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## **UN human rights system & Freedom of religion or belief: gaps and perspectives**

***Expert Seminar on "UN and Freedom of Religion or Belief" (Geneva, 14 December 2012)***

**By Willy Fautré, *Human Rights Without Frontiers***

HRWF (18.12.2012) - The UN is a complex organization with 6 principal organs overseeing 15 agencies and other specialized departments. The UN system is based on treaty-based bodies and charter-based bodies monitoring the implementation of certain treaties. With the passing years, a number of gaps have come to light in respect to the Freedom of Religion and Belief (FORB):

**Gap 1:** Two "unfree" countries, Mauritania and Maldives, were elected to be vice-presidents of the United Nations Human Rights Council (HRC) for 2012, even though they have laws providing for the death sentence for anyone who renounces Islam. How is this possible? There should be objective and undisputable criteria which bar access to such positions, such as the failure to ban the death penalty or ratification of the First Protocol to the ICCPR which provides a complaint recourse mechanism (see below).

**Gap 2:** The First Protocol to the ICCPR (1976) empowers the Human Rights Committee to receive communications from individuals of those countries which have ratified this Protocol and who claim a violation of their ICCPR rights. Only 105 countries have ratified the First Protocol! For instance, Japan has still not ratified this Protocol, although this was one of the recommendations addressed to Japan at its Universal Periodic Review in 2008. More than four years later, this has still not been done.

**Gap 3:** Resolution 1503 of the HRC Complaint Procedure called "Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms" is implemented in total secrecy. It is confidential in nature, decisions are not made public and applicants are not informed of them. The procedure only reviews situations involving gross and systematic violations and not individual contraventions of human rights. The Council only announces which countries are under examination.

**Gap 4:** Another concern is the narrowing of the freedom of religion (freedom to change one's religion) from the Universal Declaration to the ICCPR and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

The Universal Declaration language is about “*freedom to change his or her religion or belief;*” however, in the ICCPR only the “*freedom to have or to adopt a religion or belief of his choice*” is respected. Similarly, in the 1981 Declaration, “*Everyone shall have the right to freedom of thought, conscience and religion, [including] freedom to have a religion or whatever belief of his choice.*”

**Gap 5:** The status of the Special Rapporteur on FORB should be enhanced. He should be granted more resources and be allowed to make more country visits. He should also be paid and not have to work pro bono.

These are a few gaps, among others, that were raised by *Human Rights Without Frontiers* in a presentation at an expert seminar on “The UN and Freedom of Religion or Belief” on 14 December 2012 in Geneva. It will not be easy to correct them but it is high time to start doing it.

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## **Freedom of religion or belief in the UN human rights system: gaps and perspectives**

### ***Expert group gathered in Geneva to identify gaps and potential improvements in the UN human rights system concerning freedom of religion or belief***

HRWF (18.12.2012) – “More needs to be done to protect the freedom of religion or belief of people who are partly or wholly denied this right in today’s world and who are victims of intolerance and discrimination, based on religion or belief,” said a group of experts who gathered in Geneva on 14 December.

The seminar was organized by *Geneva for Human Rights*<sup>1</sup>, with financial assistance from the Netherlands government, to take a fresh look at the available UN standards and mechanisms addressing the issue of freedom of religion or belief (FORB).

FORB experts exchanged views on the current state of the subject, identified a number of gaps and tried to propose potential improvements for better protection of FORB.

Participants included experts on religious intolerance, freedom of religion and religious minorities appointed by the UN Human Rights Council, members of human rights treaty bodies, academics, governments and representatives from religious groups and non-governmental organizations. The participants were diverse in background, ethnicity and geography. Nearly every region of the world was represented.

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<sup>1</sup> Geneva for Human Rights (GHR) is a non-profit international association organized under Swiss law with tax exemption status from the Geneva authorities since 2005. It obtained consultative status with the UN Economic and Social Council in July 2009. Its central activity is training human rights defenders and those involved in countries at the national level who are in human rights promotion and protection. Geneva for Human Rights holds expert seminars on important human rights topics from time to time. GHR offers a unique expertise in the training of intergovernmental organizations on international human rights standards and procedures, and on national and international implementation strategies. All GHR courses combine the theoretical knowledge of international relations and international law with exposure to the reality of international diplomacy and the experiences of defenders in the field.

A full report of the expert seminar's results and participants will be published at a later date.

