

9-1-2000

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Recommended Citation

Bahia Tahzib-Lie, *Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief*, 2000 BYU L. Rev. 967 (2000).
Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2000/iss3/13>

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Applying a Gender Perspective in the Area of the Right to Freedom of Religion or Belief

*Bahia Tahzib-Lie**

Religion, spirituality and belief play a central role in the lives of millions of women and men, in the way they live and in the aspirations they have for the future. The right to freedom of thought, conscience and religion is inalienable and must be universally enjoyed.¹

I. INTRODUCTION

Many horrible events in different parts of the world graphically illustrate the need to discuss freedom of religion or belief in relation to gender. Among such events is the Taliban's public beatings of women for failing to wear the *burqa*, as required by its own interpretation of Islamic teachings.² Recently, the United Nations Secretary-General recommended that the "[r]elationship between freedom of religion and, in particular, the right to manifest religious beliefs, and

* This Article is the sole responsibility of the author and does not necessarily reflect the views of the Dutch Ministry of Foreign Affairs.

1. Fourth World Conference on Women, *Beijing Platform for Action*, U.N. GAOR, 52d Sess., Annex II, ¶ 24, U.N. Doc. A/C.177/20/Rev.1 (1996) [hereinafter *Beijing Platform*].

2. The U.N. Commission on Human Rights' Special Rapporteur on religious intolerance considers "the Taliban's anti-feminine policy in Afghanistan . . . [t]he most tragic illustration." *Civil and Political Rights, Including Religious Intolerance*, U.N. ESCOR, 55th Sess., ¶ 111, U.N. Doc. E/CN.4/1999/58 (1999). He then goes on to note that this policy "is tantamount to veritable apartheid against women, as women, and on the basis of specious interpretations of Islam." *Id.* Evans has critically observed that "[w]ithout wishing to act as an apologist for the Taliban, the obvious question is what authorizes the Special Rapporteur to make authoritative judgments concerning the interpretation of a faith tradition, in this case Islam?" Malcolm D. Evans, *Religious Diversity and Religious Liberty as Human Right*, at 12 (paper submitted for presentation at the International Conference on Human Rights and Our Responsibilities Towards Future Generations: An Inter-Religious Perspective, organized by the Future Generations Programme in collaboration with UNESCO and the Mediterranean Academy of Diplomatic Studies, Valetta, Malta, May 6-8, 1999). In his next report, the Special Rapporteur no longer qualifies the interpretation of the Taliban. See *Elimination of All Forms of Religious Intolerance*, U.N. GAOR, 54th Sess., ¶ 41, U.N. Doc. A/54/386 (1999).

women's right to equality" should be addressed.³ This statement is a stark reminder that the silence that traditionally enshrouds this relationship has only recently been questioned explicitly in international fora.⁴

Various international human rights instruments stipulate that women and men are equally entitled to all human rights and fundamental freedoms,⁵ which includes the right to freedom of religion or belief.⁶ Both a global and a regional instrument⁷ specifically acknowledge that the enjoyment of this right must be conferred equally on both women and men.⁸ Furthermore, numerous international human rights instruments contain a clause prohibiting discrimination on the basis of sex, and, in recent years, on the basis of the wider concept of gender.⁹ It is therefore apparent that a woman's gender

3. *Integrating the Gender Perspective into the Work of United Nations Human Rights Treaty Bodies*, Report by the Secretary-General, U.N. Doc. HRI/MC/1998/6, ¶ 70(h) (1998) [hereinafter *Integrating Gender Perspective*].

4. It has been noted that the apprehensiveness of the U.N. to tackle such allegations is not surprising. "The subject is all too often seen as being taboo and too sensitive and volatile to raise and seek resolution. However, silence and acquiescence is at the expense of women's rights and, in some cases, their very lives." CORINNE PACKER, *THE DEVELOPMENT OF THE HUMAN RIGHTS OF WOMEN 13* (a report submitted to the Royal Netherlands Ministry of Social Affairs and Employment, DCE) (The Hague, Jun. 1999) (the published version of this report is forthcoming in Dutch).

5. See, e.g., *Beijing Platform*, *supra* note 1, Annex I, ¶¶ 8, 15, 32, 36; Annex II, ¶¶ 5, 213; *Convention on the Elimination of All Forms of Discrimination Against Women*, art. 1 [hereinafter CEDAW]. See also *International Covenant on Civil and Political Rights*, G.A. Res. 2200A, art. 3 (1966) [hereinafter ICCPR]; *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A, art. 3 (1966) [hereinafter ICESCR].

6. For a compilation of human rights provisions regarding freedom of religion or belief, see BAHYYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION* ap. 499-551 (Martinus Nijhoff 1996); 9 HELSINKI MONITOR 106-15 (1998).

7. See *Beijing Platform*, *supra* note 1, Annex I, ¶ 12; Annex II ¶¶ 24, 72, 80(f); *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (available in <wysiwyg://379/http://www.undp.org/rblac/gender/osaviol.htm> (visited Apr. 19, 2000)).

8. It has been noted that various recently-held U.N. conferences have contributed to the understanding that women's equality and nondiscrimination between women and men, as well as women's equal enjoyment of human rights and fundamental freedoms, do not occur automatically as a result of the overall protection and promotion of human rights. See *Integrating Gender Perspective*, *supra* note 3, ¶ 17.

9. See, e.g., ICCPR, *supra* note 5, art. 2(1); CEDAW, *supra* note 5, art. 1; *Beijing Platform*, *supra* note 1, Annex II, ¶¶ 214, 216. See also *Rome Statute of the International Criminal Court* (available in http://www.un.org/law/icc/statute/99_corr/cstatute.htm (visited Apr. 19, 2000)). Whereas "sex" refers to biological and physical differences between males and females, "gender" refers to socially-constructed differences, taking into account such factors as power im-

should not be a reason to restrict her right to freedom of religion or belief, a right that broadly embraces theistic, nontheistic, and atheistic beliefs.

This Article examines a number of alleged violations of the right to freedom of religion or belief that are primarily directed against women or to which women are particularly vulnerable. Women who are hampered in their enjoyment of this right are often women who object to certain interpretations of their religion or belief imposed by religious leaders or society or women who are committed to a different religion or belief from that of the wider society. In this Article, they are referred to as “dissenting women.”

