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**Human Rights Council****Forum on Minority Issues**

Sixth session

26–27 November 2013

**Draft recommendations on guaranteeing the rights of religious minorities****Note by the Secretariat\*****I. Introduction**

1. In accordance with Human Rights Council resolutions 6/15 and 19/23, the present document contains the draft recommendations that will form the basis for discussions at the sixth session of the Forum on Minority Issues. The sixth Forum will consider the theme of “Beyond freedom of religion or belief: guaranteeing the rights of religious minorities”. It will seek to provide substantive and tangible outcomes in the form of thematic recommendations of practical value to all stakeholders. The outcome document drawn up to include the recommendations suggested at the present session of the Forum will be presented by the Independent Expert on minority issues to the Human Rights Council at its twenty-fifth session in March 2014.

2. The recommendations contained in the present document are based on the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as other international and regional human rights standards and principles, guidelines developed by different stakeholders and domestic legislation. The jurisprudence and general comments of the Human Rights Committee and other treaty bodies, as well as relevant reports and recommendations from different special procedures, including the work of the Special Rapporteur on freedom of religion or belief, have informed the present recommendations. A brief presentation of the legal framework is provided below.

3. As at previous sessions of the Forum, the range of issues included in the recommendations is not exhaustive. It is hoped that the recommendations will be interpreted in a constructive manner, in cooperation and open dialogue with religious minority communities in the light of the obligations of States to implement human rights standards effectively in practice.

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\* Late submission.

4. The recommendations are phrased in broad terms and may be implemented in countries with diverse religious, historical and cultural backgrounds, with full respect for universal human rights. The work of the Forum takes into account the great variety of country and minority situations and that, consequently, different measures may be required to promote and protect the rights of persons belonging to religious minorities within a given State. The Forum participants have also reiterated the fact that such measures ought to be monitored and reviewed on a regular basis to ensure that they achieve the required objectives. It has consistently been emphasized at the Forum that standard solutions are generally neither possible nor desirable, and that the recommendations should therefore be used with that in mind.

5. At previous sessions of the Forum, it has been demonstrated that there are different approaches to the protection of the rights of minorities, according to their circumstances and other factors such as historical, cultural and religious background and political systems. The present session of the Forum is an opportunity for all stakeholders to share their views on existing practices, approaches and mechanisms that could perhaps be replicated in other countries and regions to guarantee the rights and security of religious minorities. It is noted that respect for the rights of religious minorities does not automatically arise from any specific State-religion or ideology model.

6. The present document provides decision makers, public officials, non-governmental organizations, academics and others, including religious minorities themselves and religious leaders, with an overview of possible options and solutions to the challenges facing persons belonging to religious minorities. The recommendations will be a resource for decision makers, helping them to make appropriate and informed choices when designing legislation and policies aimed at guaranteeing the rights of religious minorities. The document will further constitute a useful tool for religious minorities themselves, guiding them in their efforts to improve their situation and facilitate constructive interfaith dialogues and exchanges.

## **II. Legal framework**

7. The promotion and protection of the rights of religious minorities has typically been addressed in the past through the international legal framework relevant to freedom of religion and belief. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981 does not explicitly mention religious minorities, although it does establish non-discrimination and equality as key principles. Those core principles also form the basis of the minority rights framework.

8. Article 27 of the International Covenant on Civil and Political Rights provides that “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”.

9. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter “the Declaration”), inspired by article 27 of the International Covenant on Civil and Political Rights, establishes the responsibility of States to ensure the protection of minority religious identity. Importantly, it goes further in its scope and details positive requirements for the protection of minority group rights. These rights complement, and go beyond, freedom of religion and religious identity.

10. The Declaration requires positive measures to be taken in the area of legislation, policy and programming. Article 1, paragraph 1, requires States to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within

their respective territories” and “encourage conditions for the promotion of that identity”. Article 1, paragraph 2, requires States to “adopt appropriate legislative and other measures to achieve those ends”. Article 2 underscores the right to participate effectively in cultural, religious, social, economic and public life and in decisions on the national and, where appropriate, regional levels concerning the minority to which they belong or the regions in which they live. Article 4, paragraph 1, requires States to “take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”. Furthermore, article 4, paragraph 2, calls upon them to “take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”. In paragraph 4 of the same article, States are also called upon to “take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory”. Article 5 of the Declaration establishes that national policies and programmes should be planned and implemented “with due regard for the legitimate interests of persons belonging to minorities”.

