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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**REPUBLIC OF UZBEKISTAN**

**DRAFT JOINT OPINION**  
**ON THE DRAFT LAW “ON FREEDOM OF CONSCIENCE AND**  
**RELIGIOUS ORGANIZATIONS”**

on the basis of comments by

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**in consultation with Mr Ahmed SHAHEED, the United Nations Special**  
**Rapporteur on Freedom of Religion or Belief**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

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## I. Introduction

1. On 6 August 2020, the First Vice President of the Legislative Chamber of the Parliament (Oliy Majlis) sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "OSCE/ODIHR") and to the European Commission for Democracy through Law of the Council of Europe (hereinafter "the Venice Commission") a request for an opinion on the *Draft Law of the Republic of Uzbekistan "On freedom of conscience and religious organizations"* (hereinafter "the Draft Law", CDL-REF(2020)065) to assess its compliance with international human rights standards and OSCE commitments. In accordance with standing practice, the Venice Commission and the OSCE/ODIHR agreed to prepare the Opinion jointly.
2. Mr Jan Velaers (Member, Belgium) and Mr Ben Vermeulen (Member, the Netherlands) were appointed as rapporteurs for the Venice Commission. Mr Silvio Ferrari was appointed as a legal expert for the OSCE/ODIHR. The OSCE/ODIHR Panel of Experts on Freedom of Religion or Belief (Ms Montserrat Gas Aixendri, Mr Alexandr Klyushev, Mr Emir Kovačević, Mr Cătălin Raiu, Mr Dmytro Vovk and Ms Mine Yildirim) contributed to the opinion. The Joint Opinion was also prepared in consultation with Mr Ahmed Shaheed, the United Nations Special Rapporteur on Freedom of Religion or Belief.
3. On 21 September 2020, a joint delegation composed of Mr Jan Velaers and Mr Ben Vermeulen on behalf of the Venice Commission, and of Mr Silvio Ferrari and Mr Dmytro Vovk, on behalf of the OSCE/ODIHR, accompanied by Ms Caroline Martin and Mr Serguei Kouznetsov from the Secretariat of the Venice Commission and Mr Konstantine Vardzelashvili, Mr Mikolaj Wrzecionkowski and Ms Anne-Lise Chatelain from the OSCE/ODIHR, participated in a series of videoconference meetings with the Legislative Chamber of the Oliy Majlis, the Committee for Religious Affairs under the Cabinet of Ministers, the Ministry of Justice, representatives of religious or belief communities, non-governmental organizations (NGOs) and other stakeholders. This Joint Opinion takes into account the information obtained during these meetings. The OSCE/ODIHR and the Venice Commission are grateful to the authorities and to the OSCE Project Co-ordinator in Uzbekistan for the support in organising these meetings and appreciate the public authorities' commitment to review and incorporate the recommendations of the Joint Opinion during the next stages of the legislative process.
4. *The present Joint Opinion was examined by the Venice Commission at its 124<sup>th</sup> Plenary Session (Venice, 8-9 October 2020).*

## II. Scope of the Joint Opinion

5. The scope of this Joint Opinion covers only the Draft Law, submitted for review. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the right to freedom of religion or belief in Uzbekistan.
6. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing recommendations are based on international human rights standards and obligations, OSCE human dimension commitments, and good national practices. Where appropriate, they also refer to the relevant recommendations made in previous legal opinions published by the OSCE/ODIHR and/or the Venice Commission.
7. This Joint Opinion is based on an unofficial English translation of the Draft Law provided by the First Vice President of the Legislative Chamber of the Parliament (Oliy Majlis) on 6 August 2020. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion may not cover all aspects of the Draft Law, and that the Joint Opinion thus does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in Uzbekistan in future.

### III. Executive Summary

9. The OSCE/ODIHR and the Venice Commission welcome Uzbekistan's efforts to amend its legal framework relating to the right to freedom of religion or belief, with a view to bringing it into compliance with international standards on freedom of religion or belief as called upon by several international human rights monitoring bodies.<sup>1</sup> The Draft Law brings some improvements compared to the existing legislation, such as the reduction of the required minimum number of believers to create a religious organization, the removal of the ban to wear religious attire in public and the requirement that liquidation of a religious organization be pronounced by a court instead of administrative bodies, which is overall commendable. However, the Draft Law also maintains major restrictions and suffers from deficiencies that are incompatible with international human rights standards.

10. Especially, the Draft Law still bans unregistered religious or belief activities and communities, imposes stringent and burdensome registration requirements, provides various prohibitions or strict limitations regarding the exercise of the right to freedom of religion or belief, such as on religious education, authorized places for worship and the production, import and distribution of religious materials, and still prohibits the ban of missionary activities and "proselytism" that contributes to the so-called "*violation of inter-confessional harmony and religious tolerance in society*",<sup>2</sup> which remain subject to administrative and criminal sanctions, among others. The Draft Law does not provide for strong guarantees of the autonomy for religious organizations and continues to subject fundamental elements of the freedom to manifest religion or belief to some forms of state control or state authorization, such as the organization of events or the participation in pilgrimages outside the country. The grounds that may justify the suspension or dissolution of a religious organization are vague and broad, and give too wide a discretion to public authorities, without providing an effective remedy. Hence, the Draft Law should be substantially revised in order to ensure its full compliance with international human rights standards and OSCE human dimension commitments.

