



**Analysis of the
Republic of Tajikistan’s Draft Law
“ABOUT FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS”¹**

Executive Summary

The proposed draft law “About Freedom of Conscience and Religious Unions” (the “Draft Law”) has the potential to make significant positive contributions to improving relations between religious communities and the state in the Republic of Tajikistan. Because of its importance, it will inevitably attract significant international attention. In its current form, however, the Draft Law suffers from a number of overarching flaws which prevent it from comporting with Tajikistan’s international treaty commitments as well as domestic constitutional obligations. Many provisions in the draft law are inconsistent with key human rights provisions of Tajikistan’s constitution, and similarly run contrary to Tajikistan’s international human rights obligations, particularly as expressed under the International Covenant for Civil and Political Rights (ICCPR), in relevant commitments Tajikistan has made as a participating State in the OSCE, and pursuant to its interim agreement and pending Partnership and Cooperation Agreements with the European Community.

In addition to shortfalls under constitutional and international human rights standards, the law suffers from a number of technical and structural defects which will complicate administration of the law and will introduce needless friction in state interactions with religious groups.

I. Human rights issues under the Draft Law include the following:

- **Violations of Fundamental Rights and Freedoms Related to:**
 - Freedom of thought, conscience, and religion or belief
 - Freedom of assembly and association
 - Freedom of expression
 - Freedom of movement
 - Antidiscrimination rights

II. Significant violations of these fundamental rights may occur through:

➤ Discrimination

- Overt and consistent discriminatory treatment of citizens and non-citizens (Arts. 5, 9, 17, 18, 25-27)²
- Discrimination against religious groups which fail or chose not to seek official registered status (Arts. 9, 11, 19, 23, 27, 28, 30)
- Failure to ensure that benefits are allocated in non-discriminatory way (Art. 31)
- Differential treatment of Muslim and non-Muslim groups (Preamble, Art. 5(6), Arts. 11-17)
- Preamble text references specific religious groups only
- Religion on identity cards (Art. 5(3))
- Other potentially discriminatory features of registry system (Arts. 11-18)

➤ Excessive Limitations on the Individual Right to Freedom of Religion or Belief

- Overly broad description of grounds for limiting religious freedom (Arts. 5(2), 6(6))
- Undue constraints in the registration system (Arts. 11-21, esp. 19(5)(5))
- Undue constraints in access to religious education (Arts. 8-9, 15)
- Failure to protect conscientious objectors (Art. 5(4))
- Excessive constraints on international contacts with co-religionists (Art. 29)

➤ Excessive Intervention in Internal Religious Affairs

- Provisions that allow substantive evaluation of the merits of religions (Arts. 6(6), 19(4))
- Undue constraints on how religious communities structure themselves organizationally (Art. 11)
- Organization according to “sample regulations” (Art. 12(2))
- Intervention in personnel decisions (Arts. 9(9), 34)

➤ Excessive Constraints on Involvement of Citizens in Political Processes

- Prohibitions on rights of political participation Art. 7(3))
- Religious workers (Art. 7(2))

➤ Excessive Constraints on Missionary Activity

- Limitations on distribution of religious literature and other items (Art. 27)
- Potential censorship of imported religious literature (Art. 27(4))
- Vague provision that could operate to ban missionary work (Art. 28(3))
- Additional restrictions on international organizations operating in Tajikistan (Arts 27, 29)

➤ Vague and Overbroad Provisions that Permit Abuse of Discretion in Interpretation, Implementation and Enforcement

- Registered religions must demonstrate that their aims are not inconsistent with the “cultural, national, and religious values” (Arts. 6(6), 19(5)(6))

² Select list of relevant articles is not exhaustive guide.

- Vague provisions governing approval (Arts. 19-20), suspension (Arts. 36-37), dissolution (Art. 38), and banning (Art. 18(7)) of religious organizations

III. Structural and Technical Problems May Complicate Matters

➤ The Registration System is Needlessly Complicated

- There is a confusing array of types of organizations (Arts. 11-17)
- Lack of clarity about which organizations have or do not have legal entity status (Arts 18-22)
- Insufficient flexibility in basic legal entity to allow it to meet needs of many different legal groups using entities for many different legitimate purposes (Arts. 11-19)

➤ Inconsistent and Contradictory Drafting

- Positive general human rights language is undermined by specific contradictory provisions (Arts. 4-6, 23)
- Generally applicable rights are applied inconsistently (Arts. 5, 7, 11, 16, 17, 18, 25-27)
- Responsibilities of local and central administrations are inconsistently divided raising accountability concerns (Arts. 16-17, 19, 31)

➤ Amendment and Reporting Provisions are Unnecessarily Cumbersome and Invasive

- Re-registration requirements perpetuate administrative burden (Art. 19)
- Annual reporting provisions lack specificity (Art. 22)
- Right of officials to attend events and demand information are overbroad (Art. 24)

➤ Transition provisions for the Draft Law are Onerous

- Insufficient time provided to comply (Art. 39)
- Requires currently registered organizations to reapply for registration (Art. 39)

If the draft law is adopted without any further modification, its enforcement will result in the likely violation of the fundamental rights enumerated above. By implication, these violations will have deleterious effects not only on the individual rights of Tajik citizens and non-citizens, but also—more broadly—on the development of civil society in the country and on Tajikistan’s international standing and reputation.

The complete report which follows this executive summary provides a detailed article-by-article evaluation of the Draft Law as well as recommendations for amendments to ensure its conformity with Tajikistan’s international and domestic human rights commitments.

Analysis of the
Republic of Tajikistan’s Draft Law
“ABOUT FREEDOM OF CONSCIENCE AND RELIGIOUS UNIONS”

Prepared by
Prof. Robert C. Blitt and
Prof. W. Cole Durham, Jr.
on Behalf of the
International Center for Not-for-Profit Law
Washington, D.C.
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I. Overview

A. Introduction

Laws implementing a nation’s commitments in the field of freedom of religion or belief under its own constitution and under international law are particularly important to its development and international relations. While less dramatic than some other types of law reform, laws in this area go to the core of human dignity. As a practical matter, laws dealing with registration of religious organizations are vital to the life of religious communities. While some groups may object as a matter of conscience to the need to be registered, most find that it is extremely difficult to interact with the world around them without legal entity status. This practical reality is obvious to religious leaders, who in turn are very good at making this obvious to political leaders (both at home and abroad). Laws dealing with registration of religious groups accordingly tend to become very high visibility pieces of legislation. Religious association laws constitute both the symbolic and practical organizational interface where religious and state institutions interact. If designed well, such laws contribute to the overall harmony and stability of society, and go far toward cultivating an atmosphere of tolerance and mutual respect in a country. Unduly restrictive laws in this area result in significant loss of social capital, because the positive contributions religious groups make to society are impeded. While religion can have negative as well as positive effects, and some regulation is therefore justified, it is socially wasteful to regulate religion in ways that unnecessarily curtail its positive effects. For all of these reasons, the opportunity to provide recommendations for improving Tajikistan’s proposed Law About Freedom of Conscience and Religious Unions”³ (the “Draft Law”) is welcome.

This Analysis of the Draft Law was prepared by Prof. Robert C. Blitt of the University of Tennessee College of Law⁴ and Prof. W. Cole Durham, Jr., Director of the International Center for Law and Religion Studies at Brigham Young University at the request the International

³ The U.S. Department of State has translated this draft law as “On Freedom of Conscience, on Religious Associations and Other [Religious] Organizations.”

⁴ The author can be reached by email at rblitt@utk.edu.

Center for Not-for-Profit Law (ICNL). The opinions expressed herein are those of the authors only and in no way represent the views of the University of Tennessee or Brigham Young University. A copy of the translation used is attached as Exhibit A.

B. Methodology

The Analysis assesses the Draft Law in light of the Constitution of the Republic of Tajikistan and Tajikistan's international commitments. In particular, the Analysis is based on the International Covenant for Civil and Political Rights (ICCPR),⁵ and key declarations of the General Assembly of the United Nations.⁶ The Analysis also takes into account Tajikistan's commitments as a participating State of the Organization for Security and Cooperation in Europe (OSCE),⁷ as expressed in key documents including the Helsinki Final Act, the Vienna Concluding Document, and various other commitments that OSCE participating states have made over time.⁸ In particular, the Analysis takes into account the "Guidelines for Review of Legislation Pertaining to Religion or Belief" (the "OSCE Guidelines")⁹ that were produced by the OSCE's Advisory Panel on Freedom of Religion or Belief in 2004.¹⁰ The Analysis also takes cognizance of the Interim Agreement on Trade and Trade-related Matters¹¹ and pending Partnership and Cooperation Agreement (PCA)¹² signed between Tajikistan and the European Community.

⁵ International Covenant on Civil and Political Rights ("ICCPR"), G.A. Res. 2200A (XXI), Dec. 16, 1966, UN Doc. A/6316, 6 I.L.M. 368 (entered into force Mar. 23, 1976). Tajikistan acceded to the ICCPR April 4, 1999 and has not entered any reservations to its human rights treaties.

⁶ These include the Universal Declaration of Human Rights ("UDHR"), U.N. Gen. Assembly Res. 217A(III) (adopted 10 December 1948), and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the "1981 Declaration"), U.N. Gen. Assembly Res. 36/55, adopted 25 November 1981.

⁷ Tajikistan was admitted as a participating State on January 30, 1992 and signed the Helsinki Final Act on February 26, 1992.

⁸ See in particular, CSCE, Helsinki Final Act, 1975 and Vienna Concluding Document, 1989. For a comprehensive summary of relevant OSCE Commitments, see OSCE Office of Democratic Institutions and Human Rights, OSCE Human Dimension Commitments, Vol 1: Thematic Compilation (2d. ed. 2005), available at www.osce.org/publications/odihr/2005/09/16237_440_en.pdf. This document is also available in Russian (www.osce.org/publications/odihr/2005/09/16237_440_ru.pdf). Sections 3.1.7 and 3.1.8 compile OSCE Commitments relevant to freedom of religion or belief.

⁹ The Guidelines were adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004), and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The Guidelines have also been commended by the U.N. Special Rapporteur on Freedom of Religion or Belief. Report of the Special Rapporteur on the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57. The Guidelines are available online in English at http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf and in Russian at http://www.osce.org/publications/odihr/2004/09/13600_142_ru.pdf.

¹⁰ The Advisory Panel has been reorganized and the body corresponding to the group that drafted the Guidelines is now called the Advisory Council for Freedom of Religion or Belief.

¹¹ Article 1 of the Interim Agreement, which mirrors article 2 of the Partnership and Cooperation Agreement (pending ratification), provides that:

Respect for democratic principles and fundamental and human rights, as defined in particular in the Universal Declaration of Human Rights, the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, underpin the internal external policies of the Parties and constitute an essential element of this Agreement.

At various points, reference is made to decisions of the European Court of Human Rights. This is done with full understanding that Tajikistan is not subject to the jurisdiction of this Court or to the European Convention for the Protection of Human Rights and Fundamental Freedoms¹³ (ECHR), which it interprets. However, the provisions of the ECHR track virtually verbatim the provisions of the ICCPR, which do bind Tajikistan, and the decisions of the European Court have come to be regarded as one of the preeminent and most persuasive sources of interpretation of the meaning of international human rights norms. We have thus assumed that those preparing the Draft Law would want to make sure that it complies with standards articulated by the European Court, even though its pronouncements are not technically binding in Tajikistan.

The foregoing international standards deserve particular attention to them because of the role assigned to them within Tajikistan's constitutional framework. In that regard, it is worth noting here that the Constitution of Tajikistan explicitly provides that:

International legal documents recognized by Tajikistan are a constituent part of the legal system of the republic. If republican laws do not conform to the recognized international legal documents, the norms of the international documents apply.¹⁴

Obviously, national legislation should be drafted to avoid conflict with international instruments to which Tajikistan is committed. This is also consistent with the state's constitutional obligation to protect human rights under Article 5 of the Tajik constitution:

See "Interim Agreement on Trade and Trade-related Matters Between the European Community and the European Atomic Energy Community, of the one part, and the Republic of Tajikistan, of the other part," Doc. # L 340/2, Official Journal of the European Union, November 16, 2004.

¹² Under the PCA, the Parties shall establish a political dialogue designed to:

cooperate on matters pertaining to the observance of the principles of democracy, and the respect, protection and promotion of human rights, including those of persons belonging to minorities, and to hold consultations, if necessary, on relevant matters.

Further, with regard to democracy and human rights, the parties agree under article 66 of the PCA to reinforce democratic institutions through cooperation in a number of areas, including:

technical assistance programmes intended to assist, inter alia, in the drafting of relevant legislation and regulations; the implementation of such legislation; the functioning of the judiciary; the role of the State in questions of justice; and the operation of the electoral system. They shall include training where appropriate. The Parties shall encourage contacts and exchanges between their national, regional and judicial authorities, parliamentarians, and non-governmental organisations.

"Partnership and Cooperation Agreement Establishing a Partnership Between the European Communities and Their Member States, for the one part, and the Republic of Tajikistan, of the other part," Luxembourg, 11 October 2004, European Communities No. 6 (2007), arts. 4 and 66.

¹³ Opened for Signature by the Council of Europe on 4 November 1950; entered into force 3 September 1953.

¹⁴ Constitution of the Republic of Tajikistan, art. 10.

Life, honor, dignity, and other rights of the individual are sacred. Recognition, observance, and protection of human and civil rights and freedoms is the obligation of the state.

It is worth observing that such an approach also reinforces Tajikistan's Criminal Code, which provides under Article 143 "that direct or indirect violation or restriction of the rights or freedoms of an individual or citizen on grounds of sex, race, ethnicity, language, social origin, personal, financial or official status, attitude to religion or other factors is a crime."¹⁵

The Analysis is organized as follows: An Executive Summary has been provided preceding this Introduction, which highlights the main concerns with the Draft Law. Following the Introduction, the second section briefly discusses several of the law's positive provisions. The third section provides a detailed article-by-article analysis of problematic provisions based on an examination of the draft text set against international standards and existing Tajik law. Brief recommendations follow the analysis of each provision considered, which may suggest modifications or other improvements in order to ensure that the draft law satisfies Tajikistan's international treaty obligations as well as its own domestic constitutional standards.

C. A Note on Combating Extremism and Religious Violence

Before turning to the detailed analysis of the Draft Law, it may be helpful to address one general issue that is clearly influencing the contours of this legislation, though it is nowhere expressly mentioned. Since September 11, 2001, there have been mounting concerns worldwide and in particularly in Central Asia about religiously-motivated violence and about the elements of society that resort to such measures. This creates concerns about trying to prevent such elements from entering the country, about the financing of such groups, about their international contacts, about how they may influence or manipulate youth through education, and about how in general they may use or abuse legal entity structures made available to legitimate religious communities.

With these realities in mind, it is apparent that unstated justifications for certain provisions in the draft law may stem from a legitimate need to combat terrorism or religious extremism in these and other contexts. Although these objectives may be laudable and warranted, the international community is of one mind that such actions cannot come at the expense of respect for fundamental human rights standards.

As early as 2002, the OSCE explicitly declared in its Charter on Preventing and Combating Terrorism, that: "All measures against terrorism and all counter-terrorism measures and cooperation should be conducted in accordance with the rule of law, the UN Charter and the relevant provisions of international law, international standards of human rights and international humanitarian law."¹⁶

The OSCE Charter was soon followed by UN Security Council Resolution 1624, which reiterated this balancing requirement by stressing that all governments "ensure that any measures

¹⁵ Initial Report Submitted by Republic of Tajikistan to the UN Human Rights Committee, UN Doc. CCPR/C/TJK/2004/1, April 11, 2005, para. 6.

¹⁶ OSCE, "Charter on Preventing and Combating Terrorism," Porto, Dec. 2002, at para. 7.

taken [to combat terrorism] comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.”¹⁷

Likewise, the UN Special Rapporteur on Freedom of Religion or Belief has acknowledged that some government measures to combat extremism “could include elements, or have unintended consequences, that undermine the respect for fundamental human rights,” and that it is the obligation of states to “ensure that any measure taken to combat acts of terrorism complies with its obligations under international law, in particular international human rights, refugee and humanitarian law.”¹⁸

The foregoing pronouncements do not emanate from naïve ideologues. Like the underlying international instruments they defend, they are made by leading experts from around the world, many of whom have weathered some of the most severe tests of human civilization in modern times. The international instruments were designed to take into account the need to balance fundamental rights with the practical realities of terrorism, violence, potential abuse, and so forth. This is reflected most notably in the “limitations clause” of Article 18 of the ICCPR which specifies the important but narrow conditions under which religious freedom concerns may give way to other state interests.

Global experience suggests that failure to respect the balance between advancing security concerns and protecting human rights is likely to be counterproductive in the long term. Where the appropriate balance is struck, the larger population understands the genuine necessity of the measures taken. If a government exceeds the proper balance, it loses legitimacy and may compound tendencies toward radicalization and extremism. Thus, it is vital to find ways to strike the balance correctly.

Moreover, as a practical matter, the fundamental problem of identifying genuine threats to society is not dealt with best through laws mandating the registration of religious organizations. The most dangerous figures are unlikely to approach registration officials, and they certainly are not going to hand in documents proclaiming that the organizers are extremists or are aiming to unravel society. Seldom if ever are the individuals who constitute genuine threats to social order identified by registration officials. The real problems are noticed by neighbors, family, disaffected followers, journalists, and police officials. They are typically connected with a very small portion of the total number of religious organizations in a society. Designing a registration system in ways that will capture or identify the problematic cases is in fact unlikely to succeed in that objective, but it will almost certainly make life unnecessarily difficult for the many legitimate groups who could otherwise be more effectively contributing to society. The implication is that other portions of the legal system—most notably criminal law—provide the best places to locate norms that enable identification and prosecution of those who are serious threats to society. Laws dealing with registration should be adequate to identify groups, but should not be thought of as a primary or even as a particularly effective means for controlling dangerous elements. It is with the understanding of the need for balance articulated in the foregoing and countless other authoritative statements that the following Analysis proceeds.

