



International Legal Protection of the Right to Choose One's Religion and Change One's Religious Affiliation

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Introduction

Since its creation over six decades ago, the United Nations has been at the forefront in responding to threats posed to worldwide peace and human dignity. Among the most significant of the United Nations' contributions to the global community has been its efforts to preserve human rights and fundamental freedoms. Through the Universal Declaration of Human Rights (1948) ("UDHR") and subsequent legal instruments, the United Nations and its member states have recognized that every person has certain inviolable human rights that all governments must acknowledge and respect. This philosophy of universal human rights is based upon the fact that human dignity is an inherent characteristic of all people, not a mere privilege that a government may give or take away at its choosing.

In this context, the European Centre for Law and Justice (ECLJ)—an NGO in consultative status with the United Nations Economic and Social Council—and the American Center for Law and Justice (ACLJ) would like to draw attention to the growing number of violations of the fundamental right to freedom of religion that are occurring in numerous countries around the world, specifically the right to choose one's religion and change one's religious affiliation. Forced religious conversions and punishment for voluntary conversions are commonplace in many countries. Laws against apostasy, blasphemy, or proselytizing are used in conjunction with anti-conversion laws to create an atmosphere hostile to members of the majority faith who voluntarily convert to another religion. Those who voluntarily convert to a minority faith often find it impossible to have their religion changed on official government documents such as national identification cards.

¹ A brief summary of this report was submitted to the Sixth Session of the Human Rights Council as the official written statement by the ECLJ, a non-governmental organization with Special Consultative Status with the UN Economic and Social Council (ECOSOC).

In many countries, governments that have officially recognized the universal right to voluntarily change religions have failed to take action to preserve that right due to public pressure exerted by adherents of the majority religion. This has occurred both through official action such as arrests and imprisonment and official inaction such as failing to prevent or punish private acts of violence targeting voluntary religious converts. The universal right to choose one's religious affiliation creates an obligation for all governments to investigate and punish non-governmental acts of violence or discrimination that interfere with the freedom to choose one's religion. The United Nations must take action to ensure that all governments respect the universal freedom of thought, conscience, and religion that is a well-established part of customary international human rights law.

I. Anti-conversion laws, refusals to officially recognize voluntary religious conversions, forced religious conversions, and punishment for changing religions are a global problem that must be addressed.

A. *Egypt has refused to allow a convert from Islam to Christianity to change his religion on his identification card.*

The Egyptian Government has actively restricted the freedom to adopt the religion of one's own choice by refusing to allow Muslims who convert to another religion to change their religious affiliation on their national identity cards. The United Nations must ensure that Egypt and all other nations respect the freedom of thought, conscience, and religion that is enshrined in numerous international human rights instruments.

Mohamed Ahmed Hegazy, an Egyptian journalist and political activist, is the first Muslim-born Egyptian to challenge the Government's restrictions on conversion away from Islam.² He has filed suit in the Egyptian court system to have his conversion from Islam to Christianity recognized by the Egyptian Government and to have the details on his identity card changed to reflect his new religious beliefs.³ Hegazy was born a Muslim in the Egyptian city of Port Said on the Suez Canal in 1982.⁴ He converted from Islam to Christianity in 1998, at the age of sixteen, after a period of intensive study of

² Jonathan Wright, *Setting precedent, Egyptian seeks recognition as convert*, Reuters, Aug. 6, 2007, available at <http://africa.reuters.com/top/news/usnBAN724035.html>.

³ *Id.*

⁴ *Egypt: Muslim sues for right to convert to Christianity; Christian's attorney facing death threats from Egyptian security police*, Compass Direct News, Aug. 6, 2007, available at <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idlement=4978>.

religion.⁵ Hegazy made the decision to change his religious beliefs “because he believed that love and peace were the purposes of religion and he found in Christianity what he had long been seeking.”⁶

Hegazy’s case against the Egyptian Government is the culmination of a struggle with the Egyptian authorities that began soon after his conversion to Christianity. Hegazy has stated that after the authorities discovered his conversion, Egyptian police held him in custody for three days and tortured him.⁷ He was subsequently harassed several more times and, in 2001, he was arrested again for publishing a book of poems critical of the Egyptian state security police.⁸ In early 2007, Hegazy attempted to register his change of religion with the Egyptian Interior Ministry, but officials at the Interior Ministry rejected his request.⁹ On August 2, 2007, Hegazy filed a case in the Egyptian courts against Egypt’s Interior Ministry for rejecting his application to have Christianity replace Islam on his national identity card.¹⁰ Mohamed Hegazy is currently in hiding due to numerous death threats made against him, but he has vowed to continue to press his case for religious freedom in the Egyptian courts.¹¹

The Egyptian authorities have targeted Hegazy’s legal counsel to prevent Hegazy from asserting his right to freedom of religion in the Egyptian courts. Hegazy’s first lawyer, Mamdouh Nakhla of the Kalema Center for Human Rights, originally filed Hegazy’s petition to the Egyptian courts.¹² Due to intense public pressure and threats by Egypt’s state security police, however, Nakhla abandoned his representation of Hegazy.¹³ Additionally, in retaliation against Hegazy’s lawsuit, a number of Muslim clerics have filed a petition with the Egyptian courts against his first lawyer on charges of “causing sectarian strife.”¹⁴ On August 8, 2007, the Egyptian police arrested Hegazy’s second lawyer, Dr. Adel Fawzy Faltas of the Middle East Christian Association, after conducting a high-profile online chat session with Hegazy.¹⁵ An Egyptian prosecutor is considering charging Faltas with a number of

⁵ *Egyptian convert to Christianity goes into hiding after death threats*, Jordan Times, Aug. 13, 2007, available at <http://www.jordantimes.com/?news=1428>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Wright, *supra* note 1.

¹⁰ *Egypt: Muslim sues for right to convert to Christianity*, *supra* note 3.

¹¹ Maggie Michael, *Threats force Egyptian convert to hide*, Associated Press, Aug. 11, 2007.

¹² *Egypt: Authorities detain Christian rights advocates: Group leader helped Christian convert, who has new lawyer for conversion case*, Compass Direct News, Aug. 9, 2007, available at <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=4982>.

¹³ Michael, *supra* note 10.

¹⁴ Ethan Cole, *Egypt in Uproar Over Christian Convert Case*, Christianity Today, Aug. 11, 2007, available at <http://au.christiantoday.com/article/egypt-in-uproar-over-christian-convert-case/3091.htm>.

¹⁵ *Egypt: Authorities detain Christian rights advocates*, *supra* note 11.

offenses, including “converting Muslims to Christianity, destroying the reputation of Egypt and insulting Islam.”¹⁶ His third lawyer, Ramses Raouf el-Nagar, currently represents Hegazy.¹⁷

Although the conversion of Muslims away from Islam is not specifically outlawed in Egypt, the conversion of Muslims to any other religion contravenes some interpretations of Shari’a, a body of Islamic jurisprudence which is enshrined as the basis of all Egyptian legislation in Article 2 of the Egyptian Constitution.¹⁸ Further, while Egypt’s chief authority on Islamic law, Grand Mufti Ali Gomaa, has said that “worldly punishments” should only be imposed on Muslim converts to other religions when their conversions “endanger society,” fundamentalist Muslim clerics in Egypt dispute this interpretation of Islamic law and call for harsh punishments, including the death penalty, to be imposed on Muslims who convert to other religions.¹⁹ Given the dangers associated with conversion, the majority of Egyptian Muslims who convert away from Islam either practice their new religion secretly to avoid the attention of the Government or flee Egypt to Western countries more accepting of converts from Islam.²⁰

The refusal of the Egyptian Government to recognize the conversion of Muslims to another religion on national identity cards has serious negative consequences for religious converts. National identity cards are an important component of citizenship in Egypt, and Egyptian citizens without identity cards have difficulty moving within Egypt, “registering their children in school, opening bank accounts, and establishing businesses.”²¹ Muslim converts to other religions are forced to either deny their new faith and use a national identity card that does not reflect their religious affiliation or refuse to use their identity cards and become virtual non-citizens. This choice is not required of converts from other religions to Islam because such conversions are legal and relatively easy in Egypt.²² The refusal of Egyptian authorities to change the religious affiliation of converts from Islam on national identity cards is a serious and unjustifiable infringement upon the right to change religions.

Mohammed Hegazy has brought his case in the Egyptian courts not only to change the law on conversion from Islam in Egypt and to vindicate his own rights but also to vindicate the rights of other

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Egypt mufti reaffirms Muslim freedom of religious choice*, Agence France Presse, July 28, 2007, available at http://news.yahoo.com/s/afp/20070726/wl_mideast_afp/egyptreligion_070726175007.

²⁰ *Egyptian Christian convert goes into hiding amid death threats*, Kuwait Times, Aug. 11, 2007, available at http://www.kuwaittimes.net/read_news.php?newsid=MTAxNzY2OTk2MA==.

²¹ United States Department of State, Bureau of Democracy, Human Rights and Labor, *2006 Report on International Religious Freedom* (Sept. 30, 2006), available at <http://www.state.gov/g/drl/rls/irf/2006/> [hereinafter “U.S. State Report”].

