>> at 1.

⁴⁴⁰ Some churches in the US and abroad have raised doubts about the effectiveness of the Wolf-Specter bill. They made clear their "concerns that this ...approach was not sensitive to the particular situations in which religious minorities find themselves, noting especially the fears of some overseas partners that such legislation might cause a backlash against them for having caused the sanctions." see Internet, Open Statement by U.S. Churches on Passage of International Religious Freedom Legislation, Lutheran Office for Governmental Affairs, Oct. 16, 1998, (visited Dec. 7, 1998) <<http://www.loga.org/relperstat.htm>>, at 1.

⁴⁴¹ See S.1868, 105th Cong., 2d Sess., (1998).

⁴⁴² See Internet, Bill Summary & Status for the 105th Congress, (visited Dec. 14, 1998) <<http://thomas.loc.gov/cgi-bin/bdquery/-z?d105:HR02431:P>>, at 1-2.

⁴⁴³ See International Religious Freedom Act of 1998, Pub.L. 105-292, Sec. 2.

⁴⁴⁴ See, Internet site <http://www.naaa.net/voice/may98/persecution.html>.

⁴⁴⁵ International Religious Freedom Act of 1998, Pub.L. 105-292, Sec. 2.

⁴⁴⁶ International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec. 3.

⁴⁴⁷ International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec. 3.

According to the aforementioned stipulations, if a government or its officials persecute religious minorities or if the government allows persecution as defined above by individuals or groups of individuals,⁴⁴⁸ the US will take measures within the scope of the International Religious Freedom Act. Along with arrest, torture and murder on grounds of one's religious belief, also the denial of the right to publicly manifest one's religion, evangelical work or the right to change one's belief are considered as "persecution."⁴⁴⁹

The President is entitled to order the application of sanctions, depending on the nature of the violations and the particular circumstances of the respective country. He can choose between the following tools: "(1) a private demarche, (2) an official demarche, (3) a public condemnation, (4) a public condemnation within one or more multilateral fora, (5) the delay or cancellation of one or more scientific exchanges, (6) the delay or cancellation of one or more cultural exchanges, (7) the denial of one or more working, official, or state visits, (8) the delay or cancellation of one or more working, official or state visits, (9) the withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961, (10) directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participation in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations..., (11) the withdrawal, limitation, or suspension of United States security assistance, ...(13) ordering heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations,... (14) prohibiting any United States financial institution from taking loans or providing credits totaling more than \$ 10,000,000 in any 12-month period to the specific foreign government..., (15) prohibiting the United States Government from procuring or entering into any contract for the procurement of any goods or services from the foreign government..."⁴⁵⁰ However, the "President shall not be required to apply or maintain any...action...in the case of procurement of defense articles or defense services, under existing contracts or subcontracts, ...to satisfy requirements essential to the national security of the United States; if...the person or other entity to which the Presidential action would otherwise be applied is a sole source supplier of the defense articles or services; if such articles or services are essential to the national security."⁴⁵¹ The President may also waive the application of sanctions if "the important national interest of the United States requires the exercise of such waiver authority."⁴⁵² The President may choose largely symbolic diplomatic steps to fight religious persecution abroad, if he deems it necessary to prefer other national interests to the protection of freedom of religion. The US wants to maintain friendly relations with countries that are crucial to US national security and policy interests.

The United States will also support initiatives for the promotion of religious freedom abroad through the allocations of funds⁴⁵³ or international educational and cultural exchanges.⁴⁵⁴ Furthermore US asylum policy will be reformed in order to become more sensitive towards refugees from religious persecution.⁴⁵⁵ It was reported in 1998, that for the first time, two Palestinian MCCs were granted political asylum in the US. In one instance in Chicago and another in North Carolina, the Immigration and Naturalization Service ruled in favor of the claims of two Palestinian residents from the West Bank. It was determined that, if they were to return to the West Bank, they would be endangered as a result of their conversion to Christianity.⁴⁵⁶ According to the lawyer who represented one of the MCCs, the Immigration and Naturalization Service contacted the State Department to verify her client's claim of religious persecution.⁴⁵⁷

According to a senior (United States Agency For International Development "USAID") official the avenue that looks most promising for influencing the PA is not through direct funding of democracy projects, but rather through an indirect approach. This approach would employ Palestinian NGOs which advocate the structural reform of the PA and a greater level of accountability.⁴⁵⁸ Implicit in this preference is an admission that Chairman Arafat and the ruling elite are not disposed to democratic reforms which could weaken their control over public and private life.

