

## THE TANDEM PROJECT

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### UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

#### REPORT OF THE U.N. SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF - U.N. HUMAN RIGHTS COUNCIL TENTH SESSION (A/HRC/10/8)

##### PARAGRAPHS 29-54 – ECONOMIC, SOCIAL & CULTURAL RIGHTS

**Issue:** U.N. Special Rapporteur Report (A/HRC/10/8) on Economic, Social, Cultural Rights.

**For:** United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media, Civil Society

**Review:** *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, (A/HRC/10/8) - Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir. Agenda item 3.

The Tandem Project highlights section of her report leading up to its presentation before the tenth session of the UN Human Rights Council from March 2-27, 2009. This section of her report (paragraphs 29-54) are excerpted paragraphs on Discrimination Based on Religion or Belief and its Impact on the Enjoyment of Economic, Social and Cultural Rights. For all 55 paragraphs read the full report (A/HRC/10/8) by clicking on Issues, Special Rapporteur on Freedom of Religion or Belief and then the Documents section of the OHCHR web site available at:

<http://www.ohchr.org>.

The UN Special Rapporteur on Freedom of Religion or Belief is scheduled to present her report on Tuesday 10 March 2009 in the afternoon. The time is always subject change based on the length of previous debates. It will be broadcast live on the HRC web cast and The Tandem Project will make an announcement if there are any schedule changes.

**Excerpts:** Excerpts are presented under the Eight Articles of the 1981 U.N. Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. Examples of extracts are presented prior to an *Issue Statement* for each Review.

*3. 1 Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.*

*4. 1 All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.*

*4. 2 All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.*

### III. DISCRIMINATION BASED ON RELIGION OR BELIEF AND ITS IMPACT ON THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**29. In the implementation of her mandate, the Special Rapporteur has always strived to adopt a holistic approach and to examine all issues related to freedom of religion or belief in**

a non-selective manner. In doing so, she and her predecessors came across a great variety of issues of concern, including cases of discrimination based on religion or belief (5) pertaining to civil and political rights, as well as to economic, social and cultural rights. In this section, the Special Rapporteur provides a preliminary analysis on discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights. While focusing on economic, social and cultural rights in the present report, The Special Rapporteur recalls that the 1993 Vienna Declaration and Program of Action proclaimed that all human rights are universal, indivisible, and interdependent and interrelated. Therefore, the distinction made in this section between civil and political rights on the one hand, and economic, social and cultural rights on the other, should merely be seen as reflecting the terminology used by the two international covenants.

(5) The Special Rapporteur prefers to use the term “discrimination based on religion or belief” rather than “religious discrimination”, in order to emphasize that the prohibition of discrimination is not limited to theistic beliefs but also encompasses non-theistic or atheistic beliefs. This is in line with the approach taken by the Human Rights Committee in its general comment 22, para. 2 (“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed”), as well as with the approach in the final document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-discrimination (ER/CN.4/2002, appendix).

#### **A. Legal Framework at the International Level**

[First of ten paragraphs]

30. The principle of non-discrimination is generally perceived as one of the most important in the field of human rights; it is overarching and therefore applies to all human rights, including the right to freedom of religion or belief. It is crucial to prevent discrimination with regard to the enjoyment of economic, social and cultural rights, since minorities and vulnerable groups are particularly affected when States do not abide by their obligations to respect, protect and fulfill these rights.

[Other paragraphs includes information on the principle of non-discrimination in the 1981 U.N. Declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; International Covenant on Economic, Social and Cultural Rights; and General Comments from the Human Rights Committee]

#### **B. Examples from Mandate Practice**

40. In order to illustrate the adverse impact of discrimination based on religion or belief on the enjoyment of economic, social and cultural rights, the Special Rapporteur highlights some of the recurrent issues encountered in the mandate practice, both in communications with Governments and during country visits. She has therefore selected a number of examples in order to show how various economic and cultural rights enshrined in the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights have been denied to certain individuals or groups of individuals based on their religion or belief. She also refers to other United Nations human rights mechanisms, such as treaty bodies and special procedures, which have addressed these issues within their mandates.

##### **1. Right to work**

[First of three paragraphs]

**41. The Special Rapporteur deplores that members of certain religious or belief groups are often denied access to employment or have faced obstacles, both in Government institutions and in private companies. For instance, during a recent country visit, she received information that members of certain religious minorities had been summoned by authorities and pressured to leave their jobs in State institutions (A/HRC/10/8/Add.4, para.21). During another country visit, the previous mandate holder was informed about a number of obstacles faced by religious minorities in their access to public-sector jobs, especially with regard to positions of responsibility (A/55/280/Add.2, paras. 50 and 64). The first mandate-holder, Angelo d’Almeida Ribeiro, also noted that, in one country, the Government had required private employers to dismiss employees belonging to a certain sect and had instructed administrative departments to prepare lists of members of the sect employed in the departments (E/CN.4/1987/35/, para.63).**

[Other paragraphs include evidence of persistent inequalities and religious differentials in relation to employment from the mandate-holders country visits, and access to employment with regard to the issue of wearing religious symbols]

