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Religious Minorities' Rights in International Law: Acknowledging Intersectionality, Enhancing Synergy

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Abstract: International human rights law on minorities sets forth a complex system of provisions affecting religious groups; still, the question of defining religious minorities remains largely unsettled. While assessing the legal framework of protection established under the UN system, this article explores the current debate drawing on the two key concepts of intersectionality and synergy. The intersectionality approach suggests that belonging to a religious minority cannot be dissociated from other features defining personal and groups' identities (e.g., culture, ethnic origin, gender, language) and that this distinctive quality marks the multiple forms of violations and cross-cutting discriminations of which religious minorities are often victims. On the other hand, the synergy approach implies a comprehensive understanding of the legal sources protecting individual freedom of conscience and religion as well as religious minorities. Moreover, it entails fruitful cooperation among the relevant institutional and civil actors and the need for inclusive participation of persons belonging to religious minorities in democratic decision-making processes to the aim of the accomplishment of equal and full enjoyment of their human rights.

Keywords: religious minorities; minorities' rights; freedom of religion or belief; human rights; international law; non-discrimination; intersectionality; synergy



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1. Introduction

Violations of individual human rights on grounds of freedom of religion or belief (FoRB) are globally widespread ([Pew Research Center 2019](#)). Quite often social hostility and governmental restrictions affect persons belonging to religious minorities because of their vulnerable legal and social status.¹

Among the most commonly reported infringements figure prohibitions of religious activities, restrictions on worship, practice and festivity observance, limits on and denial of public registration, arbitrary detention and prosecution of conscientious objectors, destruction of religious property, refusal to admit places of worship and denial of access to education.

Persecutions against targeted religious groups may also take the form of harassment, intimidation and violence ([UN General Assembly 2013](#)), kidnapping and forced conversion, killing, forced disappearance or torture with the aim of expelling the addressed minority from a given territory ([Human Rights Council 2012](#)).

A synergy of factors can be found at the roots of violations, insofar as social discriminatory attitudes are able to produce and to reinforce restrictive policies, notably those addressing non-traditional or newer religions ([UN General Assembly 2006](#)), and governmental favouritism towards majoritarian religious groups ([Grim and Finke 2011](#)).

State restrictions can be perpetrated under the guise of ideological or political claims, such as those of defending national cohesion or carrying out a counter-terrorism agenda ([Human Rights Council 2012](#)). Even in a pandemic crisis, as the COVID-19 pandemic has shown², minority religions can find themselves among the most vulnerable groups experiencing poverty, loss of income, poor health care facilities and troubled access to welfare security and justice.

Additionally, the presence of a dominant State religion can boost a restrictive policy towards minorities and sometimes majoritarian religions, as other non-State actors, can be the authors of harassment and intimidation against the most vulnerable groups (UN General Assembly 2013). The former Special Rapporteur on FoRB, Heiner Bielefeldt, highlighted the relevance of these intersections: ‘Human rights violations perpetrated against members of religious or belief minorities are multifaceted in motives and settings while the perpetrators may be States or non-State actors or both’ (Human Rights Council 2012; UN Commission on Human Rights 2004).

It must also be noted that religious minorities are frequently national, ethnic or linguistic minorities (UN General Assembly 2013)³ and these multiple identities can lead them to be the target of aggravated discriminations (UN Commission on Human Rights 2003). Gender, sexual orientation and disability, in addition to religious or ethnic belonging, enlarge the list of multiple forms of discrimination (Human Rights Council 2010; UN Commission on Human Rights 2003). Especially women and girls face intersectional violations related to their religious, ethnic and sexual identities, within and outside their religious group (Human Rights Council 2006).

Drawing on the key concepts of intersectionality and synergy, this article seeks to review the legal framework of religious minorities’ rights established under the UN system, from the starting point of Article 27 of the International Covenant on Civil and Political Rights (ICCPR).

Relying upon Article 27, international human rights law developed a broad protection for minorities; still, the question of defining the concept of religious minorities, their nature and extent of rights, remains largely unsettled. What is more, governments, who hold the primary responsibility to respect and promote minority religions’ rights, in several cases fail to acknowledge their existence or refuse them any public recognition.

Bearing this in mind, the perspective taken in this contribution is that the rights of persons belonging to religious or belief minorities must be primarily protected under the universal human-rights-based approach, built on the principles of universality, dignity and equality, and framed on the Universal Declaration of Human Rights (UDHR)⁴.

Nevertheless, the need for a synergy with a minority-rights-based approach shall not be underestimated. On the opposite, it shall be recalled at the outset that, in compliance with international provisions, religious minorities’ rights complement and go beyond freedom of religion (OHCHR 2014); accordingly, their respect is ‘an obligation of all States’ (UN General Assembly 2013, par. 34).

Positive measures are required on the part of the State to ensure minority religions their rights to existence and collective identity, equality and full participation in economic, political and social life (UN General Assembly 2013). Certain knowledge and understanding of religious minorities’ presence and needs are a crucial precondition for the State to confer them specific rights, and this reflects the vexed problem of their legal definition.

2. Defining Religious Minorities in International Human Rights Law: The Rationale for an Inclusive Approach

In contemporary international law, a global concern about religious minorities was raised in connection with the territorial changes following World War I. The subsequent peace settlement led to the elaboration of a legal definition enshrined in international rules, within the work of the League of Nations. It was the need to guarantee peace at the global level that prompted a redefinition of the concept of nationality where pre-eminence was to be given to ethnic, linguistic and religious differences between majorities and minorities⁵.

A universal definition of community and, at a later stage, of minority was issued in the Advisory Opinions that the Permanent Court of International Justice delivered firstly on account of the Greco–Bulgarian Treaty (1930) then with reference to the status of religious private schools in Albania (1935). In the wording of the Court, a ‘community’ is ‘(. . .) A group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions

in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other' (Permanent Court of International Justice 1935; Permanent Court of International Justice 1930). Religion finds its place among the criteria to establish the existence of a minority, while common identity and solidarity become the 'key words' to describe it.

After World War II, a number of descriptions of the term 'minority' were proposed within the work of the United Nations (UN Commission on Human Rights 1986; UN General Assembly 2019), all of them revealing the difficulty of determining which social groups were entitled to be considered as minorities, whether indigenous people or migrant workers were to be included, which subjective and objective criteria were to be met and if a minimum size had to be requested.

The deadlock in reaching an agreement on which group was to be considered a minority and the extent and nature of its rights, along with a general perception of the 'partly negative experiences of the minority protection arrangements under the League of Nations' (Scheinin 2008, pp. 23–45), prevailed during the drafting of the UDHR, where a clause on minorities was not included (Thornberry 1992).

