

EU Human Rights Guidelines on the Promotion and Protection of Freedom of religion or belief (FoRB)

EPRID Master document

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This submission is the result of joint work by member organisations of the European Platform on Religious Intolerance and discrimination (EPRID), as well as two other organisations, based on the outline shared with Civil Society Organisations on 19 October. Participating organisations are listed at the top of the attached document.

This submission represents cumulative and shared knowledge and expertise on FoRB, and we trust that its content will be studied carefully by Member States, with a view to be reflected in the final version of the Guidelines.

EPRID participating organisations

- Bahá'í International Community
- Christian Solidarity Worldwide
- Church and Society Commission of the Conference of European Churches
- European Evangelical Alliance
- Human Rights without Frontiers
- Open Doors International
- Quê Me – Action for Democracy in Vietnam

Non-EPRID participating organisations:

- Forum 18 News Service
- Swedish Mission Council

Introduction

Why is it important to defend FoRB ?

- Recalling universality of the right, multiple ramifications, gateway to other freedoms, interdependence with other rights
- Link with discriminations and violence; important sensitivity of the subject and its importance for peace and security;
- One of EU strategic priorities (recall steps taken by the EU on FoRB)

On 25 June 2012, the EU Foreign Affairs Council adopted a new Strategic Framework and Action Plan on Human Rights and Democracy, including an action point on developing new public EU Guidelines on Freedom of Religion or Belief (FoRB)¹ as one of its early deliverables. The Guidelines shall “build upon existing instruments and documents, recalling key principles and containing clearly defined priorities and tools for the promotion of FoRB”². This commitment builds on the adoption of two sets of Council Conclusions in November 2009 and February 2011³, in which the EU reiterated its comprehensive understanding of FoRB in line with international human rights standards, committing itself to take action in this field.

The EU recognises the importance of protecting and promoting the inderogable right to FoRB in itself as an essential, fundamental freedom of each individual, regardless of his or her belief or conviction. The key principles guiding the EU in this field are universality, interrelatedness and interdependence of FoRB with other human rights and fundamental freedoms, and the indivisibility of these mutually reinforcing rights, whether civil, political, economic, social or cultural by nature. The EU recognizes that the freedom of thought, conscience, and religion is a primary and essential human right that is integral and essential to other human rights and fundamental freedoms by individuals and minority or majority groups alike, safeguarding diversity based on mutual respect in any given society or context at any time.

The EU further recognises the positive consequences of promoting FoRB for the broader society, as FoRB is an essential factor for peace and stability, democratisation and development, the realisation of other human rights and fundamental freedoms⁴. The EU notes with concern research findings suggesting that 75% of the world’s population lives in countries with high or very high restrictions on religion or belief.⁵ Such restrictions tend to

1 “Freedom of religion or belief” or “freedom of thought, conscience and religion” refer to the same fundamental freedom. “Belief”, “conscience”, “thought” and “religion” are some of the words used in an interchangeable way throughout this document to refer to the object of this right.

2 Action number 23 of the Action Plan, in Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12, p. 18. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf. Retrieved 24 October 2012.

3 Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief, Brussels, 17 November 2009 <http://www.consilium.europa.eu/uedocs/cmsUpload/111190.pdf>, and Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief, Brussels, 21 February 2011. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/119404.pdf, retrieved 29 October 2012.

4 Forum 18 News Service, OSCE REGION: OSCE commitments on freedom of religion or belief, Oslo, 22 September 2009, http://www.forum18.org/Archive.php?article_id=1351&pdf=Y, retrieved on 29 October 2012.

5 The Pew Forum on Religion & Public Life, Rising Tide of Restrictions on Religion, September 2012, <http://www.pewforum.org/Government/Rising-Tide-of-Restrictions-on-Religion-findings.aspx>. Retrieved 31 October 2012.

result in violent tensions and conflict over time.⁶ The EU recognises that violations of FoRB are widespread and complex, affecting individuals holding all forms of beliefs in all regions of the world, including Europe. There is a need to prevent and address such violations in a timely, consistent and coherent manner.

The following Guidelines aim to contribute to this need. The document has a section on the purpose and the scope of the Guidelines, followed by a definition on FoRB according to international human rights standards and key instruments in this regard. The following section is an operational overview providing a set of EU objectives, priority themes, specific tools in FoRB promotion and protection. It identifies the responsibility areas of different EU actors involved, their interaction with third countries, international and regional organisations, other key stakeholders, such as civil society, human rights defenders and academic experts. The Guidelines also identifies the need for stepping up the EU's training capacity on FoRB and for mainstreaming FoRB into EU development cooperation. The final section provides an overview of monitoring and reporting the Guidelines, since reviewing the Guidelines and assessing their implementation are important for ensuring that the EU's actions in this field are both timely and needs-based. Finally, the Guidelines have two annexes, a non-exhaustive list of international norms, standards and principles pertaining to FoRB, as well as a list of guiding questions for identifying and analysing violations of FoRB in third countries or regions.

Purpose and scope

What do we want to achieve by putting together those Guidelines ?

- Public affirmation of determination to promote and protect FoRB
- Additional operational tool to the EU / instrument to assess a given situation and to engage, if necessary
- Help raising awareness (third countries / multilateral fora)

The new set of EU Guidelines on FoRB is not a legally binding document. However, it gives a strong political signal that FoRB is a priority for the EU in its internal and external policies. The purpose of the Guidelines is to publicly affirm and to raise awareness of the EU's stance on FoRB with third countries, international and regional organisations, and civil society. It provides practical and operational guidance to the EU Headquarters, EU Member States, EU Delegations, Representations and Embassies to be used in contacts with relevant actors on promoting and protecting FoRB in a pragmatic, consistent and coherent way. It seeks to enable the EU to proactively identify and react to cases of FoRB violations in different parts of the world, and to address structural causes that lead to these violations in order to prevent such violations in the future.

These new Guidelines take full account of the already existing EU Guidelines on Human Rights and International Humanitarian Law, thus reinforcing and supporting the EU's human rights policy in general. The Guidelines on the death penalty, on torture and other cruel, inhuman or degrading treatment or punishment, on human rights defenders, on

⁶ Brian J. Grim & Roger Finke, *The Price of Freedom Denied. Religious Persecution and Conflict in the Twenty-First Century*, Cambridge University Press, 2010.

violence against women and girls and combating all forms of discrimination against them, and on the promotion and protection of the rights of the child are particularly relevant.

Definition

What basis/definition do we agree on ?

- UDHR, ICCPR – articles 18
- Recall of definition given in 2009 Council Conclusions

For the purposes of these Guidelines, Freedom of religion or belief (FoRB) is defined in Article 18 of the International Covenant on Civil and Political Rights, which is to be read in the light of the UN Human Rights Committee's authoritative interpretation in General Comment 22. Paragraph 1 of Article 18 states:

“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 [*sic*] choice, and freedom, either individually or in community with others and in public or private, to manifest his [*sic*] religion or belief in worship, observance, practice and teaching.”

General Comment 22 notes, among other points, that: “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” Also, Article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally ...” Coercion to change, recant or reveal one’s religion or belief is equally prohibited. (§3) Art. 18 “cannot be derogated from, even in time of public emergency.” (§1)

FoRB is also protected by the European Convention for the Protection on Human Rights (Art. 9) which is legally binding in all 47 member states of the Council of Europe. As the Council of the EU recalled in its November 2009 Conclusions on freedom of religion or belief: “freedom of thought, conscience, religion or belief applies equally to all persons. [...] The freedom also covers the right to adopt, change or abandon one’s religion or belief, of one’s own free will.”

The Conclusions also underlined “that States have a duty to protect everyone ... from discrimination, violence and other violations. States must ensure that their legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion or belief to all without distinction.”

The Lisbon Treaty underlines that the inspiration for the European Union is drawn from the “cultural, religious and humanist inheritance of Europe”⁷. Article 10 of the TFEU⁸ stipulated

7 “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.” UDHR, art. 18.

8 “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

that in *defining* and *implementing* its policies, the Union will combat discrimination based on ...religion or belief. In Art. 13 respect for religious rites and cultural traditions was underlined. Finally Art. 17 invited the churches, religious communities and philosophical and non-confessional organisations to an “open, transparent and regular dialogue” with the European Institutions, on par with the wider civil society, as stated in Art. 11. In the Charter of Fundamental Rights of the EU, one can find principles pertaining to the protection of FoRB in Chapters II (Freedoms) and III (Equality). Art. 10 thus states: “Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance”⁹.

Article 18 recognises the right of people to “manifest” their religion or belief, and, like other international human rights standards, does not give a complete list of possible “manifestations”. As General Comment 22 notes, this “encompasses a broad range of acts”. Only “manifestations” may be limited, not the freedom itself. The only permissible limitations are discussed in General Comment 22.

FoRB is intertwined with and reinforces the rule of law and the other universal human rights, such as the freedoms of movement, expression, peaceful assembly, and association. An accessible discussion of key international human rights law issues affecting freedom of religion or belief, including the complete texts of Article 18 and General Comment 22, may be found in the downloadable Council of Europe Venice Commission / OSCE “Guidelines for Review of Legislation Pertaining to Religion or Belief”¹⁰.

Operational Guidelines:

How do we concretely promote and defend FoRB ?

1. Basic principles of action and priorities

EU objectives and priorities of action – in other terms, what are the priority thematic issues and objectives that the EU should be working on. What key messages should cut across all EU advocacy on the issue ?

