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LETTER FROM THE EDITOR

January 31, 2007

Dear Readers,

The issues discussed in both this first Issue of Volume 5 of the International Journal of Civil Society Law and recent issues of the IJCSL-Newsletter are critical ones in today's world. As we emphasize in an article written for another publication,¹ various aspects of the national regimes that protect citizen involvement in governance and the important freedoms of association, expression, and religion, are facing curtailment for a variety of reasons. Among these are fears of terrorism, religious extremism, and international cross-border intervention in the cause of "promoting democracy." On the other hand, there are some more promising developments, such as the creation of better tax incentives for volunteers and the increase in court supervision of government incursions into protected freedoms.

This issue of IJCSL discusses some of these topics in the articles, country updates, and case notes that it contains. Cross-cutting themes involve the issue of religious freedom for minority religions and the role being played by courts in resolving disputes with regard to fundamental civil and political rights, in particular the European Court of Human Rights.

- The legal complexities in Turkey surrounding rights of religious minorities, both with respect to the Law on Foundations (which was vetoed by Turkey's President in December 2006) and the January ruling of the European Court of Human Rights, holding that the Turkish state must either return property to a foundation belonging to a minority congregation or pay damages are explored in a Country Update. This comment was written by frequent contributor Dr. Otmar Oehring and is reproduced with the kind permission of Forum 18 News. Dr. Oehring suggests that the issues with regard to the Foundations Law may well require a good deal of time to resolve, while minority religious adherents may need to go to the ECHR in Strasbourg to resolve disputes.
- China's development of a "charity law" is discussed in another Country Update, which includes the comments of ICCSL on the September 15, 2006 draft for such a law.
- Paloma Durán's article is about the United Nations and its promotion of volunteerism, which has led not only to the International Year of the Volunteer (2001) and the creation of the U.N.'s volunteer corps, but also to a recognition that volunteers need legal protection in national legislation. Prof. Durán's piece provides a clear understanding of the relationships between the international treaties that encourage volunteering and the roles of volunteers and the protections for volunteers in national legal regimes.

¹ Year in Review, International Not-for-profit Organizations and Nongovernmental Organizations Committee, Section of International Law, American Bar Association, forthcoming INT'L LAWYER, July 2007.

- Tad Stahnke and Robert Blitt have contributed an article comparing the treatment of religion in constitutions in predominantly Muslim countries. Whether a constitution makes Islam the state religion or in other ways embodies principles that place Islamic law in a higher position than other laws, there is an inevitable clash with the protection of religious freedom. This insightful article, which previously appeared in the Georgetown Journal of International Law and appears here with the kind permission of that publication as well as the authors, helps to elucidate the complexity of the issues that arise.

We hope you enjoy this issue and that you will send us any thoughts and suggestions for upcoming issues.

Happy Reading!

Karla W. Simon, Editor-in-Chief

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IJCSL EDITORIAL POLICY

January, 2007

Dear Reader,

CONTENT – The IJCSL publishes articles on a variety of topics, seeking to provide a venue for an international readership to learn about and express opinions on developments in law affecting civil society. These topics and the array of opinions on them are complex and sometimes controversial. The opinions expressed herein do not necessarily reflect the views of the IJCSL or its editorial staff.

STYLE – The IJCSL publishes articles by contributors from around the world. Therefore, the IJCSL uses a flexible editorial policy regarding questions of style. Articles submitted by persons for whom the English language is native are edited based on the author's original syntax and spelling. Articles submitted by persons for whom the English language is not native are edited according to American English style.

Occasionally, the IJCSL publishes articles in languages other than English. In those instances, articles are published as submitted and the IJCSL provides an English-language summary.

QUESTIONS & COMMENTS – The IJCSL welcomes readers' questions and comments on items it publishes. If you have a question or comment, please contact:

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We look forward to hearing from you, and thank you for your interest in the IJCSL.

Sincerely,

The IJCSL Editorial Staff and Editorial Board

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5 INT. J. CIV. SOC. LAW 1 at <http://www.law.cua.edu/Students/Orgs/IJCSL>

COUNTRY UPDATES

TURKEY: RELIGIOUS FREEDOM VIA STRASBOURG, NOT

ANKARA OR BRUSSELS?*

BY OTMAR OEHRING**

Two issues remain at the forefront of attention for Turkey's non-Muslim religious minorities:

- * Whether the controversial Foundations Law will be adopted (and if so in what form); and
- * Whether the authorities will take any steps towards religious freedom and towards recognising the legal status of religious communities in the wake of a momentous 9 January ruling by the European Court of Human Rights (ECHR) in Strasbourg.

In case No. 34478/97, the ECHR ruled in favour of a Greek Orthodox community foundation running a High School in Istanbul's Fener area (Fener Rum Erkek Lisesi Vakfı#305;) that acquired a building in Istanbul's Beyoglu area in 1952 by donation. The building was confiscated by the state as a result of a court case launched by the Turkish authorities in 1992 based on a ruling of the Court of Cassation of 1974 referring to the so-called 1936 declaration on the registration of community foundations. The ECHR held that the Foundation's rights to its property had been violated and ordered the property legally returned to the Foundation or, if the authorities failed to do so, to award compensation of 890,000 Euros. It also awarded costs of 20,000 Euros to the Foundation.

The ECHR decision is positive - even if it is quite narrow in its scope. It shows that the Court does not accept the Turkish state's argumentation over the seizure of non-Muslim minorities' property. Significantly, even the Turkish judge at the Court had no objections to the ruling.

The Foundation has been seeking to protect its rights through the Turkish courts since 1992. In the wake of the rejection of this attempt in 1996, the Foundation lodged the case at the ECHR as far back as 1998 – an unusually long time to reach a ruling even by the Strasbourg court's standards. The Turkish government showed close interest in the case, with eight representatives involved at the court. Most probably the number of submissions from the Turkish government prolonged the case.

Although the Turkish press speculated excitedly about changes to the legal rights of foundations in the aftermath of the ECHR ruling, I doubt that changes will be far-reaching: the ruling itself will probably have an impact only on the community foundations that are allowed to some of Turkey's religious minorities. Even so, under the Lausanne Treaty there is no reason why

* © Forum 18 News Service. All rights reserved. ISSN 1504-2855. This article was originally published by Forum18, Thursday, January 18, 2007, reprinted here with permission.

** Dr Otmar Oehring is head of the human rights office of Missio <<http://www.missio-aachen.de/menschen-kulturen/themen/menschenrechte>>, a Catholic charity based in Germany.

other non-Muslim minorities should not have such community foundations. The impact on religious freedom more broadly is likely to be minimal.

Yet far more significantly, the ruling will provide a boost to religious minorities who will be encouraged to see the ECHR as a route to seeking the vindication of their rights. The Ecumenical Patriarchate has already lodged a number of cases in Strasbourg over property and the Armenian Patriarchate is likely to follow.

In one of its cases already at Strasbourg, the Ecumenical Patriarchate is challenging the confiscation of its orphanage in Büyükada, Princes Islands, arguing, in accordance with the title in the land deed - Owner: Greek Orthodox Patriarchate - that the orphanage is the property of the Patriarchate, a right Turkey says does not exist. The authorities do not recognise the legal existence of the Patriarchate - whether under the name the Greek Patriarchate (Rum patrikhanesi), as the Turkish authorities prefer, or under the name the Ecumenical Patriarchate, to which the Turkish authorities virulently object - and therefore claim that it cannot own property.

Experts say that it does not matter either whether the Court rules that the Patriarchate exists (therefore it can own property), or whether the Court rules that the orphanage belongs to the Patriarchate (therefore the Patriarchate must exist in law). Either way the Court will recognise the Patriarchate's right to a legal existence.

Moreover, presuming that the ECHR will rule in favour of the Patriarchate, this would provide a precedent that should force the Turkish authorities to treat other religious-owned properties and their owners in the same way.

The Vincentians, a Catholic Congregation, are also considering lodging a case over a confiscated orphanage in Istanbul, originally run by nuns, which it argues was church property. The Vincentians explain that the orphanage was originally registered as the property of one of its priests, as foreigners could not then generally buy property. After his death, the Turkish authorities sought the seizure of all property registered in his name and in 1991 the nuns were "shamefully" expelled as the Directorate General for Foundations (which should never have been involved as this property was not owned by a community foundation) had sublet the property to a private company.

But even more crucially, potential new cases from religious minorities are likely to tackle head-on the religious freedom itself of Turkey's religious minorities, not just their ownership of properties either through their foundations or directly as for example in the case of property of Catholic religious orders.

Progress elsewhere has been slow. During Pope Benedict's visit to Turkey at the end of last year, according to information given by media outside Turkey, Vatican representatives and government officials discussed the possibility of establishing a mixed working group to resolve the Catholic Church's problems in Turkey, especially over property and work permits for clergy and nuns. Catholics in the country heard nothing about any progress on the working group during the visit, and on 7 January the Vatican's Secretary of State Cardinal Tarcisio Bertone renewed the Church's urging to the government to initiate the working group. The Turkish government has still not reacted at all to the Vatican proposal - at least in public - even though prime minister Recep Tayyip Erdogan himself proposed setting up a number of joint working groups when he met members of the Turkish Bishops' Conference back in 2004.

The long-running saga of the Foundations Law - which might have resolved property problems for the foundations allowed to some non-Muslim ethnic/religious communities - reached a new twist on 2 December, when President Ahmet Necdet Sezer, a committed secularist, vetoed the Law which had been approved by the Turkish Parliament on 9 November (see F18News 22 November 2006 <http://www.forum18.org/Archive.php?article_id=875>).

The Foundations Law (No.5555) - which was intended to replace the Foundations Law No.3027 of 1935 - was due to regulate the rights of all foundations, whether Muslim or non-Muslim, though much of the attention focused on the way it would have affected non-Muslim foundations. Muslim foundations would have found their lives little changed - the Law would merely have codified existing law.

Contrary to expectations, the Parliament's version of the Law did not offer what the non-Muslim minorities had expected over defunct foundations, or over the property confiscated from foundations by the state in the wake of a 1974 High Court ruling and then sold on to third parties.

Before Parliament approved the Law, non-Muslim circles were abuzz with discussion over whether they should hope for this law's adoption or not. Many argued that any law adopted would be in a very negative version that could not then be amended for another ten or twenty years.

When Parliament adopted the law, reaction among Christian and Jewish communities was mixed. Some were happy that at least a few of the points put forward by minorities had been considered, such as the demand for return of or compensation for properties confiscated by the state as a result of the 1974 High Court ruling and still in state hands.

On the negative side, reciprocity - a principle that has been deployed especially to restrict the rights of the Ecumenical Patriarchate, with its treatment tied to the Greek government's treatment of its Turkish Muslim minority - was enshrined in law for the first time. Although Greece does unfairly restrict the rights of its Muslim minority, such restrictions are not as extensive as those imposed by the Turkish government on its Greek Orthodox minority. Yet it is quite clear that the formal inclusion of the reciprocity principle in Turkey's Foundations Law was done deliberately as an excuse to restrict Greek Orthodox rights.

President Sezer's veto of the Foundations Law was harshly criticised even in the Turkish liberal media. Most of the President's justification was based on points he disliked which affected non-Muslim minorities. He argued that some of these provisions went too far in their favour and went too far against the Turkish interpretation of its obligation to its ethnic/religious minorities under the 1923 Lausanne Treaty. On one point the President insisted that it is impossible to recognise a foundation and its ownership of properties for which there is no certificate as a foundation.

One leading journalist from the Istanbul-based Radikal newspaper argued that this was strange as when such properties were accumulated no community foundations existed - such properties were simply social and educational institutions. Permits to own them were issued in a different way, as in the Ottoman Empire even in the late 19th century ownership regulations comparable to those valid today did just not exist.

Although the President vetoed the Foundations Law it has not returned to parliament. Deputy Prime Minister Mehmet Ali Sahin declared in the wake of the ECHR ruling on the Greek Orthodox college Foundation that some parts of the Law would have to be redrafted. Any changes ought to cover foundations' properties seized by the state and then sold on to third

parties, an issue not even mentioned - let alone resolved - in Parliament's version of the Law. Yet it will be difficult to overcome many deputies' view that compensating religious minorities for such seized property will be too expensive and that the issue should therefore be dropped (see F18News 22 November 2006 <http://www.forum18.org/Archive.php?article_id=875>).

Implementation of the Law - had it been adopted - would also have run into problems as some provisions contradict other legal provisions, especially those found in the Civil Code.

But such contradictions already abound. Even though Article 110 of the Civil Code bans the formation of foundations with religious purposes, at least three such foundations - two Protestant and one Syrian Catholic - have been founded during the last few years. Whether this means that the related congregations as such have got legal personality as foundations or whether these foundations are foundations of congregations which as such still are not recognised legally still has to be discussed as more and more cases will go to the ECHR not just on the principle but on establishing foundations.

Alevis - a Muslim group the government does not recognise as a distinct religious minority - could also demand religious foundations - so far their places of worship are recognised only as cultural associations (see F18News 22 November 2006: <http://www.forum18.org/Archive.php?article_id=875>).

Property ownership for minority communities has been and remains beset with problems. Places of worship of minority communities that are allowed to maintain legally recognised community foundations - such as the Greek Orthodox, the Armenians, the Syrian Orthodox and the Jews - are owned by these foundations.

But for Catholics and Protestants, who have not historically been allowed such foundations, title deeds indicate that the congregations or church communities themselves own the buildings. Yet the state often refuses to recognise this. For example, it argued in ECHR case No. 26308/95 that the Assumptionist Fathers, a Catholic Order, are unknown in Turkey, so cannot own property. Places of worship that belong to communities that do not have foundations are in a worse legal situation than those owned by foundations.

In several extreme cases in the recent past, the state has argued that some Christian churches owned by foundations are in fact the property of individual saints (they are after all named after them). The state has gone on to argue from this that the saints concerned cannot be located - nor their heirs - so these places of worship cannot be returned to the community foundations that claim ownership and should therefore be seized by the state. Nowadays, the state is more willing to accept that minority communities' foundations own such places of worship.

But the problems for communities without foundations do not end with insecure legal ownership of their places of worship. Such communities cannot run bank accounts. A priest, bishop, individual or group of individuals has to set up a personal bank account on behalf of the community. The same even holds for communities with foundations, such as the Orthodox or Jews: their community foundations themselves are recognized but not the churches or Jewish congregations behind them. Such a restriction could be challenged at the ECHR - it is part of the whole issue of the lack of recognition of religious minority communities.

Publication of books and magazines is also more complicated - they have to be published in the name of an individual, who therefore has to take personal responsibility for their content. This has created problems in the past, though less so today.

Religious communities' charitable bodies also have no legal status. Caritas Turkey, for example, functions under the control of the Turkish Catholic Bishops' Conference (which also legally does not exist) and even works with government agencies, but has no legal status.

Religious leaders' status is not recognised in law. The one exception is with the leaders of Protestant associations that have recently been allowed to register (see F18News 22 November 2006 <http://www.forum18.org/Archive.php?article_id=875>), though even then they are recognised as leaders of an association, not of the religious community per se.

As to the vetoed Foundations Law, the government can send it to parliament again for further discussion - as President Sezer indicated in his veto - although if it is again approved the president cannot veto it a second time. His only option if he still disagrees with provisions in it is to refer it to the Constitutional Court. The government's other alternative is to abandon it - or wait until the next presidential elections expected in May, which many predict Erdogan will win.

Although Sezer did not spell it out bluntly, his comments on the vetoed Foundations Law make clear that he does not want any of the properties confiscated from foundations over the years to be given back. He sticks to the understanding of the Kemalists, the followers of Mustafa Kemal Ataturk, of how Turkey should be governed. Erdogan, on the other hand, is no more in favour of religious minorities' foundations, but takes a different view of the state's role.

Yet sadly, neither of the two big parties, the governing Justice and Development Party (AKP) or the opposition Republican People's Party (CHP), is willing to accept the principle that all people have rights, regardless of what was determined at Sevres back in 1920 and Lausanne back in 1923. Neither party gives any sign that it has read or understood Article 9 of the European Convention on Human Rights, which spells out individuals' rights to religious freedom, still less that it is ready to implement it.

Now that negotiations with the European Union over Turkey's potential accession have gone quiet - and the Turkish government feels less constrained to make concessions over religious freedom - the European Court of Human Rights in Strasbourg appears to have taken over as the best route for Turkey's religious minorities to assert their rights.

**COMMENTS ON THE
DRAFT CHARITY LAW FOR THE PEOPLES' REPUBLIC OF CHINA¹**

BY THE INTERNATIONAL CENTER FOR CIVIL SOCIETY LAW

Written comments on the Draft Charity Law (CL) have been invited by staff of the Ministry of Civil Affairs (MoCA) and the Ministry of Finance (MoF) to assist in further consideration and amendment of the draft of 15 September, 2006. After further revision, the draft law will be forwarded to the Legal Committee of the Standing Committee of the National Peoples' Congress.²

GENERAL

We are very honored to have been invited to participate in this process and to provide some suggestions about this legislation, which will establish the concept of charitable organizations in China. Some members of our group have been assisting MoCA and MoF for several years during the extensive revisions in the regulatory scheme for NPOs in China. All members of the group are familiar with the regulatory and tax regimes for charities in their own and other countries and thus bring comparative knowledge to the discussion. Our written comments are intended to provide a supplement to oral comments made during the Charity Law Salon held at Tsinghua University in November 2006, the Charity Law, Conference held in Beijing in October 2006, the conference held in conjunction with the University of British Columbia in July 2006, and other more informal discussions with Ministry and State Council officials about improving the legal environment for charity in China.

We also appreciate very much the interactivity of this process. Our view is that the ministries are doing exactly as they should by preparing drafts and seeking a broad range of advice from both Chinese and foreign experts who have worked with these issues on academic and practical levels for many years. While the views presented by various commentators may differ and while the draft that eventually emerges will inevitably be a compromise, which takes into account a variety of concerns, there is no question that it will have benefited from this interaction. And those of us who have been involved with the discussions as foreign experts will have received immeasurable benefits as well.

CAVEAT: We must precede our comments with the following caveat. Because we were unable to obtain a complete English translation of the draft, these comments are not comprehensive and account should be taken of the fact that we did not have an opportunity to review the draft in its entirety. Therefore, we hope we will be forgiven for any lack of understanding of the draft, its language, or what it contains.³

¹ Internal Draft of 15 September 2006.

² These comments were submitted to the Ministry in December 2006. A news item in the Beijing News in January 2007, re-published on www.china.org.cn, indicates that latest draft has been forwarded to the NPC. See discussion of this in the February 2007 issue of the IJCSL Newsletter, available at www.iccsl.org.

³ Although ICCSL is responsible for the preparation of these comments, we would like to thank the following people for their assistance in providing suggestions as to their content: Prof. Cole Durham, Brigham Young University School of Law; Dr. Michael Ernst-Pörksen, Cox Steuerberatung, Berlin; Dr. Jia Xijin, Associate Professor, Tsinghua University NGO Research Center; Dr. Jin Jinping, Assistant Professor, Peking University School of Law; Dr. Berthold Kuhn, Visiting Professor, Tsinghua University

GENERAL COMMENTS

Our general comments address five specific issues:

1. **Scope of the law.** As indicated below, we think that the law is too broad. It covers too many issues that should, in principle, be dealt with in separate pieces of legislation, which can address specific concerns about the relevant issues (e.g., volunteering and fund raising). Our substantive comments about the scope of the law are fueled by our conviction that no one piece of legislation can increase the public's interest in giving to charity or participating in charitable activities. A culture of philanthropy and voluntarism needs to be fostered within Chinese society, and good laws are only a beginning. Thus, it might be better to let some of the issues ripen a bit more before legislating about them. That might be particularly true, for example, of the provisions on fund raising, which are likely to be very controversial in addition to being complex.
2. **The law's relationship to other regulations/legislation for not-for-profit organizations (NPOs).**⁴ This needs to be more fully worked out in the next draft of the Charity Law.
3. **The definition of charity.** Our recommendation, discussed in detail below, suggests that this should be conformed to definitions in existing laws and regulations; there should be more clarity about the need for a charity to have both charitable purposes and charitable activities; and charities should be allowed to charge reasonable fees for their charitable work.
4. **The non-distribution constraint.** The provisions of the Charity Law that will enact this rule should be strengthened in the next draft.
5. **The process of becoming a certified charity.** This should be clarified and a "charity commission" should be considered as an alternative to the proposed process of decision-making by MoCA and MoF officials.
6. **The governance of charities.** Provisions should be included in the next draft that will strengthen governance, such as board composition rules, compensation rules, etc.

SPECIFIC COMMENTS

The comments are based on translated provisions of the draft law as described below. Issues presented by each chapter/article are discussed following the descriptions of what the draft law provides. The comments also include information about resources that may be of relevance to the Ministry officials as they work on the next draft of the CL.

The comments can be grouped roughly into three types:

NGO Research Center; Ms. Pei Bin, Senior Program Officer, Asia Foundation; Dr. Knut Pissler, China Specialist, Max Planck Institut für Internationales Privat-Recht, Hamburg; Dr. Wang Ming, Associate Dean, Tsinghua University and founding Director Tsinghua University NGO Research Center ; students at Peking University School of Law and at Tsinghua University's School of Public Policy. Ms. Li Jian, Director in the Legislative Affairs Office of the Ministry of Civil Affairs, attended a class taught by Prof. Karla Simon at Beijing University, which provided a platform for good discussion, especially of the definition of "charity and public benefit." Prof. Simon also met with her and Mr. Wang Laizhu at the MoCA offices to discuss the provisions in the draft law. The annexes are omitted but can be obtained from Karla Simon via her email – simon@law.edu.

⁴ By using this term, we mean to suggest all current forms of not-for-profit organizations currently permissible in China. We also are aware that more organizations may become NPOs if the process of moving some public institutions (*shiyè danwei*) into NPOs is successful.

- Substantive comments about the scope of the law and the definition of charity;
- Procedural comments about how an organization becomes a charity and/or a certified charitable organization; and
- Structural comments about the relationship of this law to existing laws (the Public Welfare Donations Law and the Trust Law) and regulations (on Social Organizations, Foundations, and Civil Non-commercial Institutions).

OVERVIEW

The four reasons for needing a charity law are listed on pages 19 and 20 of the explanation of the draft law (hereinafter “E”):

- (1) The number of charitable organizations in China is small, their internal organization is not standardized, and public confidence in these organizations is lacking;
- (2) The market for charitable fundraising is quite chaotic;
- (3) The support for charitable undertakings is inadequate; the tax advantages for charitable donations are not in place or are not implemented in practice; and
- (4) There are not enough activists from society for charitable undertakings; acknowledgment of charity is not strong.

References to corresponding legislation in the United Kingdom (U.K.), the United States (U.S.), and Japan can be found in E, page 20; the legislation of those countries is said to be more supportive of charity.

The objective of the law is stated as follows:

“This Law is hereby formulated to protect the legitimate rights and interests of parties concerned in charity activities, promote healthy development of charity and cultivate a charity culture.” The legislative aims of the law are explained on pages 20, 21 of E.

ISSUES PRESENTED

1. It is admirable to recognize the need for legislation to address all of the concerns stated on pages 19-20 of the Explanation. It is questionable, however, whether one piece of legislation can or should provide for all of the above-mentioned and very specific types of regulation. For example, the “Charities Act” in the UK, which became law on November 8, is 188 pages in length. It addresses principally the definition of charity, the re-organization of the Charity Commission, the regulation of charitable trustees, and the creation of a new administrative review body called the “Charity Tribunal.” Thus, it deals mainly with the substance of the definition and the procedure for acquiring status as a charity, leaving most other issues to other legislation. We address the UK Charities Act’s provisions with respect to fundraising below.
2. On balance, it might be better to have separate pieces of legislation to address the following:
 - Regulation of fund raising
 - Tax benefits (this has already been suggested in a report to MoCA-MoF on taxation of NPOs and charities/public benefit organizations; hereinafter Tax Report). The report can be found at:

http://siteresources.worldbank.org/INTCHINA/15030401122886803058/20601839/NPO_tax_En.pdf.⁵

3. Legal issues affecting volunteers are quite complex and separate from the legal issues affecting charities. They must be handled with sensitivity in order to create a “culture of voluntarism.” Over-regulation can stifle what is seen as an important way of encouraging Chinese people to participate in solving social problems and creating a harmonious society (see below for suggestions). We therefore suggest that the legal rules for volunteers also be dealt with in separate legislation.

CONTENTS OF THE DRAFT CL

The Draft CL includes chapters/articles addressing the following:

- Definition of charity (public benefit) (Chapter 1, Art. 3);
- Definition of the agencies involved in the oversight of charitable undertakings; requirements for becoming a charitable organization (contents of articles of incorporation, etc); defining the process of “voluntary charity verification” and what organizations may undertake such verification (Chapter 2);
- Fund raising regulations (Chapter 3);
- Rules for charitable trusts (Chapter 4);
- Rules for volunteers (Chapter 5);
- Relationship between social responsibility and charity (Chapter 6);
- Supportive mechanisms for charities, including tax benefits (Chapter 7);
- Legal responsibilities of charities (Chapter 8); and
- Other provisions (Chapter 9)

1. Definition of “charity:” According to the explanation of the law, Art. 3 incorporates a “medium” definition of charity by including a list of 4 general purposes:

1. Emergency and crisis relief for regions, individuals and groups in difficulties;
2. Relief for disadvantaged people;
3. Education, health, science, culture, sports for social benefit; and
4. Promotion of urban and rural community development and environment.

In addition to the specifically enumerated categories, Art. 3, para. 5 includes “other charitable activities,” which provides for future development of the concept of charity.

There is a discussion of the definition of charity (*cishan*) (whether the definition of charity should be large, medium, or small) on pages 20 - 22 of E. The discussion focuses on whether a broader (or larger, *da*) scope of charity as proposed by some “experts” should be adopted. These persons are said to have claimed that the scope of charity should be at least as broad as “public interest,” “public benefit,” or “public welfare” (*gong yi*), a term that is used in the foundation regulations as well as in the Trust Law and the Public Welfare Donation Law. Others (“experts” as well as “practitioners” from the MoF, the State Administration of Taxation (SAT), and MoCA) opposed making the definition of charity as broad as *gong yi*, by stating that because the management capacity of the government is “very limited,” a medium or small scope of charity should apply. The drafters finally decided to have the medium scope of charity (*zhong*) as the definition in Art. 3, by having a general and abstract definition of charity in Art. 3 (flush

⁵ The Tax Report is also available in Chinese on the same World Bank website.

language). This is combined with the list of specific activities deemed to be charitable in 3.1 to 3.5.

The Draft CL thus differs to some extent from the definition of “public welfare undertakings” in Art. 3 of the Public Welfare Donation Law, which reads as follows:

“Article 3: The following non-profit activities shall be deemed public welfare undertakings to which the regulations apply:

- I. Disaster relief, poverty alleviation, and assistance to the handicapped, as well as activities for social groups [*shehui tuanti*] and individuals in straightened circumstances.
- II. Education, scientific, cultural, public health, and athletic undertakings.
- III. Environmental protection and construction of public facilities.
- IV. Other public welfare undertakings promoting social development and progress.”

The definition of charity also appears to differ from the definition of “public interest” for public interest trusts (*gongyi xintuo*) in the relevant article of the Trust Law (Art. 60), which is not mentioned in the draft CL. It is also said to be narrower than the “public benefit” terminology used in the Foundation Regulations.

Gong yi (公益) is the term used in all three of the existing legal documents. It is defined in Art. 60 of the Trust Law in the context of “public welfare trusts” (*gong yi xintuo*, 公益信托) and in Art. 3 of the Public Welfare Donation Law in the context of “public welfare undertakings” (*gong yi shiye*, 公益事业). The Foundation Regulations include no definition of “public welfare,” but refer to the term (*gong yi shiye*, 公益事业) in Art. 2 to define foundations. The word for charity (*cishan*, 慈善) has only been used one time so far in Chinese legislation/regulations, in Art. 10, para. 2 of the Public Welfare Donation Law for the definition of public welfare social organizations (*gong yi xing shehui tuanti*, 公益性社会团体).

ISSUES PRESENTED

One of the significant aspects of the decision to legislate a “medium” definition of charity is the extent to which the concept of charity in China will be narrower than the concept of charity in many countries, which tend to use public benefit as the guideline for defining charity. The choice to use a “medium” definition may make sense in the context of the capacity of the administrative (and tax?) authorities, but it will inevitably be confusing for them if different definitions are used in different Chinese laws. Despite the fact that there are concerns about the capacities of the small MoCA staff that must necessarily deal with verifying charitable status (unless an inter-ministerial charity commission is created, as suggested below), their job would actually be complicated by the use of different definitions in different laws. Given that the Public Welfare Donations Law (PWDL) has been around for many years, it might be preferable if the definition of “charity” in the Charity Law were the same as the definition used in that law (i.e., the PWDL), with Art. 3, para 5 (“other charitable activities”) remaining in the CL to provide for more flexibility in case new types of purposes arise that demand support. See below for a discussion of the conflict with the existing Foundation Regulations.

It needs to be noted, however, that the Ministry of Finance has stated that only when there is a charity law, would they be able to work out tax rules for charity organizations. MoF has been the principal Ministry objecting to the broader definition of charity; the SAT has also been objecting to a broad scope for the definition.

In E. on page 23, there is an interesting discussion about whether political and religious activities should be excluded from the definition of charitable undertakings. Both topics are sensitive ones. It is stated that, if necessary, prohibitions on such activities could be read into the general clause of Art. 3, para. 2 forbidding “activities not related to the goals of charity.”

ISSUES PRESENTED

1. Political activities: It is not uncommon for countries to limit the charitable sector to those organizations that do not have advocacy as their primary purpose. On the other hand, allowing charities to engage in a modest amount of public advocacy that is related to their objectives is widely accepted (Germany, the U.K., and the U.S. all allow for this).

For example, suppose a charity wants to educate the public about the health risks of smoking. It can certainly fund research and publish books on the subject written by well-known and well-credentialed scientists. But why should it be prevented from having a public awareness “Anti-smoking Day” once a year? Although this may have a political dimension, it should be permitted.⁶

2. Religious activities: Because religion is separately regulated in China, prohibiting religious charities would seem to be an appropriate restriction in the Chinese context. In other countries, however, promoting religion is a separate charitable purpose.

2. CHAPTER 2

Art. 5 of the draft CL provides that a number of government agencies are to be responsible for aspects of the administration of charitable undertakings. There is no clear distinction made about the responsibilities of the agencies involved: State Council, local governments, MoCA on the central and local levels, and other “functional departments” (line ministries) also on the central and local levels.

ISSUES PRESENTED

1. Vague language in a law will undoubtedly create turf wars about whose job it is to regulate which aspects of charity activities. Thus, it would be much better for the CL to clearly define the roles of the following:
 - MoCA
 - MoF
 - Line ministries

It is also important to be quite specific as to the procedures to be followed in applying to become a “verified charitable organization.”

⁶ It would be easy enough to specify that only a very small part of a charity’s activities are permitted to be advocacy activities and they such activities must be related to the organization’s charitable purposes.

ICCSL's suggestion, made in the past, is that MoCA, MoF, and SAT together agree to establish an inter-ministerial "charity commission" (see below) to make "certified charity" determinations and that the line ministries have the function they have in other systems, namely, to license charities to do their work and have some oversight responsibilities with respect to the work they do.

2. It will also be necessary to delineate which organizations are subject to national regulation and which to local regulation; we assume this will be done along the same lines as the existing regulations for the three types of NPOs.

Art. 7 of the draft (E. on page 25) states that there are three organizational forms available for charitable organizations: foundations, social organizations (associations), and civil non-commercial institutions, but it does not describe exactly how the CL will affect those organizations. This is a structural problem that needs to be addressed in the next draft.⁷

ISSUES PRESENTED

1. What is not clear from discussions with MoCA and State Council officials is the extent to which currently registered not-for-profit organizations of all types will need to go through another level of administrative applications and oversight processes in order to become "verified charities" and what exactly are the benefits they will obtain if they do so. In structuring the law it would be useful to clearly delineate that an organization is not a charity unless it is certified as such (see below, however, with respect to foundations). That way an organization that engages in some charitable activities but whose purpose is not exclusively charitable will know that it does not need to apply for charitable status (e.g., the All-China Lawyers Federation is a social organization, which engages in some educational activities, but it is clearly not a charity).
2. What is the structural relationship between this law and the regulations on social organizations, civil non-commercial institutions, and the two types of foundations (fundraising foundations and non-fundraising foundations)? Some have said that the CL stands on the "pillars" of those regulations, while others disagree.⁸ It is clear that the Charity Law will deal with only a subset of the organizations permitted to be registered under those regulations – those that qualify as charities. This is especially relevant for social organizations, some of which are purely mutual benefit organizations (MBOs). Making a distinction between MBOs and charities is extremely important for the NPO sector in China, even if this current draft is a little confusing in how it does it.⁹

⁷ Chinese commentators have suggested that there be a "Comprehensive Law for NPOs," which would apparently deal with all types of not-for-profit entities in China and would also contain the requirements for charity status. It would be good to have such legislation to ensure the continuity of treatment of NPOs in the future. Efforts to write such a law should clearly proceed as the Charity Law is also considered by the ministries, the State Council, etc. In principle, the efforts for both pieces of legislation should be coordinated.

⁸ While there is currently no "project" for MoCA to write a "comprehensive NPO Law," that is being discussed both inside and outside the government.

⁹ This was proposed by ICCSL previously, in the 2004 Tax Report.

3. On the other hand as it stands now, all foundations must be for public benefit (*gong yi*), because the regulations establish this requirement. Will the CL now create “charitable” public benefit foundations as opposed to “non-charitable” public benefit foundations? This seems to be a confusing use of terminology, but perhaps that is the intent of the law.