¹⁷ S.C. Res. 1624, U.N. Doc. S/RES/1624 (2005) (adopted Sept. 14, 2005).

¹⁸ Asma Jahangir, “Report of the Special Rapporteur on Freedom of Religion or Belief: Mission to Tajikistan,” UN Doc. A/HRC/7/10/Add.2, November 27, 2007, para. 57 (hereinafter Jahangir Report).

D. Caveats

While this Analysis does not necessarily address every detailed aspect of the legislation needing attention, it is hoped that all the major points have been discussed with sufficient clarity to be helpful. This said, given the time pressures associated with preparation of this report and lack of opportunity to speak and resolve questions directly with the drafters, it is possible that some issues addressed in this Analysis could have been easily explained and clarified. Similarly, given imperfections in the translation of the Draft Law used, some problems that appear in the English version may not be present in the original language version. Further clarification of such issues can be provided upon request.

II. Positive Aspects of the Draft Law

Many aspects of the law are positive, and will mark a step forward in implementing the ideals of freedom of religion or belief in Tajikistan. For example:

1. The express purpose of the draft law is to secure human rights related to freedom of conscience and religion in accordance with Tajikistan's constitution and "international legal pacts" ratified by Tajikistan.¹⁹ Consequently, the law affirms Tajikistan's international obligations with regard to protecting these rights and sets the baseline according to this standard.
2. In many instances, provisions of the draft law comply with international standards. For example, article 5 recognizes, in accordance with the ICCPR, that no one shall be subjected to coercion which would impair one's freedom to have or to adopt a religion or belief of one's choice.²⁰
3. The provisions of Article 6 which call for creation of a "favorable opportunity for securing the freedom of . . . religion" and which proscribe a state religion are welcome.
4. Article 7 commendably states that religious unions are equal before the law and separate from state authority.
5. The general commitment to recognizing rights to be engaged in religious education in Article 9 is commendable, even though some of the constraints suggested seem excessive.
6. Article 23 identifies a number of the important rights of religious organizations.
7. The procedure set forth in Article 36 for giving religious organizations written warning of possible violations and time to correct them is a useful procedural mechanism.

These and other positive aspects of the Draft Law deserve recognition. It is clear that the Draft Law constitutes a valuable framework that can be used as the departure point for securing additional modifications as recommended below, which can in turn can yield a final version that comports fully with Tajikistan's international, regional, and domestic human rights obligations. Other positive points could be mentioned, but in the spirit of constructive engagement and of being as concise as possible, the emphasis in what follows is on aspects of the Draft Law that require improvement.

¹⁹ Draft Law, arts. 2 and 3.

²⁰ See ICCPR, *supra* note 5, art. 18(2).

III. Article-by-Article Analysis of the Draft Law

1. Overview

The following discussion will provide—on an article-by-article basis—detailed legal analysis of key shortcomings in the draft law followed by recommendations which are directed at ensuring that the draft law complies with Tajikistan’s international and domestic human rights obligations. The primary focus is given to the articles posing the most serious issues.

2. Preamble Analysis

The draft preamble text explicitly acknowledges “that Islam shall be an important aspect of history and culture of people of Tajikistan and with respect to other religions existing in the territory of the Republic...”²¹ A number of observers have suggested that this framing may result in granting “priority to the Muslim community in explicitly recognizing the particular role of Islam in the social and spiritual life of the people of Tajikistan.”²² Equally, this wording may serve to justify restrictions on the rights of other religious faiths that currently do not exist or have otherwise been unrecognized in Tajikistan.

Sometimes the general public and officials implementing the law are not clear about the difference between preamble language and the operative provisions of a law. With this in mind, most countries adopting similar preambles have also been careful to acknowledge the role of other groups, thereby implicitly stressing that the preamble is consistent with the operative provisions of the law calling for equal treatment (such as Article 7 of the Draft Law). Thus, for example, the 1997 Russian law on freedom of conscience recognized “a special role of the Orthodox Church in the history of Russia, the formation and development of its spirituality and culture,” and expressed “respect for the Christianity, Islam, Buddhism, Judaism *and other religions* constituting an integral part of the historical heritage of the peoples of Russia.”²³ In the context of Tajikistan’s historical experience, it is also worth recalling that other non-Muslim religious faiths have made cultural and other contributions to the country’s development.

Recommendation: Subparagraphs 3 and 4 should be modified to forestall any risk that the preamble could be invoked to support potential discriminatory treatment of non-Muslim and/or non-indigenous beliefs. Changes could reflect the following recommended language:

acknowledging that other religious faiths are be an important aspect of history and culture of people of Tajikistan...

²¹ Draft Law, preamble.

²² Jahangir Report, *supra* note 18, para. 31.

²³ Law No. 125-FZ “On the Freedom of Conscience and Religious Associations,” September 26, 1997, preamble (emphasis added).

3. Article-by-Article Analysis and Recommendations

A. Article 2 «The tasks of the present law»

Article 2 identifies the right of freedom of conscience or religion as a human right, and sets out to protect the rights and interests of citizens, but makes no mention of non-citizens. As discussed below,²⁴ according to international law, the right to freedom of religion or belief belongs to *all persons*, regardless of citizenship.

Recommendation: This provision should endorse standard international language in discussing freedom of religion or belief. It should be modified to read:

The tasks of this Law shall include securing for all persons the human rights related to *freedom of thought, conscience, and religion or belief...*

B. Article 4: «The main terms that shall be used in the present law»

The short list of definitions provided by Article 4 do not explain a significant number of key terms used in the law. Moreover, although some of the terms used in defining the scope of rights are positive, they can be improved further.

As a technical matter, it would be helpful to introduce greater precision with respect to the key terms used to describe religious communities or groups. This is complex because different religious groups refer to themselves and their institutions in different ways. Moreover, what is needed are words in the original language of the Draft Law which will fulfill the functional role of the terms identified below. Typical usages that have been found useful in other countries include the following:

Religious Group. This is simply a number of individuals or persons with a shared religious interest. This term may be used to refer generically to large or small groups, to religious communities, to legally recognized associations and organizations, and to unregistered groups.

Religious Community. This is a term that has emerged to describe religious groups with a common doctrinal heritage that continues over time. It is acceptable to adherents of all of the world's major religions. It can describe major world religions as well as smaller groups. A religious community may or may not have elected to acquire legal entity status. It may make sense to use this term to describe the actual body of believers together with their beliefs, interrelationships, and history. As such, a religious community exists independently of any legal entities or recognition by the state, and which is the body that creates and uses other legal structures to carry out its temporal affairs.

Religious Association. This term refers to groups that have intentionally organized themselves for particular religious purposes. Associations may or may not have legal entity status. "Association" is the generic term used to describe the forms that religious

²⁴ See discussion surrounding the subject-based limitations contained in draft article 5 in Part II(3)(C), below.

communities may use to organize their affairs in the day-to-day world. This may be what the Draft Law means by “religious unions,” which are defined in Article 4(3) to be “any kind of voluntary and non-commercial unions . . . which shall be established in the forms provided by the present law.” What is needed is a generic term that covers not only legal entities formed under something like the Draft Law, but also the legal manifestation of groups without entity status. How associations acquire legal entity status will depend on local law. (For example, in the United States, associations may be incorporated or unincorporated; in European countries, forming an association may be the method for acquiring legal entity status.) Generally, religious associations will be formed by groups (religious communities) that have a common religious heritage, but sometimes different denominations may wish to form legal entities in order to facilitate carrying out joint projects, or to form an umbrella organization that can provide the context for dialogue and cooperation. The term “union” is sometimes used instead of “association.” This is less common, but may be what the Tajik Draft Law contemplates.

Religious Organization. This terminology may be used to describe a religious group or association that has acquired legal entity status. For example, under Russian law, a religious organization is a group that has acquired legal entity status. More precisely, a religious organization is a legal entity that the state allows to be created to facilitate the temporal activities of a religious community.

Legal Entity. This is a generic term describing legal structures whereby a group of persons can acquire juristic personality with power to sue, enter into contracts, own property, and so forth, as if it were a natural person.

Note that in principle, religious associations and religious organizations can have both natural and legal persons as members. Flexibility in requirements in this regard allows different religious communities to structure their affairs in ways that comport with their religious beliefs and traditions. For many religious communities, the way that they are organized is a matter of religious belief and doctrine, and allowing flexibility is a vital part of respecting the freedom of religious communities and their members. Some religious communities organize locally, with each mosque or church having its own legal entity; some link these local organizations together in a connectional association; some organize hierarchically, with a national entity, and many local sub-entities. In most legal systems the term used to designate a religious body with legal entity status (“religious corporation” or “religious organization”) is defined in a very flexible way, so that the entities recognized by the state are free to structure themselves in accordance with the beliefs and preferences, as set forth in their statute or charter, and in their bylaws. The current Draft Law tends to use terms that are too religion-specific, and while the terms may make sense for some religious communities in Tajikistan, there are other religious communities for which the current terminology will not work well.

Recommendations: Provide definitions for terms lacking clear and definite meaning throughout the draft law (as noted in subsequent analysis).

Amend the definitions on freedom of conscience and freedom of religion to apply simply to “every person” rather than to “every person and citizen.” It is suggested that the draft law could adopt the language used in ICCPR article 18.

Further, add the following amendment to definitions related to freedom of conscience and freedom of religion:

The rights defined here shall be interpreted in their broadest meaning and nothing herein shall be construed to deny the existence of any other rights or freedoms that are recognized or conferred under international law or in Tajikistan’s international or regional human rights commitments.

In general, making the technical corrections with regard to clearer definitions of various forms of organization entails going through the entire text and making sure that terms such as “union”, “mosque”, and other terms are replaced in a way that allows the law to distinguish accurately between contexts in which the reference is to groups in general, to associations that have acquired legal entity status, and so forth. It is difficult to make line-by-line recommendations in this regard, because some basic choices need to be made about how technical terminology is to be defined and used.

C. Article 5: «Limitations on the right to freedom of thought, conscience and religion or belief»

i) Content-based Limitations

The draft law enables the government to impose limitations on the right of freedom of religion or belief based on “protecting the rights of others, ensuring security, order, health and public ethics by the law.” While international law recognizes the legitimate ability of governments to introduce some limits with regard to certain aspects of these rights, that ability is narrowly constrained requiring any limitation to be satisfy very specific criteria.

According to Article 18(3) of the ICCPR, “freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law *and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*”²⁵ The UN Human Rights Committee, the legal body charged, *inter alia*, with providing authoritative interpretive guidance for the rights enumerated in the Covenant, has observed that:

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally.²⁶

²⁵ ICCPR, *supra* note 5, art. 18(3) (emphasis added).

²⁶ UN Human Rights Committee, “General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion” (Art. 18), UN Doc. # CCPR/C/21/Rev.1/Add.4, July 30, 1993, para. 3 (hereinafter General Comment 22). See also OSCE Guidelines, *supra* note 9, II(B)(1).

In other words, rights directly related to freedom of conscience and religion—such as freedom from coercion to have or to adopt a religion or belief and the right of parents to ensure religious and moral education for their children—and as distinct from rights linked to *the manifestation* of religion or belief, *cannot be restricted* regardless of any legitimate government intent.²⁷

Moreover, even with respect to manifestations of religion, the U.N. Human Rights Committee has emphasized that limitations must be narrowly construed, and cannot be imposed for discriminatory purposes or applied in a discriminatory manner.²⁸

Another major problem with the wording of Article 5 is that it seems to imply that the right to freedom of religion or belief can be limited if the state can demonstrate that this is being done for purpose of “protecting the rights and freedoms of others, ensuring security, order, health and public ethics by law.” This is a major deviation from the requirements of the ICCPR, which allows limitations only if they are *necessary* for furthering one of the indicated purposes. When religious freedom cases are analyzed by the UN Human Rights Committee (and by other parallel bodies such as the European Court of Human Rights), states usually have an easy time demonstrating that a proposed limitation furthers one of the “legitimizing grounds”; but lose their cases because they fail to meet the necessity test by demonstrating that the limitation is in fact justifiable under the relevant circumstances. Revising this provision is probably one of the most important corrections that needs to be made in the Draft Law. It provides the crucial test for compliance with international standards.

Note that following this provision in some cases may create grounds for challenging otherwise valid Tajik laws. That is, if a law imposes limitations on manifestations of religion that are not *necessary* within the meaning of Article 18(3), then the law should give way to the right to freedom of religion or belief. In such cases, the fourth clause of Article 5 is inaccurate. It needs to be revised by adding a phrase at the beginning stating, “Except in cases where a law imposes limitations on an individual’s freedom of religion that are not permitted under the constitution or international law, no one can release himself . . . etc.”

Reinforcing the foregoing, the Concluding Document of the Vienna Meeting of the CSCE (now OSCE) provided that:

participating States recognize that the exercise of . . . rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in

²⁷ General Comment 22, para. 8.

²⁸ Id. Stated differently, the protections for manifestations of religion should be broad. Legislation that protects only worship or narrow interpretation of manifestations limiting them to ritual practice is inadequate. OSCE Guidelines, *supra* note 9, II(B)(2). Article 5 as drafted appears to allow limitations for “ensuring security.” This may simply be a translation problem, and the aim may be that “ensuring security” is really a translation of “public safety,” which would of course be permissible. The point is that generic references to “national security” are not sufficient to justify overriding manifestations of religion or belief, unless actual threats to the safety of individuals can be demonstrated.

their application the full and effective exercise of the freedom of thought, conscience, religion or belief.²⁹

Based on the standards set forth under the ICCPR and within the OSCE, it seems that the draft law may fall short on grounds of being both vague and overbroad with respect to the inclusion of terms such as “public ethics” and “security.”

Recommendation: This provision can be improved by ensuring that the language used more closely mirrors that contained in ICCPR Art. 18(3). Furthermore, the provision should explicitly acknowledge that application of these limitations is subject to strict interpretation in accordance with the guidelines set forth under the UN Human Rights Committee’s General Comment No. 22, and that the rights expressed cannot be derogated from, even in time of public emergency, as set forth in ICCPR art. 4(2).³⁰ Indeed, to avoid any distance between Tajik and international standards, the simplest approach may be adopting the language of Article 18(3) for this provision.

ii) Identity Documents

Article 5(3) indicates that “the relation of a citizen to a religion in official documents shall be not allowed, except the cases when the person shall have such wish himself.” This provision recognizes the “negative confessional freedom” according to which an individual has the right not to disclose his religion or belief. This is an aspect of the internal forum dimension of freedom that may not be regulated by the state at all. Thus, it is commendable that the Draft Law protects the right of individuals not to disclose by making it clear that no one can require them to disclose their religion in official documents. The difficulty is that the provision allow individuals to indicate their religion if “the person shall have such wish himself.” There is almost universally bad experience with such provisions. What tends to happen in fact is that those from the dominant religious tradition (or traditions) tend to indicate their religion, so that if a person fails to do so, he or she looks strange or different. While no positive indication of belief is given, it becomes clear that the individual does not belong to the mainstream, and this leads to discrimination.

Recommendation: Delete the phrase “except the cases when the person shall have such wish himself” from the second half of Article 5(3). (Of course, individuals are free to tell other people what they believe and identify themselves in other ways, but it is better if the neutral state is not involved in a process which will identify who does and who does not adhere to dominant traditions.)

iii) Subject-based Limitations

Article 5 suffers from a more problematic flaw insofar as it appears to lay the foundation for severely restricting the religious rights and freedoms of individuals who are either stateless or not citizens of Tajikistan as set forth in the draft law. This step signals a clear break from Tajikistan’s international and domestic legal obligations.

²⁹ Vienna Concluding Document, *supra* note 8, Principle 17.

³⁰ Art. 4(2) of the ICCPR, *supra* note 5, explicitly prohibits derogation from the rights contained in art. 18.

Article 18 of the ICCPR, which addresses rights related to freedom of thought, conscience, and religion or belief, is drafted in an inclusive manner. The rights enumerated apply to all individuals without distinction based on citizenship or other grounds. Thus, for example, art. 18(1) provides that “*Everyone* shall have the right to freedom thought, conscience and religion...” Likewise, art. 18(2) establishes that “*No one* shall be subject to coercion...” It should be added that, as noted above, restrictions to freedom of conscience or religion (as distinct from the right to manifest religion) are prohibited under international law, even during times of a declared state emergency. Accordingly, any effort to establish a separate framework of rights related to freedom of conscience or religion for non-Tajiks likely will result in a violation of Tajikistan’s international obligations. Indeed, this principle of broad application of the right to all individuals is reiterated in the UN General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Furthermore, article 17 of Tajikistan’s constitution affirms that:

All are equal before the law and the courts. The *state guarantees the rights and freedoms of every person regardless of nationality, race, sex, language, religious beliefs, political persuasion, social status, knowledge, and property.*³¹

Article 26 of the constitution additionally guarantees that:

Every person has the right freely to determine their position toward religion, to profess any religion individually or together with others or not to profess any, and to take part in religious customs and ceremonies.³²

Denying rights related to religious freedom based on citizenship will place the draft law *ultra vires* of the country’s constitution, and therefore violate the state’s constitutional order.³³

iv) Other Issues

Draft article 5 provides that: “Nobody can release himself from the responsibilities provided by law because of religious faith.” This provision appears to disallow the possibility of conscientious objectors exercising their right to freedom of religion or belief as a means of abstaining from compulsory military service. The UN Human Rights Committee has already expressed its concern that Tajikistan has failed to recognize this right, as established under art. 18 of the ICCPR. It has further instructed Tajikistan to “take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.”³⁴

Similarly, the OSCE has adopted a number of commitments related to conscientious objection and alternative service.³⁵ It is important to bear in mind that there may be other settings beyond

³¹ Constitution of the Republic of Tajikistan, art. 17 (emphasis added)

³² Id, art. 26 (emphasis added).