Address the type of violators (governmental/societal): primary duty lies with States to ensure that all conditions to FoRB are met, but also make due diligence to enforce legislation protecting FoRB.

Ensure that these are in line with the EU guidelines on Human rights and HRCS

Priority themes:

- Equality and Non-discrimination
- Support and Protection for Human Rights Defenders
- Decriminalisation of blasphemy *(not addressed in this document, but may be covered in a future briefing note)*
- **Issues pertaining to changing one’s religion or belief, and protection**

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.” ICCPR, art. 18.

⁹ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument)

¹⁰ OSCE Office for Democratic Institutions and Human Rights, Guidelines for Review of Legislation Pertaining to Religion or Belief, Venice, June 2004, www.osce.org/odihr/13993, retrieved on 25 October 2012.

from coercion in the choice or exercise of religion or belief

- Protection from coercion in the manifestation of religion or belief
- Civil and family law
- Protection and support to victims
- Protection of cultural and religious heritage sites and places of worship, and related issues such as registration requirements
- Promotion of interreligious and intercultural dialogue / combating religious intolerance (*not addressed in this document, but may be covered in a future briefing note*)

IV.1. BASIC PRINCIPLES OF ACTION AND PRIORITIES

IV.1.1. Basic principles concerning FoRB

EU action on Freedom of religion or belief will be based on the following key principles and approaches.

1. Freedom of religion or belief (FoRB) for all.

The right to freedom of thought, conscience, and religion or belief, is inherent in humanity and rooted in the inviolable dignity of each human individual, in particular in the character of reason and conscience. As a birthright of belonging, freedom of conscience is the equal right of all human beings regardless of their religion, gender, race, class, language, nationality, political or other opinion, and regardless of any mental and physical handicap, any social, economic or educational deprivation, or any possible grounds of discrimination.¹¹

As the Council of the EU recalled in its November 2009 Conclusions on freedom of religion or belief: “freedom of thought, conscience, religion or belief applies equally to all persons. [...] The freedom also covers the right to adopt, change or abandon one’s religion or belief, of one’s own free will.” A key overarching message is that *all people have the right to freedom of religion or belief*. There are practically no contexts where FoRB is seriously violated where the human rights of only those belonging to one community are violated, even if those belonging to some communities are reluctant to call attention to infringements for fear of reprisals. Therefore, care should be taken to ensure that language reflects this.

2. The EU prioritises a long-term, proactive approach to the promotion of freedom of religion or belief for all, coupled with a vigorous response to acute situations arising in particular contexts, or for particular groups.

Freedom of thought, conscience, and religion, or freedom of religion or belief, protects different aspects of religious freedom that are integral, interlocking and essential for a full understanding of freedom. To the extent that a society protects all these aspects of freedom for people of all faiths and none, it may be considered free and just, for freedom too is an

¹¹ See The Global Charter of Conscience, Brussels, 2012, http://charterofconscience.org/?page_id=42 (Article 2), retrieved on 26 October 2012. The Global Charter of Conscience is a declaration drafted by an international group of 50 academics, religious leaders and human-rights defenders, reaffirming and supporting Article 18 of the Universal Declaration of Human Rights. It carries a Special Recommendation by the UN Special Rapporteur on Freedom of religion or belief, Dr Heiner Bielefeldt.

aspect of social justice. Conversely, to the extent that a society refuses to protect any or all of these aspects of freedom, it forfeits its claim to freedom and justice.¹²

It is rarely the case that only one religious or belief community faces repression in a given country. Commonly, members of all religious minorities, together with dissenting schools of thought within the (majority) religion and people who reject religion all together face repression of varying forms and degrees. In countries where politics and religion are closely linked, political dissent and religious dissent are closely intertwined. FoRB for religious majorities, in the form of the right to hold and express dissenting religious views, as well as for minority populations is therefore crucial to democratic development. Therefore, if human rights violations affecting followers of one belief are observed or reported, full understanding and careful investigation/enquiry of the situation should be ensured in order to ascertain the wider dimensions of the violation and who else is affected. As former UN Special Rapporteur on Freedom of Religion or Belief Asma Jahangir commented, “When I am asked which community is persecuted most, I always reply ‘human beings’.”

Religious minorities and dissenting voices in society are extremely vulnerable and in urgent need of support in many countries and at regional levels. Such situations must be vigorously responded to. *The EU should have robust and predictable mechanisms for such responses, which are applied regardless of the religion or belief concerned.*

When acting to highlight the situation of specific groups, the EU should nonetheless base its response on an analysis of the full picture concerning FoRB for all in the country and region concerned, and as the goal, maintain the development of equal rights and security for all.

3. Avoid assumption that freedom of religion or belief is respected on the basis of visible manifestation for minority communities

Freedom of religion or belief is a human right with many dimensions. In the experience of civil society organisations, diplomatic personnel often assume that FoRB is respected in a country if minority communities appear to be free to practice their faith, for example if a number of places of worship for minority communities exist and can be freely used.

This is unfortunate as such an approach focuses solely on FoRB as a minority right, a collective right and freedom to worship. Generally, minority communities face major problems in securing places of worship in numerous countries, which must be addressed. FoRB is, however, much broader than this.

EU delegations and EEAS representatives should not make assumptions about the state of freedom of religion or belief, but engage in a proper analysis of the situation before drawing conclusions.

For example, in some states minorities are free to worship, but legislation prevents members of minority belief communities from holding political office, state employment or being members of the military. Majorities also face serious violations. For example, some states respect minority rights to manifest religion but limit the right of members of the majority religion to leave that religion. Such legislation is a violation of the inalienable right of all citizens to choose their religion or belief, regardless of how many actually wish to do so. Such laws have a chilling effect, force people who do leave/change religion or belief/conviction to keep this secret and contribute to the social intolerance of apostates, including honour killings and mob violence.

¹² Global Charter of Conscience, Article 5.

4. Assert the primacy of the rights of the individual, whilst defending the importance of collective dimensions of FoRB

Freedom of thought, conscience, and religion or belief is the right of believers, not beliefs, and a protection for human beings rather than ideas. The pertaining rights apply not only to individuals, but to individuals in community with others, associating on the basis of religion or belief. Each person treasures the rights that inhere as in their person as an individual. Equally, each person treasures membership in families, communities, religious groups, and other deep affiliations that are essential to culture. The rights of people in association are as meaningful and significant as the rights we enjoy as individuals.¹³

No community of faith or conviction has rights that are superior to any other community, but FoRB-related rights are rights both for individuals and individuals in community because belief is both an individual assent and an associative practice. As such, religious groups must be free to govern their internal affairs free from governmental or outside interference in questions of doctrine, ethics, selection of leaders, design of organizational polity, the admission and dismissal of members, and the future direction of the organization or community.

Freedom of religion or belief is a human right which has both individual and collective dimensions. Serious violations of the collective dimensions of FoRB occur in many countries (e.g., denial of legal identity to religious communities, denial of permission for or destruction of places of worship). The collective dimension of FoRB is of great importance for peace and security and for the ability of individuals to manifest their religion. It must be vigorously defended.

At the same time, the relationship between FoRB as a collective right and as a right for individuals lies at the heart of many conflicts over the interpretation of FoRB and its relationship to other rights. It is important that EU delegations and EEAS personnel understand these conflicts, the relationship between collective and individual dimensions and are able to engage in dialogue around these issues.

5. Involve a wide range of actors, be aware of pitfalls

Consultation and cooperation with civil society organisations, including religious communities, is vital both as a basis for analysis of the situation in country and for developing and implementing strategies to promote FoRB. Religious communities hold important knowledge and are likely to be key actors in promoting (or undermining) FoRB in society. It is therefore vital that consultation and strategy development include religious actors.

The choice of who to dialogue with is complex in relation to religious actors.

- Religious groups are not internally homogenous but encompass differing schools of thought. Differing traditions within religions often co-operate closely, but in some contexts represent competing social, political and religious agendas. Thus the choice of who to engage in dialogue with can be highly sensitive.
- Smaller and non-traditional groupings are often neglected in consultations and excluded from inter-religious dialogues, despite being particularly vulnerable.

¹³ Global Charter of Conscience, Articles 2 and 11 (partim).

- In some contexts religious groupings are co-opted by the state, or too afraid of reprisals to dare highlight violations. This may lead to information gained being unreliable or incomplete.
- Although religious communities have historically been at the forefront of the struggle for religious freedom, there is no guarantee that religious communities or leaders accept the right of others to FoRB. Some religious groups may be politically and socially advantaged by a lack of religious freedom for others. Neither is there any guarantee that the FoRB of members of the community is respected by the collective to which they belong, something which may particularly affect women.

In the light of the above, it is strongly recommended that consultations should include a wide range of religious and non-religious actors, including domestic and international human rights and women's organisations. EU delegations should make active efforts to provide safe space for groups to inform about violations without risk of reprisals from the state or other actors.

Another potential pitfall stems from the widespread conceptual confusion around what FoRB involves. Many assume it to involve protection for religions rather than rights for individuals which may be expressed communally. Groups may support or oppose FoRB on the basis of this misunderstanding. Women's organisations may be suspicious of FoRB agendas, given the manner in which FoRB has been misused to prevent the furtherance of women's rights, not least within the framework of the UN Commission on the Status of Women. There is therefore a significant risk of misunderstanding.

In the light of this, it is important that EU delegations make efforts to ascertain how the right is understood by dialogue partners and make clear the EU's understanding of FoRB.

EU delegations and EEAS staff should also be aware that some actors, including belief communities, holding important information are not able to express themselves in the language of rights and may express negative attitudes towards actors or communities that they experience hostility from. Their input is none-the-less important.