The current US Administration's long standing commitment to the peace process is well illustrated by USAID's six year mission in the West Bank and Gaza. USAID has contributed \$75,000,000 per annum to projects assisting in economic reform, water management, governance and democracy.⁴⁵⁹ There is certainly a recognition that the PA has some way to go in order to achieve the hallmarks of a fully functioning modern state. To this end USAID has as its objectives, the encouragement of an accountable system of democratic governance, the development of proper procedures for the drafting and reviewing legislation and the establishment of better methods of court administration.

⁴⁴⁸ International Religious Freedom Act of 1998, Pub.L. 105-292, Sec. 102(b)1.

⁴⁴⁹ International Religious Freedom Act of 1998, Pub.L. 105-292, Sec. 2 (5).

⁴⁵⁰ International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec.405(a).

⁴⁵¹ International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec.406.

⁴⁵² International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec. 407(a)3.

⁴⁵³ See International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec.501(b).

⁴⁵⁴ See International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec. 503.

⁴⁵⁵ See International Religious Freedom Act of 1998, Pub.L. 105-292, at Sec.602 and Sec.603.

⁴⁵⁶ Yossi Klein Halevi, Palestinian Christian Win U.S.Political Asylum, JERUSALEM REPORT, Apr. 2, 1998.

⁴⁵⁷ Interview with Esther Obiora, in New York, August 4, 1997.

⁴⁵⁸ Confidential interview with a senior USAID official, in Jerusalem (Jan. 23, 2000).

⁴⁵⁹ United States Agency For International Development, <http://www.usaid-wgb/overview.html>.

The third objective is highlighted by the launching of the Rule of Law Program on December 5, 1999 in Ramallah. This three year, \$30,000,000 program includes the development of a judicial training program (training institute for judges, prosecutors and court staff) and the creation of two model courts which would pioneer improved methods of court administration. In addition, the program will promote the use of alternative dispute resolution to complement judicial reform.⁴⁶⁰ In addressing human rights concerns USAID has established a citizens-rights center which serves as a clearing house for citizens' problems with the local authorities. As another component of the Rule of Law Program USAID is helping Palestinian law schools update their courses by adding human rights to their curricula.⁴⁶¹

While the United States places a high priority upon the promotion of human rights, as shown by the activities of USAID, there are two factors which limit the ability of government affiliated aid organizations to place direct pressure on the PA to improve its human rights record. A senior official at USAID commented that in a political climate with competing incentives "the peace process is extremely high on the agenda. If the people that are negotiating the peace process tell the people working on the assistance program to lay off this topic for the moment -- probably they will."⁴⁶² In addition is the need to integrate the activities of the aid organization with current foreign policy, even where that policy conflicts with goals which the organization might have. As mentioned, one of the goals of USAID is to promote the rule of law. It has been argued that the development of a constitutional framework would strengthen the rule of law by setting limits on legislative and executive power. "Constitutionality is a sine qua non of democracy and citizens' rights, and a fundamental element for the promotion of good governance."⁴⁶³

Current U.S. policy, however, does not recognize Palestine as a sovereign state.⁴⁶⁴ A senior USAID official commented that constitutionality is an issue for a fully autonomous government to consider. As aid organizations must not interact with Palestine as if were an sovereign nation, the question of pressuring the PA to adopt a constitution, or even suggesting that one be developed, is presently out of the question.⁴⁶⁵

Senator Connie Mack delivered a poignant speech to the Senate on March 3, 1999 upon his return from a trip to Israel. He challenged President Clinton to reassess the peace process and US funding to the PA due to numerous reported violations. One of the areas of non-compliance with the accords since Oslo is the religious freedom of the MCCs, which Senator Mack mentioned specifically.⁴⁶⁶ In the author's opinion, however, given the Clinton Administration's commitment to and involvement in the peace process, it is unlikely that the PA will be sanctioned for the level of violations that have occurred. To do so would put in jeopardy the larger foreign policy agenda of the United States.