³³ See also *Moscow Branch of the Salvation Army v. Russia*, European Court of Human Rights (ECtHR), App. No. 72881/01, Oct. 5, 2006, paras 82-85 (holding that distinctions based on foreign status were discriminatory and therefore violative of international religious freedom standards.

³⁴ Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/84/TJK, July 18, 2005, para. 20.

³⁵ OSCE, OSCE Human Dimension Commitments, *supra* note 8, Section 3.1.7.

the military in which conscientious objection rights may call for legitimate accommodations or adaptations. In this regard, the OSCE Guidelines note that:

It is important that laws affecting religion and belief be drafted in a way that is cognizant of the general guiding principles of constitutional norms and human rights standards, and that specific statutory exemptions be drafted and applied in a way that is fair to those with conscientious objections but without unduly burdening those who do not have such objections.³⁶

The Guidelines go on to note that in addition to conscientious objection to military service, sensitive issues often arise with respect to dietary rules, days of rest and religious holidays, and medical issues, among others.³⁷

Recommendations: Given the established nature of freedom of thought, conscience, and religion or belief as fundamental rights applicable to *all individuals* rather than to citizens or any other defined group, the premise for this provision stands in opposition to Tajikistan's international obligations. Likewise, as noted above, the provision is also *inconsistent with* Tajikistan's constitution. It is unlikely that any distinction on the grounds proposed in this part of Article 5 of the Draft Law would be in compliance with the ICCPR, and therefore the provision should be omitted.³⁸

Paragraph 4 of this article should be amended to comport with Tajikistan's international obligations and the recommendation of Special Rapporteur Jahangir that Tajikistan "take all necessary measures to recognize the right of conscientious objectors to be exempted from military service."³⁹ This can be achieved by adopting specific language in the draft law allowing for conscientious objectors to waive military service or undertake alternative civil service. A broader provision could also be added stating:

In the administration of the laws of the Republic of Tajikistan, suitable adaptations shall be made, where not inconsistent with other pressing state interests that cannot be otherwise addressed, to respect conscientious beliefs regarding diet, days of rest and religious holidays, beliefs regarding medical treatment, and other such matters.

D. Article 6: «The relation of the State to the religious unions»

i) Problems Related to State Interference with Religious Groups

Article 6 demonstrates the type of vague language contained throughout the draft law that may create complications in application and enforcement. For example, while this provision reaffirms that there shall be no state religion in Tajikistan, and in general forbids interference of state institutions with religious unions and vice versa, it still purports to enable state agencies to

³⁶ Guidelines, *supra* note 8, 22.

³⁷ *Id.*, 22-23.

³⁸ This recommendation has serious implications since many of the provisions in the Draft Law are premised on establishing a system that severely limits the rights of non-Tajik citizens. These provisions are addressed in greater detail below.

³⁹ Jahangir Report, *supra* note 18, para. 56.

interfere in the activity of religion unions in “the cases provided in the law.”⁴⁰ As noted, the UN Human Rights Committee has affirmed that freedom of thought and conscience and the freedom to have or adopt a religion or belief of one’s choice (i.e., internal forum rights) are rights which are protected unconditionally and therefore must be free from government interference.⁴¹ More generally, Principle 16(d) of the OSCE Vienna Concluding Document affirms the right of religious communities to autonomy in their internal affairs.⁴² Just as states may not impose limitations on manifestations of individual religious freedom rights, so they may not intervene unless the limitations (or interventions) are prescribed by law and are *necessary* to further one of the permitted grounds of limitation. It is thus not enough to indicate that intervention is permissible in cases “provided in the law.” Only laws that meet the test of Article 18(3) ICCPR will do.

Article 6 further engages the state in religious affairs by mandating that it “provide favorable opportunity” for securing freedom of religion and “interests of the religious citizens and religious unions.”⁴³ While in general this appears to be a favorable provision,⁴⁴ two complications arise here: first, what is intended by “favorable opportunity” and on what basis will it be provided? And second, what, if any, implications does this provision have for non-believers and individuals not affiliated with religious unions or religious groups unable to successfully register with Tajik authorities?

Another potential difficulty raised under article 6 is government involvement in regulating, *inter alia*, tax relations with religious organizations and “supporting religious educational institutions.”⁴⁵ On what basis will support for religious educational institutions be provided and what will be the nature of this support? Since the actual standards will ultimately be set forth in the tax code, it is largely meaningless to refer to them here. It may make sense simply to drop these cross reference provisions and to let the actual legislation speak for itself when it is adopted.

According to the UN Human Rights Committee, the fact that the followers of a particular religion “comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.”⁴⁶ In other words, extending

⁴⁰ Draft Law, art. 6(¶2-3).

⁴¹ General Comment 22, *supra* note 26, para. 3.

⁴² The actual language of Principle 16(d) is more specific, but it outlines key features of the more generally recognized institutional right to religious autonomy. Specifically, it provides that participating States will respect the right of religious communities to:

- establish and maintain freely accessible places of worship or assembly,
- organize themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, [and]
- solicit and receive voluntary financial and other contributions.

⁴³ Due to translation inconsistencies from the original draft law, it is possible that the English terms “religious union” and “religious organization” are used interchangeably.

⁴⁴ The aim appears to be to “foster a climate of mutual tolerance and respect” as contemplated by the OSCE Guidelines, *supra* note 8, at II(B)(7), *citing* Principle 16(b) of the Vienna Concluding Document, *supra* note 8.

⁴⁵ Draft Law, art. 6(4).

⁴⁶ General Comment 22, *supra* note 26, para. 9. Article 27 of the ICCPR provides:

“support” on discriminatory grounds—such as only to those religious groups recognized by the government—may give rise to potential violations of Tajikistan’s international obligations under the ICCPR.

Opportunities for state interference in religious affairs are exacerbated in Art. 6(6) of the draft law, whereby state agencies purportedly are given a coordinative and/or organizational role with respect to, *inter alia*, religious ceremonies. In general, the state should have no role in specifying religious rites, liturgy and other such ceremonies. Possibly the reference here is to special events such as parades, processions and the like. The state may have a legitimate interest in having input as to the time, place and manner of such events (in cases where they are outside of established meeting places), but any resulting regulations should be reasonable and should be consistent with the permitted grounds of limitation set forth in Article 18(3) ICCPR.

Draft article 6(3) also is problematic in prohibiting the “interference of religious unions to the activity of state agencies and officials.” The Draft Law does not define what constitutes “interference” which leaves the term open for personal interpretation and inappropriate interference in matters of faith. For example, if a believer confesses involvement in a crime to a clergy member, would that clergy member’s refusal to disclose the content of the confession to state authorities constitute “interference”?⁴⁷

Finally, and perhaps most significantly, article 6 imposes a responsibility on religious organizations to “take into consideration the interests of the state, national values, independence and state security” in implementing their rights and activities.⁴⁸ This provision suggests potential limitations on the right to freedom of thought, conscience and religion or belief which plainly fall outside the scope of permissible limitations established by Article 18(3) of the ICCPR. Not only are the factors which religious organizations are responsible for “tak[ing] into consideration”—including “national values” and “independence”—not present on the permissible list of state objectives justifying limitations; they appear on their face to be vague and without clear legal meaning. As the UN Human Rights Committee has concluded:

Limitations imposed [on the freedom to manifest religion or belief] must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18 [of the ICCPR]...paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.⁴⁹

Recommendations: Ambiguous terms introduced in article 6 require clarification to avoid potential problems arising from vagueness or overbreadth. Article 6 should be brought into full compliance with Article 18(3) and the guidelines set forth under General Comment No. 22. If the

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.

⁴⁷ See discussion concerning draft article 24 “The responsibilities of the religious unions”, below.

⁴⁸ Draft Law, art. 6(5).

⁴⁹ General Comment 22, *supra* note 26, para. 8.

government of Tajikistan intends to extend support to religious educational institutions or other similar facilities, the law should stipulate that such support shall be extended based on the principles of respect for equality and nondiscrimination among all religious groups. Moreover, any oversight or coordinative role assigned to state agencies under this provision should be defined to ensure respect for the observance and practice of religion or belief within every religious community.

While it is not necessarily inappropriate for a state to furnish tax exemptions to religious groups or provide other benefits, legislation and regulations controlling these circumstances must be carefully drafted to avoid discrimination against minority, non-traditional, or other religions. Any State aid should be made available to all religious groups based on non-discriminatory objective criteria.

Finally, while it is reasonable to expect that religious communities should foster good citizenship and cooperation with the state, it is not consistent with principles of separation of religion and the state or with Article 18(3) to specify what state interests and national values religious bodies should foster; accordingly, the next to the last paragraph of Article 6 should be dropped.

E. Article 7: «The separation of the religion and religious unions from the state authority»

i) Restricting Political Rights of Individuals Associated with Religious Groups

This article purports to bar any individual “workers” who undertake “activity” in religious unions from election or appointment to state agencies. It likewise seeks to ban religious unions from participat[ing] in the activity of political parties,” further prohibiting these organizations from assisting political parties either “materially or morally.” Finally, the article forbids “religious ideology...and learning” from being used as “the mean of struggle of public and political movements.”

The provisions as currently drafted in article 7 give rise to conflicts with rights guaranteed by the ICCPR. According to the Covenant, every citizen shall have the right and the opportunity, “without distinction of any kind, such as race, colour, sex, language, *religion*, political or other opinion”⁵⁰ and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote *and to be elected* at genuine periodic elections...; [and]
- (c) *To have access, on general terms of equality, to public service...*⁵¹

Moreover, article 7 also suffers from vague terms that lack clear and meaningful legal definition. For example, what constitutes “moral” assistance to or “participation in the activity” of a political party? Similarly, precisely what constitutes “activity in the religious unions” and who are to be considered “workers”? As it currently stands, article 7 would appear to restrict

⁵⁰ ICCPR, *supra* note 5, art. 2(1) (emphasis added).

⁵¹ *Id.*, art. 25 (emphasis added).

significantly the political rights of religious leadership guaranteed under article 25 of the ICCPR, but also the same rights of a receptionist or janitor who happens to be a “worker” for the religious organization.

Finally, article 7 paragraph 4 appears to restrict significantly the fundamental right of individuals to participate in both civil society and political life in Tajikistan. The paragraph is overbroad as it appears to ban any movement that may have as its inspiration or motivation religious ideology or belief, and moreover purports to do so without furnishing any objective guidelines related to enforcement or appeal. Banning a public movement based on religious learning may have far-reaching implications not only for religious life in Tajikistan, but for civil society at large and for the operation of a free and open political process in the country.

Indeed, the Constitution of Tajikistan recognizes and guarantees rights related to political participation for all citizens that are seemingly at odds with provisions of the draft law. For example, under the constitution:

*Every citizen has the right to take part in political life and state administration directly or via their representatives. Citizens have equal rights to state service. Every citizen has the right to...be elected from the age of 18.*⁵²

Further, the constitution guarantees the right of all citizens to:

participate in the creation of political parties, *including parties of...religious and atheistic nature...and other public associations...*⁵³

The provision in paragraph 4 of draft article 7 is overbroad. Prohibiting religious learning from serving as the “means of struggle of public and political movements” requires additional clarification. Although governments can have a legitimate interest in curbing the activities of extremist religious groups who advocate violence, legislative intervention to address this issue must be narrowly tailored and generally comport with international human rights standards. Existing laws preventing public disorder, or other criminal activities should be sufficient to alleviate this concern, without limiting religious activities.⁵⁴ ICCPR article 20 provides that:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

In light of article 20, the Human Rights Committee has observed that, “no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”⁵⁵ Accordingly, public

⁵² Constitution of the Republic of Tajikistan, art. 27(emphasis added).

⁵³ Id., art. 28 (emphasis added). According to article 47 of the Constitution, the rights and freedoms provided under article 28 cannot be limited, even during a declared state of emergency.

⁵⁴ See discussion on combating terrorism and religious extremism, in Part I(C), above.

⁵⁵ General Comment 22, *supra* note 26, para. 7

and political movements seeking to advocate hatred, discrimination, etc., on the basis of religious grounds legitimately could be prohibited or otherwise restricted.

Recommendation: As currently drafted, article 7 would violate fundamental political rights that are intended to apply to all individuals without discrimination based on religion or other enumerated grounds. Certain legitimate government interests, such as monitoring contributions from religious organizations to political parties, can be achieved through better tailored means such as campaign finance laws. The provision should be struck from the draft law to ensure compliance with international and constitutional norms.

With respect to paragraph 4, a narrower tailoring can better define the legislative intent here and satisfy compliance with the ICCPR. Without such an explicit change in the draft law however, the provision remains overbroad.

F. Article 9: «The religious education»

i) Restrictions on Freedom to Manifest Religion: Religious Education

This article correctly acknowledges the right to obtain a religious education. However, that right subsequently is limited in a number of problematic ways. First, it is made applicable only to citizens of Tajikistan; second, only those religious organizations which “have been established as a legal person may be authorized to establish such facilities; third, the age of seven (7) is set as the earliest point at which religious instruction may commence; fourth, the issue of religious instruction against the will of an adolescent is raised as an issue without defining how that will is to be expressed or how it is to be balanced against parental rights; and finally, a licensing system is indicated as a requirement for instructors responsible for religious education.

The restrictions on religious education currently outlined in draft article 9 fail to comport with international standards. As previously noted, the right to freedom of thought, conscience, and religion or belief is not limited to citizens only, but is intended to apply broadly to all individuals. Further, requiring registration as a religious organization before being able to provide education services may run counter to article 18(4) of the ICCPR, which expressly provides that “States Parties...undertake to have respect for the liberty of parents and...to ensure the religious and moral education of their children in conformity with their own convictions.” Under the current draft law, therefore, individuals belonging to a minority religious group that are unable to successfully satisfy the registration criteria may be compelled to forgo their right to teach their children under the Covenant.

Likewise, arbitrarily pegging to seven the age at which a child’s religious education may commence may run contrary to certain religious beliefs or traditions, as well as the convictions of the parents involved. Article 30 of the Convention on the Rights of the Child (CRC) is also instructive in this regard:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous *shall not be denied the right, in community with other members of his or her*

*group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*⁵⁶

In a similar vein, without clearer criteria of what age constitutes adolescence and what is “against the will”, and in light of ICCPR art. 18(4), article 9 of the draft may bring into doubt Tajikistan’s compliance with its international obligations. For the purpose of clarification, the CRC stipulates that:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.⁵⁷

Although not a legally enforceable instrument, the UN’s Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief does serve to convey the sentiment of the General Assembly concerning the scope and content of rights related to religion or belief. It is particularly instructive in the area of education. Under article 5, the Declaration provides that:

- 1) The parents...have the right to organize the life within the family in accordance with their religion or belief and *bearing in mind the moral education in which they believe the child should be brought up.*
- 2) *Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents...and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.*⁵⁸

Overall, draft article 9 presents significant problems when measured against Tajikistan’s international obligations. Freedom to manifest one’s religion is recognized to include the practice and teaching of religion or belief, as well as other acts integral to the religious groups’ basic affairs, such as the freedom to choose their religious leaders, priests and teachers, as well as the freedom to establish seminaries or religious schools.⁵⁹ Admittedly, these rights associated with manifesting one’s religion are subject to the limitations set forth under art. 18(3). That said, the draft legislation makes no mention of any kind of justification for the limitations introduced under article 9 that would be in line with those narrow limitations permitted under art. 18(3).

Furthermore, it is worth reiterating here that the ICCPR bars any form of coercion that would impair the right to have or adopt a religion or belief.⁶⁰ As the Human Rights Committee has observed, this includes rendering inconsistent “Policies or practices having the same intention or

⁵⁶ Convention on the Rights of the Child, UN Doc. A/RES/44/25 (12 December 1989), art. 30. Tajikistan accession dated November 25, 1993 (hereinafter CRC).

⁵⁷ CRC, art. 1.

⁵⁸ Declaration on the Elimination of All Forms of Intolerance, *supra* note 6, art. 5 (emphasis added).

⁵⁹ General Comment 22, *supra* note 26, para. 4.

⁶⁰ The OSCE Guidelines also stress this point. Guidelines, *supra* note 9, at II(B)(5).

effect, such as, for example, those restricting access to education.”⁶¹ In the context of Tajikistan, it also is worth recalling that where a state treats a set of beliefs:

as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, [it] shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.⁶²

In other words, even if the government elects to promote a secular vision for the state, it cannot come at the expense of impinging upon recognized international rights, including freedom of thought, conscience, and religion or belief.

To the extent that there are concerns about possible abuse, they can be addressed with more narrowly tailored legislation. As a practical matter, if the state has concerns about risks that educational institutions may be used to promote ends that threaten public order or safety—matters about which it may have legitimate concerns—it is better off to allow such institutions to be registered so that the relevant institutions don’t simply go underground—and to identify specific misconduct that may be appropriately be limited pursuant to Article 18(3) ICCPR as a basis for interventions. This may well be left for education legislation.

Finally, the clause in draft paragraph 5 requiring religious educators to have “special religious education” and a “license for this kind of activity” is problematic since neither term is defined and no criteria for how licenses will be issued is provided. Moreover, much depends on the beliefs of a specific religious community about who is qualified to teach. Religious communities’ beliefs about who is qualified to teach may not coincide with standard secular assumptions about how religious training is provided. Jesus and his disciples were carpenters, fishermen, and other individuals who lacked theological training. Similar comments can be made about major teachers in other traditions. Smaller religious communities often do not have members who meet secular academic standards; yet the group may prefer teachers who adhere to their beliefs rather than others with more training. In particular, they do not want to be precluded from engaging in religious training altogether merely because they do not have the best educated personnel. The point is that selection of teachers both for educating believers and for training clergy is a very sensitive matter for internal judgment within the religious community.