IV.1.2. Priority themes

IV.1.2.1. Equality and non-discrimination

Key message:

1. The European Union recalls its deep commitment to human rights, including freedom of religion or belief, as well as to equality. Equality rests on the inviolable dignity of all human beings and extends to the enjoyment of all human rights. The right to freedom of thought, conscience, and religion or belief is absolute and unlimited in terms of belief, though not in terms of practice. No human being should therefore suffer discrimination, persecution, penalties, imprisonment, or death because of beliefs with which others disagree.
2. The EU denounces any form of discrimination on grounds of religion or belief. Such practices go against the right to equality and non-discrimination in the enjoyment of human rights as stated in Articles 2 and 26 of the International Covenant on Civil and

Political Rights and Article 2 of the International Covenant on Economic, Social and Cultural Rights.

3. The European Union reminds that it is a state's duty to ensure equality and non-discrimination in protecting all people's human rights, and to ensure that people treat each other in an equal and non-discriminatory way. The principle that the right to freedom of thought, conscience, and religion or belief is inalienable and equal for all represents a universal, cardinal rule for religious freedom, and underscores the importance of the universality of rights in different societies and nations. There are no rights exclusive to any privileged religion, worldview, or group. Any assertion of a claim to rights with respect to religion or belief, whether in regard to freedom to believe, or to worship, or to build places of worship, or to seek to persuade others, automatically requires the claimants to offer that same right to people of all other religions and beliefs.

Explanation:

Discrimination is perhaps the most widespread feature of FoRB violation. Discrimination on grounds of religion or belief can be direct and indirect. It can also intersect with other grounds of discrimination, such as race and ethnic or cultural origin, gender, or disability. Direct discrimination is defined similarly under both the ECHR and EU legislation. Direct discrimination is taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of religion or belief. Indirect discrimination happens when the same treatment is offered to people who are in different situations, in which case the effects of that treatment will apply differently to people with different religions or beliefs (e.g. taking paths or participating in military service). Indirect discrimination also occurs where an apparently neutral provision, criterion or practice would put persons of a certain religion or belief at a particular disadvantage compared with other persons.

Discrimination could be based on the stereotyping of people belonging to a group defined by a real or supposed common religion or belief, making a strict dependence between belonging to the group and negative features of the person. This is termed "labelling".

Multiple discrimination can also occur when one or several other grounds than religion or belief are found to improperly discriminate against a person or a group of people. For example, both religion and social origin may be used as a ground of discrimination (in the case of Coptic Christians in Egypt). In another example, it may be religion, language and culture or traditions (in the case of Uyghur Muslims and Christians in China).

It should be noted, however, that states have a duty to protect the equality of all people (citizens as well as non-citizens) before the law, including in civil matters and in punishing discrimination among the population. In some cases, members of a minority group may be guilty of discriminating individuals of a majority group. In other instances, minorities within minority groups may suffer discrimination. Caution should therefore be exercised in addressing discrimination on grounds of religion or belief, realising that all people, whether or not exercising freedom of religion or belief, may fall prey to unfair treatment, and other grounds of discrimination may be at work.

IV.1.2.2. Support and Protection for Human Rights Defenders

Key messages:

1. The European Union supports the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. In this regard, the EU encourages states to support and protect the work of human rights defenders. This includes those advocating for FoRB and, in particular, those representing religious or belief-based communities, as well as their organisations.

Explanations:

All states should respect human rights defenders as stated in the International Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (adopted in 1998 by the United Nations General Assembly). In spite of this, human rights defenders (journalists, activists, lawyers, trade unionists etc.) working in the promotion and protection of FoRB frequently become targets for persecution and human rights violations. This is especially the case in countries where governments ban or prevent free public discussion on FoRB and restrict freedoms of association and expression on these issues.

In order to be consistent with the progress made with regard to the implementation of the EU Guidelines on human rights defenders, the actions of the EU in this area should be guided by the following:

- Encouraging third countries to adopt a culture of general respect towards and recognition of the work carried out by human rights defenders, including those working on FoRB on behalf of churches and religious associations or communities, philosophical, non-confessional organisations and civil society organisations.
- Prioritising its work in countries where there is lack of reporting or respect towards human rights defenders in general and specifically defenders of human rights working on the FoRB matters. Equally, those who work on FoRB issues in churches and religious associations or communities, philosophical and non-confessional organisations and civil society organisations should be prioritised, in particular where legislative changes and the imposition of criminal sanctions have had a negative impact on the work carried out by human rights defenders in relation to the human rights of individuals and church, religious and non-confessional and philosophical communities.

IV.1.2.3. Issues pertaining to changing one's religion or belief, and protection from coercion in the choice or exercise of religion or belief

Key message:

1. The European Union is deeply committed to freedom of expression and freedom of thought, conscience and religion or belief, and respects equally all people's rights to have a religion or belief. The EU reminds that these freedoms entail a right for individuals

(including in community with others) to seek to persuade others of any religion or belief, to freely access information about religion or belief, and change one's religion or belief. Conversely, individuals (including in community with others) are free to seek to prevent individuals, through non-coercive means, from changing religions or beliefs, or refuse to do so themselves. Such freedoms are all equal and must be treated equally, limited only as a matter of exception, which demands restrictive conditions prescribed in universally-recognised international instruments, such as the International Covenant on Civil and Political Rights.

2. The EU reminds that states' duties are to ensure the free exercise of freedom of religion or belief, including freedom in changing one's religion or belief, which demands the implementation of respect between people for such free exercise. It therefore reprobates of any legislation, administrative, civil or criminal, penalising individuals for changing their religion or belief, for inducing others to change a religion or belief, or for preventing others from changing religions or beliefs.
3. The EU expresses deep concern over convictions to death penalty for people exercising their right to change their religion or belief. The EU strongly opposes the death penalty in all circumstances. It condemns all executions wherever they take place, and calls on all nations to enforce the implementation of the UN resolution on a universal moratorium on executions and repeal legislation providing for the death penalty where people are found to have changed religions or beliefs.
4. The EU is firmly opposed to the use of coercive measures on individuals in their choice or exercise of religion or belief, impairing people's freedom of religion or belief by the use of practices that use compulsion to go beyond reasonable persuasion. It calls for an equal respect for freedom of religion or belief as well as all human rights universally, by people as well as states. Equality in this respect also entails an equal application of measures aiming to fight against coercion in religion or belief, which states must ensure.

Explanations:

Threats and limitations on the right to change one's religion or belief are among the most prominent features of FoRB violation. Work in countries where these threats and limitations exist should therefore be prioritised. The freedom to have, adopt or change one's religion or belief is absolute and may never be limited.¹⁴ FoRB furthermore provides that no-one shall be subject to coercion which would impair the individual's freedom to have or adopt a religion or belief of their choice, even when this includes abandoning a certain religion or belief.¹⁵

Threats of physical force or penal sanction to force persons to adhere, recant or convert are not permitted. Policies or practices having the same intention, such as those limiting access to social services are also in violation of the ICCPR, as per General Comment 22, §5. Categories of change of a person's religion or belief include *conversion* (the change from a certain religion or belief to another), *heterodoxy* (the adoption of alternative or non-mainstream sets of belief within one religion or belief system), and *apostasy*.

¹⁴ UDHR Article 18, ICCPR Article 18 §1, General Comment 22 §3.

¹⁵ ICCPR Art. 18(2).

Internationally, legislation pertaining to apostasy – the (negatively) perceived renunciation of a religion or belief system – remains a major problem for the advancement of FoRB. Legislation in at least 14 states provides for some form of criminal or civil punishment for apostasy, and repressive opinions on apostasy remain dominant among the population in many countries.¹⁶ “As the number of apostate communities has significantly increased in the Middle East, North Africa and Asia over the past twenty years, human rights abuses have been more regularly reported.”¹⁷

Sanctions include loss of employment, property, or inheritance, marriage annulment, loss of custody of children, and other penalties. Other provisions (e.g. treason or insult to national identity) are also used to penalise apostates. Equally, some civil administrative provisions allowing discrimination among people on grounds of their religion or belief (e.g., compulsory registration of religion or belief on identity documents linked with conditional access to social rights and benefits) constitute a hindrance to their freedom to change their religion or belief. In addition to state coercion, social actors also subject individuals to coercion in the question of religious or belief choice, including within the context of a religious group or the family. The state has a duty to protect citizens from such coercion. Generally applicable criminal laws provide the most appropriate protection from coercion for citizens (e.g., general protections from bribery, fraud, threats, kidnapping, assault and honour-based violence). Such crimes should be prevented, investigated and prosecuted.

It should be noted that sharing information about religions or beliefs and engaging in persuasion on these matters does not of itself constitute coercion, but is protected by the freedoms of expression, information and religion or belief. Whilst this is admittedly a sensitive issue in many countries, freedom to express oneself about one’s religion or belief, and related rights to share information pertaining to it, is also admittedly a vital dimension of religions and beliefs. The right to express one’s religious convictions and to attempt to share them with others is covered by the right to FoRB, provided that the right to engage in religious persuasion is not coercive, impairing other people’s FoRB by the use of practices that use compulsion to go beyond reasonable persuasion. Whilst expansive protection for the expressive and religious or belief-related rights involved is required, caution should be used with regard to possible abuses, with equality and reciprocity (*Are people of various religions or belief in principle equally free to engage in persuasion with one another?*) as well as incitement to hatred (*Does expression use negative stereotyping? Does it incite to hatred or violence against people on grounds of their religion or belief?*) as tests.