11. In order to improve the compliance of the Draft Law with international human rights standards and OSCE commitments, the OSCE/ODIHR and the Venice Commission make the following key recommendations:

- A. to amend the Draft Law to refer to the "*freedom of thought, conscience, religion or belief*" while ensuring that non-religious beliefs and not just "religion" as well as "religious or belief organizations" are covered; [para. 24]
- B. to remove the blanket prohibition of political parties and public associations with religious attributes; [para. 36]
- C. to remove the definition of "illegal religious activity" and expressly state that religious or belief groups may exist and carry out their activities without registration [para. 39], while ensuring that any religious or belief community should be able to acquire legal personality status, as a type of legal entity different from a "religious organization", for instance by registering as an association or a foundation, if it so wishes; [para. 42]
- D. to more strictly circumscribe Articles 3 and 11 para. 5 of the Draft Law in order to only prohibit communication and activities aimed at coercively converting others using violence, intimidation, threats or other unlawful forms of pressure; [para. 51]

<sup>1</sup> See e.g., UN Human Rights Committee (CCPR), [Concluding observations on the fifth periodic report of Uzbekistan](#), 1 May 2020, CCPR/C/UZB/CO/5, paras. 42-43; UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, paras. 97 and 101 (b).

<sup>2</sup> The term "*proselytism*" is an undefined term internationally and generally carries negative connotations. The wording "*non-coercive persuasion*" should be preferred, referring to communication and activities aimed at converting others without using violence, intimidation, threats or other unlawful forms of pressure. See UN Special Rapporteur on Freedom of Religion or Belief, [Report to the United Nations General Assembly](#), UN Doc. A/67/303, 13 August 2012; and OSCE/ODIHR, [Freedom of Religion or Belief and Security Policy Guidance](#) (2019), page 64.

- E. to remove the prohibition of “engaging in religious educational activities in private” in Articles 3 para. 5 and 11; [paras. 52-53]
- F. to reconsider the provision limiting the holding of religious rites and ceremonies to specific designated places (Article 13); [para. 58]
- G. to remove from Articles 14 and 20 of the Draft Law the requirement to obtain a “*positive conclusion of the religious examination*” prior to producing, importing and distributing religious or belief materials on the territory of the Republic of Uzbekistan; [para. 67]
- H. to reconsider the Committee on Religious Affairs’ competence concerning religious pilgrimage outside the country; [para. 68]
- I. to review the registration requirements and documents required and simplify them to ensure that they are not burdensome, especially remove the requirement to obtain the letter of consent from the Committee on Religious Affairs and the letter of guarantee from the local state authorities; [paras. 72-84]
- J. to more strictly circumscribe and specify the grounds for refusal to register a religious or belief organization in compliance with the limitation grounds permissible under Article 18 of the ICCPR; [paras. 89-92]
- K. to remove the obligation to notify the Committee of Religious Affairs about events from Article 22 of the Draft Law; [para. 101]
- L. to supplement Chapter 6 of the Draft Law to include a system of warnings allowing for the possibility to rectify the violation or omission and more gradual and proportionate sanctions that should be applied before the sanction of suspension or dissolution is imposed as a measure of last resort, while detailing the type of violation that might incur these various types of sanctions, including clear and precise definitions of the serious grounds that may justify the suspension or liquidation of a religious organization, as a measure of last resort, ensuring that the actual termination and liquidation/deregistration of religious or belief communities should be suspended until all avenues of appeal have been exhausted; [paras. 110 and 113] and more generally
- M. to remove vague and overbroad wording, which give too wide discretion to those public authorities tasked with implementation, thus potentially leading to arbitrary application/interpretation and undue restriction to the right of freedom of religion or belief, in particular “*preserv[ing] inter-confessional and inter-ethnic harmony*” (Articles 1 and 17), “*fundamentalism*”, “*extremism*” and “*actions aimed at opposition and aggravating relations*” (Article 9 para. 2), “*activities that offend the religious feelings of believers*” (Articles 6 para. 4 and 9 para. 4), “*humiliation of constitutional rights and freedoms of citizens*”, “*violation of civil accord*” and “*other selfish goals*” (Article 11), “*infringe[ment] on the honor and dignity of the individual*” (Article 13). [paras. 27, 30, 31, 46, 104].

*These and additional Recommendations, as highlighted in bold, are included throughout the text of this Joint Opinion.*

#### **IV. Analysis and Recommendations**

##### **A. International Standards and OSCE Commitments relating to the Right to Freedom of Religion or Belief**

12. This Joint Opinion analyses the Draft Law from the viewpoint of its compatibility with international standards relating to the right to freedom of religion or belief and freedom of association that are binding upon the Republic of Uzbekistan, as well as OSCE commitments in this field.

13. Key international obligations in this area are contained in the UN International Covenant on

Civil and Political Rights<sup>3</sup> (hereinafter “ICCPR”), in particular Articles 18 (freedom of thought, conscience and religion) and 22 (freedom of association) and, in connection with these two rights, Article 2 (obligation to respect and ensure rights without distinction of any kind). Other provisions of the ICCPR that are also relevant as they may be impacted by the Draft Law are Articles 19 (freedom of expression), 20 para. 2 (prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence), 17 (right to privacy), Article 3 (right to equality between men and women), 27 (rights of ethnic, religious or linguistic minorities), 26 (equality before the law) and 21 (freedom of peaceful assembly). Additionally, Article 14 of the UN Convention on the Rights of the Child guarantees the right of the child to freedom of thought, conscience and religion, while Article 30 specifies that a child belonging to a religious minority “shall not be denied the right, in community with other members of his or her group, [...] to profess and practise his or her own religion”.<sup>4</sup>

14. While the Republic of Uzbekistan is not a Member State of the Council of Europe (hereinafter “the CoE”), the Joint Opinion will also refer as appropriate to the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>5</sup> (hereinafter “the ECHR”), other Council of Europe’s instruments and caselaw of the European Court of Human Rights<sup>6</sup> (hereinafter “the ECtHR”), since they contain provisions similar to those in the ICCPR, and serve as tools of interpretation and as useful and persuasive reference documents on this issue.