Art. 8 provides a bit more clarity about the relationship between the CL and the existing regulations, with provisions for a “voluntary verification procedure” for charitable organizations. This verification procedure involves MoCA and the taxation departments (SAT) at the local level, which apparently means that a linkage is intended between “verified” charitable status and tax benefits, although that linkage is not fully spelled out.

ISSUES PRESENTED

The Tax Report ICCSL prepared for MoCA and MoF in 2004 (see http://siteresources.worldbank.org/INTCHINA/15030401122886803058/20601839/NPO_tax_En.pdf) proposed that a new “commission” be set up to determine “charitable” (“public benefit”) status. Such a commission could have staff who would become experts about the subject of charity or public benefit, and, if it were structured on an inter-ministerial basis, the views of each involved agency would be reflected. While it would take time to organize such a structure, this is becoming quite a well-accepted way to develop an expert body to deal with charity matters. There are now such commissions in Japan and New Zealand, along with the UK. Although they differ from the possible inter-ministerial commission suggested here in that they are public bodies with members appointed from the private sector, this is an idea whose acceptance seems to be growing.

One thing the legislation could do is require that MoCA, MoF, and SAT work to establish such a commission and create the procedures for verification as a charity within two years. That is similar to what the Japanese have recently done – the legislation passed by the Diet in May 2006 calls for the Commission to be established 18 months later.¹⁰ An outline of the provisions for the new Public Benefit Commission in Japan is attached. Consideration should be given to including some of these provisions in the draft CL.

“Certified charitable organizations” enjoy some unspecified rights (Art. 8, para. 2), and have the obligation to follow some additional requirements regarding their corporate governance (Art. 12). These include having not only a Board of Directors but also a Supervisory Board. The Board of Directors in a “certified charitable organization” is obliged to make “collective strategic decisions” (*jiti juece*), while the Supervisory Board is responsible for “supervision.”

Art. 12, para. 2 states that no more than one-third of the members of the Board of Directors and the Supervisory Board of a “certified charitable organization” may receive remuneration. There are, however, no standards set for remuneration of Board members nor are there clear conflict of interest rules or rules about related parties on the Board of Directors or Supervisory Board. See recommendations below.

¹⁰ The Japanese Commission will be a private body, composed of members appointed by the Prime Minister. It will also have a staff.

Art. 12, para. 3 states that “certified charitable organizations” should provide the directors and supervisors with the necessary provisions to fulfill their tasks. What this means, however, is unclear.

ISSUES PRESENTED

1. It remains unclear what constitutes a “collective strategic decision.” Does “collective” indicate that the Board of Directors must decide on “strategic” matters by unanimous vote or by a supermajority (e.g., 2/3’s)? The latter is more typical.
2. The obligation of the Supervisory Board to supervise as well as the rights of the Supervisory Board to fulfill this task should be clarified. It should also be discussed whether a Supervisory Board is necessary for every certified charitable organization. Especially for smaller organizations such a complex structure seems to impose an unreasonable burden.
3. There should be more clarity about Board remuneration standards.
4. There should be rules about Board composition. For example, South Africa is considering legislation that will require the Board of any charity to consist of five or more people, no more than 2/5 of whom can be related by blood or marriage.
5. All of the additional governance requirements could be useful, but unless clear benefits result from the process of becoming a “verified charity,” it is very unlikely that organizations will undertake the verification procedures.

Arts 13 to 23. From the wording of Arts. 13 to 23, it seems that these provisions might apply to all charitable organizations and not only to the ones that underwent the certification procedure for charitable organizations. If the legislation intends to apply Arts. 13 to 23 only to “certified charitable organizations,” this should be clarified. The provisions in Arts. 13 to 23 repeat many of the requirements already in force for NPOs in China (e.g. requirements for contents of the articles of association, Art. 13).

Art. 14 includes a list of “income” (*shouru*, 收入) of charitable organizations:

- (1) Funds provided by the originator (*chuangshi ren*, 创始人 (the term used here is different from the term usually used for founder (*faqiren*, 发起人), see e.g. Art. 6, para. 2 No. 3 Foundations Regulations);
- (2) Membership fees (*huifei*, 会费);
- (3) Donations and financial aid from the society (*shehui juanzeng zizhu*, 社会捐赠, 资助
- (4) Government subsidy (*zhengfu butie*, 政府补贴);
- (5) “Other legal income“ (*qita hefa shouru*, 其它合法收入).

It is unclear whether charities are going to be permitted to charge fees for services they render and goods they sell. In the definition of charity (Article 3, para. 1) the draft suggests that natural persons, legal entities or other organizations should conduct charitable activities voluntarily and free of charge. The decision whether or not to allow charitable organizations to charge fees is

apparently left to subordinate legislation on the different types of charitable organizations (foundations, social organizations and *min ban fei qiye danwei*). It seems clear that charities should be permitted to charge reasonable fees for their services/goods. However, setting the level of permissible fees is a complex issue. We have included a suggestion as to fee-setting below, but other formulations are available, and we would be happy to provide them.

Art. 15 states the purposes for which charitable organizations may use their “income” (*shouru*): First, it must be used only for the specific aims of the respective charitable organization. Art. 15 para. 2 then incorporates a non-distribution constraint by stating that “besides remuneration and welfare cost for employees and other necessary administrative costs, income of the charitable organization must not be distributed by any means to the members of the charitable organization.”

ISSUES PRESENTED

It should be discussed whether such a formulation of a non-distribution constraint is specific enough that it cannot be avoided. It might be better to provide as follows:¹¹

Non-Distribution Constraint

A charity organization is prohibited from providing special personal benefits, directly or indirectly, to any person connected with the organization (e.g., founder, officer, board member, employee, or donor) or from distributing or using assets or income other than for its charitable purposes.

Another way to approach this with regard to employees is to forbid the payment of unreasonable compensation by referring to a standard for compensation with reference, e.g., to the salary for comparable work by a government official

The Japanese legislation provides examples of alternative wording with regard to providing a non-distribution constraint for public benefit organizations, which are available below.

Art. 16 provides for a basic system of auditing. However it is not clear whether financial reports of all certified charitable organizations must undergo examination by external auditors. This should be clarified, and special rules should exist for small organizations.

Art. 17 of the draft provides a 10% ceiling for administrative costs of charitable organizations (see also E. page 27). A corresponding requirement is found in the Regulation on Foundations (2004) Art. 29. For social organizations and civil non-commercial institutions there are no current limits. Apparently this requirement is being reconsidered.

Art. 19 of the draft extends some of the disclosure requirements for foundations to social organizations and civil non-commercial institutions (see E. pages 27, 28). Art. 19 para. 4 mentions an annual activity report, a financial statement and an auditing report, which must all be disclosed. The public disclosure of reports is a good example of ways to inspire transparency and accountability.

¹¹ This language is adapted from the Open Society Institute Guidelines on Laws Affecting Civic Organizations.

Art. 21 of the draft provides that “upon termination of the charitable organization its assets (*caichan*, 财产) shall be used for charitable aims in accordance with the articles of association; if it is impossible to treat the assets in accordance with the articles of association than MoCA will “organize” that the assets are donated to a charitable organization with an identical (*xiangtong*, 相同) charitable aim and disclose this to the public.” This provision is modeled after Art. 33 of the Foundation Regulations.

ISSUES PRESENTED

Another possible formulation of the non-distribution constraint upon dissolution would be as follows:

No charity organization is permitted to distribute assets to its founders, officers, board members, employees, donors, or members upon its liquidation. It must distribute any remaining assets (after payment of creditors) to a charitable organization with similar purposes or to the state.

Art. 22 of the draft also mentions the requirement for a *zhuguan bumen* (competent business unit or line ministry) to be involved with certified charitable organizations in addition to MoCA and the SAT. The line ministry appears to be responsible for supervision of “internal governance,” financial administration, and the development of charitable activities. The extent to which this will add to the obligations of the sponsoring organizations is unclear, but it may make them even more hesitant than they already are to take up sponsorship.

ISSUES PRESENTED

Again in this regard, it would be useful to look at the provisions of the recently passed Japanese legislation, which describes in great detail the additional governance requirements for the new form of Public Benefit Corporation, which are much stricter than the language of the draft CL. These are also included below.

It would also be useful to include a requirement of fiduciary duties and the establishment of a conflict of interest policy in the CL. A suggestion would be as follows:¹²

Duties of Loyalty, Diligence, and Confidentiality

Officers and board members of a charity organization are to exercise loyalty to the organization, to execute their responsibilities to the organization with care and diligence, and to maintain the confidentiality of nonpublic information about the organization.

Prohibition on Conflicts of Interest

Officers, board members, and employees of a charity organization must avoid any actual or potential conflict between their personal or business interests and the interests of the charity organization.

3. CHAPTER 3 – FUND-RAISING.

¹² These are adapted from the Open Society Institute Guidelines on Laws Affecting Civic Organizations.

Art. 24, para. 2 states that only organizations with a “Certificate of the certification for charitable organizations” may engage in fundraising activities from the general public (*shehui gongzhong*). This does not apply “if laws or administrative regulations provide otherwise.” It is useful to limit public fund raising in this way at the present time, as it gives MoCA control over the organizations that raise money from the public.

The various rules with respect to permits for fund raising (Arts. 26-27) and the rules with respect to public fund raising (Art. 28) are really not detailed enough to protect the public. In addition, it would be useful for fund raising legislation to deal with the issue of professional fundraisers. The recently enacted Charity Act in the UK provides some useful examples of how such regulations should be developed.

Art. 25 of the draft sets up a license requirement for fundraising. Arts. 26 and 27 of the draft outline the licensing procedure: “certified charitable organizations” must apply at the MoCA offices of the people’s governments above the county level (县级以上人民政府民政部门).

ISSUES PRESENTED

It is also not clear whether the license requirement for fundraising includes fundraising activities “from the general public” under Art. 24. Does the law intend to make a distinction between fundraising (e.g., through personal contacts with individuals or companies) and fundraising activities “from the general public?”

It is not clear what this means for fundraising foundations and non-fundraising foundations under the Regulation on Foundations (2004). Can non-fundraising foundations that are charities and that obtain such a certificate engage in fundraising? Probably not, but the law does not say so in a clear fashion.

Regulation of fund raising is quite a complex subject and deserves its own legislation. For example, the 2000 Charitable Fund-Raising Act of the Canadian Province of Alberta contains more than 57 articles, which discuss such subjects as when public solicitations can be made, when a fund raising enterprise may work for a charity, etc. See <http://www.canlii.org/ab/laws/sta/c-9/20060926/whole.html>.

Indeed, the Charity Commission, which is charged with administering the new and complex provisions of the UK Act, has stated as follows with regard to fund raising:

Public charitable collections

The Act provides for a new system for licensing charitable collections in public. It applies to all such collections, including face-to-face fundraising, involving requests for direct debits.

There is a new role for the Commission in checking whether charities and other organisations are fit and proper to carry out public collections and we will be responsible for issuing public collections certificates, valid for up to five years.

We need to develop the right regulations and guidance so that we can take on this new role. We also need the necessary resources to set up the new systems and this will take time to set up. We don't envisage taking on this function for a few years yet.

4. CHAPTER 4 – CHARITABLE TRUSTS.

In this chapter on charitable trusts (*cishan xintuo*) it becomes clear that a charitable trust is supposed to become one form of a “public interest” trust (*gongyi xintuo*) in the Trust Law (2001).¹³ But there is a problem here – the Trust Law refers to public interest trusts as having the following purposes: the relief of poverty; assistance to victims of natural calamities; assistance to the disabled; the advancement of education, science and technology, culture, arts and sports; the advancement of medical and hygiene business; the advancement of environmental protection to maintain or protect ecological environment; and the advancement of other public interests. Does the proposed CL mean that there will be public interest trusts that are not charities? If so, this will be very confusing.

The charitable trust law (in Art. 72) also provides for the application of the *cy pres* doctrine. This is useful, and it might also be good to include it in the CL and make it applicable to all charities.

ISSUES PRESENTED

Chapter 4 is the only place in the draft CL or the explanatory materials that charitable trusts are mentioned, and it is not entirely clear what this means.¹⁴ It is a little surprising to find no mention of the Trust Law in the explanation on the draft, but just a reference to charitable trusts (*cishan xintuo*) in the draft law itself. This needs more development.

Treating charitable trusts as part of the same regulatory regime for charities as social organizations, foundations, and civil non-commercial institutions make sense, and it follows the manner in which this issue has been dealt with in Japan.

There are few, if any, charitable trusts in China even though the Trust Law was enacted in 2001. Perhaps the problem lies in the insufficiency of the tax benefits that can be received by creating charitable trusts.¹⁵

With respect to *cy pres*, it is clear that as to charitable assets generally, there needs to be more clarity. It is not clear who is held to be responsible for the management and protection of charitable assets. What seems to be missing in the

¹³ Some commentators believe that the enactment of the Trust Law was aimed in part at regulating charitable activities. See Charles Zhen Qu, “The doctrinal basis of the trust principles in China’s trust law,” *Real Property, Probate, and Trust Journal* summer 2003, available at http://www.findarticles.com/p/articles/mi_qa3714/is_200307/ai_n9294180/pg_1.

¹⁴ In the recent Japanese reforms, the new laws on public benefit corporations (PBCs) with respect to granting PBC status are also applicable to charitable trusts. See M. Miyakawa, *The Outline of the Three PBC Related Reforms*, in 4 *INT’L J. CIVIL SOC. L.* 4 (October 2006).

¹⁵ Prof. Yoshi Nomi, of the University of Tokyo, was asked to comment on the Trust Law as it was evolving in China; he also make the point that tax benefits must be provided if people are to be encouraged to give large sums of money for charity. See <http://www.j.u-tokyo.ac.jp/~nomi/ENGLISH/chinatrustsym2000.htm>.

management of charitable assets in the Chinese context is the court system. Social assets are neither public nor private, and this needs clarification. The clarification of charity assets also relates to the drafting of the Property Law, currently under discussion.

5. CHAPTER 5 -- VOLUNTEERS.

Dealing with charitable volunteers, which is a new concept in Chinese NPO law, this chapter begins to set out a framework for volunteer work.¹⁶ The definitions in Art. 39 of the draft seem to make it clear that volunteers are not to be used by charitable organizations in fundraising, but there is no general description of what a volunteer is and what other things volunteers may do for an organization. Further, in many other countries a great deal of charitable fundraising is done by volunteers (e.g., USA, UK).

The law permits registered charitable volunteers (under Art. 41 of the draft) to work for

- charitable volunteer organizations (*cishan zhiyuan zuzhi*, see Art. 40) and
- those charitable organizations that underwent the “verification” procedure

and “to enjoy the rights” mentioned in Art. 42. All volunteers have the duties mentioned in art. 43.

ISSUES PRESENTED

1. What roles are volunteers to play in charitable organizations? It would be good, for example, to clarify that unremunerated members of the Board of Directors and Supervisory Board are volunteers.
2. In today’s China many volunteers are students or retired persons. What responsibilities does a charitable organization have for its volunteers? Suppose, for example, that a volunteer is injured while carrying out a charitable relief mission. Does the organization have to pay for the injury?
3. What if a volunteer hurts someone in the course of carrying out his volunteer duties? Can he be sued for this, and is the organization additionally or alternatively liable? This issue is addressed in legislation from various countries. See, for example, the South Australia Volunteer Protection Act, available at <http://www.ofv.sa.gov.au/pdfs/Volunteer%20Protection%20Act.pdf>.
4. In what ways does this legislation relate to labor legislation? For example, will it exempt volunteers from minimum wage laws?
5. How does this legislation relate to regulations that have been developed at the city and provincial level? Apparently, five Chinese provinces and four cities have enacted laws or regional regulations on volunteer work, including Guangdong, Shandong, Fujian, Henan, Heilongjiang, Ningbo, Hangzhou, Yinchuan and Chengdu. Beijing is now considering such regulations as well.

We understand that providing separate legislation for volunteers is currently under consideration, and we think that such a method of dealing with this sensitive subject would be wise.

6. CHAPTER 6 -- SOCIAL RESPONSIBILITY.

¹⁶ We understand that MoCA has a new Bureau on Volunteers.

The various provisions on social responsibility (Arts. 47-51) deal generally with the question of how to instill in the Chinese people a sense of responsibility for the support for the poor and underprivileged. There is no question that the Chinese people already have such a sense, as they contribute readily to various social causes. It will be useful, however, to have some clearer guidance for public officials, teachers, and business executives as to how they may encourage greater participation in charity activities.

Pages 23 and 24 (E) discuss chapter 6 of the draft law on social responsibility (*shehui zeren*). This seems to be designed to make the Charity Law attractive to the political leadership by linking it to the social responsibility discussions in the PRC (especially in the context of the new Company Law). Art. 47, para. 2 of the draft CL provides: “Enterprises must actively fulfill social responsibility by way of charitable activities,” but no details are provided.

ISSUES PRESENTED

How is the requirement that enterprises engage in social responsibility through charities activities to be enforced? Would it be enough, for example, if an enterprise set up a charitable company foundation? Is MoCA intending to develop an index “on social responsibility” of companies? Or will the current services (e.g., www.chinacsr.com) be used?

7. CHAPTER 7 --- SUPPORT OF CHARITABLE ACTIVITIES.

In Art. 53, there is a provision that in case a charitable organization is not able to find a sponsor organization, MoCA may become the sponsor organization. This new provision is very welcome, as there has been a problem arising from the fact that many NPOs have in the past been unable to find a sponsor organization (which has resulted in large numbers being unregistered). It should be clarified, though, that MoCA can, when necessary, act as the sponsoring organization when the organization is being formed and long before it can become a certified charity. Hopefully the State Council and the legislators will not eliminate this provision, because it will solve a significant problem – that of the huge number of unregistered organizations operating in China at the present time.

There are also some general rules on tax advantages, advantages relating to customs duties, and exemptions from fees in Arts. 54 to 57, but nothing very specific.

ISSUES PRESENTED:

The Tax Report delineates a number of tax benefits for charities, which include

- Making it easier for donors to take tax deductions (especially the corporations that are trying to comply with social responsibility requirements)
- Making it possible for tax deductible donations to be made directly to charities instead of having only a list of specific charities that can receive such donations.¹⁷ It should perhaps be clarified whether this extends to all charities or only to verified charities.

¹⁷ This is likely to engender some hostility from organizations that currently serve as pass-thrus for charitable donations. They will not enjoy giving up the fees they charge for those services. After these comments were submitted, the Ministry of Finance is reported to have announced that deductible charitable contributions can now be made to all “public welfare” organizations. See story in the February 2007 IJCSL Newsletter, available at www.iccs1.org/pubs/07-02-IJCSL-N.pdf.

- Since most Chinese citizens do not file tax returns, instituting a tax designation scheme like that available in Hungary. This is discussed in the tax report presented to MoCA and MoF. See references above.
- Permitting in-kind contributions¹⁸ and carryovers.

MoCA should work with MoF to ensure that tax reforms providing these benefits are created together with enactment of the CL; otherwise no organizations will have an incentive to become “verified charities.”

8. CHAPTER 8 -- LEGAL RESPONSIBILITIES.

The articles of Chapter 8 contain the administrative sanctions for not following the provisions of the Charity Law, and they were not translated for us. In general, there should be a clear linkage between the fiduciary responsibilities of Board and Supervisory Board members and the penalties for improper behavior. In addition, the sanctions should be graduated, with only limited sanctions applying in the event of minor violations of the law, such as a one-time failure to file reports on time. More comments on sanctions will be made available in a later paper, which the Ministry officials have asked us to prepare.

9. CHAPTER 9 – DELEGATION OF RESPONSIBILITIES.

Art. 67 of the draft authorizes the State Council to formulate provisions to concretize this law and the (people’s congresses or the governments?) Provinces, autonomous regions, and municipalities are to formulate implementation provisions.

¹⁸ This appears to have been taken up by the CL, because it deals with the valuation of in-kind contributions in Art. 32.

ARTICLES

THE ROLE OF THE UNITED NATIONS IN THE TREATMENT OF VOLUNTEERS

BY DR. PALOMA DURÁN*

The United Nations is probably the international organization that has most strengthened the development and practice of employing volunteers. Its work has been centered in two areas: volunteer work through member state commitments and volunteer work stimulated within the actual organization. In the first case, the United Nations has prompted political commitments from member states by creating the United Nations Volunteer Program, which establishes the structural framework for volunteering. Thanks to this initiative, a broad-based volunteer corps has been established which has brought about the newly developed and innovative South/South Volunteer Plan, complimenting the traditional North/South volunteer framework. In addition, the role of the United Nations in promoting volunteerism has led in many cases to legislation within nation states, which is designed to protect volunteers and foster their work.

Given this important role of the United Nations with respect to volunteers, I am going to divide my study into three parts. The first will explain the different stages of United Nations work that have led to the worldwide volunteer movement. The second will propose the principle characteristics of the United Nations Volunteer Program. The third will attempt to systematize the main contributions contained in the resolutions regarding the volunteer corps approved by both the Economic and Social Council and the General Assembly, which gives legal force to the commitment to promote volunteerism.

THE UNITED NATIONS WORK PHASES REGARDING THE VOLUNTEER CORPS

Initially understood as an effort made in response to concrete humanitarian needs, the volunteer corps world-wide has evolved to such an extent that today it responds to far broader needs. In many cases it involves mobilizing a force that not only aids but also replaces and reinforces institutional responsibilities within nation states. This evolution leads us to question the very nature of volunteer work that, in Spain for example, has grown to five times the level of ten years ago. Above all, it questions the role that a volunteer corps plays or should play in building a society that enjoys greater solidarity.

From the institutional viewpoint, the U.N.'s treatment of the volunteer corps is a relatively new development. Although the organization had tried to elaborate a volunteer plan to cover emergency humanitarian needs from the outset, the shift to the current conceptual and managerial model for U.N. volunteer corps has been quite recent.

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The beginning of this “institutional” shift occurred in 1985 when the General Assembly decided to name December 5 “International Volunteer Day.” Volunteer work gathered even more momentum after the earthquake in Japan in 1995 that led to the loss of thousands of lives.¹ The Japanese government received help from many volunteers who collaborated in the recovery and reconstruction efforts in the affected area. In some cases, the help was channeled through the U.N. Volunteer Program, while in other cases it was rendered directly through non-government organizations.

As a consequence, Japan spearheaded the proposal to negotiate a General Assembly resolution recognizing the work of the volunteer corps and seeking approval of the decision to name an entire year – 2001 -- the “International Year of the Volunteer.” The text of this resolution was approved in December of 1997. From that moment on, U.N. efforts to bolster the development of volunteer work multiplied in all of its main departments and reached a high level of importance in a fairly short period of time. These efforts have been channeled through two parallel work lines. On one hand, the United Nations Volunteer Program itself has been strengthened. This was, without a doubt, the organization’s number one objective in the area of volunteers. On the other hand, the volunteer corps has also been integrated into the U.N.’s ordinary work system.

The Volunteer Program was originally created in 1970 to facilitate volunteer participation in on-the-ground activities and cooperation in humanitarian aid and development programs. According to recent program data, 5000 men and women from 160 different countries currently make up the volunteer corps. Seventy percent of these program volunteers come from developing countries, while thirty percent come from industrialized nations. These are revealing data considering the fact that over 20 years ago, in 1982, the Program was made up of 1300 people hailing from 90 countries. Eighty-one percent of these came from developing countries, while just nineteen percent of these volunteers came from developed countries.

Current work is being done in the field of technical cooperation in collaboration with governments and local communities. According to the latest statistics, 40% of the program’s work is being conducted in Africa, 26% in Asia and the Pacific, and 15% in Central and Eastern Europe. The rest of the efforts are distributed among the Arab states, the Caribbean, Central America and South America. In 1982, 46% of the program’s efforts were being conducted in Africa, 15 % in the Arab states, 5.4% in Latin America and the Caribbean, and 33% in Asia and the Pacific. The program’s annual budget currently exceeds US \$17 million. These funds are received through the United Nations Population and Development Fund, various government contributions, specific support from donor nations and the special fund for voluntary contributions for the United Nations Volunteer Program. In 1982, the program’s annual budget did not exceed US \$1 million. Since 1999, Spain has been one of the leading nations in terms of the number of volunteers facilitated to the program. In 1982, only one Spanish volunteer figured in the program’s efforts.

All of this stands as proof that in a reasonably short time, the system’s volunteer facet has grown measurably, confirming the unwavering commitment of the United Nations to this program. In addition, there has been a notable increase in awareness of this effort on the part of governments and civil society. It is important to reemphasize here that the program does not

¹ *Ed.*: The role that the Kobe (also known in Japan as the Great Awaji-Hanshin) Earthquake played in the development of legislation for not-for-profit, nongovernmental organizations in Japan is described in e.g., Tatsuo Ohta, *Public Benefit Organizations in Japan: Present Situation and Remaining Challenges*, 4 INT’L J. CIVIL SOC. L. 4 (October 2006), at 72.

represent an isolated effort. An important parallel effort has also been made to include volunteers in ordinary United Nations work. This has been especially true since the proclamation of the year 2001 as the International Year of the Volunteer, which was undoubtedly directed toward increasing the awareness of all member states whose respective populations could effectively participate in volunteer service at that time.

The treatment of United Nations volunteers can be divided into three phases. The first phase began in 1968 but was truly shaped throughout the 70's. It came about as a result of a growing realization that all of society, and especially young people, ought to participate in the cause of development. In this first phase, economic, social and spiritual development served as literal reference points in the approved texts. The movement was crystallized by the creation of the Volunteer Program in 1970.

The second phase was conditioned by the staging of large conferences and events that began to take place after 1975. The idea of the volunteer corps began to expand and, as we will see, take on a broader meaning outside of the sphere of development during this time.

Finally, the third phase was defined by the parameters of the Millennium Declaration, in which heads of state and prime ministers from around the world approved a series of objectives in different sectors. The Declaration included measurable goals and fixed time frames in which to achieve them.²

These three moments in time have defined the approach of the United Nations toward volunteers. It can be argued that the resolutions constructed in the first phase were all about process in the sense that their objective was to create the actual Volunteer Program. Therefore, their efforts seemed centered around defining a structure with appropriate channels for ensuring successful volunteer work in the United Nations system. The second phase, the end of which coincided with the celebration and follow up of the Millennium Summit, was more substantive in the sense that resolutions reached during this period included recommendations for the development of the Volunteer Program as well as suggestions to make it even more effective. The last phase, which continues to the present, has responded to the need for producing effective follow-up on the commitments undertaken. The approved goals, objectives, and ways of accounting for results all stem from this. The passage of time has forged the definition and awareness of the United Nations volunteer corps during each phase.

Therefore, I believe it is important to take a look at what the evolution has been like in terms of the acceptance and support of the volunteer corps. At this point, we need to remember that the decisions were made in resolutions approved by the Economic and Social Council and the General Assembly. The legal nature and binding force of these resolutions are well known.

The first fact to consider is that the resolutions obligate countries to vote in favor of them. It is not the objective of my study to create an analysis about the differences between the treatment of resolutions approved in the Security Council and those approved in the General Assembly. But it is important to bear this reference in mind. To this we can add a second fact that, from a strictly legal point of view, the resolutions do not bear the character of international treaties. Therefore, the obligation to support them is more political than legal. It is also true that the large legal texts approved by the United Nations have capitalized on the form of these resolutions to gain the support of member states.

² A/55/L/2, 2000.

THE UNITED NATIONS VOLUNTEER PROGRAM – LEGAL DOCUMENTS REGARDING ITS EXISTENCE AND THEIR IMPLEMENTATION

The United Nations effort on volunteer work has its origins in the contribution to and support of programs that promote development. On August 2, 1968, the Economic and Social Council approved its Resolution 1353(XLV) recognizing the enthusiasm and energy of young people around the world as an important tool in striving to achieve the goals set forth in the United Nations Charter. This resolution, titled *Youth Participation in International Cooperation*, began by recognizing that the reactions and attitudes of young people are a manifestation of the solidarity and sense of common responsibility for achieving peace as well as social and economic justice. It explicitly empowered governments to seek ways for young people to participate in social and economic development as well as the promotion and protection of human rights.

It could be said that this resolution summarized the recommendations approved in February of that same year by the Social Development Committee. At that point, the member states approved Resolution 1(XIX) in which the Committee recommended giving priority to public participation in development programs and promoting the active intervention of all groups in society. As a direct result of the Committee's recommendations on social development, the Economic and Social Council approved the aforementioned resolution, thereby inspiring all member states to look to young people for help in volunteer efforts.

On December 20, 1968, the General Assembly approved Resolution 2460 (XXIII), titled *Human Resources for Development*. In doing so, it cited the above-mentioned documents. At the time, the text approved in the General Assembly demonstrated the conviction on the part of all member states that the United Nations needed to respond to the desire of individuals, particularly young people, to dedicate part of their lives to the cause of development. Thus, the General Assembly understood that it was offering young people an adequate channel by which to translate their interest for foreign causes into an effective force for economic and social progress around the world.

The General Assembly did not allow the text to remain as a collection of merely rhetorical thoughts. Instead it asked the Economic and Social Council to create an international volunteer corps for development³. In June of 1969, the Economic and Social Council adopted Resolution 1407(XLVI), which formally recognized the role played by young people in economic, social and spiritual development. Just one month later, on July 31, 1969, the Council approved Resolution 1444 (XLVII), titled *The Use of Volunteers in United Nations Development Projects*. The text invited the Secretary General to study the measures necessary for the creation of an international corps of volunteers. In this sense, it is important to note that this resolution established the principles the Secretary General needed to bear in mind. It stated explicitly that a volunteer is a person who renders services on a not-for-profit basis in order to contribute to development. This last point set the tone for the definition of the volunteer corps during the first phase of the United Nations work in this area⁴.

³ The fourth part of the General Assembly's Resolution 2460 (XXIII) explicitly stipulated that the Assembly itself should ask the Economic and Social Council "to study the possibility of an international volunteer corps for development with the hope of possibly including the appropriate conclusions and recommendations in its annual report to the General Assembly General during its twenty-fourth session."

⁴ Operative paragraph 2 of the resolution recommended that the General Secretary bear in mind the following general principles in his study:

The Secretary General then prepared his report⁵ specifying the activity of volunteers for development as well as the definition, objectives and scope of United Nations volunteers in particular. To do this, he distributed a questionnaire among the resident experts of the United Nations Development Program asking for information about the volunteer corps' effectiveness and needs as well as the predisposition of countries to welcome the benefits that creating such a program might bring. He also asked them for opinions concerning the willingness to receive volunteers. As a result, he was able to elaborate a very detailed report on the matter.

The Secretary General began with the idea of "volunteers" set forth in Resolution 1444 (XLVII), which defined a volunteer as a person that renders services on a not-for-profit basis for the purpose of contributing to the development of the benefiting country. In addition, this resolution touched on the necessary requirements to ensure that volunteer groups were multinational and placed emphasis on the condition that volunteers were not to be sent to a country without that country's prior consent.

Bearing these elements in mind, the Secretary General went one step further by underscoring the need to define volunteers within the United Nations system as well. He achieved this by indicating that a volunteer also offered expertise and aptitudes on a full-time but temporary basis without receiving any more remuneration than that required for sustenance and immediate needs and without needing the same level of training demanded of the associated experts working at their side⁶.

The program's four objectives were:

1. To give young people the opportunity to participate in development plans and international cooperation programs.
2. To provide a new source of resources.
3. To facilitate the creation of an international network of professionals with intercultural experience.
4. To promote a favorable public opinion towards development.

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- a) "A volunteer is a person who renders services on a not-for-profit basis for the purpose of contributing to the development of the benefiting country.
 - b) A volunteer corps should be made up of individuals who have been recruited from the broadest possible geographic base.
 - c) Whenever possible, the composition of volunteer groups should have a multinational character.
 - d) A volunteer should not be sent to a country without the explicit request or approval of the benefiting country."

⁵ The Secretary General's report, titled *The possibility of creating an international volunteer corps for development*, was distributed in document E/4790, of April 14, 1970.

⁶ Paragraph 9 of the General Secretary's report refers to "individuals who offer their expertise and aptitudes on a full-time basis during a certain period of time, only accepting the remuneration required for basic sustenance and other immediate needs. They can be university graduates, technical school graduates or qualified artisans. In addition, they can have one or two years of practical experience. It is not essential that they have the same professional training required of their associated experts, but they do need to possess the aptitudes necessary for the work they are carrying out as volunteers." Paragraph 10 points out that "if volunteers render services within their own country, they are categorized as internal or national volunteers. They are categorized as external volunteers if they render services in another country where their aptitudes are scarce."

Initially, volunteers were to be assigned to programs conducted in member states and executed with the assistance of the United Nations program. The idea was then to broaden the participation of volunteers in national-level development projects. Nevertheless, as we will see, this second phase was practically marginalized due to the increase of international United Nations projects. The Secretary General's report covered a series of principles regarding the program's admission process, the commitment of those accepted, the relationship with governments, etc.

Perhaps the glossary of terms in the report's Annex No. III turned out to be the most significant aspect of the report. In addition to restating the definition of volunteer personnel, it included the distinctions between those working in their own country (internal volunteers), those working with their government's support inside or outside of their own country (national volunteers), those traveling from one country to another to render services (external volunteers), and those performing volunteer services outside of their own country with the support of an international organization (international volunteers).

After establishing these distinctions, it was a bit disappointing to see that the report did not bother to analyze the characteristics of the volunteer work or services rendered, which later ended up being defined as a service performed by one's own free will⁷. Today, this profile would be insufficient, given the fact that any labor-type relationship is based on the free will of the parties involved. It is assumed that there are other activities and relationships that people enter into by their own free will that cannot be considered voluntary services.

In any case, the one thing for sure is that the Secretary General's report laid the foundation for the creation of the United Nations Volunteer Program. The program was launched with Resolution 2659 (XXV), which was approved by the General Assembly in its 1925th plenary session on December 11th, 1970. The resolution cited prior resolutions as well as the Secretary General's own report that concurred that the participation of young people in all aspects of economic and social life is a highly important benefit for society.