As drafted, the provision may facilitate arbitrary or discriminatory application, which may hinder the ability of religious groups to establish “legal” religious education programs for their adherents and other interested individuals. No mention is made of how the government will ascertain sufficient or adequate “special religious education”, nor which government agency would be mandated with issuing licenses or how these licenses would be maintained.

Recommendations: This provision should be redrafted to extend the right of religious education to all individuals rather than only citizens of Tajikistan. Other limitations discussed above should be rendered to comply with international standards set forth under the ICCPR. In the event that

⁶¹ General Comment 22, *supra* note 26, para. 5.

⁶² *Id.*, para. 10.

any limitations are to be included in the final law with respect to religious education, they should, at a minimum, adhere to the strict guidelines set forth by the Human Rights Committee, namely:

States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and *must not be applied in a manner that would vitiate the rights guaranteed in article 18*...Limitations may be applied only for those purposes for which they were prescribed *and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner*.⁶³

G. Chapter 3 (Articles 11-17): «The types of religious unions»

This chapter of the draft law sets forth a number of distinctions, definitions and procedures relevant to the registration of various types of religious groups. There are a number of basic principles to bear in mind with respect to registration systems. It is now well established that the internationally recognized right to freedom of religion or belief embraces the right of religious communities to religious autonomy in matters of doctrine, organizational structure, and mission.⁶⁴ It is also well-settled that international norms protect (1) the right of religious communities to acquire legal entity status under laws such as the proposed Draft Law (if they so desire) and more generally (2) the right to be free from undue state interference in their own affairs.⁶⁵ Further, there are a number of more specific principles that have been accepted in connection with Tajikistan's OSCE commitments. These have been set forth in the OSCE *Guidelines for Review of Legislation Pertaining to Religion or Belief*, and are worth quoting in detail here:⁶⁶

1. Out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief.
2. Registration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.

⁶³ Id., para. 8 (emphasis added).

⁶⁴ "Introduction," in Tore Lindholm, W. Cole Durham, Jr., and Bahia G. Tahzib-Lie (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook*, xxxviii (Leiden: Martinus Nijhoff Publishers, 2004); see, e.g., *Church of Scientology v. Moscow*, paras. 72-73 (ECtHR, App. No. 18147/02, April 5, 2007); *Moscow Branch of the Salvation Army v. Russia*, *supra* note 33.

⁶⁵ The phrase "own affairs" (*eigene Angelegenheiten*) is intentionally used instead of "internal affairs." This follows German and French authority, which has recognized that the right to religious autonomy extends beyond internal affairs such as doctrine and organizational structure to other matters legitimately thought of as belonging to a religious community's appropriate sphere of activity, such as defining its mission or the scope of its ministry. See, e.g., Roland Minnerath, "The Right to Religious Autonomy," in Lindholm, Durham and Tahzib-Lie, *supra* note 64, at 291, 292; Axel Freiherr von Campenhausen, "Church Autonomy in Germany," in *Church Autonomy: A Comparative Survey*, ed. Gerhard Robbers (Frankfurt am Main: Peter Lang, 2001), 77, 78-79.

⁶⁶ Guidelines, *supra* note 9, II(F)(1) and (2).

3. Access to the basic rights associated with legal personality – for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued – should be available without excessive difficulty.
4. The right to freedom of religion or belief, whether for individuals or for religious communities, does not depend on grant of legal entity status. Individuals and communities have the right to engage in the full range of religious activities, including worship, teaching (including sharing information about their religion with others), practice, and observance of their religious beliefs.
5. Individuals and groups should be free to practise their religion without registration if they so desire.
6. High minimum membership requirements should not be allowed with respect to obtaining legal personality.
7. It is not appropriate to require lengthy existence in the State before registration is permitted.
8. Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.
9. Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited;
10. Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed.
11. Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.
12. Adequate transition rules should be provided when new rules are introduced to avoid depriving groups of existing rights.
13. Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured in a manner (e.g., hierarchical, non-hierarchical, democratic) that is inconsistent with the beliefs of the community as to how it should be structured.
14. One religious group should not have a say in whether a different group is permitted to be registered.

These basic principles must be born in mind in analyzing the registration structure proposed by the Draft Law, provides for a variety of religious structures, including places or worship, religious education institutions, and “agitating societies”, as a means of categorizing them. No justification or reason for establishing this classification system is provided in the draft law, nor is any justification provided for the registration of separate types of entities according to these classifications. In part, the system no doubt reflects some social realities concerning the types of organizations that exist in Tajikistan. The problem is that the proposed structure is too religion-specific and too restrictive.. In effect, the registration structure may operate as a “limitation on manifestations of religion,” and to the extent that it does, it cannot be justified unless the limitations are necessary in the sense of Article 18(3) ICCPR. But since less restrictive and

burdensome structures can easily be designed, the restrictive, limiting structures cannot be justified under international standards.

This is not to say that a registration structure cannot be enacted. Every modern state has such structures in one form or another. Indeed, it is now well settled that there is a right under international law for religious groups to acquire legal entity status if they desire it. Great flexibility is urged in such instances. What is critical is that the registration structure facilitates religious activity, rather than limits it in ways not allowed by Article 18(3) ICCPR.

Turning then to the proposed Draft Law, part of the difficulty is that the concepts and definitions are unclear. In this regard, it may be help to identify terms in the original language of the Tajik law (Russian or Tajik) which can replicate the terms described in the discussion of Article 4, above. The primary distinction introduced in article 11 separates “religious unions” into two types: “religious communities” and “religious organizations”. These are then subdivided into various other types of organizations. It might be simpler to speak of religious groups and religious organizations—i.e., groups without and with legal entity status. Aside from this simple and basic distinction that is obviously necessary, it is unclear what purpose is furthered by the arbitrary distinction between communities and organizations (which appears to be a distinction between Muslims and others) or the parallel distinction between churches and synagogues on one hand, and mosques on the other. The law ought to be neutral and not religion-specific to the extent possible.

It would be simpler if various religious communities could establish religious organizations (legal entities) to fit their needs. A Muslim group might create a religious organization (entity) to own, build and operate a mosque; a Christian group might create a religious organization (entity) to own, build and operate a church; a Jewish group might create a religious organization (entity) to own, build and operate a synagogue; and so on for other religious communities. Some of these groups might want to have one centralized organization with several sub-organizations to reflect it’s hierarchical structure; some might want to form an association of several organizations. There is no need to specify in advance how religious organizations would use such structures to carry out their affairs. The important thing is that the state should not stand in the way of their doing so.

Thus, for example, there is no reason for the state to say, as in Article 11(3) that “not less than 3 religious organizations can establish an association.” There might be a religious community that has adherents in two cities, and they might want to create two organizations in the two cities, and then have the two city organizations be members of one association. On the other hand, the community might prefer to have just one organization to serve the two cities (and perhaps others as well). The point is that these are matters of internal organization within the religious community that are not at all the business of the state. The state has a legitimate interest in receiving knowledge about the basic organizational features of religious communities, so it can contact the community if necessary, but the state should not dictate or meddle in the structure of such organizations.

Sometimes a particular group may request that a certain type of structure be made available. That is acceptable, so long as other groups remain free to organize as they see fit. In the United

States, for example, historically, there have been fifteen states which have adopted special statutory provisions for particular religious denominations—usually larger traditional groups—but in each case there are also other provisions so that other groups can easily attain legal entity status.⁶⁷ Religious groups should have access to legal entity status on at least as favorable terms as other non-profit entities, and in certain respects, out of deference to freedom of religion, they deserve even greater deference and protection.⁶⁸

Setting aside the initial distinction between groups with and without legal entity status, the proposed framework suffers from a number of consistent flaws: First, all religious structures, with the exception of educational institutions, are required to be established by Tajik citizens only. The problem of extending rights related to freedom of thought, conscience, and religion or belief to citizens only rather than to all individuals has been discussed above.⁶⁹ Second, establishing such structures also requires a minimum number of participants. For example, “religious centers” can only be established by a minimum of 10 citizens.⁷⁰ Likewise, with regard to mosques, so-called “Friday mosques” or public mosques, can be founded only by “religious centers” or at least 30 citizens.⁷¹ Although no justification for the minimum numbers required is given in the law, most minimums are probably not unreasonable, though the requirement of at least 30 citizens for religious centers is already probably excessive. It needs to be remembered that some groups organize on a congregational basis, and the number of adult members may be quite small. The number ten is reasonable because it is usually possible for groups smaller than ten to function without legal entity status. But of course, this number is only reasonable if groups are free to practice without registering at all.⁷² The OSCE Guidelines are very clear that

⁶⁷ See Patty Gerstenblith, “Associational Structures of Religious Organizations,” in James A. Seritella, Thomas C. Berg, W. Cole Durham, Jr., et al., *Religious Organizations in the United States: A Study of Identity, Liberty, and the Law* (Durham, North Carolina: Carolina Academic Press, 2006), p. 232, citing Paul G. Kapuer & Stephen C. Ellis, *Religious Corporations and the Law*, 71 Mich. L. Rev. 1499, 1533-38 (1973).

⁶⁸ Thus, the California Nonprofit Corporation Law and the Revised Model Nonprofit Corporation Act in the United States both impose lighter regulatory burdens on religious corporations than on other public benefit corporations. Gerstenblith, *supra* note 67, at 229-30. For example, religious corporations are less subject to the supervisory role of the attorney general and do not face the same disclosure requirements as other public benefit organizations. In both cases, this is out of respect for the religious liberty of the organizations involved.

⁶⁹ See discussion at Part 2(A), above. The problem recurs in article 18 of the draft law. Significantly, in *Moscow Branch of the Salvation Army v. Russia*, the European Court of Human Rights specifically held that a citizenship requirement (indeed, even a local residence requirement) on founding members of a religious entity constituted impermissible discrimination in violation of the international religious freedom standards. See *Moscow Branch of the Salvation Army v. Russia*, *supra* note 33, paras. 82-85.

⁷⁰ The law indicates that these structures would be designated for “non-worship religious activity.” Draft Law, art. 13.

⁷¹ Smaller, “five-time” or daily mosques require a minimum of 10 citizens to act as founders. Draft Law, art. 16(4). The U.S. Department of State has reported that there are 262 “Friday” mosques registered, and that additional regulations authorize “Only one such mosque...per 15,000 residents in a given geographic area.” Some observers have contended that this limitation “is discriminatory because no such rule exists for other religious groups.” U.S. Department of State, *International Religious Freedom Report 2007*. Tajikistan has reported previously to the Human Rights Committee that three “Friday” or central mosques were refused registration status because Friday mosques were permitted only in towns having more than 15,000 inhabitants. These mosques were subsequently registered as “five prayer” mosques. Human Rights Committee, “Summary Record,” UN Doc. CCPR/C/SR.2287, July 22, 2005 (Translated from the French).

⁷² That is one of the reasons that registration for religious organizations should not be mandatory per se. Guidelines, *supra* note 9, item 2.

“[h]igh minimum membership requirements should not be allowed with respect to obtaining legal personality.”⁷³

Article 12 indicates that “religious unions without legal person status shall be registered in the authorized state agency on religion and shall work based on a sample regulations (sic) that [are] prepared and approved by the authorized state agency on religion.” It is not clear what the sample regulations will contain and how they might limit a religious group’s religious autonomy.

A third consistent flaw in classification system described in the draft law requires certain religious structures to seek approval from both a local and central authorized body. For example, registration of mosques is conducted by “local administration of the state authority” together with the central “authorized state agency”.⁷⁴ Likewise, “agitating societies, worship and pilgrimage places” also must apply to authorized state and central state agency for registration purposes.⁷⁵ Further, the draft law requires that appointments of Imams and Imam-Khatibs also must be approved under a two-tier “authorized state agency” and “local administration of the state authority” framework.⁷⁶

Although the ICCPR does not speak directly to the issue of registration—and more specifically as it relates here, to registration criteria that are being enforced and interpreted by both local and central government agencies—it should be noted that two-tier bureaucratic arrangements such as those in Article 16(5) of the Draft Law may result in additional opportunities for arbitrary interpretation and application of the law, as well as further complicate the process of registering religious structures. As a consequence, such provisions may in fact create a level of government interference in the right to manifest a religion or belief that impinges on the right in a manner not in accord with the strict nature of the justifiable limitations set forth in art. 18(3) of the ICCPR.⁷⁷

Indeed, in advance of the UN Human Rights Committee’s consideration of Tajikistan’s 2005 State Party Report on the Implementation of the ICCPR, the Committee explicitly sought information from the state concerning the system of registration of religious organizations already in place.⁷⁸ Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, has found that registration systems often appear “to be used as a means to limit the right of freedom

⁷³ Id., item 6.

⁷⁴ Draft Law, art. 16(3).

⁷⁵ Id., art. 17(2).

⁷⁶ Id., art. 16(5).

⁷⁷ See discussion in Part 3(C)(i), above.

⁷⁸ Specifically, the Committee sought information addressing the following questions:

24. Please provide details of applications for registration of organizations under the Law on Religion and Religious Organizations which have been denied, and the grounds on which registration has been denied.

25. Please provide details of any prosecution of activity arising from non-compliance with the registration provisions of the Law on Religion and Religious Organizations.

Human Rights Committee, “List of issues to be taken up in connection with the consideration of the initial report of Tajikistan,” UN Doc. CCPR/C/84/L/TJK, April 29, 2005, paras. 24-25.

of religion or belief of members of certain religious communities.”⁷⁹ More directly, a recent report by Jahangir published following a state visit to Tajikistan expressed concern over the country’s existing registration system. The report observed that “Some local authorities have allegedly tried to use the registration process to hinder the activities of religious minorities, and that in certain districts, government agencies repeatedly denied Jehovah’s Witnesses registration as a legal entity.”⁸⁰ The report concluded by reiterating “that the right to freedom of religion is not limited to members of registered religious communities.”⁸¹

From this line of inquiry, it is clear that implementation of such registration systems may trigger deleterious consequences for the free practice of fundamental rights related to freedom of religion or belief and place Tajikistan in violation of its international human rights obligations.

More problematic, the draft law requirement of state approval for religious appointments—be it single or two-tiered—stands in direct contradiction to international law and best practices insofar as it raises concerns with respect to interference with fundamental rights intimately connected to the exercise of freedom of religion. This is equally true of the proposed requirement to have places of worship registered with the government. In the first instance, the Human Rights Committee has affirmed that, “the practice and teaching of religion or belief includes...the *freedom to choose their religious leaders, priests and teachers*.”⁸² Likewise, Principle 16(d) of the OSCE Vienna Concluding Document provides that participating States shall respect the right of religious communities to “select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State.” This means that if a religious community wishes to have state officials involved in appointing their religious officials, that is permissible, but otherwise not. Generally, the authorization for consensual state appointments was included for states with official religions. Since Tajikistan has a system that calls for institutional separation of religion and the state, it is inconsistent for the state to have a role in religious appointments. There is clear authority in the decisions of the European Court of Human Rights—not technically applicable in Tajikistan, but certainly a persuasive authority on the meaning of international standards—that a state may not limit registration to groups for which the state has appointed the official religious leader.⁸³

Moreover, because the appointment policy of the Draft Law appears to apply only to Imams, and therefore to the Muslim faith exclusively, it may fall short of Tajikistan’s commitments related to non-discrimination under both the ICCPR and International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

⁷⁹ Asma Jahangir, “Civil and Political Rights, Including the Question of Religious Intolerance,” UN Doc. E/CN.4/2005/61, December 20, 2004, para. 56.

⁸⁰ Jahangir Report, *supra* note 18, para. 32.

⁸¹ *Id.*, para. 52.

⁸² General Comment 22, *supra* note 26, para. 4.

⁸³ In general, “state measures favouring a particular leader or group in a divided religious community or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of the freedom of religion.” *Supreme Holy Council of the Muslim Community v. Bulgaria*, ECtHR, App. No. 39023/97, 16 December 2004, para. 76; *Serif v. Greece*, ECtHR, App. No. 38178/97, 1999, paras. 49, 52-53; *Hasan and Chaush v. Bulgaria*, cited above, para. 78).

With respect to places of worship, Principle 16(d) of the Vienna Concluding Document provides that “participating States will...respect the right of these religious communities to establish and maintain freely accessible places of worship or assembly.”⁸⁴ Reasonable land use regulations are permissible, provided that they are not overly restrictive and do not allow the exercise of excessive discretion by state officials.⁸⁵

The UN General Assembly has endorsed both of these rights, proclaiming that “the right to freedom of thought, conscience, religion or belief shall include,” *inter alia* the freedom to “train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief,” and to “to establish and maintain places” for the purpose of “worship or assembl[y] in connection with a religion or belief.”⁸⁶

In addition, the draft law potentially establishes unjustifiable government interference in religious education institutions by requiring that the “condition and order of the studies” be defined by the Ministry of Education, and that a license shall be required for any educational activity. While comment on the law “About Issuing License for Some Kinds of Activities” is outside the scope of this analysis, it should be noted that the terms “condition and order of the studies” is vague and should be clarified. The Human Rights Committee has held that “the freedom to establish seminaries or religious schools” is part of the broad range of acts encompassing the freedom to manifest religion or belief. Therefore, any encroachment that goes beyond the narrowly defined reasonable limitations outlined under the ICCPR would, in all likelihood, amount to a violation of the right to freedom of thought, conscience, and religion or belief. As noted elsewhere, “Policies or practices...restricting access to education [or other rights] are...inconsistent with article 18.2” of the ICCPR.⁸⁷

Finally, it should be observed that the registration system, by virtue of creating recognized and unrecognized religious groups in and of itself may create a framework that is inconsistent with the Tajik constitution, according to which the state guarantees:

the rights and freedoms of every person regardless of nationality, race, sex, language, religious beliefs, political persuasion, social status, knowledge, and property.⁸⁸

On this important point, the draft law at article 12 is unclear as to the extent of rights that would be extended to religious groups which are left “without legal person status.”