15. In addition, the Republic of Uzbekistan has made various commitments related to the right to freedom of religion or belief in several OSCE documents, notably the 1989 Vienna Document, which sets out key rights such as the rights of communities of believers to recognition of their legal personality, the right to maintain freely accessible places of worship, and the right to religious education and training (para. 16), among others.<sup>7</sup> Furthermore, the 1990 Copenhagen Document refers to each state’s obligation to respect the right to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance, and obliges participating States to ensure that the exercise of these rights is subject only to such restrictions as are prescribed by law and are consistent with international standards (para. 9.4). Also, the 2003 Maastricht Document emphasizes the obligation to uphold the principle of non-discrimination in the area of religion or belief and the duty of the State to facilitate the freedom of religion or belief through effective national implementation measures (para. 9). These commitments were later reaffirmed in a 2013 OSCE Ministerial Council Decision.<sup>8</sup> The freedom of association is likewise protected in key OSCE commitments (see, inter alia, the 1990 Copenhagen Document, para. 9.3).<sup>9</sup>

16. Other useful reference documents include the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (hereinafter “the 1981 UN Declaration”),<sup>10</sup> 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>11</sup> the General Comments of the UN Human Rights

<sup>3</sup> *UN International Covenant on Civil and Political Rights* (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR on 28 September 1995.

<sup>4</sup> *UN Convention on the Rights of the Child*, adopted by the UN General Assembly by resolution 44/25 of 20 November 1989. The Republic of Uzbekistan acceded to this Convention on 29 June 1994.

<sup>5</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953.

<sup>6</sup> For instance, ECtHR, *Hasan and Chauch v. Bulgaria*, Application no. 30985/96, judgment of 26 October 2000; *Bayatyan v. Armenia*, Application no. 23459/03, judgment of 7 July 2011; *Ahmet Arslan and Others v. Turkey*, Application no. 41135/98, judgment of 23 February 2010; *Sürek v. Turkey (no. 1)*, Application no. 26682/95, judgement of 14 June 2004; *Kokkinakis v. Greece*, Application no. 14307/88, judgment of 25 May 1993.

<sup>7</sup> Available at <<http://www.osce.org/mc/40881><http://www.osce.org/mc/40881>>.

<sup>8</sup> OSCE, *Ministerial Council Decision No. 3/13 on the Freedom of Thought, Conscience, Religion or Belief* (Kyiv, 2013).

<sup>9</sup> For an overview of these and other OSCE Human Dimension Commitments, see OSCE/ODIHR, *Human Dimension Commitments (Thematic Compilation) Human Dimension Commitments (Thematic Compilation)*, 3<sup>rd</sup> Edition, particularly Sub-Section 3.1.8.

<sup>10</sup> *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN General Assembly 25 November 1981, UN Doc. A/RES/36/55.

<sup>11</sup> *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by General Assembly resolution 47/135 of 18 December 1992.

Committee,<sup>12</sup> the reports of the UN Special Rapporteur on Freedom of Religion or Belief<sup>13</sup> and relevant UN Human Rights Council resolutions.<sup>14</sup>

17. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which provide further and more detailed guidance, such as the 2004 OSCE/ODIHR-Venice Commission Joint Guidelines on Legislation pertaining to Religion or Belief<sup>15</sup> (hereinafter “the 2004 Joint Freedom of Religion or Belief Guidelines”), the 2014 OSCE/ODIHR-Venice Commission Joint Guidelines on the Legal Personality of Religious or Belief Communities<sup>16</sup> (hereinafter the “2014 Joint Legal Personality Guidelines”), the 2015 OSCE/ODIHR Joint Guidelines on Freedom of Association<sup>17</sup> and OSCE/ODIHR Freedom of Religion or Belief and Security Policy Guidance (2019).<sup>18</sup>

## B. National Legal Framework

18. Article 31 of the Constitution of the Republic of Uzbekistan guarantees everyone’s freedom of conscience, and “*the right to profess or not to profess any religion*”. Article 57 of the Constitution bans “*political parties based on the national and religious principles*”. Pursuant to Article 61 of the Constitution, “[*r*]eligious organizations and associations shall be separated from the state and equal before law” and “[*t*]he state shall not interfere in the activity of religious associations”. Article 18 of the Constitution sets out a general prohibition of discrimination on the ground of *inter alia*, religion and convictions.

19. Article 20 of the Constitution includes a specific provision regarding restrictions to the exercise of rights and freedoms in general, stating that such exercise “*must not encroach on the lawful interests, rights and freedoms of other persons, the state and society*”.