C. Other Donor--Community Responses

Of course many members of the international community other than the United States and Israel make significant contributions to the development of the emerging Palestinian state. Coordinated by the Department for International Development "DFID", Britain contributes a current sum of £20,000,000 annually, through both multi-lateral schemes with the European Union and United Nations Relief Works Agency and bi-lateral programs with the Palestinians directly. DFID's goal is to halve the number of people living in extreme poverty by the year 2015. The bi-lateral program is focused on five sectors, education, health, water, private sector development, and most importantly for the purposes of this article, good government.⁴⁶⁷ With respect to good government, DFID has three primary goals. A unified, modernized legal system, featuring improved legal status for women, an efficient and effective public administration and a democratic, professional, accountable and responsible Parliament.⁴⁶⁸ A senior member of DFID stated that a major problem within government is the lack of defined roles, not only for each member of staff in a ministry, but between different ministries themselves. In order to alleviate this situation DFID is trying to help the Palestinians to further define the roles in different sectors of government to ensure that there is as little overlap as possible and to guarantee that the needs and interests of each department are taken into account. DFID is also helping ministries to develop proper procedures for devising internal policies on the promotion and recruitment of personnel.⁴⁶⁹ A major problem for the legal system in Gaza and the West Bank is the fact that different parts of the areas under PA control are under different legal systems. Both the West Bank and Gaza have a history of first being under Ottoman and then British law and vestiges of both still remain. Problematically however, the West Bank was for a

⁴⁶⁰ United States Agency for International Development, <http://www.usaid-wgb/overview.html>.

⁴⁶¹ United States Agency For International Development, <http://www.usaid-wgb/overview.html>.

⁴⁶² Confidential interview with a senior USAID official, in Jerusalem (Jan. 23, 2000).

In the authors opinion it is not a given that a constitution can only be created in circumstances where there is a sovereign nation in existence. Any organization is capable of developing a means to determine the powers of its various parts and where the limits to those powers may lie, from companies, to NGOs, to states (such as the fifty American States) existing within nations. With respect to the considerable responsibilities and powers which the PA has, there is a clear need for the development of a constitutional structure.

⁴⁶³ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC

INSTITUTIONS, at 33 (1999).

⁴⁶⁴ Confidential interview with a senior US AID official, in Jerusalem (Jan. 23, 2000).

⁴⁶⁵ Confidential interview with a senior USAID official, in Jerusalem (Jan. 23, 2000).

⁴⁶⁶ Senator Connie Mack's speech, "Israeli and Palestinian Peace Based Upon Security, Freedom and A Change of Heart," (Mar. 3, 1999).

⁴⁶⁷ Interview with Chris Metcalf, Consul (Development) at DFID, in Jerusalem, (Jan. 17, 2000).

⁴⁶⁸ Department for International Development (Britain), DFID Factsheet: Good Government, (1999).

⁴⁶⁹ Interview with Chris Metcalf, Consul (Development), at DFID, in Jerusalem, (Jan. 17, 2000).

period under Jordanian law while Gaza was under Egyptian military occupation. In addition, both areas still retain some elements of Israeli military law.⁴⁷⁰ This has led to not only confusion but, even conflict between laws. To address this problem DIFD, in conjunction with the Justice Ministry, is assisting in the modernization and unification of Palestinian legislation.⁴⁷¹

A specific focus on human rights has been taken by the UK, with the establishment of the Human Rights Project Fund in Gaza and the West Bank. Through the financing of Palestinian human rights NGOs the fund focuses on four issues, the rights of the child, promoting civil rights through the media, the rule of law and action in civil society.⁴⁷² Mr. Robin Kealy, the British Consul-General to Jerusalem stated, "We want the Palestinian future to be that of a peaceful and democratic society where civil rights are fully respected."⁴⁷³ In addition, with other members of the donor community, the UK supports the Palestinian Independent Commission for Citizens Rights "PICCR" which acts as the ombudsman institution in the PA. The impetus behind the PICCRs development "came out of the perceived need to build human and citizens' rights into the formal institutions of the Palestinian state."⁴⁷⁴