Recommendations: To ensure that this provision satisfies international and domestic human rights standards, the following modifications should be made to the draft text:

- Remove citizenship requirements related to religious structures;

⁸⁴ Concluding Document of the Vienna Meeting, January 19, 1989, Art. 16(4) (emphasis added). Available at <http://www.wilsoncenter.org/subsites/ccpdc/pubs/addm/osce.htm>.

⁸⁵ See, e.g., *Manoussakis v. Greece*, ECtHR, App. No. 18748/91, 26 September 1996, para. 45; see Guidelines, *supra* note 9, at 25.

⁸⁶ Declaration on the Elimination of All Forms of Intolerance, *supra* note 6, art. 6 (emphasis added).

⁸⁷ General Comment 22, *supra* note 26, para. 5. See also Part III(3)(D) and (F), above.

⁸⁸ Constitution of the Republic of Tajikistan, art. 17.

- Clarify the arbitrary distinctions made under the draft law between religious communities and religious unions; clarify why mosques are treated differently from churches and synagogues;
- More clearly define the rights of religious groups that are unable to register successfully with the government and define what is intended by “work based on a sample regulations”;
- Simplify the number of types of legal entities authorized, making them less religion-specific and more flexible, to meet the needs of the religious communities in Tajikistan;
- Remove registration requirements related to places of worship and pilgrimage;
- Reduce all minimum membership requirements to ten;
- More clearly define the relationship between government and religious education institutions;
- Remove government appointment controls related to Imams;
- More clearly define the meaning and scope of “agitating societies”; and
- Make it clear that religious groups can function legally without being registered, and with no more onerous requirement than providing notice to authorities of their existence and a person authorities can contact about the group

H. Article 18: «The establishment of the religious organizations»

This article reiterates a number of problems already discussed: First, the requirement that founders of religious organizations be citizens of Tajikistan; second, a ban prohibiting leaders, “members of political parties”, and state workers from becoming founders of religious organizations (essentially a counterpart to the ban on religious leaders participating in politics already addressed under draft article 7); third, vagueness in draft language; and finally, overbroad limitations on freedom of religion.

With regard to points three and four above, certain terms used in draft article 18 fail to provide clear legal meaning. For example, an individual can be considered a member or participant in a religious organization only if he or she is a “full competent person”. Likewise, the right to establish a religious organization is restricted not to Tajik citizens alone, but to those citizens “possessing full work competency.” In both instances, the law provides no further definition or clarification as to the meaning or import of these terms.

It should be noted that the UN Special Rapporteur has concluded that any ban on “foreign leaders of religious associations...would adversely affect the smaller religious minority groups that have only foreign priests serving in Tajikistan.”⁸⁹

In a related vein, the final subparagraph of article 18 requiring that the activity, aims, and actions of religious organizations not “contradict the legislature of the Republic of Tajikistan”, signals a provision drafted in an overbroad manner that does not comport with international standards provided under the ICCPR. It is appropriate to expect religious communities to be law abiding, but they may be critical of some legislation and legislative activity, and in particular, it is not permissible for legislation to limit religious freedom if that legislation does not meet the requirements of Article 18(3) ICCPR. As drafted, the open-ended nature of this provision could

⁸⁹ Jahangir Report, *supra* note 18, para. 37.

enable a religious group to be prosecuted on minor technical grounds or based on laws directed specifically at that group.

Recommendations: Revise provision to clarify or remove conditions that are not in accordance with international standards—including ensuring the right of all citizens to participate in the political, civil, and religious life of Tajikistan, and the right of all individuals to exercise their right to freedom of thought, conscience, and religion or belief without undue restrictions.

Revise provisions to clarify or remove terms noted above that potentially may fail to satisfy judicial scrutiny on grounds of being vague and/or overbroad.

Remove or clarify the overbroad provision in paragraph 7 to ensure that compliance with international standards, including those related to anti-terrorism and anti-extremism measures.⁹⁰

I. Article 19: «The registration of the religious organizations»

Draft article 19 stipulates that the registration requirements outlined above will apply to all religious structures in Tajikistan. Unless further refined, this process runs the risk of creating two hurdles for religious groups to pass, and of creating needless duplication of governmental efforts. The system ought to allow religious groups to elect to register either at the national level, or at the local level, with appeals for any denials going to courts at the corresponding level. Once a religious organization is registered at the national level, the registration ought to be valid nationwide. An organization registered at two or more local levels ought to be able to be registered at the national level as well. The guiding principle of any registration system should be to avoid unpredictable outcomes, arbitrary enforcement, discrimination, bureaucratic delays, and government accountability gaps, in contrast to what has been experienced in other countries attempting to implement similar structures.⁹¹

Furthermore, “in necessary cases,” that require “getting the conclusions of the religious specialists and other inspection and analytic actions,”⁹² it is vital that reasonably short time limits be imposed on the process of reviewing applications. In its current form, the Draft Law sets neither time limits nor substantive criteria on the process of expert review of applications for registration. The law provides no clarification or guidance as to when such specialists or other inspections are required other than to call these situations “necessary cases”, and it also provides no guidance as to how and by whom an individual may be designated a “specialist” or what may be appropriate for them to review. Both failings are an open invitation to arbitrary decision making that violates international standards. The OSCE Guidelines indicate that “excessively burdensome constraints or time delays prior to obtaining legal personality” are inappropriate,⁹³ as are provisions that “grant excessive governmental discretion in giving approvals.”⁹⁴

⁹⁰ See discussion on anti-terrorism measures and religious extremism in Part I(C), above.

⁹¹ See for example, U.S. Commission on International Religious Freedom, *Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations*, addressing amendments to the Russian Federation's NGO law (March 2007).

⁹² Draft Law, art. 19(4).

⁹³ Guidelines, *supra* note 9, item 8.

⁹⁴ *Id.*, item 9.

Moreover, it is not clear what an expert review commission would be examining. International standards require that the state has a duty to be neutral and impartial,⁹⁵ and may not engage in “substantive review of ecclesiastical structures.”⁹⁶

Directly linked to this allowance for discretionary delays to address “necessary cases” that require “the conclusions of religious specialists”, it should be stressed that the Human Rights Committee has affirmed that the terms “belief” and “religion” in Article 18 of the ICCPR 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. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.⁹⁷

Inherent in the very notion of freedom of religion or belief is that the state should remain neutral, and should not be assessing whether a particular religion is a good or bad one. The state may identify crimes and other administrative violations that relate to neutrally defined conduct, but it should not make access to entity status depend on expert assessments of the merits of particular religions, so long as their believers are “practising or prepared to practise their faith within the constitutional framework” of the state.⁹⁸

With regard to the list of documents required to submit an application,⁹⁹ there are several problems. In general, the list is excessively burdensome, and can be abused to obstruct, delay, or reject applications from legitimate but unpopular groups. Such practices by Russian officials who exploited similar provisions to obstruct access of religious groups to legal entity status have been held to violate international standards.¹⁰⁰ The ten-year residency requirement is particularly problematic. The OSCE Guidelines specifically state, “It is not appropriate to require lengthy existence in the State before registration is permitted.”¹⁰¹ The European Court has indicated it is inappropriate to require residency or citizenship of founding members;¹⁰² *a fortiori* a ten-year residence requirement is inappropriate.

Another problematic provision requires that a group seeking registration secure *in advance* from an authorized state agency a document evidencing that body’s “positive conclusion ... about the fact that the aims and tasks of the religious organization *shall not contradict culture, national and religious values.*”¹⁰³ Here, it is worth recalling the narrow limitations allowable under the

⁹⁵ *Id.*, II(B)(4), citing *Metropolitan Church of Bessarabia v. Moldova*, (ECtHR 2001), para. 116.

⁹⁶ *Id.*, item 10.

⁹⁷ General Comment 22, *supra* note 26, para. 2.

⁹⁸ Vienna Concluding Document, *supra* note 8, Principle 16(c).

⁹⁹ Draft Law, art. 19(5).

¹⁰⁰ See *Moscow Branch of the Salvation Army v. Russia*, *supra* note 33, para. 89; *Church of Scientology Moscow v. Russia*, *supra* note 64, paras. 79, 93.

¹⁰¹ Guidelines, *supra* note 9, item 7.

¹⁰² *Moscow Branch of the Salvation Army v. Russia*, *supra* note 33, paras. 82-85.

¹⁰³ Draft Law, art. 19(5)(v-vi) (emphasis added).

ICCPR article 18(3): freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law *and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*.¹⁰⁴ The ICCPR does not allow for limitations based on vague terms such as "culture, national and religious values." As noted above, the Human Rights Committee has previously stressed the fact that article 18(3) "is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant."¹⁰⁵ A state may reasonably require that a religious organization be willing to practice its religion "within the constitutional framework "of the state,¹⁰⁶ but it is not appropriate to demand that a religious community's beliefs be absolutely consistent with the "culture, national and religious values" of a state. Among other things, the state is supposed to be neutral; and as such it does not have an official set of religious values. It would be a violation for the state to have the kind of values with which it demands that religious groups must conform in order to be eligible for entity status. Leaving that aside, the provision is obviously vague, and provides an open invitation for official abuse of discretion.

In other words, certain prerequisites for submitting a registration application give rise to a scenario in which it becomes either impossible or unduly difficult for a religious group to fulfill the technical step of *assembling the paperwork required to submit an application*. This situation may arise in cases where the religious group encounters a hostile regional authority unwilling to furnish the necessary reference, or similarly, in cases where the authorized state agency refuses to provide a positive conclusion with regard to a given group's aims and tasks. The European Court has held that the right to freedom of religion is violated where government officials deny or obstruct registration for reasons that are in the control of the government.¹⁰⁷

With regard to other problematic issues, one of the required documents calls for "information about the founders of the organization." This is appropriate if some basic identity and address information is inquired, but the provision should not authorize a fishing expedition into the private lives of individual members. Finally, the registration fee should not be excessive and should not vary among applicants in a discriminatory way. The normal 30-day processing period is appropriate, so long as the expert review provision or repeated denials of the application are not used to obstruct approval of the application.

As currently conceived, any amendments to the regulations of a religious organization trigger a mandatory re-registration process including payment of all state fees. Particularly for amendments dealing with minor matters or issues that appropriately fall within the domain of a religious community's right to religious autonomy, a simplified procedure requiring only that timely notice be given to the state should suffice. For example, under the Draft Law, the regulations of an organization are required to specify the location of the managing body. But it is not at all unusual for a religious group to change the location of its headquarters. Similarly, an organization may decide to create an additional sub-organization, or to expand the territory of its

¹⁰⁴ ICCPR, *supra* note 5, Art. 18(3) (emphasis added).

¹⁰⁵ General Comment 22, *supra* note 26, para. 8.

¹⁰⁶ Vienna Concluding Document, *supra* note 8, Principle 16(c).

¹⁰⁷ *Church of Scientology Moscow v. Russia*, *supra* note 64, para. 88, 92.

operation. Internal organizational matters such as these should not trigger a new re-registration process or otherwise create any undue bureaucratic burdens on the group.

It is also important to note that no provision is made for appeals from decisions denying entity status to an applicant. Conceivably, such appeal provisions may be found in Tajikistan's administrative code, or some other similar provision. But it is vital that appropriate appeal procedures be in place so that an applicant can be assured of effective remedies in case of wrongful denial of entity status.¹⁰⁸

Recommendations: The overriding problem with this article is that religious groups may be denied registration *without ever having had the chance to apply*. Because the Draft Law provides officials with discretion whether or not to furnish documents necessary for the application, groups may be blocked from even applying for legal entity status since they cannot complete the application file, and therefore cannot reach the stage of obtaining a decision (either positive or negative) or seek an appeal if needed. All documents that require official approvals should be shifted to the process of approving applications (to the extent they are appropriate). Any documents constituting the application should be readily accessible and obtainable by applicant without relying on government officials.

The recommendations that follow here are designed to ensure that a registration system should, at a minimum, be fair, free from discrimination, and should be applied in ways that facilitate religious activities through making entity status available, rather than serving as an obstacle that hinders the right to freedom of thought, conscience, and religion or belief.

The most significant problem posed by the registration system as currently drafted is the risk of exposing religious groups to the arbitrary interpretation, application, and enforcement of a system that varies based on whims or biases of regional offices and individual bureaucrats lacking guidance with respect to Tajikistan's international and constitutional commitments. Therefore, it ought to be possible for religious groups to elect either registration at the local or national level, whichever they think is most convenient or in their best interests, without requiring double clearances. Those staffing the registration process should be given specific training with respect to Tajikistan's international obligations to respect the right of religious communities to acquire legal entity status if they so desire and to ensure objective and consistent application of the law. Clear, prompt, and objective appeal processes should be in place to handle inappropriate denials of entity status or other bureaucratic delays or obstructions.

Further, the provision permitting delays for certain types of applications should be removed, or in the alternative revised to include clear and predictable conditions that may justifiably trigger a more thorough evaluation and that specify the standards for such review, as well as a reasonable and explicit deadline for how long any additional evaluation may take. Caution should be exercised in drafting this provision to ensure that it satisfies any scrutiny related to potential discrimination concerns against minority, "non-traditional" or newly established religions.

The 10-year residency requirement should be dropped, and the information required about founders should be limited to basic items such as identity and address.

¹⁰⁸ Guidelines, *supra* note 9, II(B)(9).

Finally, the provisions describing mandatory document filings should be specified in ways that assure that the overall process is neither discriminatory nor unduly burdensome.

J. Article 20: «The refusal for registration of the religious organizations»

This draft provision sets out the terms according to which the government may reject applications for registration. Although some of the conditions set forth in article 20 appear reasonable, it is worth recalling that the provisions of article 19 operate to disqualify *a priori* applications from religious groups that are deemed, at least unofficially, unfit by the government by virtue of withholding documents necessary to submit an application for registration. Indeed, article 20 stipulates that an application missing “all of the required documents...shall not be presented” at all.

To avoid this problem, items within control of government officials should be eliminated from the list of documents needed to complete an application. Thus, the items in Article 19 related to “a reference from regional administration of the state authority about the residence of the followers of that religion for last 10 years” and “a positive conclusion of the authorized state agency on religion about the fact that the aims and tasks of the religious organization shall not contradict culture, national and religious values” should be removed from the list of documents required as part of the application. In fact, these are both inappropriate matters to be taken into account in registration decisions. But if they were appropriate items, they could be added in as grounds for decision in Article 20. The document about “payment of state fee” ought to be changed to be “tender of payment of the state fee.” With these changes, it would be clear that state officials could not block completion of the application, and would be required to consider it within a 30-day period, subject to an appropriately limited extension for review by an expert committee.

Even if a group is able to submit an application successfully, its approval is not guaranteed. Among other conditions, article 20 makes registration contingent upon the application satisfying all other (undefined) requirements “provided by the legislature of the Republic of Tajikistan.” That phrase should simply be removed. If the legislature of the Republic of Tajikistan wants to impose other (appropriate) conditions for approving applications, it should amend Article 20 to specify any additional conditions. With the current draft provision in place, the outcome of the registration process remains uncertain at best.

The provision allowing denial of registration “if the name of the religious organization shall insult the ethic, national and religion feeling of citizens” is unduly vague. The fact that some believers in one religious community may be offended because others in another community select a name that makes truth or identification claims to which those in the first community object should not be a ground for denial of registration. Religious expressions of this type are protected, even if some take offense. The larger issue here is that there could be efforts to block the registration of one group because another group needs to use a similar name. For example, many applicants might want to have the word “Orthodox” or “Baptist” in their name. Registration authorities should find ways that registered names can be sufficiently different for purposes of identification, without foreclosing one or another group seeking to use a name in accordance with their religious beliefs from doing so.

Importantly, there is evidence that the failure to register successfully is not cost-free. The findings of the European Court of Human Rights reached in evaluating the impact of a similar Russian law are instructive here. In *Moscow Branch of the Salvation Army v. Russia*, the Court found that the process of seeking re-registration “necessitated complex bureaucratic steps and a diversion of resources from [the organization’s] activity,” created “negative publicity which severely undermined...efforts at charitable fund-raising and generated distrust among landlords,” and “made it impossible for 25 foreign employees and seven non-Moscow Russian employees to obtain residence registration.”¹⁰⁹ Similarly, in *Church of Scientology Moscow v. Russia*, after noting that the right to entity status is linked to the underlying right of a religious community to religious autonomy,¹¹⁰ the Court held that delay and denial of entity status constituted an interference with the religious freedom rights of the religious community that violated international standards.¹¹¹ Among other things, the Court in the *Scientology* case held in effect that a state’s duty of neutrality and impartiality can be violated not only by positive actions of state officials, but by failure to act in good faith.¹¹²

Recommendations: Paragraph 5 of the draft article should be removed. Paragraph 2 should be removed or, in the alternative, documents required to complete the application package should not require any government evaluation or opinion of the religious group. Furthermore, the law should stipulate that government evaluation of applications shall occur based on transparent and objective grounds. Approval of the application should not hinge on government endorsement or acceptance of the applicant religious group as a valid or otherwise legitimate religion. As previously noted, ICCPR article 18 rights are not limited in application to traditional religions and any tendency to discriminate against any religion or belief for any reason, “including the fact that they are newly established, or represent religious minorities”¹¹³ gives rise to a potential violation of Tajikistan’s international commitments. The provisions relating to the name of the religious organization should be revised as described above.

K. Article 21: «The regulations of the religious organization»

For the most part, the disclosures required under this draft article are legitimate. However, there are some points that need clarification. When subparagraph 2 indicates that the regulations shall provide “the structure of the religious organization, managing and controlling body of the religious organization, the territory, where this organization shall work,” it is important to remember that it is the structure of the legal entity that is to be described, not the structure of the religious community. For a variety of reasons having to do with what the religious community believes to be the most effective organizational means for organizing its resources, the two may be quite different. This is a matter of religious autonomy and relates to an organization’s protected internal affairs. The same point can be made with respect to the next subparagraph, which calls for a description of the managing body, etc.