²² *Egyptian convert to Christianity goes into hiding after death threats*, *supra* note 4.

converts and even the rights of his own family.²³ Indeed, Hegazy is married to another convert to Christianity named Zeinab who is four months pregnant with the couple's first child. In Egypt, the officially recognized religious affiliation of the father determines the religious affiliation of the child. Hegazy and his wife desire for their child to be born a Christian so that their child can have a Christian name, receive a Christian education and, one day, marry in a church. Hegazy therefore wants to have the religious affiliation on his identity card changed both to set a precedent in favor of religious freedom in Egyptian law and to ensure that his child "can be openly raised [as a] Christian."²⁴ Hegazy has said, "I think it is my natural right, to embrace the religion I believe and not to have to have a double personality for me as well as for my wife and my expected baby."²⁵

B. Malaysia has refused to allow a convert from Islam to Christianity to change her religion on her identification card.

Lina Joy, a native Malay who was born a Muslim, began attending a Christian church in 1990 and was baptized a Christian in 1998. In 1998, Joy applied for a name change on her national identification card which was granted, but the National Registration Department would not change her religious designation from Muslim to Christian. She filed a lawsuit in civil court, but her case was directed to the Shari'a court system. Malaysia's court system is divided: a civil court handles some matters for Muslim citizens and most matters for non-Muslims while Shari'a courts handle cases involving Muslims pertaining to civil, family, marriage, and personal rights. On appeal, Joy claimed that the Shari'a courts did not have jurisdiction over her since she was a Christian, but her plea was denied.²⁶ On May 30, 2007, the highest civil court in Malaysia ruled that it had no jurisdiction to rule on the conversion and Joy would be required to seek remedy in the Shari'a courts.

If Joy subjects herself to the Shari'a courts' jurisdiction, she could face imprisonment since the Shari'a courts consider apostasy or conversion a crime. Due to the state's failure to recognize her conversion, Joy is unable to marry her Christian fiancé because Malaysia prohibits marriage between Muslims and non-Muslims.²⁷ Joy's ordeal has dealt a blow to Malaysia's self-promoted image as a tolerant nation.

²³ *Id.*

²⁴ *Id.*

²⁵ *Egypt: Muslim sues for right to convert to Christianity, supra note 3.*

²⁶ Eileen Ng, *Christian Convert Fights Malaysian Law*, May 27, 2007, available at <http://www.foxnews.com/wires/2007May27/0,4670,MalaysiaChristianConvert,00.html>

²⁷ Hannah Beech, *Is Religious Conversion a Crime?*, Time, May 31, 2007, <http://www.time.com/time/printout/0,8816,1626720,00.html>.

C. *Hamas gunmen reportedly kidnapped a Christian woman and forced her to convert to Islam.*

In August 2007, Fatah government officials stated that Hamas gunmen had abducted Sana al-Sayegh, a dean and professor at Palestine University, and forced her to convert from Christianity to Islam.²⁸ According to reports, the professor was held for two weeks, was not allowed to contact her family members, and was forced to change her religion and marry a Muslim man. The professor was reunited with her family during a meeting held at the home of Rafik Makki, a Hamas leader, where she stated—while surrounded by armed Hamas guards—that the conversion was actually voluntary. Her family believes that the conversion was not voluntary and that she made that statement under duress. The Muslim man whom al-Sayegh is alleged to have married has stated that he had no knowledge of the marriage. While Hamas officials claimed that the reported forced conversion was voluntary, sources close to the family said that she would not willingly convert to Islam and she had “called her parents to say she was being held against her will in order to marry a Muslim man”²⁹ Subsequent attempts by the family to see her have been unsuccessful.³⁰

D. *In many countries, those who voluntarily convert from the majority religion to another faith or encourage such conversions face arrests and violence under anti-conversion, apostasy, and blasphemy laws.*

Unfortunately, the situations in Egypt, Malaysia, and the Gaza Strip are not isolated incidents. In many countries, forced religious conversions and punishment for voluntary conversions are commonplace. For example, in a September 2005 report to the U.N. General Assembly, the Special Rapporteur on Freedom of Religion or Belief (Asma Jahangir) observed, “questions related to change of religion are at the very heart of the mandate on freedom of religion or belief. Violations and limitations of this aspect of the right to freedom of religion are unacceptable and still occur too often.”³¹ She explained that there are four types of situations in which the right to change religions may be jeopardized:

- (a) State agents try to convert, re-convert or prevent the conversion of persons;

²⁸ Khaled Abu Toameh, *Hamas Forced Professor to Convert*, Jerusalem Post, Aug. 5, 2007, available at <http://www.jpost.com/servlet/Satellite?cid=1186066387589&pagename=JPost%2FJPArticle%2FPrinter>.

²⁹ Aaron Klein, *Christian woman ‘forced to convert to Islam’; Professor missing for weeks, indicates she’s abducted, then surfaces as Muslim*, Aug. 5, 2007, WorldNetDaily, available at http://worldnetdaily.com/news/article.asp?ARTICLE_ID=57019.

³⁰ Toameh, *supra* note 27.

³¹ *Elimination of All Forms of Religious Intolerance, Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, Asma Jahangir*, Doc. No. A/60/399 (Sept. 7, 2005), at para. 40, available at <http://www.ohchr.org/english/bodies/chr/informal/60/documents.htm>

- (b) Religious conversion is prohibited by law and punished accordingly;
- (c) Members of majority religious groups seek to convert or reconvert members of religious minorities; and
- (d) So-called “unethical” conversions have been reported.³²

The Special Rapporteur explained that she had received reports

[about] situations where State officials at different levels, often municipal, and different institutions (police, army) tried to convert members of religious groups, often of minority religious communities, or to force them to renounce their beliefs. They did so by threatening to kill them or their relatives, depriving them of their liberty, torturing and ill-treating them or threatening to dismiss them from their jobs. In some instances State officials tried to make believers renounce their religion and join a State-approved religion.³³

The Special Rapporteur further explained that

[t]he punishment for conversion can consist of arrest and trial for “apostasy”, imprisonment, and sometimes the death penalty. In some countries other penalties can be imposed, such as the suspension of all contracts and inheritance rights, the annulment of marriages, loss of property or the removal of children. Administrative requirements can also make it difficult to change one’s religion or belief: in a number of cases converts have found it impossible to obtain identity cards after having changed their religion. Where conversion is not actually prohibited by law, converts can be harassed or threatened by State and religious officials.³⁴

In many countries, individuals seeking to accept the majority religion face no difficulties, but those desiring to change from the majority religion to another faith are prevented from doing so. Anti-conversion laws and laws against apostasy, blasphemy, or proselytizing have resulted in an infringement upon human rights which the United Nations must address because, as stated by the Human Rights Committee, freedom of religion includes the “right to replace one’s current religion or belief with another.”³⁵ Governments must also do much more to protect those who voluntarily convert from the majority religion to another faith from violent acts committed by private parties.

1. Anti-conversion laws are used to prevent voluntary conversions from the majority religion and punish those who encourage such conversions.

³² *Id.* at para. 41-45.

³³ *Id.* at para. 42.

³⁴ *Id.* at para. 43.

³⁵ U.N. Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, CCPR/C/21/Rev.1/Add.4 (1993), available at <http://www.unhcr.ch/tbs/doc.nsf/MasterFrameView/9a30112c27d1167cc12563ed004d8f15?Opendocument>.

In many countries, anti-conversion laws which purport to protect individuals from forced conversions actually provide an avenue for the government to discriminate against voluntary converts. Many states within India have instituted this type of anti-conversion law, and Sri Lanka and Bangladesh have used the laws passed in India as models for their own anti-conversion legislation.³⁶ While India's constitution explicitly prohibits discrimination on the basis of religion,³⁷ India's anti-conversion law, called the Freedom of Religion Act, actually results in discriminatory practices against minority religious groups. This law was "enacted in Rajasthan (2006), Gujarat (2003), Madhya Pradesh (1968), Chhattisgarh . . . Arunachal Pradesh (1978) and Orissa (1967). . . . A similar law is expected to be brought in Jharkhand."³⁸ With some variation among the Indian states, the Act provides that "[n]o person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion."³⁹ Some Indian states further require individuals to provide the government with a declaration and registration of their conversion. Penalties for violating the Act range from monetary fines to imprisonment.⁴⁰

While these anti-conversion laws, on their face, appear to protect religious adherents only from attempts to induce conversion by improper means, the laws' failure to clearly define what makes a conversion improper bestows governments with unfettered discretion to accept or reject the legitimacy of religious conversions. Governments have described "subtle forms of humanitarian aid and development carried out as a normal part of [a] Church's mission"⁴¹ as a cause of improper and unethical conversions. Anti-conversion laws are used to prevent religious minorities from seeking voluntary converts from members of the majority faith. The United States Commission on International Religious Freedom noted that, "[i]n June 2006, a report by the Indian national government's National Commission for Minorities (NCM) found that Hindu extremists had frequently invoked the state's anti-

³⁶ Angela C. Wu, *Briefing: Congressional Human Rights Caucus* (July 21, 2006), available at <http://www.becketfund.org/files/581fd.pdf>.

³⁷ INDIA CONST. art. 14-16, available at http://www.servat.unibe.ch/law/icl/in00000_.html.