Nonetheless, the question of minorities' rights remained on the stage at the UN level, until it was agreed that a special provision (Article 27) regarding ethnic, religious and linguistic minorities should have been introduced in the ICCPR. The Covenant was the first binding multilateral treaty on human rights defining the rights pertaining to members of a minority⁶; furthermore, 'The wording of Article 27 is very significant (. . .) in that it represents a departure from some of the restrictions and limitations of many of the earlier definitions and descriptions of who is to be considered a minority, and also changes significantly the nature and extent of the rights they can claim' (UN General Assembly 2019, para. 42).

However, for the sake of effective implementation and clarification of Article 27, further investigations were deemed necessary. In a 1979 study on the rights of minorities under Article 27 ICCPR, Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, offered a definition mostly cited in subsequent United Nations documents (Wheatley 2005, p. 18). According to him, a minority is 'A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language' (Capotorti 1979, para. 568).

Objective criteria, as the non-dominant position, and subjective criteria, as the will of individuals to be considered part of the group, together with the wish to preserve common features and traditions (OHCHR 2010), are intertwined in Capotorti's definition. However, his explanation seems to have been discarded in the subsequent jurisprudence and clarifications by the Human Rights Committee (UN General Assembly 2019, para. 23; UN Commission on Human Rights 1985).

As the Special Rapporteur on Minority Issues pointed out, international efforts for an effective realization of the rights of persons belonging to minorities are undermined by a lack of consistency in understanding who minorities are, what that definition entails and who is entitled to claim the rights recognized to them. The absence of a clear UN description still leads some member States to deem it left to them to determine who is a minority and who is not (UN General Assembly 2019).

With the purpose of overcoming those inconsistencies and contradictions, in 2019, the Special Rapporteur on Minority Issues elaborated a working definition on the concept of minority under Article 27 ICCPR and the Human Rights Committee's jurisprudence; this reads as follows: 'An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of

these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status' (ibid.).

The intersectional presence of multiple characteristics (that the working definition refers to as 'combination') and the reference to individual freedom sound perfectly consistent with an inclusive approach whenever the term 'religious minority' has to be used.

As the Special Rapporteur on FoRB reminded us, a broad understanding of both the terms 'religion' and 'minority' is recommended when defining which communities fall within the scope of religious minorities. Moreover, the question of which individuals or groups of individuals fall under the guarantees of Article 27 ICCPR, as well as other minority rights provisions, shall be established on the basis of people's self-understanding, together 'with a transparent empirical assessment of their actual need for promotional measures' (Human Rights Council 2012).

3. International Human Rights Standards on Religious Minorities: Synergy among Relevant Instruments

The foundation of the international legal protection for religious minorities can be traced in the universal recognition of human dignity beside the general principle of non-discrimination, embodied in Articles 1, 2 and 7 UDHR⁷.

Relying upon a human rights-based approach for the protection of minority religions, it shall be argued that the synergy between a universalistic normative framework (Bielefeldt et al. 2016, p. 453) and a minority-rights approach (i.e., the recognition of additional and specific minority rights) represents the most effective tool for granting persons belonging to religious minorities their rights to identity and equality (Ghanea 2012).

International standards on FoRB, their practice and interpretation are positively relevant for religious minorities since provisions regarding individual and collective freedom of thought, conscience and religion shall be applied to any religious group without prejudice or discrimination, as it was clearly established in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN General Assembly 1981, Art. 4).

Against the backdrop of the universal recognition of human dignity and equality, international provisions on FoRB were first embodied in Article 18 UDHR, which recognizes the right to freedom of thought, conscience and religion in terms that were later substantially confirmed in a legally binding instrument, through Article 18 ICCPR (Scheinin 1992; Bossuyt 1987, p. 351 ff.).

A primary source of protection for religious minorities shall be derived from the broad understanding of the term 'religion' set forth by the Human Rights Committee (HRCee) in its General Comment No. 22: '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. (. . .)' (Human Rights Committee 1992a, para. 62)⁸. A broad range of religious or belief communities, traditional and non-traditional, whether recognized by the State or not, including recently established faith or belief groups or minority groups within larger minorities (Human Rights Council 2012), is protected under Article 18, beside minority rights standards (UN General Assembly 2013). The aim is that of avoiding discriminatory attitudes towards vulnerable groups or hostility and diffidence against new religious movements.

Relevant references to an inclusive approach can also be found in the Human Rights Committee's General Comment No. 23 on the rights of ethnic, linguistic and religious minorities, where it is affirmed that a religious minority's existence is not dependent upon the decision of the State, but it has to be established through objective criteria (Human Rights Committee 1994c). Moreover, individuals hold the right to identify or not with a religious minority (Human Rights Council 2014); in sum, all persons de facto living in a

situation of religious or belief minority should have their human rights recognized and fulfil their individual and communitarian identity (Human Rights Council 2012).

Notwithstanding this conceptual framework, the Committee put a threshold as regards which group can be entitled to the protection offered by Article 18, stating, for example, that 'a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot conceivably be brought within the scope of Article 18 of the Covenant'⁹ (Human Rights Committee 1994a). By the same token, while positively admitting Rastafarians as a religious minority within the meaning of Article 27, the Committee held that certain limitations on the right to practice one's religion through the use of drugs constituted a legitimate interference with the rights established in Article 18, 26 and 27 ICCPR (Human Rights Committee 2007).

As for the extent of the right, a general distinction is frequently held between *forum internum*, which is the right to have a religion or belief of one's own choice without interference¹⁰, and *forum externum*, which involves the right to manifest such religion or belief in worship, observance, practice and teaching. Freedom to manifest one's religion or belief may be subject to limitations that shall be prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others¹¹.

The right to adopt, to change and to maintain a religion or belief of one's choice has an absolute character and cannot be subjected to whatsoever limitation (UN General Assembly 2005); any form of coercion that would impair the enjoyment of this right shall be prohibited (Article 18 par. 2 ICCPR)¹².

The term 'coercion' has been broadly construed as implying physical force, penal sanctions, restrictions of access to employment or coercive display of religious or belief adherence in official documents (e.g., identity card) or any other means having the aim of forcing someone to reveal his or her allegiance to a given religion (UN General Assembly 2013).

General Comment No. 22 emphasizes the need for a comprehensive approach in protecting FoRB, highlighting the importance of safeguarding minorities in order to shield individual freedom of religion. Along this line, prohibitions on having and maintaining places of worship, policy restrictions on public registration of religious communities or property expropriations are held as forms of coercion that members of religious minorities may suffer in exercising their freedom to profess their religion (UN General Assembly 2005). As a consequence, a more religious minority-rights attitude should have been expected from the Committee when it had to decide individual claims involving conscientious objection to performing compulsory military service, brought by members of the Jehovah's Witnesses.¹³ The cases were settled, instead, only under Article 18.

Any form of coercion aimed at forced religious conversion is prohibited under international law, also when deriving from non-State actors, with the complicity of the State.¹⁴ In these cases, as the Committee stated, States are under a positive obligation to take appropriate measures to guarantee individuals and minority groups' rights (UN General Assembly 2005). While the existence of a dominant or an official religion of the State does not imply in itself a violation of Article 18, belonging to such community must be facultative and its dominance must not lead to discrimination towards adherents of other faiths or to the banning of internal dissent (Human Rights Committee 1994b).