¹⁰⁹ *Moscow Branch of the Salvation Army v. Russia*, *supra* note 33, paras. 30-33.

¹¹⁰ ECtHR, App. No. 18147/02, 5 April 2007, para. 72.

¹¹¹ *Id.*, para. 81.

¹¹² *Id.*, para. 97.

¹¹³ General Comment 22, *supra* note 26, para. 2.

Subparagraph 4 speaks of the “order” of introducing amendments. It would probably be better to speak of the method and procedures for introducing amendments. This may simply be a translation problem.

Significant complications may arise with respect to subparagraph 5 which requires providing information on the “sources of the financial resources and other property.” This provision trenches on sensitive issues for religious communities, and has become more complex in a day when there are risks that terrorist funds could be laundered through religious groups (with or without the knowledge of the religious group). Due to the vague wording of this provision, it is unclear whether religious organizations need to provide a sum total of their financial assets or an itemized accounting. The latter scenario is particularly problematic for religious organizations given the common use of donation boxes and other anonymous sources of support from which they may benefit. Even where donations are made by known individuals, a religious organization may believe that as a matter of religious belief, the source of the donation should be kept confidential. For larger organizations, disclosing financial assets may put religious personnel at risk of being kidnapped or subjected to other extortionist pressures. The cost of preparing accounting documents may be a substantial burden, especially for smaller religious groups. As a practical matter, it doesn’t make a great deal of sense to include this information in the regulations (statute/charter) of the organization. It makes much more sense to call for periodic reports, and even here, there should be assurance that disclosures will be treated with strictest confidence by the relevant state officials.

The regulations of the religious organization ought to include a description of how assets of the organization should be distributed in case of dissolution. This helps assure that assets are more likely to be distributed in accordance with the religious beliefs of the group in the unfortunate situation where dissolution is necessary.

Recommendation: Clarify the language in paragraph 5 to specify that only a total, as opposed to itemized, accounting of assets is required. In the alternative, include a provision that does not require itemized accounting for donations under a set amount, or that allows summaries of categories of donations. Some certification that to the best knowledge of the religious organization in question, funds do not come directly or indirectly from designated organizations might help with some of the money laundering concerns. Obviously, organizations engaged in such laundering are unlikely to volunteer the fact, but subsequent discovery of misstatements in this area provide grounds for prosecution, and the threat of such prosecutions is likely to be a substantial deterrent to engaging in laundering activities.

L. Article 22: «The state list of the religious organizations»

This draft article mentions “information about annual activity” of religious organizations, without specifying precisely what information shall be required from religious organizations.

Recommendation: Annual reporting requirements for religious organizations should be designed for the purpose of obtaining necessary and legitimate information from the religious group without creating an undue administrative burden. It would make sense to include updates of the address of the organization and its key officers in an annual report, and to rely on this information rather than to require amendment of the regulations of the organization each time

changes are made. Any reporting should be minimal, and limited to essentials that can be provided without imposing costly or time-consuming burdens on the religious organization. A small annual filing fee that could help cover the costs of processing reports would be reasonable. This also tends to help identify organizations that are no longer functioning.

M. Article 23: «The rights of the religious organizations»

Draft article 23 contains a number of positive provisions. It is important to ensure that any list of enumerated rights is not constrained or limited in any undue manner.

There is some inconsistency between the title of Chapter 5 of the Draft Law, which refers to religious unions, the title of Article 23, which refers to religious organizations, the text of Article 23, which refers to religious unions, and Article 24, which again refers to religious unions. Articles 11 and 12 appear to indicate that religious unions, in contrast to religious organizations, are not religious entities. Terminology needs to be settled upon and used consistently. (See comments to Article 4). It may be necessary to sort out the activities which any religious group can engage in, and those that only legal entities can do. The distinction should be based on the incidents of juristic person status, not on any distinction of types of religious groups or other religious factors. Typically, only a legal entity can institute legal proceedings (subparagraph 2), but all the other indicated activities could be engaged in by a group that has not acquired legal entity status, with the exception that there may be some “rights provided in the present Law and other laws of the Republic of Tajikistan” that may be invoked only by legal entities.

Recommendation: The entire article can be strengthened by including the following amending language in paragraph 1:

“For implementing its goals, religious unions shall be entitled to exercise their rights, including the right...”

Clarify what can be done by organization (legal entity), and what by union (non-entity group).

Subparagraph 5 of the draft article should be amended as follows:

“to implement the other rights provided in the present Law, other laws of the Republic, and in all international treaties to which Tajikistan is a state party.”

Finally, a general provision may be added to the effect that:

“The rights listed here do not deny the existence or right to exercise any other rights or freedoms that are recognized under international law, including customary international law, or under Tajikistan’s commitments as a participating State in the OSCE.”

N. Article 24: «The responsibilities of the religious unions»

The responsibilities outlined here are general, and depending on how they are interpreted, may conflict with the right to freedom of thought, conscience, and religion or belief. There is a

technical problem at the outset, depending on the meaning of the term “union.” If a union is not a legal entity, it may simply be a religious group that does not have any “founding documents.” This could be solved by simply adding the phrase “that have been adopted by the union/organization/religious community (depending on which is correct).

The obligation to “present information” at the “request of the authorized state agency” is unqualified, vague, and may be subject to abusive or discriminatory application at the hands of government officials. Informational requests can be extremely burdensome and disruptive, particularly to smaller religious groups, and are potentially infinite, if not tightly circumscribed. Likewise, the right of government representatives to attend “events organized by the religious organization” is unqualified and vague, and therefore lacking precise legal meaning with respect to defining the scope of the obligation and its application. The drafter was presumably thinking of normal worship services that are open to the public. But what of a private interview between a priest and a parishioner, possibly for confession, or to seek counseling on private matters? What if leaders of a religious community are meeting to discuss a sensitive appointment? Scenarios such as these might be “events organized by the religious organization.” Unlimited government power to attend any event may violate rights of privacy, have a chilling effect on the religious life of the organization in question, and may well impact upon participants’ willingness to attend such events. Most legal systems protect the right of clergy to be insulated from informational requests from courts or government where confidential communications are involved. Moreover, the mere possibility of the exercise of such power interferes with the autonomy of the religious community.

Based on this draft provision—and specifically on the government rights to request documents and attend events in an unfettered manner—it appears that the supervisory powers may be excessive. Any intervention should be based on objective criteria and arise only where reasonable grounds exist that an organization has violated the law.

Recommendation: Clarify the scope of responsibilities by eliminating unpredictable or vague obligations. Further, remove paragraph 2 which allows for unlimited government requests of information, or revise to specify that to the extent such requests operate as a burden on religious activity, the requests should be granted only if they can be justified under the relevant limitation clause of the ICCPR (Article 18(3)). Rather than providing the government agency in question with unlimited discretion, requests should be regulated through the courts and granted only where the government can show reasonable cause. Finally, ensure that religious organizations are able to challenge government requests for information through the judicial system.

The right of government officials to attend “events organized by the religious organizations” should be removed. In the alternative, narrowly define what constitutes an event (public gatherings rather than closed meetings of religious officials, etc), and further, require that the government agency submit in advance to the organization a written request for permission to attend a given event. This document should contain the reasons for the request which shall be based, at a minimum, on reasonable apprehension of a violation of the law. In the event that the religious organization declines a request, the government agency may have the opportunity to petition a court.

O. Article 25: «The religious customs, traditions, and ceremonies»

Like much of the Draft Law, this article similarly restricts the right to freely practice religious “customs, traditions and ceremonies” to citizens of the state only. Moreover, this right is circumscribed further by requiring that practices of custom and tradition satisfy the criteria set by the law “About Regulating Customs and Ceremonies in the Republic of Tajikistan.”

As noted, freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts, including “ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.”¹¹⁴ Moreover, the Human Rights Committee has concluded that the observance and practice of religion or belief may include:

not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.¹¹⁵

To comply with Tajikistan’s international human rights commitments, neither the Draft Law nor the law “About Regulating Customs and Ceremonies” is permitted to discriminate against any religion or belief for any reason, regardless of whether practices are deemed “non-traditional,” new, or otherwise undesirable.¹¹⁶ Although a consideration of the specific provisions of the law regulating customs is outside the scope of the current analysis, it should be reiterated that any limitations therein must be in conformity with the strict guidelines provided under the ICCPR.

Moreover, as currently drafted, restricting the right to practice traditions and customs to religious unions and/or citizens only will contradict protections provided under Tajikistan’s own constitution. Article 26 of the constitution stipulates that:

*Every person has the right freely to determine their position toward religion, to profess any religion individually or together with others or not to profess any, and to take part in religious customs and ceremonies.*¹¹⁷

Draft article 25 does have some positive protections, which can be improved upon. The right to worship within military units is recognized, as is the right to access prisons and other state institutions for the purpose of providing worship. However, limitations in the draft law, including a role for government control and restricting rights only to recognized “religious unions”, may hinder full exercise of these rights in accordance with international standards. In the absence of grounds that would justify a limitation under Article 18(3) ICCPR, the state may not restrict access of any religious group (with or without legal entity status) from such facilities, and in particular, the state may not discriminate in favor of traditional religions by allowing only such groups to have access to prisons, the military, or other such institutions.

¹¹⁴ Id., para. 4.

¹¹⁵ Id.

¹¹⁶ Id., para. 2.

¹¹⁷ Constitution of the Republic of Tajikistan, art. 26 (emphasis added).

The provision should not be construed to allow only those from religious groups with legal entity status to have access, because this would discriminate against persons from non-registered groups. In light of the discussion above concerning shortcomings in the proposed registration framework, it is likely that certain religious groups unable to register successfully with the government will face unwarranted discrimination, particularly with regard to accessing public places to provide religious support for their adherents. Paragraph 4 of draft article 25 enables only “religious unions” to seek access to hospitals and other public places. If “religious unions” here covers groups both with and without entity status, this provisions may be acceptable, Otherwise, individuals confined to such places and belonging to unregistered religious groups potentially will be denied the ability to exercise their rights related to freedom of thought, conscience, and religion or belief.

Moreover, placing the onus on the citizens confined to public places to request religious services may facilitate government interference in free exercise of fundamental rights, or cause certain individuals to forgo making such formal requests for fear of persecution or other punishment at the hands of government officials unwilling to carry out such requests.

It is for all these reasons that the OSCE Guidelines provide:

Some limited freedoms are often provided for the wearing of some types of religious attire, provided that it does not interfere with discipline in the prison or efficiency in the military. It is also advisable to permit, when reasonable, access to religious books and spiritual counseling. Ultimately, limitations should be made only after a proper “limitations analysis”, with the understanding of the reasonable possibility of heightened State-security interests. With regard to State hospitals, where security concerns are much lower, the State should accordingly be more flexible and sensitive with respect to issues such as religiously sanctioned foods and attire.¹¹⁸

Recommendations: The restriction extending rights related to the free conduct of traditions, customs, and ceremonies to Tajik citizens only should be removed. The provision should be made to apply to all individuals equally, without distinction. The law “About Regulating Customs and Ceremonies in the Republic of Tajikistan” should be examined to ensure conformity with Tajikistan’s international commitments, including the obligation of non-discrimination.

Paragraph 4 should be amended to clarify that the list of public institutions is not finite. Further, to avoid a conflict with Tajikistan’s international human rights obligations under the ICCPR, the term “religious unions” should be replaced to be made more inclusive. These recommended changes can be accomplished with the following modifications:

¹¹⁸ Guidelines, *supra* note 9, at 21-22.

For completing worship *all religious groups* shall have right to apply with offers to the citizens being in the hospitals, invalid houses, places of the preliminary arrest, prisons *and other public institutions and facilities*.¹¹⁹

Paragraph 5 should be amended to remove the onus on individual citizens to request religious services by allowing but not requiring such requests. The provision also should be made to apply to all individuals equally, regardless of citizenship. Finally, the role of government intervention in facilitating such practices should be amended to reflect a narrow, coordinative role:

Worship and religious traditions and customs shall be freely completed by all individuals being in the hospitals, invalid houses, places of the preliminary arrest and prisons. The administration of these institutions shall *permit* the invitations of the religious workers; *and facilitate* in defining time and other conditions of conducting worship, religious customs and traditions or ceremonies *in accordance with recognized international standards*.¹²⁰

P. Article 26: «The rights of citizens for completing Hajj and Umra »

The Hajj process is tied intimately to fundamental rights including freedom of religion and freedom of movement. ICCPR Article 12 provides, inter alia, that:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement...
2. Everyone shall be free to leave any country, including his own.

These travel rights are subject only to restrictions which “are provided by law, are necessary to protect national security, public order...public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in” the ICCPR.”¹²¹

Likewise, the ICCPR guarantees as part of the right to manifest religion, “participation in rituals associated with certain stages of life,” with limitations to this right being narrowly construed.¹²² And of course, rights relevant to Hajj and Umra should be administered in a non-discriminatory way.

Recommendation: This draft provision should stipulate that regulation of Hajj and Umra shall be conducted in a manner that accords with Tajikistan’s international commitments and the rights associated with freedom of movement and freedom of thought, conscience, and religion or belief.

Q. Article 27: «The religious literature and objects»

The right to “get and use” religious literature and objects is limited to citizens and religious unions only. Further, only religious unions are permitted to “produce, export, import and spread”

¹¹⁹ Emphasis denotes modifications to draft language.

¹²⁰ Emphasis denotes modifications to draft language.

¹²¹ ICCPR, *supra* note 5, art. 12.

¹²² General Comment 22, *supra* note 26, para. 4.

any religious content. This right to “spread” religious literature and objects is further constrained to the places where followers of the given religion live.

As noted by the Human Rights Committee, the practice and teaching of religion or belief includes conduct of basic affairs, including “the freedom to prepare and distribute religious texts or publications.”¹²³ Restrictions on this right that do not satisfy the narrow limitations permissible under article 18(3) violate the right to freedom of religion or belief. The draft law provides no justification for limiting this fundamental religious practice to religious unions only. All persons and religious groups (with or without legal entity status) should have the right to obtain and use religious literature and objects. Principle 16(i) of the Vienna Concluding Document affirms the right of “individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief.”

Article 27 also fails to explain why distribution of such religious materials and objects should be limited to specific geographic areas where followers of a given religion reside. Any limitations must be prescribed by law and be necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Article 18(3) ICCPR.

The General Assembly’s Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is also instructive in this context. It provides that the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; [and]
- (d) To write, issue and disseminate relevant publications in these areas;¹²⁴

The Declaration acknowledges that these rights and freedoms “shall be accorded in national legislation in such a manner that *everyone shall be able to avail himself of such rights and freedoms in practice.*”¹²⁵

The draft law also purports to limit the export and import of “large number[s]” of religious literature or objects based on agreement of the authorized state agency without providing any justification for the limitation or any indication of how the measure is in accord with Tajikistan’s international treaty obligations. Without objective criteria in place, this provision may subject religious groups to discriminatory treatment at the hands of government officials, if not to outright censorship.

Indeed, the OSCE has stipulated that participating states are required to, *inter alia*, “respect the right of individual believers and communities of believers to *acquire, possess, and use sacred books, religious publications...and other articles and materials* related to the practice of religion

¹²³ Id.

¹²⁴ Declaration on the Elimination of All Forms of Intolerance, *supra* note 6, art. 6.

¹²⁵ Id, art. 7.

or belief,” and also “allow religious faiths, institutions and organizations to produce, *import and disseminate religious publications* and materials.”¹²⁶

Draft article 27 further seeks to prohibit any religious activity of international organizations working in Tajikistan without the prior agreement of the authorized state agency. This blanket prohibition makes no exception for the importation of materials for employees of the international organization or for non-Tajik citizens. The only permissible grounds for granting permission to international organizations to undertake religious activity in Tajikistan requires that followers of the religion in question be citizens of Tajikistan or other qualified individuals who have resided in the country for 10 years.

According to the UN Special Rapporteur on Freedom of Religion or Belief:

Missionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by article 18 of ICCPR...Missionary activity cannot be considered a violation of the freedom of religion and belief of others if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.¹²⁷

In her recent report on Tajikistan, Special Rapporteur Jahangir cautioned “against the adoption of legal provisions that would prohibit actions directed at converting believers of one confession to others as well as any other charitable or missionary activity.”¹²⁸

Recommendations: Remove references to citizens and religious unions and ensure that provision applies to all individuals and religions without discrimination or distinction. Remove geographic limitations and import/export limitations, or in the alternative, provide specific justification for such limits that comport with international standards.

With respect to international organizations, it is worth reiterating the fact that article 18 of the ICCPR “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.”¹²⁹ The discrimination manifest in the Draft Law’s effort to prohibit or severely restrict the freedom to manifest religion or belief on the part of international organizations simply because it is non-indigenous likely represents a violation of the Covenant. This provision should be removed, or in the alternative, justifiable grounds recognized as legitimate by the ICCPR and in compliance with Special Rapporteur Jahangir’s conclusions on missionary activity should be drafted.

¹²⁶ Vienna Concluding Document, *supra* note 8, principles 16.9 and 16.10.

¹²⁷ “Interim Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief,” UN Doc. A/60/399, September 30, 2005, para. 67.

¹²⁸ Jahangir Report, *supra* note 18, para. 53. The legitimacy of missionary work involving only religious persuasion is also discussed in connection with Article 28 below.

¹²⁹ General Comment 22, *supra* note 26, para. 2.

R. Article 28: «The charity activity of the religious unions»

This provision limits charity activities to registered “religious unions”. As previously noted, this type of discriminatory limitation (which excludes groups denied registration) likely runs counter to Tajikistan’s international human rights obligations. Engaging in charitable activity is a commandment or certainly an encouraged practice in most major religious traditions, and as such it is covered among the types of manifestation of religion protected by Article 18 of the ICCPR. It is a manifestation of religious beliefs both for individuals and for religious groups, and the right to engage in such activity is not dependent on the state. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief affirms the right of to “establish and maintain appropriate charitable or humanitarian institutions” for all religious groups.¹³⁰

Further, paragraph 3 of draft article 28 contains vague terms that should be clarified, including “activities ... possessing mental and other stressing character”. Presumably this language is intended to prevent the exercise of undue influence on recipients of charitable activities provided by religious organizations. It is not necessarily inappropriate to proscribe pressure tactics, but the limitation ought to be much more narrowly tailored.