11. An inclusive approach to defining which groups fall within the scope of “religious minority” is in line with Human Rights Committee’s general comment No. 23 (1994) on the rights of minorities, which emphasizes that “the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria” (para. 5.2). In its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, the Committee further stressed that the terms “belief” and “religion” should be broadly construed and that application of article 18 of the International Covenant on Civil and Political Rights must not be limited to traditional or established religions. The State must therefore also ensure non-discrimination and equal enjoyment of human rights for smaller, dispersed or newly arrived religious communities. The right for individuals to self-identify as belonging to a religious minority or not to do so must be recognized, and discussions should not be limited to officially recognized groups.

### **III. General considerations**

12. The term “religious minorities” as used in the present document therefore encompasses a broad range of religious or belief communities, traditional and non-traditional, whether recognized by the State or not, including more recently established faith or belief groups, large and small communities, which seek protection of their rights under minority rights standards. Non-believers, atheists or agnostics may also face challenges and discrimination and require protection of their rights. Attention should also be given to the situation of religious minorities where they form the minority in a particular region or locality, but not in the country as a whole.

13. The diversity that exists within religious minority groups must also be recognized. The rights of every single member of such minority groups must be respected fully. Religious minorities are also frequently national, ethnic or linguistic minorities. Discrimination against them may be compounded, intersectional and based not only on their religious identity, but also on their ethnic, linguistic or other identity, and perceptions of them as “other” or not fully belonging. Religious minority women and girls may experience multiple or intersectional forms of discrimination in the course of their interactions within and outside their group. A gender perspective that takes into account the multiple and intersecting forms of discrimination that minority women and girls might face

is critical when addressing minority rights and the situation of minority women and girls in a given religious minority group, and in a particular country.

14. In their efforts to guarantee the rights of religious minorities, all stakeholders are encouraged to refer to the substantive and action-oriented recommendations made at the five previous sessions of the Forum, focusing on the key thematic areas of minorities and the right to education, effective political participation, effective participation in economic life, ways to guarantee the rights of minority women and girls and effective implementation of the Declaration.<sup>1</sup> These recommendations equally apply to religious minorities and should be considered as complementary to the recommendations contained in the present document, which are directed to and aimed at addressing particular areas of concern to religious minorities.

15. All measures taken with a view to implementing the recommendations made at the Forum session should be, to the fullest extent possible, developed, designed, implemented and reviewed with the full and effective participation of religious minorities, including women. The conditions allowing for such collaboration and mechanisms to facilitate consultation should be put in place by all actors involved. Efforts should also be made to ensure that the diverse views within minority groups, including those of religious leaders but also of other members of the community, are sought and taken into account in the process. All efforts should be made to ensure that the principle of self-identification/self-understanding of members of religious minorities is respected.

#### **IV. Recommendations**

16. Based on the Declaration, a set of core recommendations are reflected below. These are then elaborated upon through a set of possible measures for their implementation in practice by different actors involved.

##### **A. General recommendations**

17. All States should fully implement the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities with due and dedicated attention to the situation of religious minorities present in the country. In accordance with the Declaration, attention given to religious minorities should include but also go beyond freedom of religion or belief to guarantee implementation of the full range of minority rights for persons belonging to religious minorities.

18. States must fully comply with and implement article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, giving specific attention to the issues of particular concern to religious minorities who may experience discrimination, marginalization and stigmatization and who may require greater attention.

19. States should consider, where appropriate, special measures that address long-standing discrimination and inequality experienced by persons belonging to religious minorities. While non-discrimination measures are essential, the rights of minorities frequently require specific affirmative action measures to ensure equality. Institutional attention to religious minorities helps to facilitate such measures and improves the

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<sup>1</sup> See previous recommendations of the Forum in A/HRC/10/11/Add.1, A/HRC/13/25, A/HRC/16/46, A/HRC/19/71 and A/HRC/22/60.

mainstreaming of minority issues in institutions such as human rights bodies and ministries working on central concerns of minorities.

## **B. Implementation of international standards and domestic legislation**

20. The provisions of the Declaration should be translated by States into domestic legislation and dedicated attention to religious minorities should be reflected in the national institutional frameworks for the protection of human rights, including line ministries and government departments, national human rights institutions, and consultative bodies and mechanisms.

21. Existing legislation should be reviewed to ensure that no provisions exist in law that are discriminatory or have a directly or indirectly discriminatory impact on persons belonging to religious minorities.

22. States should adopt domestic anti-discrimination legislation that includes provisions that prohibit direct and indirect discrimination against persons belonging to religious minorities. Governments should ensure the implementation of such legislation, including at the local levels, and that remedies are available and easily accessible for religious minorities and that adequate penalties are applied in the event of violation.

23. States that have not already adopted laws protecting against religious hatred, incitement to religious discrimination, hostility or violence against religious minorities, should do so in line with applicable international standards.

24. States should ensure that anti-terrorism legislation and policies and their application do not lead to negative consequences for members of religious groups, in particular as a result of religious profiling. They should ensure that religious profiling, in particular in the context of anti-terrorism measures, is actually prohibited by law.