## **2. Right to an adequate standard of living**

[Second of three paragraphs]

**45. With regard to discrimination based on religion or belief and its impact on the right to adequate housing, the mandate addressed the situation of members of a Muslim minority community in several communications to a Government (E/CN.4/1993/62, para. 45, E/CN.4/2005/61/Add.1, para. 173 and A/HRC/7/10/Add.1, paras. 180-181). Reportedly, Muslims were systematically relocated through eviction from villages, where afterwards members of the Buddhist majority settled in so-called “model villages”. In the course of these evictions, mosques were reportedly destroyed and replaced by Buddhist pagodas. In addition, the land of existing mosques in certain places was confiscated by the authorities.**

[Other paragraphs include inadequate food of persons deprived of their liberty when prison officials are given total control over what they eat, and confiscation of personal property including residential premises]

## **3. Right to the enjoyment of the highest attainable standard of physical and mental health.**

[Second of two paragraphs]

**48. In the framework of another country mission (E/CN.4/1999/58/Add.2, paras. 35 and 113), the previous mandate-holder noted that a residence permit containing essential information on a individual, including religious and political data, was indispensable in order to get access to health care, employment and education. Reportedly, sector policemen had the power to issue and revoke this document. The previous mandate-holder criticized such an elaborate system of control and excessive power over individuals. The current Special Rapporteur would like to reiterate that any indication of a person’s religious affiliation on official documents carries a serious risk of abuse or subsequent discrimination based on religion or belief, which has to be weighed against the possible reasons for disclosing the holder’s religion (A/63/161, para. 77).**

[Other paragraph include reports by previous mandate-holders that members of religious

minorities were denied access to medical care adversely affecting their right to health, and a bias in public services in villages without any medical facilities]

#### **4. Right to Education**

[Second of three paragraphs]

**50. Concerning school education, the Special Rapporteur on freedom of religion or belief was informed by atheistic and non-theistic believers that pupils were, in some instances, compelled to take part in collective religious worship and had no adequate rights of withdrawal. Furthermore, atheistic and non-theistic groups objected to the manner in which syllabuses of religious education were drawn up, especially that atheists and non-theists were rarely represented on the relevant committees or advisory bodies. Some countries afforded a special status to faith-based schools and allowed them to discriminate in their admission and employment policies. Consequently, teachers with no religious beliefs or with beliefs incompatible with those of the faith-based school were put at a disadvantage in comparison with theistic colleagues. The Special Rapporteur reiterates that pupils and teachers should not be discriminated against on grounds of their adherence-or not- to a specific religion or belief (A/62/280, paras. 72 and 78).**

[Other paragraphs include discussion of the issues of wearing religious symbols such as the wearing of the Muslim head scarf by women and the Sikh turban as essential to their faith. A footnote refers to the Committee on the Rights of the Child and the principle of the best interests of the child and the rights of the child to access to education]

#### **5. Right to take part in cultural life**

[Second of three paragraphs]

**53. The Special Rapporteur has repeatedly emphasized that places of worship, religious sites and cemeteries have more than a material significance for the religious community attached to them. In this context, she is of the view that the concept of collective heritage of human kind could be used more prominently with regard to the preservation and protection of religious sites. During a country visit, the Special Rapporteur recommended that the Government should issue non-selective regulations and designate holy sites on a non-discriminatory basis (A/HRC/10/8/Add.2, para. 77). In addition, restrictions on access to such places of worship and religious sites, which ultimately also affect the right to take part in cultural life, must comply with international human rights law, including the principle of non-discrimination, as well as freedom of religion or belief and liberty of movement. In the context of article 12 (3) of the International Covenant on Civil and Political Rights, the Special Rapporteur stressed that the prohibition of discrimination and freedom of religion or belief may be decisive in the evaluation of whether a restriction on the liberty of movement is permissible.**

[Other paragraphs include discussion of the United Nations Declaration on the Rights of Indigenous Peoples, and reference to irreplaceable relics and religious monuments]

**ISSUE STATEMENT:** International Human Rights Standards on Freedom of Religion or Belief are international law and universal codes of conduct for peaceful cooperation, respectful competition and resolution of conflicts. The standards are a platform for inclusive and genuine dialogue on core principles and values within and among nations, all religions and other beliefs.

STANDARDS: [http://www.tandemproject.com/program/81\\_dec.htm](http://www.tandemproject.com/program/81_dec.htm)

**The Tandem Project:** a non-governmental organization founded in 1986 to build understanding, tolerance and respect for diversity, and to prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project, a non-profit NGO, has sponsored multiple conferences, curricula, reference materials and programs on Article 18 of the International Covenant on Civil and Political Rights – Everyone shall have the right to freedom of thought, conscience and religion - and 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

The Tandem Project initiative is the result of a co-founder representing the World Federation of United Nations Associations at the United Nations Geneva Seminar, *Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief*, called by the UN Secretariat in 1984 on ways to implement the 1981 UN Declaration. In 1986, The Tandem Project organized the first NGO International Conference on the 1981 UN Declaration.