The alleged violations below are assessed by using a basic yardstick based on international human rights norms, which articulate both an internal and an external aspect of the right to freedom of religion or belief.¹⁰ Section II.A addresses situations involving alleged violations of internal freedom, which denotes the individual’s inner, private domain. Allowing people the freedom to believe in a religion or belief of their own choice lies at the heart of internal freedom. Section II.B addresses situations involving alleged violations of external freedom. External freedom denotes the outer, often public, domain and has been defined as an individual’s “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.”¹¹ Section III presents conclusions and a number of recommendations that could be helpful in combating violations of the right to freedom of religion or belief that are specifically or primarily directed against women or to which women are particularly vulnerable.

balances, socio-economic disparities and culturally-reinforced stereotypes. See *Integrating Gender Perspective*, *supra* note 3, ¶ 16. Nevertheless, the concepts of “sex” and “gender” tend to be used inconsistently or interchangeably in international instruments in the areas of international human rights law, international humanitarian law, and international criminal law. See, e.g., PACKER, *supra* note 4, at 23-24; Kelly D. Askin & Dorean M. Koenig, *International Criminal Law and the International Criminal Court Statute: Crimes against Women*, in 2 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW (Kelly D. Askin & Dorean M. Koenig eds., forthcoming).

10. For an elaboration, see TAHZIB, *supra* note 6, chs. 3 & 4.

11. UDHR, art. 18; ICCPR, *supra* note 5, art. 18(1). For a similar definition, see, e.g., *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 36/55, art. 1(1) (1981) [hereinafter *1981 Declaration*]; art. 9(1) ECHR. For less elaborate definitions, see, e.g., art. III ADRDM; art. 12(1) ACHR; principle VII of the Final Act of the Conference on Security and Co-operation in Europe, adopted Aug. 1, 1975; art. 8 of the African Charter on Human and Peoples’ Rights, adopted June 27, 1981.

II. AN ASSESSMENT OF ALLEGED VIOLATIONS OF WOMEN'S RIGHT TO FREEDOM OF RELIGION OR BELIEF

A. *Violations of Women's Internal Freedom*

In assessing situations in which women are restricted in their choice of religion or belief, it should be clear that they do not have to make a once-in-a-lifetime choice or resign themselves to the religion or belief passed on to them by their parents, spouse, religious leaders, community, or society. Internal freedom means that women should be free, at any time, to explore other beliefs and to make their own choices as to religious commitment and membership. Internal freedom also includes freedom to avoid or openly reject a religion or belief if so inclined.

The relevant human rights instruments recognize internal freedom in two ways. First, they stipulate that internal freedom must be protected unconditionally and in all circumstances. Therefore, limitations are not permitted even in times of public emergency that threaten the life of the nation, such as internal or international armed conflict.¹² Second, the instruments bar "coercion" that would impair internal freedom by forcing a person to adopt certain beliefs.¹³ Although these instruments do not define coercion, it has been argued that the definition of coercion should not be limited to the use of physical force or penal sanctions to compel individuals to recant or convert.¹⁴ Some restrictive policies and practices have been condemned as "coercion," such as those that restrict access to education, medical care, employment, or the rights to vote or participate in the conduct of public affairs.

12. See ICCPR, *supra* note 5, art. 4(2); ACHR, art. 27(2). For an elaborate discussion on derogation clauses, see *Siracusa Principles Limitations and Derogation Provisions in the International Covenant on Civil and Politic Rights*, 7 HUM. RTS. Q. 1-14, 23-34, 89-131 (1985) [hereinafter *Limitation and Derogation Provisions*].

13. See ICCPR, *supra* note 5, art. 18(2); 1981 Declaration, *supra* note 11, art. 1(2). For the three possible meanings of coercion, see Peter Cumper, *Freedom of Thought, Conscience, and Religion*, in THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND UNITED KINGDOM LAW 355, 370-71 (David Harris & Sarah Joseph eds., 1995).

14. See Human Rights Committee, General Comment No. 22(48), art. 18, U.N. Doc. A/48/40, Pt. I, ¶ 5 [hereinafter General Comment on art. 18 ICCPR]. Opinions are divided as to what constitutes indirect forms of impermissible pressure. For a framework of four interrelated variables designed to help disentangle the different factors that states have used to draw the line between "proper" and "improper" proselytism, see Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251, 326-38.

It is important to understand the scope of internal freedom in order to assess situations in which women are limited in their choice of religion or belief, particularly in the case of dissenting women. Cases of women being abducted and forcibly converted to a particular religion,¹⁵ being forced to marry a man from a different religion and convert to his faith,¹⁶ being forced to secrecy due to their voluntary conversion to another religion,¹⁷ and being raped because they belong to a certain religion or belief¹⁸ are violations of women's internal freedom. They exemplify situations in which dissenting women are primarily targeted and therefore particularly vulnerable. Although a state may not necessarily be involved in a particular act of coercion or violence against women, it must take measures to prohibit, prevent, or punish such acts.¹⁹

B. Violations of Women's External Freedom

External freedom manifests itself in many ways.²⁰ Nevertheless, the relevant instruments enumerate the countervailing interests that may justify limiting a person's external freedom. Only when three specific prongs are met may states restrict a particular act. To be

15. *Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, U.N. GAOR, 51st Sess., ¶ 105, U.N. Doc. A/51/542/Add.2 (1996); *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. ESCOR, 52nd Sess., ¶ 66, U.N. Doc. E/CN.4/1996/95/Add.1 (1996).

16. *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. ESCOR, 54th Sess., ¶ 62(e), U.N. Doc. E/CN.4/1998/6 (1998).

17. *Civil and Political Rights, Including Religious Intolerance*, U.N. ESCOR, 55th Sess., ¶ 72, U.N. Doc. E/CN.4/1999/58 (1999).

18. *Id.*, ¶¶ 61, 111.

19. This may be inferred, for instance, from the *Declaration on the Elimination of Violence Against Women*, art. 4, U.N. Doc. A/RES/48 104 (1993) [hereinafter DEVAW], which rejects the private-public distinction in making clear that states have a duty to prevent and punish all violence against women. See also U.N. Doc. E/CN.4/1999/58, ¶ 101 (1999). It has further been argued that ICCPR, *supra* note 5, art. 2(1) imposes such an affirmative obligation on states. See Courtney W. Howland, *Safeguarding Women's Political Freedoms Under the International Covenant on Civil and Political Rights in the Face of Religious Fundamentalism*, in RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 93, 93-103 (Courtney W. Howland ed., 1999) [hereinafter RELIGIOUS FUNDAMENTALISMS].