Before explaining the conditions for volunteer work, the resolution centered its definition of this type of work on activities that aided development. This confirms the idea that the volunteer corps was first conceived in terms of development projects. It was not until later that its scope was broadened to include other activities.

The resolution restated the need for volunteers to have the technical and personal qualifications required to conduct their work. It also emphasized the fact that no volunteers would be sent to a country without the express consent of that country. The text covered the creation of an international group of volunteers whose members would be designated as United Nations Volunteers. At the same time, the Secretary General was asked to designate the Administrator of the United Nations Development Program (UNDP) as Administrator of United Nations Volunteers. It proposed the naming of a program coordinator to promote the information and selection processes. It also invited all nations to contribute to the Volunteer Fund created expressly to support the activities of the United Nations Volunteer Program. Finally, the resolution solicited both the Secretary General and the Administrator of the United Nations

⁷ Annex III of the General Secretary's report defines "volunteer service" as follows: "Voluntary service: service rendered by one's own free will. This term is used by non-government individuals and organizations in particular. For example, it is used by the IVSCC (International Volunteer Service Coordinating Committee). The term "volunteer service" is used frequently by ISVS (International Secretary of the Volunteer Service) and its organizations dedicated to providing volunteers."

Development Fund to provide information concerning the program and its progress in the following General Assembly session.

THE RESOLUTIONS APPROVED IN THE UNITED NATIONS: A SUBSTANTIVE ANALYSIS

In this section, I will discuss my substantive analysis of resolutions approved by the United Nations. In all cases, the resolutions use the reports presented by the Secretary General as a reference, as they contain numerous valid suggestions. In addition, an important number of subsequent resolutions have been included in the text after these first resolutions.

I will bear in mind the resolutions approved by the Economic and Social Council as well as those approved by the General Assembly as a result of the proposals of the Social, Humanitarian and Cultural (Third) Committee. I understand the need to bear in mind the difference between the organs that approved these resolutions, although it is well known that each of these contain differences in their mandates.

THE RESOLUTIONS OF THE ECONOMIC AND SOCIAL COUNCIL

Within the inner circles of the Economic and Social Council, two resolutions on volunteerism were approved during this period. The first, in 1997⁸, proclaimed 2001 as the International Year of the Volunteer, based on a General Assembly proposal that declared the Year in its own Resolution 52/17. The second, in 2001, proposed various initiatives for the celebration of the International Year of the Volunteer⁹.

In the first resolution, the text was prepared as an initiative of the United Nations Population and Development Fund, whose executive board issued a decision recognizing the role of volunteers around the world and expressly reinforcing the work of United Nations volunteers. Echoing the Economic and Social Council's Resolution 1980/67 regarding the proclamation of international days and years, the preamble of this resolution underscored the importance of volunteers as well as the multiple needs they could address given the increase in serious problems, such as environmental deterioration, the proliferation of drugs, or the spread of AIDS.

The first resolution also included a specific paragraph concerning volunteer work done by women, restating the positive effect that the International Year of the Volunteer initiative would have on civil society. Finally, the preamble highlighted the benefits and advantages of proclaiming the International Year of the Volunteer. This initiative would entail the promotion of the volunteer corps as well as service channeling and a revision of resources¹⁰.

The operative section proclaimed the International Year of the Volunteer and invited governments, the entire United Nations system, intergovernmental organizations, volunteer organizations, private organizations as well as community organizations to collaborate and

⁸ Resolution 1997/44, approved in the Council's 37th plenary meeting during its July 1997 session.

⁹ Resolution proposed by the Social Development Committee in its 39th session period (E/CN.5/2001/L.4).

¹⁰ The preamble's paragraph 8 states: "Unanimously agreed that a year dedicated to deepening understanding, facilitation, interconnection and promotion of volunteer service with particular emphasis on activities at the local level could contribute greatly to a heightened awareness of the achievements and possibilities of volunteer services, stimulate service efforts by a growing number of individuals and channel resources that would allow for better effectiveness of these services."

determine the best means of promoting and recognizing volunteer corps for the preparation and observance of this initiative. It proposed the celebration of *ad hoc* activities at all levels and asked the U.N. Secretary General to launch a campaign aimed at building awareness in overall public opinion.

The Economic and Social Council's second resolution had its origins in the General Assembly's Resolution 55/57 of December 2000, which asked the Social Development Committee to formulate suggestions and recommendations with the Economic and Social Commission for the purpose of broadening volunteers' contributions to social development. As a result, in its 39th session period held in February of 2001, the Committee for Social Development approved a resolution on volunteerism and social development,¹¹ and this was sent to the Economic and Social Council for formal adoption.

The preamble of the Council's second resolution included references to prior resolutions and also highlighted the role of the United Nations Volunteer Program. In addition, it recounted the valuable participation of volunteers in various activities and recognized the volunteer corps as a logical component of any strategy directed at reducing poverty, achieving sustainable development and procuring social integration. At the same time, it addressed the role of women and men in the development of a volunteer corps and recognized this as a way to participate in the development of any society.

The operative section of the second resolution dealt with issues in greater depth than the Council's first resolution, and there was a logical explanation for this. The goal for this resolution was to gather suggestions and proposals to ensure an adequate celebration of the International Year of the Volunteer. Moreover, it established a guideline for some of the characteristics of volunteer work. For example, operative paragraph 4 specified that volunteer work should never replace remunerated work¹², while operative paragraph 5b urged governments to consider the effects of socio-economic policies with respect to volunteer work¹³. The same paragraph underscored the contribution of the volunteer corps in achieving social development objectives. The text also contained proposals regarding work within the United Nations system, volunteer work planning, the inclusion of this type of work in all facets of society, the increase in recognition of volunteer work, as well as suggestions on how to help and support governments that ask for volunteer assistance in creating national capacity in the volunteer sector.

Finally, operative paragraph 9 asks the Secretary General to make recommendations in his report to the General Assembly's 56th session period for supporting volunteer work. In fact, he did this in his report titled, *Support for the volunteer corps*¹⁴.

¹¹ The resolution of the Social Development Committee, *The Volunteer Corps and Social Development* (E/CN.5/2001/L.4), approved by the Committee in its 39th sessions period held on February 13-23, 2001, under topic 3(ii) of the program titled, *Follow up on the World Summit on Social Development*.

¹² Operative paragraph 4 affirms: "that support for volunteer services does not in any way justify a reduction in governmental intervention or the fact that these activities might serve to replace remunerated job positions".

¹³ Operative paragraph 5b affirms: "the further suggestion to governments that they bear in mind the possible effects of general socioeconomic policies regarding opportunities, capacity and willingness of citizens to carry out volunteer work."

¹⁴ Report presented by the United Nations Secretary General in agenda item 120 during the 56th sessions period of the General Assembly titled, *Social Development, including questions relating to the social situation in the world in terms of young people, aging, disabled people and families* (A/56/288).

RESOLUTIONS OF THE GENERAL ASSEMBLY

Since December of 1985, the General Assembly has approved at least five resolutions concerning the volunteer corps. The first of these is Resolution 40/212¹⁵, of December 17, 1985, in which the Assembly took note of the report presented by the United Nations Development Program on the U.N. Volunteer Program. The resolution is made up of three preamble paragraphs and three operative paragraphs. It is a short text oriented to action. The primary proposal of the operative section is the declaration of December 5th as the *International Volunteer Day for Economic and Social Development*. The resolution also invited the entire United Nations system as well as specialized organisms and non-governmental organizations to create and promote activities directed at a greater public consciousness toward volunteer work and its real impact on society.

After the proclamation of the International Day of the Volunteer in 1997 during the 52nd session period of the General Assembly, the Assembly echoed the proposal made by the Economic and Social Committee concerning the declaration of the International Year of the Volunteer. Almost 125 Member States supported the text of Resolution 52/17¹⁶, which embraced the proposal of the Economic and Social Committee and announced the decision to proclaim 2001 the International Year of the Volunteer.

From this moment on, the three General Assembly resolutions referred respectively to the preparation of the International Year of the Volunteer, the recommendations for it, and the follow up on it. This covered the three-year period of 2000-2001-2002. Resolution 55/57 was prepared by the Netherlands, which had covered the group meetings for experts on volunteerism and social development. The resolution on *The International Year of the Volunteer* was adopted by consensus just as all previous and subsequent volunteer-oriented resolutions were during the 55th session period of the General Assembly under agenda item 103 in December of 2000.

The five-paragraph preamble summarized the previous resolutions as well as the document approved during the special session of the General Assembly concerning the World Summit for Social Development held in Geneva during June of 2000. The summit had recommended the participation of volunteers in social development.

The nine-paragraph operative section covered the activities conducted in the governmental realm as preparation for the International Year of the Volunteer. This section urged member states to examine the characteristics and trends of volunteerism at the national and local level, including the existing problems and challenges that were solvable within the framework of the International Year of the Volunteer. It also invited member states to increase the participation of their volunteer corps as well as to encourage the participation of young, elderly, and disabled people in all of these activities. In addition, it provided an impetus to governments and the United Nations system in preparing the International Year of the Volunteer and integrating references to volunteerism in all of its activities.

At the same time, the General Assembly asked the Social Development Committee to formulate recommendations for broadening the contribution of volunteers to social development, asking the Secretary General to present his note on the contribution of the United Nations Volunteer Program to the celebration of the International Year of the Volunteer as a Social

¹⁵ This resolution was adopted in plenary session 120a) of the General Assembly on December 17th, 1985.

¹⁶ Resolution 52/17 was adopted in the 52nd session period during the 50th plenary session on November 20th, 1997 within the framework of the discussions on agenda point 12.

Development Committee document and to broadly distribute it in all the negotiation processes that were currently open.

As a result, during the Social Development Committee's 39th session period, the Committee adopted a resolution on volunteerism and social development that was later sent to the Economic and Social Council. As such, Resolution 55/57 of the General Assembly stated that two of its plenary sessions would be dedicated to volunteerism during its 56th session period. This would coincide with the closing ceremonies of the International Year of the Volunteer and would request the General Secretary to prepare a report on ways of supporting volunteer work both from the governmental point of view and the United Nations system point of view. The General Secretary prepared this report, and as a result, two General Assembly plenary sessions were dedicated to the topic of volunteerism during the 56th session period in December of 2001.

During those sessions, the Assembly adopted a second resolution titled *Recommendations on supporting the volunteer corps*. This resolution was once again prepared by the Netherlands and cosponsored by 125 Member States. Resolution 56/38, approved in December of 2001 under agenda item 108, had a 7-paragraph preamble and 10 operative paragraphs. It included a list of recommendations for supporting volunteer work at different levels. The preamble echoed the documents approved during the General Assembly's special sessions on Copenhagen+5, Habitat+5, as well as the Action Platform approved in the Most Advanced Nations Conference. In all of these documents explicit references were made to the contribution of volunteers and the importance of these efforts for the development of all societies.

In addition, the text reiterated the valuable contribution of volunteer work, especially in reducing poverty levels, encouraging sustainable development, preventing and managing disasters, and promoting social integration. The text went on to add that volunteer work also helped in overcoming social exclusion and discrimination. The operative section began by accepting the General Secretary's report on supporting the volunteer corps as well as the work done by the United Nations Volunteer Program. It also thanked member states and the United Nations system itself for the activities carried out during the course of the International Year of the Volunteer. Furthermore, in its Annex, the resolution established the necessary recommendations by which member states and the United Nations system should support volunteers. These recommendations were broken down into three sections: one for general considerations, one for governments, and one for the United Nations system.

One of the most hotly debated issues in the negotiation process was whether or not a definition of the volunteer corps should be included. The lack of universal agreement over this definition led to the inclusion of a first recommendation specifying that volunteer activities should have a broader definition. This definition needed to include the fact that volunteer activities should be conducted for the benefit of society and that economic remuneration should not be the primary motivation for doing such work¹⁷. In addition, the first part of the considerations list, dedicated to general questions, confirmed that there was no one universal model for volunteer work since the needs were so different in each country. In the same way that it reiterated that volunteer activities should not substitute in any way the governmental obligation

¹⁷ Recommendation 1 expressly states: "Regarding the recommendations in question, the terms "volunteer corps", "volunteer services" and "volunteer activities" refer to a broad array of activities including the modern forms of mutual support and self help, the official rendering of services and other forms of civic participation done for the benefit of overall society and without economic remuneration being the primary motivating factor."

for covering society's basic needs, it also stated that volunteer work should not take the place of remunerated employment.

The recommendations to the governments were directed at creating a favorable environment for continued support of volunteer activities, always bearing in mind the local situation. These recommendations set out to propose the creation of informed public opinion concerning volunteer work as well as the beneficial effects that volunteers can have on society's development. In addition they facilitated access to information for citizens concerning the volunteer work opportunities available to them.

Beyond this, they recommended a training and skill development process for volunteers as well as citing the express need to motivate public sector workers to undertake volunteer activities. Nevertheless, it was agreed that volunteer skill development should go hand-in-hand with fiscal or legislative measures serving as incentives to motivate citizens and volunteer organizations. These measures would be facilitated if one particular additional recommendation were adopted. This recommendation involved producing research and studies for the analysis of volunteers' needs as well as their effect on society. This research would facilitate the study of the effects socio-economic policies have on volunteer activities as well as the effects of volunteer integration in national development plans. Finally, the recommendations to governments included the need to examine the means available for allowing more people from all sectors of society to participate in volunteer activities.

The recommendations regarding the United Nations system were directed at supporting volunteer work by creating a favorable environment through the application of certain measures. These measures included enhancing public awareness, recognizing the contributions of volunteers, integrating volunteers into U.N. system programs, planning for the strengthening of social capital by including people from all sectors of society in volunteer activities, as well as aiding in the creation of national capacity in the realm of qualification.

The text of the resolution asked governments and the U.N. system to bear all of these recommendations in mind¹⁸, specifically asking the Secretary General to disseminate the resolution and its annex with recommendations in addition to presenting a follow up report on the International Year of the Volunteer in the General Assembly's 57th session period.

The third of the General Assembly's resolutions referred to the follow up on the International Year of the Volunteer. Titled *Follow up on the International Year of the Volunteer*, Resolution 57/106 was adopted by consensus during the General Assembly's 57th session period under agenda item 98 in the 61st plenary session held in November of 2002. The resolution was prepared and presented by Brazil and had the co-sponsorship of 130 Member States.

The text had a 9-paragraph preamble and 13 operative paragraphs. The preamble followed the pattern of previous resolutions, including a reference to resolutions concerning volunteers dating from 1985. There was an additional section in this text stating that the volunteer corps could help achieve the development objectives established in the Millennium Declaration as well as other U.N. Summits. In this way, the text restated the objectives of the Millennium Declaration, which established concrete goals for various economic and social issues.

¹⁸ Operative paragraph 6 cites the establishment of "the recommendations for the ways in which governments and the United Nations system can support volunteers". Operative paragraph 8 explicitly states that the General Assembly "should exhort all governments and United Nations system organizations to bear these recommendations firmly in mind."

The operative section embraced the report prepared by the Secretary General on the follow up and celebration of the International Year of the Volunteer as well as the creation of 123 national committees to promote the Year around the world. It also highlighted contributions achieved by governments as well as private sector and civil society organizations and alliances at various levels. In addition, the resolution embraced the legislative measures passed during the International Year of the Volunteer meant to strengthen and ensure successful volunteer work.

The resolution went on to urge governments and the United Nations system to apply the recommendations approved in Resolution 56/38 and to celebrate International Volunteer Day every year on December 5th.

Beyond that, the text reaffirmed the need to recognize and promote all forms of volunteer work, considering it an activity that unites and benefits all sectors of society. The resolution proposed the establishment of a world volunteer consulting base for the U.N. volunteer corps in order to strengthen the development and establishment of networks and alliances. Finally, the resolution asked the Secretary General to adopt measures to enhance the celebration of International Volunteer Day and produce a report to be presented during the 60th sessions period of the General Assembly. The concise text established actions that allowed for a guarantee of volunteer integration as a universal question in United Nations work, especially in the follow up and application process for the Millennium Declaration and other economic and social sector objectives.

All of this said, it is clear that the resolutions of both the Economic and Social Council and the General Assembly established the guidelines for conducting activities that institutionally guaranteed the development and support of volunteer work. In fact, the last resolution approved in the General Assembly in December of 2005 underscored and summarized all of the commitments made previously and restated the indispensable development objectives approved in the Millennium Summit.

EVOLUTION IN THE TREATMENT OF UNITED NATIONS VOLUNTEERS

Having analyzed the resolutions and decisions approved in the United Nations while bearing in mind the contributions of large-scale events and conferences held over the past few years, we are now in a position to consider the evolution of the treatment of volunteers within the system. In the first place, we should consider the periods to which I am referring. The first spans from the end of the 60's, when the first debates on development and volunteer participation in it began, until 1985 with the approval of December 5th as International Volunteer Day.

Within this time frame, it is also necessary to consider two specific moments. The first involves the creation of the U.N. Volunteer Program, with its culmination in 1970. The second involves the program's initiation and awareness processes that lasted until the "International Volunteer Day" status was publicly recognized. During the first stage, the system's work was marked by a definition of volunteer service and the type of volunteer person that can facilitate the adequate development of the United Nations Program.

Operative paragraph 2 of Resolution 144 (XLVII) of the Economic and Social Council explicitly stated that a volunteer person should fulfill two requirements: rendering services on a not-for-profit basis and doing so for the purpose of contributing to the development of the

benefiting country. The report prepared by the Secretary General in April 1970¹⁹ further specified the definition of Resolution 144 in an attempt to differentiate between the volunteer figure and the institutional figure and “associated personnel”.

The Secretary General affirmed that volunteers should offer their services (knowledge and aptitudes) on a full-time basis for a specific period of time, only accepting remuneration to cover basic sustenance and other immediate needs²⁰. To the initial definition of Resolution 144, the Secretary General added a series of elements that described the profile of a volunteer worker. In addition to the work regime and its temporary nature, the Secretary General also specified that the person could be a university or technical school graduate, or a qualified artisan. That person did not necessarily have to have practical experience, but he or she had to have the necessary aptitude for the work undertaken. That person did not need to have the associated knowledge required of an associated expert.

Whatever the case may be, and based on the specific profile of the volunteer worker, the definition of the Economic and Social Committee’s Resolution 144 was the structural basis for the United Nations Program. In fact, it also served as the basis for the General Assembly’s Resolution 2659 (XXV) under which the United Nations Volunteer Program was created²¹. From the program’s creation until 1985, the system’s work has been centered on the organization of the volunteer corps as the basis of the above-mentioned definition. Nevertheless, in the second period (from 1985 until the celebration of the International Year of the Volunteer and the Millennium Declaration), the treatment was different.

At the beginning of this second phase, the program already carried the baggage of fifteen years’ experience in which the number of volunteers had increased, as had the number of projects in which they were working and the operational budget. In this sense, the program appeared to be consolidating itself. From the conceptual point of view, after 1985 the system began to fulfill a twofold purpose in terms of volunteers. On one hand, volunteer service began to be promoted within the U.N.’s own organization, although this initiative posed certain bureaucratic inconveniences that made expansion difficult.

At the same time, an “awareness” process began for external actors regarding volunteers. This was made amply manifest in the resolutions approved during this second phase. They included recommendations for all implicated parties within society. This was also true for the incorporation of references to volunteer service in the texts of large United Nations Conferences that began taking place in the 90’s. The system broadened the interest for its first phase program in order to strengthen volunteer service in all sectors and all situations within every society. Nevertheless, although this awareness task proved feasible and yielded positive effects in practice, there was still a paradoxical absence of a unified definition for volunteer service.

The conference texts contained unclear references to civil society, non-governmental organizations, humanitarian organizations, as well as the volunteer corps and volunteer

¹⁹ General Secretary’s report also mentioned: “the possibility of creating an international volunteer corps for the purpose of development” (document E/4790, of April 14, 1970, p.3).

²⁰ *Ibid.*

²¹ It is still significant that in the Spanish translation of Resolution 2659, mention is made of “contracting” volunteers when the original English word was “recruit” and should be thus translated in that way. This is especially true when considering that the term “contract” in Spanish can have certain legal implications that, from a labor standpoint, would be “antithetical” to any definition of volunteer service.

organizations. This lack of unified criteria reflected the volunteer situation in the different member states. It cannot be forgotten that the United Nations is the sum of its member states that approve decisions to be executed later by the organization's Secretariat. But these decisions often reflect the diverse positions of the member states. This second phase's lack of definition was a reflection of the situation in many countries that had already integrated or intrinsically unified volunteer service into the concept of civil society. Either that, or it was simply not defined.

In any case, the "broadening" that the United Nations was conducting with respect to the framework of volunteer activity during this phase also demonstrated the role the U.N. was playing both "outside" of and within its own system. In addition to strengthening and promoting the actual Volunteer Program and proposing volunteer opportunities among U.N. personnel, an advance was needed in order to make the volunteer corps an objective in the policies and programs of each member state. This was also necessary so that people willing to provide a volunteer service could do so within a framework that went beyond obvious emergency situations and into the realm of true social development.

The last of the phases, which would include the present, confirms the evolution experienced in the treatment of volunteers by the United Nations. On one hand, it can be said that the volunteer corps has gone from being an exclusively "ad extra" activity that supports efforts during emergency or humanitarian aid situations to an "ad intra" activity that promotes volunteer activity within the United Nations system itself and attempts to integrate volunteers in all decisions approved in the Organization's inner circles. To this broadening, if it can be called this, we must add the very concept of the volunteer corps. If, at first, volunteer activity was directed at helping those who needed it, it is currently assumed that the benefit is a double one, enriching the person receiving the support as well as the one giving it.

Finally, it could also be said that volunteer work has gone from being an activity carried out by young people to being an invitation to people of all ages and from all sectors of society to participate in social development. One of the clearest proofs of this is not only the obvious call for it to be that way, i.e. through resolutions, but also the language in the Action Plan approved under the auspices of the II World Assembly on Aging held in Madrid in April of 2002.²²

These three factors clearly demonstrate a substantial change in the very concept of volunteerism, which is producing major consequences in the treatment of volunteers at the local and national level. The United Nations has been a leader in these developments, as this paper demonstrates.²³ It remains to be seen to what extent national volunteer promotion programs, including the fostering of volunteerism through legislation aimed at protecting volunteers, will be successful in further developing and enhancing the role of volunteers in addressing social and economic development goals.

²² The report can be found on the web at <http://www.un.org/esa/socdev/ageing/waa/index.html>.

²³ One aspect of this can be seen from the development of a website that deals with many issues regarding volunteers. See World Volunteer Web at <http://www.worldvolunteerweb.org/>.

ANNEX. Chronological table of resolutions approved in the United Nations as well as reports presented by the General Secretary

Date	U.N. Organ/Entity	Resolution / Report
February 1968	Social Development Committee	Resolution 1(XIX) on development
August 1968	Economic and Social Council (ECOSOC)	Resolution 1353 (XLV), <i>Participation of young people in international cooperation</i>
December 1968	General Assembly	Resolution 2460 (XXIII), <i>Human resources for development</i>
June 1969	ECOSOC	Resolution 1407 (XLVI) on the function of young people in development
July 1969	ECOSOC	Resolution 1444 (XLVII), <i>Use of volunteers in United Nations development projects</i>
April 1970	Secretary General	Report E/4790, <i>Possibility of creating an international volunteer corps for development</i>
December 1970	General Assembly	Resolution 2659/XXV, <i>United Nations Volunteers</i>
March 1985	United Nations Development Program Administrator	Report DP/1985/44, on United Nations Volunteers
December 1985	General Assembly	Resolution 40/212, <i>International Volunteer Day for economic and social development</i>
July 1997	ECOSOC	Resolution 1977/44, <i>Proclamation of 2001 as the International Year of the Volunteer</i>
November 1997	General Assembly	Resolution 52/17, <i>International Year of the Volunteer, 2001</i>
February 2000	Preparatory committee of the General Assembly's extraordinary period on the follow up for the Social Development Summit	Report on the United Nations Volunteer Program
December 2000	General Assembly	Resolution 55/57, <i>International Year of the Volunteer</i>
January 2001	Secretary General	Report to the Social Development Committee on <i>The role of the volunteer corps in the promotion of social development</i>
February 2001	Social Development Committee	Resolution 39/2, <i>The volunteer corps and social development</i>
July 2001	ECOSOC	Approval of the Social Development Committee's Resolution 39/2
October 2001	Secretary General	Report to the General Assembly, <i>Supporting Volunteers</i>
December 2001	General Assembly	Resolution 56/38, <i>Recommendations on the support for volunteers</i>
October 2002	Secretary General	Report to the General Assembly, <i>International Year of the Volunteer: results and future perspective</i>
December 2002	General Assembly	Resolution <i>Follow up on International Year of the Volunteer</i>

To this we need to add the last resolution from December 2005, formally approved in January 2006 in the General Assembly. The number of this resolution is 60/134.

**THE RELIGION-STATE RELATIONSHIP AND THE RIGHT TO FREEDOM OF
RELIGION OR BELIEF: A COMPARATIVE TEXTUAL ANALYSIS OF THE
CONSTITUTIONS OF PREDOMINANTLY MUSLIM COUNTRIES***

BY TAD STAHNKE & ROBERT C. BLITT^{*,*}

INTRODUCTION

Several current developments in constitutional drafting are spurring renewed analysis of the existing constitutional landscape of the Muslim world. In 2004, Afghanistan adopted a new permanent constitution, and Iraq's Governing Council approved an interim constitutional document for Iraq (the "Transitional Administrative Law" or TAL). Iraq's transitional national assembly, elected in January 2005, drafted a permanent constitution in August 2005.¹ In Sudan, a new interim constitution is anticipated as a product of the Comprehensive Peace Agreement between the Government of the Sudan and the Sudan People's Liberation Movement.

Although the drafting and approval processes have differed markedly in these countries, international legal norms and international actors have played--and will continue to play--important roles. In each country, questions have been raised about the relationship between international legal/human rights norms and existing political arrangements in Muslim countries--especially with respect to the internationally recognized right of freedom of thought, conscience, and religion or belief. The search for reliable answers to these questions has been hindered by the dearth of specific comparative information available regarding relevant constitutional provisions

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¹ The TAL allowed for a six-month extension in the drafting process provided such a request was approved by a majority vote of the transitional national assembly before August 1, 2005. IRAQ CONST. (TAL) art. 61(F), I <http://www.cpa-iraq.org/government/TAL.html>; *see also infra* Appendix E.

in predominantly Muslim countries² and the absence of any comprehensive survey of texts to provide an overall picture of the constitutional arrangements in such countries.

This study represents a small but important first step in filling this urgent resource gap by providing an analysis of the constitutional provisions currently in place concerning the relationship between religion and the state, freedom of religion or belief, and related human rights in predominantly Muslim countries.

The Muslim world stretches from Europe to Africa, through the Middle East and into Asia. Indeed, its geographical diversity mirrors a central finding of this study, that predominantly Muslim countries encompass a variety of constitutional arrangements addressing the role of Islam and the scope of the right to freedom of thought, conscience, and religion or belief, and other related human rights.

In other words, although the countries reviewed in this study share the common denominator of having a majority Muslim population, the documents surveyed here establish a broad assortment of constitutional views--ranging from Islamic republics with Islam as the official state religion to secular states with strict separation of religion and state. Moreover, diversity on the role of Islam and the extent of guarantees for internationally-recognized human rights are also found in the constitutions of those states where Islam is proclaimed the religion of the state.

Yet despite the diversity of constitutional structures, several important realities come to light through this comparative review:

- More than half of the world's Muslim population (estimated at over 1.3 billion) lives in countries that are neither Islamic republics nor countries that have declared Islam to be the state religion. Thus, the majority of the world's Muslim population currently lives in countries that either proclaim the state to be secular, or that make no pronouncements concerning Islam to be the official state religion.
- Countries in which Islam is the declared state religion may provide constitutional guarantees of the right to freedom of religion or belief that compare favorably with international legal standards.
- Similarly, countries with Islam as the declared state religion may maintain constitutional provisions protecting the related rights to freedom of expression, association, and assembly--or the rights of equality and nondiscrimination with regard to, *inter alia*, religion and gender--which compare favorably with international standards.
- A number of constitutions of predominantly Muslim countries incorporate or otherwise reference international human rights instruments and legal norms.

This wide diversity in the constitutional provisions of predominantly Muslim countries, and especially in those countries declaring themselves to be Islamic states or declaring Islam to be the state religion, is not necessarily well understood. For example, we have observed the perception that a provision found in Afghanistan's new constitution--that "no law can be contrary to the sacred religion of Islam"--represents the norm in the constitutions of predominantly Muslim countries.³ As this study shows, that perception is incorrect.

² This study defines predominantly Muslim countries as those where more than half of the population is Muslim.

³ This study demonstrates that out of forty-four predominantly Muslim countries, only fifteen constitutions provide for Islamic law, principles, or jurisprudence as a source of, or limitation on, general legislation. *See infra* Appendix A.

And yet such perceptions and assumptions are not new. Since adoption of the Universal Declaration of Human Rights (UDHR) in 1948, critics have questioned the particular religious roots of human rights and have challenged claims of its universality in the face of contradictory religious attitudes and practices. But the need for protection of certain individual rights deemed inherent and universal--and not contingent upon particular cultures or political arrangements--became a matter of global concern after the horrors of World War II. The world then came together under the auspices of the United Nations to enshrine the natural rights and freedoms available to all persons--including the right of religious freedom--as universal human rights.

The Universal Declaration of Human Rights, adopted in 1948, recognizes in its first sentence the "inherent dignity and . . . equal and inalienable rights of all members of the human family" as the "foundation of freedom, justice and peace in the world."⁴ Article 18 of the Declaration addresses the relationship of religion and human rights, forbidding distinctions of any kind, including on the basis of religion, with regard to the enjoyment of those rights and freedoms. It states, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."⁵

According to the 2004 Arab Human Development Report, criticism that the Universal Declaration enshrines uniquely Western values "underestimates the extent of the Arab contribution, whether on the part of the Arab states that actively and effectively participated in debates on the substantive elements of human rights standards, or in the persons of distinguished Arab experts who helped shape international human rights law."⁶ Indeed, the crucial role played by the delegate from Egypt, Dr. Mahmoud Azmi, during the drafting and passage of the Declaration serves as an illustration of the aspired universality of this document.⁷ Dr. Azmi was an active defender of human rights for all individuals, including for women and minorities. He fervently advocated the passage of the Declaration and pointed to the long, multi-civilizational and multi-religious history of his own country to demonstrate that commitment to human rights is not a Western but a universal human concept.⁸

In the end, out of fifty-eight states then in existence, no country voted against the Universal Declaration.⁹ The Declaration thus represented a consensus at that moment in history on the nature and scope of fundamental human rights, including the freedom of thought, conscience, and religion or belief. From the early years of the United Nations, Christians, Jews, Muslims, Hindus, Sikhs, Buddhists and other religious people and groups have worked together and with one another to advance human rights. These religious groups have emphasized the religious bases for human rights within their own traditions.

Now, more than fifty years later, as Iraq and Afghanistan have embarked on their own constitutional processes, questions about the compatibility of international human rights norms

⁴ Universal Declaration of Human Rights, G.A. Res. 217A, at 1, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

⁵ *Id.* art. 18.

⁶ UNITED NATIONS DEVELOPMENT PROGRAMME, ARAB HUMAN DEVELOPMENT REPORT 2004: TOWARDS FREEDOM IN THE ARAB WORLD 75 (2004).

⁷ See Susan Waltz, *Universal Human Rights: The Contribution of Muslim States*, 26 HUM. RTS. Q. 800-44 (2004)

⁸ In addition to Dr. Azmi, Omar Lutfi (Egypt) and Charles Malik (Lebanon) also were involved in the different stages of the preparation of the Universal Declaration of Human Rights. See *supra* note 4, at 75

⁹ Eight states abstained from the U.N. General Assembly vote on the U.N. Declaration of Human Rights: Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, the former Soviet Union, Ukraine, and Yugoslavia.

within Islamic societies are being raised anew. Three contentious issues, in particular concerning religion, permeated the drafting and approval of Afghanistan's constitution and Iraq's TAL: the appropriate constitutional role for Islam; the scope of guarantees for fundamental human rights, including the right to freedom of thought, conscience, and religion; and the equality of rights and freedoms, especially for women. As Iraq's newly elected transitional national assembly engaged in the process of drafting a permanent constitution, matters concerning religion and human rights resurfaced as key, potentially divisive, issues.¹⁰

To be certain, actual implementation of constitutional provisions is dependent on a number of diverse factors, including level of state control, system of government, independence of the judiciary, individual access to the courts, and enforcement of judicial remedies. Relatedly, constitutional text alone may not necessarily reflect what is being done in practice, especially in the field of human rights.

That said, constitutional text remains important for setting forth aspirational norms. It lays the groundwork for legal and political reconstruction. Even if not fully implemented upon enactment, constitutional text remains fixed as fundamental law and as a statement of national principles, and can be invoked by future generations seeking to fulfill its promise.

I. THE RELATIONSHIP BETWEEN RELIGION AND THE STATE

A. ISLAM AS STATE RELIGION

The global Muslim population is estimated at over 1.3 billion.¹¹ Of this figure, approximately 1 billion Muslims live in forty-four predominantly Muslim countries where Muslims constitute more than half of the population.¹² Of the 1 billion Muslims living in predominantly Muslim countries, 28% live in ten countries that, according to the constitution, declare themselves to be Islamic states.¹³ Generally, a country with a constitutional provision declaring itself to be an Islamic state distinguishes itself by seeking to promote a broader, more significant role for Islam within that country. This role can manifest itself in a number of ways, and the practical ramifications of a constitution declaring an Islamic state are not uniform.

Each of the constitutions of the ten declared Islamic states also proclaim Islam to be the official religion of the state. In other words, all Islamic states declare Islam the official state

¹⁰ At the time of writing, the transitional national assembly had appointed a fifty-five-member committee to work on drafting the permanent constitution. However, criticism concerning the representativeness of this body has resulted in expanding the committee to seventy-one voting members, with the addition of fifteen Sunni delegates and one Sabeian Mandaean representative.