³⁸ Christian Solidarity Worldwide, *Briefing: Freedom of Religion Legislation in India* (May 2006), at 3, available at <http://www.csw.org.uk/Countries/India/Resources/AttacksAgainstChristians.pdf> (noting that the two most recent enactments of the anti-conversion law are waiting to go into effect).

³⁹ See Compass Direct News, *India: 'Anti-Conversion' Laws Linked to Higher Persecution; Himachal Pradesh state approves the latest so-called 'Freedom of Religion' law*, Feb. 28, 2007, available at <http://compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=4784>.

⁴⁰ *Id.*

⁴¹ Tracy Hresko, Note, *Rights Rhetoric as an Instrument of Religious Oppression in Sri Lanka*, 29 B.C. Int'l & Comp. L. Rev. 123, 130 (2006).

conversion law as a pretext to incite mobs against Christians.”⁴²

Sri Lanka recently has proposed anti-conversion laws that explicitly prohibit religious conversions. Although the Constitution of Sri Lanka prohibits discrimination on the basis of religion⁴³ and further guarantees all persons the “freedom to have or adopt a religion or belief of his choice,”⁴⁴ the Jathika Hela Uramaya, a Buddhist nationalist party, has introduced the “Bill on Prohibition of Forcible Conversion of Religions” and the Sri Lankan government introduced an “Act of Safeguarding Religious Freedom.”⁴⁵ Such legislation would “criminalize ‘unethical’ conversions”⁴⁶ and would make “conversion from one religion to another an offense under law.”⁴⁷ The direct translation of the proposed law reads: “No person shall convert nor attempt to convert or aid or abet acts of conversion of another to a different religion.”⁴⁸

Under the auspices of upholding anti-conversion laws, government arrests and private acts of violence have contributed to the degradation of religious freedom. For example, the Indian government arrested four Christian missionaries on forced conversion charges on May 14, 2005, accusing them of using financial incentives for conversions.⁴⁹ Likewise, a Christian pastor faced charges under anti-conversion laws for passing out Christian literature in May 2006.⁵⁰ In 2005, a violent mob in India burned down a Catholic school, accusing the school of converting Hindus. Furthermore, in 2006, a crowd of one hundred people beat Christian pastors who circulated Christian pamphlets at a convention of Bible students.⁵¹ In Sri Lanka, although the anti-conversion laws are still pending, anti-Christian violence is prevalent. Countless churches, pastors, and even children face abuse by violent mobs and receive little police assistance.⁵²

2. Apostasy, blasphemy, and anti-proselytizing laws are used to prevent voluntary conversions from the majority religion and punish those who encourage such conversions.

⁴² *Annual Report of the United States Commission on International Religious Freedom*, at 244 (May 2, 2007), available at <http://www.uscirf.gov/countries/publications/currentreport/2007annualRpt.pdf#page=1> [hereinafter “Annual Report”].

⁴³ SRI LANKA CONST. art. 9, available at <http://www.constitution.gov.lk/constitutionSL1978.shtml>.

⁴⁴ *Id.* at art. 10.

⁴⁵ Christian Solidarity Worldwide, *Briefing: Sri Lanka, Religious Freedom Threatened by Anti-Conversion Legislation* (Sept. 2004), at 4, available at <http://www.csw.org.uk/Resources/Briefings/images/SRI%20LANKA%20Anti-Conversion%20Law%20Briefing%20EU%20September%20BRIEFING.doc>

⁴⁶ U.S. State Report, *supra* note 20.

⁴⁷ Christian Solidarity Worldwide, *supra* note 44, at 3.

⁴⁸ *Id.* at 4.

⁴⁹ U.S. State Report, *supra* note 20.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Christian Solidarity Worldwide, *supra* note 44, at 6-7.

Many countries use prohibitions against apostasy, blasphemy, and proselytizing to prevent voluntary conversions from the majority religion. Some rely on their interpretation of Islamic Shari'a law to prevent voluntary conversion from Islam. In fact, "several predominantly Muslim countries have laws that make conversion from Islam a crime. Death sentences, life imprisonment, torture, and lesser penalties for this act have been carried out in numerous countries."⁵³

a. *Pakistan*

The preamble to the Constitution of Pakistan provides that "sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust."⁵⁴ It further states that "Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam," but "adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures."⁵⁵ The Constitution provides that every citizen of Pakistan has "the right to profess, practise and propagate his religion, and [] every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institution."⁵⁶ Citizens cannot be compelled to pay taxes used for the "propagation or maintenance of any religion other than his own."⁵⁷

Despite these constitutional protections, Pakistan's Penal Code contains provisions against blasphemy that have severely limited the rights of non-Muslims. The blasphemy laws "frequently result in imprisonment on account of religion or belief and/or vigilante violence against the accused."⁵⁸ Blasphemy charges do not require investigation; rather, a mere uninvestigated claim can lead to an arrest.⁵⁹

The consequences for contravening the country's "blasphemy laws," are the death penalty for defiling Islam or its prophets; life imprisonment for defiling, damaging, or desecrating the Qur'an; and ten years' imprisonment for insulting another's religious feelings."⁶⁰

⁵³ Felice D. Gaer, *Anti-Conversion Laws and Religious Freedom in South Asia and the Middle East: The Case of Abdul Rahman*, Congressional Human Rights Caucus (Apr. 7, 2006), available at www.uscirf.gov/events/cong_testimony/2006/april/04072006_SouthAsiaHR.html.

⁵⁴ PAKISTAN CONST. Preamble, available at http://www.nrb.gov.pk/constitutional_and_legal/constitution/preamble.html.

⁵⁵ *Id.*

⁵⁶ *Id.* at art. 20, available at http://www.nrb.gov.pk/constitutional_and_legal/constitution/part2.ch1.html.

⁵⁷ *Id.* at art. 21.

⁵⁸ Annual Report, *supra* note 41, at 85.

⁵⁹ Smita Narula, *Overlooked Danger: The Security and Rights Implications of Hindu Nationalism in India*, 16 Harv. Hum. Rts. J. 41, 63 (2003).

⁶⁰ U.S. State Report, *supra* note 20.

In Pakistan, those who convert from Islam or take any action allegedly critical of Islam face violence, imprisonment, or death. In a public statement, the Senior Judge of Lahore High Court, Justice Nazir Akhtar said, “it is a religious obligation to kill the blasphemer on the spot without trial.”⁶¹ One man was charged with blasphemy in 2000 when he tried to return to his Christian faith and, in June 2002, received the “mandatory death sentence” for allegedly blasphemous statements against Mohammed.⁶² In 2002, a young man was sentenced to death “for allegedly making phone calls and writing letters to the complainant that contained derogatory remarks about the Prophet Mohammed.”⁶³ In November 2006, two Christian men were charged with blasphemy and sentenced to ten years imprisonment. A Christian woman was likewise prosecuted in January 2007 for “allegedly ‘uttering derogatory remarks’ about the Prophet Muhammad.”⁶⁴ The fairness of blasphemy trials is often tainted by Islamic militants who threaten violence if the accused is not found guilty. In nearly all cases in which the accused is acquitted, “[they] have been forced into hiding because of fears of vigilante violence.”⁶⁵

Another human rights problem in Pakistan is that the government has not intervened to prevent forced conversions of Christians or other religious minorities. “[S]everal human rights groups have highlighted the increased phenomenon of Hindu girls . . . being kidnapped from their families and forced to convert to Islam.”⁶⁶ In May 2004, a Christian teenager died after severe torture for five days—“electric shocks and burns from warm iron rods”—when he refused to convert to Islam.⁶⁷ Before he died, the teenager gave the police a report of the event:

As soon as the Islamic extremists came to know that I am Christian they asked me to convert to Islam. I refused and they started torturing me. They would continue the torture from night till morning. They tortured me badly and during the torture they continuously asked me to accept Islam.⁶⁸

b. Afghanistan

In Afghanistan, those who convert from or insult Islam face apostasy and blasphemy charges.⁶⁹ The Constitution specifically states, “no law can be contrary to the beliefs and provisions of the sacred

⁶¹ Christian Solidarity Worldwide, *Briefing: Pakistan, Religious Freedom Update* (Sept. 2004), at 5, available at <http://www.csw.org.uk/Resources/Briefings/images/PAKISTAN%20BRIEFING.pdf>.

⁶² *Id.* at 5.

⁶³ Narula, *supra* note 58.

⁶⁴ Annual Report, *supra* note 41, at 248.

⁶⁵ *Id.*

⁶⁶ U.S. State Report, *supra* note 20.

⁶⁷ *Briefing: Pakistan*, *supra* note 60, at 3.