## **C. Policies and programmes**

25. States should demonstrate their commitment to the protection of religious minority rights by ensuring that their issues are consistently integrated into and reflected in governmental policies and programmes. Minority rights-based approaches should be implemented that are comprehensive in scope and recognize that religious minorities may require special attention and positive measures to ensure the full enjoyment of their rights to non-discrimination and equality in all aspects of society — cultural, religious, social, economic and public.

26. The composition of national institutions, including government bodies and public employers, should be reviewed periodically to ensure that they are representative of the religious minorities present in society. States should ensure the recruitment of persons belonging to religious minorities into law enforcement and other national bodies and public institutions.

27. Measures to ensure access to justice for persons belonging to religious minority groups should be taken, such as the training of public and law enforcement officials on the rights contained in the Declaration and domestic legislation relevant to the rights of religious minorities. Efforts should be made to increase the representation of religious minorities in the judiciary and to improve their access to public service.

28. As provided for in the Declaration, States should engage with neighbouring and kin States from which religious minorities emanate to foster positive exchanges and provide appropriate religious and/or cultural support to religious communities and for them to

establish and maintain peaceful contacts with other members of their group, both within their own country and across State borders.

29. Trade unions should ensure that religious minorities are reasonably accommodated in the labour market. They should, for example, develop expertise on the challenges facing religious minorities in their country and seek to engage policymakers and employers in finding solutions.

30. National human rights institutions should develop expertise on the religious diversity within the State concerned and actively ensure that challenges faced by religious groups are addressed in their work, including by, as appropriate, establishing a specialized unit and developing guidelines on religious minority issues, for example for employers. They should promote and ensure the representation of such religious diversity within their own secretariat and staff.

#### **D. Consultation and participation**

31. Positive measures to ensure consultation with and participation of all religious minorities at all levels of society are required. The inclusion of religious minorities in consultative and decision-making bodies helps to ensure that their views, issues and concerns are taken into account. States should facilitate the establishment of bodies and mechanisms aimed at creating a space for discussions and exchanges on issues relevant to religious minorities.

32. States should engage in open-ended consultations with the full range of religious minority groups and with wider society on measures to improve respect for all human rights of persons belonging to religious minorities.

33. Measures to improve the representation and participation of religious minorities in all fields of life, including targeted recruitment and training initiatives, should be taken and promoted in the public and private sectors. Religious minorities, including from smaller communities, should be represented in oversight and regulatory bodies relating to, for example, law enforcement services.

34. States should promote equitable access for minorities to information and communications technologies and tools, including the Internet and online social media channels, as a vehicle for the dissemination of information and sharing of good practices and for encouraging the effective participation of religious minorities, including young people, in all spheres of life and the fostering of a spirit of acceptance at all levels and interfaith discussions.

35. Where religious minorities form the majority in a particular region or locality, cultural and/or political autonomy arrangements may be considered appropriate with due consideration given to ensuring the rights of those who may form a minority in those localities.

#### **E. Education**

36. States must ensure that the national educational environment is welcoming and non-discriminatory to those belonging to religious minorities and that students belonging to minority religious groups have the opportunity to learn about their own religion, manifest their religion, participate in their religious holidays, and learn about the religions and beliefs of others.

37. Governments should develop and implement inclusive and targeted education policies that provide access to high-quality learning environments for all persons belonging

to religious minorities. Intercultural education approaches that are minority-sensitive should be adopted, with particular attention paid to reflecting the plurality and positive contribution of religious minorities to society and to countering negative stereotypes and myths about their faiths and groups.

38. Where public education includes instruction in a particular religion or belief, provision should be made for non-discriminatory exemptions or alternatives to accommodate the wishes of religious minorities. Instruction in subjects such as the general history of religions must be delivered in a neutral and objective way and promote interfaith and interreligious understanding and dialogue. Measures should be taken to ensure that children (along with their parents/legal guardians) may choose whether to participate in classes of religious education or not.

39. Particular attention should be paid to the needs of girls belonging to religious minorities in education. Ensuring that they have equal access to education may require dialogue with and within religious communities aimed at the formulation of appropriate human rights-based approaches to issues such as bans of headscarves and other religious dress requirements in schools.

40. Measures should be taken to address existing barriers that might prevent some religious minorities from accessing tertiary education due to their religious affiliation. This could be done for example through the development of affirmative action schemes in education policies for members of religious minorities.

41. Human rights education should integrate a minority rights component and give special attention to religious minorities, as appropriate. Governments should collaborate with religious minority actors and organizations in the development of materials relevant to religious minority rights and the religious communities in the State, and ensure that minority issues are fully reflected in and mainstreamed into school curricula. School texts must be reviewed to ensure that they reflect and are appropriate for religious minorities and do not convey negative stereotypes about them.