20. The rules regulating the exercise of the right to freedom of conscience, the registration of religious organizations, their status and obligations, and their termination are currently laid down in the Law on “On freedom of conscience and religious organizations” (1998, as last amended in 2018).<sup>19</sup> Several provisions of the Code of Administrative Offences<sup>20</sup> and of the Criminal Code<sup>21</sup> of the Republic of Uzbekistan are also relevant as they provide administrative and criminal sanctions potentially impacting the exercise of the right to freedom of religion or belief (see below).<sup>22</sup> In addition, as noted during the videoconferences, numerous resolutions and bylaws

<sup>12</sup> Especially, UN Human Rights Committee (CCPR), [General Comment no. 22: The Right to Freedom of Thought, Conscience and Religion \(Article 18 of the ICCPR\)](#), 27 September 1993, CCPR/C/21/Rev.1/Add.4; and [General Comment no. 34 on Article 19: Freedoms of opinion and expression](#), 12 September 2011, CCPR/C/GC/34.

<sup>13</sup> Available at <<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>>. Available at <<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>>.

<sup>14</sup> Available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=86](http://ap.ohchr.org/documents/dpage_e.aspx?m=86http://ap.ohchr.org/documents/dpage_e.aspx?m=86)>.

<sup>15</sup> OSCE/ODIHR and Venice Commission, [Guidelines for Review of Legislation Pertaining to Religion or Belief](#) (2004), CDL (2004)061 (hereinafter “the 2004 Freedom of Religion or Belief Guidelines”).

<sup>16</sup> OSCE/ODIHR and Venice Commission, [Guidelines on the Legal Personality of Religious or Belief Communities](#) (2014), CDL(2014)029-e (hereinafter “the 2014 Joint Legal Personality Guidelines”).

<sup>17</sup> OSCE/ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015) (hereinafter “2015 Joint Guidelines on Freedom of Association”).

<sup>18</sup> OSCE/ODIHR, [Freedom of Religion or Belief and Security Policy Guidance](#) (2019).

<sup>19</sup> Available at <[http://www.legislationline.org/topics/country/45/topic/78](http://www.legislationline.org/topics/country/45/topic/78http://www.legislationline.org/topics/country/45/topic/78)> in English and at <<https://lex.uz/docs/65089#65280https://lex.uz/docs/65089#65280>> in Russian.

<sup>20</sup> Available at <<https://lex.uz/docs/97661https://lex.uz/docs/97661>>.

<sup>21</sup> Available at <<https://lex.uz/docs/111457https://lex.uz/docs/111457>>.

<sup>22</sup> In particular, **Article 240 of the Code of Administrative Offences**, which provides that the “*[i]mplementation of illegal religious activity, evasion of the leaders of religious organizations from registering the charter, organization and conduct of special children’s and youth meetings by ministers of worship and members of religious organizations, as well as labor, literary and other circles and groups that have nothing to do with worship - shall entail the imposition of a fine from fifty to one hundred basic calculation values or administrative arrest up to fifteen days. Conversion of believers from one denomination to another (proselytism) and other missionary activities - shall entail the imposition of a fine from fifty to one hundred basic calculation values or administrative arrest up to fifteen days*”, which, if committed repeatedly, entails criminal liability under **Article 216<sup>2</sup> of the Criminal Code** with up to 360-hours compulsory community service, or restriction of freedom from one to three years, or imprisonment for up to three years; **Article 184<sup>1</sup> of the Code of Administrative Offences**, which provides that “*[t]he appearance of citizens of the Republic of Uzbekistan (with the exception of ministers of religious organizations) in public places in religious attire - shall entail the imposition of a fine from five to ten basic calculation values or administrative arrest up to fifteen days*” and **Article 184<sup>2</sup>**, which prohibits the “*[i]llegal production, storage, import into the territory of the Republic of Uzbekistan for the purpose*

regulate various aspects of the exercise of the right to freedom of religion or belief and the Draft Law aims at consolidating these rules and regulations in one act, which is in principle a welcome objective.

### C. The Scope and Purpose of the Draft Law

21. The Draft Law primarily refers to the “*freedom of conscience and religion*”. In substance however, the Draft Law regulates the exercise of the right to *manifest* one’s religion. Nevertheless, it is important to emphasize that Article 18 of the ICCPR does not permit any limitations whatsoever on the freedoms of thought and conscience (or on the freedom to have or adopt a religion or belief of one’s choice), which are protected unconditionally. The distinction between “*freedom of conscience*” and “*freedom of religion or belief*” is also relevant in terms of their subjects, since by its very nature the right to freedom of conscience is a right of individuals, which is not susceptible of being exercised by legal persons and communities.<sup>23</sup>

22. The Draft Law also primarily refers to “religion”/“religious belief”, but does not mention the freedom of non-religious belief, although a few provisions mention the word “belief”.<sup>24</sup> It is thus not clear whether the Draft Law also covers non-religious “beliefs”. However, Article 18 of the ICCPR not only guarantees the freedom of religion, but also the “freedom of belief”,<sup>25</sup> as do OSCE commitments.<sup>26</sup> Moreover, the UN Human Rights Committee has expressly stated that the “freedom of thought” and the “freedom of conscience” are protected equally with the freedom of religion or belief,<sup>27</sup> while ensuring that a potentially broad interpretation is given to the types of value-systems protected under Article 18 of the ICCPR, including theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.<sup>28</sup> In that respect, the exclusive reference to “atheistic beliefs” in Article 6 para. 4 of the Draft Law – for instance excluding humanism – is too restrictive.

