

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## ISHR'S SUMMARIES OF DOCUMENTS FOR THE 6<sup>TH</sup> SESSION OF THE COUNCIL

### Report of the Special Rapporteur on freedom of religion or belief<sup>1</sup>

#### Name of mandate holder

Asma Jahangir

#### Mandate

The Special Rapporteur monitors and reports on violations of religious freedoms around the world to prevent intolerance and discrimination based on religion or belief. She examines governmental actions that are inconsistent with the provisions of the UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. These provisions include the rights to freedom of thought, conscience and religion, choose a religion or belief, manifest this religion or belief in worship, observance, practice and teaching, and protection from discrimination on the grounds of religion or other belief. Her work is also based on the *ICCPR* and the *UDHR*, which state that every person has the right to freedom of thought, conscience and religion.

#### Activities

- Report pursuant to Human Rights Council resolution 4/10 of 30 March 2007,<sup>2</sup> which requested the Special Rapporteur on freedom of religion or belief to report to the Human Rights Council at its sixth session

#### Summary and key conclusions:

In her report, the Special Rapporteur focuses on substantive questions and 'gives an overview of the mandate's issues of concern according to the categories of her framework of communications'. She highlights situations where the right to freedom of religion or belief has been infringed, and recommends proactive strategies in order to prevent such violations.

#### Freedom of religion or belief:

- There are four broad types of situations which constitute violations and limitations of the **freedom to adopt, change or renounce a religion or belief**: (1) situations where State agents try to convert, reconvert or prevent the conversion of persons; (2) situations where religious conversion is prohibited by law and punished accordingly; (3) situations where members of majority religious groups seek to convert or

<sup>1</sup> Summary prepared by Yuri Saito, Intern, ISHR, edited by Gareth Sweeney, Geneva Program, ISHR.

<sup>2</sup> UN Doc. A/HRC/6/5, 20 July 2007.

reconvert members of religious minorities by violent means; and (4) situations where so-called “unethical” conversions have been reported.

- **Freedom from coercion** should be broadly interpreted; it also entails a positive obligation.
- **The right to manifest one’s religion or belief** may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

#### **Discrimination:**

- To prevent **discrimination on the basis of religion or belief**, inter-religious and intra-religious dialogue should be promoted at all levels; education can serve as an essential tool.
- The notion of an official or **State religion** must never be exploited at the expense of the rights of minorities and the rights linked to citizenship.

#### **Vulnerable groups:**

- Many **women** suffer from aggravated discrimination. It is important to ensure that the right to freedom of religion or belief does not unintentionally become an instrument for undermining freedoms. Women have to be empowered to partake in decision-making and in inter-religious dialogue.
- Reports of alleged violations of the right to freedom of religion or belief of **persons deprived of their liberty** have been increasing. Personnel of detention facilities must be adequately trained. The religious belief of a detainee should never be used against him or her.
- **Religion-based refugee** claimants should not be required to hide their religion or to practise in secret in order to avoid persecution. When the asylum-seeker becomes a refugee *sur place* as a result of his own actions, e.g. by converting after his arrival in the country of asylum to a religion which would make him prone to persecution in his home country, the genuineness of the action should be evaluated on a case-by-case basis.
- Discrimination faced by **children** derives both from governmental actions and from incidents provoked by non-State actors. The rights and duties of parents must be respected, but the best interests of the child shall be a primary consideration. Education plays a key role in this field.
- States have an obligation to guarantee the right of **minorities** to profess and practise their own religion. States are responsible even when abuses are committed against minorities by non-State actors.
- Many limitations placed on the right of **migrant workers** and members of their families to manifest their religion or belief may fail to comply with Article 18(3) of the ICCPR.<sup>3</sup>

#### **Intersection of freedom of religion or belief with other human rights:**

- **Freedom of expression:** any attempt to lower the high threshold of Article 20 would not only shrink the frontiers of free expression, but would also limit freedom of religion or belief itself.<sup>4</sup>
- **Right to life, right to liberty:** States have obligations to protect religious communities and to enable them to practise their faith in all security, bring the perpetrators of acts of religious intolerance to justice, and to promote a culture of religious tolerance.
- **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment:** the corporal punishment of schoolchildren and certain forms of punishment contained in Sharia penal codes are incompatible with human rights standards.<sup>5</sup>

#### **Cross-cutting issues:**

---

<sup>3</sup> Article 18(3) of the ICCPR states: “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.”

<sup>4</sup> According to Article 20 of the ICCPR, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be proscribed by law.”

<sup>5</sup> The Special Rapporteur ‘came to the conclusion that stoning or amputation constitute, if not torture, at least cruel, inhuman and degrading treatment that is prohibited in absolute terms by various international conventions.’, *supra* note 2, para. 42.

- The fact that no **derogation** is allowed from Article 18 of the ICCPR (freedom of religion or belief) not only implies that no individual can be deprived of this right, but also that States should avoid equating certain religions with terrorism as this may have adverse consequences on the right to freedom of religion or belief of all members of the concerned communities. Similarly, terrorist acts which are carried out by non-State actors in the name of religion ought to be delinked from religion.
- The burden of justifying a **limitation** upon the freedom to manifest one's religion or belief lies with the State.
- An autonomous and independent **institution** dealing specifically with complaints and conciliation in matters of religion or belief should be set up in each State.
- **NGOs** contribute to the work of the Special Rapporteur by providing information, and may also help in ensuring an effective follow-up to her observations. Governments must protect individuals who try to cooperate with the Special Rapporteur.

### **Key recommendations:**

- Many further efforts need to be made at the international and national levels in order to eliminate intolerance and discrimination based on religion or belief.
- States have to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of religion or belief, *inter alia*, by the provision of effective remedies in cases of violation.
- States and non-State actors have to abide by the applicable international human rights standards.
- States should devise proactive strategies in order to prevent violations of this right. Education could serve as an essential tool in this respect.
- Inter-religious and intra-religious dialogue is vital for the prevention of conflicts. This should not only include religious leaders, but could also involve initiatives at the grassroots level.

## **COUNCIL MONITOR STAFF**

**Kaavya Asoka**, Fellow, ISHR  
**Eléonore Dziurzynski**, Communications Officer, ISHR  
**Michael Ineichen**, Human Rights Officer, Geneva Program  
**Gareth Sweeney**, Deputy Manager, Geneva Program  
**Katrine Thomasen**, Manager, Geneva Program

## **AUTHOR**

**Yuri Saito**, Intern

## **ABOUT THE PUBLICATION**

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch/hrm/council](http://www.ishr.ch/hrm/council)

## **SUBSCRIPTION**

If you wish to receive Council Monitor reports by e-mail during the Council session, please e-mail [information@ishr.ch](mailto:information@ishr.ch) with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

## **COPYRIGHT AND DISTRIBUTION**

Copyright © 2007 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).