⁶⁸ *Id.*

⁶⁹ Annual Report, *supra* note 41, at 227.

religion of Islam.”⁷⁰ There is no recourse under Afghan law to amend such laws because “[t]he provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended.”⁷¹ While followers of religions other than Islam may exercise their faith in Afghanistan and perform religious rites, they must do so in a manner that does not interfere with or question Islam.⁷² For example, in October 2005, an Afghan journalist, Ali Mohaqiq Nasab, was imprisoned for blasphemy and “insulting Islam” after he “question[ed] discrimination against women and the use of certain harsh punishments under traditional Islamic law, including amputation and public stoning.”⁷³

Afghan citizen Abdul Rahman was arrested in March 2006 for changing his religion from Islam to Christianity. Under the charge of “rejecting Islam” and apostasy, he would have faced execution if found guilty. “[T]he judge overseeing the trial publicly affirmed that if Rahman did not return to Islam, ‘the punishment will be enforced on him, and the punishment is death.’”⁷⁴ It was only after a strong international outcry that the charges were dropped.

c. Iran

In Iran, Islam is the official religion. The Constitution of Iran states that the “investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.”⁷⁵ Individuals—whether Muslim or a member of a minority faith—may form a religious society, so long as it does not violate the “criteria of Islam.”⁷⁶ “No one may be prevented from participating in these groups,” nor shall they be “compelled to participate in them.”⁷⁷

In practice, however, religious freedom for non-Muslims is severely restricted in Iran. The United States Department of State has reported that

[Iran] does not protect the right of citizens to change or renounce their religious faith. Non-Muslims may not engage in public religious expression and persuasion among Muslims, and there are restrictions on published religious material. Apostasy, specifically conversion from Islam, may be punishable by death.⁷⁸

⁷⁰ AFGHANISTAN CONST. art. 3, available at http://www.servat.unibe.ch/law/icl/af00000_.html.

⁷¹ *Id.* at art. 149.

⁷² *Id.* at art. 2.

⁷³ Annual Report, *supra* note 41, at 227-28.

⁷⁴ *Id.* at 228.

⁷⁵ The Constitution of the Islamic Republic of Iran, 1980, at art. 23, available at: <http://www.uiowa.edu/~c032155/webdocs/iran-const.htm>.

⁷⁶ *Id.* at art. 26.

⁷⁷ *Id.*

⁷⁸ U.S. State Report, *supra* note 20.

The Iranian government closely monitors Christians in Iran, and Christian converts are often arrested. Those who proselytize among Muslims risk their lives.⁷⁹ The government routinely engages in “raiding church services, detaining worshippers and church leaders, and harassing and threatening church members.”⁸⁰ During one of these raids, authorities arrested Christian pastor Hamid Pourmand. After serving over a year in prison, Pourmand was released but was instructed to not participate in the church.⁸¹ Moreover, in December 2006, Iranian authorities arrested eight leaders of house churches. The government accused the leaders of “evangelization and ‘acts against the national security of the Islamic Republic.’”⁸²

Members of the Baha’i faith experience similar persecution because Iran views Baha’is as being in opposition to the country’s interpretation of Islam. Baha’is face questioning and arrests for offenses such as “spreading propaganda against the regime.”⁸³ “Even individuals who are born as Baha’is can be implicated by apostasy laws.”⁸⁴ These strict policies against “insulting Islam” further implicate Iranian news publications whose journalists have been imprisoned for making statements challenging Islam.⁸⁵

d. Burma

In Burma, “[s]erious human rights abuses perpetuated by [the] military regime continue to be widespread, including systematic and egregious violations of religious freedom.”⁸⁶ Minority religious groups such as Muslims and Christians bear the brunt of the government’s suppression.⁸⁷ The government has failed to intervene to prevent or punish acts of violence committed by Buddhists against Muslims.⁸⁸ Moreover, “[a]mong the Chin and Naga ethnic minorities, there are credible reports that government and military authorities made active efforts to convert Christians to Buddhism.”⁸⁹ “Chin families who agreed to convert to Buddhism were offered monetary and material incentives, as well as exemption from forced labor.”⁹⁰ “Naga Christian refugees leaving Burma continually report that

⁷⁹ *Id.*

⁸⁰ Annual Report, *supra* note 41, at 214.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 213.

⁸⁴ Felice D. Gaer, *supra* note 52.

⁸⁵ *Id.*

⁸⁶ Annual Report, *supra* note 41, at 115.

⁸⁷ *Id.* at 116.

⁸⁸ *Id.*

⁸⁹ *Id.* at 117.

⁹⁰ *Id.*

members of the army, together with Buddhist monks, closed churches in their villages and attempted to force adherents to convert to Buddhism.”⁹¹

e. Vietnam

In Vietnam, while there has been a recent “decline in the overall number and frequency of forced renunciations of faith, imprisonments, and torture,”⁹² there are still “reports of individuals [being] threatened unless they renounced their religious affiliations . . .”⁹³ The government continues to closely monitor “suspicious” religious groups, and “Vietnamese security forces [have] detained, interrogated, arrested, imprisoned, beat, harassed, or threatened adherents from many of Vietnam’s diverse religious communities.”⁹⁴

Despite laws that prohibit forced renunciation of faith, there continue to be “instances of fines, police ‘summons,’ short-term detentions, or threats of withholding government benefits used to induce individuals to abandon their religion . . .”⁹⁵ There are reports that “police continue to beat and threaten Hmong Protestants in Dien Bien Province in order to get them to renounce Christianity.”⁹⁶ “There are no reports, however, that security officials are being punished for these actions. . . .”⁹⁷

f. Saudi Arabia

The official religion of Saudi Arabia is Islam,⁹⁸ and the government’s power is derived “from the Holy Koran and the Prophet’s tradition.”⁹⁹ The Armed Forces are used “for the defence of the Islamic religion”¹⁰⁰ and it is the duty of all citizens to defend Islam.¹⁰¹ Religious freedom is nonexistent in Saudi Arabia for non-Muslims.¹⁰² Only those who practice Sunni Islam—the approved form of Islam in Saudi Arabia—enjoy basic religious rights.

Citizens of Saudi Arabia do not enjoy the freedom to change their religion. Conversion from Islam is considered apostasy, and converts may face death sentences.¹⁰³ Proselytizing by non-Muslims is

⁹¹ *Id.*

⁹² *Id.* at 154.

⁹³ *Id.* at 152.

⁹⁴ *Id.* at 155.

⁹⁵ *Id.* at 157.

⁹⁶ *Id.*

⁹⁷ *Id.* at 158.

⁹⁸ SAUDI ARABIA CONST. art. 1, available at http://www.servat.unibe.ch/law/icl/sa00000_.html.

⁹⁹ *Id.* at art. 7.

¹⁰⁰ *Id.* at art. 33.

¹⁰¹ *Id.* at art. 34.

¹⁰² Freedom House, *Worst of the Worst: The World’s Most Repressive Societies 2006; Saudi Arabia*, available at <http://www.freedomhouse.org/uploads/WoW/2006/SaudiArabia2006.pdf>.

¹⁰³ U.S. State Report, *supra* note 20.

likewise illegal,¹⁰⁴ and the government uses “criminal charges of apostasy, blasphemy, and criticizing the nature of the regime . . . to suppress discussion and debate and silence dissidents.”¹⁰⁵ In 1994, Hadi Al-Mutaif was sentenced to death for a blasphemous statement; his sentence was later changed to life in prison. A schoolteacher who discussed Judaism, the Bible, and terrorism faced “charges of blasphemy and insulting Islam and [was] sentenced to three years in prison and 750 lashes;” he was later pardoned in November 2005.¹⁰⁶ In April 2006, after a Saudi journalist made remarks allegedly “denigrating Islamic beliefs,” the government arrested him.

g. *Sudan*

The Constitution of Sudan states that it is “a country of racial and cultural harmony and religious tolerance” and that Islam is the religion of the majority while “Christianity and traditional religions have a large following.”¹⁰⁷ The Constitution provides that “[e]veryone has the right to freedom of conscience and religion and the right to manifest and disseminate his religion or belief in teaching, practice or observance.”¹⁰⁸ Forced conversions and religious discrimination are prohibited.¹⁰⁹ The Constitution also provides that “all people shall preserve the principles of religion and reflect this in their planning, laws, policies, and official work.”¹¹⁰ It also states, however, that every citizen has the duty to “respond to the Jihad call.”¹¹¹

In practice, Shari’a law greatly limits the religious freedom of non-Muslims. Converts from Islam to another religion may face the death penalty or experience “intense scrutiny, intimidation, and sometimes torture by government security personnel who act with impunity.”¹¹² However, individuals who convert to Islam in Sudan do not face persecution.¹¹³ To the contrary, the government tries to convert individuals to Islam:

Reports continue of coerced conversion in government-controlled camps for internally displaced persons, as well as among prison inmates, Popular Defense Force trainees, and children in camps for vagrant minors. The government has also allegedly tolerated the use of humanitarian assistance to induce conversion to Islam. In government-controlled

¹⁰⁴ *Id.*

¹⁰⁵ Annual Report, *supra* note 41, at 218.

¹⁰⁶ *Id.* at 219.

¹⁰⁷ SUDAN CONST. art. 1, available at <http://www.sudan.net/government/constitution/english.html>.

¹⁰⁸ *Id.* at art. 24.

¹⁰⁹ *Id.* at art. 21, 24.

¹¹⁰ *Id.* at art. 18.

¹¹¹ *Id.* at art. 35, § 1(b).

¹¹² Annual Report, *supra* note 41, at 104-05.