It should also be noted that states are obliged to respect the liberty of parents, and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child. (Article 5 of the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child).

Some states have legislation which specifically seeks to protect citizens from forcible conversion. In some cases such laws, whilst apparently having a legitimate motive, are vaguely formulated and open to abuse, threatening the rule of law as well as the right to

¹⁶ Christian Solidarity Worldwide, *No place to call home: Experiences of Apostates from Islam; Failures of the International Community*, New Malden, 2008, <http://dynamic.csw.org.uk/article.asp?t=report&id=94&search=>, retrieved on 30 October 2012.

¹⁷ *Ibidem*.

leave or adopt a religion or belief, and rights to freedom of expression. Minorities are particularly vulnerable in relation to abuses of such laws.

The right to freedom of thought, conscience, and religion or belief, “contains a duty as well as a right, an obligation and not only an entitlement, because a right for one person is automatically a right for another and a responsibility for both. All citizens are responsible for the rights of all other citizens, just as others are responsible for theirs. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.”¹⁸

IV.1.2.4. Protection from coercion in the manifestation of religion or belief

Key message:

1. The European Union insists that FoRB is a universal right equally enjoyed by all human beings, which includes the right to participate in certain practices, or refuse to do so, or do so differently from expectations. Equality also includes that women and men alike should choose freely to manifest religion or belief. The EU therefore opposes coercion in the manifestation of religion or belief.

Explanations:

FoRB provides the individual with the right to decide what they believe and how they wish to manifest those beliefs. Protection from coercion implies that the manifestation of religion or belief shall be voluntary.

Some states mandate particular forms of religious or belief manifestation. All requirements to manifest religion or belief, for example in the form of legal requirements to wear religious clothing or observe religious practices are in violation of FoRB. Such requirements often have a particularly negative effect upon FoRB and other rights of women. The EU asserts every woman’s right to determine her beliefs herself and the manner in which she will manifest them, and to protection from state or societal coercion.

Numerous states limit particular forms of religious or belief manifestation. The manifestation of religion or belief may only be restricted under strictly limited circumstances set forth in ICCPR Article 18 §3, namely that limitations shall be “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” It should be noted that the word ‘necessary’ provides a narrow margin for limitations. In reflecting on the legitimacy of proposed or actual limitations on religious manifestations, delegations may find the following questions useful: *Is the limitation sufficiently clear as to give notice of what is and is not prohibited? Is the purported basis for the limitation congruent with those identified in the limitations clause (Art. 18(3) ICCPR)? Is the limitation proportionate to the public interest that is served?* Add footnote: I think this is from the ODIHR guidelines.

18 Global Charter of Conscience, Article 9.

IV.1.2.5. Protection of cultural and religious heritage sites and places of worship, and related issues such as registration requirements

Key message:

1. In coherence with Art. 17 TFEU, the European Union respects and does not prejudice the status of religious heritage sites and places of worship. However, on grounds of protection of human rights, in particular freedom of religion or belief, as well as protection of cultural heritage (in particular treasures possessing artistic, historic or archaeological value), the EU firmly condemns violence and acts of terrorism targeting religious heritage sites and places of worship, and people gathered in these places.
2. The Union reiterates the duty of public authorities to ensure that individuals in community with others enjoy freedom of religion or belief, including when practicing religion or belief in private or in public. Public authorities must equally protect the right to private life, and ensure that limitations to freedom of religion or belief are exceptional and in compliance with international standards.

Explanation:

Under freedom of religion or belief, freedom of association, the right to private property, the safety of people and property, as well as the protection of cultural heritage¹⁹ and treasures possessing artistic, historic or archaeological value²⁰, particular attention must be paid to the protection of religious heritage and places of worship, insofar as they are seen as instrumental for realising freedom of religion or belief. In situations where FoRB is violated, religious heritage sites and places of worship often become choice targets for attacks and other acts of violence, because they symbolise the visible presence of communities whose religion or belief is not tolerated. Notorious destruction of religious heritage has taken place recently in Afghanistan, Cyprus, Egypt, Kosovo and Mali. Protecting these places becomes a particular priority when groups of people gathered in these places are in danger.

According to traditions, various names can be given to describe these places – several names sometimes describing the same places. Also, they may include easily identifiable landmarks as well as less identifiable buildings or constructions. Common names given to places of worship vary. They include, but are not limited to: *basilica, cathedral, chapel, church, crypt, house of prayer, masjid, mausoleum, meeting house (or sometimes simply 'house'), mosque, musalla, pagoda, sepulcher, shrine, synagogue, temple, and worship hall (or sometimes simply 'hall')*.

Delegations should equally advocate for the protection of people exercising freedom of religion or belief in places not dedicated to religion or belief administratively. One common feature of FoRB violation is for authorities to refuse people's right to exercise FoRB on grounds that the place where exercise is carried out is not dedicated to it. In many states, this even includes refusing exercise of FoRB in private places, in particular homes or private rooms.

19 As Parties to the 1955 European Cultural Convention, all EU Member States recognise that safeguarding national cultural heritage (including religious heritage) is instrumental to "a greater understanding of one another." As visible marks of cultural diversity, religious heritage sites and places of worship help foster a climate of tolerance and respect and constitute a very sign of such tolerance and respect.

20 In the context of trade, Art. 36 TFEU justifies special protection for "the protection of national treasures possessing artistic, historic or archaeological value."

Any limitation to freedom of religion or belief is a matter of exception, which demands restrictive conditions prescribed in international instruments, such as the *International Covenant on Civil and Political Rights*.²¹ In particular, measures or laws concerning the use of (private or public) premises for religious or belief-related ends should not be adopted in way either to prohibit legitimate religious or belief-related activities or to impose unfair limitations on individuals exercising FoRB. The following are some of the major problem areas that may be addressed: Registration of religious or belief-related organisations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits. Individuals and groups should be free to practice their religion or belief without registration if they so desire. High minimum membership requirements should not be allowed with respect to obtaining legal personality. Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.

IV.1.2.6. Civil and family law

Key message:

1. The EU reiterates that all human rights, as well as civil and family law aim to protect people, especially the vulnerable in the society. Legislation derived from a certain religion or belief and tradition, though legitimate, must promote people's full enjoyment and exercise of freedom of religion or belief, within the restricted permissible limitations provided in universally-recognised human rights instruments, especially the *International Covenant on Civil and Political Rights* read in the light of *General Comment 22*.
2. The EU underlines that FoRB protects the right of individuals, as well as individuals in community with others, to create social and family regulations. Official legislation, however, must conform to international and universally-recognised human rights standards, and ensure that private law or customs do not violate freedom of religion or belief for individuals or individuals in community with others.

Explanations:

All law is developed in a social context and is inevitably influenced by worldviews, including religious worldviews of the society in which it is found. Legislation, including secular laws, may to a greater or lesser extent have a religious basis, which in itself is not violation of FoRB. However, specific laws having a basis in religious or other beliefs and traditions which are not consistent with international obligations violate human rights, including the right to freedom of religion or belief and equality. This is particularly notable in the area of civil and family law and has major implications for the status of women, children, LGBT persons, migrants, and minority religious and belief communities. FoRB protects the right of individuals, as well as individuals in community with others, who can make up social and family regulations. No state, nor organised religious groups, can therefore enforce religious laws, even by collective will, on individuals, where such laws and regulations undermine universal human rights principles, including particularly freedom from coercion. Universal principles are established to protect individuals by placing

21 Global Charter of Conscience, Article 8.

constrains on society's pursuit of collective goals, including goals related to religion or belief. The right to voluntarily observe rules pertaining to religion or belief is on par with protection from coercion, and both rights need to be promoted equally.

Laws that resonate with the worldviews held by citizens are more likely to be enforced and obeyed, contributing to strengthening the rule of law. However, laws that violate human rights, regardless of their their basis, must be reformed. Contextualised processes and local actors that draw upon religious and other worldviews to promote reform are of importance to changing such laws.

The EU should take particular notice of and position against social and family laws that discriminate against the status of women, children, LGBT persons, migrants, and minority religious and belief communities. The following examples highlights the interconnectedness of civil and family law, FoRB and a wide range of other rights: Under discriminatory law inter-religious marriages can be prohibited and women do not enjoy the same amount of freedom in their choice of marriage²². When one family member has changed or abandoned his/her religion or belief, often the law, family, or society enforces a divorce. This does not only have impact on the financial position as one can lose his/her job or be disowned from their own enterprise, but one can also lose custody right of children for religious or belief-related reasons. Furthermore, couples can be prohibited from adopting children as they do not adhere to the majority or state-supported religion or ideology, even though states are obliged to respect the liberty of parents, and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child²³. In addition, in several countries girls fall victim of abduction, rape and/or forced marriage with a man of the majority religion or belief, often without legal resort for the victims or their family²⁴.

IV.1.2.7. Protection and support to victims

Key message:

1. The EU stipulates that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law²⁵. Individuals, as well as religious organisations, who are being violated in their exercise of FoRB have the right to effective remedies and fair trial. Victims, likewise, have a right to rehabilitation.

Explanations:

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- 22 In Egypt for instance, by law a Muslim man is allowed to marry a Christian women, but a Muslim women is not allowed to marry a man of the Muslim faith.
 - 23 Article 5 of the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child. General Comment 22 §6; ECHR protocol 2 art. 2; 1981 Declaration art. 5; Vienna Concluding Document 16.7
 - 24 In Pakistan, the Hindu community suffers from abduction of girls by men from the Muslim community and subjected to forced conversion and forced marriage. Abductions are met with police inaction and girls face legislative hindrances to leaving Islam (apostacy is not permitted) and to being allowed to return to live with non-Muslim parents. This has led to the forced migration of Hindu families to India and to some families keeping girls at home instead of sending them to school.
 - 25 Article 8 UDHR and article 3 ICCPR, article 47 European Charter of Human rights.