Among the observations made at the seminar<sup>2</sup>:

- It is important to understand that religious freedom standards are designed to protect both believers and non-believers, not the religion or belief itself;
- These standards also protect places of worship and sacred objects of religious groups;
- Freedom of religion implies the right to change one's religion and the right to hold non-theistic and atheistic beliefs;
- The freedom of religion or belief should be considered as part of the whole corpus of human rights standards and analyzed and utilized as such;
- Many of the human rights mechanisms that are available for protecting the freedom of religion or belief can be accessed more often and more effectively, such as the international human rights treaty bodies, the Human Rights Council's Special Rapporteur on FORB, the UN Council's independent expert on minorities, the Council's Universal Periodic Review mechanism and the submission of complaints at international, regional and national levels through the courts, national human rights commissions and ombudspersons.
- Gaps in current standards should be addressed, such as how to impose more accountability and better transparency in state efforts to protect freedom of religion or belief, how to improve women's rights in circumstances when such rights conflict with religious beliefs or where women are threatened because of such beliefs, how to address lesbian, gay and transgender rights when such rights conflict with religious beliefs or where such persons are threatened because of such beliefs and how to establish better preventive mechanisms to provide early warning and avoid situations of mass violence and persecution against religious groups.
- However, the complexity of FORB is poorly served if one only considers human rights law standards. Law will never be able to engage in the full complexity of FORB practice. Attitudes and cultural practices also need to change.
- It is acknowledged that religious and belief groups are valuable assets for our societies. Religion or belief is one of the fundamental elements in a person's conception of life itself. The freedom of religion or belief should be fully respected and guaranteed.
- The position of people belonging to religious minorities is often vulnerable.
- Religious and belief groups would be more effective in protecting FORB if they would advocate not only for the protection of their own religion or beliefs but those of others as well.
- To the extent that faith groups seek protection for their own members, there is an ethical obligation to consider how they can best structure and administer their own organizations in ways that are consistent with human rights standards.
- Religious groups should not seek privileged status for their own group, triggering problems for other groups.
- The human rights treaty bodies could help by developing more guidance on how the freedom of religion or belief applies to their particular treaty framework.
- A compilation of available jurisprudence and guidance from the treaty bodies and other mechanisms relating to the freedom of religion or belief should be collected and made widely available to rights holders, advocates and religious groups.
- The UN Treaty Bodies and the monitoring mechanisms of the Human Rights Council, such as the Special Rapporteur on the Freedom of Religion or Belief, should be able to rely on high-quality and consistent servicing to enable them to perform their tasks; this requires the allocation of sufficient funds.
- A forum or other meeting should be organized to bring together relevant stakeholders on these issues and discuss gaps, improvements, patterns and trends.

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<sup>2</sup> Source: Press release of Geneva for Human Rights (17 December 2012).

For more information about the seminar and the future publication of the full report, please contact *Geneva for Human Rights* at:

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**Office of the United Nations High Commissioner for  
Human Rights: Report of the Secretary General -  
"Combating intolerance, negative stereotyping,  
stigmatization, discrimination, incitement to violence  
and violence against persons, based on religion or belief"**

***66/167. Combating intolerance, negative stereotyping, stigmatization,  
discrimination, incitement to violence and violence against persons, based on  
religion or belief***

The General Assembly,

*Reaffirming* the commitment made by all States under the Charter of the United Nations to promote and encourage universal respect for and observance of all human rights and fundamental freedoms without distinction as to, inter alia, religion or belief,

*Reaffirming also* the obligation of States to prohibit discrimination on the basis of religion or belief and to implement measures to guarantee the equal and effective protection of the law,

*Reaffirming further* that all human rights are universal, indivisible, interdependent and interrelated,

*Reaffirming* that the International Covenant on Civil and Political Rights 1 provides, inter alia, that everyone shall have the right to freedom of thought, conscience and religion or belief, which shall include freedom to have or to adopt a religion or belief of one's choice and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching,

*Welcoming* Human Rights Council resolution 16/18 of 24 March 2011,2

*Reaffirming* the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance, *Deeply concerned* about incidents of intolerance, discrimination and violence against persons based on their religion or belief in all regions of the world,

*Deploring* any advocacy of discrimination or violence on the basis of religion or belief,

*Strongly deploring* all acts of violence against persons on the basis of their religion or belief, as well as any such acts directed against their homes, businesses, properties, schools, cultural centres or places of worship,

*Strongly deploring*, further, all attacks on and in religious places, sites and shrines in violation of international law, in particular human rights law and international humanitarian law, including any deliberate destruction of relics and monuments, *Concerned* about actions that wilfully exploit tensions or target individuals on the basis of their religion or belief,

*Noting with deep concern* the instances of intolerance, discrimination and acts of violence occurring in many parts of the world, including cases motivated by discrimination against persons belonging to religious minorities, in addition to the negative projection of the followers of religions and the enforcement of measures that specifically discriminate against persons on the basis of religion or belief,