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of distribution or distribution of materials of religious content” which is subject “a fine for citizens from twenty to one hundred, and for officials - from fifty to one hundred and fifty basic calculated values with the confiscation of materials and appropriate means for their production and distribution”, which in case of repetition is punished with a fine from one hundred to two hundred basic calculation units or correctional labor up to three years as per **Article 244<sup>3</sup> of the Criminal Code; Article 202<sup>1</sup> of the Code of Administrative Offences**, which states: “*Inducement to participate in the activities of non-state non-profit organizations, movements, sects, illegal in the Republic of Uzbekistan - shall entail the imposition of a fine from fifty to one hundred basic calculation values or administrative arrest up to fifteen days*”, which if committed repeatedly entails criminal liability under **Article 216<sup>1</sup> of the Criminal Code** with up to 360-hours of correctional labour, up to three years of correctional labour or restriction of freedom from one to three years, or imprisonment for up to three years; **Article 241 of the Code of Administrative Offences**, which states that “[t]eaching religious beliefs without special religious education and without the permission of the central governing body of a religious organization, as well as teaching religious beliefs privately - shall entail the imposition of a fine from five to ten basic calculated values or administrative arrest up to fifteen days”, which in case of repetition is punished by up to 360-hours of compulsory community service, or correctional labor up to three years, or restraint of liberty from one to three years, or imprisonment up to three years as per **Article 229<sup>2</sup> of the Criminal Code**. In addition, **Article 156 para. 2 of the Criminal Code** provides that “[i]ntentional acts that [...] offend the feelings of citizens in connection with their religious or atheistic convictions, committed with the aim of inciting hostility, intolerance or hatred towards population groups on national, racial, ethnic or religious grounds, as well as direct or indirect restriction of rights or the establishment of direct or indirect advantages depending on their national, racial, ethnic or attitude to are punished by restraint of liberty from two to five years or imprisonment up to five years” and **Article 216 of the Criminal Code** states that the “[i]llegal organization or resumption of the activity of illegal public associations or religious organizations, as well as active participation in their activities - is punished with a fine from fifty to one hundred basic calculation units or restraint of liberty from two to five years, or imprisonment up to five years”.

<sup>23</sup> See for the purpose of comparison, at the European level, European Commission of Human Rights, [Kontakt-Information-Therapie and Hagen v. Austria](#), Application no. 11921/86, decision of 12 October 1988.

<sup>24</sup> See the reference to the word “beliefs” in Articles 4 para. 3 (“religion or other beliefs”), 6 para. 4 (“religious or atheistic beliefs”) and 6 para. 6 (“religion or belief”) of the Draft Law.

<sup>25</sup> See *op. cit.* footnote 15, Part II.A.3, p. 4-5 (2004 Joint Freedom of Religion or Belief Guidelines).

<sup>26</sup> See, in particular, OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (Copenhagen, 5 June-29 July 1990), paras. 5 and 5.12; and OSCE, [Ministerial Council Decision No. 3/13 on the Freedom of Thought, Conscience, Religion or Belief](#) (Kyiv, 2013). For an overview of other OSCE human dimension commitments, see OSCE/ODIHR, [Human Dimension Commitments \(Thematic Compilation\)](#), 3<sup>rd</sup> Edition, particularly Sub-Section 3.1.8.

<sup>27</sup> *Op. cit.* footnote 12, para. 1 (1993 UNHRC General Comment no. 22).

<sup>28</sup> *Ibid.* paras. 1-2 (1993 UNHRC General Comment no. 22). See also the reference to value-systems such as pacifism, atheism and veganism or certain political ideology such as communism which the ECtHR considered *prima facie* as being covered by Article 9 of the ECHR; see European Commission of Human Rights (EComHR), [Arrowsmith v. the United Kingdom](#), Application no. 7050/75, decision of 16 May 1977; [Angelini v. Sweden](#), Application no. 10491/83, decision of 3 December 1986; [W. v. the United Kingdom](#), Application no. 18187/91, decision of 10 February 1993; [Hazar, Hazar and Acik v. Turkey](#), Application nos. 16311/90, 16312/90 and 16313/90, decision of 11 October 1991.

23. Throughout the provisions in the Draft Law concerning the collective aspects, there are only references to “*religious organizations*”, and not to organizations which are based on (non-religious) beliefs.<sup>29</sup> The exclusive reference to “*religious organizations*” implies a differential treatment between “religious organizations” and non-religious “belief organizations”. This approach is unjustifiable if belief communities are unable to register under separate legislation, for instance on non-governmental/non-commercial organizations or associations, that would offer protection equivalent to that guaranteed to “*religious organizations*”. During the videoconferences, the public authorities clarified that (non-religious) belief groups would be able to register under other laws pertaining to non-governmental or non-profit organizations, but also emphasized that religious organizations benefit from certain prerogatives or advantages, such as the exemption from utility services, as per a Resolution of the Cabinet of Ministers from 2003. Of note, Article 21 para. 2 of the Draft Law will also exempt religious organizations from paying the state fee when appealing to the court against illegal decisions of state bodies or illegal actions (inaction) of their officials. It is not clear whether similar advantages or exemptions apply to non-governmental or non-profit organizations.