Art 2(3) of the ICCPR obliges states to ensure that victims of human rights violations have an effective remedy; have their claims determined by competent judicial, administrative or legislative authorities, or any other competent authority; and that competent authorities enforce such remedies. In addition, article 14 of the ICCPR prescribes that “All persons shall be equal before the courts and tribunals.” In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

Often, individuals whose right to FoRB are violated face further discrimination and are denied their right to effective remedy. As all human rights are interlinked and interconnected, so are the right to FoRB and the right to effective remedy as well.

The EU shall take notice of indications that these rights are being violated, through ignorance about violations of FoRB, such as violence against people exercising their right to FoRB, unnecessary delay in administrative measures and procedures such as filing complaints, lack of cooperation by local or national officials and police, denial of the right to choose an independent lawyer, indefinitely postponements of court hearings, allegations of falsification or withdrawal of evidence, refusal of attending court hearings by international actors. Section 3.1 provides tools for action in relation with third states, such as addressing individual case in demarches, public statements, and political dialogues; visiting of court hearings and prisons.

2. Actors

Primary role of EU Delegations and/or EU member states representing the EU at any given time / function as an Early Warning Mechanism

Monitoring, reporting and assessment

Role of Council working groups / FoRB Task Force on FoRB

Role of the PSC and Council

Engagement with civil society

ENP

IV.2. ACTORS

IV.2.1. Primary role of EU delegations/function as an early warning mechanism

In order for EU delegations to function as an early warning mechanism delegations will need to have broad based and regular contact with appropriate organisations in the country concerned. See Annex 2 for additional guidance.

IV.2.2. Role of Council Working groups/FoRB task Force

European action on FoRB is the strongest when EU member states support the EU strategy on FoRB with bilateral action (burden sharing). The FoRB Task Force is the forum where member states and the EEAS share information and coordinate bilateral activities and EU

actions, strategise for the collaborative promotion of priority thematic issues, for example at the UN level.

3. EU tools / Promotion of freedom of religion or belief in relations with third countries and in multilateral forums

For action in relations with third countries (political dialogue, demarches, bi- and multilateral cooperation, training, other measures) – source of inspiration: LGBT toolkit.

3. 1. Regarding partner countries

- Monitoring FoRB:

Use of the analysis/checklist in Annex 2

- EU HoMs reports

- HRCS – address the situation of FoRB, noting in particular the occurrence of human rights violations against religious minorities. The fact that FoRB has not been chosen as a priority area in the HRCS should not prevent delegations to pay particular attention to this issue, given its very volatile and sensitive nature.

- Demarches and public statements

- Individual cases

- Court hearing and prison visits

- Political dialogues

- International mechanisms

Support for special procedures of the UN Human Rights Council, including the Special Rapporteur on Freedom of Religion or Belief and the Independent Expert on Minority Issues

- Visiting EU and Member State missions

IV.3. EU TOOLS / PROMOTION OF FREEDOM OF RELIGION OR BELIEF IN RELATIONS WITH THIRD COUNTRIES AND IN MULTILATERAL FORA

IV.3.1. Regarding partner countries

Monitoring FoRB:

- Use the analysis/checklist in **Annex 2** to track and monitor the situation of the human rights–under Article 18 of the Universal Declaration of Human Rights (UDHR) in the respective country to identify progress/setbacks.
- Keep contact with local and regional authorities, local and international civil society organisations, as well as different religious/belief groups in order to obtain information, including on individual cases of human rights violations. Varieties of groups or communities within one given religion or belief system must be taken into account, including non-traditional and heterodoxical views.

EU Heads of Mission (HoMs) reports:

- Include in the periodic reports an analysis of the situation of FoRB as well as the occurrence of violations of human rights towards people and human rights defenders in relation to FoRB.
- Identify individual cases of apparent violations of the human rights enjoyed in relation to FoRB.
- Detail measures (e.g. requests, raising the issue in political dialogue, financing) that have been taken or planned to combat alleged or proven violations (any action on an individual case should only be carried out if the person concerned gives his or her agreement).

Human rights fact sheets:

- Address the situation of FoRB in the human rights fact sheets, noting in particular the occurrence of human rights violations in relation to FoRB.

Démarches and public statements:

- Propose and carry out *démarches* and public statements on issues concerning FoRB with a particular focus on high risk cases and situations.
- Highlight and publicise positive developments to the promotion and protection of the full enjoyment of human rights in relation to FoRB in third countries.

Individual Cases:

- Advise specific action, e.g. *démarches*, when made aware of well-documented individual cases of alleged or proven violations of the human rights enjoyed in relation to FoRB (actions on individual cases should be determined on a case-by-case basis and may form part of a general *démarche* or statement).

Court hearings and prison visits:

- Visibility and presence - Attend court hearings and show solidarity and support during legal procedures related to cases of violations of human rights enjoyed in relation to FoRB (paying special attention to the high-risk cases).
- Contact a state prosecutor or police authorities to ask for permission to visit people in detention due to matters concerning FoRB.

Political Dialogues:

- Raise the issue of FoRB in the human rights component of political dialogues and specialised dialogues (human rights dialogues, consultations, subcommittees, economic and sectorial, people to people) with partner countries and regional organisations.

- Raise individual cases, with the consent of those involved, of human rights violations concerning FoRB.
- Encourage partner countries to initiate legislative changes to ensure equality before the law for people regarding FoRB.
- Encourage partner countries to sign and/or ratify and implement relevant international instruments, particularly the ICCPR and any other UN convention, and to lift any relevant reservations to these instruments.
- Encourage partner countries to invite UN Human Rights Special Procedures, particularly the Special Rapporteur on Freedom of Religion or Belief, to conduct country and thematic missions, to accept their recommendations and implement them.
- Support those partner countries that are in favour of the promotion and the protection of human rights in relation to FoRB, encouraging a closer cooperation in multilateral forums and promote their efforts as examples on a regional level.
- Encourage an exchange of information of good practices with partner countries that are in favour of the promotion and the protection of FoRB in order to improve and contribute to EU measures (to be included in the compendium of good practices and lessons learnt).

Supporting efforts by civil society:

- Provide messages of political support when deemed useful.
- Facilitate information on the available funding (e.g. through the EIDHR or relevant instruments of the EU Member States).
- Provide information on the situation of laws and practices in relation to FoRB in the EU.
- As appropriate, promote the visibility of local organisations promoting FoRB, e.g. by hosting debates and seminars on relevant issues and including FoRB aspects and speakers; endorsing cultural events, conferences, or social projects, especially those involving different religious and belief groups.
- Consult civil society, including religious groups, on how to mainstream and promote FoRB.
- Consult civil society on proposed changes and EU responses.
- Consult civil society on cases regarding FoRB.
- Encourage civil society organisations to promote FoRB.
- Provide funding for FoRB research

International mechanisms:

- Suggest that UN Special Rapporteur for FoRB, EU Special Representatives and equivalent figures from the Council of Europe, the OSCE and other regional human rights bodies, meet local NGOs/(civil society) that work on the promotion and the protection of FoRB.
- Encourage local groups to include information on the situation of FoRB in their alternative reports to regional human rights mechanisms as well as the UN bodies.

Include such information in the material for use in the Universal Periodic Review mechanism at the UN Human Rights Council.

Visiting EU and Member State missions:

- Include information on the situation of FoRB in partner countries for visiting EU and Member State missions and encourage them to raise the issue with local counterparts and to meet human rights defenders working on the issue of FoRB and how best to protect human rights defenders.
- Throughout these actions special attention should be paid to: high risk cases including criminal sentences, the death penalty, torture or ill-treatment; exorbitant administrative fines, access to legal counsel, cases of alleged and proven violations in relation to FoRB; good practices to achieve policy and legal change and to structural constraints including discriminatory legislation and practices, as well as impunity for human rights violations in relation to FoRB.

3.2. In multilateral forums

UN / OSCE / CoE

Regional mechanisms (AU, OAS, LAS, OIC, ASEAN...)

Other mechanisms

IV.3.1. In multilateral fora

Many of the comments in Section 3.1 'Regarding partner countries' are also valid for multilateral fora, as they offer opportunities for the EU and EU member states to engage with third countries. Many multilateral forums also offer opportunities to engage with genuinely independent civil society defenders and, as indicated in Section 3.1, these opportunities should be fully utilised.

It is particularly important in multilateral forums that any engagement with third countries be based on a reliable assessment of freedom of religion or belief in the country concerned, or there is a risk of sending mixed messages contradicting engagements outside multilateral fora. It should be noted that many serious human rights violators attempt to isolate their engagement in multilateral forums from a realistic assessment of the actual state of their human rights record, for example in bidding for leadership positions in multilateral fora.

A non-exhaustive outline of points relevant to some specific multilateral forums is given below.