On the other hand, attempts to convert others to one's faith through means of propagation or missionary activities and humanitarian actions shall be considered legitimate as international human rights law covers proselytism as a form of manifestation of religious conviction. Therefore, blanket prohibitions are deemed inconsistent with international standards while limitations provided by Article 18 par. 3 ICCPR must be strictly applied for those purposes for which they were prescribed and must be proportionate (UN General Assembly 2005).

The extent to which this legal framework may be relevant to religious minorities' activities was clearly expressed in *Case of Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka* (Human Rights Committee 2005a), where the Order claimed that Sri Lanka Supreme

Court's restrictions on their teaching and charity functions were in breach of its members' rights to religious practice under Articles 18, 19, 26 and 27 ICCPR.

The Committee held the view that State authorities, in refusing to grant the Order its requested legal recognition ('incorporation') on the ground that it had improperly propagated its faith, had infringed its right to religious freedom ex Article 18 (1), since propagation of religion is part and parcel of individual manifestation. The government also violated the right to non-discrimination for religious reasons, since other faith bodies had been provided with incorporated status and there were no reasonable or objective grounds for excluding the Order. Similarly, in the case of a member of the Evangelist Christian Baptist Church in Kazakhstan, who had been convicted for allegedly conducting missionary activity without registration, the Committee found a violation of Article 18 (par. 1), reiterating that the norm protects the rights of all members of a religious congregation to manifest their faith in community with others, in worship, observance, practice and teaching (Human Rights Committee 2015). Regrettably, in neither of the cases, the Committee held its view under Article 27 as well.

Another field where a minority-rights-based decision should have reinforced individual claims is that related to religious dress code. General Comment No. 22 highlights that freedom to manifest one's faith encompasses the right to wear religious clothing and head coverings.

The Committee held the view that denying a female Muslim university student the right to wear a veil during classes constitutes a violation of Article 18 par. 2 (Human Rights Committee 2004a). Likewise, it recognized that the wearing of a turban is a religious duty for a male Sikh, 'tied in with a person's identity'; therefore a regulation requiring to appear bareheaded in passport photographs (Human Rights Committee 2013a) as well as in identity photographs for residence permits shall infringe freedom of religion (Human Rights Committee 2011a).

However, priority was given to the protection of public safety in the workplace over the right to dress in conformity with religious convictions: in *Singh Bhinder v. Canada*, the claim of a Sikh, wearing a turban instead of headgear in the workplace, was found inadmissible, since the public interest to safety constituted a legitimate ground for restriction (Human Rights Committee 1989; Human Rights Committee 2002b).

In none of these cases, religious dress codes were evaluated as a means to preserve group identity, which would have led to an assessment under Article 27 (UN General Assembly 2019). To some extent, the Human Rights Committee's line of argumentation reveals a lack of consistency with the General Comment assertion about the intersectional dimension of individual and minorities' rights for a comprehensive understanding and protection of FoRB.

In fact, focusing on the relationship between individuals and their communities, Article 27 represents a new approach towards minorities (UN General Assembly 2019, para. 48 d; Bielefeldt et al. 2016, p. 444). In its General Comment No. 23 (Human Rights Committee 1994c), the Human Rights Committee observes that Article 27 establishes a right conferred to individuals belonging to minority groups, distinct from all the other rights to which they are entitled under the Covenant.¹⁵ As the Committee points out, 'the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language' (Human Rights Committee 1994c, para. 5.1.).

Persons belonging to religious minorities must not be citizens of the State party nor permanent residents or have a kind of recognition; therefore migrant workers and visitors are also included. The existence of an ethnic, religious or linguistic minority does not depend upon the decision of the State, but 'it requires to be established by objective criteria' (Human Rights Committee 1994c, para. 5.2.).

Article 27 addresses only 'ethnic, religious or linguistic minorities', thus departing from the earlier language that referred also to racial or national groups (UN General Assembly 2019). It also avoids any subjective requirement and restrictions appearing in

previous proposals, such as that to be ‘loyal to the State’, ‘non dominant’ or the ‘desire to maintain’ minority peculiarities.

Given the broad construction of the minority concept and the inclusive definition of who is entitled to claim the rights conferred in Article 27 (UN General Assembly 2019), the Committee ultimately holds the function of clarifying the content of the norm, monitoring the compliance with the Covenant and assessing the factual situation of a particular group.¹⁶

Although expressed in negative form (‘shall not be denied’), the State is under a positive obligation to ensure the protection of minorities’ rights aimed at preserving their survival and the development of their cultural, religious and linguistic features ‘thus enriching the fabric of society as a whole’ (Human Rights Committee 1994c, para. 9). The effective exercise of the individual rights conferred by the Covenant depends upon the possibility and ability of their groups to collectively practice their faith and to maintain their tradition. At the same time, the principle of self-understanding in matters pertaining to personal religious identity shall be respected (Human Rights Council 2012).¹⁷

Although positive measures must be taken in accordance with non-discrimination provisions (Articles 2.1. and 26 ICCPR), actions aimed at correcting conditions that would impair the enjoyment of the rights recognized in Article 27, wherever based on objective and reasonable grounds, may be legitimate under the Covenant (Human Rights Committee 1994c, para. 6.2.). States might also differentiate the treatment of religious minorities in view of the dimension of the group or the degree of its presence and tradition in the territory, provided that the measure is not discriminatory (Scheinin 2008).

Much of the Committee’s case law under Article 27 has so far been related to indigenous groups.¹⁸ Despite the usual absence of religious issues¹⁹, these cases have potentially positive implications for religious minorities, as long as they raise the question of the communities’ participation in decisions affecting them (Human Rights Committee 1994c, para. 7). Be that as it may, scholars have properly underlined the overall exclusion of minority religions from consideration under Article 27 (Ghanea 2012) and the general absence of a ‘minority-sensitive reading’ (Scheinin 2008, p. 42)²⁰ of the provisions applicable to their claims.

Besides the UN Covenant, international standards of protection for religious minorities encompass human rights instruments which, although not minority-specific, still contain relevant clauses. Article 30 of the UN Convention on the Rights of the Child sets forth the right of children belonging to religious minorities to profess and practice their religion in community with other members of their group, while Article 14 recognizes the right of the child to freedom of thought, conscience and religion. A holistic approach and a broad concept of minority have so far been adopted by the Committee on the Rights of the Child when evaluating discriminatory practices (Doek 2008, pp. 278–96).

The UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD) also deserves to be mentioned in this context since, despite the fact that its definition of racial discrimination does not cover religion (UN General Assembly 1965)²¹, religious bias can be an indirect effect of ethnic discrimination, thus leading to the application of the Convention (Thornberry 2016, p. 353 ff.). Another ICERD relevant provision is Article 5 d (vii) where a guarantee of equality before the law in the enjoyment of (among others) the right to freedom of thought, conscience and religion is clearly stated. Patrick Thornberry highlighted the ICERD Committee’s sensitive approach towards the concrete situation of ethnic/religious minorities: ‘In most cases where the Committee addresses discrimination against religious practice on ethnic/racial grounds, attention is drawn to the “intersectionality” thesis to buttress the relevant recommendations’ (Thornberry 2016, p. 353).

A far-reaching step towards the definition and protection of religious minorities was set forth in 1992 when the UN General Assembly proclaimed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.²² The purpose of the Declaration is that of ensuring more effective implementation of existing inter-

national human rights instruments, guaranteeing persons belonging to minorities the right to preserve and develop their group identity (UN Commission on Human Rights 2005).

The Declaration is positively inspired by Article 27 ICCPR, to which it adds the category of 'national minorities'.²³ The Preamble affirms that minorities' religious identity shall be respected with the aim of contributing to the political and social stability of the States where they live. Minority protection is based on four requirements: existence, non-exclusion, non-discrimination and non-assimilation.

The right to existence entails that religious minorities shall not be physically excluded from the territory by means aimed at destroying the group or making them forcibly leave the country²⁴; it also involves the protection of their cultural and religious heritage, places of worship and sacred sites, which are essential to preserving their identity (UN Commission on Human Rights 2005, para. 24).²⁵ The Declaration Commentary, issued by the Working Group on Minorities, maintains that, while forced assimilation is unacceptable, a certain degree of integration may be necessary for the State to ensure pluralism and equality in the enjoyment of human rights (UN Commission on Human Rights 2005, para. 21–22).

A full exercise of religious minorities' rights demands the right to develop and to express traditional features (also using a special attire (UN Commission on Human Rights 2005, para. 56)). Both exercise and non-exercise of the rights pertaining to minorities must be safeguarded from discriminatory consequences, and the State is required to prohibit groups from burdening their members with the imposition of internal rules (UN Commission on Human Rights 2005, para. 54).

Since the rights set forth by the Declaration pertain to individuals²⁶, persons belonging to religious minorities have the right (individually and in community with others) to profess and practice their own religion, to participate in cultural, religious, social, economic and public life and to have their own associations and maintain contacts (also across frontiers) with members of their group as well as with other religious groups.²⁷ However, differences in the entitlements of the groups are acceptable, as 'old' minorities have stronger entitlements than 'new' (UN Commission on Human Rights 2005, para. 11).

Minorities are also entitled to establish their political parties, though a distinction must be made between institutional structures and cultural identities so that public institutions shall not be based on ethnic or religious criteria. A more general right to participation in public decisions is conferred by Article 2 (par. 3) of the Declaration. The enforcement of this clause would be highly significant since consultation enables public authorities to assess the different groups' demands and special religious requirements before taking appropriate legislative or other measures (ibid., para. 30); to this aim, minorities shall be involved at the initial stages of decision making as well as during the process of adopting and monitoring policies.

The overall purpose of participation and cooperation is that of ensuring suitable legal, administrative and territorial arrangements, granting pluralism and constructive group accommodation based on equality and dignity for all (ibid., para. 13). Where necessary, positive measures can lead to transitional affirmative actions, provided that they do not disproportionately affect the rights of others (ibid., para. 55)²⁸; in addition, arrangements for cultural and local autonomy may be settled (UN Commission on Human Rights 2005, para. 20).

Essential boundaries are drawn by the Declaration, through the prohibition of any action contrary to the principles of sovereign equality, territorial integrity and political independence of States.

4. The 'Four Pillars' in a Minority-Rights Perspective

Within the legal framework of a religious-minority-rights approach, grounded on Article 27 ICCPR and the UN Declaration on Minorities, four 'pillars' can be set up: protection of a group's existence, promotion of its collective identity, right to non-discrimination and equality and right to effective participation in public life and in decisions affecting the group (UN General Assembly 2013).

These dimensions are briefly referred to, bearing in mind the two key perspectives underlined at the beginning: normative universalism and self-understanding of religious or belief minorities (Human Rights Council 2012). Sensitivity to either of these essential aspects furthers a factual acknowledgement of the real interests and needs for accommodations of minority religions and a fruitful dialogue with their representatives.

It also avoids underestimation of internal diversities (Human Rights Council 2012) and possible conflicts within minorities that request enlarging the space for dialogue with the inclusion of vulnerable members (women, children, elderly people, dissenters) in order to gain a widened understanding of traditions, values and particular prescriptions to be settled (dress code, dietary rules, etc.) (UN General Assembly 2013).

Awareness of normative universalism also leads to proper consideration of intersectional dimensions in religious discriminations, thus improving synergy among legal tools to ensure an adequate response.

4.1. The Right to Existence and Collective Identity

Minority religions frequently suffer from State control, through the means of interference in their internal affairs (Human Rights Council 2012), property confiscation or discriminatory ways of restitution. Among the most frequent forms of obstruction enacted by governments, registration procedures can be particularly burdensome.

At the national level, special procedures may be necessary to provide religious or belief communities with legal personality. These measures have practical significance for the full enjoyment of collective freedom of religion or belief since the acquisition of a proper legal status permits religious minorities the accomplishment of essential activities, such as building and maintaining places of worship, appointing religious leaders, running schools, hospitals and alike.

Registration procedures are sometimes made particularly burdensome, lengthy and expensive by discriminatory legislative norms, bureaucratic requirements or administrative applications (Human Rights Council 2012); the reasons are commonly political, since governments may wish to benefit a particular dominant religion or to exclude new religious movements or immigrants' faiths from legal facilities (UN General Assembly 2013).

Religious minorities deprived of their status at times have to re-register under questionable conditions, such as the number of the faithful and of the years they have been present in the territory (Human Rights Council 2012; Human Rights Council 2011).

As the Special Rapporteur on FoRB noted, 'registration should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits' (Human Rights Council 2006) and 'requiring high minimum membership levels or a lengthy existence in the country concerned are no appropriate criteria for registration' (ibid.).

It is worth recalling that the existence of a religious minority is not dependent upon the decision of the State, and therefore, the exercise of its fundamental rights shall not be subjected to registration. Internal religious autonomy, which 'shields religious actors against governmental interference' (Ventura 2015, pp. 161–78), together with basic functions, such as maintaining places of worship or running educational institutions, are vital for an effective exercise of collective religious freedom.

According to this argument, the denial to register a religious association, under the alleged lack of security and health requirements of its places of worship, was found disproportional by the Human Rights Committee (Human Rights Committee 2005b). On this topic, the recommendations of the Forum on Minority Issues (Human Rights Council 2014) recall that States are required to comply with international legal standards, ensuring that any legal or administrative recognition of religious groups or any procedure of registration is conducted with an inclusive approach and without discrimination.