Multi-laterally funded programs like the PICCR indicate an increased awareness within the donor community that human rights must not be ignored leading up to a final status agreement. Torge Larson, Political Officer for the Norwegian Representative Office, stated that there should not be any inherent contradiction between the peace process and a respect for human rights.⁴⁷⁵ Until recently however security has been the major concern of the international donor community. This means that those who are guilty of most human rights abuses, the security services, have the support of the international community due to its concerns about terrorism. "The international community has learned a big lesson here. Now human rights are being focused on and there is international co-operation and a realization that things have to change."⁴⁷⁶ The judiciary is an example. From the Norwegian point of view the development of an independent and functioning judiciary is of the highest priority, from both a human rights and institutional perspective. Larson argues that "The Judiciary is in deep crisis."⁴⁷⁷ This problem has arisen as a result of weaknesses within the judicial institutions themselves, for example the lack of courts and well trained judges and lawyers. There is also however the political element-the executive infringing on the courts jurisdiction and the neglect of decisions. The former problem has received attention, but "[u]ntil now donors have been reluctant to support the political process."⁴⁷⁸

Regarding human rights violations against MCCs, Larson says that in studying the situation he does not believe that there has been official systematic persecution from within the PA, but rather it is a case of a very new group entering the community. With no support in traditional society and a lot of hostility against them, coupled with poorly trained security forces and a lack of respect for the rule of law, MCCs are in a difficult position. "You must remember that the security forces are members of society too."⁴⁷⁹ Norway does make strong and repeated appeals directly to the PA executive on human rights issues and according to Larson, due to Norway's long and close relationship with many of the main actors, their protests are listened to. While the Norwegians don't often directly threaten the suspension of a particular program due to abuses, there are some occasions when, as a result of continued violations of a human rights nature, it will be stated clearly that, "there will be consequences, that it will be impossible to continue support in certain sectors."⁴⁸⁰

D. US Department of State Annual Report on International Religious Freedom for 1999

The International Religious Freedom Act mandates an annual report of international religious freedom, of which the 1999 report is the first. The report outlines the PA's proclaimed position concerning human rights in the region. Though the PA does not yet have a Constitution, and no single law in force specifically protects religious freedom, the PA claims to respect religious freedom in practice. In spite of this claim, the draft Palestinian Basic Law proposed that Islam be recognized as the official religion.⁴⁸¹

The report mentions that "there are periodic allegations that a small number of Muslim converts to Christianity sometimes are subject to societal discrimination and harassment by PA officials."⁴⁸² It is interesting to note how the report attempts to minimize this claim by using words such as, "periodic allegations," and "sometimes." In the authors opinion this reflects an ambiguous stance on the enforcement of human rights concerning this particular issue. The report does state that the PA asserts that it investigates such complaints, but has not shared or publicized the results of these investigations with any outside party. Perhaps the State Department fears taking a strong position before the allegations are proven to be true.

⁴⁷⁰ See, Justus Reid Weiner, Human Rights in the Israeli Administered Areas during the Intifada: 1987-1990, 10 Wisc. J. Intl L. at 195,197-198, (1994).

⁴⁷¹ Interview with Chris Metcalf, Consul (Development), at DFID, in Jerusalem, (Jan. 17, 2000).

⁴⁷² Robin Kealy, British Consul General Jerusalem, Palestinian Rights Programme, www.palestinian-rights.org/news/intro.htm (Jan. 27, 2000).

⁴⁷³ Robin Kealy, British Consul General Jerusalem, Palestinian Rights Programme, www.palestinian-rights.org/news/intro.htm (Jan. 27, 2000).

⁴⁷⁴ The British Council, To assist Palestinians in achieving their human rights, at 2, (2000).

⁴⁷⁵ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁷⁶ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁷⁷ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁷⁸ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁷⁹ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁸⁰ Interview with Torge Larson, Political Officer at the Norwegian Representative Office, in Dahil Bered, (Jan. 26, 2000).

⁴⁸¹ The US Department of State Annual Report on International Religious Freedom for 1999, Section I.

⁴⁸² The US Department of State Annual Report on International Religious Freedom for 1999, Section I.

The allegations against the PA that are cited in the report address the detainment of several MCCs by PA security officials because they "proselytized too openly." The report continues, "it appears that their religious activities were in fact only one of many factors leading to their detention."⁴⁸³ Again this demonstrates the report's hesitancy to take an admonishing tone against these offenses. It appears that the State Department prefers a cautious stance on this issue also. However, the question remains, how effective will this report be in protecting human rights?