20. For a comprehensive list of examples, see *1981 Declaration*, *supra* note 11, art. 6. See also Principle 16 of the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Nov. 4, 1986-Jan. 17, 1989.

permissible, restrictions must be: (1) prescribed by law; (2) in pursuance of one or more compelling state interests—namely, public safety, order, health or morals, or the fundamental rights and freedoms of others (excluding, for example, national security); and (3) necessary to protect one or more of the aforementioned state interests.²¹

It has been pointed out that this three-prong test must not be applied in a manner that would vitiate a person's enjoyment of the right to freedom of religion or belief.²² Furthermore, states may not impose restrictions for discriminatory purposes or apply them in a discriminatory manner.²³ Discrimination on the grounds of gender, sex, or religion is therefore prohibited. The onus is on the state to demonstrate that any restriction it imposes satisfies the three-prong test.

To determine the legitimacy of state interference with external freedom in a given case, the state's actions must be assessed in terms of the above prongs. This has proven difficult, since the prongs are often interpreted in different ways. In particular, the state interests referred to in the second prong are often difficult to define and imply a measure of relativity, in that they may change according to circumstance and country. Hence, for the purpose of interpretation, states

21. For the relevant limitation clauses, see, e.g., ICCPR, *supra* note 5, art. 18(3); ECHR, *supra* note 11, art. 9(2). The ECHR determines that the third condition should be necessary "in a democratic society." In the view of the European Court of Human Rights, democratic society necessarily presupposes religious pluralism. See *Kokkinakis v. Greece*, 260 Eur. Ct. H. R. (ser. A) at 17 (1993). See also *Manoussakis and Others v. Greece*, 1997-IV Eur. Ct. H.R. Rep. Judgments & Dec. 1346, 1362-63 (1996). With this understanding, practice has shown that this addition is more a case of verbiage than of substance. For a detailed discussion on limitation clauses, see *Limitations and Derogation Provisions*, *supra* note 12, at 1-22, 35-88, 155.

22. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 8. The Human Rights Committee also recommended that in "[i]nterpreting the scope of permissible limitation clauses, States Parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3 and 26." *Id.* This has also been emphasized by the U.N. Special Rapporteur on religious intolerance. See, e.g., U.N. Doc. E/CN.4/1999/58/Add.2, ¶¶ 110(b), 122 (1998).

23. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 8.

are allowed a certain, though not unlimited, measure of latitude, commonly referred to as the “margin of appreciation.”²⁴

To illustrate alleged violations of women’s external freedom, this section considers three situations in which women have claimed that state officials have illegitimately restricted their external freedom of religion or belief. Each case involves sensitive, controversial, and complex issues in contemporary societies. The first concerns a traditional practice affecting the health of women and girls, and the second and third concern dress codes for women in secular and non-secular societies. It should be emphasized that no value judgement concerning the beliefs involved is intended.²⁵

Each case demands a careful balancing of the competing interests of the state and the woman. The outcome of the balancing process depends on whether the state has met the three-prong test described above. In all three cases, it is assumed that the first prong of the test has been fulfilled—that the state in question has enacted legislation expressly prohibiting the contested manifestation of religion or belief, which legislation is “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.”²⁶ In other words, the law describes any

24. In developing the doctrine of the margin of appreciation, the European Court of Human Rights adopted the view that, in principle, the national or local authorities are in a better position than international courts to assess the situation and determine the necessity of certain restrictions. See Pieter van Dijk, *A Common Standard of Achievement: About Universal Validity and Uniform Interpretation of International Human Rights Norms*, 13 NETH. Q. HUM. RTS. 105, 114-19 (1995).

25. It has been critically noted that “[i]f one’s religious beliefs dictate . . . the subjugation of women, they do not cease to do so merely because this is deemed incompatible with human rights protection. One might be required as a matter of public order or in the interests of preserving the rights of others to refrain from manifesting those rights, but is it the place of human rights law to attempt to influence and judge the validity of those beliefs themselves? . . . [I]t needs to be accepted that in recognizing the freedom of religion, the international system is recognizing the intrusion of systems of belief which are of fundamental importance to the believer and which may dictate patterns of behaviour which simply cannot be contained within the existing web of human rights thinking.” Evans, *supra* note 2, at 13 (endnotes omitted).

26. *Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment*, U.N. EXCOR, 52nd Sess., Annex principle 1.1, U.N. Doc. E/CN.4/1996/39 (1996). See also U.N. Doc. E/CN.4/1999/58/Add.2, ¶¶ 107(d), 110(b) (1998). It has been suggested that the first condition also extends to unwritten norms of common law that are clearly expressed. See MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 324 (1993).

prohibited act in clear, precise, and unambiguous terms, with a view to making everyone fully aware of what is prohibited.²⁷

1. The freedom to undergo female genital mutilation vs. the protection of public health

The following example concerns women and girls who rely upon their religion or belief to defend their freedom to undergo female genital mutilation (FGM).²⁸ These women argue that FGM is a religiously-prescribed or religiously-motivated ritual “associated with certain stages of life”²⁹ and therefore a part of their external freedom of religion or belief.³⁰ In a country that specifically bans any form of FGM in the interests of public health, the law of the state typically conflicts with this practice prescribed by or associated with their religion or belief. Thus, the issue is whether the state action justifies the restriction of external freedom.

To justify the restriction in the interests of “public health,”³¹ public authorities must demonstrate that the health effects of FGM

27. For examples of vague, imprecise, and so-called “catch-all” provisions, see U.N. Doc. E/CN.4/1999/58/Add.2, ¶ 107 (1998).

28. FGM is described as comprising “all procedures involving partial or total removal of the external female genitalia, or other injury to the female genital organs, for cultural, religious or other non-therapeutic reasons.” FEMALE GENITAL MUTILATION: A JOINT WHO/UNICEF/UNFPA STATEMENT 3 (1997).

29. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 4.