4.2. *The Right to Non-Discrimination and Equality*

Religious minorities' rights to non-discrimination are deeply rooted in the equality and dignity principles; nonetheless, the adoption of a human-rights-based approach without an understanding of the peculiar forms of discrimination they face can be unable to adequately respond to their need for protection (Human Rights Council 2014). Combating violations deriving from States as well as non-State actors requires a synergy of institutional policies, promotional actions and protective measures, tailored to the particular situation of the religious community involved and aimed at fostering its inclusion in the larger society (UN General Assembly 2013). As the former Special Rapporteur on FoRB recalled, '(. . .) Discrimination based on religion or belief often emanates from deliberate State policies to ostracize certain religious or belief communities and to restrict or deny their access to, for example, health services, public education or public posts' (Human Rights Council 2009).

In addition, religious discrimination is increasingly associated with ethnic or gender-based discrimination, in all aspects of social life. From the part of the State, the denial of citizenship or unequal access to political leadership can be motivated by religious bias; likewise, authorities' attitudes of hostility and disrespect towards persons belonging to religious minorities may lead to the infringement of their access to justice and equality in courts (UN General Assembly 2013).

Far beyond a public–private divide, structural discriminations against members of religious or belief minorities often occur in civil sectors, such as in the housing and labour market, higher education, healthcare system (Human Rights Council 2012) and the media²⁹, involving the role of economic actors, employers and trade unions to find reasonable accommodation of religious minorities' requirements.

Violations are perpetrated by non-State actors to a greater extent, sometimes with direct or indirect government involvement and frequently in a context of impunity. The spreading of negative stereotypes, acts of vandalism against places of worship, desecration of cemeteries and sacred sites and violent interruptions of rituals are among the most commonly reported incidents (Human Rights Council 2012).

Family laws and personal status regulations regarding marriage, children caring, inheritance and divorce may also pave the way to human rights violations for persons belonging to minorities, who can experience discriminatory treatment in divorce settlements and child custody because of their religion (ibid.). In the case of two Moroccan citizens residing in the Netherlands, who had been refused a family allowance for their foster children residing in Morocco, the Human Rights Committee held a view that did not take into account religious traditions claims under Article 27.

The claimants alleged that their children were not living with them in compliance with Moroccan tradition about family; they also contended that, requiring that foster children live with their foster parents in order to be assigned the benefits was a discriminatory criterion since it affected migrant workers more than Dutch nationals.

The Committee upheld that the relevant national legislation granted equal treatment to nationals and non-nationals, and consequently no violation of Article 26 ICCPR was found (Human Rights Committee 1992b; Vandenhoele 2005, p. 53).

Special attention must be devoted to multiple violations and, in particular, to the intersection of religious and gender discrimination (Human Rights Council 2012). In many parts of the world, women from marginalized religious groups experience forced marriage, abduction, barriers to their participation in public and social life, limitations to religious dress code, stigmatization and inequalities in education and health (Khan 2014). To highlight the multidimensional feature of women's rights violations, the concept of structural violence (Khan 2014) has been increasingly applied, together with a gender perspective (Human Rights Council 2014), which requires States to set an appropriate legal framework of protection for all human rights (Human Rights Council 2012).

International bodies increasingly outline that freedom of religion or belief cannot be used to justify infringements of other freedoms, such as women's rights (Human

Rights Committee 2000)³⁰, that can be curtailed by harmful religious and cultural practices (UN General Assembly 2013).

More generally, it is worth recalling that '(. . .) Only by focusing on human beings as rights holders can freedom of religion or belief do justice to the broad variety of religious and non-religious convictions, identities and practices, without singling out one specific religion or belief (or one type of religion) for privileged treatment' (Human Rights Council 2015a, para. 14).

This is all the more true when religious freedom comes into conflict with freedom of expression. In line with international standards, national blasphemy laws and other related religious offences, aimed at the protection of the dominant religion, should be replaced.³¹ In many parts of the world, blasphemy provisions and the criminalization of apostasy target minorities and vulnerable groups (Human Rights Council 2012; Angeletti 2012), affecting individual and community's rights.

As the Special Rapporteur put it, 'If hate incidents are not tackled quickly and effectively, targeted groups may experience permanent damage to their self-esteem and sense of belonging within their societies, increasing their marginalization. Majority communities may gradually become desensitized to the hostility in their societies targeted against minority groups' (Human Rights Council 2015b, para. 102).

Incitement to hatred on religious grounds is sanctioned by Article 20 ICCPR, which is compatible with and complements the freedom of opinion and expression provision, established in Article 19 (Human Rights Committee 2011b; Temperman 2016).

Despite efforts for clarification, the definition of 'hate speech' remains largely controversial: 'There is no universally accepted definition of "hate speech". The term encompasses a wide array of hateful messages, ranging from offensive, derogatory, abusive and negative stereotyping remarks and comments, to intimidating, inflammatory speech inciting violence against specific individuals and groups' (Human Rights Council 2015b, para. 52).

Article 20 ICCPR is not meant to protect religions, systems of thought, opinions or institutions from judgments, critics or defamations (UN Secretary General 2009). Nonetheless, whenever discriminatory and extremist expressions are able to undermine communities' rights to live free from intimidation and stigmatization, either the application of Article 20 or legitimate restrictions to freedom of expression (Article 19 par. 3) are justified.

The need to protect the Jewish community against prejudice, hostility and public propagation of anti-Semitic discourse led the Committee to uphold limitations of freedom of expression in a number of cases³², with the essential purpose of protecting a well-defined targeted group, rather than generally promoting democratic values and principles³³.

Therefore, in the case of a French professor sanctioned for having publicly denied the Holocaust, the Committee found the restrictions imposed on the author's freedom of expression under Article 19 (3) necessary, since his statements were designed to raise anti-Semitic feelings. The government held that the aim of the legislative limitations was to guarantee the Jewish community their right 'to live free from fear of an atmosphere of anti-Semitism' (Human Rights Committee 1996, para. 9.6).

On the other hand, with regard to a group of Moroccan Muslim citizens living in the Netherlands (Human Rights Committee 2017), who claimed that the discriminatory statements issued by Geert Wilders constituted an incitement to hatred and violence, the Committee found no violation of Article 20, since the politician had been subjected to a fair internal prosecution established in compliance with that rule. As for the authors' allegation under Article 27, the Committee found it not sufficiently substantiated, seeing that they had not 'adduced specific arguments in support of their claims under these provisions, distinct from their claims under Articles 20 (2) and 26' (Human Rights Committee 2017, para. 9.9).

The Committee seems reluctant to assess cases giving proper consideration to the claimants' status of a vulnerable ethnic and religious group in the larger society; rather, minorities' rights seem to find a convenient shelter under the umbrella of the non-discrimination

provision. Yet in so doing, the possibility for Article 27 to be a useful tool for an improved protection of religious minorities' rights appears undermined.