While the terminology of Article 28(3) is vague, it may be that the aim is to ban or restrict proselytizing activity. The OSCE Guidelines contain the following provision regarding proselytizing and missionary activity:

Proselytism and missionary work is a sensitive issue in many countries. It is first important to remember that, at its core, the right to express one’s convictions, beliefs, and faith can be a vital dimension of the human experience, and the right to do so is encompassed within the right to freedom of religion or belief, as well as by the right to freedom of expression. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved. Thus, it is now well-settled that traditional door-to-door proselytizing is protected (though the right of individuals to refuse to be proselytized also is protected).¹³¹ On the other hand, exploiting a position of authority over someone in the military or in an employment setting has been found to be inappropriate.¹³² If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.¹³³

Recommendation: Remove the restriction of “religious unions”, and allow all religious groups the right to pursue charitable endeavors. Practices related to charity can be regulated by a law of general application rather than one specifically directed at religious groups and which excludes those unable to register successfully with the government.

¹³⁰ Declaration on the Elimination of All Forms of Intolerance, *supra* note 6, art. 6.

¹³¹ *Kokkinakis v. Greece*, ECtHR 1993.

¹³² *Larissis v. Greece*, ECtHR 1996.

¹³³ Guidelines, *supra* note 9, at 20.

Clarify the meaning of activities “possessing mental and other stressing character”, and ensure that any limitations here are in accord with Tajikistan’s international obligations, including the narrow limitations envisioned under the ICCPR and Special Rapporteur Jahangir’s conclusions noted above regarding draft article 27. Make it clear that subparagraph 3 only limits missionary activity that definitely involves exercise of undue influence or other coercive behavior.

S. Article 29: «The international relation and connections of the religious unions»

This draft provision premises international relations between a religious union and the rest of the world on approval of the authorized state agency. The precise meaning of “international relations” is not defined, and further, is in any event limited only to “religious unions” rather than all religious groups. The second paragraph signals a potential undue restriction on freedom of movement by requiring that members of religions unions seek prior agreement with the authorized state agency before traveling abroad for educational purposes. Moreover, this paragraph creates undue government interference with respect to which foreign citizens are invited by the religious union to study in Tajikistan. In many contexts, this provision could operate to interfere with the internal affairs of transnational religious groups. With respect to such rules, the OSCE Guidelines indicate that:

if a State creates purely religion-based categories for exclusion, this may be inconsistent with the required religious neutrality of the State. Moreover, since such restrictions may make it difficult for a particular belief community to staff its organization as it sees appropriate, such restrictions may in fact operate as an intervention in internal religious affairs. Thus, . . . rules that specifically aim at religious exclusion, particularly discriminatory exclusion, should be carefully scrutinized.¹³⁴

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief recognizes the right of all religious groups to “To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”¹³⁵ It is likely that this right similarly falls within the ambit of the ICCPR guarantee to freedom to manifest religion.

Recommendations: Remove the requirement of state approval for international relations on the part of religious unions, and ensure that the provision applies to all religious groups regardless of registration status. Any limitations on the right to establish and maintain international ties should be narrowly constructed and based on the grounds provided under the ICCPR. This might include narrowly and neutrally described visa standards that disallow entry of persons who might pose a threat to safety or public order.

T. Chapter 7 (Articles 30-33): «The property of the religious unions»

The title of Chapter 7 refers to religious unions; the title of Article 30 refers to religious organizations; but the text of articles 30-33 refers to religious unions. Conceptual clarity is

¹³⁴ Id., at 19.

¹³⁵ Declaration on the Elimination of All Forms of Intolerance, *supra* note 6, art. 6.

needed. The rights of both legal entities and groups without legal entity status need to be sorted out. In fact, for the most part, it is legal entities that will be dealing with property rights; a primary reason religious groups seek entity status is that property relations become incredibly complex without entity status.

Draft article 30 enables only registered religious unions to benefit from property rights. It speaks of “public property,” without making it clear exactly what this entails. (This may be addressed elsewhere in Tajikistan’s Civil Code.) It is important that this designation not carry with it limitations on the ability of a religious community that would hamper its religious practices. The context suggests that the “public property” status is intended as an advantage; in that respect, it is important that this advantage be dispensed in a non-discriminatory manner.

The last subparagraph of Article 30 indicates that “religious unions shall pay tax from financial and commodity charities presented to them according to Tax Code of the Republic of Tajikistan.” If the revenues involved are gifts from charitable entities to the religion, it is not clear why they should be taxable. In the end, this will be governed by the Tax Code, and it is not clear why it needs to be mentioned here. But at a minimum, religious groups should not face stiffer liabilities than other nonprofit organizations in the system.

Draft article 31 enables local and central administrations to grant properties of the state “to the religious unions for enjoyment.” If unions include groups that have not acquired legal entity status, this may create technical problems down the road. There may be objective reasons why only legal entities should receive such properties, particularly if legal entity status is easily accessible for all religious groups who desire to acquire this status. No guidelines on how this type of grant may be exercised are provided in the draft law, thus raising the possibility of potentially discriminatory application. In any event, only religious unions are eligible for such a grant.

Recommendations: Remove the restriction on non-registered groups (except to the extent that it is intended that property be transferred to legal entities) and provide clear guidelines on what objective criteria will be used for government administrations to allocate property on a non-discriminatory and equitable basis. Clarify any benefits or restrictions associated with receiving “public property”.

U. Article 34: «The labour relations and labour rights of the citizens in the religious unions»

This draft provision authorizes religious unions to enter into labor contracts with citizens. At a minimum, the provision needs to be extended to apply to non-citizens who may be legally hired in Tajikistan. Since non-legal entities cannot enter into contracts, and Article 11 seems to refer to religious unions that do not have legal entity status, the terminology should be checked and verified for consistency. In general, the provision should be satisfactory for a range of issues, at least for religious organizations that conceptualize their relationships with persons carrying out their affairs in ways that fit within standard employer-employee relationships.

There are at least three particular types of difficulties that need to be addressed. The first major issue is that religious groups may have distinctive ways of conceptualizing the relationship

between supervisory and supervised personnel. For example, the relationship of a bishop and a priest in the Roman Catholic Church is governed by canon law, and is not thought of as an employment relationship. A labor contract governed by labor law may not adequately fit this relationship. There is no problem here if Article 34 only provides that religious organizations have the right to hire employees using labor contracts, but are not required to do so. Similarly, there is probably no difficulty if something like the bishop-priest relationship is thought of more as “management” than a matter of “labor law”, and thus simply doesn’t apply. One reason it is so important that religious institutions have the right to religious autonomy is that they need to be free to structure their labor relations in ways that comport with their religious beliefs.

In a similar sense, personnel who may look to outsiders like employees may be volunteers or independent contractors. Again, considerations of religious autonomy may make it important that relationships that are conceptualized in religious terms are not reshaped in state images.

Another issue has to do with non-discrimination rules in labor law. Typically, labor contracts that are made in discriminatory ways may be invalid. In general, this is a good thing. Public or private employers should not discriminate on the basis of religion. However, the situation is different if the employer is a religious organization. There may be reasons of doctrine, tradition, or simply practice which lead the religious organization to prefer to hire its own believers, and there may be reasons why religious practice and conformity to religious beliefs may be important to the religious organization in specifying terms and conditions of employment. It is important as a matter of religious autonomy that such preferential employment practices be permitted.

Recommendation: This draft provision should be revised to ensure that all religious entities are permitted to employ individuals based on non-discriminatory principles that satisfy Tajikistan’s international obligations under the ICCPR. (Of course, members, or collections of members, of religious groups may hire, or jointly hire, other individuals, but they do so without the benefit of entity status. That is simply one of the consequences of not having acquired entity status.) It is reasonably foreseeable that certain religious groups may seek to employ individuals who are not citizens of Tajikistan for the purpose of religious worship or education, or other general purposes aimed at strengthening their religious community. Any limit on this right necessarily must comply with the narrow restrictions allowable under the ICCPR. It is helpful to provide exemptions from normal anti-discrimination rules to allow preferential employment practices on the part of religious organizations with respect to their own believers.

V. Chapter 9 (Articles 35-38): «The responsibility for violating the law about the freedom of conscience and religious unions»

Draft article 35 speaks of “violating” the Draft Law. Since for the most part, the Draft Law specifies rights, and the mechanisms for acquiring entity status, and thus is fundamentally an empowering statute, it is not clear what violating the legislation would be. Whatever possible violations there may be, it is important to be clear that failure to invoke a right or a power is not a violation. Failure to register should be a right, not a violation.

Draft article 36 is a positive provision in the sense that it provides that the authorized state agency on religion (or a prosecutor) may suspend the activity of a religious organization after

giving a written instruction or notice if the activities of the religious organization violate the organization's regulations or other laws or the rights of third parties. The provision does require the instruction to be written, but it does not specify that the instruction needs to address the alleged infraction with sufficient clarity. This is probably simply an oversight, and may be a problem of translation. But it is important that the instruction be sufficiently clear to give the religious organization notice of what it has done wrong.

Nevertheless, article 36 falls short insofar as it appears to grant the state agency on religion discretion to suspend activities of a religious union for up to three months without judicial order. Judicial approval of the suspension order or a right of appeal should be built into this process, to minimize arbitrary application and to ensure that the religious organization's right to procedural fairness is preserved. This provision has the advantage that it may help to cure some otherwise vague standards in the Draft Law.

In contrast to article 36, article 37 seems to suggest that suspension of activities for three months does require a court order. There is some lack of clarity here. Possibly, the three months spoken of in article 37 is added on to the three months in article 36. Possibly the three month suspension described in 36 can't really go into effect without judicial intervention. Possibly, the judicial suspension can be invoked on an emergency basis with no notice. That would be unfortunate, since most problems can be rectified if sufficient notice is given. How Article 37 is intended to work may be more clear in the original language. In any event, this confusion needs to be eliminated.

Neither the term "activities" nor its scope is defined under the law. The ensuing vagueness may be used to suspend fundamental rights that cannot be derogated from, even during declared state emergencies.¹³⁶

Nothing in the draft law requires that the state agency inform the religious union of the specific violations with which it is being charged. No clear appeals process is apparent in the draft legislation for religious unions whose activities are ordered suspended.

Recommendations: Activities of the religious group must be defined in the law. Further, any definition must comport with Tajikistan's international commitments, including the ICCPR. Accordingly, limitations on the right to manifest religion can only be occur where they are "prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."¹³⁷ Activities related to freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. "The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency."¹³⁸

The draft chapter should be revised to account for these obligations, and further to ensure that recognized principles of procedural fairness—including clear notice, judicial oversight, appeals—are respected.

¹³⁶ ICCPR, *supra* note 5, art. 4(2) and General Comment 22, *supra* note 26, para. 1.

¹³⁷ *Id.*, art. 18(2).

¹³⁸ General Comment 22, *supra* note 26, para. 1.

Article 38 ought to provide for both voluntary and involuntary dissolution, and should specify the grounds for involuntary dissolution. This is likely covered in the Civil Code of Tajikistan. It would be helpful to have a specific cross reference to the provision or provisions involved.

W. Chapter 8 (Articles 39-41): «The final regulations»

Draft article 39 requires that existing religious unions be re-registered in accordance with the provisions included in the draft law and that this be undertaken by the established deadline of December 31, 2008. Religious organizations which fail to meet this deadline will lose their legal status.

Recommendation: This chapter underscores the significant deleterious impact the draft law potentially may have on religious life in Tajikistan. Groups that have been able to operate legally in the country are now confronted by the possibility of being stripped of that status. It would be helpful if more generous transition rules were provided. As a matter of convenience to those administering the re-registration process, it would make sense if most groups could be “grandfathered” in, or could be automatically re-registered in some way. As a practical matter, many existing religious organizations will have charters (regulations) that no longer conform to the new law. It would be useful to allow at least one year and preferably two for the re-registration process. In some systems, when a new legal entity is created as part of the re-registration process, property held by the original entity needs to be transferred to the new entity. Ideally this would happen automatically, but if new conveyances are necessary, it is important to provide that there is an exemption from any transfer taxes, in addition to the exemption from paying the state fee for re-registering.

Exhibit A

DECREE

OF THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN

on the bill of the Law of the Republic of Tajikistan “ABOUT FREEDOM OF CONSCIOUS AND RELIGIOUS UNIONS”

According to article 58 of the Constitution of the Republic of Tajikistan the Government of the Republic of Tajikistan takes decision:

To find the bill of the Law of the Republic of Tajikistan “About Freedom of Conscious and Religious Unions” approved and to present it for consideration of Majlisi Namoyandagon of Majlisi Oli of the Republic of Tajikistan.

**Head of the Government
of the Republic of Tajikistan**

Bill

THE LAW

OF THE REPUBLIC OF TAJIKISTAN

ABOUT FREEDOM OF CONSCIOUS AND RELIGIOUS UNIONS

Acknowledging and confirming the right of every person of the society for freedom of conscious and the equal responsibility of all before the law regardless of religion and faith, basing on the fact that the Republic of Tajikistan shall be a secular state, acknowledging that Islam shall be an important aspect of history and culture of people of Tajikistan and with respect to other religions existing in the territory of the Republic, this Law shall be adopted.

CHAPTER 1. THE GENERAL REGULATIONS

Article 1. The theme of regulation of the present Law

The present Law shall regulate social relations concerning freedom of conscious and religion, and shall define the order of implementation of the right of establishing religious unions.

Article 2. The tasks of the present Law

The tasks of this Law shall be securing human right for freedom of conscious, religion, and protecting rights and interests of the citizens.

Article 3. The legislature of the Republic of Tajikistan about freedom of conscious and religious unions

The legislature of the Republic of Tajikistan about freedom of conscious and religious unions shall be based on Constitution of the Republic of Tajikistan, the present Law, other legal regulative acts of the Republic of Tajikistan, as well as international legal pacts ratified by the Republic of Tajikistan.

Article 4. The main terms that shall be used in the present Law.

The following main terms shall be used in this Law:

freedom of conscious – the right of every person and citizen in determining his (her) relation to a religion freely and independently, separately or collectively following any religion or not following any religion, changing religious faith and also expressing and spreading faith concerning the relation to a religion as well as an atheistic belief;

freedom of religion – the right of every person and citizen for independent choosing of any religion and following it, participating in religious ceremonies, completing religious customs and religious education;

religious unions – any kind of voluntary and non-commercial unions of the citizens of the Republic of Tajikistan, foreign citizens and stateless persons, which shall be established in the forms provided by the present Law;

Article 5. The right for freedom of conscious and religion

No compulsion shall be allowed in expressing the right for freedom of conscious and religion in the Republic of Tajikistan.

Restricting the rights for freedom of following a religion or belief shall be possible only for protecting the rights and freedoms of others, ensuring security, order, health and public ethics by the law.

Indicating the relation of a citizen to a religion in official documents shall be not allowed, except the cases when the person shall have such wish himself.

Nobody can release himself from the responsibilities provided by law because of religious faith. The change of responsibility bearing to another one because of the faith shall be possible only in the cases provided by the legislature of the Republic of Tajikistan.

With the agreement of sides, the parent or the persons changing them shall have the right to bring up their children according to their own relation to a religion.

The foreign citizens and stateless persons being in the Republic of Tajikistan shall use the right for freedom of conscious and religion in the order provided by the present Law.

CHAPTER 2. THE STATE AND RELIGIOUS UNIONS

Article 6. The relation of the State to the religious unions.

The State shall provide favorable opportunity for securing the freedom of faith and freedom of religion, observance of legal rights and interest of the religious citizens and religious unions.

Not any religion shall be acknowledged as a state and universally obliged religion in Tajikistan.

The interference of state agencies and officials to the activity of religious unions and also the interference of the religious unions to the activity of state agencies and officials shall be prohibited, except the cases provided in the law.

In the framework of its authority the State shall regulate the tax relations of the religious organizations, presenting tax exemptions, assisting financially to religious unions in repairing the historic and cultural monuments being in their possession, supporting religious educational institutions.

In implementing the freedom of faith and propaganda and agitation activities, the religious unions shall be responsible to take into consideration the interests of the State, national values, independence and state security.

The authorized state agency on religion shall coordinate the relations of the State and religious unions in the Republic of Tajikistan. The authorized state agency on religion shall provide the organizational issues, general control, observance of the requirements of the regulations of the religious organizations, organization of religious ceremonies in coordination with other authorized state agencies.

Article 7. The separation of the religion and religious unions from the state authority

All religions and religious unions shall be separated from the state authority and shall be equal before the law.

The religious unions cannot fulfill the tasks of the state authority. During their activity in the religious unions the religious, the workers shall have not right to be elected or appointed to agencies of the state authority.

The religious unions shall not participate in the activity of political parties and shall not assist them materially or morally.

Religious ideology, religious agitation and learning cannot be the mean of struggle of public and political movements.

Article 8. The state system of education and religious unions

The state system of education in the Republic of Tajikistan shall be separated from the religion and religious unions.

The State shall provide the secular education in all educational institutions, as well as the accessibility of types and different levels of education regardless of the relation to religion.

It shall be possible to include subjects about religion to academic programmes of the system of education of the Republic of Tajikistan, but including religious subjects shall not be possible, except the special educational institutions preparing specialists for the field of religion.

Article 9. The religious education

The citizens shall have right to be engaged in religious education, they can get religious education individually or together with others.

According to the order provided by the present Law and the regulations of the organization, the religious unions, which have been established as a legal person shall be authorized to establish the provided types of religious educational institution for religious education of children and adults.