30. FGM is known to be practiced in many areas of the world among followers of different religions and beliefs, including Christians of many denominations, Sunni and Shiite Muslims, Ethiopian Jews (the Falasha), and adherents of indigenous African beliefs. Although occasionally some religious leaders have publicly supported, encouraged, or condoned such views, it has been widely argued that the practice of FGM does not originate with religions such as Islam, Christianity, or Judaism. *See, e.g., The Implementation of the Human Rights of Women*, U.N. ESCOR, 51st Sess., ¶ 41, 47-50, U.N. Doc. E/CN.4/Sub.2/1999/14 (1999) (referring to a decision of the Egyptian Council of State and a symposium of 26 religious leaders and medical personnel from eleven African countries held in Banjul, Gambia, July 20-24, 1998, which emphasized that FGM is not prescribed by any religion); DANISH MINISTRY OF FOREIGN AFFAIRS (DANIDA), GUIDELINES ON THE PREVENTION OF FEMALE GENITAL MUTILATION 4, 19 (2d rev. ed. 1986) [hereinafter FEMALE GENITAL MUTILATION]. Although many claim that FGM has erroneously been associated with religion, this does not alter the fact that women and girls who fail to demonstrate that FGM is associated with religion could alternatively argue that the practice is associated with nontheistic or atheistic belief and on that basis still demand protection of their external freedom of religion or belief.

31. The “public health” ground may be invoked “in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.” *See Limitation and Derogation Provisions, supra* note 12, at 3, 6.

are serious. For instance, they can produce evidence of the immediate and long-term health risks FGM entails, which vary depending on the nature and extremity of the procedure followed.³² Physical complications include hemorrhage, severe pain, damage to surrounding organs, urinary retention, keloids, and, in some cases, death. Beyond physical injury, the health consequences may extend to severe shock, emotional stress, and various psychological, sexual, and reproductive disorders.³³ Furthermore, the state may demonstrate that the strong consensus of the world community, as evidenced in numerous international forums and nongovernmental organizations, has denounced FGM as a serious threat to the health of women and girls and called upon states to legislate against it.³⁴ The public authorities will thereby argue that they have satisfied the compelling state interest and necessity prongs since the restriction is necessary in the interest of public health.

Women making an informed choice to undergo FGM may nevertheless counter that the restriction is unnecessary to protect public health, since only the participant's health is at stake. These women argue that the state must distinguish between those manifestations of religion or belief that endanger the health of other persons and those that only affect the health of the participant and that only in the former case would it be justifiable for the state to invoke "public health" as a ground for imposing a restriction.

However, this line of reasoning is untenable. First, FGM can lead to complications during pregnancy and childbirth, thereby endangering the life and health of the unborn child.³⁵ If the woman has a sexual partner, the psychosexual and psychological effects of FGM could give rise to conflict with the partner and therefore affect his health and well-being. In addition, a sexually active woman who has

32. See, e.g., U.N. Doc. A/54/341 (1999); U.N. Doc. E/CN.4/1986/42, Pt. I (1986).

33. For more detail, see, e.g., Heidi Jones et. al, *Female Genital Cutting Practices in Burkina Faso and Mali and Their Negative Health Outcomes*, 30 *STUD. FAM. PLAN.* 219, 220 (1999); *Report of the Working Group on Traditional Practices Affecting the Health of Women and Girls*, U.N. Doc. E/CN.4/1986/42, Pt. I (1986).

34. For a concise overview of action taken by the U.N. system, see *Traditional or Customary Practices Affecting the Health of Women: Report of the Secretary-General*, U.N. Doc. A/54/341 (1999). The WHO, UNICEF, and UNFPA issued a joint statement in 1997. See *FEMALE GENITAL MUTILATION*, *supra* note 28.

35. "Logistic regression analyses have shown significant positive relationships between the severity of genital cutting and the probability that a woman would have gynecological and obstetric complications." Jones et. al, *supra* note 33, at 219.

contracted a blood borne disease, such as hepatitis B or HIV/AIDS, as a result of undergoing FGM may transmit this disease to others and thereby put their health at risk.³⁶

Moreover, it seems reasonable that states have an obligation to protect the public, most notably women and girls, from the risks associated with FGM and its detrimental effects on health.³⁷ For the same reason, states regularly inform the public about the harmful effects of excessive alcohol consumption and cigarette smoking.³⁸ The very nature of a public health system implies that the community as a whole will bear the costs of treating complications from FGM. Hence, the financial implications for the community are another reason why it is in the “public” interest to ban the practice. Furthermore, in many African countries, FGM constitutes “a major public health problem for health services that are already overburdened and frequently deficient.”³⁹

Some women may object to this line of reasoning and argue that states rarely ban excessive alcohol consumption and cigarette smoking. Adults are allowed to make choices about their own bodies, including those that may adversely affect their health and the public health system. In response, it could be pointed out that international fora have specifically called upon states to develop, adopt, and implement national legislation and policies prohibiting FGM and to prosecute the perpetrators of this practice.⁴⁰ Unlike excessive alcohol consumption and cigarette smoking, FGM is banned because it constitutes an irreversible physical intervention with immediate and long-term health risks. According to this line of thinking, the adult’s

36. WORLD HEALTH ORGANIZATION, REGIONAL PLAN OF ACTION TO ACCELERATE THE ELIMINATION OF FEMALE GENITAL MUTILATION IN AFRICA 4 (1997).

37. This obligation is explicitly set forth in art. 24(3) of the Convention on the Rights of the Child. *See also 1981 Declaration, supra* note 11, art. 5(5). Although not expressly mentioned in ICESCR, *supra* note 5, art. 12, and CEDAW, *supra* note 5, art. 12, this obligation can be inferred from these provisions. *See BRIGIT C.A. TOEBES, THE RIGHT TO HEALTH AS A HUMAN RIGHT IN INTERNATIONAL LAW* 57-58, 129, 148, 154, 258, 267-68, 332 (1998).

38. This line of reasoning has been used in regard to the state obligation to inform the public, including children, of the risks of contracting HIV/AIDS and other sexually transmitted diseases. *See Corinne Packer, Sex Education: Child’s Rights, Parent’s Choice or State’s Obligation, in OF INNOCENCE AND AUTONOMY* (forthcoming 2000).