A further field where full enjoyment of religious minorities' rights to equality could be reinforced through comprehensive use of international legal sources is that of education. Religion can be among the causes of discrimination that have the purpose or effect of nullifying or impairing equality of treatment in education and depriving a person or a group of persons of access to education, as has been stated by the UNESCO Convention Against Discrimination in Education, which calls for States to enact legislation and policies aimed at combating discrimination in education (UNESCO 1960, Art. 1; McKean 1983, pp. 128–35; Coomans 2009).

Several international standards set forth parents' rights to ensure the religious and moral education of their children in conformity with their own convictions as well as children's rights not to be compelled to receive religious instruction inconsistent with these convictions. These provisions, which are now considered as a rule of general international law (Wheatley 2005, p. 12)³⁴, are of essential relevance for religious minorities given that they imply the right of parents to choose educational systems other than that offered by public authorities, provided that they respect public standards (UNESCO 1960, Art. 5; Machnyikova 2007).

In *Waldman v Canada*, the Human Rights Committee affirmed that, while the Covenant does not oblige States to provide public funding to faith-based schools, if it chooses to do so, funding must be made available without discrimination. It held the view that 'the public funding for Roman Catholic schools but not for schools of the author's religion, which results in him having to meet the full cost of education in a religious school' constituted a violation of the non-discrimination provision under Article 26 since any differential treatment is legitimate only when it meets the criterion of reasonable and objective aim (Human Rights Committee 1999a; Human Rights Committee 1999b).

No reference to Article 27 was made in the ruling while the concurring individual opinion by Martin Scheinin suggested evaluating the case not only under the non-discrimination clause but also under Article 27 and Article 18, since 'the existence of public Roman Catholic schools in Ontario is related to a historical arrangement for minority protection'. Professor Scheinin also recalled how Article 27 'imposes positive obligations for states to promote religious instruction in minority religions'.³⁵

In line with the UNESCO Convention, separate educational systems based on religious grounds may be established by States, provided that they respect public quality standards and that their attendance is optional. However, since inclusion of minorities and immigrant communities is not enhanced by means of a segregated system of education, it would be better to limit it and to avoid any discrimination in the access procedure (UN Commission on Human Rights 2001; (UNESCO 1960, Art. 2 (b))). In order to foster integration in a tolerant society (UN Commission on Human Rights 2005)³⁶, multicultural and intercultural education shall be encouraged³⁷.

The 1992 UN Declaration and other international standards call for an inclusive, minority-sensitive national educational environment, where students belonging to religious minorities are free to learn about and manifest their religion, culture and traditions while, in the meantime, they can gain acknowledgement of the others' religions and beliefs. Particular attention shall be paid to the educational needs of girls belonging to religious minorities by means of dialogue with the minority involved (Human Rights Council 2014, para. 43).

In some States, students belonging to minorities are given religious instruction in the majoritarian faith against their will and the exercise of a right to exemption is burdensome (Human Rights Council 2012). As religious instruction can legitimately be part of the school curriculum, a right to exemption or alternatives must be granted to persons belonging to minorities. Wherever history of religions is a compulsory course in public schools, the Human Rights Committee clearly affirmed that the teaching must be neutral

and respectful; otherwise, a violation of Article 18 (par. 4) is to be found ([Human Rights Committee 1990](#); [Human Rights Committee 2004b](#)).

The Committee also held the violation of a Sikh student's right to manifest his religion as he had been expelled by a French public school for wearing a keski. The school had acted in compliance with Act 2004-228, which forbids the wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner. The Committee held the view that no compelling evidence of legitimate ground for restriction was provided by the State party; furthermore, the permanent exclusion from school was disproportional to the aim pursued ([Human Rights Committee 2013b](#)).

4.3. *The Religious Minorities' Rights to Effective Participation in Public Life*

The enhancement of minority religions' effective involvement in decisions affecting them, as well as their full participation in economic, cultural and social life³⁸, is a precondition for full and equal enjoyment of their human rights ([Human Rights Council 2010](#)). Furthermore, free practice of culture and religion, together with commitment in political and social life can be helpful to avoid tensions and hostility among communities ([OHCHR 2014](#)). However, the quality of minorities' political participation must go beyond a pure formal assessment: as the Independent Expert on Minority Issues recalled, '(. . .) States must also ensure that the participation of minority representatives has a substantial influence on decisions which are taken, so that there is, as far as possible, a shared ownership of the decisions taken' ([Human Rights Council 2010](#), para. 53). Accordingly, governments should promote mechanisms and bodies where religious minorities can be involved in discussion and public dialogue ([OHCHR 2014](#)), and participation in these forms of consultation shall not be restricted only to those religions previously recognized by the State (*ibid.*)³⁹

Additionally, as a general principle, any measure taken to facilitate open discussion must respect 'the principle of self-identification/self-understanding of members of religious minorities' ([Human Rights Council 2014](#), para. 11).

The enjoyment of the right to political participation may, nonetheless, conflict with the corresponding freedom of political organizations to settle their membership regulations.

In fact, the right to join a political party of one's choice is not absolute, as it was confirmed in *Paul Arenz v. Germany* ([Human Rights Committee 2004c](#))⁴⁰, where some members of the Church of Scientology had been subjected to an expulsion procedure from the CDU party, on account of their affiliation to that Church.

As a result of their expulsion and of the national courts' ruling upholding the party's decision, the authors claimed to be victims of violations of their rights to take part in their communities' political affairs and to freedom of thought, conscience and religion. Recalling that Article 18 ICCPR had to be interpreted widely, as protecting not only traditional religions but also newly established and minority religions and beliefs, the authors contended that their exclusion amounted to a violation of Article 18 in conjunction with Article 26, in view of the fact that only Scientology members had been subjected to expulsion. The communication was found inadmissible since the mere fact that the Courts had been given precedence to the principle of party autonomy over the wish of its members to belong to it did not amount to arbitrariness or denial of justice.

The case should have been examined also under Article 27, given the status of the Church of Scientology as a vulnerable group at a larger level, but this was not the pattern followed by the Committee, which did not make any reference to minorities' rights.

5. Concluding Remarks

Despite consistent efforts from international bodies to provide a legal definition, the concept of minority religions still seems quite hard to grasp. The reason partly lies in the uncertainties surrounding the notions of religion and belief, which nowadays are extending their boundaries well beyond any traditional meaning. A political explanation is also crucial: where governments deliberately pursue the aim of persecuting a religious

group, they deprive it of its existence, visibility and peculiarities, let alone its special rights as a minority.

On the other hand, targeting a group as a religious minority within a State may sometimes be practically inconsistent with the wishes and feelings of its members, as some (or most) of them shall prefer not to be addressed as such or to feel forced to belong to a religious identity they do not really share. These are some of the risks implied in what has been called the ‘governed religion’ opposing to the ‘everyday religion’ experienced by ordinary people, where religious feelings, rituals, traditions and faith identity are much more fluid and dynamic (Shakman Hurd 2015).

Before any positive measure towards minority religions is taken, a careful appraisal of the self-identification criterion should therefore be made.