¹¹³ *Id.* at 105.

areas, children who have been abandoned or whose parentage is unknown are considered by the government to be Muslims and may not be adopted by non-Muslims.¹¹⁴

h. China

“The Chinese government continues to engage in systematic and egregious violations of freedom of religion or belief.”¹¹⁵

Every religious community in China continues to be subject to serious restrictions, state control, and repression. The most severe religious freedom abuses are directed against Tibetan Buddhists, Uighur Muslims, Roman Catholics, house church and unregistered Protestants, and spiritual groups such as the Falun Gong, abuses involving imprisonment, torture, and other forms of ill treatment.¹¹⁶

“The Chinese government requires all religious organizations to become registered as a means for the government to manage religious activity and maintain control of independent religious institutions and practice.”¹¹⁷ The government has arrested religious and human rights leaders and has used anti-terrorism measures as a justification for arresting many Uighur Muslims that have no apparent connection to terrorist organizations.¹¹⁸ The government has also conducted a violent campaign to eliminate the Falun Gong, a religious group that it considers to be an “evil cult.”¹¹⁹ Members of the Falun Gong are often sent to “re-education camps” designed to force them to renounce their beliefs.¹²⁰ Various Protestant and Catholic groups have also been classified as cults in recent years and subjected to adverse treatment.¹²¹

i. North Korea

“By all accounts, there are virtually no personal freedoms in the Democratic People’s Republic of North Korea (DPRK or North Korea) and no protection for universal human rights.”¹²² “Freedom of thought, conscience, and religion or belief does not exist, as the government severely represses public and private religious activities and maintains a policy of tight control over government-sanctioned

¹¹⁴ *Id.*; see also Sarah L. Dygert, Note, *Eradicating Sudanese Slavery: The Sudanese Government and the Abuse of Islam*, 3 Regent. J. Int’l L. 143 (2005) (noting that Sudanese slavery is connected to the government’s Islamization program).

¹¹⁵ Annual Report, *supra* note 41, at 120.

¹¹⁶ *Id.* at 81.

¹¹⁷ *Id.* at 121.

¹¹⁸ *Id.* at 122-23.

¹¹⁹ *Id.* at 123-25.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 141.

religious practice.”¹²³ “The practice of imprisoning religious believers is apparently widespread,” and “they are subject to constant abuse from prison officials in an effort to force them to renounce their faith. When they refuse, they are often beaten and sometimes tortured to death.”¹²⁴

j. Other Countries

In Laos, government officials have forced members of minority religions to renounce their faith or face imprisonment.¹²⁵ For example,

[i]n late 2005, authorities in the Muang Phin District of Savannakhet Province detained 24 ethnic Brou Protestants for several days in order to force them to renounce their religion. All but two of the men recanted their faith. These two men were imprisoned for approximately one year¹²⁶

Moreover, “reports persist that local officials in Oudomasai, Salavan, and Bolikhamsai provinces pressured minority Protestants to renounce their religion on threat of arrest or forceful eviction from their villages.”¹²⁷

In Turkmenistan, “members of some religious minority groups, particularly Protestants, Hare Krishnas, and Jehovah’s Witnesses, have faced official pressure to renounce their faith publicly, and been forced to swear an oath on the Rukhnama.”¹²⁸ In Eritrea, the government “continues to engage in systematic and egregious violations of religious freedom... .”¹²⁹ “There are credible reports that the security forces have used coercion on detainees to secure repudiation of their faith. Some religious detainees have reportedly been beaten, tortured, confined in crowded conditions, or otherwise subjected to harsh conditions resulting in death.”¹³⁰

Islam is the official religion of the State of Algeria, and constitutional revisions cannot infringe upon “Islam as the religion of the State.”¹³¹ Although civil law does not make conversion from Islam illegal, the Algerian government’s interpretation of Shari’a law forbids Muslims from converting to another religion. Those who proselytize a minority faith face imprisonment and severe fines. Such

¹²³ *Id.*

¹²⁴ *Id.* at 143.

¹²⁵ *Id.* at 149.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 188.

¹²⁹ *Id.* at 93.

¹³⁰ *Id.* at 94.

¹³¹ ALGERIA CONST. art. 1, 178, available at http://www.servat.unibe.ch/law/icl/ag00000_.html.

penalties seek to stop anyone who “incites, constrains, or utilizes means of seduction tending to convert a Muslim to another religion,” or distributes materials questioning the Muslim faith.¹³²

While Islam is the official religion of Jordan,¹³³ discrimination based on religion is prohibited by the Constitution.¹³⁴ Jordan’s Constitution safeguards “the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality.”¹³⁵ In practice, members of minority religions have limited religious freedom because the Jordanian government relies heavily upon Shari’a law in interpreting its laws.¹³⁶ Converts from Islam to Christianity risk losing civil and property rights and may face apostasy charges that, in theory, can lead to execution. Proselytizers are also prosecuted.¹³⁷

Similarly, while Kuwait’s government “safeguards the heritage of Islam,”¹³⁸ its constitution provides that people are equal with regard to “human dignity, and in public rights and duties before the law” regardless of religion.¹³⁹ The constitution provides that “[f]reedom of belief is absolute” and all people enjoy “the freedom of [p]ractic[ing] religion in accordance with established customs, provided that it does not conflict with public policy or morals.”¹⁴⁰ Kuwaiti authorities strictly forbid conversions away from the Muslim faith. Those who convert “face harassment, including loss of job, repeated summonses to police stations, arbitrary detention, physical and verbal abuse, police monitoring of their activities, and property damage without legal recourse.”¹⁴¹

The official religion of Qatar is Islam, and Shari’a law is “a main source of its legislations.”¹⁴² The Constitution prohibits discrimination based on religion and provides that “all persons are equal before the law.”¹⁴³ Likewise, the official religion of Yemen is Islam, and Shari’a law “is the source of all legislation.”¹⁴⁴ The Constitution of Yemen provides that “[d]efending religion . . . is a sacred duty.”¹⁴⁵

¹³² U.S. State Report, *supra* note 20.

¹³³ JORDAN CONST. art. 2, available at http://www.kinghussein.gov.jo/constitution_jo.html.

¹³⁴ *Id.* at art. 6.

¹³⁵ *Id.* at art. 14.

¹³⁶ See U.S. State Report, *supra* note 20.

¹³⁷ *Id.*

¹³⁸ KUWAIT CONST. art. 12, available at http://www.servat.unibe.ch/law/icl/ku00000_.html.

¹³⁹ *Id.* at art. 29.

¹⁴⁰ *Id.* at art. 35.

¹⁴¹ *Id.*

¹⁴² QATAR CONST. art. 1, available at http://www.servat.unibe.ch/law/icl/qa00000_.html.

¹⁴³ *Id.* at art. 35.

¹⁴⁴ YEMEN CONST. art. 2-3, available at <http://www.al-bab.com/yemen/gov/con94.htm>.

¹⁴⁵ *Id.* at art. 59.

Yemeni citizens are equal under the Constitution¹⁴⁶ and are guaranteed “freedom of thought and expression of opinion in speech, writing and photography within the limits of the law.”¹⁴⁷

Both Qatar and Yemen prohibit proselytizing, particularly by non-Muslims towards Muslims, as well as conversion away from the Muslim faith.¹⁴⁸ Qatar established new anti-proselytizing laws in 2004:

If proselytizing is done on behalf of an individual, for any religion other than Islam, the sentence is imprisonment of up to five years. According to this new law, individuals who possess written or recorded materials or items that support or promote missionary activity are imprisoned for up to two years.¹⁴⁹

Furthermore, in both Qatar and Yemen, leaving Islam constitutes apostasy—an action punishable by execution.¹⁵⁰

Tunisia prohibits non-Muslims from proselytizing because the government believes that it disturbs public order.¹⁵¹ The United Arab Emirates likewise “prohibits non-Muslims from proselytizing or distributing religious literature under penalty of criminal prosecution, imprisonment, and deportation, for engaging in behavior offensive to Islam.”¹⁵² In Uzbekistan, the Law on Freedom of Conscience and Religious Organizations (1998) outlaws “proselytizing and private religious instruction.”¹⁵³ This law appears to be contrary to the guarantee in the Constitution of Uzbekistan that all citizens “have the right to profess or not to profess any religion. Any compulsory imposition of religion shall be impermissible.”¹⁵⁴

II. International law recognizes a universal right to choose one’s religion free from coercion or discrimination; that right includes the right to change (or not change) one’s religious affiliation.

International human rights law unambiguously establishes that the freedom of thought, conscience, and religion includes the freedom to change religion based on one’s personal convictions.

¹⁴⁶ *Id.* at art. 40.

¹⁴⁷ *Id.* at art. 41.

¹⁴⁸ U.S. State Report, *supra* note 20.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Freedom House, *Worst of the Worst: The World’s Most Repressive Societies 2006; Uzbekistan*, available at <http://www.freedomhouse.org/uploads/WoW/2006/Uzbekistan2006.pdf>.

¹⁵⁴ UZBEKISTAN CONST. art. 31, available at <http://www.umId.uz/Main/Uzbekistan/Constitution/constitution.html>.

Numerous declarations, covenants, and conventions embody the universal obligation to protect and preserve human rights and fundamental freedoms.