39. WORLD HEALTH ORGANIZATION, *supra* note 36, at 4.

40. *See, e.g., G.A. Res. 54/133 of 17 Dec. 1999, ¶ 3(d), U.N. Doc. A/RES/54/133* (2000).

consent does not preclude a state from prohibiting persons from injuring themselves.⁴¹

There are reasons to recognize FGM as a public health threat, and paternalistic health legislation against it has a legitimate ground for restricting a woman's external freedom of religion or belief. More importantly, it should be acknowledged that "public health" includes both collective and individual health interests.⁴² From the foregoing, it can be inferred that the state will satisfy the second and the third prongs and that it therefore legitimately interfered with the external freedom of women and girls.

2. The freedom to wear religious clothing in public employment vs. the protection of public order or morals

Women have the right to wear religiously-prescribed or religiously-motivated headdress, since "the wearing of distinctive clothing or headcoverings" qualifies as an observance or practice of religion or belief.⁴³ Nevertheless, there have been several cases of protest against women and girls wearing headscarves in public settings in secularized states.⁴⁴ Women who stand out because of clothing associated with

41. For an analogous case see *Bhinder v. Canada* (Communication No. 208/1986, Views of 9 Nov. 1989), U.N. Doc. A/45/40 (Vol. II), Annex IX, sect. E (1990). This case deals with a naturalized Canadian citizen and a Sikh by religion, whose labor contract as a maintenance electrician with the Canadian National Railway Company was terminated as a result of his refusal to wear safety headgear during his work, which would require him to relinquish his turban. From the views of the Human Rights Committee, it can be inferred that paternalistic health and safety legislation falls within the scope of legitimate restrictions. For a discussion, see TAHZIB, *supra* note 6, at 294-300.

42. See, e.g., Bert B. Lockwood, Jr. et al., *Working Paper for the Committee of Experts on Limitation Provisions*, 7 HUM. RTS. Q. 35, 64-65 (1985). See also *Siracusa Principles*, *supra* note 31, at 6; Alexandre Kiss, *Commentary by the Rapporteur on the Limitation Provisions*, 7 HUM. RTS. Q. 15, 20 (1985).

43. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 4. Incomprehensibly, however, the European Commission on Human Rights held that the wearing of religiously-prescribed or religiously-motivated headscarves is not embraced by external freedom. *Karaduman v. Turkey*, 74 D&R 93, 108-09 (1993). It is questionable whether the European Court of Human Rights would agree with this holding. In *Manoussakis and Others v. Greece*, the Court found that "the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." *Manoussakis and Others*, *supra* note 23, at 1365.

44. For a detailed analysis and interpretation of the passages of the Koran relating to the *hijab*, the veil, see FATIMA MERNISSI, *THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM* 85-101 (Mary Jo Lakeland trans., 1991). For the meaning and implications of wearing the veil for Muslim women who choose to do so, see Fatheena Mubarak, *Muslim Women and Religious Identification: Women and the Veil*, in MANY

their religion have also experienced harassment and discrimination in public employment.⁴⁵

The international media highlighted, for instance, the case of a Turkish woman wearing a hijab. On May 2, 1999, Merve Kavakçı was prevented from taking oath as an elected member of the Turkish National Assembly because she refused, in compliance with the prescriptions of her religion, to remove her headcovering in the meeting hall.⁴⁶

The hypothetical case in this context concerns legislation that prohibits the wearing of religiously-prescribed or religiously-motivated headscarves in public employment. The rationale behind such legislation is that wearing a headdress of this kind is a political symbol of female submission and therefore violates the religious and political neutrality required of all civil servants. The question is whether the state may prohibit a woman from making a knowing, informed, and uncoerced decision to wear her headscarf in the workplace.

It is not readily clear how the state could justify its ban on women in public office wearing a religiously-prescribed or religiously-motivated headscarf. From the narrow set of permissible, compelling state interests, the only conceivable possibilities would be the protection of morals or public order. Yet these choices seem to run the risk of compelling interest inflation⁴⁷ and hence of being

RELIGIONS, ALL AUSTRALIAN: RELIGIOUS SETTLEMENT, IDENTITY AND CULTURAL DIVERSITY 123 (Gary D. Bouma ed., 1997) [hereinafter MANY RELIGIONS, ALL AUSTRALIAN]. It has been argued, however, that the function of the veil at the time of Muhammad was to protect women, and thus the veil's most appropriate modern equivalent is education and schooling, which, in our times, gives the most protection to a woman. SOHEIB BENCHEIKH, MARIANE ET LE PROPHÈTE: L'ISLAM DANS LA FRANCE LAÏQUE 142-45 (1998).

45. See, e.g., U.S. DEP'T OF STATE, ANN. REP. ON INT'L RELIGIOUS FREEDOM FOR 1999, at 248 (2000) (describing a case in Germany); *Civil and Political Rights, Including: Freedom of Expression*, U.N. ESCOR, 55th Sess., ¶ 37(a), U.N. Doc. E/CN.4/1999/58/Add.1, ¶ 37(a) (1998).

46. This case has been characterized as "disturbing." See *Oral Statement on Freedom of Religion or Belief by the Finnish Presidency of the European Union to the OSCE Review Conference, Human Dimension, Vienna, 23 Sept. 1999*, OSCE Doc. RC.DEL/103/99, ¶ 5 (1999).

47. The Human Rights Committee has expressed concern at official enforcement of strict dress requirements for women in public places "under the guise of public order and morality." U.N. Doc. A/53/40, ¶ 133 (1998).

“used as a pretext for reintroducing unwarranted forms of interference.”⁴⁸

The notion of “morals” is inherently vague and fluid, differing from time to time, from culture to culture, and from one political system to another.⁴⁹ It is not derived from any single tradition or religion but from “many social, philosophical and religious traditions.”⁵⁰ It has been noted that the fluid nature of morals “would presumably create a significant obstacle” against violating an individual’s external freedom in the name of one particular religion or ideology.⁵¹ In other words, the concept of morals may not be invoked to curtail the external freedom of a person who does not embrace a particular religion or ideology.⁵² It is therefore hard to understand how the protection of morals can be invoked as a compelling state interest.