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*The Tandem Project is a UN NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

**Goal:** To eliminate all forms of intolerance and discrimination based on religion or belief.

United Nations Secretary General Ban Ki Moon, at the Alliance of Civilizations Madrid Forum said; “never in our lifetime has there been a more desperate need for constructive and committed dialogue, among individuals, among communities, among cultures, among and between nations.” Another writer in different setting said; “the warning signs are clear, unless we establish genuine dialogue within and among all kinds of belief, ranging from religious fundamentalism to secular dogmatism, the conflicts of the future will probably be even more deadly.”

**Challenge:** to reconcile international human rights standards on freedom of religion or belief with the truth claims of religious and non-religious beliefs.

Did God create us or did we create God? This question calls for inclusive and genuine dialogue, respectful and thoughtful responses, discussion of taboos and clarity by persons of diverse beliefs. Inclusive and genuine is dialogue between people of *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief*. These UN categories embodied in international law promote tolerance and prevent discrimination based on religion or belief.

Inclusive and genuine dialogue is essential as a first step in recognition of the inherent dignity, equal and inalienable rights of all members of the human family, and a foundation for freedom, justice and peace in the world. Leaders of religious and non-religious beliefs sanction the truth claims of their own traditions. They are the key to raising awareness and acceptance of the value of holding truth claims in tandem with human rights standards on freedom of religion or belief.

To build understanding and support for Article 18, International Covenant on Civil and Political Rights – Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Encourage the United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media and Civil Society to use International Human Rights Standards on Freedom of Religion or Belief as essential for *long-term solutions* to conflicts in all matters relating to religion or belief.

**Objectives:**

1. Use International Human Rights Standards on Freedom of Religion or Belief as a platform for genuine dialogue on the core principles and values within and among nations, all religions and other beliefs.

2. Adapt these human rights standards to early childhood education, teaching children, from the very beginning, that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.<sup>1</sup>

**History:** In 1968 the United Nations deferred work on an International Convention on the Elimination of all Forms of Religious Intolerance, because of its apparent complexity and sensitivity. In the twenty-first century, a dramatic increase of intolerance and discrimination on grounds of religion or belief is motivating a worldwide search to find solutions to these problems. This is a challenge calling for enhanced dialogue by States and others; including consideration of an International Convention on Freedom of Religion or Belief for protection of and accountability by all religions or beliefs. The tensions in today's world inspire a question such as:

Should the United Nations adopt an International Convention on Freedom of Religion or Belief?

**Response:** Is it the appropriate moment to reinitiate the drafting of a legally binding international convention on freedom of religion or belief? Law making of this nature requires a minimum consensus and an environment that appeals to reason rather than emotions. At the same time we are on a learning curve as the various dimensions of the Declaration are being explored. Many academics have produced voluminous books on these questions but more ground has to be prepared before setting up of a UN working group on drafting a convention. In my opinion, we should not try to rush the elaboration of a Convention on Freedom of Religion or Belief, especially not in times of high tensions and unpreparedness. - *UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Prague 25 Year Anniversary Commemoration of the 1981 UN Declaration, 25 November 2006.*

**Option:** After forty years this may be the time, however complex and sensitive, for the United Nations Human Rights Council to appoint an Open-ended Working Group to draft a United Nations Convention on Freedom of Religion or Belief. The mandate for an Open-ended Working Group ought to assure nothing in a draft Convention will be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

#### *Separation of Religion or Belief and State*

**Concept:** *Separation of Religion or Belief and State - SOROBAS.* The First Preamble to the 1948 United Nations Universal Declaration of Human Rights reads; “*Whereas 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.*” This concept suggests States recalling their history, culture and constitution adopt fair and equal human rights protection for all religions or beliefs as described in General Comment 22 on Article 18, International Covenant on Civil and Political Rights, UN Human Rights Committee, 20 July 1993 (CCPR/C/21/Rev.1/Add.4):

**Article 18:** protects *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.* The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with international characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

**Article 18:** permits restrictions to manifest a religion or belief only if such limitations are prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Dialogue:** International Human Rights Standards on Freedom or Religion or Belief are international law and universal codes of conduct for peaceful cooperation, respectful competition and resolution of conflicts. The standards are a platform for genuine dialogue on core principles and values within and among nations, all religions and other beliefs.

**Education:** Ambassador Piet de Klerk addressing the Prague 25 Year Anniversary Commemoration of the 1981 U.N. Declaration said; “Our educational systems need to provide children with a broad orientation: from the very beginning, children should be taught that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.”<sup>1</sup>

*1981 U.N. Declaration on Freedom of Religion or Belief*

5.2: Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents, the best interests of the child being the guiding principle.” With International Human Rights safeguards, early childhood education is the best time to begin to build tolerance, understanding and respect for freedom of religion or belief.

5.3: The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, and friendship among peoples, peace and universal brotherhood, respect for the freedom of religion or belief of others and in full consciousness that his energy and talents should be devoted to the service of his fellow men.