Giving children religious education shall be allowed when they reach age 7, with the written agreement of their parents or the persons changing them and only in free from the study at a comprehensive school time and in special¹³⁹ buildings.

Involving adolescents in religious education against their will shall not be allowed.

The persons involved in giving religious education, must have special religious education and a license for this kind of activity.

Article 10. The control and inspection of the religious unions.

The control and inspection of the religious unions shall be conducted by the authorized state controlling and financial agencies in the order provided in the legislature of the Republic of Tajikistan.

CHAPTER 3. THE TYPES OF RELIGIOUS UNIONS.

Article 11. The types of the religious unions

The religious unions shall be established in the form of religious communities and religious organizations.

The religious organizations shall be established in a form of religious centers, religious institution, church, synagogue and other forms not contradicting with legislature.

The religious communities shall be established in a form of mosques, agitating societies, worship and pilgrimage places and other forms not contradicting with legislature.

According to the order provided by the Civil Code of the Republic of Tajikistan, not least than 3 religious organizations can establish an association.

Article 12. The legal status of the religious unions.

The religious organizations shall be legal person and shall act based on the Regulations in the order provided by the present Law.

The religious unions without legal person status shall be registered in the authorized state agency on religion and shall work based on a sample regulations that prepared and approved by the authorized state agency on religion.

Article 13. The religious centers

The religious centers shall be voluntary and independently religious organization established at least by 10 founders, citizens of the Republic of Tajikistan for organizing and completing non-worship religious activity.

The religious centers shall have right to be the founder of the religious organizations and religious communities.

Article 14. The church and synagogue

The church and synagogue shall be types of the religious organizations working on the basis of their regulations in the order provided by the present Law. The regulations of the church and synagogue shall be prepared according to the requirements of this Law and the sample Regulations approved by the authorized state agency on religion.

¹³⁹ Note – by special building is meant a building, that shall have a license for conducting classes in it from respective agencies

Article 15. The religious educational institutions

The religious educational institutions shall be a special type of the religious organizations engaged in teaching and providing religious knowledge. The religious centers and associations of the religious unions can establish religious educational institutions, as well as high institutions for preparing religious workers.

The condition and order of the studies in the religious educational institutions shall be defined by the Ministry of Education of the Republic of Tajikistan.

The educational activity of the religious educational institutions shall be allowed on the basis of a license. Issuing licenses for educational activity of the religious educational institutions shall be conducted according to the order provided by the Law of the Republic of Tajikistan “About Issuing License for Some Kinds of Activities”.

Article 16. The mosque

The mosque shall be the place for public praying.

The mosque as a kind of religious community shall work on the basis of the sample Regulations approved by the authorized state agency on religion.

The registration of the mosques shall be conducted by local administration of the state authority together with authorized state agency on religion of Gorno-Badakhshon Autonomous Region (GBAR), regions and Dushanbe city. The registration of the mosques of the Districts and Towns of the Republican Subordination shall be conducted by local administration of the state authority together with central authorized state agency on religion.

According to its activity scale and location the mosques may be divided to five-time and public mosques. The founders of the five-time mosques can be the religious centers or at least 10 citizens of the Republic of Tajikistan, and the founders of the public mosques can be the religious centers or at least 30 citizens of the Republic of Tajikistan.

The imams of the five-time mosques and imam-khatibs of the public mosques shall be appointed with the suggestion of the Public Council of Ulamo of the respective district, town and region by the authorized state agency on religion together with local administration of the state authority.

The imams of the five-time and public mosques shall be selected from the persons possessing high religious education.

The order of registration of the five-time and public mosques shall be conducted according to sample Regulations approved by the authorized state agency on religion.

The requirements of the sample Regulations concerning the registration of the mosques shall be applied to the five-time and public mosques, which shall be established after enactment of the law.

Article 17. The agitating societies, worship and pilgrimage places

The agitating societies, worship and pilgrimage places shall be other types of the religious communities. For establishment of these types of the religious communities, their founders (not least than 10 citizens of the Republic of Tajikistan) shall apply with not least than 50 signatures of citizens of the Republic of Tajikistan belonging to a certain religion.

For registration the agitating societies, worship and pilgrimage places it must be necessary to apply to the authorized state agency on religion of GBAR, regions, Dushanbe city and respective central state agency on religion.

CHAPTER 4. THE ESTABLISHMENT AND REGISTRATION OF THE RELIGIOUS ORGANIZATIONS

Article 18. The establishment of the religious organizations

The religious organizations shall be established voluntary and openly with the purpose of satisfying religious needs of the citizens in the Republic of Tajikistan.

The founders of the religious organizations, except religious educational institutions in the Republic of Tajikistan can be only the citizens of the Republic of Tajikistan possessing full work competency.

The leaders, the members of political parties, officials and state workers cannot be the founders of the religious organizations.

Only full competent person shall be considered the member or the participant of the religious union.

If the foreign citizens and stateless persons shall have permanent residence or a certificate of residence in the Republic of Tajikistan, they can be a member or a participant of the religious union.

The name of the religious organization must include the information about that religion. The religious organization shall be responsible to indicate its full name in a course of its activity.

The establishment and activity of the religious organizations, the aims and actions of which shall contradict the legislature of the Republic of Tajikistan shall be banned.

Article 19. The registration of the religious organizations

In order to get the status of the legal person, the religious organizations must be on the state registrar.

The state registration of the religious unions shall be conducted by the Ministry of Justice and its agencies in local areas.

The state registration and anew registration of the religious organizations, as well as refusal for registration shall be conducted according to the order and term provided by the legislature of the Republic of Tajikistan.

In necessary cases for conducting religion analysis, getting the conclusions of the religious specialists and other inspection and analytic actions the state registration of the religious organizations shall be delayed.

The following documents shall be presented to the authorized state agency for the state registration:

- an application for registration;
- the regulations of the organization;
- a protocol of the foundation session or general meeting of the founders;
- information about the founders of the organizations;
- a reference from regional administration of the state authority about the residence of the followers of that religion for last 10 years;
- a positive conclusion of the authorized state agency on religion about the fact that the aims and tasks of the religious organization shall not contradict culture, national and religious values;
- a document about payment of state fee;

- a document about the legal address of the religious organization;

In the case of introducing amendments to the Regulations of the religious organization, the religious organization shall go through anew registration in the order stated in this article.

For the state registration and also for introducing amendments to the regulations, the religious organizations must pay state fees in the order and amount provided by the Law of the Republic of Tajikistan “About State Fee”.

The state registration of the religious organizations shall be finished in one month from the day of presenting documents indicated in this article. The religious organization registered as a legal person shall be issued an appropriate certificate about the state registration.

The religious organizations shall acquire a legal status from the moment of getting state registration.

Article 20. The refusal for registration of the religious organizations

The state registration of the religious organizations shall be refused on the following basis:

- if the regulations of the religious organizations shall contradict with Constitution of the Republic of Tajikistan and the laws of the Republic of Tajikistan;
- if all the required documents for the state registration indicated in the present Law shall not be presented;
- if it shall prove out that there was false information in the presented documents;
- if the name of the religious organization shall insult the ethic, national and religion feeling of citizens;
- in other cases provided by the legislature of the Republic of Tajikistan.

Article 21. The regulations of the religious organization

The regulations of the religious organization shall provide the following:

- the name, aim of the religious organization, type and its religious belonging;
- the structure of the religious organization, managing and controlling body of the religious organization, the territory, where this organization shall work;
- the power and the order of renewing the managing body of the religious organization, its term, the location of the permanent managing body;
- the order of introducing amendments and additions to the regulations of the religious organization;
- the sources of the financial resources and other property of the religious organization, the rights of the religious organization and its structural branches concerning the management of the property;
- the order of anew establishment or liquidation of the religious organization.

Article 22. The state list of the religious organizations

The state list of the religious organizations shall be bank of information about the religious organization. The authorized state agency shall regulate the type of the list.

The following shall be included to the state list of the religious organizations:

- the name of the religious organization, its religious belonging;
- its legal address and its location;
- the type of the religious organization;
- the information about the type of licensed activity;

- the number and date of the certificate about the state registration of the religious organization
- information about anew registration of the religious organization;
- information about annual activity of the religious organization
- information about the process of anew registration or liquidation of the religious organization.

CHAPTER 5. THE RIGHTS AND RESPONSIBILITIES OF THE RELIGIOUS UNIONS

Article 23. The rights of the religious organizations.

For implementing the goals of its regulations, the religious unions shall have right:

- to spread freely information about its activity;
- to represent and protect its own rights, the legal rights and interests of its member and participant, as well as of other citizens in the court and other agencies of the state authority;
- to apply with initiatives about different issues of religious life, to present proposals to the administration of the state authority;
- to engage in production and economic activity according to the legislature of the Republic of Tajikistan;
- to implement the other rights provided in the present Law and other laws of the Republic of Tajikistan.

Article 24. The responsibilities of the religious unions

The religious unions shall be responsible:

- to observe the Constitution of the Republic of Tajikistan, other legal regulative acts, international legal acts ratified by the Republic of Tajikistan concerning its activity, as well as rules provided in the regulations and other founding documents;
- by request of the authorized state agency on religion to present information;
- to allow the representatives of the authorized state agency on religion, controlling and investigating agencies to attend the events organized by the religious organization.

CHAPTER 6. THE RIGHTS OF THE CITIZENS AND RELIGIOUS ORGANIZATIONS CONNECTED WITH FREEDOM OF RELIGION

Article 25. The religious customs, traditions and ceremonies

Religious customs, traditions and ceremonies of the citizens shall be conducted freely in the framework of the Law of the Republic of Tajikistan “About Regulating Customs and Ceremonies in the Republic of Tajikistan”.

The worship, customs and traditions connected with worship in pilgrimage and worshipping places, buildings of the religious unions, houses of the citizens and cemeteries shall be completed relative to the peculiarities of the religions.

The commanding staff of the military units shall not stop the soldiers to participate and complete religious customs in their free time.

For completing worship the religious unions shall have right to apply with offers to the citizens being in the hospitals, invalid houses, places of the preliminary arrest and prisons.

By a request of the citizens being in the hospitals, invalid houses, places of the preliminary arrest and prisons, the worship and religious traditions and customs shall be completed in those places. The administration of these institutions shall assist to the invitations of the religious workers; participate in defining time and other conditions of conducting worship, religious customs and traditions or ceremonies.

In other cases, the public worship, religious customs and traditions shall be conducted in order of conducting peaceful meetings, demonstrations and marches provided by legislative acts of the Republic of Tajikistan.

Article 26. The rights of the citizens for completing Hajj and Umra

The citizens of the Republic of Tajikistan shall have right to complete Hajj and Umra. The order of the trip of citizens shall be regulated by the Government of the Republic of Tajikistan.

Article 27. The religious literature and objects

The citizens and religious unions shall have right to get and use religious literature and objects. The religious unions shall have right to produce, export, import and spread the religious objects, religious literature and other information objects of religious content according to the legislature of the Republic of Tajikistan.

The religious literature and religious objects shall be spread in the places, where shall live the followers of that religion.

The export and import of the large number of the religious literature and as well as other religious objects shall be conducted only after getting the conclusion (agreement) of the authorized state agency on religion.

Without prior agreement with the authorized state agency, the international organizations working in the Republic of Tajikistan cannot be involved in agitating activity, religious or non-religious worship, importing literature and papers of religious content.

The state agency shall give agreement for (religious) agitating activity only if the followers of that religion shall be citizens of the Republic of Tajikistan or the persons equaled with them living in the Republic of Tajikistan for last 10 years.

Article 28. The charity activity of the religious unions

The religious unions shall have the right for charity activity according to the legislature of the Republic of Tajikistan.

Donations and financial means allocated for these purposes shall be tax-deductible.

All kinds of charity and agitating activities directed to involving the citizens to religion, possessing mental and other stressing character shall be banned.

Article 29. The international relation and connections of the religious unions

In agreement with authorized state agency, the religious unions shall have right for international relations.

In agreement with authorized state agency on religion, the religious unions shall have right to send the citizens of the Republic of Tajikistan for study to educational institutions of foreign countries and also to invite foreign citizens for this purpose.

CHAPTER 7. THE PROPERTY OF THE RELIGIOUS UNIONS

Article 30. The property of the religious organizations

According to the Civil Code of the Republic of Tajikistan, the religious unions shall have public property. They shall use the right of possession, enjoyment and disposal of property, and other objects necessary for their activity according to the legislature and property earmarking.

The building and property of the mosque, church, synagogue shall be the public property of the religious unions.

The religious unions shall pay tax from financial and commodity charities presented to them according to Tax Code of the Republic of Tajikistan.

Article 31. The enjoyment of property of the state, public associations and citizens

For their needs the religious unions shall have right to use the building and property given by the state agency, public associations and citizens on the basis of a contract.

Local and central administration of the state power can give the worship and pilgrimage places or other properties of the state to the religious unions for enjoyment.

Assignment of historic and cultural building and objects to the religious unions shall be conducted according to the legislature of the Republic of Tajikistan.

The religious unions shall use land according to the Code of Land of the Republic of Tajikistan.

Article 32. The productive and economic activity of the religious unions.

According to the legislature of the Republic of Tajikistan, the religious unions can be involved in productive and economic activity.

The income and benefit from economic activity and other incomes of the religious unions shall be subject to taxation according to Tax Code of the Republic of Tajikistan.

Article 33. The management of property of the religious unions, which stopped their activity

In the case of stopping activity of the religious unions, the management of property being in their possession shall be finished according to the legislature and its regulations.

The property connected with worship being the property of the religious unions shall not be taken by the claims of creditors.

In the absence of the legal heritors, the property of the religious unions shall be the state property.

CHAPTER 8. THE LABOUR RELATIONS IN THE RELIGIOUS UNIONS

Article 34. The labour relations and labour rights of the citizens in the religious unions

The religious unions shall have right to accept the citizens to work. The conditions of the work shall be defined in a work contract between the religious union and an employee in written form according to the labour legislature of the Republic of Tajikistan.

The legislature of the Republic of Tajikistan about labour, social security, tax and insurance shall be applied to the **citizens** working in the religious unions.

CHAPTER 9. THE RESPONSIBILITY FOR VIOLATING THE LAW ABOUT THE FREEDOM OF CONSCIOUS AND RELIGIOUS UNIONS

Article 35. The responsibility for violating the Law about the Freedom of Conscience and Religious Unions

The natural, legal persons and religious communities violating the legislature about the freedom of conscience and religious unions shall be called to account in an order provided by the legislature of the Republic of Tajikistan.

Article 36. The responsibility of the religious unions for violating the legislature of the Republic of Tajikistan

According to the present Law and other laws of the Republic of Tajikistan, the religious unions shall be responsible for the violation of the legislature of the Republic of Tajikistan.

In a case of taking actions going out the framework of goals and tasks mentioned in the regulations or violating the laws and the legal interests of legal and natural persons by the religious organizations, a written instruction shall be issued to the administration of the religious union by the authorized state agency or prosecutor.

The religious union shall be responsible to eliminate the committed violations during a month from the day of receiving the written instruction and to report to the agency that issued the written instruction. In a case of not eliminating the violations in a defined period, the authorized state agency on religion with its own initiative or with order of the prosecutor shall issue a decree about the activity suspension of the religious union up to three months.

Article 37. The reasons for activity suspension of the religious unions

The activity of the religious unions shall be suspended by the decision of the court up to three months in the following cases:

- in the case of violating the legislature of the Republic of Tajikistan;
- in the case, when the actions of the religious organizations shall contradict with its Regulations or the Sample Regulations of the authorized state agency on religion;
- the violation of legal rights and interests of the legal and natural persons by the religious union;

If in the defined period, the religious union shall eliminate the violations and shortcomings defined in the instruction of the authorized state agency about the activity suspension, the activity of the religious union shall be reactivated from the moment of eliminating violations.

In a case of not eliminating these violations by the religious union, the court can stop the activity of the religious union by the suggestion of the authorized state agency (the Ministry of Culture, the Ministry of Justice) or prosecutor.

The appeal over the decision about the suspension and stopping activity of the religious union shall be submitted in the order provided by the legislature of the Republic of Tajikistan.

Article 38. The activity stopping of the religious union.

The activity of the religious union as a legal person shall be stopped by liquidation or anew establishment.

The liquidation or anew establishment of the activity of the religious union shall be conducted according to the Civil Code of the Republic of Tajikistan.

CHAPTER 10. THE FINAL REGULATIONS

Article 39. The registration of the religious unions, which were established before taking effect of the present Law

The regulations of the present Law about the state registration of the religious unions shall be also applied to the religious unions, which were established before taking effect of the present Law.

The regulations of the religious unions, which were established before taking effect of the present Law, should be brought to accordance with the requirements of the present Law from the moment of taking effect of the present Law. Only those parts of the regulations of the religious unions not contradicting with the present Law shall be effective. The anew registration of the religious unions that were established before the moment of taking effect of the present Law shall be conducted not later than December 31, 2008 with exemption from paying the state fee.

The religious organizations that did not go through the regulations of this article in the defined period shall lose the status of the legal person and their certificate about the state registration shall be recognized invalid by the decision of the registering agency. Such case shall release them from their responsibilities.

Article 40. About recognizing the Law of the Republic of Tajikistan “About Religion and Religious Unions” ineffective

The Law of the Republic of Tajikistan “About Religion and Religious Unions” of December 1, 1994 (The Information of the Supreme Soviet of the Republic of Tajikistan of 1994 year, # 23-24, article 452; The Information of Majlisi Oli of the Republic of Tajikistan of 1997 year, # 9, article 117, part XXIV; # 23-24, article 333, part VI; 1999 year, # 9, article 232; 2001 year, # 4, article 155) shall be recognized ineffective.

Article 41. The order of taking effect of the present Law

The present Law shall take effect from the moment of its official publication.