Under the three-prong test, it is similarly difficult to invoke protection of public order as a compelling state interest. In the context of limitations on external freedom of religion or belief, “public order” should not be confused with a similar sounding French legal expression used in civil and administrative law, *l’ordre public*.⁵³ Considering that the former concept should be narrowly construed to mean the prevention of public disorder, the state’s argument that an

48. David Little, *Studying “Religious Human Rights”: Methodological Foundations*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 45, 60 (Johan D. van der Vyver & John Witte, Jr. eds., 1996).

49. It should be noted that even in a relatively homogeneous region such as western Europe, the European Court of Human Rights has struggled to agree upon a common European concept of “morals” in the domestic law of European states. The Court concluded that notions of morals vary “from time to time and from place to place especially in an era which is characterised by a rapid and far-reaching evolution of opinion on the subject.” *Handyside v. U.K.*, 24 Eur. Ct. H.R. 22 (ser. A) (1976).

50. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 8.

51. Little, *supra* note 48, at 60.

52. *See* General Comment on art. 18 ICCPR, *supra* note 14, ¶¶ 9 & 10.

53. Unlike comparable limitation clauses in the ICCPR, *supra* note 5, art. 18(3), lacks the parenthetical term *ordre public*. Furthermore, the French text of this provision refers to *la protection de l’ordre*. This means that the expression “public order” may therefore only be used to “avoid disturbances to the order in the narrow sense,” NOWAK, *supra* note 26, at 327, and not “to protect *ordre public* with its general connotations of national public policy,” Karl Josef Partsch, *Freedom of Conscience and Expression, and Political Freedoms*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 209, 212 (Louis Henkin ed., 1981). It should be emphasized that “the protection of public order” in ECHR, *supra* note 11, art. 9(2), which deals with limitations on external freedom of religion or belief, should also be equated with the prevention of disorder. For an explanation, see Lockwood, *supra* note 42, at 56-61.

employee wearing a headscarf would disrupt order in the workplace or the smooth running of the public sector seems rather untenable.

Assuming, however, that the state can demonstrate that its actions were in the interest of public order or morals, the issue remains as to whether the restriction was necessary. In other words, it should be determined whether the restriction is proportionate to the compelling state interest pursued and whether it is applied with a discriminatory purpose or in a discriminatory manner. When a woman is prohibited from wearing religious clothing in public employment, the question of necessity depends on the inherent requirements of the woman's job, the employing institution's objectives, and her employer's goodwill.

In regard to assessing the question of necessity in this case, a number of conventions of the International Labour Organisation give specific guidance. For instance, Convention No. 122 concerning Employment Policy emphasizes that "there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of . . . sex, religion."⁵⁴ Furthermore, Convention No. 111 concerning Discrimination in Respect of Employment and Occupation prohibits, as a general rule, "any distinction, exclusion or preference made on the basis of . . . sex, religion . . . which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."⁵⁵ Exempt from this general rule is any distinction, exclusion, or preference in respect to a particular job based on the inherent requirements of the job.⁵⁶ The objectives underlying such requirements of the job may be assessed in terms of whether they are truly necessary or merely arbitrary.⁵⁷ For instance, preference in employment for a person holding a particular religious or other belief does not amount to discrimination if that belief is a genuine qualification for the job.⁵⁸

54. Art. 1(2)(c).

55. Art. 1(1)(a).

56. Art. 1(2).

57. International Labour Office, *ILO Standards and Action for the Elimination of Discrimination and the Promotion of Equality of Opportunity in Employment*, U.N. Doc. HR/GENEVA/1984/WP.15, ¶ 32 (1984).

58. HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION, ARTICLE 18 - FREEDOM OF RELIGION AND BELIEF 78, IN PARTICULAR RECOMMENDATIONS R4.1.1 & R4.1.2. (1998).

In determining whether the necessity prong is satisfied, an important factor is whether the restriction on the woman's external freedom was applied with discriminatory purpose or in a discriminatory manner. In the present case, it can be argued that the purpose,⁵⁹ or alternatively the effect,⁶⁰ of the state-imposed restriction is discriminatory on the basis of religion because virtually the only group it affects are members of Muslim denominations that require women to wear headscarves.⁶¹ Assuming that simply wearing a religiously-prescribed or religiously-motivated headscarf violates the religious and political neutrality required of all civil servants, it is important to determine whether the policy is uniformly enforced. For example, does the state also object on the same grounds to its employees wearing other religiously-prescribed or religiously-motivated garments such as the Jewish *yarmulke* (skullcap), Roman Catholic collar, or Sikh turban? Does it treat religiously-prescribed or religiously-motivated garments differently from religious ornaments such as a necklace with a Christian crucifix? Does it countenance religious symbols or accessories, such as a Christmas tree in the workplace?⁶² Furthermore, it can be argued that the effect of the state-imposed restriction is discriminatory on the grounds of sex or gender because the requirement to wear religiously-prescribed or religiously-motivated headscarves applies only to women.

In contrast, some may argue that the scarf represents female submission and that women should therefore be protected against it. However, women who make an informed choice to wear a headscarf may argue that the scarf should be viewed as a religious practice and

59. Situations in which the purpose is discriminatory are referred to as direct or intentional discrimination.

60. Situations in which the effect is discriminatory are referred to as indirect or incidental discrimination. Indirect discrimination occurs when a practice or policy purports to treat everyone in the same manner, but in effect, disadvantages a higher proportion of people from a particular religious or other belief group and is not reasonable under the circumstances.

61. For a definition of discrimination based on religion or belief, see *1981 Declaration*, *supra* note 11, art. 2(2).

62. It has been observed that "[w]hile wearing a scarf-like headcovering is relatively innocuous, full covering is clearly more obvious than the wearing of a cross or a yarmulke. Yet, minority religious rights are drained of much of their meaning if 'acceptable' religious practices are defined by reference to majority religious traditions." Barbara Roblin Mirza, *Selected Personal Rights and Freedoms: Rights to Wear Clothing of One's Choice, to Drive, and to Travel Unattended and Without Permission*, in III WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 134 (Kelly D. Askin & Dorean M. Koenig eds., forthcoming 2000).

should be respected and understood as overt religiosity, including connection with minority religions.⁶³