24. In order to avoid any ambiguity as to whether the scope of the Draft Law includes non-religious beliefs, **it is recommended to amend the title and wording of the Draft Law to refer to the “freedom of thought, conscience, religion or belief”, and to ensure throughout the Draft Law that non-religious beliefs and belief organizations are covered as well**, in line with Article 18 of the ICCPR and relevant OSCE commitments.<sup>30</sup> Having said that, **only when other legislation affords equivalent protection and treatment to belief organizations, it would be sufficient to only regulate the individual aspects of the freedom of belief in the Draft Law.**

25. Article 4 of the Draft Law defines the “freedom of conscience” as “*a guaranteed constitutional right of citizens to profess any religion or not to profess any*”. As mentioned above, it is recommended to define the right to freedom of religion or belief. As such, this right is not restricted to only professing or not professing a religion or belief. It has the absolute inner dimension of thought and conscience (which includes the right to have or adopt a religion or belief or change a religion or belief) and external manifestations through worship, teaching, observance and practice, either alone or in community with others, in public or in private. None of these elements can be found in the definition stated under Article 4. This definition should be broader and Article 18 of the ICCPR could serve as a useful guidance in this respect: “[f]reedom to have or to adopt a religion or belief of one’s choice, and freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching”.<sup>31</sup>

26. While several provisions of the Draft Law refer to “*citizens*”,<sup>32</sup> thus suggesting that legitimate interests of non-citizens may not be protected on equal grounds, during the videoconference, the public authorities emphasized that pursuant to Article 6 para. 2 of the Draft Law, foreign citizens

<sup>29</sup> Regarding the meaning of “belief”, see *op. cit.* footnote 16, para. 2 (2014 Joint Legal Personality Guidelines), which states that “[t]he terms “religion” and “belief” are to be broadly construed” and that “[a] starting point for defining the application of freedom of religion or belief must be the self-definition of religion or belief, though of course the authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case”, emphasizing that “[t]here is a great diversity of religions and beliefs” and that “[t]he freedom of religion or belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views”; see also *op. cit.* footnote 15, Part II.A.3 (2004 Joint Freedom of Religion or Belief Guidelines).

<sup>30</sup> For similar recommendations regarding similar provisions, see e.g., ODIHR/Venice Commission, [Joint Opinion on the Draft Law Amending the Law of the Republic of Armenia on Freedom of Conscience and on Religious Organizations](#) (20 March 2018), CDL-AD(2018)002, paras. 18-20.

<sup>31</sup> Although Uzbekistan is not a Member State of the Council of Europe, the definition provided in Article 9 of the ECHR can also serve as a useful reference: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”.

<sup>32</sup> See e.g., Articles 1, 3 (definitions of “religious organization” and “local religious organization”), 4 paras. 1 and 3, 6, 9 para. 2, 10-13, 15-16, 19, 34 and 41. Especially, Articles 3 para. 8 and 3 para. 10 refer to a religious organization as a “voluntary association of citizens” and Article 34 (c) refers to a document containing the “signatures of citizens of the Republic of Uzbekistan” as one of the documents required for registering a local religious organization; and Article 11 of the Draft Law refers to the “constitutional rights and freedoms of citizens” and “harm to the health and morals of citizens” as legitimate grounds for restrictions.

and stateless persons enjoy on an equal basis with the citizens all the rights guaranteed by this law. While Article 31 of the Constitution provides that “[f]reedom of conscience shall be guaranteed to all” and that “[e]veryone shall have the right to profess or not to profess any religion”, the provisions of the Draft Law appear to be more restrictive. While acknowledging the intention of the drafters to extend protection of the law to non-citizens on equal grounds, to make it clear that guarantees of fundamental rights and freedoms apply to everyone, and not just to citizens,<sup>33</sup> **it would be preferable to refrain from referring exclusively to “citizens” throughout the Draft Law and prefer the wording “all individuals” or “everyone”, as appropriate.** This approach would also be in line with Article 31 of the Constitution of Uzbekistan.

27. Article 1 of the Draft Law which describes the purpose of the Draft Law refers to the overall objective of “*preserv[ing] inter-confessional and inter-ethnic harmony*”. A similar wording is used in Article 17 para. 3 of the Draft Law when describing the role and powers of local state authorities in the religious sphere, and in Article 11 para. 5, where missionary activity and “proselytism” contributing to the violation of that harmony are prohibited. While such an objective may be a legitimate and appreciable goal, the guiding principle should be the respect, protection and promotion of individual and collective freedom of religion or belief. Moreover, such a wording may lead to restrictive interpretations of the law and could lead to limiting or eliminating religious and belief pluralism when it produces tensions between different religious or belief groups instead of removing the causes of tensions by ensuring that every individual and group can fully exercise the right to freedom of religion or belief.<sup>34</sup> **It is recommended to reconsider the reference to the preservation of inter-confessional and inter-ethnic harmony and focus instead on the respect, protection and promotion of individual and collective freedom of religion or belief.**

#### **D. “Separation of Religion from the State” and Autonomy/Independence of Religious Organizations**

28. Article 5 of the Draft Law lists the basic principles for ensuring freedom of conscience, i.e., “*equality; rule of law; openness and transparency of religious organizations’ activities; separation of religion from the state*”. Some other guiding principles, which constitute key guarantees of the right to freedom of religion or belief, could also be mentioned under Article 5 of the Draft Law. These include the principle of autonomy and right to self-government of religious or belief communities and organizations, which already is mentioned in Article 9 para. 4 of the Draft Law, and the principle of impartiality and neutrality of the state which offers better protection to communities and guards their autonomy.<sup>35</sup>

29. There is reference to “*openness and transparency of religious organizations’ activities*” in Articles 5 and 8 of the Draft Law, stating that “[r]eligious organizations carry out their activities openly and transparently in cooperation with state bodies and public institutions”. These provisions are vague and in practice may open up the possibility of interference of the State in the affairs of religious or belief organizations, likely leading to excessively restrictive and arbitrary measures. Also they do not contain clear and foreseeable obligations for religious or belief organizations in terms of what might be expected of them, and may lead to the imposition of burdensome reporting or other requirements leading to unjustified interference with the right to freedom of religion or belief. It should also be emphasized that openness and transparency are not *per se* mentioned as legitimate aims justifying restriction in Article 18 para. 3 of the

<sup>33</sup> See e.g., ODIHR, [Comments on the Draft Constitution of Turkmenistan](#) (2016), para. 132. See also e.g., Venice Commission, [Opinion on the Draft Law on the Review of the Constitution of Romania](#), CDL-AD(2014)010, 24 March 2014, para. 49; [Opinion on the Constitution of Bulgaria](#), CDL-AD(2008)009, 31 March 2008, paras. 55-57.