The report states that to date, no disciplinary actions have been taken against the PA security officials suspected of involvement in the persecution of MCCs. PA officials "say that they understand their responsibility to protect even Muslims who convert to non-indigenous Christian denominations that espouse the view that Palestine was promised by God to his chosen people, the Jews."⁴⁸⁴ During the period covered by the report, approximately seven MCCs were detained without warrant or trial by PA security forces. They were subsequently questioned about their faith and other activities. On top of this, there were allegations that while in custody, several were mistreated. The report affirms that the US Consulate in Jerusalem is aware of these concerns and maintains an ongoing high level dialog with PA officials. The report does not offer a course of action other than asserting that "the Consulate continues to make inquiries to try to ascertain the facts..."⁴⁸⁵ A resolution of the issues seems far away.

Conclusions and Outlook

It would be difficult to overemphasize the importance of monitoring the PA's record, even during the interim stage of the peace process. Some human rights groups don't believe, or don't want to acknowledge that there is a problem concerning MCCs. These human rights groups have defaulted on their roles as watchdogs and information sources for journalists and researchers.

One Palestinian human rights group, LAW, has minimized and sought to explain away assertions that the PA is persecuting MCCs by blaming these claims on supposed political motives on the part of those claiming persecution.⁴⁸⁶ It simply denies that a pattern of systematic persecution exists. Another Palestinian human rights group, PHRMG, advances the argument that any violation of the rights of individual MCCs should be understood as minutia⁴⁸⁷ given the scant part of the population which they represent, in light of the overall grim human rights situation in the areas controlled by the PA. This human rights group reasons that the MCCs predicament cannot be distinguished from that of ordinary Muslims who have no interest whatsoever in converting to Christianity. They assert that everyone in the PA is at risk of having his/her rights trampled upon and that it is impossible to identify whether being an MCC puts one at greater risk than a general cross section of the population.⁴⁸⁸

This author respectfully dissents. This dissent is based not merely on having personally interviewed and considered documentary evidence presented by a number of individuals, almost none of whom have any discernable ulterior motive for making false allegations, but also on the general reluctance they exhibited in lodging their complaints, even to this author and his research assistants. Most of the witnesses had to be persuaded, often via trusted intermediaries, to give their testimony. They would cooperate only on the condition that the article not mention their name or other identifying details and were reassured to be told that the article would be published on the other side of the world. The church officials and clergy who were interviewed exhibited similar signs of being intimidated by the PA. They were generally not keen to answer the author's (or his researchers') questions. Most insisted on having their cases referred to under a pseudonym.

Clearly the PA's leadership has the capability of substantially improving human rights for the MCCs and the Palestinian population as a whole. This author recommends three concrete steps be taken to ameliorate the situation.

First, the PA must close most of its prisons and jails. In the PA controlled areas there are currently 152 prisons and jails, for a total population of two million. Most of these facilities are not directly regulated or overseen by members of the PA. Often the untrained and unprofessional security officers have nobody to monitor their conduct. What goes on behind closed doors in their isolated custodial facilities is unlikely to affect their status in their security force, unless, of course, they uncover a plot against the PA leadership. Since there are no repercussions to be had and only honors to gain, the security officers are left largely to their own discretion when dealing with prisoners. By closing down most of these institutions the fledgling PA bureaucracy could better regulate the remaining institutions, therefore protecting the human rights of the detainees and prisoners being held.

Second, as was stated earlier in this article, many members of the PA security forces are untrained in the law and procedure for arresting and confining suspects. Flagrant human rights abuses would be less likely to occur if the PA properly trained its

⁴⁸³ The US Department of State Annual Report on International Religious Freedom for 1999, Section I.

⁴⁸⁴ The US Department of State Annual Report on International Religious Freedom for 1999, Section I.

⁴⁸⁵ The US Department of State Annual Report on International Religious Freedom for 1999, Section I.

⁴⁸⁶ See The Myth of Christian Persecution By the Palestinian Authority, LAW-- THE PALESTINIAN SOCIETY FOR THE

PROTECTION OF HUMAN RIGHTS AND THE ENVIRONMENT , May 1998 at 39-40.

⁴⁸⁷ For the Record: The 'Persecution' of Christians under the Palestinian National Authority, PALESTINIAN HUMAN RIGHTS MONITOR, Feb. 1998, at 5-6.

⁴⁸⁸ This position is shared by Victoria Wagner, one of the three researchers who ably assisted in collecting testimony for this article.

security forces imposed penalties for violating the rule of law, and reduced the number of distinct security forces and the total number of security personnel. The third recommendation is intended to address the problem that many security personnel, lacking much to do, are prone to target the non-conforming members of society (such as MCCs) in the hope of gaining recognition.