United Nations

- Express the need for all countries to adhere and comply with the Universal Declaration of Human Rights (UDHR) (1948), where the principle of universality of human rights is enshrined in Article 1, as well as the International Convention on Civil and Political Rights (ICCPR). Regarding FoRB, reminding countries that they have to adhere and comply with Articles 18 UDHR and ICCPR

- Incorporate FoRB concerns in statements and in questions during interactive dialogues at the UN, reflecting the fact that the EU is deeply concerned by violations of human rights and fundamental freedoms based on a person's religion or belief and condemning in particular the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions such as stoning, the practice of torture and other cruel, exorbitant administrative fines, access to legal counsel, inhumane and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights.
- Encourage States to take all necessary measures, in particular legislative or administrative, to ensure that a person's religion or belief may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention; to ensure that these human rights violations are investigated and perpetrators held accountable and brought to justice; and also to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work.
- Advocate increased UN Member State support to and ensure a follow-up to the annual report on the elimination of all forms of religious intolerance by the Special Rapporteur to the General Assembly.
- When appropriate, commend the attention paid to these issues by special procedures of the Human Rights Council and Treaty bodies and encourage them to continue to integrate consideration of human rights violations based on FoRB within their relevant mandate.
- When appropriate, include FoRB questions and recommendations in interventions during the UPR process at the Human Rights Council (HRC) in Geneva.

Organisation for Security and Cooperation in Europe (OSCE)

- Insist that politically binding human dimension commitments are to be implemented in concrete ways by participating States.
- Ensure that in interventions at meetings and other OSCE-related activity, for example project funding and mandate setting, freedom of religion or belief matters are always addressed holistically as a freedom of all people. Moves to expand the range of activities (for example meetings and mandates) addressing FoRB-related matters in separate categories of "Anti-Semitism", "Muslims", and "Christians and Members of Other Religions" should be resisted, as undermining the universality of human rights. The advantages of using FoRB for all as a lens to address violations against particular groups should be stressed, not least as this approach firmly links to legally-binding international human rights agreements and enables a realistic assessment of the situation and opportunities in participating States which seriously violate their human dimension commitments.
- Within the Office of Democratic Institutions and Human Rights (ODIHR), work to move Freedom of Religion or Belief back from the Tolerance and Non-Discrimination Department to its former location – and proper place as a mainstream human right - within the Human Rights Department. This would enable an effective institutional structural link to work on FoRB in the context of the related mainstream human rights.

- Ensure OSCE activities are targeted on those participating States where its activities add most value, because of their weak or non-existent democracies.
- Work closely with genuinely independent civil society human rights defenders working in or on FoRB in those participating States which seriously violate their human dimension commitments.
- Work with the OSCE/ODIHR Advisory Panel of Experts on FoRB to build on their work with the Venice Commission on legislative review and enable implementation and continued effective use to made of this work.
- Explore with the ODIHR and the Advisory Panel ways of effectively achieving EU goals in the promotion and protection of FoRB.

Council of Europe (CoE)

When appropriate, incorporate FoRB concerns in national statements and in questions during interactive dialogues at the CoE

- Insist that commitments made upon countries' accession to the Council of Europe are to be implemented within the timescale indicated at the time of accession. Highlight any failures to do this, and work closely with victims of related human rights violations – eg. prosecutions and jailing of conscientious objectors to military service
- Work closely with genuinely independent civil society human rights defenders working in or on FoRB in CoE members where there are serious violations of FoRB.

Particular CoE institutions are also noted below.

European Convention on Human Rights (ECHR)

- Remind Council of Europe Member States that they are contractual parties to the Convention for the Protection of Human Rights and Fundamental Freedoms and (where relevant) a number of additional protocols. The human rights of residents of these states are thus protected with the European Court of Human Rights in Strasbourg as an independent judicial body. The judgements of the Court are for implementation – notably those parts of judgements addressing the structural causes of violations.
- Within the framework of the Committee of Ministers, following European Court of Human Rights judgements against countries violating Article 9 (“Freedom of thought, conscience and religion”) and inter-related articles, press for action to remove the structural conditions (legal and otherwise) that led to the judgment.

European Commission against Racism and Intolerance (ECRI)

- Follow up ECRI country monitoring work to ensure implementation of recommendations concerning FoRB.

- Work closely with genuinely independent civil society human rights defenders working in or on FoRB in CoE members where there are serious violations of FoRB.

European Commission for Democracy through Law (Venice Commission)

- Work with the Venice Commission to build on its work on legislative review and legal opinions with the OSCE/ODIHR Advisory Panel of Experts on FoRB, and enable implementation and continued effective use made of this work.
- Insist that member states effectively remove all obstacles to the enjoyment of the human rights laid down in the ECHR, in line with the judgments of the European Court of Human Rights.

African Union

Association of Southeast Asian Nations

Other Mechanisms

- Encourage other relevant international organisations to take appropriate steps to animate states to ratify and comply with the relevant international norms and standards relating to the enjoyment of FoRB[2] .
- Incorporate, when appropriate, FoRB concerns in statements and in questions during interactive dialogues at international mechanisms.
- Encourage third countries to invite human rights special rapporteurs from different international organisations to do country and thematic missions, to accept their recommendations and carry out their implementation.
- Where possible, make efforts to collaborate on a cross-regional basis in organising side-events on promoting and protecting the enjoyment of FoRB, in particular to discuss good practices on FoRB; pay attention to the recommendations adopted by all different international organisations, encouraging States to take them into consideration to improve the situation of FoRB.
- Identify possible like-minded States to advance FoRB in the enjoyment of human rights.
- Encourage the Office of the UN High Commissioner for Human Rights (UNOHCHR), other UN entities, Council of Europe (CoE) and OSCE local offices to address FoRB issues in their work.
- Include civil society members in side-events that take place in multilateral forums to promote FoRB.

3.3. Genuine engagement and consultations with key stakeholders, such as civil society, human rights defenders, (academic) experts, religious/atheistic/philosophical groups and others, in Brussels, EU capitals, and in third countries.

IV.3.3. Genuine engagement and consultations with key stakeholders

Genuine engagement and consultation with key stakeholders active in the protection and promotion of FoRB is important, in order to ensure that the EU's policy and action in this field respond to real needs and evolutions on the ground. It includes substantive and regular interactions between the EU and key stakeholders based on mutual trust and respect. Civil society and experts in this field can contribute to forming effective policy responses and prioritisation of key matters pertaining to FoRB.²⁶

In line with the obligations taken in the 2012 EU Action Plan on Human Rights action point 2²⁷, the EU is committed to engage with civil society at headquarters level in Brussels, EU capitals and third countries. This requires a genuine commitment and willingness of the EEAS, EU Delegations and EU member state missions in third countries to meet and consult with key stakeholders working on FoRB on a regular basis. Such exchanges of views will not only take place when reviewing the priority themes of the Guidelines following on a three year basis, but also in assessing the implementation of the Guidelines as the situation changes and evolves in different contexts.

The EU commits to consult with a wide range of different actors in this field, including independent human rights defenders, NGOs and think-tanks/fact-tanks working on FoRB, religious bodies, interfaith groups, and platforms with a philosophical conviction. The EU will aim to promote inclusive dialogues, including women, youth and minority representatives, and those located in remote areas.

Considering the wealth of knowledge on FoRB in the academic world, the EU will extend its contacts with academic experts on FoRB. The EU will liaise with the UN Office of the High Commissioner for Human Rights and in particular the UN Special Rapporteur on FoRB. Furthermore, the EU will seek to strengthen its exchange with national and regional expert bodies on FoRB, such as the US Commission on International Religious Freedom (USCIRF), the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) and the Venice Commission of the Council of Europe.

4. Training

- Development of training materials (with possible timeline)
- Prioritisation for training of:
 - HR team at EEAS and EU MFAs
 - HR team of DEVCO and Enlargement
 - Staff based at EU delegations and MS embassies in countries that are prioritized in the human rights country strategies
 - Staff deployed for ESDP missions with relevance for justice sector and policing reform. General training on culture and religion for all staff being deployed in areas where sensitivity is high.

²⁶ Cf. Human Rights and Democracy Network (HRDN), HRDN response to the adoption of the new EU human rights package by the Foreign Affairs Council on 25 June, Brussels, 25 June 2012; Human Rights and Democracy Network, Meeting in the Middle: Enhancing the Partnership between Civil Society and the External Action Service, forthcoming autumn 2012.

²⁷ Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12, pp. 6, 15. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf. Retrieved 24 October 2012.

IV.4. TRAINING OF THE EEAS STAFF IN MONITORING VIOLATIONS OF FREEDOM OF RELIGION OR BELIEF

The EEAS would need a tool to do the analysis in terms of freedom of religion or belief, as well good training material for capacity building within the EEAS. The different departments in the EEAS working on human rights would need to work closely together in order to get a full picture of the issue's complexity. As religious freedom is a very complex fundamental right, the EEAS staff would need to cooperate closely with the civil society's representatives working on those issues. The training of the EEAS staff would need to focus on the thematic issues with carefully defined indicators for the country concerned.

Training materials will be developed by the end of 2013, using input from existing materials, together with recommendations from relevant academics, belief communities, representatives from NGOs and civil society. Materials will be made available to member states.

Training will be practical in its orientation, focused on enabling delegations to use EU tools for analysis and reporting effectively, highlight EU thematic priorities and respond to violations. Training on the specific situation in countries where FoRB is prioritized in Human Rights Country strategies will be provided.

5. Development cooperation

Recall that FoRB is mainstreamed in the global EIDHR calls for proposals. In countries where FoRB has been identified as a priority area, the Country Based Support Schemes should reflect this.

IV.5. DEVELOPMENT COOPERATION

If FoRB and the monitoring of the situation of human rights is going to be mainstreamed, it should be taken into consideration in every relationships the EU strengthens and develops, whether bilaterally or multilaterally. Therefore, the guidelines and EU action should have a broad focus, including not only political dialogue or démarches, but also the promotion of FoRB through development cooperation, research and training; it should be closely connected to the activities and learning of other actors.