¹¹ Accurate and up-to-date population data for many of the countries surveyed either does not exist or varies widely. Figures presented here are estimates and, unless indicated otherwise, are based on the Annual Report on International Religious Freedom 2004. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP'T OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM 2004, *available at* <http://www.state.gov/drl/rls/irf/2004/>.

¹² All of the predominantly Muslim countries surveyed here, with the exception of Malaysia, are members of the Organization of the Islamic Conference (OIC). One of the OIC's primary objectives is to "promote Islamic solidarity among Member States." charter of the organization of the Islamic conference art. 2, *available at* <http://www.oic-oci.org/english/main/charter.htm>. Although the OIC consists of fifty-seven member states, only forty-four of these countries have a Muslim population greater than 50% according to data provided by the U.S. Department of State.

¹³ These states are Afghanistan, Bahrain, Brunei, Iran, Maldives, Mauritania, Pakistan, Qatar, Saudi Arabia, and Yemen. *See infra* Appendix A

religion. That said, there are an additional twelve predominantly Muslim countries that have chosen to declare Islam as the official state religion while forgoing the potentially more far-reaching impact of also declaring the country an Islamic state. Taken together, the twenty-two states that declare Islam the official religion account for 58%--or just over 600 million--of the 1 billion Muslims living in predominantly Muslim countries. As with the smaller category of declared Islamic states, the practical ramifications of a declaration of Islam as the religion of the state vary from state to state. Within these countries, there exist a range of legal provisions, policies, and practices in the political, social, religious, and economic spheres.

In contrast to this grouping of twenty-two states, the constitutions of eleven predominantly Muslim countries proclaim the state to be secular. These countries account for nearly 140 million Muslims, or 13.5% of the 1 billion Muslims living in predominantly Muslim countries. Finally, the eleven remaining predominantly Muslim countries have not made any constitutional declaration concerning the Islamic or secular nature of the state, and have not made Islam the official state religion. This group of countries, which includes Indonesia, the world's largest Muslim country, accounts for over 250 million Muslims. (See table below.)

TABLE: DEFINING A CONSTITUTIONAL ROLE FOR RELIGION

Declared Islamic States	Declared Islam as the State Religion	No Constitutional Declaration	Declared Secular States
1. Afghanistan	Ten Islamic states and:	1. Albania	1. Burkina Faso
2. Bahrain	11. Algeria	2. Lebanon	2. Chad
3. Brunei	12. Bangladesh	3. Syria	3. Guinea
4. Iran	13. Egypt	4. Indonesia	4. Mali
5. Maldives	14. Iraq (TAL)	5. Comoros	5. Niger
6. Mauritania	15. Jordan	6. Djibouti	6. Senegal
7. Oman	16. Kuwait	7. The Gambia	7. Azerbaijan
8. Pakistan	17. Libya	8. Sierra Leone	8. Kyrgyzstan
9. Saudi Arabia	18. Malaysia	9. Somalia*	9. Tajikistan
10. Yemen	19. Morocco	10. Sudan**	10. Turkey
	20. Qatar	11. Uzbekistan	11. Turkmenistan
	21. Tunisia		
	22. U.A.E.		
Estimated Muslim Population: 285.5 million or approximately 28% of Muslims living in predominantly Muslim countries.	Estimated Muslim Population (including declared Islamic states): 602.5 million or approximately 58% of Muslims living in predominantly Muslim countries.	Estimated Muslim Population: 287.5 million or approximately 28.5% of Muslims living in predominantly Muslim countries.	Estimated Muslim Population: 140 million or approximately 13.5% of Muslims living in predominantly Muslim countries.

* At the time of writing, Somalia has no recognized constitution.

** At the time of writing, parties to Sudan's long-running civil war are contemplating the drafting of a new interim constitution. It also should be noted that of the approximately 300 million Muslims not living in predominantly Muslim countries, the vast majority are found in just a handful of states. In particular, India, Nigeria, China, Russia, Ethiopia, and Tanzania are home to over 270 million Muslims, or nearly 90% of those living outside of predominantly Muslim countries. These Muslims live under constitutional structures which are either declared secular or silent with respect to a state religion. (See Appendix D below.)

Under international human rights standards, a state can adopt a particular relationship with the religion of the majority of the population, including establishing a state religion, provided that such a relationship does not result in violations of the civil and political rights of, or discrimination against, adherents of other religions or non-believers. According to the U.N. Human Rights Committee's General Comment on Article 18 (freedom of thought, conscience, and religion) of the International Covenant on Civil and Political Rights (ICCPR):

The 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 [freedom of thought, conscience, and religion] and 27 [rights of members of religious, ethnic and linguistic minorities], nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 [equal protection of the law without any discrimination].¹⁴

In a similar vein, the European Court of Human Rights has stated that the mere existence of a state religion or established church does not violate the right to freedom of religion or belief as long as individuals are free to leave that religion or church.¹⁵

B. ALTERNATIVES TO CONSTITUTIONAL RECOGNITION OF A STATE RELIGION

Several countries around the world, Muslim and non-Muslim alike, have made a special recognition of a particular religion in the preamble or body of the constitution, without adopting a state religion or established church or any facially operative constitutional distinction between religions or among adherents of different religions. For example, Sudan's constitution provides: "Islam is the religion of the majority of the population. Christianity and customary creeds have considerable followers."¹⁶ The constitution of Greece states that the "prevailing religion in Greece is that of the Eastern Orthodox Church of Christ,"¹⁷ the Georgian constitution "recognizes [the] special role of the Apostolic Autocephal Orthodox Church of Georgia,"¹⁸ and Bulgaria's constitution asserts Eastern Orthodox Christianity as the "traditional religion."¹⁹ In addition, the constitution of Thailand requires that the state "shall patronize and protect Buddhism and other religions,"²⁰ and, according to Argentina's constitution, the "Federal Government supports the Roman Catholic Apostolic Faith."²¹

¹⁴ Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)*, para. 9, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument) [hereinafter *General Comment 22*].

¹⁵ *Darby v. Sweden*, 13 E.H.R.R. 774, P 35 (1991).

¹⁶ SUDAN CONST. Art. 1.

¹⁷ GREECE CONST. Art. 3, § 1.

¹⁸ GEORGIA CONST. Art. 9, § 1.

¹⁹ BULG. CONST. Art. 13, § 3.

²⁰ THAIL. CONST. § 73.

²¹ ARG. CONST., Art. 2.

Finally, some constitutions make reference to God or other religious concepts but are otherwise secular in nature. For example, the Indonesian constitution provides that the "State shall be based upon the belief in the One and Only God."²² The range of references to religion demonstrated here results in a variety of constitutional practices that characterize a given state's relationship with religion.

C. CONSTITUTIONAL ROLE FOR ISLAMIC LAW, PRINCIPLES, OR JURISPRUDENCE

1. Overview

Twenty-two of forty-four predominantly Muslim countries recognize some constitutional role for Islamic law, principles, or jurisprudence. This includes eighteen of the twenty-two countries where Islam is the religion of the state,²³ as well as four predominantly Muslim countries where Islam is not the declared state religion.²⁴ In countries where a constitutional role for Islam is established, that role varies and in some cases may be restricted to specific matters, such as personal status issues or the creation of councils designed to advise the government concerning questions related to religion and religious life.²⁵ (See Appendix A below.)

2. Islam as Source of Legislation

The constitutions of several countries where Islam is the state religion, including Egypt and the Gulf states, establish Islamic law, principles, or jurisprudence as "the basis for," "the principal source of," "a principal source of," or "the source of" legislation.²⁶ This practice of declaring Islamic law as a basis for legislation also occurs in countries such as Syria and Sudan, which do not have a declared state religion.

In several of these cases, no additional constitutional guidance is given to address the question of what governmental body, process, or mechanism, if any, is charged with assessing the conformity of legislation with Islamic principles or law. Moreover, many of these constitutions fail to provide any further definition of the terms "Islam," "sharia" (Islamic law) or the "fundamentals," "principles," or "jurisprudence" of Islam.²⁷ For example, in Saudi Arabia, the

²² INDO. CONST. art. 29 § 1.

²³ Afghanistan, Algeria, Bahrain, Egypt, Iraq, Iran, Jordan, Kuwait, Libya, Malaysia, Maldives, Mauritania, Oman, Pakistan, Qatar, Saudi Arabia, U.A.E, and Yemen. *See infra* Appendix A.

²⁴ The additional four states that invoke Islamic principles, law, or jurisprudence in their constitutions without having declared Islam as the state religion are Comoros, The Gambia, Sudan, and Syria. The four states that declare Islam the state religion but do not establish any additional role for Islamic law, principles, or jurisprudence are Bangladesh, Brunei, Morocco, and Tunisia. *See infra* Appendix A.

²⁵ For example, both the constitutions of Jordan and Malaysia limit the role of Islamic law. Under Jordan's constitution, Islamic law applies only to personal status law and matters pertaining to *waqfs* (Muslim religious endowments or trusts). JORDAN CONST. art. 102-10. Likewise, in Malaysia, the application of Islamic law is restricted to certain enumerated areas, and in most cases falls within state jurisdiction under the federal division of powers. *See* MALAY. CONST., Ninth Schedule, List II--State List. Although the constitution of The Gambia does not declare Islam as the state religion, it similarly restricts the application of Sharia as a source of legislation to "matters of marriage, divorce and inheritance." GAM. CONST. art. 7, § f.

²⁶ *See* OMAN CONST. art. 2; EGYPT CONST. art 1; THE 1971 PROVISIONAL CONSTITUTION OF THE UNITED ARAB EMIRATES art. 7 (this constitution was made permanent under constitutional amendment no. (1) of 1996); YEMAN CONST. art. 3.

²⁷ *See, e.g.,* ALGERIA CONST. art. 1; BAHRAIN CONST. art 2; EGYPT CONST. art 2; MALDIVES CONST. art 1; SUDAN CONST. art 65

state is mandated to protect "the rights of the people in line with the Islamic sharia," without specifying what interpretation should be applied, by whom, and how.²⁸

In Egypt, the role of interpreting the meaning of "sharia" has fallen to the Supreme Constitutional Court, whereas in Pakistan, the constitution specifically assigns this role to the Federal Shariat Court.²⁹ Finally, in Yemen, Article 46 of the constitution provides judges with discretionary powers to interpret sharia and apply punishments that may not necessarily be proscribed by law. Though a full analysis on this subject is beyond the scope of this study, what remains clear is that the human rights ramifications of establishing a constitutionally-mandated role for Islam vary from country to country. As the 2004 Arab Human Development Report points out:

Does [sharia] mean those Islamic schools of thought that promote justice, equality, reason and respect for human dignity? Or does it refer to the doctrines of Islamic jurisprudence, which may be understood only within their cultural and historical context and which give rise to various forms of conflict between them and present-day human rights principles?³⁰

3. Other Provisions for Recognition of Islamic Principles

Other examples of how various constitutions lend meaning to or implement a function for Islamic principles demonstrate that diverse arrangements exist. Article 3 of Afghanistan's new constitution features a "repugnancy clause" that provides "no law can be contrary to the sacred religion of Islam and the values of this Constitution." Moreover, under the new constitution, ordinary legislation may be used to restrict or trump the constitutional rights of individual Afghans, since the scope of many of these rights are made subject to "provisions of the law."³¹ In a related vein, Afghanistan's constitution also requires that courts render decisions based on "provisions of the Hanafi jurisprudence" when "there is no provision in the Constitution or the laws with respect to a case under consideration."³²

For other countries, Islamic principles are constitutionally recognized, but neither self-executing nor judicially enforceable. Article 8(1A) of the Bangladesh constitution provides that "absolute trust and faith in the Almighty Allah shall be the basis of all actions."³³ However, part 2 of the same article states that this principle, while "fundamental to the governance of Bangladesh... shall not be judicially enforceable." Under Algeria's constitution, state institutions are not permitted to engage in "practices contrary to Islamic morals."³⁴ This provision is supported by a constitutionally mandated High Islamic Council charged with: (a) encouraging and promoting *ijtihad*, or interpretation of Islamic law; (b) providing its opinion on religious

²⁸ Saudi Arabia Basic System (Decree A/90) art. 26.

²⁹ See *infra* Part V

³⁰ UNITED NATIONS DEVELOPMENT PROGRAMME, ARAB HUMAN DEVELOPMENT REPORT 2004: TOWARDS FREEDOM IN THE ARAB WORLD 115 (2004). The report also notes that consideration of Shari'a as a source of legislation may not in and of itself constitute a violation of human rights principles "provided that those principles, intentions and interpretations of the Shari'a that favour freedom and equality ... are those employed." *Id.* at 116. For an example of a provision that attempts to define the meaning of sharia more precisely, while also favoring an interpretation in line with the principles of freedom and equality, see IRAQ CONST. (TAL) art. 7(A).

³¹ For example, under Article 2, freedom to perform religious rites is permitted only "within the limits of the provisions of law." AFG. CONST. art. 2; see also AFG. CONST. arts. 23, 27, 35, 37, 39, 40, 50.

³² AFG. CONST. art. 130.

³³ BANGL. CONST. art. 8, § IA.

³⁴ ALG. CONST. art. 9.

rules; and (c) presenting periodic reports of its activity to the President.³⁵ The constitutions of Mauritania, Comoros, and Pakistan also establish advisory bodies that assess laws or other official matters in light of Islamic principles.³⁶

4. Other Principles in Addition to Islam May Be Sources of Legislation or the Basis for Determining Constitutional Repugnancy

In some countries, other principles are mentioned as sources of legislation alongside Islamic law, principles, or jurisprudence. For example, in addition to "Islamic law and the consensus of the nation, by referendum," Sudan recognizes the "Constitution and custom" as sources of legislation.³⁷ A variation of this type of clause is found in Article 9 of Algeria's constitution, which states that "the [government] institutions forbid ... practices contrary to Islamic morals and the values of [the] November [revolution]."

Significantly, Iraq's TAL establishes not only Islam as a check on legislation, but provides that legislation cannot contradict democratic principles or human rights guarantees as well. Article 7 (a) of Iraq's TAL provides that "No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in ... this Law may be enacted during the transitional period."³⁸

II. GUARANTEE OF THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

A. *MINIMUM INTERNATIONAL STANDARDS FOR CONSTITUTIONAL PROVISIONS*

The minimum international standards required for an effective constitutional guarantee of the right of freedom of religion or belief might be extracted from the UDHR and the ICCPR. These minimum standards include:

- Universal applicability to everyone as individuals, regardless of religion or belief;
- The freedom to manifest a religion or belief, either individually or in community with others, in public or private;
- Freedom to manifest *all aspects* of a religion or belief, including worship, teaching, practice, and observance;
- No coercion that would impair the freedom to have or to adopt a religion or belief of one's choice.³⁹ (Aspects of a constitution that could constitute coercion include: (a)

³⁵ ALG. CONST. arts. 171-72.

³⁶ Mauritania's constitution establishes a High Islamic Council. MAURITANIA CONST. art. 94. The Comoros constitution establishes a Council of the Ulemas to assist the government "in formulating decisions that affect the religious ... life of the country." COMOROS CONST. art. 57. Pakistan's constitution creates a Council of Islamic Ideology. PAK. CONST. art. 228.

³⁷ SUDAN CONST. art. 65.

³⁸ Notably, a recent conference on Islam and democracy concluded that if a constitution is to recognize Islamic law or principles, the relevant constitutional language should "always recognize not only the basic principles of Islam, but also the principles of democracy, pluralism, social justice, rule of law, and [a country's] international obligations." Conference, *Democracy and Islam in the New Constitution of Afghanistan*, RAND CENTER FOR ASIA PACIFIC POLICY 2 (2003). USCIRF Commissioner Khaled Abou El Fadl was a participant in this conference before his appointment to the Commission.

³⁹ According to the U.N. Human Rights Committee, "Article 18.2 [of the ICCPR] 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

- no provision for equality or the prohibition of discrimination on the basis of religion, or (b) separate political rights for citizens of different religions); and
- Limitations on the right to freedom of thought, conscience, and religion or belief only in certain circumstances as provided for under international law.⁴⁰

B. *RELEVANT INTERNATIONAL HUMAN RIGHTS INSTRUMENTS*

The key international standards relating to the right to freedom of thought, conscience, and religion or belief are set out in the UDHR and the ICCPR.

1. Universal Declaration of Human Rights (UDHR)

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.⁴¹

2. International Covenant on Civil and Political Rights (ICCPR)

Article 18 of the ICCPR provides:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁴²

article 25 [political rights] and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature." *See General Comment 22, supra* note 14, para. 5.

⁴⁰ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 18(3), U.N. Doc. A/6316 (Dec. 16, 1966), *available at* http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

⁴¹ Universal Declaration of Human Rights, *supra* note 4.

⁴² ICCPR, *supra* note 40. The Human Rights Committee, established under Article 28 of the Covenant, is the expert body tasked with supervising and monitoring the implementation of Covenant obligations by States parties. In carrying out this function, the Committee, *inter alia*, elaborates General Comments "which are designed to assist States parties to give effect to the provisions of the Covenant by providing greater detail regarding the substantive and procedural obligations of States parties." General Comments provide guidance and clarification to the various provisions of the ICCPR, and are widely considered as an integral and substantive part of the body of international human rights law. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, CIVIL AND POLITICAL RIGHTS: THE HUMAN RIGHTS COMMITTEE (FACT SHEET NO. 15 REV. 1) 10, *available at* <http://www.ohchr.org/english/about/publications/docs/fs15.pdf>.

C. IMPLEMENTATION OF INTERNATIONAL STANDARDS IN PREDOMINANTLY MUSLIM COUNTRIES

The constitutions of the primarily Muslim countries surveyed here reflect a variety of approaches to guarantees for the freedom of thought, conscience, and religion, with some texts comparing favorably, and others comparing less favorably to the standards derived from international instruments.

1. Constitutional Provisions That Compare Favorably

Several predominantly Muslim countries have constitutional guarantees of the right to freedom of religion or belief that, on their face, compare favorably with these international standards. (See Appendix B.) For example, the constitutions of Pakistan and Bangladesh provide that, subject "to law, public order and morality ... every citizen shall have the right to profess, practice and propagate his religion,"⁴³ and Iraq's TAL guarantees that "each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited."⁴⁴

2. Constitutional Provisions That Compare Less Favorably

Conversely, several countries where Islam is the state religion have constitutional provisions regarding the right to freedom of religion or belief that, on their face, do not compare favorably with all aspects of international standards. Examples include provisions:

- (1) Limited to worship or the practice of religious "rites";⁴⁵
- (2) Limited to one or more religions or class of religions;⁴⁶ or
- (3) Allowing limitations on freedom of religion by any ordinary law rather than only those limitations permitted under international law.⁴⁷

3. Freedom of Religion or Belief as a Right of Every Individual

Several countries with predominantly Muslim populations have constitutions that clearly specify that the right to freedom of religion or belief is to be extended to either every citizen or every individual. For example, Pakistan and Senegal extend the right of freedom of religion and belief to "every citizen" and "all citizens," whereas Indonesia's provision covers "every person."⁴⁸

⁴³ PAK. CONST. pt. II, art. 20(a); see also BANGL. CONST. pt. III, art. 41 (1) (a) (drafted in a similar manner).

⁴⁴ IRAQ CONST. (TAL) ch. II, art. 13(F). The TAL also "guarantees the full religious rights of all individuals to freedom of religious belief and practice." See IRAQ CONST. (TAL) ch. I, art. 7 (A).

⁴⁵ See, e.g., EGYPT CONST. ch. III, art. 46; MOROCCO CONST. art. 6; AFG. CONST. ch. I, art. 2.

⁴⁶ Under Iran's constitution, "Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies" IRAN CONST. ch. I, art. 13. Under Afghanistan's constitution, recognition of religious freedom is limited to non-Muslims. See AFG. CONST. ch. I, art. 2.

⁴⁷ See, e.g., AFG. CONST. ch. I, art. 2; YEMEN CONST. pt. II, art. 41; BAHR. CONST. ch. III, art. 22; KUWAIT CONST. pt. III, art. 35; MALDIVES CONST. ch. II, art. 25; LIBYA CONST. ch. I, art. 2.

⁴⁸ PAK. CONST. pt. II, art. 20(a); SEN. CONST. art. 8; INDON. CONST. ch. X(A), art. 28(e). Other countries with similar individual guarantees include Albania, Bangladesh, Malaysia, Mauritania and Kyrgyzstan. See *infra* Appendix B.

However, other constitutional provisions in many countries where Islam is declared to be the state religion are less clear, raising the possibility that only groups, rather than individuals, are afforded protection. Failure to provide explicit protection for individuals means that--depending upon interpretation and application--the group or the state may define the exact parameters of the right to freedom of religion or belief rather than the individual. Consequently, individuals may not be protected fully in their freedom to dissent from established religious teachings (i.e. an individual's right to have a religion or belief that differs or dissents from the rules or doctrines of a religious group with whom that individual might be associated).⁴⁹

4. Constitutional Safeguards Against Coercion in Matters of Religious Belief

Finally, several constitutions contain provisions designed to protect individuals against coercion that would impair the freedom to have or to adopt a religion or belief, further bolstering protections for the freedom of thought, conscience, and religion or belief. Examples of countries that include such provisions in their constitutions include Albania, Bangladesh, Pakistan, Azerbaijan, Sierra Leone, Turkey, Malaysia, and Sudan.⁵⁰ These provisions cover a wide range of areas and generally seek to protect individuals from being compelled to:

- Participate in religious practices or become a member of a religious community;
- Reveal or profess a religion or belief publicly;
- Receive religious instruction or education of a religion that is not one's own;
- Take an oath contrary to one's religion; or
- Pay a tax that is used for the purposes of a religion other than one's own.

⁴⁹ Several predominantly Muslim countries have constitutions that do not frame freedom of religion and belief specifically as an individual right. See, e.g., ALG. CONST. art. 36; BAHR. CONST. ch. III, art. 22; EGYPT. CONST. ch. III, art. 46.

⁵⁰ ALB. CONST. pt. II, art. 24(3); BANGL. CONST. pt. III, art. 41(2); PAK. CONST. pt. II, art. 21; AZER. CONST. art. 71 (IV); SIERRA LEONE CONST. art. 24; TURK. CONST. ch. II, pt. VI, art. 24; MALAY. CONST. art. 11 (2); SUDAN CONST. art. 24; see also Appendix B *infra*.

5. TABLE: COMPARISON OF CONSTITUTIONAL PROVISIONS ON FREEDOM OF RELIGION TO INTERNATIONAL STANDARDS

	Generally Compare Favorably	Establish Specific Safeguards Against Religious Coercion	No Provisions or Provision Only for the Right to Worship	Provisions That Do Not Define Rights on an Individual Basis or Limit Rights to One or More Enumerated Groups	Provisions That Permit Limitations Not Enumerated Under International Standards
Middle East & North Africa	Iraq (TAL)	Iraq (TAL)	Algeria*	Morocco	Bahrain
			Bahrain	Oman	Egypt
South Asia	Bangladesh	Bangladesh	Afghanistan	Afghanistan	Afghanistan
	Pakistan	Pakistan			
East Asia	Indonesia		Brunei	Maldives*	Maldives
	Malaysia	Malaysia			
Africa	Chad	Niger	Comoros*		Djibouti
	Djibouti	Senegal	Mauritania*	Burkina Faso	The Gambia
Eastern Europe & Eurasia	The Gambia	Sierra Leone	Somalia**		Niger
	Guinea	Sudan			Sierra Leone
Eastern Europe & Eurasia	Mali				
	Albania	Albania	N/A	N/A	Turkey
Eastern Europe & Eurasia	Azerbaijan	Azerbaijan			
	Kyrgyzstan	Turkey			
Eastern Europe & Eurasia	Tajikistan	Uzbekistan			
	Turkey				
Eastern Europe & Eurasia	Turkmenistan				
	Uzbekistan				

* Countries with no constitutional provisions concerning freedom of religion specifically.

** At the time of writing, Somalia has no recognized constitution.

D. CONSTITUTIONAL RESTRICTIONS ON THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

Several countries with constitutions establishing Islam as the state religion either do not provide guarantees of the right to freedom of religion or belief, or provide guarantees that, on their face, do not compare favorably with all aspects of international standards. Examples of such countries include Iran, Libya, and Oman. Some countries, such as Egypt and Saudi Arabia, assert that these restrictions flow from the position of Islam as a declared state religion and/or the role of Islam or sharia in the legal system.⁵¹ Nevertheless, the United Nations Human Rights Committee (HRC), the body that assesses compliance with the International Covenant on Civil and Political Rights (ICCPR), has concluded that restrictions made on this basis constitute violations of the ICCPR. For example, the HRC expressed concern about "infringements of the right to freedom of religion or belief" in Egypt, deplored "the ban on worship imposed on the Bahai community," and called on the government to ensure that "its legislation and practice are consistent with Article 18 of the Covenant."⁵² In the case of Yemen, the HRC called on the government to "ensure that its legislation and practice are in line with the provisions of the Covenant and in particular that the right of persons to change their religion . . . is respected."⁵³ In addition, the Committee noted "with concern the situation of discrimination against women in matters of personal status, more particularly in marriage and divorce as well as the rights and duties of spouses," and requested that the government ensure that "in all fields in the life of society, women enjoy complete equality with men, both in law and in fact."⁵⁴ (See Part E below.)

In all cases, it should be emphasized that differences may exist in practice between written provisions and actual enforcement of rights. Indeed, violations of the right to freedom of religion or belief are not restricted to countries with a declared state religion; similar violations likewise may occur in countries where the constitution does not provide for a state religion or established church.⁵⁵

That said, several countries with a declared state religion or an established church provide generally effective protection in law and in practice to the right to freedom of religion or belief

⁵¹ See Summary Record of the 2048th Meeting: Consideration of Reports Submitted By Egypt Under Article 40 of the Covenant, U.N. Human Rights Committee, U.N. Doc. CCPR/C/SR.2048 (2002); Reports Submitted by Saudi Arabia Under Article 9 of the Convention, U.N. Committee on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/370/Add.I and Corr.I (2001); Summary Record of the 1558th Meeting: Consideration of Reports, Comments and Information Submitted By Saudi Arabia Under Article 9 of the Convention, U.N. Committee on the Elimination of Racial Discrimination, U.N. Doc. CERD/C/SR.1558 (2003).

⁵² Concluding Observations of the Human Rights Committee: Egypt, U.N. Human Rights Committee, para. 17, U.N. Doc. CCPR/CO/76/EGY (2002), available at <http://www.unhchr.ch/tbs/doc.nsf/0/89189f6057f03fdec1256c68002flec4?Opendocument>.

⁵³ Concluding Observations of the Human Rights Committee: Yemen, U.N. Human Rights Committee, para. 20, U.N. Doc. CCPR/CO/75/YEM (2002), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/83b4694b87b1flabc1256c0500253d65?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/83b4694b87b1flabc1256c0500253d65?Opendocument).

⁵⁴ See id. para. 7.

⁵⁵ After reviewing the state party report submitted by Uzbekistan, the HRC concluded that the government must abolish legislation that requires "religious organizations and associations to be registered to be entitled to manifest their religion and beliefs," as well as a Penal Code provision "which penalizes the failure of leaders of religious organizations to register their statutes," since those provisions were found to violate Article 18 of the ICCPR. Concluding Observations of the Human Rights Committee: Uzbekistan, U.N. Human Rights Committee, para. 24, U.N. Doc. CCPR/CO/71/UZB 26/04/2001 (2001), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.UZB.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument).

and related human rights (for example, Norway, Denmark, and Iceland). The circumstances under which such protection occurs include:

- (1) Constitutional and/or legislative guarantees in line with international standards for upholding freedom of thought, conscience, religion or belief and related human rights, as well as effective mechanisms to enforce these guarantees in practice;
- (2) Enforceable prohibitions of discrimination on account of religion or belief; and
- (3) Strong adherence to rule of law and international human rights norms, including access to enforcement mechanisms for these norms through international institutions such as the European Court of Human Rights.

E. *PERMISSIBLE LIMITATIONS ON FREEDOM TO MANIFEST A RELIGION OR BELIEF UNDER INTERNATIONAL LAW*

Under international standards, no limitations whatsoever are permitted on the freedom to *have or adopt* a religion or belief of one's choice. The guarantee of freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education also cannot be restricted.⁵⁶ However, the freedom to *manifest* a religion or belief may be limited in certain circumstances according to ICCPR Article 18.3. In the words of the U.N.'s HRC:

- Article 18.3 [of the ICCPR] *permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.*
- In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3 and 26.
- *Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18.*
- The Committee observes that paragraph 3 of Article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.
- Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.
- The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.⁵⁷

Despite these principles laid out by the HRC, a number of predominantly Muslim countries that have ratified the ICCPR have constitutional provisions that, on their face, permit limitations that are not consistent with international standards.⁵⁸ For example, in Afghanistan, the right to

⁵⁶ General Comment 22, *supra* note 14, para. 8.

⁵⁷ See *id.* (emphasis added).

⁵⁸ At the same time, specific limitations not in accordance with the views of the HRC also exist in countries such as Maldives, which has not signed the ICCPR. Under the Maldives constitution, the rights to freedom

manifest a religion is contingent upon "provisions of the law"⁵⁹ which may enable limitations of the right based on non-enumerated grounds. In addition, provisions in other countries introduce limitations not recognized under international standards including recognition of a limited list of religious communities,⁶⁰ "public policy,"⁶¹ "established customs,"⁶² "decorum,"⁶³ "the order established by law and the regulations,"⁶⁴ and state sovereignty and national security.⁶⁵

III. RELATED RIGHTS: FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

A. OVERVIEW

Many manifestations of religion or belief also fall within the scope of the related rights of freedom of expression, association, and assembly. Thus, protection of the right to freedom of religion or belief is enhanced by effective constitutional guarantees of these related rights.

As with the freedom to manifest religion or belief, the rights to freedom of expression, association, and assembly also are subject to restriction only in limited circumstances under international standards such as the ICCPR. Restrictions on these rights may be imposed only as prescribed by law and where necessary "in the interests of national security or public safety, public order . . . the protection of public health or morals or the protection of the rights and freedoms of others."⁶⁶

B. APPLICATION OF RELATED RIGHTS

In several countries where Islam is the religion of the state, the constitutional provisions on the rights to freedom of expression, association, and assembly provide that the right can be circumscribed by any ordinary act of the legislature, rather than under the specific circumstances envisioned under international law.⁶⁷ However, other countries having Islam as a state religion do maintain provisions on these rights that, on their face, compare favorably with international standards.⁶⁸

of conscience and expression may be restricted on the grounds of "protecting the basic tenets of Islam."
MALDIVES CONST. art. 25.

⁵⁹ AFG. CONST. art. 2.

⁶⁰ IRAN CONST. art. 13.

⁶¹ KUWAIT CONST. art. 35.

⁶² For example, LIBYA CONST. art. 2 and BAHR. CONST. art. 22.

⁶³ JORDAN CONST. art. 14.

⁶⁴ DJIBOUTI CONST. art. 11.

⁶⁵ GAMBIA CONST. art. 25. Article 14 of Turkey's constitution also expresses a limitation to the right of freedom of religion based on national security grounds.

⁶⁶ See ICCPR, *supra* note 40, arts. 19, 21, 22.

⁶⁷ See, e.g., PAK. CONST. art. 19 (subjecting the right of freedom of expression to, *inter alia*, "any reasonable restrictions imposed by law in the interest of the glory of Islam."); BAHR. CONST. art. 23 (allowing for freedom of expression "provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused."); YEMEN CONST. art. 41 (providing that "the State shall by law secure freedom of thought and expression whether orally, in writing or in pictures and as provided for by law.")

⁶⁸ See, e.g., ALG. CONST. art. 36; BANGL. CONST. art. 41.

From among the related human rights discussed above, freedom of religion or belief is intimately linked with the right to freedom of expression. For example, enforcement of offenses of blasphemy and injury to religious feelings may conflict with the right to freedom of expression. These types of laws "can be used to suppress the expression of religious beliefs or opinions on religious issues that are perceived to be incorrect by or are unpopular with adherents of other religious groups, particularly the dominant group."⁶⁹ Although outside the reach of this study, a robust analysis of how such conflicts are addressed in practice is crucial for determining the scope of freedom of religion or belief in a given country.

IV. EQUALITY AND PROHIBITION OF DISCRIMINATION

A. OVERVIEW

Many of the constitutions of predominantly Muslim countries contain provisions addressing:

- (1) Equality before the law;
- (2) Equality of rights and freedoms (including in some cases specific provision of equal rights for men and women); and
- (3) Non-discrimination in rights or other official activities on the basis of, *inter alia*, religion and gender.

The Human Rights Committee has concluded that "inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes."⁷⁰ Abdelfattah Amor, former Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, has identified several practices allegedly rooted in tradition but sometimes justified on the basis of religion which may result in discrimination against women and be harmful to their wellbeing, including:

- Cultural stereotypes, including preference for male children, religious extremism, and regulation of women's clothing;
- Discrimination resulting from the condition of women within the family, including practices related to marriage and divorce (e.g.: polygamy, family planning, division of responsibilities);
- Discrimination related to inheritance and independent management of finances;
- Discrimination related to right to life, including infanticide, cruel treatment of widows, and honor crimes; and
- Aggravated discrimination against women who also are members of a minority community.⁷¹

As a result of these findings, the Human Rights Committee has determined that ICCPR Article 18 "may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion."⁷²

⁶⁹ Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 *BYU L. REV.* 251, 289.

⁷⁰ General Comment No. 28: Equality of Rights Between Men and Women, U.N. Human Rights Committee, para. 5, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (March 29, 2000), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?0pendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?0pendocument).