Having determined that some form of discrimination has taken place, the next question to decide is whether such a restriction is a legitimate occupational qualification. This is important to the determination of whether the contested legislation was based on objective criteria. To answer the question, it is important to know the nature of the job and the employing institution's objectives. For instance, as regards a public teaching post, the state may take into consideration the impact on young, impressionable pupils of a teacher wearing a headscarf in the classroom, the educational role of teachers, and the pupils' emulation of their teachers as role models.⁶⁴ It should, however, also consider whether the teacher embraces the same norms and values as the school and whether she would be likely to proselytize in the classroom. It is interesting to see whether the state would also apply the same criteria to a teacher who is a nun and wears a habit in the classroom. Another example is found in the armed forces, where specific conditions may preclude the wearing of certain kinds of headdress.⁶⁵

An additional factor in determining whether the necessity prong is satisfied is to assess the goodwill of a public employer in the event of a complaint. To do so, it is important to examine the attitude he or she adopted when offered the opportunity to reconcile a clash of interests and to consider whether he or she was unwilling to compromise or make allowances to accommodate differences. In fact, this analysis is another way of establishing whether the public employer opted for the least restrictive means of achieving the compelling state interest involved. Public employers would benefit from a

63. For a discussion of the variety of reasons advanced by Muslim women who make an informed choice to wear Muslim dress and a refutation of state justifications for a ban of such dress, see Mirza, *supra* note 62.

64. For a discussion of a current dispute in Germany involving the place of Muslim dress in the public schools, see William Barbieri, *Group Rights and the Muslim Diaspora*, 21 HUM. RTS. Q. 907, 921-25 (1999).

65. *See, e.g.*, Goldman v. Weinberger, 475 U.S. 503 (1986). *Goldman* involved an orthodox Jewish rabbi who was also a member of the U.S. Air Force. His obligation to wear a *yarmulke* conflicted with military regulation that required him to keep his head uncovered while on duty indoors. The U.S. Supreme Court, in a 5-4 decision, rejected his application for an exemption, emphasizing the military interest in uniformity. By contrast, the British army has traditionally allowed Sikh soldiers to wear turbans. *See* Leon Shaskolsky-Sheff, *Rabbi Captain Goldman's Yarmulke, Freedom of Religion and Conscience, and Civil (Military) Disobedience*, in 17 ISRAEL Y.B. ON HUM. RTS. 197, 203 (1987).

recommendation to an Australian firm: “[w]ith employer goodwill, much may be done to ensure that such believers have just as good job prospects as anyone else. Allowing an employee to wear a . . . head-scarf in the firm’s colours may seem, but is not, a trivial response, because through this action the employer indirectly acknowledges Australian religious diversity and respect for the individual.”⁶⁶

In the case of religious dress, unlike the FGM case described in section II.B.1, states will generally have difficulty showing that the second and the third prongs have been satisfied. In this connection, it should also be emphasized that the U.N. Special Rapporteur on religious intolerance has urged that “dress should not be the subject of political regulation and calls for flexible and tolerant attitudes in this regard, so as to allow the variety and richness of . . . garments to manifest themselves without constraint.”⁶⁷ Although there are reasons to believe that in the balancing process more weight should be given to the woman’s external freedom, whether the state’s curtailment of her external freedom will be considered justified will ultimately depend on the particulars of the individual case.

3. The freedom to refuse to wear religious garments in public vs. the protection of public order or morals

Some nonsecular states impose legislation tailored to the dominant religion’s interpretation on all citizens regardless of their beliefs.⁶⁸ They may, for instance, require all women to observe a restrictive dress code in public.⁶⁹ Dissenting women (including members of

66. Juliet Sheen, *Living Within the Tensions of Plurality: Religious Discrimination and Human Rights Law and Policy*, in MANY RELIGIONS, ALL AUSTRALIAN, *supra* note 44, at 162, 171-72.

67. U.N. Doc. A/51/542/Add.2, ¶ 140 (1996). *See also* U.N. Doc. E/CN.4/1996/95/Add.2, ¶ 97 (1996).

68. Such situations give rise to a variety of questions regarding the law to be applied to different religious or secular groups living within the same nonsecular country, including:

Should the same law be applied to everyone or should it be so only as long as it is nonreligious or secular law? If only religious law governs, what of those persons who do not want to be governed by religious law? If the state only allows religious law, then is each religious community entitled to its own laws? Should a state have some persons governed under religious law and some under secular law? May an individual chose the system of law by which she wants to be governed?

Courtney W. Howland, *Introduction*, in RELIGIOUS FUNDAMENTALISMS, *supra* note 19, at xviii. These issues are addressed by Howland on pages 143-78.

69. *See, e.g.*, U.N. Doc. E/CN.4/1998/6, ¶ 60(a) (1998); *Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment*

the state religion who object to the state's interpretation of the religion's female dress standards) have found it difficult to change such laws or the attitudes of co-religionists and their society as a whole.⁷⁰ In some nonsecular states, women who fail to comply in public with religiously-prescribed or religiously-motivated dress codes allegedly risk detention, ill-treatment, and severe punishment.⁷¹ It has even been alleged that such states have condoned extrajudicial killing.⁷²

The following hypothetical case concerns religiously-prescribed or religiously-motivated legislation that requires all women in a particular nonsecular state, regardless of their religion or belief, to wear garments that cover them from head to toe in public.⁷³ The rationale behind such laws is that wearing religious garments is prescribed by or associated with the state religion. Since such laws apply to the entire public sphere and not only public employment, it should be noted that a dissenting woman in this nonsecular state is far more restricted in her external freedom than a state employee wearing a headscarf in the secular state who is not altogether precluded from wearing her scarf outside her job.

For reasons similar to those relating to the case described in Section II.B.2, legislation of this kind is difficult to place within the parameters of permissible restriction. The question is what compelling state interest the state would invoke if a woman who embraces a different religion or belief from that of her society, or who belongs to a different branch of the same religion, objects to observing a restric-

of Human Rights and Fundamental Freedoms, U.N. GAOR, 52nd Sess., ¶31(a)(i), U.N. Doc. A/52/477 (1997); U.N. Doc. A/51/542/Add.2, ¶ 51 (1996); U.N. Doc. E/CN.4/1996/95/Add.2, ¶ 27 (1996); *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. ESCOR, 51st Sess., U.N. Doc. E/CN.4/1995/91 (1994).