6. Monitoring and reporting

Review of and annual reporting on the implementation of the guidelines)

IV.6. MONITORING AND REPORTING

Monitoring and evaluation

Monitoring and evaluation is vital if the EUs foreign policy activities are to become increasingly effective over time. EU Guidelines need to identify how the efficacy of EU action on FoRB will be monitored and evaluated. This requires the identification of a number of indicators. Indicators should be both process and result oriented and easy to use. Indicators

should monitor both effects in the country concerned and within the EEAS (for example monitoring the development in knowledge and capacity of personnel).

Country analysis

Guidelines should provide instruction on how country analyses will be carried out including:

The development of a practical tool for country analysis to be used by delegations

This tool should be developed in consultation between the EEAS, relevant academics and specialized NGOs, using input from similar tools already in existence – the questions in Annexe 2 constitute such a tool.

In using the tool, delegations should be instructed to:

- make use of existing reports from NGOs, member states, other state and multilateral actors (eg US State Dept, US Commission on International Religious Liberty, UN special rapporteur, Universal Periodic Review).
- consult with government actors, belief communities and relevant NGOs in country, and relevant civil society actors in Europe. In consulting with civil society actors in country, the EEAS should be careful to create safe space in which actors can share concerns without fear of reprisals.

The resultant analysis should be:

- shared between member states, forming the basis for the identification of key messages and relevant actions and shared with relevant NGOs, taking into account the eventual security concerns to persons or organisations highlighted in the analysis.
- updated annually as part of the procedure for monitoring and adjusting strategies for the promotion of FoRB in prioritised countries.

Annex 1 - Non-exhaustive list of international norms, standards and principles the EU may invoke in contacts with third countries

ANNEX 1

NON-EXHAUSTIVE LIST OF INTERNATIONAL NORMS, STANDARDS AND PRINCIPLES THE EU MAY INVOKE IN CONTACTS WITH THIRD COUNTRIES

United Nations

Treaties:

1951 – Convention Relating to the Status of Refugees

- Article 3 – Non-discrimination
- Article 4 – Religion

1954 – Convention relating to the Status of Stateless Persons

- Article 4

1966 – International Covenant on Civil and Political Rights

- Articles 2, 18, 20, 24, 26

1966 – International Convention on the Elimination of Racial Discrimination

- Article 5

1966 – International Covenant on Economic, Social and Cultural Rights

- Article 2

1989 – United Nations Convention on the Rights of the Child

- Articles 2, 14

1990 – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

- Articles 12, 13

Declarations:

1948 – Universal Declaration of Human Rights

- Articles 2, 18

1981 – Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief
1986 – Declaration on the Right to Development

- Article 6

1992 – Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Other relevant documents

1993 – Human Rights Committee - General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) – CCPR/C/21/Rev.1/Add.4

Council of Europe

1950 – Convention for the Protection of Human Rights and Fundamental Freedoms.

- Article 9 – Freedom of thought, conscience and religion

1952 – First Protocol (to above)

- Article 2 – Right to education

2000 – Twelfth Protocol (to above)³³

- Article 1 – General Prohibition of Discrimination

1995 – Framework Convention for the Protection of National Minorities

- Articles 5, 6, 7

European Union

2000 – Charter of Fundamental Rights of the European Union.

- Article 10 – Freedom of thought, conscience and religion.
- Article 21 – Non-discrimination.
- Article 22 – Cultural, religious and linguistic diversity.

Organisation for Security and Co-operation in Europe (OSCE)

Helsinki Final Act 1975 – Basket 1, principle 7

Concluding document of Vienna follow-up meeting 1989 – Articles 16 & 17

Organisation of American States (OAS)

1969 – American Convention on Human Rights ('Pact of San José', Costa Rica)

- Article 1 – Obligation to respect rights.
- Article 12 – Freedom of Conscience and Religion.
- Article 16 – Freedom of Association

1988 – Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

- Article 3 – Obligation of Non-discrimination

1994 – Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belém Do Para')

- Article 4

African Union (AU)

1969 – Convention Governing the Specific Aspects of Refugee Problems in Africa.

- Article IV – Non-discrimination.

1981 – African Charter on Human and Peoples' Rights

- Articles 2, 8

1990 – African Charter on the Rights and Welfare of the Child.

- Article 9 – Freedom of thought, conscience and religion.

Annex 2 – Table for an analysis of right to freedom of religion or belief

GUIDING QUESTIONS FOR IDENTIFYING VIOLATIONS OF FREEDOM OF RELIGION OR BELIEF

– A SUGGESTED ANNEX FOR THE EU GUIDELINES ON FREEDOM OF RELIGION OR BELIEF –

As of October 2012

This document has two parts: it contains an overview of general questions to help determine whether there is cause for concern in certain countries or societies on the full enjoyment of freedom of religion or belief (FoRB). The second part provides a more detailed list of questions, based on this general list. This document should be seen as part of a process to monitor the respect of this fundamental human right; consideration should therefore be given to putting in place a mechanism to measure progress and regress in the application of this right in a given country, society or context on a regular basis.

In this document, freedom of religion or belief is understood in the broad context of article 18 of the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). It considers on the one hand the protection of the right to have a belief, whether theistic, atheistic or non-theistic in nature; and on the other, the right to manifest this “belief”. “Belief”, “conscience”, “thought” and “religion” are some of the words used in an interchangeable way throughout this document to refer to the object of this right.

PART I – Overview

1. Violations of freedom of religion or belief by state authorities

1.1 Legal Framework

Does the constitution restrict freedom of religion or belief:

- Through the limited, exclusive recognition of a religion or ideology?
- Through articles that discriminate against individuals and/or groups (minority or majority) for their beliefs or convictions - whether recognised or not?
- Through restriction to the exercise of this right which go beyond paragraph 8 of general comment 22 of the Human Rights Committee[3]?

Do laws restrict freedom of religion or belief:

- Through the granting of certain privileges to individuals based on their religion or belief?
- Through distinctions made in the application of laws based on a person's religion or belief?
- Through legislative control, e.g. specific laws pertaining to religious practise?

1.2 Executive

- Does the executive provide fair and non-discriminatory protection to all, regardless of their religion or belief?
 - Does the executive promote equality for all, regardless of their religion or belief, in all areas of human rights - civil, political, economic, social and cultural?
 - Does the executive encourage - actively or tacitly - discrimination, including attacks, against individuals and property on religious or convictional grounds?
 - Does the executive put in place rules that discriminate against individuals based on their religion or belief?
- Do politicians or state officials spread incendiary or discriminatory messages about certain religions or beliefs (e.g., "non-traditional religions") or those exercising freedom of religion or belief?

1.3 Judiciary

- Does a person's religion or belief lead to further breach in due process? Are they denied access to an independent, self-chosen, lawyer? Do they have fair and transparent trials? Is there recourse for appeal?

2. Violations on freedom of religion or belief by non-state actors

- Is a group stigmatised in State-run or privately run media and among leading thinkers and community leaders?
- Does such a group have access to the public space to defend themselves?
- Is there discrimination against individuals based on their religion or belief in:
 - o Education
 - o Employment - this applies also to employment by government and local authorities- and enterprises
 - o Healthcare
 - o Housing
 - o Freedom to assemble and organise?

- Are acts of violence perpetuated against individuals exercising their freedom of religion or belief? Is such discrimination or violence incited, condoned or ignored by State authorities?

PART II – Guiding Questions for Identifying Violations of Freedom of Religion or Belief

1. Violations of freedom of religion or belief by state authorities

1.1 Legal Framework

- Does the constitution allow freedom of religion or belief? Does it favour one or more religion or belief systems over others?
- Are there other legal provisions or laws related to freedom of thought, conscience and religion? Are there conflicting provisions, potentially undermining the individual's right to freedom of religion or belief? (E.g. collective/indigenous rights vs. individual rights; reference to Shari'a, anti-conversion clauses, etc.)
- Are related rights, such as freedom of expression, association and assembly guaranteed?
- Are there provisions for the protection of minority rights?
- Are there provisions for fair trial and due judicial process?
- Do government laws punish criticism or adoption of certain religion or belief, namely through apostasy, blasphemy, conversion, or defamation laws? Is death penalty or imprisonment, or threat thereof, used to punish the fact of adopting or holding a certain belief or conviction?
- Is registration with the state obligatory as a prerequisite for existence or carrying out activities? Are registration requirements discriminatory?
- Are there laws in place to punish hate speech?
- Are there provisions to address the rights of victims of violence and discrimination against people exercising their religion or belief, including reparation, rehabilitation and compensation?

1.2 Executive

1.2.1 Government structures

- Is there a government or related body at federal, national and/or local level in charge of monitoring and controlling religious activities?
- Does the government have a body or a Ministry for addressing minority rights?

- Are there mechanisms for appealing decisions concerning the right to exist or carry out activities that have been taken by such bodies, whether in courts or through administrative procedures?