## **F. Training and awareness-raising**

42. All actors should take initiatives in the area of awareness-raising, including campaigns on minority rights with activities aimed at the promotion of the Declaration, as well as information on existing specialized minority rights and equality bodies, departments or relevant agencies, and their services. Outreach should be targeted at religious minority communities, including via minority media and in minority localities and languages, as well as to wider society.

43. In conformity with the Declaration, States should take measures to encourage knowledge of the religions, history, traditions, language and culture of the religious minorities existing within their territory. Measures to inform society at large may include, for example, the development of resource materials on the history, culture, traditions and positive contributions to society of the different religious groups present in the State, as well as media-based initiatives to encourage knowledge about religious minorities.

44. Training initiatives on minority rights, non-discrimination and equality, freedom of religion or belief, good practices and methodologies should be considered within all relevant public institutions. Public and law enforcement officials should be provided with such training, and monitoring and oversight mechanisms should be put in place to identify and punish unprofessional performance of law enforcement officials when dealing with religious minorities, in particular in cases of intentional exclusion or harassment and religious or ethnic profiling.

## **G. Research and data**

45. States should undertake research and data-gathering exercises, including in the context of national census surveys, aimed at compiling detailed information on the demographic and socioeconomic situation of religious minorities in their country.

46. Data should be gathered that is quantitative and qualitative in nature and includes considerations of the situation of religious minorities relative to other members of society. Research should assess the freedom for religious minorities to practise their religion, culture and traditions, and should consider key areas of minority concern, including access to quality education, employment, health and housing, and their ability to participate effectively in public life.

47. A full picture of the religious and belief diversity in a State should include all religions and belief groups. Data collection should be conducted in an ethnically sensitive manner and on a voluntary basis, consistent with the right of religious minorities to self-identification, with full respect for the privacy and anonymity of the individuals concerned and in accordance with international standards of personal data protection.

48. National statistical bodies should be mandated to collect data on religious minorities. Governments should also consider, where necessary, providing support to the work of non-governmental organizations and research centres to initiate research projects relevant to the religious minorities in the State/region, where necessary.

## **H. Prevention of violence and protection of the security of religious minorities**

49. States have the responsibility to protect human rights and security for all and to create conditions of peace and stability. They must act appropriately and rapidly to protect the rights and security of persons belonging to religious minorities under threat and prosecute anyone who commits, supports or incites violence against them.

50. Preventive measures should be taken against acts of violence directed against persons or religious sites belonging to religious minorities. In situations of extreme risk, appropriate preventive measures should be rapidly deployed by law enforcement bodies and adapted as the situation evolves. States should take all necessary measures to ensure protection for and prevent attacks and violence against advocates for religious minorities' rights and those who fulfil leadership or community roles and may be at greater risk of violence.

51. States should ensure that all cases of intimidation, harassment, persecution and other serious human rights violations against religious minorities are thoroughly and immediately investigated and perpetrators punished. Appropriate measures, including legal assistance, should be made available to religious minority groups as required in order to document cases of violence or intimidation and effectively prosecute those who commit attacks on them and communal violence.

52. In conflict situations, special attention must be paid to the situation and security of persons belonging to vulnerable religious minorities. Efforts should be made to fully reintegrate with dignity religious communities that have been displaced during conflict to their places of origin, allow access to all places of worship and other religious sites, and ensure protection of religious minorities present on the territory. Religious minorities from all religions within a State should be actively involved, including at the earliest stages and throughout peacebuilding initiatives and reconciliation processes.

## **I. Interfaith dialogue, consultation and exchange**

53. In multi-faith societies, efforts to build a climate of trust, understanding, acceptance and interfaith cooperation and exchange should be established. Such measures benefit the whole of society and are essential elements of good governance.

54. States should consider creating or facilitating national and regional institutions aimed at fostering interfaith dialogue and projects promoting a culture of understanding and a spirit of acceptance. The establishment of formal and informal national and local institutions and platforms for dialogue where representatives of religious groups meet regularly to discuss issues of common concerns should be encouraged.

55. The potential of religious and political leaders in helping to build tolerant, inclusive societies and initiate and support such efforts and activities should be harnessed. Such influential community and national figures should be at the forefront of dialogue and inter-community cohesion efforts, as well as in publicly condemning any advocacy of religious hatred, discrimination, hostility or violence.

56. Initiatives relating to interreligious and interfaith dialogues should be as inclusive as possible and should be encouraged at the grass-roots level. The participation of women and young people belonging to religious minorities should be particularly encouraged and ensured through active outreach. The use of different channels of communication, such as the media, arts and local institutions, to foster interfaith dialogue and exchange should also be promoted.

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