*Expressing concern* at manifestations of intolerance based on religion or belief that can generate hatred and violence among individuals composing different nations, and in this regard emphasizing the importance of respect for religious and cultural diversity, as well as interfaith and intercultural dialogue, which contribute to promoting a culture of tolerance and respect among individuals, societies and nations,

*Recognizing* the valuable contribution of people of all religions or beliefs to humanity and the contribution that dialogue among religious groups can make towards an improved awareness and understanding of the common values shared by all humankind,

*Underlining* the fact that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance and respect for religious and cultural diversity and in the universal promotion and protection of human rights, including freedom of religion or belief,

*Underlining also* the importance of education in the promotion of tolerance, which involves the acceptance by the public of and its respect for religious and cultural diversity, including with regard to religious expression, and underlining further the fact that education, in particular at school, should contribute in a meaningful way to promoting tolerance and the elimination of discrimination based on religion or belief,

*Recognizing* that working together to enhance the implementation of existing legal regimes that protect individuals against discrimination and hate crimes, increase interfaith and intercultural efforts and expand human rights education is an important first step in combating incidents of intolerance, discrimination and violence against individuals on the basis of religion or belief,

*Welcoming* the establishment of the King Abdullah Bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue in Vienna, initiated by King Abdullah of Saudi Arabia, on the basis of the purposes and principles enshrined in the Universal Declaration of Human Rights,<sup>3</sup> and acknowledging the important role that the Centre is expected to play as a platform for the enhancement of interreligious and intercultural dialogue,

*Welcoming also*, in this regard, all international, regional and national initiatives aimed at promoting interreligious, intercultural and interfaith harmony and combating discrimination against individuals on the basis of religion or belief, 1. *Expresses deep concern* at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremist organizations and groups aimed at creating and

perpetuating negative stereotypes about religious groups, in particular when condoned by Governments;

2. *Expresses concern* that the number of incidents of religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief, continues to rise around the world, condemns, in this context, any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, as set forth in the present resolution and consistent with their obligations under international human rights law, to address and combat such incidents;

3. *Condemns* any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audiovisual or electronic media or any other means;

4. *Recognizes* that the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred, and expresses its conviction that a continuing dialogue on these issues can help to overcome existing misperceptions;

5. *Reiterates* the call made by the Secretary General of the Organization of the Islamic Conference at the fifteenth session of the Human Rights Council upon all States to take the following actions to foster a domestic environment of religious tolerance, peace and respect:

(a) Encouraging the creation of collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects in the fields of education, health, conflict prevention, employment, integration and media education;

(b) Creating an appropriate mechanism within Governments to, inter alia, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation;

(c) Encouraging the training of Government officials in effective outreach strategies;

(d) Encouraging the efforts of leaders to discuss within their communities the causes of discrimination, and developing strategies to counter those causes;

(e) Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;

(f) Adopting measures to criminalize the incitement to imminent violence based on religion or belief;

(g) Understanding the need to combat denigration and the negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, regional, and international levels through, inter alia, education and awareness-raising;

(h) Recognizing that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combating religious hatred, incitement and violence;

6. *Calls upon* all States:

(a) To take effective measures to ensure that public functionaries, in the conduct of their public duties, do not discriminate against an individual on the basis of religion or belief;

(b) To foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society;

(c) To encourage the representation and meaningful participation of individuals, irrespective of their religion or belief, in all sectors of society;

(d) To make a strong effort to counter religious profiling, which is understood to be the invidious use of religion as a criterion in conducting questioning, searches and other law enforcement investigative procedures;

7. *Also calls upon* all States to adopt measures and policies to promote the full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction;

8. *Calls for* strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs;

9. *Encourages* all States to consider providing updates on efforts made in this regard as part of ongoing reporting to the Office of the United Nations High Commissioner for Human Rights, and in this respect requests the United Nations High Commissioner for Human Rights to include those updates in her reports to the Human Rights Council;

10. *Requests* the Secretary-General to submit to the General Assembly at its sixty-seventh session a report on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, as set forth in the present resolution.

*89th plenary meeting*

*19 December 2011*

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## **'State religions' should never be used for national identity politics – UN expert**

UHCHR (06.03 2012) – United Nations Special Rapporteur Heiner Bielefeldt today said that “official ‘State religions’ should never be used for purposes of national identity politics, as this may have detrimental effects for the situation of individuals from minority communities.” He also urged States to make sure that any privileges, financial or otherwise, granted to ‘official’ religions or beliefs should not amount to any kind of discrimination against members of other religions or beliefs.

“It seems difficult, if not impossible, to conceive of an official ‘State religion’ that in practice does not have adverse effects on religious minorities, thus discriminating against their members,” said Mr. Bielefeldt presenting his report\* on freedom of religion or belief and ‘recognition’ issues, at the current session of the UN Human Rights Council.