1.2.2 Government policy

- Are there restrictions on manifesting religion or belief (such as restricting the use of religious/convictional symbols in the public space – for more examples see below)? Are these compatible with international human rights standards?
- Does the state recognise ways of respecting freedom of religion or belief, such as separation of state and religion? Is there a pronounced state ideology, e.g. secularism, atheism, etc.?
- Does any level of government interfere with people exercising the right to freedom of religion or belief or interconnected rights? Are there de facto restrictions on freedom of assembly or speech that negatively impact religious freedom? Can publications, material be published and distributed independently (without state approval), can belief groups obtain own printing presses?
- Can people freely assemble to worship, discuss, teach and disseminate their (religious) beliefs, or is registration for this a requirement? Are registration conditions disproportionate, such as a minimum amount of members, or are there administrative difficulties at local or national level?
- Has government characterised some religious groups as “cults” or “sects”? If yes, on what basis and criteria, and with what consequences?
- Does the state favour any religion/belief through state-sponsored funding?
- Is the state involved in, or tacitly allows, efforts to export an extreme ideology, whether religious or atheistic in nature?
- Can people freely choose to adopt, change or leave a religion/belief?
- Can parents bring up their children in a religion/belief of the parents’ choosing?
- Is religious affiliation marked on ID cards and documents? Is it possible to change information on the card without administrative difficulties, official harassment, and/or social stigmatisation, including the possibility to opt out?
- Can minority groups, migrant workers and refugees enjoy freedom of religion or belief?
- Are prisoners or other residents of institutions, such as old people’s homes, entitled to freedom of religion or belief, i.e. to participate in regular services, to enjoy pastoral visits in private, and to access literature of religious/convictional observance of his/her denomination?
- Is the right to conscientious objection to military service respected? If not, what limitations are imposed on the exercise of this right?

- *Education*

- Are confessional religious classes obligatory in primary and secondary education? Are there opt-outs for such education? Do those who opt out experience discrimination, whether formal or informal? Does the State support and fund the education of a favoured religion/belief or ideology at the expense of others? Do educational curricula include biased teaching or problematic wording regarding a certain religion/belief?
- Can religious bodies/groups decide how they organise their internal training and teaching? Are they allowed to invite foreigners? Are members allowed to travel abroad for training?
- How is the school curriculum on religion developed? Have religious communities - including minority belief communities - been consulted on the educational content pertaining to their community? How is training of teachers developed and done with regards to the presentations made to students on various religions or beliefs?
- Are there implicit or explicit restrictions on applying for higher education, based on a person's religion or belief?

- Media

- Is there a de facto or de jure state-controlled media in place? If yes, does it favour one religion/belief and/or disseminate incendiary messages or propaganda regarding any religions or beliefs (eg. "non-traditional religions"), or have religious/belief groups equally access to media?
- Does the state respond to inflammatory media reporting in State-owned and/or private media outlets?

- Socio-economic rights

- Is there discrimination against individuals based on their religion or belief in receiving healthcare or other social benefits or services?
- Are there discriminatory regulations in the exercise of economic rights based on a person's religion or belief?
- Are all trades and professions, in private and public sector, open to everyone, regardless of their religion or belief?
- Is pressure exercised on the private sector in the employment of individuals based on their religion or belief? If yes, by whom?
- What about property rights – that of individuals, but also of religious communities? Are religious groups allowed to own, rent, maintain and/or renovate property for religious use? Are there any reported hurdles in doing so at local or national level?

- Physical and psychological intimidation and violence

- Does the state attempt to exert control over the activities of religious bodies, e.g. pressuring a religious group to admit or expel certain individuals or interfering in internal leadership and governing structures? Does the government attempt to infiltrate religious bodies through the use of informants and covert or open surveillance?
- Does the state attempt to coerce independent religious groups/leaders into endorsing or promoting government policies or political figures against their will? Are religious leaders expected to practice self-censorship when speaking/preaching and do they or their communities face negative repercussions if they do not?
- Are there reports or allegations of state-sanctioned torture of individuals on the basis of their religious affiliation or conviction?
- Are there reports/allegations of state-sanctioned violence and attacks against certain religious groups or individuals?
- Are there signs that the state supports, either directly or indirectly, the elimination of an entire religious group in the country?

- Other state responses

- Are those who perpetrate violence and/or threats thereof against people exercising their freedom of religion or belief properly investigated? Are perpetrators brought to justice? Are there allegations of the existence of a culture of impunity?
- Has the state made efforts to improve communal tensions through dialogue and educational efforts and outreach?
- Does the state prosecute or apply remedies for violations of religious freedom?
- In conclusion, are there different levels of intensity regarding state restrictions on freedom of religion or belief (favouritism – disinformation – intolerance – intimidation – violence)?
- Are there reports or allegations of multiple discrimination against certain individuals, in so that ethnicity, gender, age, caste, class and/or individual vulnerability, such as disability, may aggravate religious freedom violations?

1.3 Judiciary

- Is the judiciary independent and competent to address violations of freedom of religion or belief?
- Are there substantiated fears that fair trial and due judicial process may not be guaranteed for certain individuals because of their individual religious affiliation or conviction, or because of the kinds of charges brought against them and the context of the charges (eg. following police raid on a peaceful meeting)?
- Are there reports of malfunctioning and irregularities of public prosecutors, the court, police and/or prison authorities, or other state agencies?

- Are individuals with certain religions or belief facing further breaches to due process? Are they denied access to an independent lawyer? Do they have fair and transparent trials?
- Are there de jure restrictions on freedom of assembly or speech that negatively impact religious freedom (cf. above – government policy)?

2. Violations of freedom of religion or belief by non-state actors

- Are there social or cultural norms or rules restricting freedom of religion or belief and the free choice of religion/belief? Do people face social exclusion, stigmatisation and economic marginalisation for changing or leaving their religion/belief?
- Is a violent, armed conflict on-going with a religious dimension or are there well-founded fears that such a conflict could break out?
- Are there acts of sectarian/communal violence, mob attacks, and/or terrorist actions against individuals or groups exercising their freedom of religion or belief, their personal property and/or property of a given community?
- Are there incidents of religiously-based collective punishment, honour killings and/or abductions?
- Are there reports of migratory flows of religious groups leaving the country or internal displacement of representatives of certain religious groups due to religious discrimination and persecution?
- Do certain religious groups and/or leaders prevent other groups and individuals from being able to practise freedom of religion or belief freely?
- Are there movements or groups promoting religious nationalism, religious fundamentalism or religious extremism in the country? Are there other groups whose ideology conflicts with freedom of religion or belief, hampering this freedom through restrictions on assembly or speech or for practical or strategic reasons? Is support for such movements or groups increasing?
- Are extreme or populist political groups with intolerant agendas present and active in the country?
- Are there efforts by civil society, including religious leaders and communities, to engage in interfaith dialogue respecting freedom of religion or belief for all at various levels? Are these efforts inclusive (involving representatives of minorities, women, youth, etc. in dialogue and decision-making) or exclusive by nature?

- Education

- Are there private schools or cells which include inflammatory and problematic teaching or material regarding certain religions or beliefs?

- Media

- Are there private media outlets which spread incendiary messages about certain religions or beliefs (eg. “non-traditional religions”)?
- In conclusion, are there different levels of intensity regarding societal restrictions on freedom of religion or belief (majoritarianism – disinformation – intolerance – intimidation – violence)?
- Are there reports of individuals facing multiple discrimination, in so that ethnicity, gender, age, caste, class and/or individual vulnerability such as disability may aggravate religious freedom violations?

By Sofia Lemmetyinen, CSW & Sarah Vader, BIC

Input and comments have also been given by colleagues and partner organisations.

Sources of inspiration: UK Toolkit on FoRB, The Pew Forum Rising Restrictions on Religion (2011), USCIRF Annual Report 2011

ADDITIONAL GUIDANCE FOR ANNEX 2

In addition to providing questions for an analysis of the situation of FoRB Annex 2 should provide guidance as to how delegations should go about conducting the analysis. This guidance should include guidance on dialogue with civil society.

Who should be involved in dialogue/consultation?

Consultation and cooperation with civil society organisations, including religious communities, is vital both as a basis for analysis of the situation in country, for enabling the delegation to function as an early warning mechanism and for developing and implementing strategies to promote FoRB. Religious communities hold important knowledge and are likely to be key actors in promoting or undermining FoRB in society. It is therefore important that consultation and strategy development include religious actors.

The following should be noted in the choice of religious dialogue partners:

- Religious and belief groups are not internally homogenous. Differing traditions within communities often cooperate closely but may also represent competing social, political and religious agendas. The choice of who to engage in dialogue with can be sensitive.
- Smaller and non-traditional groups are often neglected in consultations and excluded from inter-religious dialogues, despite being particularly vulnerable to FoRB violations.
- In some contexts religious groupings are coopted by the state, or too afraid of reprisals to highlight violations. This may lead to information being unreliable or incomplete.
- Although religious communities have historically been at the forefront of the struggle for religious freedom, there is no guarantee that religious communities or leaders accept the right of other religion or belief communities to freedom of religion or belief. Neither is there

any guarantee that the rights of individuals to FoRB are respected by the collective, something which may particularly affect women.

In the light of this it is advised that consultations include as wide as possible a range of religious and non-religious actors, including domestic and international human rights and women's organisations. Every effort shall be made to provide safe space for groups to inform of violations without the risk of reprisals.

Ensuring clarity and openness in dialogue

There is widespread conceptual confusion around what freedom of religion or belief involves. A common misunderstanding is that it is a right for religions rather than for individuals. Such misunderstandings will also affect the nature of the information provided to delegations on FoRB violations. In conducting dialogue in order to gain information about FoRB violations it is important that EU delegations make efforts to ascertain how the right is understood by dialogue partners and make clear the EUs understanding of FoRB and the range of violations that information is sought on.

Some actors holding important information, such as vulnerable religious or belief communities may not be able to express themselves in the language of rights and may express negative attitudes towards other actors or communities from whom they experience hostility or discrimination. Their input is none-the-less important.