In addition, the intersectionality approach suggests that most of the time belonging to a religious minority cannot be dissociated from other features defining personal and group identities (e.g., culture, ethnic origin, gender, language) and that this distinctive quality marks the multiple forms of violations and cross-cutting discriminations of which minorities often fall victim. In order to effectively fight multiple violations, a synergy of legal sources and applicable standards is required, all framed in the founding principles of equal dignity and the universality of human rights (Bielefeldt 2013).

Besides a combined effort of legal instruments, the synergy approach entails cooperation among the relevant institutional and civil actors and the need for inclusive participation of persons belonging to religious minorities in democratic decision-making processes to accomplish an equal and full enjoyment of their human rights.

Here again, a group/individual divide should be avoided, since participation shall include group leaders and representatives but also other faithful, the most vulnerable subjects and dissenters.

In principle, there will always be individual religious or non-religious interests not represented by the group at large and to which society and institutions must give proper consideration.

Providing adequate protection to freedom of religion or belief seeks and encourages a fruitful interaction between international human rights and minority rights regimes.

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Notes

- ¹ Global instances of discrimination and persecutions on religious grounds are regularly discussed in *International Journal on Minority and Group Rights*: see, among others, Mithun, Mahanam Bhattacharjee. 2019. Reasons Behind the Forced Migration of Bangladeshi Hindu Religious Minorities to India. *International Journal on Minority and Group Rights* 26 (3): 461–83; Id., 2018. Ethnic Conflict and Violence in Myanmar: The Exodus of Stateless Rohingya People. *International Journal on Minority and Group Rights* 25 (4): 647–63; Misra, Amalendu. 2015. Life in Brackets: Minority Christians and Hegemonic Violence in Pakistan. *International Journal on Minority and Group Rights* 22 (2): 157–81; Khan, Ashrafuzzaman, Mrinmoy Samadder. 2013. Struggling Insecurity: Ahmadiyya Community in Bangladesh. *International Journal on Minority and Group Rights* 20 (3): 371–79.
- ² The UN Special Rapporteurs called governments to ‘leave no one behind’, www.ohchr.org, 9 April 2020. The Special Rapporteur on FoRB signalled an up-surgings of incitement to hatred and religious intolerance in many parts of the world related to the pandemic: United Nations Guidance Notes on Addressing and Countering Covid-19 related Hate Speech, 11 May 2020; UN expert warns against religious hatred and intolerance during COVID-19 outbreak, www.ohchr.org, 22 April 2020. See also United

States Commission on International Religious Freedom, The Global Response to the Coronavirus: Impact on Religious Practice and Religious Freedom, www.uscirf.org, March 2020.

- 3 The Forum on Minority Issues also pointed out the importance of internal diversity within minority religious groups, Human Rights Council, Recommendations of the Forum on Minority Issues, Beyond freedom of religion or belief: Guaranteeing the rights of religious minorities (2013), A/HRC/25/66 (2014). An intersectional approach has also been adopted by the European Union: European Parliament, Towards a Comprehensive EU Protection System for Minorities, 2017.
- 4 A clear account of this perspective was provided by the Former Special Rapporteur on FoRB, Heiner Bielefeldt, A/HRC/22/51. As the Rapporteur recalled, religious minorities have historically been analysed and protected under other conceptual frameworks, firstly under the settlements of bilateral or multilateral peace agreements; that, however, resulted in the selected protection of certain predefined groups, *ibidem*.
- 5 For a historical overview, Bielefeldt, Heiner, Nazila Ghanea, and Michael Wiener. 2016. *Freedom of Religion or Belief. An International Law Commentary*. Oxford: Oxford University Press, p. 441 ff.; Lerner, Natan. 2003. *Group Rights and Discrimination in International Law*. Boston: Martinus Nijhoff, p. 7 ff.; Ferrari, Daniele. 2019. *Il concetto di minoranza religiosa dal diritto internazionale al diritto europeo*. Bologna: Il Mulino, p. 25 ff.
- 6 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language' (Article 27 ICCPR). The Commission on Human Rights, established in 1946, created a Sub-Commission on Prevention of Discrimination and Protection of Minorities, which helped in developing Article 27 ICCPR (Knights 2007, p. 8). In 1999 the Sub-Commission was renamed as UN Sub-Commission on the Promotion and Protection of Human Rights. Pursuant to General Assembly Resolution 60/251 of 15 March 2006, all responsibilities of the Commission on Human Rights were assumed by the Human Rights Council and the Sub-Commission was replaced by the Human Rights Council Advisory Committee.
- 7 Indeed, the prevailing conception in human rights law after World War II was focused on the need to protect individual rights and prevent discrimination, while no remarkable attention was devoted to the protection of groups as such or persons as members of that group; an exception was the Genocide Convention, Lerner, Natan. 2006. *Religion, Secular Beliefs and Human Rights*. Boston: Martinus Nijhoff, p. 81.
- 8 A similar provision had been previously proposed by the Special Rapporteur Arcot Krishnaswami in his Study of Discrimination in the Matter of Religious Rights and Practices, U.N. Doc. E/CN.4/Sub.2/200/Rev.1 (1960).
- 9 A critical appraisal of the view expressed by the Committee, because of a lack of proper argumentation, was expressed by Malcolm D. Evans, The United Nations and freedom of religion: the work of the Human Rights Committee, Rex Ahdar (ed.), Law and Religion, Ashgate, Aldershot, 2000, pp. 35–61.
- 10 The right to change religion was positively established in Article 18 UDHR, but it was not clearly embodied in Article 18 ICCPR due to the absence of general consensus among delegates (Bossuyt 1987, p. 357 ff.; Evans 1997, p. 197 ff.). The right to withdraw from one's own religion and to join another was clearly reaffirmed by the Human Rights Committee in its General Comment No. 22, where it is stated that the right to 'have or to adopt' a religion or belief includes 'the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief' (CCPR/C/21/Rev.1/Add.4, para. 5; Nowak 1993, p. 316).
- 11 Article 18 par. 3 ICCPR. The right to manifest religion shall be granted also to persons deprived of their personal liberty (Human Rights Committee 2002a). Where the limitation is grounded on morals, a wide margin of appreciation shall be acknowledged to the State (Human Rights Committee 1982). In General Comment No. 22, the Committee made it clear that a religious manifestation contrary to gender equality rights should have been limited by the State (Human Rights Committee 1993, para. 9–10). For more details on Article 18 ICCPR, which would be beyond the scope of this article, Angeletti, Silvia. 2008. *Libertà religiosa e Patto internazionale sui diritti civili e politici. La prassi del Comitato per i diritti umani delle Nazioni Unite*. Torino: Giappichelli.
- 12 The distinction between discrimination and coercion was thoroughly discussed during the drafting procedures of Article 18 ICCPR, CCPR/C/SR.1166 (1992).
- 13 Human Rights Committee, *Min-Kyu Jeong et al. v. The Republic of Korea*, Comm. No. 1642-1741/2007, CCPR/C/101/D/1642-1741/2007 (2011); *Jong-nam Kim et al. v. The Republic of Korea*, Comm. No. 1786/2008, CCPR/C/106/D/1786/2008 (2013); *Young-kwan kim et al. v. The Republic of Korea*, Comm. No. 2179/2012, U.N. Doc. CCPR/C/112/D/2179/2012 (2015).
- 14 See among others, E/CN.4/1999/58; E/CN.4/2004/63; E/CN.4/2002/73; E/CN.4/2005/61.
- 15 State obligations deriving from Article 2 (1) are also relevant.
- 16 The Committee clearly stated that 'The minorities referred to in article 27 are minorities within such a State and not minorities within any province'; English-speaking Canadian citizens were not considered a linguistic minority, Human Rights Committee, *Ballantyne, Davidson, McIntyre v. Canada*, Comm. No. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1, 5 May 1993. See also *Diergaardt et al. v. Namibia*, Comm. No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997, 25 July 2000, where the Committee found that not every kind of economic activity is relevant to meet the criterion of cultural identity.