A. *The Universal Declaration of Human Rights*¹⁵⁵

The fundamental freedom to change one's religion is enshrined in the UDHR.¹⁵⁶ As stated on the United Nations Global Compact website, "the principles of the UDHR are considered to be *international customary law and do not require signature or ratification by the state to be recognized as a legal standard.*"¹⁵⁷ The UDHR is "a common standard of achievement for all peoples and all nations."¹⁵⁸ The UDHR Preamble declares, "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."¹⁵⁹ It also states that "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."¹⁶⁰ The UDHR "states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community."¹⁶¹

Article 1 of the UDHR states that "[a]ll human beings are born free and equal in dignity and rights" and "are endowed with reason and conscience."¹⁶² Article 18 of the UDHR provides:

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.¹⁶³

Article 19 also provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference...."¹⁶⁴ While the UDHR was considered an aspirational document at the time it was drafted, the fundamental principles expressed in the UDHR

¹⁵⁵ The UDHR was adopted unanimously by the U.N. General Assembly on December 10, 1948 with only eight states abstaining from the vote. Human Rights Commission, *Celebrating the Universal Declaration of Human Rights*, at <http://www.hrc.co.nz/index.php?p=451> (last visited Aug. 22, 2007).

¹⁵⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, U.N. Doc A/810 at 71 (Sept. 10, 1948), available at <http://www.un.org/Overview/rights.html>.

¹⁵⁷ *Human Rights*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/humanRights.html> (last visited Aug. 13, 2007) (emphasis added).

¹⁵⁸ UDHR at Preamble.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, U.N. Doc. A/CONF.32/41 at 3 (May 13, 1968), available at http://www.unhchr.ch/html/menu3/b/b_tehern.htm.

¹⁶² UDHR at art. 1.

¹⁶³ *Id.* at art. 18.

¹⁶⁴ *Id.* at art. 19.

have become customary international law and have been reiterated in numerous other international conventions, documents, and court opinions.¹⁶⁵

B. *The International Covenant on Civil and Political Rights*

Article 18 of the International Covenant on Civil and Political Rights (1966) (“ICCPR”) also protects the right to change one’s religion:

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 that would impair his freedom to have or to adopt a religion or belief of his choice. . . .¹⁶⁶

Moreover, Article 19 of the ICCPR states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. . . .¹⁶⁷

As of July 2007, there were 67 signatories and 160 parties to the ICCPR including Afghanistan, Egypt, India, Iran, Jordan, Sri Lanka, Sudan, and Yemen.¹⁶⁸ In agreeing to the provisions of the ICCPR, Egypt stated, “[t]aking into consideration *the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument . . . we accept, support and ratify it.*”¹⁶⁹

The ICCPR provides that the Human Rights Committee has the authority to interpret the ICCPR in order to clarify its provisions. The Human Rights Committee has elucidated the meaning of Article 18 of the ICCPR, stating that:

¹⁶⁵ See, e.g., Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222 (1950), at art. 9, available at <http://www1.umn.edu/humanrts/instreet/z17euroco.html>; *Barankevich v. Russia* [2007] ECHR 10519/03 at para. 34 (citing *Kokkinakis v. Greece* [1993] ECHR 14307/88 at para. 31); *Stankov and another v. Bulgaria* [2001] ECHR 29221/95, at para. 101-05.

¹⁶⁶ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, at art. 18, available at <http://www1.umn.edu/humanrts/instreet/b3ccpr.htm>.

¹⁶⁷ *Id.* at art. 19.

¹⁶⁸ Office of the United Nations High Commissioner for Human Rights, *Ratifications and Reservations: International Covenant on Civil and Political Rights*, available at <http://www.ohchr.org/english/countries/ratification/4.htm>.

¹⁶⁹ Human Rights Committee, *Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocols*, U.N. Doc CCPR/C/2/Rev.4. (1995), available at <http://www.unhcr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/876f09862d3b0437c12563e70037d248?OpenDocument> (emphasis added).

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 . . . ¹⁷⁰

The Human Rights Committee has also stated that

[t]he fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter . . . 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. . . . ¹⁷¹

The Committee has declared that

[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it. ¹⁷²

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

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) provides additional protection for the right to choose one’s religious beliefs and change religious affiliation. Article 1 of the Declaration provides:

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

¹⁷⁰ *General Comment No. 22, supra* note 34.

¹⁷¹ *Id.*

¹⁷² *Id.*

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.¹⁷³

The Declaration prohibits discrimination on the grounds of religion or belief, which it describes as “an affront to human dignity and a disavowal of the principles of the Charter of the United Nations”¹⁷⁴ The Declaration requires signatory States to rescind any legislation that discriminates on the basis of religion. Article 6 explains that “the right to freedom of thought, conscience, religion or belief” includes specific freedoms such as the freedom “[t]o worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.”¹⁷⁵

D. The Convention for the Protection of Human Rights and Fundamental Freedoms

Many customary international legal principles established by the UDHR are also found in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (“Convention”), also known as the European Convention on Human Rights. Article 9 of the Convention provides:

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 worship, teaching, practice and observance. . . .¹⁷⁶

Like the UDHR, this Convention recognizes the universal right to choose one's religion and change one's religious affiliation.

E. The United Nations Special Rapporteur on freedom of religion or belief has emphasized that international human rights law protects the right to choose one's religion and prohibits forced conversions.

¹⁷³ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA res. 36/55 (Nov. 25, 1981), at art. 1, available at http://www.unhchr.ch/html/menu3/b/d_intole.htm.

¹⁷⁴ *Id.* at art. 2, 3.

¹⁷⁵ *Id.* at art. 6.

¹⁷⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (1950), at art. 9. The Charter of Fundamental Rights of the European Union provides similar protection for the “right to freedom of thought, conscience and religion.” Charter of Fundamental Rights of the European Union, art. 10(1), Dec. 7, 2000, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

In 1986, the United Nations designated a Special Rapporteur on Freedom of Religion or Belief (“Special Rapporteur”) to investigate incidents of alleged violations of religious freedom.¹⁷⁷ The Special Rapporteur was created with the mandate “to examine incidents and governmental actions in all parts of the world which were inconsistent with the provisions of the Declaration . . . and to recommend remedial measures for such situations.”¹⁷⁸

In a September 2005 report to the U.N. General Assembly, the current Special Rapporteur (Asma Jahangir) stated:

[A]ccording to universally accepted international standards, the right to freedom of religion or belief includes the right to adopt a religion of one’s choice, the right to change religion and the right to maintain a religion. . . . [T]hese aspects of the right to freedom of religion or belief *have an absolute character and are not subject to any limitation whatsoever*.¹⁷⁹

The Report noted that Article 18 of the UDHR and Article 1 of the 1981 Declaration protect the right to be free from forced conversions.¹⁸⁰ The Report also explained that the Human Rights Committee has observed regarding Article 18 of the ICCPR 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.”¹⁸¹ It is clear that “freedom of thought, conscience and religion . . . cannot be interfered with in any way.”¹⁸²

The Report stated, “[t]he Special Rapporteur notes that there is a clear prohibition under international human rights law of coercion to change or maintain one’s religion. . . . [T]he term ‘coercion’ in article 18 . . . is to be broadly interpreted and includes pressure applied by a State or policies aiming at facilitating religious conversions.”¹⁸³ The Report added:

Since the choice of religion or belief is part of the forum internum, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing [an] individual’s desire to have or adopt a religion or belief and is therefore not acceptable under human rights law.¹⁸⁴

¹⁷⁷ Office of the United Nations High Commissioner for Human Rights, *Special Rapporteur on freedom of religion or belief*, at <http://www.ohchr.org/english/issues/religion/index.htm>.

¹⁷⁸ *Id.*

¹⁷⁹ *Elimination of All Forms of Religious Intolerance*, *supra* note 30, at para. 46 (emphasis added).

¹⁸⁰ *Id.* at para. 47.

¹⁸¹ *Id.* at para. 48.

¹⁸² *Id.* at para. 49.

¹⁸³ *Id.* at para. 51.

¹⁸⁴ *Id.* at para. 52.

The Report explained that “[a] State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.”¹⁸⁵

In the cases where non-State actors interfere with the right to “have or adopt a religion or belief of [one’s] choice,” the requirements of article 18 of the Covenant and other relevant international instruments also *entail a positive obligation for the State to protect persons from such interference*. . . . States must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practise the religion or belief of their choice free of coercion and fear. If non-State actors interfere with this freedom, and especially the freedom to change or to maintain one’s religion, *the State is obliged to take appropriate measures to investigate, bring the perpetrators to justice and compensate the victims*¹⁸⁶

There is no question that “the right to manifest one’s religion includes carrying out actions to persuade others to believe in a certain religion” such as distributing religious literature.¹⁸⁷ The Report stated, “[i]n conclusion, any form of coercion by State and non-State actors aimed at religious conversion is prohibited under international human rights law, and any such acts have to be dealt with within the remit of criminal and civil law.”¹⁸⁸

In a March 2007 report, the Special Rapporteur reiterated:

The Special Rapporteur considers situations where people are arrested, tried or otherwise challenged because they had converted to another religion as unacceptable forms of violations of the right to freedom of religion or belief because, in essence, they limit or tend to limit the freedom of thought or conscience itself. This is sometimes called the “forum internum”, which, according to the main international instruments, forms the part of the right to freedom of religion or belief that is not susceptible to any limitation.¹⁸⁹

Additionally, the Commission on Human Rights issued resolutions in 2001 and 2003

[e]mphasizing that the right to freedom of thought, conscience, religion and belief is far-reaching and profound and that 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, in public or in private.¹⁹⁰

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at para. 53 (emphasis added).

¹⁸⁷ *Id.* at para. 59-61.