⁷¹ Abdelfattah Amor, *Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, Etude sur la Liberte de Religion ou de Conviction et la Condition de la Femme au Regard de la Religion et des Traditions*, at 26-51, U.N. Doc. E/CN.4/2002/73/Add.2 (April 5, 2002), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/121/89/pdf/G0212189.pdf?OpenElement>.

B. CONSTITUTIONAL PROVISIONS ON EQUALITY AND NONDISCRIMINATION THAT COMPARE FAVORABLY WITH INTERNATIONAL STANDARDS

Not all countries with Islam as a declared state religion have opted to make equality subject to Islamic law. Several countries with Islam as the state religion maintain equality provisions that reflect international standards.⁷³ For example, Article 12 of Iraq's TAL guarantees that:

All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

Oman's constitution states, "All citizens are equal before the Law and share the same public rights and duties. There is no discrimination between them on the ground of gender, origin, colour, language, religion, sect, domicile, or social status."⁷⁴ Similarly, Algeria provides that "citizens are equal before the law without any possible discrimination on the basis of birth, race, gender (sex), opinion or all other conditions or personal or social circumstance."⁷⁵

The constitutions of some predominantly Muslim countries go even further in asserting the right of equality and protection from discrimination. For example, Syria's constitution guarantees "for women all opportunities enabling them to fully and effectively participate in . . . political, social, cultural, and economic life" and provides that "citizens are equal before the law in their rights and duties."⁷⁶ Likewise, Chad's constitution ensures that "Chadians of either sex have the same rights and the same duties" and extends "to all equality before the law, without distinction of origin, race, sex, religion, political opinion, or social position."⁷⁷

⁷² U.N. Human Rights Committee, *supra* note 70, para. 21. Similarly, the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief has concluded that in order to prevent freedom of religion from being used to undermine the rights of women, it is essential that this freedom not be interpreted as a right of indifference with respect to the status of women. Stahnke, *supra* note 69, at 263.

⁷³ According to the HRC, discrimination, as used in the ICCPR, "should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." In the same respect, the HRC also found that Article 26 of the ICCPR (equal protection) does not "merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities." General Comment No. 18, Non-Discrimination, U.N. Human Rights Committee, at para. 7, 12, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (1989), available at <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>.

⁷⁴ OMAN CONST. art. 17.

⁷⁵ ALG. CONST. art. 29.

⁷⁶ SYRIA CONST. arts. 25, 45.

⁷⁷ CHAD CONST. arts. 13, 14.

C. CONSTITUTIONAL AND OTHER LIMITATIONS ON THE RIGHTS TO EQUALITY AND NONDISCRIMINATION

At least five constitutions of countries where Islam is the religion of the state, including Egypt and Bahrain, explicitly make equality subject to Islamic principles or the rules of Islamic jurisprudence regarding the treatment of men and women.⁷⁸ Qualifying equality in this way may subject women to discriminatory treatment in law and practice, particularly with regard to personal status issues such as marriage, divorce, and inheritance. Typically, this issue does not arise in secular states, where the principle of equality is expressed without qualification.

Still other predominantly Muslim countries' constitutions provide exceptions from general nondiscrimination provisions for personal status issues such as adoption, marriage, and divorce;⁷⁹ limit the application of equality to specific rights,⁸⁰ or do not address the issues of equality and discrimination.⁸¹

Finally, the constitutions of a number of predominantly Muslim countries may restrict to Muslim citizens the right to serve in government positions, particularly to hold executive power. This is achieved by requiring a specific Islamic oath or by stipulating that only Muslims can hold a given position. For example, in Yemen, the president, vice-president, members of the House of Representatives, prime minister, and other ministers must take the following constitutional oath: "I solemnly swear to God the Almighty that I shall abide by the Holy Koran and the Sunnah of Prophet Muhammed . . ."⁸² Alternatively, according to the Tunisian constitution, only a Tunisian citizen "of Moslem religion . . . may present himself as a candidate for the Presidency of the Republic." In Syria, "the religion of the President of the Republic shall be Islam." And in Pakistan, "[a] person shall not be qualified for election as President unless he is a Muslim."⁸³ In other predominantly Muslim countries, an Islamic oath is required of individuals before being permitted to take office.

This restriction also may manifest itself in a more specific form, whereby practice of a *particular strand* of Islam is established--often in favor of another Muslim community--as a prerequisite to political office. For example, in the Maldives, a "person shall be qualified to be elected as President if he is *a Muslim of Sunni following*," and in Brunei, "No person shall be appointed to be Prime Minister unless he is a Brunei Malay professing the Muslim religion *and belonging to the [Shafeite] sect of that religion*."⁸⁴

V. CONSTITUTIONAL LAW: SUPREMACY, REMEDIES FOR RIGHTS VIOLATIONS, AND REVISIONS

A. LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS MAY BE VOID

The constitutions of at least three predominantly Muslim countries which have established Islam as the state religion, as well as Iraq's TAL, contain a provision that makes void any law

⁷⁸ BAHR. CONST. art. 5(b); EGYPT CONST. art. 11; Iran Const. art. 20-21; SAUDI ARABIA CONST. art. 8.; YEMEN CONST. art. 31.

⁷⁹ SIERRA LEONE CONST. art. 27(4)(d); GAM. CONST. art. 33(5)(c).

⁸⁰ For example, compare the Moroccan constitution's provision: "Men and Women enjoy equal political rights," MOROCCO CONST. art. 8, with Azerbaijan's more broadly formulated "Men and women have equal rights and freedoms," AZER. CONST. art. 25.

⁸¹ See, e.g., BRUNEI CONST.

⁸² YEMEN CONST. art. 159.

⁸³ TUNIS. CONST. art. 40; SYRIA CONST. art. 3 (1); PAK. CONST. art. 41(2).

⁸⁴ MALDIVES CONST. art. 34(a); BRUNEI CONST. art. 4(5) (emphasis added).

inconsistent with fundamental rights as set out in the constitution.⁸⁵ For example, Article 26 of Bangladesh's constitution provides:

- (1) All existing law inconsistent with the provisions [on fundamental rights] shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
- (2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

Pakistan's constitution also provides safeguards for protection of fundamental rights under Article 8:

- (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter [on fundamental rights] shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent [sic] of such contravention, be void.⁸⁶

More generally, the constitutions of several predominantly Muslim countries provide for the supremacy of the constitution over other laws and regulations and establish a constitutional court or other official body to assess the conformity of laws to the constitution, including guarantees of human rights. Malaysia's provision on constitutional supremacy is not as specific as Bangladesh's, yet it still provides that the constitution "is the supreme law of the Federation and any law passed . . . which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."⁸⁷

B. *CONSTITUTIONALLY RECOGNIZED RIGHTS MAY BE SUPERSEDED BY ORDINARY LAW*

Some constitutions do not entrench supremacy for human rights guarantees, and as a consequence, in certain situations these guarantees may be superseded by an ordinary act of legislation. As noted above, Afghanistan's new constitution, on its face, permits ordinary legislation to restrict or trump fundamental individual rights. Other countries with similar provisions include Senegal, Yemen, and Iran.⁸⁸

C. *REVIEW OF CONSTITUTIONALITY MAY IMPLICATE THE CONFORMITY OF LEGISLATION WITH ISLAM*

In states where Islamic principles, law, or jurisprudence are established in the constitution as a basis or standard of legislation, a judicial or other body empowered to assess the constitutionality of laws may also have the authority to review legislation for its conformity to Islam. One example

⁸⁵ These countries are Bangladesh, Pakistan and Maldives. BANGL. CONST. pt. III, art. 26; PAK. CONST. pt. II, ch. 1, art. 8; MALDIVES CONST. art. 31.

⁸⁶ It should be noted that Pakistan's constitution also tasks a Federal Shariat Court with examining "whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet." If such a law is determined to be repugnant to those injunctions, "such law or provision shall, to the extent to which it is held to be so repugnant, case [sic] to have effect on the day on which the decision of the Court takes effect." PAK. CONST. pt. VII, ch. 3, arts. 203(D)(1), 203(D)(3)(b).

⁸⁷ MALAY. CONST. art. 4(1).

⁸⁸ SEN. CONST. tit. II, art. 8; YEMEN CONST. pt. II, art. 41; IRAN CONST. ch. I, art. 13.

is the Supreme Constitutional Court of Egypt, which, in addition to enforcement of constitutionally recognized human rights, has been tasked with interpretation of the constitution's provision that "Islamic jurisprudence is the principal source of legislation."⁸⁹ In the Iraq TAL, "Islam . . . is to be considered a source of legislation,"⁹⁰ and Article 44(b)(2) provides the Federal Supreme Court with:

Original and exclusive jurisdiction, on the basis of a complaint from a claimant or a referral from another court, to review claims that a law, regulation, or directive issued by the federal or regional governments, the governorate or municipal administrations, or local administrations is inconsistent with [the Transitional Administrative Law].⁹¹

Another example is Afghanistan's new constitution, which establishes that "no law can be contrary to the sacred religion of Islam and the values of [the] Constitution,"⁹² and also empowers the Supreme Court to review legislation for conformity to the constitution, provided such a review is made at "the request of the Government and/or the Courts."⁹³ As noted above, the Afghan constitution also requires courts to apply Hanafi jurisprudence where the constitution or existing laws are silent.⁹⁴

D. REMEDIES FOR VIOLATIONS OF CONSTITUTIONALLY RECOGNIZED RIGHTS

Some constitutions provide explicitly for remedies for violations of constitutionally recognized rights, including violations by government officials. In Turkey, "everyone whose constitutional rights and freedoms are violated has the right to request prompt access to the competent authorities" and the "State is obliged to indicate in its transactions, the legal remedies and authorities the persons concerned should apply and their time limits."⁹⁵ Sudan's constitution sets out a similar provision under Article 34:

Every aggrieved person who has exhausted means of grievance and complaint to the executive and administrative organs, shall have the right of access to the Constitutional Court to protect the freedoms, sanctities and rights set out in this Chapter; and the Constitutional Court may according to due process exercise the power to annul any law or order that contravenes the Constitution and restore the right to the aggrieved or compensate him for damage sustained.

Albania, Azerbaijan, and Bangladesh also provide for such remedies in their respective constitutions.⁹⁶

⁸⁹ EGYPT CONST. pt. 1, art. 2.

⁹⁰ IRAQ CONST. (TAL) ch. 1, art. 7(A).

⁹¹ IRAQ CONST. (TAL) ch. 6, art. 44(B)(2).

⁹² AFG. CONST. ch. 1, art. 3.

⁹³ AFG. CONST. ch. 7, art. 121.

⁹⁴ AFG. CONST. ch. 7, art. 130; see also discussion *supra* Part II(c)(iii).

⁹⁵ TURK. CONST. ch. 2, § 15, art. 40.

⁹⁶ ALB. CONST. pt. 1, art. 4(3); AZER. CONST. pt. 2, ch. III, art. 60(II); BANGL. CONST. pt. III, art. 44.

E. *PROHIBITIONS ON CERTAIN REVISIONS TO THE CONSTITUTION*

Another notable provision found in several constitutions seeks to entrench certain state-defining elements by preventing their modification. In some cases, such as Chad, these protected provisions guarantee the secular nature of the state and the fundamental rights of its citizens. The Chadian constitution specifies that:

No procedure of revision may be started or pursued if it interferes with:

The integrity of the territory, independence or national unity;
The republican form of the State, the principle of the division of powers and
secularity;
The freedoms and fundamental rights of the citizen . . .⁹⁷

In contrast, the prohibition on revisions found in the constitutions of several countries where Islam is the religion of the state protects the Islamic character of the state. According to Iran's constitution:

The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria; the religious footing; the objectives of the Islamic Republic of Iran . . . and the . . . official religion of Iran [Islam] . . . are unalterable.⁹⁸

Finally, Algeria's constitution demonstrates that both fundamental rights and Islam as a state religion may be considered essential state characteristics that cannot be subject to revision. According to the constitutional text, no constitutional revision "may impinge on . . . Islam, as the religion of the State [or on] fundamental liberties, on the rights of man and citizen."⁹⁹

VI. REFERENCE TO INTERNATIONAL AGREEMENTS AND HUMAN RIGHTS INSTRUMENTS

A. *OVERVIEW*

Protection of the right to freedom of religion or belief can be enhanced by constitutional references to international human rights instruments, including human rights treaties to which the country is a party. The application of these international human rights protections, if considered part of the domestic law of the state and enforceable through the courts or other means, can supplement other constitutional provisions on human rights.

⁹⁷ CHAD CONST. tit. XIV, art. 225.

⁹⁸ IRAN CONST. ch. XIV, art. 177; see also MOROCCO CONST. tit. XII, art. 106.

⁹⁹ ALG. CONST. tit. IV, art. 178(3), 178(5); see also QATAR CONST. ch. V, art. 145-46; AFG. CONST. ch. 10, art. 149; IRAQ CONST. (TAL) ch. 1, art. 3(A). Kuwait's constitution permits revisions with respect to the role of Islam; however it prevents amendments with respect to "the principles of liberty and equality . . . [unless such an amendment serves] to increase the guarantees of liberty and equality." KUWAIT CONST. pt. V, art. 175.

B. *AFFIRMATIVE OBLIGATION OR GENERAL REFERENCE TO INTERNATIONAL HUMAN RIGHTS INSTRUMENTS*

The constitutions of predominately Muslim countries address in a variety of ways international human rights documents such as the UDHR and other international agreements to which the state is a party, including the U.N. Charter and the ICCPR. Some of these constitutions may contain an affirmative obligation to abide by specific international human rights instruments. For example, Article 7 of Afghanistan's new constitution declares that the state "shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights." In a similar manner, Article 6 of Yemen's constitution provides that the state "shall abide by the United Nations Charter, the Universal Declaration on Human Rights, the Arab League Charter and the universally recognized rules of international law."

States with constitutions that lack any specific affirmative obligation to abide by international human rights instruments may, nonetheless, make reference more generally to "international . . . treaties and the generally recognized norms of international Law conducive to the promotion of peace and security,"¹⁰⁰ subscribe "to the principles and objectives of the Charter of the United Nations,"¹⁰¹ or respect "the international charters and treaties . . . to which it is a party."¹⁰² Other constitutions may allude to such documents in their preambles,¹⁰³ whereas others make no reference at all to any international documents or treaties.

C. *INCORPORATION OF INTERNATIONAL TREATIES INTO DOMESTIC LAW*

Several primarily Muslim countries' constitutions provide that an international agreement duly ratified by the state has the force of law. In some of these countries, in addition to ratification, an enactment by the legislative body is required for an agreement to have the force of law. Examples include Chad and Egypt.¹⁰⁴

VII. CONCLUSION

This study has assessed existing constitutional provisions concerning the relationship between religion and state, freedom of thought, conscience, and religion or belief, and related human rights in predominantly Muslim countries against recognized international standards. Given the fact that freedom of thought, conscience, and religion or belief remain salient human rights in the minds of Muslim citizens--and reflect a high-ranking priority within their concept of freedom¹⁰⁵--this study can serve as a resource for current drafting efforts underway in Muslim countries, especially as drafters begin to grapple with key questions including the role of Islam, the provision of individual human rights, and the interaction between religion and state.

¹⁰⁰ OMAN CONST. ch. 2, art. 10.

¹⁰¹ ALG. CONST. ch. 3, art. 28.

¹⁰² QATAR CONST. ch. 1, art. 6.

¹⁰³ See, e.g., LEB. CONST. pmb.; GUINEA CONST. pmb.; MALI CONST. pmb.

¹⁰⁴ CHAD CONST. tit. XIII, art. 222; EGYPT CONST. pt. V, ch. III, § 1, art. 151.

¹⁰⁵ According the findings of a "Freedom Survey" undertaken as part of the Arab Human Development Report, freedom of thought, freedom of belief, freedom for minorities to practice their distinctive culture and religious rites, and freedom for religious organizations were considered key elements of the concept of freedom by more than 80% of those surveyed. See UNITED NATIONS DEVELOPMENT PROGRAMME, ARAB HUMAN DEVELOPMENT REPORT 2004: TOWARDS FREEDOM IN THE ARAB WORLD 98 (2004).

The comparative analysis of constitutional text presented here is intended as a departure point and an invitation for further examination of the interpretation and application of these texts--especially with regard to their practical impact on society and on the protection of internationally recognized human rights. The authors hope that others may take up this task to further advance human rights, and the right to freedom of thought, conscience, and religion or belief, around the globe.

VII. APPENDIX

A. TABLE I: RELATIONSHIP BETWEEN RELIGION AND THE STATE CONSTITUTIONAL PROVISIONS (BY REGION)¹⁰⁶

MIDDLE EAST/NORTH AFRICA

➤ ALGERIA ¹⁰⁷	
% Muslim	99%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	No
	<u>Article 2</u> : Islam is the religion of the State.
	<u>Article 9</u> : The [government] institutions forbid; ... – practices contrary to Islamic morals and the values of [the] November [revolution].
Constitutional Formulation	<u>Article 171</u> : Next to the President of the Republic, a High Islamic Council is established ... especially to: – encourage and promote ijthihad [independent legal interpretation of Islamic law]; – to provide its opinion on the religious rules on what is submitted to it...
	<u>Article 178</u> : No constitutional revision may impinge on: ... 2. The democratic character based on plural parties. 3. Islam, as the religion of the State. ... 5. On fundamental liberties, on the rights of man and citizen.
➤ BAHRAIN ¹⁰⁸	
% Muslim	98%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	<u>Article 1</u> : a. The Kingdom of Bahrain is [a] fully sovereign, independent Islamic Arab state...

¹⁰⁶ All constitution excerpts, unless indicated otherwise, are taken from the most current volume of CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 2005). All population data is taken from U.S. DEPT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM 2004 (2004), available at <http://www.state.gov/g/drl/rls/irf/2004>; U.S. DEPT OF STATE, COUNTRY BACKGROUND NOTES (2004), available at <http://www.state.gov/r/pa/ei/bgn>.

¹⁰⁷ ALG. CONST. (1996, as amended to 2002).

¹⁰⁸ BAHR. CONST. (as promulgated by King Hamad bin Isa Al Khalifa on February 14, 2002).

Article 2: The religion of the State is Islam. The Islamic Shari'a is a principal source for legislation....

Article 5: b. The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a). ... d. Inheritance is a guaranteed right governed by the Islamic Shari'a.

Article 120: c. It is not permissible to propose an amendment to Article 2 of this Constitution, and it is not permissible under any circumstances to propose the amendment of ... the principles of freedom and equality established in this Constitution.

➤ **EGYPT¹⁰⁹**

% Muslim	90%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	<u>Article 2</u> : Islam is the religion of the State ... Islamic jurisprudence is the principal source of legislation.

➤ **IRAN¹¹⁰**

% Muslim	99%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Article 1: The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Qur'anic justice....

Article 2: The Islamic Republic is a system based on belief in: 1. the One God (as stated in the phrase "There is no god except Allah"), His exclusive sovereignty and the right to legislate, and the necessity of submission to His commands; 2. Divine revelation and its fundamental role in setting forth the laws....

Constitutional Formulation

Article 4: All civil penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter.

Article 12: The official religion of Iran is Islam and the Twelver Ja'fari school [in usul al-Din and fiqh], and this principle will remain eternally immutable. Other

¹⁰⁹ EGYPT CONST. (1971, as amended to 1980).

¹¹⁰ IRAN CONST. (1979, as amended to 1989). The Iranian Constitution contains a lengthy preamble and numerous additional provisions touching on the relationship between Islam and the state.

Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of fiqh constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of fiqh, without infringing upon the rights of the followers of other schools.

Article 170: Judges of courts are obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam ...

Article 177: The contents of the Articles of the Constitution related to the Islamic character of the political system; the basis of all the rules and regulations according to Islamic criteria; the religious footing; the objectives of the Islamic Republic of Iran; the democratic character of the government; the wilayat al-'amr; the Imamate of Ummah ... [and the] official religion of Iran [Islam] and the school [Twelver Ja'fari] are unalterable.

➤ **IRAQ (1925)**¹¹¹

% Muslim	N/A
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	In certain matters
	<u>Article 13</u> : Islam is the official religion of the State...
Constitutional Formulation	<u>Article 76</u> : The Shara [Sharia] courts alone shall be competent to deal with actions relating to the personal status of Moslems and actions relating to the administration of Waqf foundations.

➤ **IRAQ 2004 (TAL)**¹¹²

% Muslim	97%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	<u>Article 3</u> : [Supreme Law] (A) This Law is the Supreme Law of the land and shall be binding in all parts of Iraq without exception ... Likewise, no amendment may be made that could abridge in any way the rights of the Iraqi people cited in Chapter Two ... reduce the powers of the regions or governorates; or affect Islam, or any other religions or sects and their rites.

¹¹¹ IRAQ CONST. (1925), available at <http://www.geocities.com/dagtho/iraqiconst19250321.html>, or via the constitution finder project at the T.C. Williams School of Law, University of Richmond, at <http://confinder.richmond.edu>.

¹¹² IRAQ CONST. (TAL), available at <http://www.cpa-iraq.org/government/TAL.html>.

Article 7: [State Religion, Freedom of Religion, Arab Nation] (A) Islam is the official religion of the State and is to be considered a source of legislation. No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in Chapter Two of this Law may be enacted during the transitional period. This Law respects the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice.

➤ **JORDAN**¹¹³

% Muslim	95%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	In certain matters

Article 2: Islam shall be the religion of the State ...

Article 104: The Religious Courts shall be divided into:- (i) The Sharia Courts (ii) The tribunals of other Religious Communities.

Article 105: The Sharia Courts shall have exclusive jurisdiction in the following matters in accordance with its special laws: (i) Matters of personal status of Moslems (ii) Cases concerning blood money (diyeh) where the two parties are Moslems or where one of the parties is not a Moslem and the two parties consent to the jurisdiction of the Sharia Courts.

Constitutional Formulation

Article 106: The Sharia Courts shall apply in its proceedings the provisions of the Sharia Law.

Article 108: The tribunals of Religious Communities are the tribunals of the non-moslem [sic] religious tribunals which were or will be recognized by the Government as being established in the Hashemite Kingdom of Jordan.

➤ **KUWAIT**¹¹⁴

% Muslim	85% of residents
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Article 2: The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation.

Constitutional Formulation

Article 18: ... Inheritance is a right governed by the Islamic Sharia.

¹¹³ JORDAN CONST. (1952, as amended to 1984).

¹¹⁴ KUWAIT CONST. (1962).

➤ **LEBANON**¹¹⁵

% Muslim	70%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Law or Legislation?	No
Constitutional Formulation	N/A

➤ **LIBYA**¹¹⁶

% Muslim	97%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Constitutional Formulation Constitutional Proclamation, 11 December 1969
Article 2: Islam is the religion of the State and Arabic is its official language. The State protects religious freedom in accordance with established customs.

Article 8: ... Inheritance is a right which will be governed by the Islamic Shari'a.

➤ **MOROCCO**¹¹⁷

% Muslim	99%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	No

Constitutional Formulation Article 6: Islam is the religion of the State which guarantees to all freedom of worship.

Article 19: The King ... ensures the observance of Islam and the Constitution. He is the protector of the rights and liberties of the citizen, social groups and collectivities.

Article 106: The monarchic form of the State as well as the provisions relating to the Islamic religion cannot be the object of a constitutional revision.

¹¹⁵ LEB. CONST. (1926, as amended to 1995).

¹¹⁶ Libya has not had a constitution since the overthrow of King Idris in 1969. The Revolutionary Command Council published its Constitutional Proclamation on December 11, 1969. The subsequent Declaration on the Establishment of the Authority of the People (1977) noted at Article 2 that "The Holy Kuran is the constitution of the Socialist People's Libyan Arab Jamahiriya."

¹¹⁷ MOROCCO CONST. (Adopted by referendum September 13, 1996 and promulgated October 7, 1996).

➤ **OMAN**¹¹⁸

% Muslim	99% of citizens
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Article 1: The Sultanate of Oman is an Arab, Islamic, Independent State with full sovereignty and Muscat is its Capital.

Article 2: The State's religion is Islam and Islamic Sharia is the basis for legislation.

Constitutional Formulation Article 10: The Political Principles: ... Laying suitable foundations for consolidating the pillars of genuine shura emanating from the country's heritage, values and its Islamic Sharia, taking pride in its history while adopting the useful contemporary methods and tools.

Article 11: The Economic Principles: ... Inheritance is a right governed by Islamic Sharia.

➤ **QATAR**¹¹⁹

% Muslim	99% of citizens
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Constitutional Formulation Article 1: Qatar is an Arab State, sovereign and independent. Its religion is Islam, and the Islamic Law is the main source of its legislations. Its system is democratic, and its official language is the Arabic language ...

Article 51: The right of inheritance is inviolable and is governed by the Islamic Law.

➤ **SAUDI ARABIA**¹²⁰

% Muslim	99%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes

Constitutional Formulation The Basic System of the Consultative Council (Decree A/90), 1992
Article 1: The Kingdom of Saudi Arabia is an Arab and Islamic sovereign state. Its

¹¹⁸ OMAN CONST. (1996).

¹¹⁹ QATAR CONST. (adopted by referendum on April 29, 2003).

¹²⁰ Saudi Arabia has no written constitution. After releasing the decree cited here, King Fahd Ibn Abdulaziz affirmed that the announcement of the basic system of government was only an authentication of regulations already emanating from sharia.

religion is Islam, and its constitution, the holy Quran and the prophet's Sunnah...

Article 6: The citizens will take allegiance before the monarch in line with the holy Quran and the prophet's Sunnah.

Article 7: The rule in the kingdom depends on the holy Quran and the prophet's Sunnah.

Article 8: The rule in the kingdom is based on justice, consultations and equality in accordance with the Islamic Sharia.

Article 23: The state protects the Islamic creed, carries out its Sharia and undertakes its duty towards the Islamic call.

Article 38: The penalty is personal, and no crime or penalty unless in line with the Sharia text or the regulations ...

Article 46: The judicial authority is an independent organ and nobody has authority over the judges except the authority of the Islamic Sharia.

Article 48: The system of judges which is applied to all cases presented before it is, sharia rules according to the teachings of the holy Quran, the Sunnah, and the regulations set by the ruler provided that they do not contradict the holy Quran and Sunnah.

Article 55: The king will rule the nation according to the rulings of Islam and supervise the application of sharia (Islamic laws), the state's general policy and the protection and defense of the country.

➤ **SYRIA**¹²¹

% Muslim	90%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	Article 3: (2) Islamic jurisprudence is a main source of legislation.

➤ **TUNISIA**¹²²

% Muslim	98%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	No
Constitutional Formulation	<u>Article 1</u> : Tunisia is a free State, independent and sovereign; its religion is ... Islam, its language is Arabic and its regime is the Republic.

¹²¹ SYRIA CONST. (amended 2000).

¹²² TUNIS. CONST. (amended 1993).

➤ **U.A.E.** ¹²³

% Muslim	96%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	<u>Article 7</u> : Islam shall be the official religion of the Union. The Islamic Shari'ah shall be a principal source or legislation in the Union ...

➤ **YEMEN** ¹²⁴

% Muslim	100%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Law or Legislation?	Yes
Constitutional Formulation	<p><u>Article 1</u>: The Republic of Yemen is an independent, sovereign, Arab Islamic State which is inseparable and no part of it shall be ceded. The Yemeni people is [sic] part of the Arab and Islamic nation</p> <p><u>Article 2</u>: Islam is the religion of the State and Arabic is its official language.</p> <p><u>Article 3</u>: The Islamic Sharia'a (jurisprudence) shall be the source of all legislations.</p> <p><u>Article 23</u>: The right to inherit according to Islamic Sharia'a shall hereby be guaranteed by law.</p> <p><u>Article 46</u>: ... Crime and punishment shall be determined by the provisions of Sharia'a and law...</p> <p><u>Article 59</u>: The defence of religion and the country is a sacred duty and military service is an honour ...</p>

¹²³ The 1971 Provisional Constitution of the United Arab Emirates was made permanent under Constitutional Amendment No. (1) of 1996.

¹²⁴ YEMEN CONST. (1994).

SOUTH ASIA

➤ AFGHANISTAN¹²⁵

% Muslim	99%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Legislation?	No law can be contrary to Islam

Article 1: Afghanistan is an Islamic Republic, independent, unitary and indivisible State.

Article 2: The religion of Afghanistan is the sacred religion of Islam. Followers of other religions are free to perform their religious rites within the limits of the provisions of law.

Article 3: In Afghanistan, no law can be contrary to the sacred religion of Islam and the values of this Constitution.

Constitutional Formulation

Article 130: When there is no provision in the Constitution or the laws with respect to a case under consideration, the court shall follow the provisions of the Hanafi jurisprudence within the provisions set forth in this Constitution to render a decision that secures justice in the best possible way.

Article 131: Courts shall apply Shia jurisprudence in cases dealing with personal matters involving the followers of the Shia Sect in accordance with the provisions of the law. In other cases as well, where no provisions of this Constitution and other laws apply and both sides of the case are followers of the Shia Sect, courts shall resolve the case according to laws of this Sect.

Article 149: The provisions of adherence to the provisions of the sacred religion of Islam and the republican regime cannot be amended.

➤ BANGLADESH¹²⁶

% Muslim	88%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Legislation?	No

Article 2: The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic.

Constitutional Formulation

Article 8: (1) Absolute trust and faith in the Almighty Allah shall be the basis of all actions.
(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form

¹²⁵ AFG. CONST. (2003).

¹²⁶ BANGL. CONST. (amended 1996).

the basis of the work of the State and of its citizens, but shall not be judicially enforceable.

➤ **MALDIVES**¹²⁷

<u>% Muslim</u>	100%
<u>Islamic or Secular State?</u>	Islamic
<u>Islam State Religion?</u>	Yes
<u>Islamic Law Source of Legislation?</u>	Yes

Constitutional Formulation

Article 1: The Maldives shall be a sovereign, independent, democratic republic based on the principles of Islam ...

Article 7: The religion of the State of the Maldives shall be Islam.

Article 16: (2) Every person who is charged with an offence shall have the right to defend himself in accordance with Shari'ah ...

Article 23: (1) Property of persons shall be inviolable. No person shall be deprived of his property except as provided by law or Shari'ah.

Article 38: The President shall be the supreme authority to propagate the tenets of Islam in the Maldives.¹²⁸

Article 43: The powers of the President shall be exercised subject to Shari'ah and the Constitution. Nothing shall be done in violation of Shari'ah or the Constitution.

Article 156: In this Constitution the word 'law' also includes the norms and provisions of Shari'ah established by the Noble Quran and the traditions of the Noble Prophet, and the rules derived therefrom.

➤ **PAKISTAN**¹²⁹

<u>% Muslim</u>	96%
<u>Islamic or Secular State?</u>	Islamic
<u>Islam State Religion?</u>	Yes
<u>Islamic Law Source of Legislation?</u>	Yes

Constitutional Formulation

Article 1: (1) Pakistan shall be [a] Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

Article 2: Islam shall be the State religion of Pakistan

Article 31: (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to

¹²⁷ MALDIVES CONST. (1998).

¹²⁸ According to Article 156, "Propagation of the tenets of Islam means the administration of the faith, beliefs and doctrines of Islam and the facilitation of the practice of the same."

¹²⁹ PAK. CONST. (amended 2002).

understand the meaning of life according to the Holy Quran and Sunnah.

(2) The State shall endeavour, as respects the Muslims of Pakistan,--

(a) to make the teaching of the Holy Quran and Islamiat compulsory ... and to secure correct and exact printing and publishing of the Holy Quran;

(b) to promote unity and the observance of the Islamic moral standards;...

Article 203(C): (1) There shall be constituted for the purposes of this Chapter a court to be called the Federal Shariat Court.

(2) The Court shall consist of not more than eight Muslim [Judges], including the [Chief Justice], to be appointed by the President.

Article 203(D): (1) The Court may ... examine and decided [sic] the question whether or not any law ... is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet

(3) If any law or provision of law is held by the Court to be repugnant to the injunctions of Islam,--

(a) the President ... or the Concurrent Legislative List, or the Governor ... shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, case [sic] to have effect on the day on which the decision of the Court takes effect.

Article 227: All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions ...

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

Article 228: (1) There shall be, constituted ... a Council of Islamic Ideology, in this part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members ... as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

Article 229: The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

Article 230: (1) The functions of the Islamic Council shall be—

(a) to make recommendations to [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advice [sic]

a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam;

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

(d) to compile in a suitable form, for the guidance of [the Majlis-e-Shoora] and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.

EAST ASIA

➤ BRUNEI¹³⁰

% Muslim	67%
Islamic or Secular State?	Islamic ¹³¹
Islam State Religion?	Yes
Islamic Law Source of Legislation?	No
Constitutional Formulation	<p><u>Article 3:</u> (1) The religion of Brunei Darussalam shall be the Muslim Religion according the Shafeite sect of that religion. Provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam.</p> <p>(2) The Head of the religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan ["Supreme Ruler"].</p>

➤ INDONESIA¹³²

% Muslim	87%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 29:</u> (1) The State shall be based upon the belief in the One and Only God.

➤ MALAYSIA¹³³

% Muslim	60.4%
Islamic or Secular State?	N/A
Islam State Religion?	Yes
Islamic Law Source of Legislation?	In certain matters

¹³⁰ BRUNEI DARUSSALAM CONST. (revised 1984). Although some provisions were suspended under a state of emergency in December 1962 and others since independence on January 1, 1984, the government maintains that the constitution remains the supreme law.

¹³¹ Brunei defines itself as an Islamic state that "honors everything which embodies Islam in a moderate way." The National Philosophy of Melayu Islam Beraja (MIB), or Malay Islamic Monarchy, is the nation's "formal guiding light" and represents a blend of Malay culture, the teaching of Islamic laws and values and the monarchy system. According to Brunei's government, since Islam is tolerant of all religions, "the MIB philosophy cannot be viewed as a force which stifles the practice of other religions." It is expected that MIB "be esteemed and practiced by all." See The Government of Brunei Darussalam Official Website, at <http://www.brunei.gov.bn/government/mib.htm>.