<sup>34</sup> See e.g., for the purpose of comparison, ECtHR, [Metropolitan Church of Bessarabia and Others v. Moldova](#), Application no. 45701/99, judgement, 13 December 2001, para. 116, which states that “*the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other*”; see also [Serif v. Greece](#), Application no. 38178/97, judgment of 14 December 1999, para. 53.

<sup>35</sup> See e.g., *op. cit.* footnote 15, Parts II.B.4 and II.D (2004 Joint Freedom of Religion or Belief Guidelines). See also, as a comparison at the European level, ECtHR, [Metropolitan Church of Bessarabia and Others v. Moldova](#), Application no. 45701/99, judgment of 13 December 2001, para. 116.

ICCPR. It is thus recommended to reconsider the inclusion of such a wording in the Draft Law.

30. Article 9 of the Draft Law then further details the principle of the “separation of religion from the state”. Article 9 para. 2 provides that the State “does not allow religious fundamentalism and extremism, actions aimed at opposition and aggravating relations, inciting of enmity between different confessions”. First, there is no consensus at the international level on a normative definition of “extremism”, “violent extremism” or “fundamentalism”.<sup>36</sup> The OSCE/ODIHR, the Venice Commission and other international bodies have raised concerns pertaining to “extremism”/“extremist” and “fundamentalism” as legal concepts and the vague and imprecise nature of such terms, particularly in the context of criminal legislation.<sup>37</sup> In practice, the vagueness of such terms may allow States to adopt highly intrusive, disproportionate and discriminatory measures,<sup>38</sup> as demonstrated by the findings of international human rights monitoring mechanisms, which point to persistent problems, in particular, with so-called “extremism” charges and the implications on the rights to freedom of religion or belief, expression, association, and peaceful assembly as well as the occurrence of unlawful arrests, detention, torture and other ill-treatment in the Republic of Uzbekistan.<sup>39</sup> The use of the terms “extremism” and “fundamentalism” may substantially increase State control over religious or belief communities and criminalize perfectly legitimate activities performed by them.<sup>40</sup> Several international bodies have recommended to refrain from enacting legal or other measures that are founded on or make reference to concepts such as “extremism” or “religious extremism”, given the vagueness of these terms and the potential for their misuse in excessively discretionary or discriminatory ways.<sup>41</sup> Similarly, the wording “actions aimed at opposition and aggravating relations” between different confessions is so broad and generic that it may include an undefined number of actions and activities that are legitimate, simply based on a subjective assessment of potential perceived harms by the authorities. On account of its broad and imprecise wording, **this provision gives too wide a margin of discretion to the public authorities tasked with its implementation, thus**

<sup>36</sup> See e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereinafter “UN Special Rapporteur on Counter-terrorism and Human Rights”), [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, paras. 11 and 21, noting that “[d]espite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an ‘elusive concept’”.

<sup>37</sup> See e.g., UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, paras. 12-14; UN Special Rapporteur in the field of cultural rights, [Report on the phenomena of fundamentalism and extremism](#), 16 January 2017, A/HRC/34/56, paras. 10-11; and UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, para. 51, where it is emphasized that “when employed as criminal legal categories, vague terms such as ‘extremism’ and ‘fundamentalism’ terms are irreconcilable with the principle of legal certainty as well as being incompatible with the fundamental rights mentioned”. See also *op. cit.* footnote 18, pages 31-32 and 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security), which states that “extremism” is “an imprecise term without a generally accepted definition, which leaves it open to overly broad and vague interpretations and opens the door to arbitrary application of the law”; OSCE/ODIHR, [Opinion on the Law on Countering Extremist Activity of the Republic of Moldova](#) (30 December 2019), paras. 13-16; OSCE/ODIHR, [Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan](#) (22 November 2019), paras. 12-16; OSCE/ODIHR, [Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan](#) (6 October 2016), paras. 21-24; Venice Commission, [Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation](#), CDL-AD(2012)016-e, 15-16 June 2012, para. 30. See also OSCE/ODIHR, [Guidelines on the Protection of Human Rights Defenders](#) (2014), paras. 100, 205 and 213; OSCE/ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), September 2018, pp. 21 and 31; and OSCE, [Preventing Terrorism and Countering Violent extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach](#) (2014), Sub-Section 2.3.1.

<sup>38</sup> See also UN Special Rapporteur on Counter-Terrorism and Human Rights, [Report to the UN Commission on Human Rights](#), UN Doc. A/HRC/40/52, 1 March 2019, para. 19.