¹⁸⁸ *Id.* at para. 67.

¹⁸⁹ *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”; Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir; Addendum: Summary of Cases Transmitted to Governments and Replies Received*, Doc. No. A/HRC/4/21/Add.1 (Mar. 8, 2007), at para. 6, available at <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>.

¹⁹⁰ Commission on Human Rights, *Elimination of all forms of religious intolerance*, CHR res. 2003/54 (Apr. 24, 2003), available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2003.54.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.54.En?Opendocument); Commission on Human Rights, *Elimination of all forms of religious intolerance*, CHR res. 2001/42 (Apr. 23, 2001), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2001.42.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2001.42.En?Opendocument).

III. All governments are bound to recognize and respect the universal right to choose one's religion and change religious affiliations.

- A. *Egypt and many other countries have officially endorsed the UDHR, the ICCPR, and other international legal instruments that recognize the universal right to choose one's religion and change religious affiliations.***

The U.N. General Assembly adopted the UDHR unanimously on December 10, 1948 with only eight states abstaining from the vote.¹⁹¹ The following UN member states voted in favor of the UDHR:

Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma (Myanmar), Canada, Chile, China, Columbia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay and Venezuela.

The General Assembly reaffirmed the right to change one's religion when it adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981.¹⁹² Moreover, as of July 2007, there were 67 signatories and 160 parties to the ICCPR.¹⁹³

- B. *Hamas and previous Palestinian governments have announced their intent to comply with international human rights law.***

Although the United States and some other governments do not officially recognize Hamas as a legitimate government due to its terrorist activities, Hamas currently exerts control over the Gaza Strip. As a *de facto* government of the Gaza Strip, Hamas must respect every individual's right to choose his own religion free from coercion.

The United Nations only admits sovereign states to be members with voting rights to the General Assembly. According to customary international law, a sovereign state must have a permanent population, a defined territory, government, and the capacity to enter into relations with other states. Although the Palestinian government has never been a full U.N. member, the U.N. recognizes Palestine as a non-member *entity*. It has permanent observer status as well as certain additional rights granted by the General Assembly including "the right to participate in the general debate of the Assembly, to speak

¹⁹¹ Human Rights Commission, *Celebrating the Universal Declaration of Human Rights*, at <http://www.hrc.co.nz/index.php?p=451> (last visited Aug. 22, 2007). Those abstaining were Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR and Yugoslavia. *Id.*

¹⁹² Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), at art. 1.

¹⁹³ Office of the United Nations High Commissioner for Human Rights, *Ratifications and Reservations: International Covenant on Civil and Political Rights*, available at <http://www.ohchr.org/english/countries/ratification/4.htm>.

under agenda items other than Palestinian and Middle East issues at any meeting of the plenary, and to exercise the right of reply.”¹⁹⁴ Also, the previous Palestinian government enjoyed such additional rights as “the right to co-sponsor draft resolutions and decisions on Palestinian and Middle East issues and to raise points of order related to the proceedings on Palestinian and Middle East issues.”¹⁹⁵ The rights and privileges that the U.N. affords to the Palestinians come with the responsibility to recognize and respect the universal right to choose one’s own religious beliefs.

In addition, the charter of the Hamas movement, known as the Covenant of the Islamic Resistance Movement of 1988, provides that Hamas “takes care of human rights and is guided by Islamic tolerance when dealing with the followers of other religions.”¹⁹⁶ Article 31 of the charter provides that all religions can live in peaceful coexistence with one another and that Islam affords everyone his basic rights.¹⁹⁷ The basic rights that Hamas must afford to non-Muslims must include, at a bare minimum, the right to be free from forced conversions to Islam.

Moreover, Prime Minister Ismail Haniyeh of Hamas recently stated that his government would respect all past agreements made by the Palestinian Authority.¹⁹⁸ This is significant because the Palestinians have long acknowledged the preeminence of the UDHR. For example, on December 13, 1988, Yasser Arafat, then leader of the PLO, told the U.N. General Assembly that the Palestinians “rel[ied] on the Charter and resolutions of the United Nations, the Declaration of Human Rights and international legitimacy.”¹⁹⁹ He also declared that the PLO’s legislative body reaffirmed the United Nations charter and resolutions.²⁰⁰ In addition, Arafat stated that the Palestinian government’s “democratic system will be based on the precepts of social justice and equal rights, freedom from ethnic, religious, racial or sexual discrimination under a constitution that will guarantee the rule of law.”²⁰¹ As a succeeding governing entity, Hamas is bound by Arafat’s pledge to respect international legal principles.

¹⁹⁴ United Nations, *Press Release: Palestine Observer is Granted Additional Rights to Participate in Work of General Assembly*, available at <http://www.un.org/News/Press/docs/1998/19980707.ga9427.html>.

¹⁹⁵ *Id.*

¹⁹⁶ *The Covenant of the Islamic Resistance Movement*, art. 31, available at <http://www.intellnet.org/documents/900/000/903.htm>.

¹⁹⁷ *Id.*

¹⁹⁸ Patrick St. Paul, *Haniyeh: “We are the Legitimate Government”*, Monthly Review Online, June 16, 2007, available at <http://www.monthlyreview.org/mrzine/sp160607.html>; Kaveh L. Afrasiabi, *The Death of the Two-State Solution*, Asia Times Online, June 20, 2007, available at http://www.atimes.com/atimes/Middle_East/IF20Ak04.html.

¹⁹⁹ Yasser Arafat, P.L.O. President, *Statement to the U.N. General Assembly*, Dec. 13, 1988, available at <http://www.mideastweb.org/arafat1988.htm>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

Additionally, Hamas must comply with the Basic Law of Palestine, which was signed into law by Arafat in 2002.²⁰² The Basic Law contains several provisions that promote a healthy governmental respect for religious freedom. For example, Article IX states that “[a]ll Palestinians are equal . . . without discrimination because of race, sex, color, religion, political views, or disability.”²⁰³ Article XVIII provides that “[f]reedom of belief, worship, and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals.”²⁰⁴ Although the Basic Law proclaims Islamic Shari’a as the law of the land, it maintains that the “[r]espect and sanctity of all other heavenly religions shall be maintained.”²⁰⁵ The Basic Law also states that “[b]asic human rights and freedoms shall be binding and respected,” and that “[t]he Palestinian National Authority shall work . . . to join regional and international declarations and covenants which protect human rights.”²⁰⁶ If Hamas is to adhere to its charter and the Basic Law of Palestine and strive for international recognition, it must accept the UDHR’s universal protection of the right to change (or not change) one’s religion.

C. *The right to choose and change one’s religious beliefs is universal and is part of customary international law that is binding upon all governments.*

Certain basic human rights found in the UDHR and other international legal documents—including the right to choose one’s religion—are so universally accepted that they have become established as customary international law that is binding upon *all* governments, not just those that have signed or ratified the underlying documents.²⁰⁷ For example, in December 1998, the U.N. General Assembly adopted a Declaration that stated that “*all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner . . .*”²⁰⁸ The General Assembly reaffirmed “the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights . . . as basic elements of

²⁰² U.S. State Report, *supra* note 20.

²⁰³ Amended Basic Law [Constitution] art. 9 (Palestinian National Authority), *available at* http://www.usaid.gov/wbg/misc/Amended_Basic_Law.pdf.

²⁰⁴ *Id.* at art. 18.

²⁰⁵ *Id.* at art. 4.

²⁰⁶ *Id.* at art. 10.

²⁰⁷ *See generally A and others v. Secretary of State for the Home Department (No 2)*, 2005 UKHL 71, 19 BHRC 441, ¶ 153(c) (2005).

²⁰⁸ United Nations General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, U.N.G.A. Res. 53/144 (Dec. 9, 1998), *available at* <http://www.un.org/Depts/dhl/resguide/r53.htm> (emphasis added).

international efforts to promote universal respect for and observance of human rights and fundamental freedoms”²⁰⁹ The Declaration stated that:

all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion²¹⁰

The right to choose one’s religion and change one’s religious affiliation is among the principles of the UDHR that are binding upon all governments regardless of whether they have signed or ratified the UDHR. Nations that have ratified the UDHR, such as Egypt, would be obligated to uphold the right to change religions even if they formally rescinded their ratification. Governments that have not officially ratified the UDHR, such as Hamas, are bound by customary international law and must recognize and respect the right to choose one’s religious beliefs. The international community must hold all *de jure* and *de facto* governments to the highest standard when it comes to the protection of human rights and fundamental freedoms set forth in the UDHR.

D. Governments that impose Shari’a law must do so in a manner that recognizes and respects the right of both Muslims and non-Muslims to choose their religious beliefs and voluntarily change their religious affiliation.

As discussed previously, some nations forbid or punish voluntary conversions from Islam to another religion under their interpretations of Shari’a law and also deliberately fail to intervene to prevent private acts of violence against converts. Many of these governments have ratified the UDHR and other documents that recognize the right to choose one’s religion, and those that have not are bound to respect the right to change religions under customary international law.

Islamic legal scholars have acknowledged that the UDHR establishes universal principles applicable to Muslims and non-Muslims alike.²¹¹ For example, in 1998, the United Nations High Commissioner for Human Rights organized a seminar on Islamic perspectives on the UDHR that coincided with the 50th anniversary of the UDHR.²¹² “Twenty experts in Islamic Law and human rights

²⁰⁹ *Id.* at preamble.