¹³² INDON. CONST. (amended 2002).

¹³³ MALAY. CONST. (amended 1994).

Article 3:

(1) Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation. ...

(4) Nothing in this Article derogates from any other provision of this Constitution.

Ninth Schedule Legislative Lists:¹³⁴ List II--State List 1. Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organisation and procedure of Syariah [sharia] courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.

¹³⁴ This section sets out the division of legislative powers between the federal and state governments in Malaysia. Sharia courts are regulated on the state level.

AFRICA

➤ BURKINA FASO¹³⁵

% Muslim	60%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 31</u> : Burkina Faso is a democratic, unitary and secular State.

➤ CHAD¹³⁶

% Muslim	4%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 1</u> : Chad is a Republic, sovereign, independent, secular, social, one and indivisible, founded on the principles of democracy, the rule [regne] of law and justice. The separation between State and religions is affirmed.

➤ COMOROS¹³⁷

% Muslim	99%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Preamble</u> : The Comorian people solemnly affirm their will to: draw from Islam the permanent inspiration for the principles and rules that shall govern the union ... This preamble forms an integral part of the Constitution. <u>Article 9</u> : The Union will have exclusive jurisdiction in the following matters: religion, nationality, currency, foreign relations, external defense, and national symbols.

¹³⁵ BURK. FASO CONST. (amended 1997).

¹³⁶ CHAD CONST. (1996).

¹³⁷ COMOROS CONST. (2001). The constitution was translated from the French by USCIRF. The original French version is available at <http://www.accpuf.org/com/constit.htm> and <http://portail.droit.francophonie.org/doc/html/km/con/2001dfkmc01.html>. According to the State Department, as of March 2004 the National Assembly is tasked with finalizing a new constitution for the Union. A new government was appointed in July 2004.

Article 36: ... the Council of the Ulemas and the Economic and Social Council shall assist as needed, the government of the Union ... in formulating decisions that affect the religious, economic and social life of the country.

➤ **DJIBOUTI**¹³⁸

% Muslim	99%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	Article 1 The State of Djibouti shall be a democratic sovereign Republic, one and indivisible. It shall ensure the equality of all citizens before the law, without distinction as to origin, race, sex or religion. It shall respect all beliefs.

➤ **THE GAMBIA**¹³⁹

% Muslim	95%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	In certain matters
Constitutional Formulation	<u>Article 7</u> : In addition to this Constitution, the laws of The Gambia consist of-- ... (f) the Sharia as regards matters of marriage, divorce and inheritance among members of the communities to which it applies. <u>Article 100</u> : (2) The National Assembly shall have no power to pass a Bill-- ... (b) to establish any religion as a state religion; ... <u>Article 137</u> : (1) A Cadi Court shall be established in such places in The Gambia as the Chief Justice shall determine. ... (4) The Cadi Court shall only have jurisdiction to apply the Sharia in matters of marriage, divorce and inheritance where the parties or other persons interested are Muslims.

➤ **GUINEA**¹⁴⁰

% Muslim	85%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No

¹³⁸ DJIB. CONST. (1992).

¹³⁹ GAM. CONST.

¹⁴⁰ GUINEA CONST.

Constitutional Formulation	<u>Article 1:</u> Guinea is a unitary, indivisible, secular, democratic and social Republic. It shall assure equality before the law for all citizens, without distinction of origin, race, ethnicity, sex, religion and opinion. It shall respect all beliefs.
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➤ **MALI**¹⁴¹

% Muslim	90%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No

Constitutional Formulation	<u>Article 25:</u> Mali is an independent, sovereign, indivisible, democratic, secular and social Republic. Its principle is government of the People, by the People and for the People.
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➤ **MAURITANIA**¹⁴²

% Muslim	100%
Islamic or Secular State?	Islamic
Islam State Religion?	Yes
Islamic Law Source of Legislation?	No

Article 1: Mauritania is an indivisible, democratic and social Islamic Republic.

Article 5: Islam shall be the religion of the people and of the State.

Constitutional Formulation	<u>Article 94:</u> There shall be instituted next to the President of the Republic a High Islamic Council composed of five (5) members. ... It shall formulate opinions concerning the questions about which it has been consulted by the President of the Republic.
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➤ **NIGER**¹⁴³

% Muslim	90%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No

Article 4: The Republic of Niger is one and indivisible, democratic and social. Its fundamental principles are: the separation of the State and of religion.

Constitutional Formulation	<u>Article 8:</u> The Republic of Niger is a State of Law (Etat de droit). The Republic shall assure to all the equality before the law without distinction of sex, of social, ethnic or religious origin. The Republic shall respect and protect all faiths. No religion [nor]
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¹⁴¹ MALI CONST. (Decree 92-073 of February 25, 1992, concerning promulgation of the constitution).

¹⁴² MAURITANIA CONST.

¹⁴³ NIGER CONST.

belief shall assume ... political power nor interfere in the affairs of the State.

Article 136: ... The republican form of the State, multipartism, the principle of separation of State and religion and the provisions of articles 36 and 141 of this Constitution cannot be the object of an amendment.

➤ **SENEGAL**¹⁴⁴

% Muslim	94%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 1:</u> The Republic of Senegal is secular, democratic, and social. It assures the equality before the law of all citizens, without distinction of origin, race, sex (or) religion. It respects all faiths.

➤ **SIERRA LEONE**¹⁴⁵

% Muslim	60%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 5:</u> (1) The Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice. <u>Article 6:</u> (2) ... the State shall promote national integration and unity and discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.

➤ **SOMALIA**¹⁴⁶

% Muslim	99%
Islamic or Secular State?	
Islam State Religion?	
Islamic Law Source of	

¹⁴⁴ SEN. CONST.

¹⁴⁵ SIERRA LEONE CONST. (as amended to 1991).

¹⁴⁶ The Transitional National Government (TNG), established in August 2000, had a three-year mandate to draft a new constitution and hold elections. The TNG failed to accomplish this goal, but the process is ongoing. In October 2004, Abdullahi Yusuf Ahmed was sworn in as Somalia's new president in Kenya. However, security concerns have kept Yusuf and the new parliament in Nairobi. Other governing bodies continue to control various cities and regions of Somalia, including Somaliland, Puntland, and traditional clan and faction strongholds. The negotiations that allowed a new administration to be established for Somalia have been conducted under the auspices of the Intergovernmental Authority on Development, a regional body comprising Kenya, Uganda, Sudan, Somalia, Ethiopia, Eritrea, and Djibouti.

Legislation?	
Constitutional Formulation	A new administration for Somalia was recently established but the country remains without a recognized constitution.

➤ **SUDAN**¹⁴⁷

% Muslim	65 – 75%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	Yes

Article 1: ... Islam is the religion of the majority of the population. Christianity and customary creeds have considerable followers.

Article 4: Supremacy in the State is to God the creator of human beings, and sovereignty is to the vicegerent people of the Sudan who practice it as worship of God, bearing the trust, building up the country and spreading justice, freedom and public consultation. The Constitution and the law shall regulate the same.

Article 18: Those in service in the State and public life shall envisage the dedication thereof for the worship of God, wherein Muslims stick to the scripture and tradition, and all shall maintain religious motivation and give due regard to such spirit in plans, laws, policies and official business in the political economic, social and cultural fields in order to prompt public life towards its objectives, and adjust them towards justice and up-rightness to be directed towards the grace of God in The Hereafter.

Constitutional Formulation

Article 65: Islamic law and the consensus of the nation, by referendum, Constitution and custom shall be the sources of legislation; and no legislation in contravention with these fundamentals shall be made; however, the legislation shall be guided by the nation's public opinion, the learned opinion of scholars and thinkers, and then by the decision of those in charge of public affairs.

Article 139: (3) [No constitutional amendment] shall ... come into force where it amends the provisions of the basic fundamentals, save after the same is also passed by the people in a referendum and signed by the President of the Republic. The basic provisions and fundamentals are:-- (a) Islamic law and the legislative consensus of the people by the referendum, the Constitution or custom are the prevalent sources of law; (b) the human being has the freedom of creed and worship, and the citizen has the freedom of expression and the organization of political association, in accordance with the provisions set out in this Constitution; ...

¹⁴⁷ SUDAN CONST.

EUROPE / EURASIA

➤ ALBANIA¹⁴⁸

% Muslim	65 – 70%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No

Article 3: The independence of the State and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this State, which has the duty of respecting and protecting them.

Article 10:

- Constitutional Formulation
1. In the Republic of Albania there is no official religion.
 2. The State is neutral in questions of belief and conscience, and also, it guarantees the freedom of their expression in public life.
 3. The State recognizes the equality of religious communities.
 4. The State and the religious communities mutually respect the independence of one another and work together for the good of each of them and for all.
 5. Relations between the State and religious communities are regulated on the basis of agreements entered into between their representatives and the Council of Ministers. These agreements are ratified by the Assembly.
 6. Religious communities are juridical persons. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed.

➤ AZERBAIJAN¹⁴⁹

% Muslim	96%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No

Article 7: I. The Azerbaijan State is a democratic, law-governed, secular, unitary republic.

- Constitutional Formulation
- Article 18: I. In the Azerbaijan Republic religion is separated from the State. All religions are equal by law. II. The spread and propaganda of religions which humiliate human dignity and contradict the principles of humanity are banned. III. The State education system is of secular character.

¹⁴⁸ ALB. CONST.

¹⁴⁹ AZER. CONST. (as amended to 2002).

➤ **KYRGYZSTAN**¹⁵⁰

% Muslim	80%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<p><u>Article 1</u>: 1. The Kyrgyz Republic (Kyrgyzstan) is a sovereign, unitary, democratic republic created on the basis of a law-governed secular state.</p> <p><u>Article 8</u>: 3. Religion and all cults are separate from the state. 4. In the Kyrgyz Republic the following is not permitted: Organization of political parties on religious and ethnic grounds. Religious organizations must not pursue political aims and tasks; . Interference by members of religious organizations and cults with the activity of state organs; . Activity of foreign political parties, public associations, religious and other organizations detrimental to the constitutional system, state and national security.</p>

➤ **TAJIKISTAN**¹⁵¹

% Muslim	95%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<p><u>Article 1</u> The Republic of Tajikistan is a sovereign, democratic, law-governed, secular, and unitary State.</p> <p><u>Article 8</u>: ... No single ideology of a party, social association, religious organization, movement, or group may be recognized as the State [ideology]. ... Religious organizations are separate from the State and may not interfere with State affairs.</p> <p><u>Article 100</u>: The republican form of government, the territorial integrity, the democratic, law-governed, secular, and social nature of the State are unchangeable.</p>

➤ **TURKEY**¹⁵²

% Muslim	99%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 2</u> : The Republic of Turkey is a democratic, secular and social state governed by the rule of law ...

¹⁵⁰ KYRG. CONST. (as amended to 2003).

¹⁵¹ TAJ. CONST. (as amended to 2003).

¹⁵² TURK. CONST. (as amended to 2002).

Article 174: No provision of the Constitution can be construed or interpreted as rendering unconstitutional the Reform Laws ... which aim ... to safeguard the secular character of the Republic, and which were in force on the date of the adoption by referendum of the Constitution of Turkey.

➤ **TURKMENISTAN**¹⁵³

% Muslim	89%
Islamic or Secular State?	Secular
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 1</u> : Turkmenistan is a democratic, law-governed and secular State, in which the State administration is implemented in the form of a presidential republic.

➤ **UZBEKISTAN**¹⁵⁴

% Muslim	88%
Islamic or Secular State?	N/A
Islam State Religion?	No
Islamic Law Source of Legislation?	No
Constitutional Formulation	<u>Article 61</u> : Religious organizations and associations shall be separated from the state and equal before law. The state shall not interfere with the activity of religious associations.

¹⁵³ TURKM. CONST. (AS Amended to 2003).

¹⁵⁴ UZB. CONST.

B. TABLE II: THE RIGHT TO FREEDOM OF RELIGION OR BELIEF CONSTITUTIONAL PROVISIONS (BY REGION)

MIDDLE EAST / NORTH AFRICA

➤ ALGERIA

Islam State Religion?	Yes
ICCPR Ratification	Sept. 12, 1989
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 36</u> : The freedom of conscience and the freedom of opinion are inviolable.

➤ BAHRAIN

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 22</u> : Freedom of conscience is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.

➤ EGYPT

Islam State Religion?	Yes
ICCPR Ratification	Jan. 14, 1982 ¹⁵⁵
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 12</u>: The official religion of Iran is Islam and the Twelver Ja'fari school [in usul al-Din and fiqh], and this principle will remain eternally immutable. Other Islamic schools, including the Hanafi, Shafi'i, Maliki, Hanbali, and Zaydi, are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of fiqh constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of fiqh, without infringing upon the rights of the followers of other schools.</p> <p><u>Article 13</u>: Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.</p> <p><u>Article 14</u>: In accordance with the sacred verse ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the</p>

¹⁵⁵ Egypt attached the following declaration: "Taking 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 [sic] it." United Nations Treaty Collection, Multilateral Treaties Database, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty5.asp>.

Islamic Republic of Iran.

Article 23: The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.

Article 26: The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them.

➤ **IRAQ 1925**

Islam State Religion?	Yes
ICCPR Ratification	Jan. 25, 1971
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 13</u>: Islam is the official religion of the State. Freedom to practice the rites of the different sects of that religion, as observed in Iraq, is guaranteed. Complete freedom of conscience and freedom to practice the various forms of worship, in conformity with accepted customs, is guaranteed to all inhabitants of the country provided that such forms of worship do not conflict with the maintenance of order and discipline or public morality.</p> <p><u>Article 16</u>: The various communities shall have the right of establishing and maintaining schools for the instruction of their members in their own tongues, provided that such instruction is carried out in conformity with such general programmes as may be prescribed by law.</p>

➤ **IRAQ 2004 (TAL)**

Islam State Religion?	Yes
ICCPR Ratification	Jan. 25, 1971
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 7</u>: (A) Islam is the official religion of the State ... This Law respects the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice.</p> <p><u>Article 13</u>: (F) Each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited.</p> <p><u>Article 15</u>: (C) No one may be unlawfully arrested or detained, and no one may be detained by reason of political or religious beliefs.</p>

➤ **JORDAN**

Islam State Religion?	Yes
ICCPR Ratification	May 28, 1975
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 14</u>: The State shall safeguard the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such exercise is inconsistent with public order or decorum.</p> <p><u>Article 19</u>: Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they will comply with the general provisions of the law and submit to the control of government in matters relating to their curricula and tendency.</p>

➤ **KUWAIT**

Islam State Religion?	Yes
ICCPR Ratification	May 21, 1996 ¹⁵⁶
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 35</u> : Freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals.

➤ **LEBANON**

Islam State Religion?	No
ICCPR Ratification	Nov. 3, 1972
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 9</u> : Freedom of conscience is absolute. In assuming the obligations of glorifying God, the Most High, the State respects all religions and creeds and safeguards the freedom of exercising the religious rites under its protection, without disturbing the public order. It also guarantees the respect of the system of personal status and religious interests of the people, regardless of their different creeds. <u>Article 10</u> : Education is free so long as it does not disturb the public order, does not violate the morals, and does not touch the dignity of any religion or creed. The rights of communities to establish their own private schools cannot be violated, provided that they comply with the general requirements laid down by the State with respect to public education.

➤ **LIBYA**

Islam State Religion?	Yes
ICCPR Ratification	May 15, 1970
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 2</u> : ... The State protects religious freedom in accordance with established customs.

➤ **MOROCCO**

Islam State Religion?	Yes
ICCPR Ratification	May 3, 1979
Constitutional Provisions for the Right to Freedom of Religion or Belief	<u>Article 6</u> : Islam is the religion of the State which guarantees to all freedom of worship.

➤ **OMAN**

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provisions for the Right	<u>Article 28</u> : The freedom to practice religious rites according to the recognized custom is guaranteed, provided it does not disrupt the public order or contradict

¹⁵⁶ Kuwait attached the following interpretive declaration regarding Article 23: "The Government of Kuwait declares that the matters addressed by article 23 are governed by personal-status law, which is based on Islamic law. Where the provisions of that article conflict with Kuwaiti law, Kuwait will apply its national law." Kuwait also made the following reservations concerning Article 25 (b): "The Government of Kuwait wishes to formulate a reservation with regard to article 25 (b). The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males." United Nations Treaty Collection, Multilateral Treaties Database, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty6.asp>.

to Freedom of Religion or Belief with morals

➤ **QATAR**

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p>The Basic System of the Consultative Council (Decree A/90), 1992</p> <p><u>Article 9:</u> The family is the kernel of Saudi society, and its members shall be brought up on the basis of the Islamic faith, and loyalty and obedience to God, His Messenger, and to guardians; respect for and implementation of the law, and love of and pride in the homeland and its glorious history as the Islamic faith stipulates.</p> <p><u>Article 26:</u> The state protects the rights of the people in line with the Islamic sharia.</p>

➤ **SYRIA**

Islam State Religion?	No
ICCPR Ratification	Apr. 21, 1969
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 35:</u> (1) The freedom of faith is guaranteed. The state respects all religions.</p> <p>(2) The state guarantees the freedom to hold any religious rites provided they do not disturb the public order.</p>

➤ **TUNISIA**

Islam State Religion?	Yes
ICCPR Ratification	Mar. 18, 1969
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 5:</u> The Tunisian Republic guarantees the inviolability of the human person and freedom of conscience, and protects the free exercise of beliefs, with reservation that they do not disturb the public order.</p>

➤ **U.A.E.**

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 32:</u> The freedom to hold religious ceremonies in accordance with established custom shall be safeguarded, provided such ceremonies are consistent with public order and with public morals.</p>

➤ **YEMEN**

Islam State Religion?	Yes
ICCPR Ratification	Feb. 9, 1987
Constitutional Provisions for the Right to Freedom of Religion or Belief	<p><u>Article 41:</u> ... The State shall by law secure freedom of thought and expression whether orally, in writing or in pictures and as provided for by law.</p> <p><u>Article 51:</u> Private houses and worship and education centres shall not be violated, put under surveillance or searched unless otherwise provided for by law.</p>

SOUTH ASIA

➤ AFGHANISTAN

Islam State Religion? Yes

ICCPR Ratification Jan. 24, 1983

Article 2: The religion of Afghanistan is the sacred religion of Islam. Followers of other religions are free to perform their religious rites within the limits of the provisions of law.

Constitutional Provisions for the Right to Freedom of Religion or Belief

Article 45: The State shall devise and implement a unified educational curriculum based on the provisions of the sacred religion of Islam, national culture, and in accordance with academic principles, and shall develop the curriculum of religious subjects in schools on the basis of the Islamic sects existing in Afghanistan.

Article 54: ... The State shall adopt necessary measures to ensure the physical and psychological well-being of the family ... and the elimination of traditions contrary to the principles of the sacred religion of Islam.

➤ BANGLADESH

Islam State Religion? Yes

ICCPR Ratification Sep. 6, 2000

Article 39: Freedom of thought and conscience is guaranteed.

Constitutional Provisions for the Right to Freedom of Religion or Belief

Article 41: (1) Subject to law, public order and morality-- (a) every citizen has the right to profess, practice or propagate any religion; (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.
(2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.

➤ MALDIVES

Islam State Religion? Yes

ICCPR Ratification Not a State Party

Constitutional Provisions for the Right to Freedom of Religion or Belief

Article 25: Every citizen shall have the freedom to express his conscience and thoughts orally or in writing or by other means, unless prohibited by law in the interest of protecting the sovereignty of the Maldives, of maintaining public order and of protecting the basic tenets of Islam.

➤ PAKISTAN

Islam State Religion? Yes

ICCPR Ratification Not a State Party

Constitutional Provisions for the Right to Freedom of Religion or Belief

Article 20: Subject to law, public order and morality:
(a) Every citizen shall have the right to profess, practice and propagate his religion; and
(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Article 21: No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or

maintenance of any religion other than his own.

Article 22: (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own. ...

(3) Subject to law: (a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and (b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

EAST ASIA

➤ BRUNEI

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provision for the Right to Freedom of Religion or Belief	<u>Article 3</u> : (1) The religion of Brunei Darussalam shall be the Muslim Religion according to the Shafeite sect of that religion. Provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam.

➤ INDONESIA

Islam State Religion?	No
ICCPR Ratification	Not a State Party
Constitutional Provision for the Right to Freedom of Religion or Belief	<u>Article 28E</u> : (1) Every person shall be free to choose and to practice the religion of his/her choice ... (2) Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience. (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions. <u>Article 28</u> : (1) ... freedom of thought and conscience [and] freedom of religion ... are all human rights that cannot be limited under any circumstances. <u>Article 29</u> : (1) The State shall be based upon the belief in the One and Only God. (2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

➤ MALAYSIA

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provision for the Right to Freedom of Religion or Belief	<u>Article 11</u> : (1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it. (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own. (3) Every religious group has the right-- (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes... (4) State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. (5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality. <u>Article 12</u> : (2) Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam and incur such expenditure as may be necessary for the purpose. (3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.

AFRICA

➤ BURKINA FASO

Islam State Religion? No

ICCPR Ratification Apr. 4, 1999

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 7: The freedom of belief, of non-belief, of conscience, of religious opinion, philosophy, of religious exercise, the freedom of assembly, the free practice of custom as well as the freedom of procession and its demonstration are guaranteed by the present Constitution subject to respect of the law, of the public order, of good morals and of the human person.

➤ CHAD

Islam State Religion? No

ICCPR Ratification Jun. 9, 1995

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 27: The freedoms of opinion and of expression, communication, conscience, religion, the press, of association, assembly, circulation, demonstration, and parade are guaranteed to all. These can only be restricted by the respect of the liberties and rights of others and the imperative to safeguard the public order and good morals. The law determines the conditions of their exercise.

Article 54: No one may avail oneself of his religious beliefs, nor his philosophical opinions to excuse oneself from a duty dictated by the national interest.

➤ COMOROS

Islam State Religion? No

ICCPR Ratification Not a State Party

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Preamble: The Comorian people solemnly affirm their will to: ... express their attachment to the principles and fundamental rights as defined by the Charter of the United Nations, the Organization for African Unity, the Pact of the Arab League, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, as well as the international conventions, particularly those addressing the rights of children and women.
... This preamble forms an integral part of the Constitution.

➤ DJIBOUTI

Islam State Religion? No

ICCPR Ratification Nov. 5, 2002

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 11: Everyone shall have the right to freedom of thought, conscience, religion, worship and opinion in conformity with the order established by law and the regulations.

➤ THE GAMBIA

Islam State Religion? No

ICCPR Ratification Mar. 22, 1979

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 25: (1) Every person shall have the right to--
... (b) freedom of thought, conscience and belief, which shall include academic freedom;
(c) freedom to practise any religion and to manifest such practice; ...
(4) The freedoms referred to in subsections (1) and (2) shall be exercised subject to the law of The Gambia in so far as that law imposes reasonable restrictions on

the exercise of the rights and freedoms thereby conferred, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.

Article 32: Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.

Article 212: (3) All the people of The Gambia shall be entitled to their ethnic, religious and cultural values which do not disturb the unity or cohesion of the State.

➤ **GUINEA**

Islam State Religion?	No
ICCPR Ratification	Jan. 24, 1978
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 7</u>: [Every individual] shall be free to believe, to think and to profess [their] religious faith ... political or philosophical opinions. [Every individual] shall be free to express, to manifest and to diffuse [their] ideas and opinions by speech, by writing and by image. [Every individual] shall be free to instruct and [be informed] from sources available to all.</p> <p><u>Article 14</u>: The free exercise of religious sects shall be guaranteed. Religious institutions and communities freely create and administer themselves. They shall not be subject to the tutelage of the state.</p>

➤ **MALI**

Islam State Religion?	No
ICCPR Ratification	Jul. 16, 1974
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 4</u>: Every person has the right to freedom of thought, conscience, religion, worship [culte], opinion, expression and creation with respect to the law.</p> <p><u>Article 18</u>: Every citizen has the right to education. Public education is obligatory, free and secular.</p>

➤ **MAURITANIA**

Islam State Religion?	Yes
ICCPR Ratification	Not a State Party
Constitutional Provision for the Right to Freedom of Religion or Belief	N/A

➤ **NIGER**

Islam State Religion?	No
ICCPR Ratification	Mar. 7, 1986
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 8</u>: ... The Republic shall respect and protect all faiths. No religion, no belief shall assume the political power nor interfere in the affairs of the State ...</p> <p><u>Article 14</u>: Each person shall have a right to the free development of his personality in its material, intellectual and spiritual, cultural and religious dimensions as long as he does not violate the right of others, does not infringe on</p>

constitutional order, legal order or morality.

Article 23: Each person has the right to freedom of thought, of opinion, of expression, of conscience, of religion and of cult. The State guarantees the free exercise of the cult and the expression of beliefs. These rights are exercised in the respect of public order, of social peace and of national unity.

➤ **SENEGAL**

Islam State Religion?
ICCPR Ratification

No
Feb. 13, 1978

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 8: The Republic of Senegal guarantees to all citizens fundamental individual freedoms, economic and social rights as well as the collective rights. These freedoms are in particular civil and political freedoms: freedom of opinion, freedom of association, freedom of assembly, freedom of movement, freedom of manifestation, the cultural freedoms [and] the religious freedoms ... These freedoms and these rights are exercised within the conditions provided by law.

Article 24: The freedom of conscience, the freedoms and the religious and cultural practices, the profession of the religious educator are guaranteed, subject to the public order. The institutions, the religious committees have the right to develop themselves without hindrance. They are detached from the tutelage of the State. They regulate and administer their affairs in an autonomous manner.

➤ **SIERRA LEONE**

Islam State Religion?
ICCPR Ratification

No
Aug. 23, 1996

Constitutional
Provision for the Right
to Freedom of Religion
or Belief

Article 24: (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.
(2) Except with his own consent ... no person attending any place of education shall be required to receive religious instruction or to take part in or to attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.
(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.
(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.
(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes a provision which is reasonably required--
(a) in the interest of defence, public safety, public order, public morality or public health; or
(b) for the purpose of protecting the rights and freedoms of other persons including the right to observe and practise any religion without the unsolicited intervention of the members of any other religion; and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

➤ **SOMALIA**

Islam State Religion?	
ICCPR Ratification	Jan. 24, 1990
Constitutional Provision for the Right to Freedom of Religion or Belief	No international recognized government and no constitution

➤ **SUDAN**

Islam State Religion?	No
ICCPR Ratification	Mar. 18, 1986
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 24</u>: Every human being shall have the right of freedom of conscience and religious creed, and he shall have the right to declare his religion or creed, and manifest the same by way of worship, education, practice or performance of rites or ceremonies; and no one shall be coerced to adopt such faith, as he does not believe in, nor to practice rites or services he does not voluntarily consent to; and that is without prejudice to the right of choice of religion, injury to the feelings of others, or to public order, all as may be regulated by law.</p> <p><u>Article 27</u>: There shall be guaranteed for every community or group of citizens the right to preserve their particular culture, language or religion, and rear children freely within the framework of their particularity, and the same shall not by coercion be effaced.</p>

EUROPE / EURASIA

➤ ALBANIA

Islam State Religion?	No
ICCPR Ratification	Oct. 4, 1991
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 20</u>: 1. Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms.</p> <p>2. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging.</p> <p>They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in organizations and societies for the protection of their interests and identity.</p> <p><u>Article 24</u>: 1. Freedom of conscience and of religion is guaranteed.</p> <p>2. Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals.</p> <p>3. No one may be compelled or prohibited to take part or not in a religious community or in religious practices or to make his beliefs or faith public.</p>

➤ AZERBAIJAN

Islam State Religion?	No
ICCPR Ratification	Aug. 13, 1992
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 48</u>: I. Everyone has the right to freedom of conscience and religion. II. Everyone has the right to independently define his attitude towards religion, to profess religion alone or together with others, or to profess no religion at all, to express and spread religious convictions. III. The free conduct of religious rites if it does not violate public order or public morality is authorized. IV. The violation of the freedom of religion and self-expression is not allowed.</p> <p><u>Article 71</u>: IV. No one shall be compelled to make public religious and other convictions and thoughts and be persecuted for them.</p>

➤ KYRGYZSTAN

Islam State Religion?	No
ICCPR Ratification	Oct. 7, 1994
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 16</u>: 11. Everyone is guaranteed the freedom of conscience, confession and religious or atheist activity. Everyone has the right to freely profess any religion or to not profess any, to choose, have and disseminate religious or atheist beliefs.</p> <p><u>Article 82</u>: 3. The Constitutional Court of the Kyrgyz Republic: 8) Resolves issues concerning the constitutionality of activities of political parties, public associations and religious organizations.</p>

➤ TAJIKISTAN

Islam State Religion?	No
ICCPR Ratification	Jan. 4, 1999
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 26</u>: Everyone has the right to independently determine his (her) relationship toward religion, to profess any religion individually or together with others, or to profess none, and to participate in the performance of religious cults, rituals, and ceremonies.</p>

➤ **TURKEY**

Islam State Religion?	No
ICCPR Ratification	Sep. 23, 2003
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 14:</u> None of the rights and freedoms embodied in the Constitution can be exercised for activities undertaken with the aim of ... endangering the existence of the democratic and laic Republic based on human rights.</p> <p>No provision of the Constitution can be interpreted in a manner that would grants [sic] the State or individuals destroying the fundamental rights and freedoms embodied in the Constitution, or staging an activity with the aim of restricting rights and freedoms more extensively than is stated in the Constitution...</p> <p><u>Article 24:</u> Everyone has the right to freedom of conscience, religious belief and conviction. Acts of worship, religious services, and ceremonies can be conducted freely, provided that they do not violate the provisions of Article 14.</p> <p>No one can [be] compelled to worship, or to participate in religious ceremonies and rites, to reveal his religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.</p> <p>Education and instruction in religion and ethics are conducted under state supervision and control. Instruction in religious culture and ethics education are compulsory in the curricula of primary and secondary schools. Other religious education and instruction are subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.</p> <p>No one can be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for even partially basing the fundamental, social, economic, political, and legal order of the state on religious tenets or for the purpose of obtaining political or personal benefit and influence.</p>

➤ **TURKMENISTAN**

Islam State Religion?	No
ICCPR Ratification	May 1, 1997
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 11:</u> The State guarantees freedom of religion and conscience and their equality before the law. Religious organizations are separate from the State and may not interfere with State matters and perform State functions. The State educational system is separate from religious organizations and has a secular character. Everyone has the right to independently determine his [her] attitude toward religion, to profess individually or with others any religion or not to profess any [religion], to express and disseminate convictions connected to the attitude toward religion [and] to participate in the practice of religious cults, rituals and ceremonies.</p>

➤ **UZBEKISTAN**

Islam State Religion?	No
ICCPR Ratification	Sept. 28, 1995
Constitutional Provision for the Right to Freedom of Religion or Belief	<p><u>Article 31:</u> Freedom of conscience is guaranteed to all. Everyone shall have the right to profess or not to profess any religion. Any compulsory imposition of religion shall be impermissible.</p> <p><u>Article 61:</u> Religions organizations and associations are separate from the government and equal before the law. The government does not interfere in the activities of religious associations.</p>

C. TABLE III: EQUALITY AND PROHIBITION OF DISCRIMINATION CONSTITUTIONAL PROVISIONS (BY REGION)

MIDDLE EAST / NORTH AFRICA

➤ **ALGERIA**

Islam State Religion?	Yes <u>Article 29</u> : The citizens are equal before the law without any possible discrimination on the basis of birth, race, gender (sex), opinion or all other conditions or personal or social circumstance.
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 31</u> : The [government] institutions seek to assure the equality of rights and duties of all citizens ... in suppressing the obstacles, which obstruct the development of the human personality and impede the effective participation of all in the political, economic, social and cultural life. <u>Article 140</u> : Justice is founded on the principles of legality and equality. It is equal for all, accessible to all, and is expressed by respect of the law.

➤ **BAHRAIN**

Islam State Religion?	Yes <u>Article 4</u> : Justice is the basis of government. Cooperation and mutual respect provide a firm bond between citizens. Freedom, equality, security, trust, knowledge, social solidarity and equality of opportunity for citizens are pillars of society guaranteed by the State.
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 5</u> : b. The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a). <u>Article 18</u> : People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed.

➤ **EGYPT**

Islam State Religion?	Yes <u>Article 8</u> : The State shall guarantee equality of opportunity to all citizens.
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 11</u> : The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence. <u>Article 40</u> : All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed.

➤ **IRAN**

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of	<u>Article 3</u> : In order to attain the objectives specified in Article 2 [belief system of the Islamic Republic], the government ... has the duty of directing all its resources to the following goals:

Discrimination	<p>9. the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres...</p> <p>14. securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law...</p> <p><u>Article 19</u>: All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language, and the like, do not bestow any privilege.</p> <p><u>Article 20</u>: All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.</p> <p><u>Article 21</u>: The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:</p> <ol style="list-style-type: none"> 1. create a favourable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual; 2. the protection of mothers, particularly during pregnancy and childrearing, and the protection of children without guardians; 3. establishing competent courts to protect and preserve the family; 4. the provision of special insurance for widows, and aged women and women without support; 5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.
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➤ **IRAQ 1925**

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 18</u> : Iraqis shall be equal in status, as regards the enjoyment of their rights and the discharge of their obligations...

➤ **IRAQ 2004 (TAL)**

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 12</u> : All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited. Everyone has the right to life, liberty, and the security of his person. No one may be deprived of his life or liberty, except in accordance with legal procedures. All are equal before the courts.

➤ **JORDAN**

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 6</u> : (i) Jordanians shall be equal before the Law. There shall be no discrimination between them as regards their rights and duties, on grounds of race, language or religion. (ii) The Government shall ensure work and education, within the limits of its possibilities, and shall ensure a state of tranquility and equal opportunities, to all Jordanians.