- 17 The right to have one's name recorded in official documents as it is written in accordance with religious tradition has been recognized under Article 17 (right to privacy), *Leonid Raihman v. Latvia*, Comm. No. 1621/2007, U.N. Doc. CCPR/C/100/D/1621/2007 (2010); *A.R. Coeriel and M.A.R. Aurick v. The Netherlands*, Comm. No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (1994).
- 18 Indigenous groups' claims are often related to the protection of economic activities linked to a traditional way of life, Human Rights Committee, *B. Ominayak v. Canada*, Comm. No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (1990); *J.G.A. Diergaardt v. Namibia*, Comm. No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000); *Jouni E. Länsman v. Finland*, Comm. No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 (1996).
- 19 A reference to a sacred place of the old Sami religion can be found in *Länsman et al. v. Finland*, Comm. No. 511/1992, U.N. Doc. CCPR/C/52/D/511/1992 (1994).
- 20 The Author stressed the quite restrictive approach applied by the HRCee in making use of other international instruments. The Committee takes into account the material made available by the individual parties in their submissions during communications without including such references in the dispositive part of the view. In addition, concluding observations on country reports do not mention other international instruments or case law (pp. 44–45).
- 21 See Thornberry, Patrick. 2016. *The International Convention on the Elimination of All Forms of Racial Discrimination, A Commentary*. Oxford: Oxford University Press, p. 353 ff.; Garvalov, Ivan. 2008. The United Nations International Convention on the Elimination of All Forms of Racial Discrimination. In *Synergies in Minority Protection*. Edited by Kristin Henrard, and Rober Dunbar. Cambridge: Cambridge University Press, pp. 249–77. See also the Genocide Convention, which includes religious groups among the possible targets of acts committed with the intent of genocide, U.N. General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, Article II; the Refugee Convention includes religion among the reasons for well-founded fear of persecution, Convention Related to the Status of Refugees, United Nations General Assembly Resolution 2198 (XXI) 1951, Article 1(2).
- 22 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly Resolution 47/135 (1992).
- 23 Citizens and non-citizens, including persons belonging to indigenous peoples, are protected by the Declaration, E/CN.4/Sub.2/AC.5/2005/2 (para. 17).
- 24 See also ICERD Article 4; ICCPR Article 20.
- 25 See Silvio Ferrari, Andrea Benzo (eds), *Between Cultural Diversity and Common Heritage. Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ashgate, Farnham, 2014.
- 26 As the Commentary points out, the rights established in the Declaration can be claimed by individuals, E/CN.4/Sub.2/AC.5/2005/2 (para. 14).
- 27 The right to association encompasses religious institutions as well as other types of national or international associations.
- 28 See also: ICERD Article 2.2.
- 29 Media play a key role in shaping societal perception of religious minorities, sometimes reinforcing stigmatization and prejudices against minorities. Effective participation of religious minorities in the media shall be facilitated, A/68/268.
- 30 See also Human Rights Council. 2020. *Report of the Special Rapporteur on freedom of religion or belief*. A/HRC/43/48.
- 31 See further, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012); Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, 'Fez Process' 2017; A/HRC/25/66.
- 32 Human Rights Committee, *Malcolm Ross v. Canada*, Comm. No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (2000); *Ernst Zündel v. Canada*, Comm. No. 953/2000, U.N. Doc. CCPR/C/78/D/953/2000 (2003); *J.R.T. and the W.G. Party v. Canada*, Comm. No. 104/1981, U.N. Doc. CCPR/C/OP/2 at 25 (1984) (where the Committee found the violation of Article 20).
- 33 Protection is accorded only to individuals who prove to be victim of a violation; communication procedures do not allow for an *actio popularis*, *Fatima Andersen v. Denmark*, Comm. No. 1868/2009, CCPR/C/99/D/1868/2009 (2010).
- 34 See also: Article 26(3) UDHR, Article 13(3) ICESCR, Article 18(4) ICCPR, Article 14(2) American Convention on Human Rights, Article 2 First Protocol ECHR, Article 17 African Charter on Human and People's Rights, Article 5(1)b UNESCO Convention Against Discrimination in Education, Article 5(2) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Articles 14 and 29 CRC.
- 35 '(...) And if demands for religious schools do arise, one legitimate criterion for deciding whether it would amount to discrimination not to establish a public minority school or not to provide comparable public funding to a private minority school is whether there is a sufficient number of children to attend such a school so that it could operate as a viable part in the overall system of education. In the present case this condition was met. Consequently, the level of indirect public funding allocated to the education of the author's children amounted to discrimination when compared to the full funding of public Roman Catholic schools in Ontario'. Individual Opinion by member Martin Scheinin (concurring), U.N. Doc. CCPR/C/67/D/694/1996 (1999) cit. (par. 5).
- 36 See also: ICERD Article 7; CRC Article 29.

- 37 Ex Article 13 ICESCR everyone has the right to education, which shall enable all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. More generally, States should take measures to encourage knowledge of the history, culture and positive contributions of religious groups to society at large and to provide public officials with training initiatives, A/HRC/25/66.
- 38 Indigenous peoples' rights to participation have been improved, see Tomaselli, Alexandra. 2017. The Right to Political Participation of Indigenous Peoples: A Holistic Approach. *International Journal on Minority and Group Rights* 24: 390–427; A/HRC/25/66.
- 39 The concept of group vulnerability should be increasingly acknowledged in order to accommodate diversity, as has been suggested with regard to cultural minorities, Macioce, Fabio. 2018. Asymmetrical Recognition. Group Vulnerability and Group Rights, Beyond Cultural Identities. *International Journal on Minority and Group Rights* 25: 132–51.
- 40 The authors claimed to be victims of a violation of Articles 2 (1), 18, 19, 22, 25, 26 and 27.

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