70. For a discussion, see Bouthaina Shaaban, *The Muted Voices of Women Interpreters*, in FAITH & FREEDOM: WOMEN'S HUMAN RIGHTS IN THE MUSLIM WORLD 61 (Mahnaz Afkhami ed., 1995) [hereinafter FAITH & FREEDOM]. For instance, in her book AL-SUFUR WA'L-HIJAB, published in 1928, Nazira Zin al-Din, a Muslim woman interpreter, set out to demonstrate that neither the text of the Koran nor the *hadith* require Muslim women to wear hijab and concluded that *hijab* is prohibited by the Islamic *Shari'a*.

71. See, e.g., FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT 78 (Kevin Boyle & Juliet Sheen eds., 1997) [hereinafter A WORLD REPORT]; AMNESTY INTERNATIONAL, SAUDI ARABIA: A SECRET STATE OF SUFFERING 2 (AI Index MDE 23/01/00) (2000).

72. See A WORLD REPORT, *supra* note 71, at 25.

73. In his latest report, the U.N. Special Rapporteur on religious intolerance names Afghanistan and Saudi Arabia as examples in this regard. See *Elimination of All Forms of Religious Intolerance*, U.N. GAOR, 54th Sess., ¶¶ 41-42, U.N. Doc. A/54/386 (1999).

tive dress code. As in the case of a state employee wearing a veil, the only conceivable state interest seems to be the protection of morals and public order. Here again, the question is whether curtailment of a woman's external freedom is legitimate in such circumstances. For instance, imposing strict dress standards as a means of protecting morals has been qualified as one of "the most repressive governmental actions."⁷⁴

Assuming that in this situation the first two prongs are fulfilled, the question of whether the limitation meets the necessity prong remains open to debate. Once again, it could be argued that state interference is directly or indirectly discriminatory on the grounds of sex, gender, or religion and that it conveys disrespect for dissenting women. The Human Rights Committee has pointed out that

[t]he fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population shall not result in any impairment of the enjoyment of any of the rights under the [International] Covenant [on Civil and Political Rights], including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.⁷⁵

Since women who refuse to observe a restrictive dress code in public are likely targets of violence in some states, the protection of public order argument is somewhat understandable though not necessarily convincing. It is therefore doubtful whether the state's curtailment of women's external freedom is permissible in such cases. There are reasons to believe that a woman's external freedom could weigh more heavily in the balance, but, especially considering the margin of appreciation of the state, there are also reasons to counter this, for instance, when a state insists that the imposition of a strict dress code is an essential component of public morality.

Assuming that the three-prong test has been satisfied and that the woman is free to refuse to wear the veil in public, she must then determine what price she is willing to pay to pursue this practice. Sometimes the pressure may force many women to veil themselves, as illustrated by the following quotation: "None of us want to wear the veil. But fear is stronger than our convictions or our will to be

74. See T. Jeremy Gunn, *Cesar's Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT'L L. REV. 43, 86-87 (1998).

75. General Comment on art. 18 ICCPR, *supra* note 14, ¶ 9.

free. Fear is all around us. Our parents, our brothers, are unanimous: Wear the veil and stay alive.”⁷⁶ These words are a stark reminder of the obligation of states to refrain from engaging in violence against women and to exercise due diligence to prevent acts of violence against them, regardless of whether those acts are perpetrated by the state or by private persons.⁷⁷

III. CONCLUSIONS AND RECOMMENDATIONS

Section II.A provided a variety of examples of violations of women’s internal freedom of religion or belief, and Section II.B considered three situations of alleged violations of women’s external freedom of religion or belief. Violations of the right to freedom of religion or belief that are specifically targeted against women and those to which women are particularly vulnerable should be redressed. This requires gender sensitivity towards freedom of religion or belief. To eliminate such violations, more attention should be given to the following six subject areas: (1) the forms of coercion that curtail women’s internal freedom of religion or belief; (2) the type of restrictions that affect their external freedom of religion or belief; (3) the permissibility of these gender-specific forms of coercion and restriction; (4) the nature and frequency of such coercion and restriction; (5) the kinds of society in which they take place; and, (6) the reasons behind curtailments of women’s right to freedom of religion or belief.⁷⁸

Governments, parliaments, international organizations, nongovernmental and community organizations, religious leaders and institutions, educators, public opinion leaders, experts, activists, and the media have an important role to play in advancing women’s equal right to freedom of religion or belief, including the promotion of a collective and individual awareness of this right of women.

76. Karima Bennoune, *S.O.S. Algeria: Women’s Human Rights Under Siege*, in FAITH & FREEDOM, *supra* note 70, at 187 n.19.

77. See DEVAW, *supra* note 19, art. 4 (stipulating that “[s]tates should condemn violence against women and should not invoke any . . . religious consideration to avoid their obligations with respect to its elimination”). See also U.N. Commission on Human Rights Res. 1999/42 of 26 Apr. 1999, ¶¶ 3, 12, U.N. Doc. E/CN.4/RES/1999/42 (1999).

78. For some recommendations, see Bahia Tahzib-Lie, *Women’s Equal Right to Freedom of Religion or Belief: An Important But Neglected Subject*, in RELIGIOUS FUNDAMENTALISMS, *supra* note 19, at 123-24.

For instance, when addressing the right to freedom of religion or belief in their area of work, governments and nongovernmental organizations should not ignore the gender perspective. To that end they could identify alleged gender-specific abuses, collect specific information on the situation of dissenting women, and formulate recommendations specific to women. Such information could, for instance, be incorporated in their reports on freedom of religion and the section dealing with this freedom in their country-specific reports.

Furthermore, international and national courts and human rights treaty organizations should incorporate a gender perspective in their interpretations of norms relating to religious freedom. For example, the Committee on the Elimination of Discrimination Against Women and the Human Rights Committee might both consider formulating a general recommendation or comment on one or more of the above-mentioned subject areas. They could also consider formulating a joint general recommendation or comment. By way of interpretation and elaboration based on the experience gained through the supervisory activities of these treaty bodies, such statements would contribute to the development of the normative content of treaty provisions on the freedom of religion or belief, the right to equality, and the prohibition of discrimination based on religion, belief, sex, and gender. Such statements would also promote more effective implementation of these treaty provisions.

Finally, the U.N. Special Rapporteur on religious intolerance should continue to examine the question of the enjoyment by women of their right to freedom of religion or belief, in particular, the obstacles which dissenting women face.