➤ **KUWAIT**

Islam State Religion?	Yes
Constitutional Provisions for Equality	<u>Article 8</u> : The State safeguards the pillars of Society and ensures security, tranquility and equal opportunities for citizens.

and Prohibition of Discrimination	<p><u>Article 29</u>: All people are equal in human dignity, and in public rights and duties before the law, without distinction as to race, origin, language or religion.</p> <p><u>Article 175</u>: The provisions relating to the Amiri System in Kuwait and the principles of liberty and equality, provided for in this Constitution, may not be proposed for revision except in relation to the title of the Emirate or to increase the guarantees of liberty and equality.</p>
➤ LEBANON	
Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 7</u> : All Lebanese are equal before the law. They equally enjoy civil and political rights, and assume obligations and public duties without any distinction among them.
➤ LIBYA	
Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 5</u> : All citizens are equal before the law.
➤ MOROCCO	
Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 5</u>: All Moroccans are equal before the law.</p> <p><u>Article 8</u>: Men and Women enjoy equal political rights.</p>
➤ OMAN	
Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 17</u> : All citizens are equal before the Law and share the same public rights and duties. There is no discrimination between them on the ground of gender, origin, colour, language, religion, sect, domicile, or social status.
➤ QATAR	
Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 18</u>: The Qatari society is based upon the pillars of justice, charity, freedom, equality, and good morals.</p> <p><u>Article 19</u>: The State protects the pillars of society, maintains security and stability, and equal opportunities for citizens.</p> <p><u>Article 35</u>: People are equal before the law. There shall be no discrimination against them because of sex, race, language, or religion.</p>
➤ SAUDI ARABIA	
Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 8</u> : The rule in the kingdom is based on justice, consultations and equality in accordance with the Islamic sharia.

➤ **SYRIA**

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 25:</u> (3) The citizens are equal before the law in their rights and duties. (4) The state insures the principle of equal opportunities for citizens. <u>Article 45:</u> The state shall guarantee for women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life. The state must remove the restrictions that prevent women's development and participation in building the socialist Arab society.

➤ **TUNISIA**

<u>Islam State Religion?</u>	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 6:</u> All citizens have the same rights and the same duties. They are equal before the law.

➤ **U.A.E.**

<u>Islam State Religion?</u>	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 14:</u> Equality, social justice, the provision of safety and security and equality of opportunity for all citizens shall be the bases of the community. Mutual co-operation and respect shall be a firm bond between them. <u>Article 25:</u> All persons shall be equal before the law. No discrimination shall be practiced between citizens of the Union by reason of race, nationality, religious belief or social position.

➤ **YEMEN**

<u>Islam State Religion?</u>	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 24:</u> The State shall provide equal political, economic, social and cultural opportunities for all citizens, and shall issue legislations ensuring proper application. <u>Article 25:</u> The Yemeni society shall hereby be established on social solidarity based on justice, freedom and equality as provided for by law. <u>Article 31:</u> Women are akin to men having rights and obligations as demanded by the Sharia'a and stipulated by law. <u>Article 40:</u> All citizens shall have equal rights and obligations.

SOUTH ASIA

➤ AFGHANISTAN

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 22</u> : Any kind of discrimination and privilege among the citizens of Afghanistan is prohibited. The citizens of Afghanistan have equal rights and duties before the law.

➤ BANGLADESH

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 27</u> : All citizens are equal before law and are entitled to equal protection of law. <u>Article 28</u> : (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. ... (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

➤ MALDIVES

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 13</u> : Maldivian citizens are equal before and under the law and are entitled to the equal protection of the law.

➤ PAKISTAN

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 22</u> : (2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation. <u>Article 25</u> : (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex alone. <u>Article 26</u> : (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth. <u>Article 27</u> : (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race religion, caste, sex, residence or place of birth:

EAST ASIA

➤ BRUNEI

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	N/A

➤ INDONESIA

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 27</u>: (1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.</p> <p><u>Article 28D</u>: (1) Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.</p> <p><u>Article 28I</u>: (2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.</p>

➤ MALAYSIA

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 8</u>: (1) All persons are equal before the law and entitled to the equal protection of the law.</p> <p>(2) Except as expressly authorized by this Constitution, there shall be no discrimination against [sic] citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment. ...</p> <p>(5) This Article does not invalidate or prohibit--</p> <p>(a) any provision regulating personal law...</p> <p><u>Article 12</u>: (1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth--</p> <p>(a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or</p> <p>(b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution...</p>

AFRICA

➤ BURKINA FASO

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 1:</u> All the Burkinabians are born free and equal in rights. All have an equal vocation to enjoy all the rights and all the freedoms guaranteed by the present Constitution.</p> <p>Discrimination of all sorts, notably those founded on race, ethnic [character], region, color, sex, language, religion, caste, political opinions, wealth and birth, are prohibited.</p> <p><u>Article 23:</u> ... Marriage is founded on the free consent of the man and of the woman. Every discrimination founded on race, color, religion, ethnicity, caste, social origin, fortune is forbidden in the matter of marriage. Children are equal in rights and in duties within their familial relations.</p>

➤ CHAD

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 13:</u> Chadians of either sex have the same rights and the same duties. They are equal before the law.</p> <p><u>Article 14:</u> The State assures to all equality before the law, without distinction of origin, race, sex, religion, political opinion, or social position. It has the duty to see to the elimination of all forms of discrimination with regard to women and to assure the protection of their rights in all areas [domains] of private and public life.</p> <p><u>Article 161:</u> Until their codification, the customary and traditional rules are applicable only in the communities where they are recognized. However, those customs contrary to the public order or those which promote inequality between citizens are forbidden.</p>

➤ COMOROS

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Preamble:</u> [The Comorian people] proclaim: ...</p> <ul style="list-style-type: none">- Equality for all in rights and duties without distinction to sex, origin, race, religion or belief.- Equality for all before the law ... This preamble forms an integral part of the Constitution.

➤ DJIBOUTI

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<p><u>Article 1:</u> ... [Djibouti] shall ensure the equality of all citizens before the law, without distinction as to origin, race, sex or religion. It shall respect all beliefs ...</p> <p><u>Article 10:</u> The person is sacred. The State shall have the obligation to respect and protect it. All human beings shall be equal before the law.</p>

➤ THE GAMBIA

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of	<p><u>Article 28:</u> (1) Women shall be accorded full and equal dignity of the person with men.</p> <p>(2) Women shall have the right to equal treatment with men, including equal</p>

Discrimination

opportunities in political, economic and social activities.

Article 33: (1) All persons shall be equal before the law.

(2) Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect.

(3) Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(4) In this section, the expression "discrimination" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(5) Subsection (2) shall not apply to any law in so far as that law makes provision--

(a) with respect to persons who are not citizens of The Gambia or to qualifications for citizenship;

(b) with respect to the qualifications prescribed by this Constitution for any office;

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.

(6) Subsection (3) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (5).

Article 216: (1) The State shall endeavor to secure and promote a society founded on the principles of freedom, equality, justice, tolerance, probity and accountability.

➤ **GUINEA**

Islam State Religion?

No

Constitutional Provisions for Equality and Prohibition of Discrimination

Article 4: The law shall punish any act of racial, ethnic or religious discrimination, or any regionalistic propaganda, which could have a grave effect on national unity, the security of the State, the territorial integrity of the Republic or the democratic functioning of its institutions.

Article 8: All human beings shall be equal before the law. Men and women have the same rights. No one shall be favored or disadvantaged by reason of his birth, his race, his ethnicity, his language, his political, philosophical or religious beliefs and opinions.

➤ **MALI**

Islam State Religion?

No

Constitutional Provisions for Equality and Prohibition of Discrimination

Article 2: Every Malian is born and remain [sic] free and equal in rights and duties. All discrimination founded on social origin, color, language, race, sex, religion and political opinion shall be prohibited.

➤ **MAURITANIA**

Islam State Religion?	Yes
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 1:</u> ... The Republic shall guarantee equality before the law to all of its citizens, without distinction as to origin, race, sex or social condition ...

➤ **NIGER**

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 8:</u> ... The Republic shall assure to all the equality before the law without distinction of sex, of social, ethnic or religious origin ... All particularist propaganda of regional, racial or ethnic character, all manifestation of racial, ethnic, political or religious discrimination, shall be punished by law ...

➤ **SENEGAL**

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 1:</u> The Republic of Senegal is secular, democratic, and social. It assures the equality before the law of all citizens, without distinction of origin, race, sex (or) religion. It respects all faiths. <u>Article 5:</u> Any act of racial, ethnic, or religious discrimination, as well as any regionalist propaganda which carries affects to the internal security of the Slate or to the territorial integrity of the Republic, are punished by law. <u>Article 7:</u> ... All human beings are equal before the law. There is in Senegal no subject, no privilege of birth, person or family.

➤ **SIERRA LEONE**

Islam State Religion?	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 6:</u> (2) ... the State shall promote national integration and unity and discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties. <u>Article 8:</u> (1) The Social Order of the State shall be founded on the ideals of Freedom, Equality and Justice. (2) In furtherance of the Social Order-- (a) every citizen shall have equality of rights, obligations, and opportunities before the law, and the State shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit: <u>Article 27:</u> (1) Subject to the provisions of subsection (4), (5) and (7), no law shall make any provision which is discriminatory either of itself or in its effect. (2) Subject to the provisions of subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority. (3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description. (4) Subsection (1) shall not apply to any law so far as that law makes provision— (a) for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licences);

or

(b) with respect to persons who are not citizens of Sierra Leone; or

(c) with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalization, or by resolution of Parliament; or

(d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or

(e) for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(f) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

(g) whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

(h) for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law or of membership of Parliament.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provisions of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction of the rights and freedoms guaranteed by sections 18, 22, 24, 25 and 26 being such a restriction as is authorised by subsection (3) of section 18, subsection (2) of section 22, subsection (5) of section 24, subsection (2) of section 25 or subsection (2) of section 26, as the case maybe. (8) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by any Court on the grounds that it contravenes the provision of subsection (2).

➤ **SOMALIA**

Islam State Religion?

Constitutional

Provisions for Equality
and Prohibition of
Discrimination

No internationally recognized government and no constitution available.

➤ **SUDAN**

Islam State Religion?

Constitutional

Provisions for Equality
and Prohibition of
Discrimination

No

Article 21: All people are equal before the courts of law. Sudanese are equal in rights and duties as regards to functions of public life; and there shall be no discrimination only by reason of race, sex or religious creed. They are equal in eligibility for public posts and offices not being discriminated on the basis of wealth.

EUROPE / EURASIA

➤ ALBANIA

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 18</u> : 1. All are equal before the law. 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry. 3. No one may be discriminated against for reasons mentioned in paragraph 2 if reasonable and objective legal grounds do not exist.

➤ AZERBAIJAN

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 25</u> : I. Everyone is equal before the law and the court. II. Men and women have equal rights and freedoms. III. Everyone has equal rights and freedoms irrespective of race, nationality, religion, sex, origin, property status, social position, convictions, political party, trade union organization and social unity affiliation. Limitations or recognition of rights and freedoms because of race, nationality, social status, language, origin, convictions and religion are prohibited.

➤ KYRGYZSTAN

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 15</u> : 3. All [persons] in the Kyrgyz Republic are equal before law and the court. No one can be subject to any kind of discrimination, violation of rights and freedoms on the ground of origin, gender, race, nationality, language, religion, political and religious convictions, or any other conditions and circumstances of personal or public nature. <u>Article 22</u> : 1. Laws of the Kyrgyz Republic concerning the rights and freedoms of citizens must be equally applied to all citizens and not bestow on anyone privileges and preferences, except for cases provided for by the Constitution of the Kyrgyz Republic and laws for the social protection of citizens.

➤ TAJIKISTAN

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 17</u> : All are equal before the law and court. The State guarantees the rights and freedoms of everyone regardless of his nationality, race, gender, language, religious beliefs, political persuasion, education, [and] social and property status. Men and women have equal rights.

➤ TURKEY

<u>Islam State Religion?</u>	No
Constitutional Provisions for Equality and Prohibition of Discrimination	<u>Article 10</u> : All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. No privilege can be granted to any individual, family, group or class. State organs and administrative authorities act in compliance with the principle of equality before the law in all their proceedings.

➤ TURKMENISTAN

<u>Islam State Religion?</u>	No
Constitutional	<u>Article 17</u> : Turkmenistan guarantees the equality of rights and freedoms of

Provisions for Equality
and Prohibition of
Discrimination

citizens as well as the equality of citizens before the law regardless of nationality, origin, property and official status, place of residence, language, altitude toward religion, political conviction [or] political affiliation.

Article 18: A man and a woman in Turkmenistan have equal civil rights. Violation of equality of rights on grounds of gender entails responsibility according to law.

➤ **UZBEKISTAN**

Islam State Religion?

No

Constitutional
Provisions for Equality
and Prohibition of
Discrimination

Article 18: All citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status.

Article 46: Women and men shall have equal rights.

*D. Population Data and Freedom of Religion Provisions of Non-Muslim Countries with Significant Muslim Populations*¹⁵⁷

INDIA¹⁵⁸

Population Data

Estimated Muslim Population: 120,000,000

Estimated % Muslim Population: 12%

Religious or Secular State? Constitution preamble: sovereign socialist secular democratic republic

Constitutional Formulation

Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 25

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law--

¹⁵⁷ See supra note 106.

¹⁵⁸ INDIA CONST. (as amended to 2002).

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

...

Explanadon II--In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right--

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Article 27

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached [*1034] thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 30

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Article 51A

It shall be the duty of every citizen of India--;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

NIGERIA¹⁵⁹

Population Data

Estimated Muslim Population: 68,500,000

Estimated % Muslim Population: 50%

Religious or Secular State? n/a

Constitutional Formulation

Article 10

The Government of the Federation or of a State shall not adopt any religion as State Religion.

Article 15

(2) . . . national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

(3) For the purpose of promoting national integration, it shall be the duty of the State to--

(c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and

(d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.

Article 23

The national ethics shall be Discipline, Integrity, Dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism.

Article 38

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

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

¹⁵⁹ NIG. CONST.

Article 42

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person--

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Article 262

(1) The Sharia Court of Appeal shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-- (a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;

(b) where all the parties to the proceedings are [M]uslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;

(c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a [M]uslim;

(d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a [M]uslim or the maintenance or the guardianship of a [M]uslim who is physically or mentally infirm; or

(e) where all the parties to the proceedings, being [M]uslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.¹⁶⁰

¹⁶⁰ The Nigerian constitution also provides for the establishment of state-level sharia courts. NIG. CONST. arts. 275-79.

CHINA¹⁶¹

Population Data

Estimated Muslim Population: 20,000,000

Estimated % Muslim Population: 1.4%

Religious or Secular State? n/a

Constitutional Formulation

Article 4

All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

Article 33

All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the constitution and the law.

Article 36

Citizens of the People's Republic of China enjoy freedom of religious belief.

No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

Article 48

Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life.

¹⁶¹ P.R.C. CONST. (as amended in 1999).

RUSSIA¹⁶²

Population Data

Estimated Muslim Population: 20,000,000

Estimated % Muslim Population: 14%

Religious or Secular State? Secular

Constitutional Formulation

Article 13

1. In the Russian Federation, ideological diversity is recognized.
2. No ideology can be instituted as state-sponsored or mandatory.

Article 14

1. The Russian Federation is a secular state. No religion may be instituted as state-sponsored or mandatory.
2. Religious associations are separated from the state, and are equal before the law.

Article 19

1. All are equal before the law and the court.
2. The State guarantees the equality of rights and freedoms without regard to gender, race, nationality, language, origin, property or employment condition, attitude toward religion, membership in public associations or any other circumstances. Any forms of limitation of rights of man and citizen on social, racial, linguistic or religious grounds [are prohibited].
3. Man and women have equal rights and freedoms and equal possibilities of their realization.

Article 28

Everyone is guaranteed the freedom of conscience, freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them.

Article 29

1. Everyone is guaranteed the freedom of thought and speech.
2. Inadmissible are propaganda or agitation, inciting social racial, national hatred and strife. Forbidden are propaganda of social, racial, national, religious or racial superiority.

¹⁶² Russ. CONST.

ETHIOPIA¹⁶³

Population Data

Estimated Muslim Population: 31,950,000

Estimated % Muslim Population: 45%

Religious or Secular State? n/a

Constitutional Formulation

Article 11

1. State and religion are separate.
2. There shall be no state religion.
3. The state shall not interfere in religious matters and religion shall not interfere in state affairs.

Article 25

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

Article 27

1. Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice, and the 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. Without prejudice to the provisions of sub-Article 2 of Article 90, believers may establish institutions of religious education and administration in order to propagate and organize their religion.
3. No one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.
4. Parents and legal guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions.
5. Freedom to express or 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, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion.

Article 34

1. Men and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable [sic] age as defined by law, have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce.
5. This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

¹⁶³ ETH. CONST.

Article 35

1. Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.
7. Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

Article 90

2. Education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.

TANZANIA¹⁶⁴

Population Data

Estimated Muslim Population: 12,600,000

Estimated % Muslim Population: 35%

Religious or Secular State? n/a

Constitutional Formulation

Article 9

The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasises the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring--

(g) that the Government and all its agencies provide equal opportunities to all citizens, men and women alike without regard to their colour, tribe, religion, or station in life;

Article 13

(1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

(2) No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.

(5) For the purposes of this Article the expression "discriminate" means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications.

Article 19

(1) Every person has the right to the freedom of thought or conscience, belief or faith, and choice in matters of religion, including the freedom to change his religion or faith.

(2) Without prejudice to the relevant laws of the United Republic the profession of religion, worship and propagation of religion shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority.

(3) In this Article reference to the word "religion" shall be construed as including reference to religious denominations, and cognate expressions shall be construed accordingly.

¹⁶⁴ TANZ. CONST. (as amended to 1995).

*E. DRAFT CONSTITUTION OF THE REPUBLIC OF IRAQ*¹⁶⁵

The Preamble

In the name of God, the most merciful, the most compassionate [We have honored the sons of Adam]

We, the people of the land between two rivers, the homeland of the apostles and prophets, abode of the virtuous imams, pioneers of civilization, crafters of writing and cradle of numeration and pioneers of agriculture, upon our land the first law made by man was passed, the most ancient just pact for homelands policy was inscribed, and upon our soil, companions of the Prophet and saints prayed, philosophers and scientists theorized and writers and poets excelled, acknowledging God's due over us, and in fulfillment of the call of our homeland and citizens, and [in a response to the call] of our religious and national leaderships and the determination of our great references¹⁶⁶ and our leaders and reformers, and in the midst of an international support from our friends and those who love us, marched for the first time in our history towards the ballot boxes by the millions, men and women, young and old, on the 30th of January 2005, invoking the pains of sectarian oppression sufferings inflicted by the autocratic clique and inspired by the tragedies of Iraq's martyrs, Shiite and Sunni, Arabs and Kurds and Turkmen and along with the remainder of their brothers from all the other components and recollecting the darkness of the ravage of the holy cities and the South in the Sha'abaniyya uprising and burnt by the flames of grief of the mass graves, the marshes, A1-Dujail and others and articulating the sufferings of racial oppression in the massacres of Halabcha, Barzan, Anfal and the Fayli Kurds and inspired by the ordeals of the Turkmen in Basheer and as is the case in the remaining areas of Iraq where the people of the west suffered from the assassinations of their leaders, symbols and elderly and from the displacement of their skilled individuals and from the drying out of their cultural and intellectual wells, so we sought hand in hand and shoulder to shoulder to create our new Iraq, the Iraq of the future free from sectarianism, racism, locality complex, discrimination and exclusion.

Accusations of being infidels, and terrorism did not stop us from marching forward to build a nation of law. Sectarianism and racism have not stopped us from marching together to strengthen our national unity, and to follow the path of peaceful transfer of power and adopt the course of the just distribution of resources and providing equal opportunity for all.

We the people of Iraq who have just risen from our stumble, and who are looking with confidence to the future through a republican, federal, democratic, pluralistic system, have decided, with the help of our men and women, our old and young to respect the law, implement justice and equality, cast aside the politics of aggression, and tending to the concerns of women and their rights, and the elderly and their concerns, and children and their affairs and spreading a culture of diversity and defusing terrorism. We the people of Iraq of all components and shades

¹⁶⁵ IRAQ DRAFT CONST. (finalized Aug. 29, 2005, to be decided by referendum Oct. 15, 2005) (unofficial translation from Arabic by the United Nations). The Draft Constitution was amended October 12, 2005 by the Iraqi National Assembly. These amendments were too late to be included in the United Nations draft presented here, but were available prior to press time from the Associated Press. Text of Proposed Iraqi Constitution, ASSOCIATED PRESS, Oct. 12, 2005, at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201331.html> [hereinafter PROPOSED CONSTITUTION]; Text of Proposed Iraqi Constitution, ASSOCIATED PRESS, Oct. 12, 2005, at http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201422_5.html [hereinafter PROPOSED CONSTITUTION 2] (The first reference details changes to Articles 1-13, and the second Articles 122-139. Amendments will be noted to the extent possible in footnotes to the main text, with the original text underlined, and the amended text in italics.).

¹⁶⁶ religious authorities, PROPOSED CONSTITUTION, *supra* note 166.

have taken upon ourselves to decide freely and with our choice to unite our future and to take lessons from yesterday for tomorrow, to draft, through the values and ideals of the heavenly messages and the findings of science and man's civilization, this lasting Constitution. The adherence to this Constitution preserves for Iraq its free union, its people, its land and its sovereignty.

Section One

Fundamental Principles

Article 1:

The Republic of Iraq is an independent sovereign state whose system of government shall be republican, representative (Parliamentary), democratic and federal.¹⁶⁷

Article 2:

First: Islam is the official religion of the State and it is a fundamental source of legislation:

- A. No law that contradicts the established provisions of Islam may be established.
- B. No law that contradicts the principles of democracy may be established.
- C. No law that contradicts the rights and basic freedoms stipulated in this Constitution may be established.

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabbeans.

Article 3:

Iraq is a country of many nationalities, religions and sects: it is a part of the Islamic world and is a founding and effectual member of the Arab League and is obligated to its charter.¹⁶⁸

Article 4:

First: The Arabic language and Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac and Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed.

¹⁶⁷ The Republic of Iraq is a single, independent federal state with full sovereignty. Its system of government is republican, representative Parliamentary and democratic. This Constitution is the guarantor of its unity. PROPOSED CONSTITUTION, supranote 166.

¹⁶⁸ Iraq is a country of many nationalities, religions and sects and is a founding and active member of the Arab League and is committed to its covenant. Iraq is a part of the Islamic world. PROPOSED CONSTITUTION, supranote 166.

Second: The scope of the term official language and the means of applying the provisions of this article shall be defined by law which shall include:

- A. Publication of the official gazette, in the two languages;
- B. Speech, conversation and expression in official settings, such as the Council of Representatives, the Council of Ministers, courts, and official conferences, in either of the two languages;
- C. Recognition and publication of the official documents and correspondences in the two languages;
- D. Opening schools that teach the two languages, in accordance with the educational guidelines;
- E. Use of both languages in any settings enjoined by the principle of equality such as bank notes, passports and stamps.

Third: The federal institutions and agencies in the Kurdistan region shall use both languages.¹⁶⁹

Fourth: The Turkmen language and Syriac language are two other official languages in the administrative units in which they represent density of population.

Fifth: Each region or governorate may adopt any other local language as an additional official language if the majority of its population so decide in a general referendum.

Article 5:

The law is sovereign. The people are the source of authorities and its legitimacy, which the people shall exercise in a direct general secret ballot and through their constitutional institutions.

Article 6:

Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution.

Article 7:

First: No entity or program, under any name, may adopt racism, terrorism, the calling of others infidels, ethnic cleansing, or incite, facilitate, glorify, promote, or justify thereto, especially the Saddamist Ba'ath in Iraq and its symbols. This may not be part of the political pluralism in Iraq. A law shall regulate this.

Second: The State shall undertake combating terrorism in all its forms, and shall work to protect its territories from being a base or pathway or field for terrorist activities.

Article 8:

Iraq shall observe the principles of a good neighborliness, adhere to the principle of non-interference in the internal affairs of other states, endeavor to settle disputes by peaceful means,

¹⁶⁹ The Arabic and Kurdish languages. PROPOSED CONSTITUTION, supra note 166.

establish relations on the basis of mutual interests and reciprocity, and respect its international obligations.

Article 9:

First:

A. The Iraqi Armed Forces and Security Services will be composed of the components of the Iraqi people with due consideration given to its balance and its similarity without discrimination or exclusion and shall be subject to the control of the civilian authority. The Iraqi Armed Forces shall defend Iraq and shall not be used as an instrument of oppression against the Iraqi people, shall not interfere in the political affairs and shall have no role in the transfer of authority.

B. The formation of military militia outside the framework of the armed forces is prohibited.

C. The Iraqi Armed Forces and its personnel, including military personnel working at the Ministry of Defense or any subordinate departments or organizations, may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by the Ministry of Defense regulations. This ban encompasses the activities of the personnel mentioned above acting in their personal or official capacities. Nothing in this Article shall infringe upon the right of these personnel to cast their vote in the elections.

D. The Iraqi National Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This service shall be under civilian control and shall be subject to legislative oversight and shall operate in accordance with the law and pursuant to the recognized principles of human rights.

E. The Iraqi Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production, and non-use of nuclear, chemical, and biological weapons, and shall prohibit associated equipment, materiel, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.

Second: National service will be stipulated by law.

Article 10:

The holy shrines and religious places in Iraq are religious and civilizational entities. The State is committed to confirming and safeguarding their sanctity, and guaranteeing the free practice of rituals in them.

Article 11:

Baghdad is the capital of the Republic of Iraq.

Article 12:

First: The flag, national anthem, and emblem of Iraq shall be fixed by law in a way that represents the components of the Iraqi people.

Second: A law shall regulate the decorations, official holidays, religious and national occasions and the Hijri and Gregorian calendar.

Article 13:

First: This constitution is the sublime and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law shall be enacted that contradicts this constitution. Any text in any regional constitutions or any other legal text that contradicts it is deemed void.

Section Two

Rights and Liberties

Chapter One: Rights

First: Civil and Political Rights

Article 14:

Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, sect, belief or opinion, or economic and social status.

Article 15:

Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.

Article 16:

Equal opportunities are guaranteed for all Iraqis. The State guarantees the taking of the necessary measures to achieve such equal opportunities.

Article 17:

First: Every individual shall have the right to personal privacy, so long it does not contradict the rights of others and public morals.

Second: The sanctity of the homes is inviolable and homes may not be entered, searched, or put in danger, except by a judicial decision in accordance with the law.

Article 18:

First: An Iraqi is any person born to an Iraqi father or mother.

Second: Iraqi nationality is the right of every Iraqi and shall be the basis of his citizenship.

Third:

A. An Iraqi citizen by birth may not have his nationality withdrawn for any reason. Any person who had his nationality withdrawn shall have the right to reclaim it, and this will be stipulated by law.

B. The Iraqi nationality shall be withdrawn from the naturalized in the cases stipulated by law.

Fourth: An Iraqi may have multiple nationalities. Everyone who assumes a senior, security sovereign position must abandon any other acquired nationality. A law shall regulate this.

Fifth: Iraqi citizenship shall not be granted for the purposes of the policy of settling people that cause an imbalance in the population composition of Iraq.

Sixth: A law shall regulate the provisions of nationality. The competent courts shall consider the suits resulting from it.

Article 19:

First: The Judiciary shall be independent and no power shall be above the Judiciary except the Law.

Second: There is no crime or punishment except by a stipulation. The punishment shall only be for an act that the law considers a crime when perpetrated. A harsher sentence than the applicable sentence at the time of the offense may not be imposed.

Third: Litigation shall be a safeguarded and guaranteed right for all.

Fourth: The right to a defense shall be sacred and guaranteed in all phases of investigation and trial.

Fifth: The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried on the same crime for a second time after acquittal unless new evidence is produced.

Sixth: Every person shall have the right to be treated with justice in judicial and administrative proceedings.

Seventh: The proceedings of a trial are public unless the court decides to make it secret.

Eighth: The punishment shall be personal.

Ninth: Laws shall not have a retroactive effect unless the law stipulates otherwise. This exclusion shall not include taxes and fees laws.

Tenth: The criminal law shall not have a retroactive effect, unless it is to the benefit of the accused.

Eleventh: The court shall delegate a lawyer at the expense of the state for an accused of a felony or misdemeanor who does not have a defense lawyer.

Twelfth:

A. Unlawful detention shall be prohibited.

B. Detention or arrest shall be prohibited in places not designed for it, pursuant to prison regulations covered by health and social care and subject to the scrutiny of the law.

Thirteenth: The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty four hours from the time of the arrest of the accused. It may be extended only once and for the same period.

Article 20:

The citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to voting, election and nomination.

Article 21:

First: No Iraqi shall be surrendered to foreign entities and authorities.

Second: A law shall regulate the right of political asylum to Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled.

Third: No political asylum shall be granted to a person accused of committing international or terrorist crimes or any person who inflicted damage on Iraq.

Second: Economic, Social and Cultural Liberties

Article 22:

First: Work is a right for all Iraqis to guarantee a decent living for them.

Second: The law shall regulate the relationship between employees and employers on economic basis and with regard to the foundations of social justice.

Third: The State shall guarantee the right of forming and joining professional associations and unions. A law shall regulate that.

Article 23:

First: Personal property is protected. The proprietor shall have the right to benefit from, exploit and utilize personal property within the limits of the law.

Second: No property may be taken away except for the purposes of public benefit in return for just compensation. A law shall regulate that.

Third:

A. Every Iraqi shall have the right to own property throughout Iraq. No others may possess immovable assets, except as exempted by law.

B. Owning property for the purposes of population change shall be prohibited.

Article 24:

The State shall guarantee freedom of movement of Iraqi manpower, goods and capitals between regions and governorates. A law shall regulate this.

Article 25:

The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources and the encouragement and the development of the private sector.

Article 26:

The State shall guarantee the encouragement of investments in the various sectors. A law shall regulate this.

Article 27:

First: Public property is sacrosanct, and its protection is the duty of each citizen.

Second: The provisions related to the protection of State properties and its management and the conditions for its disposal and the limits under which none of these properties can be relinquished shall all be regulated by law.

Article 28:

First: No taxes or fines may be imposed, amended, exempted or pardoned from, except in accordance with law.

Second: Low wage earners shall be exempted from taxes in a manner that ensures the upholding of the minimum wage required for survival. A law shall regulate that.

Article 29:

First:

A. The family is the foundation of society; the State shall preserve its entity and its religious, moral and patriotic values.

B. The State shall guarantee the protection of motherhood, childhood and old age and shall care for children and youth and shall provide them with the appropriate conditions to further their talents and abilities.

Second: Children shall have right over their parents in regard to upbringing, care and education. Parents shall have right over their children in regard to respect and care especially in times of need, disability and old age.

Third: Economic exploitation of children shall be completely prohibited. The State shall take the necessary measures to protect them.

Fourth: All forms of violence and abuse in the family, school and society shall be prohibited.

Article 30:

First: The State shall guarantee to the individual and the family - especially children and women - social and health security and the basic requirements for leading a free and dignified life. The State shall also ensure the above a suitable income and appropriate housing.

Second: The State shall guarantee the social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanage or unemployment, and shall work to protect them from ignorance, fear and poverty. The State shall provide them housing and special programs of care and rehabilitation. A law shall regulate it.

Article 31:

First: Every citizen has the right to health care. The State shall take care of public health and provide the means of prevention and treatment by building different types of hospitals and medical institutions.

Second: Individuals and institutions may build hospitals or clinics or places for treatment with the supervision of the State and this shall be regulated by law.

Article 32:

The State shall care for the handicapped and those with special needs and ensure their rehabilitation in order to reintegrate them into society and this shall be regulated by law.

Article 33:

First: Every individual shall have the right to live in a safe environment.

Second: The State shall undertake the protection and preservation of the environment and biological diversity.

Article 34:

First: Education is a fundamental factor in the progress of society and is a right guaranteed by the State. Primary education is mandatory and the State guarantees to eradicate illiteracy.

Second: Free education is a right for all Iraqis in all its stages.

Third: The State shall encourage scientific research for peaceful purposes that serve man and shall support excellence, creativity, invention and the different aspects of ingenuity.

Fourth: Private and public education shall be guaranteed and this shall be regulated by law.

Chapter Two: Liberties

Article 35:

First:

- A. The liberty and dignity of man shall be safeguarded.
- B. No person may be kept in custody or interrogated except in the context of a judicial decision.
- C. All forms of psychological and physical torture and inhumane treatment shall be prohibited. Any confession coerced by force, threat, or torture shall not be relied on. The victim shall have the right to compensation in accordance with the law for material and moral damages incurred.

Second: The State shall guarantee the protection of the individual from intellectual, political and religious coercion.

Third: Compulsory service (unpaid labor), serfdom, slave trade trading in slaves), trafficking of women and children, and sex trade shall be prohibited.

Article 36:

The State shall guarantee in a way that does not violate public order and morality:

- A. Freedom of expression using all the means.
- B. Freedom of press, printing, advertisement, media and publication.
- C. Freedom of assembly and peaceful demonstration and this shall be regulated by law.

Article 37:

First: The freedom of forming and joining associations and political parties shall be guaranteed. A law shall regulate this.

Second: It is prohibited to force any person to join any party, society or political entity or force him to continue his membership in it.

Article 38:

The freedom of communication, and mail, telegraphic, electronic, and telephonic correspondence, and other correspondence shall be guaranteed and may not be monitored, wiretapped or disclosed except for legal and security necessity and by a judicial decision.

Article 39:

Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices and that shall be regulated by law.

Article 40:

Each individual shall have the freedom of thought, conscience and belief.