Third and finally, it has been argued in this article that the Palestinian judiciary lacks the independence within the Palestinian political sphere to enforce its decisions and thereby adequately protect human rights. There are two interrelated problems here. The first is the centralization of power in the executive. The latter is the absence of any safeguards which delineate the separation of powers between the courts and the administration in a constitutional sense. With these problems in mind it is proposed that a detailed Constitution be adopted, which specifies the independence of the judiciary from the legislative process and especially from arbitrary executive decree.⁴⁸⁹ A constitutional court should be developed to ensure the constitutionality of any laws passed. It is especially important that proper procedures be put in place governing the appointment and removal of judges and a Supreme Judicial Council needs to be reestablished with this in view.⁴⁹⁰

These ideas would work in theory, however currently the PA has limited resources or technical ability to engage in the structural reform needed to rectify these abuses. For various reasons the PA has enjoyed a virtual honeymoon period since it came into existence more than five years ago. Moreover, as the date of PA sovereignty approaches, there is a high possibility that current violations will be perpetuated within the legal framework of the new state.

The U.S. and Israeli governments each have their own mixed motives which limit their respective willingness to pressure the PA to reduce human rights abuses. The International Religious Freedom Act, signed into law by President Clinton, gave the President the authority to sanction nations who, according to an annual report issued by the State Department, infringe upon the religious freedoms of their citizens. A wide range of constraints are permitted from a private demarche to complete economic sanctions. Recently, the US has committed to give \$100,000,000 worth of security equipment this year to the PA as part of the five year plan of \$900,000,000 in contributions.⁴⁹¹ Clearly the US has considerable economic leverage in the region and could use that influence to demand human rights improvements. However, the President would be reluctant to impose serious sanctions against the Palestinian entity, which is not at this time a sovereign state, or even push human rights as an issue in the peace talks. The primary objective of the US in the region, is peace and the secondary objective is the fight against terrorism. To rebuke the PA or to make human rights an issue in the peace negotiations would cause the US to lose influence with the PA, when dealing with other 'more important' issues.

Israel has not devoted much effort to pressing Arafat's PA on the issue of the MCCs, because of its overriding concern for security and, secondarily, because its concern for the political survival of the peace process. Israel depends on Arafat staying in control of the PA for these objectives to be met. If Israel publicly rebukes the PA for its offenses against the MCCs this could strain the relationship, possibly compromising Israel's two paramount goals. There is also a risk that by publicly taking an interest in the MCCs, Israel might be seen by some Palestinians as the MCCs' patron, making the claim that MCCs are collaborators more believable.

In the opinion of this author, the U.S. and Israel should make human rights a major issue in the final status peace process negotiations. By using financial incentives during this pre-state stage, the U.S., Israel, and international donor communities can prevent these 'bad habits' from accompanying Arafat into the emerging Palestinian state. Financial incentives can be ear-marked to train PA security personnel in human rights practices to construct modern penal institutions and to reform the legal justice system.

If the internal reforms do not work or pressure from the US, Israel and the donor communities does not materialize, there is a last resort for the MCCs and the Palestinians of the West Bank and Gaza. Since the PA is not a sovereign state, even though it has administrative responsibilities in designated areas of the West Bank and Gaza, Israeli military rule is still in effect in the territories. This means, legally speaking, that human rights are the responsibility of the PA on a day-to-day basis but the ultimate responsibility is Israel's.⁴⁹²

Therefore the Israeli Supreme Court is the last legal resort for Palestinians living under the jurisdiction of the PA. The Supreme Court, long a liberal voice, has, in recent years, become increasingly activist and focused on human rights and the rule of law. It has frequently demonstrated its commitment to ensuring human rights in the West Bank and Gaza. Of course the MCCs living in the PA would be worried over utilizing Israeli legal institutions, but these people clearly have a need for an institution of last resort to turn to, as demonstrated by the actions of the MCCs who have sought asylum in Israel.

It seems logical that instead of turning to Israeli courts the MCCs should turn to the PA's justice system, at least in the first instance. This, however, would be largely nonproductive at the present time. The PA's justice system has no practical

⁴⁸⁹ See REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 39 (1999) for a more detailed discussion on the constitutional framework in the PA.