The report explores key issues from the meanings of 'recognition' regarding the right to freedom of religion or belief, to the limits that registration procedures can impose on certain religious or belief communities, and the need for States ensure that an official 'State religion' does not discriminate religious minorities.

"Respect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as it has the status of a human right, prior to and independent of any acts of State approval," the Special Rapporteur stressed.

Mr. Bielefeldt distinguishes between three different meanings of the concept of State recognition, underscoring the need of clearly distinguishing between them to avoid misunderstandings that could affect the implementation of freedom of religion or belief, or even undermine its status as a universal human right.

- "Recognition" as due respect for the status of all human beings as right holders by virtue of their inherent dignity.
- "Recognition" in terms of States providing the status of legal personality, which religious or belief groups may need for the exercise of important communitarian aspects of their freedom of religion or belief.
- "Recognition" in the sense of States according a specific privileged status position to some religious or belief communities.

The UN independent expert called on States to offer appropriate options for religious or belief communities to achieve the status of legal personality, which may be needed to undertake important community functions relevant for the full enjoyment of freedom of religion or belief, which is a right of individuals to be exercised either alone or together with others. "Registration procedures for obtaining legal personality status should be quick, transparent, fair, inclusive and non-discriminatory," he said.

**(\*) Check the full report:**

**[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60_en.pdf)**

**Heiner Bielefeldt assumed his mandate as Special Rapporteur on freedom of religion and belief on 1st August 2010. He is Professor of Human Rights and Human Rights Politics at the University of Erlangen-Nürnberg. From 2003 to 2009, he was Director of Germany's National Human Rights Institution. Mr. Bielefeldt's research interests include various interdisciplinary facets of human rights theory and practice, with a focus on freedom of religion or belief. Log on: <http://www2.ohchr.org/english/issues/religion/>**

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## **Sikhs win turban case against France at the UN**

***"The UN Human Rights Committee has asked France to submit a report by March 15th on measures it is taking to remedy the violation of the religious freedom of 76 year old Ranjit Singh, who was asked to remove his turban for his ID photo" said Mejjindarpal Kaur, UNITED SIKHS Legal Director, who is in the fore-front of a legal campaign for French Sikhs' right to wear their turban***

ICHR (12.01.2012) - The UN Human Rights Committee (UNHRC) has concluded that France had violated the religious freedom of 76 year old Ranjit Singh when he was asked

to remove his turban for his ID photograph. This was disclosed today at a media conference, in Bobigny (near Paris), by the UNITED SIKHS legal team, who had filed a communication on behalf of Ranjit Singh to the UNHRC in December 2008.

The media conference was told that the UNHRC observed that "even if the obligation to remove the turban for the identity photograph might be described as a one-time requirement, it would potentially interfere with the author's (Ranjit Singh's) freedom of religion on a continuing basis because he would always appear without his religious head covering in the identity photograph and could therefore be compelled to remove his turban during identity checks."

The Committee said that France had failed to explain how the Sikh turban hindered identification since the wearer's face would be visible and he would be wearing the turban it at all times, therefore, the regulation constituted a violation of article 18 of the International Covenant on Civil and Political Rights (ICCPR), which was entered into force for France on 4 February 1981. You may read the Committees views in full here. The views were adopted at the 102nd session of the Committee's sitting.

"I had faith that truth and justice would prevail and I patiently waited for this day. I pray that France will now fulfil its obligation and grant me a residence card bearing my photo without baring my head," said Ranjit Singh, who despite his ill-health has had no access to the public health-care system or to social benefits since 2005 because his residence card was refused due to his refusal to remove his turban.

"UNITED SIKHS is heartened by the Committee's observations that France is under an obligation to provide Ranjit Singh with an effective remedy, including a reconsideration of his application for a renewal of his residence permit and a review of the relevant legislative framework and its application in practice. France, the Committee noted, is also under an obligation to take steps to prevent similar violations in the future," said Mejjindarpal Kaur, UNITED SIKHS Legal Director, who addressed the media conference.

"We now look to France to fulfil its treaty obligations under International law and its moral duty to ensure that the freedom of religion and belief is upheld for everyone who lives within its territory," she added.

"We are very pleased with the views that the Committee adopted and we welcome France's compliance with these findings. We also look forward to a similar resolution for Shingara Singh, whose case is still pending before the Committee," O'Melveny & Myers, a New York law firm engaged by UNITED SIKHS, said in a statement through their attorneys who spoke during a telephone interview. A decision is still awaited for Shingara Singh, whose passport has not been renewed by France because he refused to remove his turban for his ID photograph.

**You may read a previous press release on our advocacy for religious freedom here.**

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