Article 41:

First: The followers of all religions and sects are free in the:

- A. Practice of religious rites, including the Husseini ceremonies.
- B. Management of the endowments (Awqaf), its affairs and its religious institutions. The law shall regulate this.

Second: The State shall guarantee the freedom of worship and the protection of the places of worship.

Article 42:

First: The Iraqi shall enjoy the right of free movement, travel, and residence inside and outside Iraq.

Second: No Iraqi may be exiled, displaced or deprived from returning to the homeland.

Article 43:

First: The State shall seek to strengthen the role of civil society institutions, to support, develop and preserve its independence in a way that is consistent with peaceful means to achieve its legitimate goals. A law shall regulate that.

Second: The State shall seek the advancement of the Iraqi clans and tribes and shall attend to their affairs in a manner that is consistent with religion and the law and upholds its noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.

Article 44:

There may not be a restriction or limit on the practice of any rights or liberties stipulated in this Constitution, except by law or on the basis of it, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

Section Three

Federal Powers

Article 45:

The federal powers shall consist of: the legislative, the executive and the judicial. These powers shall exercise their specializations and tasks on the basis of the principle of separation of powers.

Chapter One: The Legislative Power

Article 46:

The federal legislative power shall consist of the Council of Representatives and the Federation Council.

First: The Council of Representatives

Article 47:

First: The Council of Representatives shall consist of a number of members, at a ratio of one representative per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people in it shall be upheld.

Second: A candidate to the Council of Representatives must be a fully eligible Iraqi.

Third: A law shall regulate the requirements for the candidate, the voter and all that is connected with the elections.

Fourth: The elections law aims to achieve a percentage of women representation not less than one-quarter of the Council of Representatives members.

Fifth: The Council of Representatives shall promulgate a law dealing with the replacement of its members on resignation, dismissal or death.

Sixth: No member of the Council of Representatives shall be allowed to hold any other official position or work.

Article 48:

The Council of Representatives member shall take the constitutional oath before the Council prior to assuming his duties as follows:

(I swear by God the Almighty to carry out my legal tasks and responsibilities devotedly and honestly and preserve the independence and sovereignty of Iraq, and safeguard the interests of its people, and watch over the safety of its land, skies, waters, resources and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary and adhere to the applications of the legislation neutrally and faithfully. God is my witness.)

Article 49:

The Council of Representatives shall set its bylaws to regulate its work.

Article 50:

First: The Council of Representatives shall decide by a two-thirds majority, the membership authenticity of its members within thirty days from the date of filing an objection.

Second: The Decision of the Council of Representatives may be appealed before the Federal Supreme Court within thirty days from the date of its issuance.

Article 51:

First: Sessions of the Council of Representatives shall be public unless it deems them otherwise.

Second: Minutes of the sessions shall be published in means regarded appropriate by the Council.

Article 52:

The President of the Republic shall call upon the Council of Representatives to convene by a presidential decree within fifteen days from the date of the ratification of the general elections results. Its eldest member shall chair the first session to elect the president of the Council and his two deputies. This period may not be extended by more than the aforementioned one.

Article 53:

The Council of Representatives shall elect in its first session its president, then his first deputy and second deputy, by an absolute majority of the total number of the Council members by direct secret ballot.

Article 54:

First: The electoral term of the Council of Representatives shall be limited to four calendar years, starting with its first session and ending with the conclusion of the fourth year.

Second: Election of the new Council of Representatives will be carried out forty five days prior to the date signaling the end of the previous electoral session.

Article 55:

The Council of Representatives shall have one annual term with two legislative sessions lasting eight months. The bylaw shall define the method of convention. The session in which the general budget is being presented shall not end until its approval.

Article 56:

First: The President of the Republic or the Prime Minister or the President of the Council of Representatives or fifty members of the Council of Representatives may call the Council to an extraordinary session. The session shall be restricted to the topics that necessitated the request.

Second: The President of the Republic, or the Prime Minister or the President of the Council or fifty members of the Council of Representatives, may ask for an extension of the legislative session of the Council of Representatives for no more than thirty days in order to complete the tasks that required the extension.

Article 57:

First:

- A. The Council of Representatives quorum shall be fulfilled by an absolute majority of its members.
- B. Decisions in the sessions of the Council of Representatives shall be made by a simple majority after quorum is fulfilled, unless stipulated otherwise.

Second:

- A. Bills shall be presented by the President of the Republic and the Prime Minister.
- B. Proposed laws shall be presented by ten members of the Council of Representatives or by one of its specialized committees.

Article 58:

The Council of Representatives shall specialize in the following:

First: Enacting federal laws.

Second: Monitoring the performance of the executive authority.

Third: Electing the President of the Republic.

Fourth: Passing a law, approved by a two third majority of the members of the Council of Representatives, to regulate the ratification of international treaties and agreements.

Fifth:

To approve the appointment of the following:

- A. The President and members of the Federal Court of Cassation, Chief Public Prosecutor and the President of Judicial Oversight Commission based on a proposal from the Higher Juridical Council, by an absolute majority.
- B. Ambassadors and those with special grades based on a proposal from the Cabinet.
- C. The Iraqi Army Chief of Staff, his assistants and those of the rank of division commanders and above and the director of the intelligence service based on a proposal from the Cabinet.

Sixth:

A. Question the President of the Republic based on a justifiable petition by an absolute majority of the Council of Representatives members.

B. Relieve the President of the Republic by an absolute majority of the Council of Representatives members after being convicted by the Supreme Federal Court in one of the following cases:

1. Perjury of the constitutional oath.
2. Violating the Constitution.
3. High treason.

Seventh:

A. The Council of Representatives member may direct questions to the Prime Minister and the Ministers on any subject within their specialty and they may answer the members' questions. The Member who has asked the question solely has the right to comment on the answer.

B. At least twenty five members of the Council of Representatives may table a general issue for discussion to obtain clarity on the policy and the performance of the Cabinet or one of the Ministries. It must be submitted to the President of the Council of Representatives, and the Prime Minister or the Ministers shall specify a date to come before the Council of Representatives to discuss it.

C. A Council of Representatives member with the agreement of twenty five members may direct a question to the Prime Minister or the Ministers to call them to account on the issues within their authority. The discussion on the question shall begin at least seven days after submitting the question.

Eighth:

A. The Council of Representatives may withdraw confidence from one of the Ministers by an absolute majority and he is considered resigned from the date of the decision of confidence withdrawal. The issue of no confidence in the Minister may be tabled only on that Minister's wish or on a signed request of fifty members after an inquiry discussion directed at him. The Council of Representatives shall not issue its decision regarding the request except after at least seven days of its submission.

B.

1. The President of the Republic may submit a request to the Council of Representatives to withdraw confidence from the Prime Minister.

2. The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request may be submitted only after a question has been put to the Prime Minister and after at least seven days from submitting the request.

3. The Council of Representatives shall decide to withdraw confidence from the Prime Minister by an absolute majority of its members.

C. The Government is considered resigned in case of withdrawal of confidence from the Prime Minister.

D. In case of a vote of withdrawal of confidence in the Cabinet as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Cabinet is formed in accordance with the provisions of Article 74 of this Constitution.

E. The Council of Representatives may interrogate independent commission heads in accordance with the same procedures as for the ministers and may dismiss them by an absolute majority.

Ninth:

A. To consent to the declaration of war and the state of emergency by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister.

B. The period of the state emergency shall be limited to thirty days, extendable after approval each time.

C. The Prime Minister shall be authorized with the necessary powers that enable him to manage the affairs of the country within the period of the state of emergency and war. A law shall regulate these powers that do not contradict the Constitution.

D. The Prime Minister shall present to the Council of Representatives the measures taken and the results within the period of declaration of war and within 15 days of the end of the state of emergency.

Article 59:

First: The Council of Ministers shall submit the draft general budget bill and the closing account to the Council of Representatives for approval.

Second: The Council of Representatives may conduct transfers between the sections and chapters of the general budget and reduce the total of its sums, and it may suggest to the Cabinet to increase the total expenses, when necessary.

Article 60:

First: A law shall regulate the rights and privileges of the Speaker of the Council of Representatives, his two deputies and the members of Council of Representatives.

Second:

A. Each member of the Council of Representatives shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such.

B. A Council of Representatives member may not be placed under arrest during the legislative term of the Council of Representatives, unless the member is accused of a felony and the Council of Representatives members consent by an absolute majority to lift his immunity or if caught *in flagrante delicto* in the commission of a felony.

C. A Council of Representatives member may not be arrested after the legislative term of the Council of Representatives, unless the member is accused of a felony and with the consent of the Speaker of the Council of Representatives to lift his immunity or if he is caught *in flagrante delicto* in the commission of a felony.

Article 61:

First: The Council of Representatives may dissolve itself with the consent of the absolute majority of its members, upon the request of one third of its members or upon the request of the Prime Minister and the consent of the President of the Republic. The Council may not be dissolved during the period in which the Prime Minister is being questioned.

Second: Upon the dissolution of the Council of Representatives, the President of the Republic shall call for general elections in the country within a period not to exceed sixty days from the date of its dissolution. The Cabinet in this case is considered resigned and continues to run everyday business.

Second: The Federation Council

Article 62:

A legislative council shall be established named the "Federation Council" to include representatives from the regions and the governorates that are not organized in a region.

A law, enacted by a two third majority of the members of the Council of Representatives, shall regulate the Federation Council formation, its membership conditions and its specializations and all that is connected with it.

Chapter Two: The Executive Power

Article 63:

The Federal Executive Power shall consist of the President of the Republic and the Council of Ministers and shall exercise its powers in accordance with the Constitution and the law.

First: The President of the Republic

Article 64:

The President of the Republic is the Head of the State and a symbol of the unity of the country and represents the sovereignty of the country. He safeguards the commitment to the Constitution and the preservation of Iraq's independence, sovereignty, unity, the security of its territories in accordance with the provisions of the Constitution.

Article 65:

A nominee to the Presidency must meet the following conditions:

- A. Must be an Iraqi by birth, born to Iraqi parents.
- B. Must be fully eligible and has completed forty years of age.
- C. Must be of good reputation and political experience, and known for his integrity, righteousness, fairness and loyalty to the homeland.
- D. Must not have been convicted of a crime involving moral turpitude.

Article 66:

A law shall regulate the nomination to the post of the President of the Republic.
A law shall regulate the nomination of one or more vice presidents/deputies.

Article 67:

First: The Council of Representatives shall elect, from amongst the nominees, the President of the Republic by a two-thirds majority of its members.

Second: If any of the candidates do not receive the required majority vote then the two candidates who received the highest number of votes shall compete and the one who receives the highest number of votes in the second election shall be declared as President.

Article 68:

The President shall take the Constitutional Oath before the Council of Representatives in the form stipulated in Article 48 of the Constitution.

Article 69:

First: The President of the Republic's term in office shall be limited to four years and may be elected for a second time and no more.

Second: The Council of Representatives shall elect a new President three months prior to the end of the term in office of the outgoing President.

- A. The term of the President terminates upon termination of the Council of Representatives' term.
- B. The President will continue to carry out his duties until a new Council of Representatives is elected and until a new President is elected, within 30 days.
- C. In case the post of President is empty/becomes vacant for any reason then a new President shall be elected to fulfill the remaining term of the past/former President.

Article 70:

The President of the Republic shall assume the following powers:

- A. To issue a special pardon on the recommendation of the Prime Minister, except for anything concerning private claim and for those who have been convicted of committing international crimes, terrorism, and financial and administrative corruption.
- B. To ratify international treaties and agreements after the approval by the Council of Representatives. Such international treaties and agreements are considered ratified after fifteen days from the date of receipt.
- C. To ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt.

- D. To call the elected Council of Representatives to convene during a period not to exceed fifteen days from the date of approval of the election results and in the other cases stipulated in the Constitution.
- E. To award medals and decorations on the recommendation of the Prime Minister in accordance with the law.
- F. To accredit Ambassadors.
- G. To issue Presidential decrees.
- H. Ratify death sentences issued by the competent courts.
- I. Perform the duty of the Higher Command of the armed forces for ceremonial and honorary purposes.
- J. Exercise any other presidential powers stipulated in this Constitution.

Article 71:

A law shall fix the salary and the allowances of the President of the Republic.

Article 72:

First: The President of the Republic shall have the right to submit his resignation in writing to the Speaker of the Council of Representatives, and [it]s considered effective after seven days from the date of its submission to the Council of Representatives.

Second: The "Vice" President shall assume the office of the President in case of his absence.

Third: The Vice President shall assume the duties of the President of the Republic or in the event of the post of the President becomes vacant for any reason whatsoever. The Council of Representatives must elect a new President within a period not to exceed thirty days from the date of the vacancy.

Fourth: In the case the post of the President of the Republic becomes vacant, the Speaker of the Council of Representatives shall replace the President of the Republic in case he does not have a Vice President, on the condition that a new President is elected during a period not to exceed thirty days from the date of the vacancy and in accordance with the provisions of this Constitution.

Second: Council of Ministers

Article 73:

First: The President of the Republic entrusts the largest parliamentary bloc's candidate to form a Cabinet within fifteen days from the date of the election of the President of the [Republic].

Second: The Prime Minister-designate shall undertake the naming of the members of his Cabinet within a period not to exceed thirty days from the date of his designation.

Third: In case the Prime Minister-designate fails to form the Cabinet during the period specified in clause "Second" of this article the President of the Republic shall name a new nominee for the post of Prime Minister within fifteen days.

Fourth: The Prime Minister-designate shall present the names of his Cabinet members and the ministerial program to the Council of Representatives. He is deemed to have gained its confidence upon the approval, by an absolute majority of the Council of Representatives, of the individual Ministers and the ministerial program.

Fifth: The President of the Republic shall name another nominee to form the Cabinet within fifteen days in case the Cabinet did not gain the confidence.

Article 74:

First: The conditions for assuming the post of the Prime Minister shall be the same as those for the President of the Republic, provided that he has completed thirty five years of age and has a college degree or its equivalent.

Second: The same prerequisites required in the Minister apply to the member of the Parliament; he also is required to be a holder of a university degree or its equivalent.

Article 75:

The Prime Minister is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the armed forces. He directs the Council of Ministers, and presides over its meetings and has the right to dismiss the Ministers on the consent of the Council of Representatives.

Article 76:

The Prime Minister and members of the Cabinet shall take the Constitutional Oath before the Council of Representatives in the form stipulated in Article 48 of the Constitution.

Article 77:

The Cabinet shall exercise the following powers:

First: Plan and execute the general policy and the general plans of the State and oversee the work of the ministries and departments not associated with a ministry.

Second: To propose bills.

Third: To issue rules, instructions and decisions for the purpose of implementing the law.

Fourth: To prepare the draft of the general budget, the closing account, and the development plans.

Fifth: To recommend to the Council of Representatives to approve the appointment of under secretaries, ambassadors, State senior officials, Chief of Staff of the Armed Forces and his assistants, Division Commanders or higher. Director of the National Intelligence Service, and heads of security institutions.

Sixth: To negotiate and sign international agreements and treaties or designate any person to do so.

Article 78:

First: The President of the Republic shall take up the office of the Prime Minister in the event the post becomes vacant for any reason whatsoever.

Second: When the case cited in provision one of this article, the President of the Republic appoints another nominee to form the Cabinet within a period not to exceed fifteen days in accordance with the provisions of Article 74 of this Constitution.

Article 79:

A law shall regulate the salaries and allowances of the Prime Minister and Ministers, and anyone of their grade.

Article 80:

The responsibility of the Prime Minister and the Ministers before the Council of Representatives is of a joint and personal nature.

Article 81:

First: A law shall regulate the work of the security institutions and the National Intelligence Service and shall define its duties and authorities. It shall operate in accordance with the principles of human rights and be subject to the oversight of the Council of Representatives.

Second: The National Intelligence Service shall be attached to the Cabinet.

Article 82:

The Council of Ministers shall establish internal bylaws to organize the work therein.

Article 83:

A law shall regulate the formation of ministries, their tasks, their responsibilities and the authorities of the minister.

Chapter Three: The Judicial Authority

Article 84:

The Judicial authority is independent. The courts, in their various types and classes, shall assume this authority and issue decisions in accordance with the law.

Article 85:

Judges are independent and there is no authority over them except that of the law. No authority shall have the right to interfere in the Judiciary and the affairs of Justice.

Article 86:

The Federal Judicial Authority is comprised of the Higher Juridical Council, Supreme Federal Court, Federal Court of Cassation, Public Prosecution Department, Judiciary Oversight Commission and other Federal Courts that are regulated in accordance with the law.

First: Higher Juridical Council

Article 87:

The Higher Juridical Council shall oversee the affairs of the Judicial Committees. The law shall specify the method of its establishment, its authorities, and the rules of its operation.

Article 88:

The Higher Juridical Council shall exercise the following authorities:

First: To manage the affairs of the Judiciary and supervise the Federal Judiciary.

Second: To nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, the Chief Justice of the Judiciary Oversight Commission and present them to the Council of Representatives to approve their appointment.

Third: To propose the draft of the annual budget of the Federal Judiciary Authority and present it to the Council of Representatives for approval.

Second: Federal Supreme Court

Article 89:

First: The Federal Supreme Court is an independent judicial body, financially and administratively.

Second: The Federal Supreme Court shall be made up of number of judges, and experts in Islamic jurisprudence and law experts whose number, the method of their selection and the work of the Court shall be determined by a law enacted by a two third majority of the members of the Council of Representatives.

Article 90:

The Federal Supreme Court shall have jurisdiction over the following:

First: Oversight of the constitutionality of laws and regulations in effect.

Second: Interpretation of the provisions of the Constitution.

Third: Settle matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of each of the Cabinet, the concerned individuals and others of direct contest with the Court.

Fourth: Settle disputes that arise between the federal government and the governments of the regions and governorates, municipalities, and local administrations.

Fifth: Settle disputes that arise between the governments of the regions and governments of the governorates.

Sixth: Settle accusations directed against the President, the Prime Minister and the Ministers. That shall be regulated by law.

Seventh: Ratify the final results of the general elections for membership in the Council of Representatives.

Eighth:

A. Settle competency dispute[s] between the Federal Judiciary and the judicial institutions of the regions and governorates that are not organized in a region.

B. Settle competency dispute[s] between judicial institutions of the regions or governorates that are not organized in a region,

Article 91:

Decisions of the Federal Supreme Court are final and binding for all authorities.

Third: General Provisions**Article 92:**

Special or exceptional courts may not be established.

Article 93:

The law shall regulate the establishment of courts, their types, classes and jurisdiction and the method of appointing and the terms of service of judges, public prosecutors, their discipline and their retirement.

Article 94:

Judges may not be removed except in cases specified by law; such law will determine the particular provisions related to them and shall regulate their disciplinary measures.

Article 95:

A judge or public prosecutor may not:

First: Combine between the judicial job, and the legislative and executive jobs and any other job.

Second: Joining [sic] any party or political organization or perform any political activity.

Article 96:

A law shall regulate military judiciary and shall specify the jurisdiction of military courts, which will be limited to crimes of military nature that occur by members of the armed forces, security forces and within the limits stipulated by law.

Article 97:

It is prohibited to stipulate in law the immunization from appeal of any administrative work or decision.

Article 98:

It is permitted to regulate in a law the establishment of a State Council specialized in the functions of administrative judiciary, interpretation, drafting, and the State and various public institutions representation before the judicial bodies except those exempted by law.

Chapter Four: Independent Commissions

Article 99:

The High Commission for Human Rights, Independent Electoral High Commission and Commission on Public Integrity are independent commissions, which shall be subject to monitoring by the Council of Representatives. A law shall regulate their functions.

Article 100:

First: The Central Bank of Iraq, Board of Supreme Audit, Communication and Media Commission, and the Endowment Commissions are financially and administratively independent institutions. A law shall regulate the work of each of these institutions.

Second: The Central Bank of Iraq is responsible before the Council of Representatives. The Board of Supreme Audit and the Communication and Media Commission shall be attached to the Council of Representatives.

Third: The Endowment Commissions shall be attached to the Council of Ministers.

Article 101:

A commission named Foundation of Martyrs shall be established and attached to the Council of Ministers. Its functions and competencies shall be regulated by law.

Article 102:

A public commission shall be established to guarantee the rights of the regions and governorates that are not organized in a region in fair participation in managing the various state federal institutions, missions, fellowships, delegations, and regional and international conferences. The

commission shall be comprised of representatives of the federal government, and representatives of the regions and governorates that are not organized in a region and shall be regulated by a law.

Article 103:

A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of federal government experts and representatives and experts and representatives from the regions and governorates and shall assume the following responsibilities:

First: Ensure the fair distribution of grants, aid, and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.

Second: Ensure the ideal use and division of the federal financial resources.

Third: Guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that are not organized in a region in accordance with the established percentages.

Article 104:

A council named the Federal Public Service Council shall be established and shall regulate the affairs of the federal public service, including the appointment and promotion. A law shall regulate its formations and competencies.

Article 105:

Other independent commissions may be established according to need and necessity by a law.

Section Four

Powers of the Federal Government

Article 106:

The federal authorities shall preserve the unity, integrity, independence, sovereignty of Iraq, and its federal democratic system.

Article 107:

The federal government shall have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing and ratifying debt policies and formulating foreign sovereign economic and trade policy;

Second: Formulating and executing national security policy, including creating and managing armed forces to secure the protection, and to guarantee the security of Iraq's borders and to defend Iraq;

Third: Formulating fiscal and customs policy, issuing currency, regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy, and establishing and administering the Central Bank;

Fourth: Regulating standards, weights and measures;

Fifth: Regulating the issues of citizenship, naturalization, residency and the right to apply for political asylum.

Sixth: Regulating telecommunications and mail policy.

Seventh: To draw up the general and investment budget bill.

Eighth: Plan policies relating to water sources from outside Iraq and guarantee the rate of water flow to Iraq and its fair distribution in Iraq in accordance with laws and international conventions.

Ninth: General population statistics and census.

Article 108:

Oil and gas are the ownership of all the people of Iraq in all the regions and governorates.

Article 109:

First: The federal government with the producing governorates and regional governments shall undertake the management of oil and gas extracted from current fields provided that it distributes oil and gas revenues in a fair manner in proportion to the population distribution in all parts of the country with a set allotment for a set time for the damaged regions that were unjustly deprived by the former regime and the regions that were damaged later on, and in a way that assures balanced development in different areas of the country, and this will be regulated by law.

Second: The federal government with the producing regional and governorate governments shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encourages investment.

Article 110:

The following competencies shall be shared between the federal authorities and regional authorities:

First: To manage and organize customs in coordination with the governments of the regions and governorates that are not organized in a region. A law shall regulate that.

Second: To regulate the main sources of electric energy and its distribution.

Third: To formulate the environmental policy to ensure the protection of the environment from pollution and to preserve its cleanness in cooperation with the regions and governorates that are not organized in a region.

Fourth: To formulate the development and general planning policies.

Fifth: To formulate the public health policy in cooperation with the regions and governorates that are not organized in a region.

Sixth: To formulate the public educational and instructional policy in consultation with the regions and governorates that are not organized in a region.

Seventh: To formulate and organize the internal water sources policy in a way that guarantees fair distribution. A law shall regulate that.

Article 111:

Whatever is not stipulated in the exclusive responsibilities pertaining to the federal authorities will be considered among the prerogatives of the governorates and the regions that are not under a governorate. The other joint responsibilities between the federal [sic] and the provinces, in the case of a dispute, the priority will be to the province's law.

Section Five

Powers of the Regions Chapter One: [Regions]

Article 112:

The federal system in the Republic of Iraq is made up of a decentralized capitol, regions and governorates, and local administrations.

Article 113:

First: This Constitution shall approbate the region of Kurdistan and its existing regional and federal authorities, at the time this constitution comes into force.

Second: This Constitution shall approbate new regions established in accordance with its provisions.

Article 114:

The Council of Representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by a simple majority of the members present.

Article 115:

One or more governorate shall have the right to organize into a region based on a request to be voted on in a referendum submitted in one of the following two methods:

A. A request by one third of the council members of each governorate intending to form a region.

B. A request by one-tenth of the voters in each of the governorates intending to form a region.

Article 116:

The region shall adopt a constitution that defines the structure of the regional government, its authorities and the mechanisms of exercising these authorities provided that it does not contradict with this Constitution.

Article 117:

First: The regional authorities shall have the right to exercise executive, legislative, and judicial authority in accordance with this Constitution, except for those powers stipulated in the exclusive powers of the federal government.

Second: In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive powers of the federal government, the regional authority shall have the right to amend the application of the national legislation within that region.

Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge its responsibilities and duties, but having regard to its resources, needs and the percentage of its population.

Fourth: The regions and governorates shall establish offices in the embassies and diplomatic missions, in order to follow up cultural, social and developmental affairs.

Fifth: The Regional Government shall be responsible for all the administrative requirements of the region, particularly the establishment and organization of the internal security forces for the region such as police, security forces and guards of the region.

Chapter Two: [Governorates that are not incorporated in a region]

Article 118:

First: The governorates shall be made up of number of districts, sub-districts and villages.

Second: Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable it to manage its affairs in accordance with the principle of decentralized administration. A law shall regulate this.

Third: The governor, who is elected by the Governorate Council, is the highest executive official in the governorate to practice his powers authorized by the Council.

Fourth: A law shall regulate the election of the Governorate Council, the governor and their powers.

Fifth: The Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry. The Governorate Council shall have an independent finance.

Article 119:

Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments and shall be regulated by law.

Chapter Three: [The Capital]

Article 120:

First: Baghdad with its municipal borders is the capital of the Republic of Iraq and shall constitute, with its administrative borders, the governorate of Baghdad.

Second: A law shall regulate the status of the capital.

Third: The capital may not merge with a region.

Chapter Four: [The Local Administrations]

Article 121:

This Constitution shall guarantee the administrative, political, cultural and educational rights for the various nationalities, such as Turkmen, Caldeans, Assyrians and all other components. A law shall regulate this.

Section Six

Final and Transitional Provisions Chapter One: Final Provisions

Article 122:

First: The President of the Republic and the Council of the Ministers collectively or one-fifth of the Council of Representatives members may propose to amend the Constitution.

Second: The fundamental principles mentioned in Section One and the rights and liberties mentioned in Section Two of the Constitution may not be amended except after two successive electoral terms, with the approval of two-thirds of the Council of Representatives members, and the approval of the people in a general referendum and the ratification of the President of the Republic within seven days.

Third: Other Articles not stipulated in clause "Second" of this Article may not be amended, except with the approval of two-thirds of the Council of Representatives members and with the approval of the people in a general referendum and the ratification of the President of the Republic within seven days.

Fourth: Articles of the Constitution may not be amended if such amendment takes away from the powers of the regions that are not within the exclusive powers of the

federal authorities except by the consent of the legislative authority of the concerned region and the approval of the majority of its citizens in a general referendum.

Fifth:

- A. The amendment is considered ratified by the President of the Republic after the expiration of the period stipulated in clauses "Second" and "Third" of this Article in case he does not ratify it.
- B. An amendment shall enter into force on the date of its publication in the Official Gazette.

Article 123:

The President of the Republic, the Prime Minister, members of the Council of Ministers, the Speaker of the Council of Representatives, his two Deputies and members of the Council of Representatives, members of the Judicial Authority and people of the special grades may not use their influence to buy or rent any of the State properties, or to rent or sell any of their assets to the State, or to sue the State for it or to conclude a contract with the State under the pretense of being building contractors, suppliers or concessionaires.

Article 124:

The laws and judicial judgments shall be issued in the name of the people.

Article 125:

Laws shall be published in the Official Gazette and shall take effect on the date of its publication, unless stipulated otherwise.

Article 126:

Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.

Article 127:

Every referendum mentioned in this Constitution is valid with the approval of a simple majority of the voters unless otherwise stipulated.

Chapter Two: Transitional Provisions

Article 128:

First: The State shall guarantee care for families of martyrs, political prisoners and victims of the oppressive practices of the defunct dictatorial regime.

Second: The State shall guarantee compensation to the families of the martyrs and those injured due to terrorist acts.

Third: A law shall regulate matters mentioned in clauses "First" and "Second" of this Article.

Article 129:

The Council of Representatives shall adopt in its first session the bylaws of the Transitional National Assembly until it adopts its own bylaws.

Article 130:

The Iraq High Criminal Court shall continue its duties as an independent judicial body, in examining the crimes of the defunct dictatorial regime and its symbols. The Council of Representatives shall have the right to dissolve by law the Iraqi High Criminal Court after the completion of its work.

Article 131:

First: The High Commission for De-Ba'athification shall continue its functions as an independent commission, and in coordination with the Judicial Authority and the Executive institutions within the framework of the laws regulating its functions. The Commission shall be attached to the Council of Representatives.

Second: The Council of Representatives shall have the right to dissolve this Commission after the completion of its function by absolute majority.

Third: The nominee to the Position of the President of the Republic, the Prime Minister and the members of the Ministers Council, the Speaker and the members of the Council of Representatives, the President and members of the Federation Council, the corresponding positions in the regions, members of the Judicial committees and other positions included in the De-Ba'athification pursuant to the law may not be subject to De-Ba'athification judgments.

Fourth: The rulings mentioned in clause Third of this article remain valid, unless the Commission mentioned in "First" provision of this Article is dissolved.¹⁷⁰

Article 132:

First: The Property Claims Commission shall continue its functions as an independent commission in coordination with the Judicial authority and the Executive institutions in accordance with the law. The Property Claims Commission shall be attached to the Council of Representatives.

Second: The Council of Representatives shall have the right to dissolve the Commission by a two-thirds majority vote of its members.

¹⁷⁰ Fifth: Membership in the defunct Ba'ath party alone is not considered a sufficient basis for transfer to the courts, and a member enjoys equality before the law and its protection, as long as he is not subject to the rulings of the De-Ba'athification Commission and its bylaws.

Sixth: The Council of Representatives will form a parliamentary committee from its members to oversee and review the executive activities of the Supreme De-Ba'athification Commission and state agencies to guarantee justice, objectivity and transparency, and to examine its accordance with the law. The committee's decisions will be subject to agreement by the Council of Representatives. PROPOSED CONSTITUTION 2, supra note 166.

Article 133:

Application of the provisions of the articles related to the Federation Council, wherever it may be cited in this Constitution, shall be postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term that is held after this Constitution comes into force.

Article 134:

First: The expression "the Presidency Council" shall replace the expression "the President of the Republic" wherever it is mentioned in this Constitution. The provisions related to the President of the Republic shall be reactivated one successive term after this Constitution comes into force.

Second:

- A. The Council of Representatives shall elect the President of the State and two Vice Presidents who shall form a Council called "the Presidency Council," which shall be elected by one list and with a two-thirds majority.
- B. The special provisions to remove the President of the Republic present in this Constitution shall apply to the President and members of the Presidency Council.
- C. The Council of Representatives may remove a member of the Presidency Council with a three-fourths majority of its members for reasons of incompetence and dishonesty.
- D. In the event of a vacant seat in the Presidency Council, the Council of Representatives shall elect a replacement by a two-thirds majority vote of its members.

Third: Members of the Presidency Council shall be subject to the same conditions as members of the Council of Representatives and must also:

- A. Have completed forty years of age.
- B. Enjoy good reputation, integrity and uprightness.
- C. Have quit the defunct Party ten years prior to its fall, in case he was a member of the dissolved Ba'ath Party.
- D. Have not participated in suppressing the 1991 and Al-Anfal uprising. He must not have committed a crime against the Iraqi people.

Fourth: The Presidency Council shall issue its decisions unanimously and a member may delegate his place to any of the other members.

Fifth:

- A. Legislations and decisions enacted by the Council of Representatives shall be forwarded to the Presidency Council to approve it unanimously and to issue it within ten days from the date of delivery to the Presidency Council, except what was mentioned in

Articles (114) and (115) of this Constitution that pertain to the formation of regions.

B. In the event the Presidency Council does not approve, legislation and decisions shall be sent back to the Council of Representatives to reexamine the disputed issues and to vote on by the majority of its members and then shall be sent for the second time to the Presidency Council for approval.

C. In the event the Presidency Council does not approve the legislations and decisions for the second time within ten days of receipt, the legislation and decisions are sent back to the Council of Representatives who have the right to adopt it by a three-fifths non-appealable majority vote and shall be considered ratified.

Sixth: The Presidency Council shall practice the powers of the President of the Republic stipulated in this Constitution.

Article 135:

The Prime Minister shall have two deputies in the first term [electoral round].

Article 136:

First: The Executive Authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law.

Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this constitution, provided that it completes (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), in a period not to exceed (the thirty first of December two thousand and seven) [sic].

Article 137:

Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and agreements, shall be considered valid unless it is amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.¹⁷¹

¹⁷¹ First: At the start of its functioning, the Council of Representatives shall form a committee from its members, which will be representative of the main components of Iraqi society and the duty of which will be to present within a period no longer than four months to the Council of Representatives a report that includes recommendations for the necessary amendments that can be made to the Constitution. The committee will be dissolved after a decision is made on its proposals.

Article 138:

The Transitional Administrative Law and its Annex shall be annulled on the seating of the new government, except for the stipulation of Article 53(A) and Article 58 of the Transitional Administrative Law.

Article 139:

This Constitution shall come into force after the approval of the people thereon in a general referendum, its publication in the Official Gazette and the seating of the government that is formed pursuant to this Constitution.

Second: The amendments proposed by the committee will be put before the Council of Representatives in a single batch for approval. It will be considered approved by the agreement of an absolute majority of the number of council members.

Third: The articles amended by the Council of Representatives under the second clause of this article will be put before the people for a referendum within two months of the Council of Representatives' approval of them.

Fourth: The referendum on the amended articles will be considered successful with the agreement by an absolute majority of those who vote, unless it is rejected by two-thirds of those who vote in three governorates or more.

Fifth: This is an exception to Article 122 of this Constitution which concerns amending the Constitution. After the amendments discussed in this article are decided on, work will return to the terms of Article 122. PROPOSED CONSTITUTION 2, supra note 166.