²¹⁰ *Id.*

²¹¹ The Catholic Church has also confirmed the value of religious freedom, especially in the declaration *Dignitatis Humanae*. His Holiness Pope Paul VI, Declaration on Religious Freedom, *Dignitatis Humanae*, On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious (Dec. 7, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

²¹² Mary Robinson, United Nations High Commissioner for Human Rights, Seminar, *Enriching the universality of human rights; Islamic perspectives on the Universal Declaration of Human Rights* (Geneva, 1998), available at <http://www.unhchr.ch/html/50th/islamp1.htm>.

were selected by the High Commissioner, in consultation with the [Organization of the Islamic Conference].”²¹³ The High Commissioner noted in her closing remarks:

I have learned of the fundamental principles of Islam relating to the dignity of the human person, to the search for justice and the protection of the weak, solidarity, respect for other cultures and beliefs. *In all these discussions, no one expressed doubts about the Universal Declaration of Human Rights nor denied the legitimacy or universality of international human rights standards.*²¹⁴

A key Islamic human rights document recognizes that people of all faiths are entitled to respect for their religious beliefs. The Universal Islamic Declaration of Human Rights (1981) (“UIDHR”) provides that “[e]very person has the right to freedom of conscience and worship in accordance with his religious beliefs.”²¹⁵ The UIDHR also states that “[n]o one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.”²¹⁶ The UIDHR recognizes that “[e]very person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. . . .”²¹⁷ The latter part of this provision should *not* be read as an all-encompassing exception that renders meaningless the rule of religious liberty established in the former part. The UIDHR also provides that “[t]he Qur’anic principle ‘There is no compulsion in religion’ shall govern the religious rights of non-Muslim minorities.”²¹⁸

In addition, the Cairo Declaration on Human Rights in Islam (1990) (“CDHRI”)—drafted by the Organization of the Islamic Conference—states that “[a]ll men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of . . . belief, . . . religion, . . . or other considerations. . . .”²¹⁹ The CDHRI states that “[e]veryone shall have the right to live in security for himself [and] his religion”²²⁰ The CDHRI provides that “[i]t is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.”²²¹ However, the CDHRI asserts that fundamental human rights “are

²¹³ *Id.*

²¹⁴ *Id.* (emphasis added).

²¹⁵ Universal Islamic Declaration of Human Rights, Sep. 19, 1981, at art. XIII, *available at* <http://www.alhewar.com/ISLAMDECL.html>.

²¹⁶ *Id.* at art. XII(e).

²¹⁷ *Id.* at art. XII(a).

²¹⁸ *Id.* at art. X(a).

²¹⁹ Cairo Declaration of Human Rights in Islam, Aug. 5, 1990, U.N. Doc. A/CONF.157/PC/62/Add.18, art. 1(a), *available at* <http://www1.umn.edu/humanrts/instate/cairodeclaration.html>.

²²⁰ *Id.* at art. 18(a).

²²¹ *Id.* at art. 10.

subject to the Islamic Shari'ah."²²² This raises the issue of whether Shari'a law recognizes the universal right to change one's religious affiliation.

Even under Shari'a law, there is disagreement over the proper punishment (if any) for conversion from Islam or apostasy. Although some interpretations of Shari'a law forbid conversion from Islam,²²³ there is some disagreement on the prescribed punishment or whether to view apostasy or conversion as merely something to be discouraged.²²⁴ Traditionally, the belief has been that Muslims who converted from Islam were to be executed,²²⁵ but more recently, most Islamic countries that still forbid the practice have opted for some lesser form of punishment.²²⁶ The principal text for Islam, the Koran (or Qur'an), makes no mention of a punishment for apostasy. The view of the death penalty as the sanctioned punishment for apostasy is derived from a lesser source of religious authority called the Hadith, which is acknowledged as open to interpretation.²²⁷

There is no consensus on whether Shari'a law requires governments to punish Muslims that voluntarily convert to other religions.²²⁸ For example, Dr. Ahmad Shafaat has proposed that a call for the death penalty or some other punishment for voluntarily converting from Islam to another religion is a misinterpretation of the Koran.²²⁹ Dr. Shafaat notes that the Koran mentions apostasy many times, but never states a punishment. This, along with the fact that the Koran does discuss penalties lesser than death for other sins, suggests that if such a punishment were appropriate for apostasy, the Koran would have addressed it.²³⁰ Dr. Shafaat proposes that death was only to be appropriate as a possible punishment

²²² *Id.* at art. 24.

²²³ Lionel Beenher, *Religious Conversion and Sharia Law*, June 8, 2007, available at http://www.cfr.org/publication/13552/religious_conversion_and_sharia_law.html.

²²⁴ Dr. Ahmad Shafaat, *The Punishment of Apostasy in Islam Part I: The Qur'anic Perspective*, Feb. 2006, available at <http://www.islamicperspectives.com/ApostasyI.htm>.

²²⁵ Magdi Abdelhadi, *What Islam Says on Religious Freedom*, BBC News Online, Mar. 27, 2006, available at http://news.bbc.co.uk/2/hi/south_asia/4850080.stm.

²²⁶ Beenher, *supra* note 222.

²²⁷ Shafaat, *supra* note 223.

²²⁸ See, e.g., Maududi, Abul A'la, *Human Rights in Islam* (1976), available at <http://www.islam101.com/rights/index.htm> (arguing that universal human rights are not solely attributable to the West but also find their origin in Islam).

[While] Muslims are enjoined to invite people to embrace Islam and advance arguments in favour of it, they are not asked to enforce this faith on them. No force will be applied in order to compel them to accept Islam. Whoever accepts it does so by his own choice. Muslims will welcome such a convert to Islam with open arms and admit him to their community with equal rights and privileges. But if somebody does not accept Islam, Muslims will have to recognize and respect his decision, and no moral, social or political pressure will be put on him to change his mind.

Id. at chap. 3.

²²⁹ Shafaat, *supra* note 223.

²³⁰ *Id.*

for those who converted and then took direct action against Islam. In cases where the apostate was passive, other Muslims should attempt to convince him peacefully of his mistake in leaving Islam or even leave him alone entirely.²³¹ While this interpretation of Shari'a law is not universal within the Muslim world, it reflects the fact that there is no uniform understanding of whether the government must (or may) punish Muslims that choose to convert to another religion. This reflects a lack of any regional or international consensus on the requirements of Shari'a law and provides further evidence that all governments, including those that follow Islamic law, must be held accountable to comply with universal norms with regard to religion-based human rights.

Any interpretation of Shari'a law that allows for forced conversions and subjects voluntary religious converts to arrest, violence, or death is inconsistent with customary international law. As discussed previously, the UDHR is a well-established source of customary international law.²³² Principles considered to be customary international law are considered binding on even non-consenting parties.²³³ All nations, regardless of their religious traditions, must be held to the standards contained in the UDHR such as Article 18's protection of the freedom to alter one's religious affiliation.²³⁴ Neither regional agreements nor national constitutions may exempt a government from compliance with customary international law.

The UDHR and the CDHRI do not give any government the authority to abuse the basic human rights of non-Muslims in the name of Shari'a law. If governments are free to abridge the right to choose one's own religion by relying on regional practices or religious doctrines, how can the right of a person to choose and change his religious affiliation be considered *universal*? The U.N. must strongly reiterate that there is no "Shari'a exception" to the universal duty to uphold basic human rights.²³⁵ The international community must not tolerate or ignore the global problem of forced religious conversions and official refusal to recognize voluntary conversions.

IV. Recommendations

²³¹ *Id.*

²³² Lawrence O. Gostin, *Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann*, 29 J.L. Med. & Ethics 121, 127 (2001).

²³³ Dean Adams, *The Prohibition of Widespread Rape as Jus Cogens*, 6 San Diego Int'l L.J. 357, 388 (2005).

²³⁴ UDHR at art. 18.

²³⁵ See generally David G. Littman, *Human Rights and Human Wrongs*, National Review Online, Jan. 19, 2003, available at <http://www.nationalreview.com/script/pringpage.p?ref=/comment/comment-littman011903.asp>.

With a host of challenges and dangers facing the global community in the Twenty-First Century, reinforcement of the freedom of religion and belief is a cornerstone upon which peace building and brotherhood between nations may be established. In light of the growing number of violations of religious freedom occurring around the world which undermine human dignity and create a threat to the peace, the international community must reaffirm the fundamental right to freedom of religion as proclaimed by the UDHR and customary international law.

In light of the foregoing, we recommend that the HRC take the following actions:

- Reaffirm that all governments must recognize voluntary conversions and prevent coerced conversions;
- Condemn the practices of states that have implemented anti-conversion laws or other laws that would prevent individuals from freely choosing their own religion;
- Request the Special Rapporteur on Freedom of Religion or Belief to investigate claims of forced religious conversions as well as incidents of state-sanctioned punishment for voluntary conversions from the majority religion;
- Call on religious leaders of all faiths to recognize the right to choose one's religion and condemn any interpretation of their religious laws that would call for corporal punishment for those that would convert from their religions; and
- Reiterate that all governments must intervene to prevent non-governmental actors from committing violent or discriminatory acts against those who change their religion or refuse to do so.