⁴⁹⁰ REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN

RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS, at 57 (1999).

⁴⁹¹ Lahoud, Lamia. US to Give PA \$100m. in Security Aid. THE JERUSALEM POST, January 31, 2000 at 4.

⁴⁹² Justus Weiner, Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications 27 N.Y.U. J. INT'L L. & POL. 761, 855 (1995).

autonomy from the executive branch, even though in theory it is independent. The PA president and justice minister can hire, fire, retire, or otherwise control all judicial employees, including judges at all levels. Two previous chief justices were 'retired' by the executive branch, one possibly for an unsympathetic comment made against the PA in an interview and the second for a decision that called for the release of ten Birzeit University students who were being detained unlawfully.⁴⁹³ In addition, the then attorney general resigned, in protest, in 1997 because of encroachment into the affairs of the judicial branch, by both the executive branch and by the heads of the various police and security forces.⁴⁹⁴

The PA's adoption of sound human rights policies and practices would contribute immeasurably to the success of the peace process. Although Chairman Arafat's commitment to these values in the agreements is vague at best, and international law offers no readily applicable standard, the Palestinians' expectations regarding an improvement in their personal liberty⁴⁹⁵ deserves to be met and should not be limited to issues of pride or prestige.

⁴⁹³ AMNESTY INTERNATIONAL, PALESTINIAN AUTHORITY DEFYING THE RULE OF LAW: POLITICAL DETAINEES 9-10 (1999).

⁴⁹⁴ Cf. YEZID SAYIGH & KHALIL SHIKAKI, THE COUNCIL ON FOREIGN RELATIONS, STRENGTHENING PALESTINIAN PUBLIC INSTITUTIONS 57-58 (1999).

⁴⁹⁵ AL-HAQ, A HUMAN RIGHTS ASSESSMENT OF THE DECLARATION OF PRINCIPLES ON INTERIM SELF-GOVERNMENT ARRANGEMENTS FOR PALESTINIANS, 9-10 (1993).

Appendix - Egypt

Articles in the Egyptian Constitution referring to Freedom of Religion⁴⁹⁶

Article 2:

Islam is the Religion of the State. Arabic is its official language, and the principal source of legislation is Islamic Jurisprudence (Sharia).

Article 9:

The family is the basis of the society founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family- with all values and traditions represented by it- while affirming and promoting this character in the interplay of relations within the Egyptian society.

Article 12:

Society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, the historical heritage of the people, scientific facts, socialist conduct and public manners within the limits of the law.

The State is committed to abiding by these principles and promoting them.

Article 19:

Religious education shall be a principal subject in the courses of general education.

Article 40:

All citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed.

Article 46:

The State shall guarantee the freedom of belief and the freedom of practising religious rights.

Articles in the Egyptian Constitution referring to the State of Emergency⁴⁹⁷

Article 137:

The President of the Republic shall assume executive power and shall exercise it in the manner stipulated in the Constitution.

Article 147:

In case it becomes necessary during the absence of the People's Assembly, to take measures which cannot suffer delay, the President of the Republic shall issue decisions in this respect which have the force of law.

Such decisions must be submitted to the People's Assembly, within fifteen days from the date of issuance if the Assembly is standing or at its first meeting in case of the dissolution or recess of the Assembly. If they are not submitted, their force of law disappears with retroactive effect without having to take a decision to this effect. If they are submitted to the Assembly and are not ratified, their force of law disappears with retroactive effect, unless the Assembly has ratified their validity in the previous period or settled their effects in another way.

⁴⁹⁶ State Information

Services.http://www.assembly.gov.eg/en_aconst53.htm#533begin

⁴⁹⁷ Article 137 of the Constitution enables the President to assume executive power exercised in the manner stipulated by the Constitution. Designed to allow the President, in the absence of the People's Assembly, to deal with critical situations quickly and effectively, the powers enable his decisions to have the force of law by enjoying the status of decree-laws. Secondly, that the State of Emergency specified by Article 147 of the Constitution as enabling the President to intervene by making decisions with the force of law had not been established.

Source: Egypt's Report on Separation of Powers. National report of the 10th Conference of the European Constitutional Courts, Egypt, Supreme Constitutional Court.
<http://www.mkab.hu/conference/okhe/egypthe.htm>