<sup>39</sup> See CCPR, [Concluding observations on the fifth periodic report of Uzbekistan](#), 1 May 2020, CCPR/C/UZB/CO/5, paras. 20-21 and 42; UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, paras. 98 and 101; and UN General Assembly, [Report of the Working Group on the Universal Periodic Review Uzbekistan](#), A/HRC/39/7 (9 July 2018).

<sup>40</sup> See the remarks of the UN Special Rapporteur on Freedom of Religion or Belief, E/CN.4/2005/61/Add 1, para. 152; and OSCE/ODIHR, [Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan](#), CDL-AD(2008)032-e, para. 14.

<sup>41</sup> See e.g., *op. cit.* footnote 18, pages 31-32 and 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security); and UN Special Rapporteur on Counter-Terrorism and Human Rights, [2020 Report on the human rights impact of policies and practices aimed at preventing and countering violent extremism](#), 21 February 2020, A/HRC/43/46, para. 52 (b).

**potentially leading to arbitrary application and interpretation and thus undue restriction to the right of freedom of religion or belief, and should be reconsidered.**

31. Article 9 para. 4 of the Draft Law states that “[t]he State [...] does not interfere into [religious organizations] activity, unless it contradicts the legislation”. However, legislation may only interfere with religious organizations to the extent it is necessary for the protection of the aims mentioned in Article 18 para. 3 of the ICCPR. **This implies that legislation interfering in the freedom of such organizations must be justified in the light of Article 18 para. 3 of the ICCPR. The notion of an activity of a religious organization that “contradicts” the legislation should be reformulated to reflect and comply with the requirements of this provision.**<sup>42</sup>

32. Article 9 para. 4 further provides that the state does not allow “activities that offend the religious feelings of believers”. Such a provision should not be used to prevent or punish criticism directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or critical comments on religious doctrine and tenets of faith.<sup>43</sup> Additionally, it must be noted that the UN Human Rights Committee has expressly recognized that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20 para. 2 of the Covenant” i.e., when constituting incitement to discrimination, hostility or violence.<sup>44</sup> **It is recommended to delete the reference to “activities that offend the religious feelings of believers” from Article 9 para. 4 of the Draft Law in order to avoid an overbroad and discretionary interpretation by the authorities.**

33. Finally, Article 9 para. 5 of the Draft Law forbids the “[e]stablishment and operation in the country of a political party and other public association on religious grounds, branches and representative offices of religious parties established outside the republic, participation of religious organizations in the activities of political parties and other public associations with political goals, as well as provision of financial or other assistance to them”.

34. Freedom of association and freedom of expression, including in the formation and functioning of political parties, are individual and collective rights that must be respected without discrimination, including on the ground of religion or belief.<sup>45</sup> Further, the [United Nations Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#) (1992) states that “[p]ersons belonging to minorities may exercise their rights... individually as well as in community with other members of their group, without any discrimination” (Article 3 para. 1). Manifesting religious convictions in the political field is protected by the right to freedom of religion or belief, expression and association. Freedom of expression and freedom of association may be limited to pursue the legitimate aims provided by Articles 19 para. 2 and 22 para. 2 of the ICCPR, including for reasons of public order,

<sup>42</sup> Article 18 para. 3 of the ICCPR states that “[f]reedom 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”.

<sup>43</sup> See *op. cit.* footnote 12, para. 48 (UN Human Rights Committee General Comment no. 34); and Venice Commission, [Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred](#), CDL-AD(2008)026-e, para. 76. See also, for the purpose of comparison, ECtHR, [Otto-Preminger Institut v. Austria](#), Application no. 13470/87, judgment of 20 September 1994, para. 47, which states that “[t]hose who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism [and] must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith” though “the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 (art. 9) to the holders of those beliefs and doctrines”, especially “[t]he respect for the religious feelings of believers as guaranteed in Article 9 (art. 9) can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration; and such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society”.

<sup>44</sup> See *ibid.* para. 48 (UN Human Rights Committee General Comment no. 34). See also UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, [2010 Joint Declaration on Ten Key Threats to Freedom of Expression](#), 3 February 2010, Section 2 on Criminal Defamation.

<sup>45</sup> Articles 2 and 26 of the ICCPR. See also OSCE/ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2011), para. 53; and [Joint Guidelines on Freedom of Association](#) (2015), Principle 5 (para. 30).

protection of public health or morals, national security, and the protection of the rights (or reputations for freedom of expression) of others.<sup>46</sup>

35. In order for a restriction on freedom of association to be legitimate, the activities or aims of a political party would need to constitute a real threat to the state and its institutions or/and involve the use of violence.<sup>47</sup> It is difficult to accept that this would automatically apply to all political parties affiliated with or carrying the name of a certain religious denomination, without exception. Rather, such limitations would only be permissible on a case by case basis with regard to political parties, which pose a serious and immediate danger to public order and which seek to pursue their aims in a violent manner.<sup>48</sup> Accordingly, a political party should not be prohibited solely because it is a party with religious attributes. It is worth noting that it is normal practice across the Council of Europe and OSCE region for political parties to operate on the basis of or inspired by religious beliefs, or with the participation and support of religious communities.<sup>49</sup> Moreover, this provision may not only interfere with freedom of expression protected by Article 19 of the ICCPR by restricting religiously inspired political arguments, but may also limit the expression of members of religious or belief organizations in political debate, which is protected under Article 25 of the ICCPR.

36. In light of the foregoing, **the blanket prohibition of political parties with religious attributes in Article 9 para. 5 of the Draft Law, though reflecting the ban provided in Article 57 of the Constitution of the Republic of Uzbekistan, is not in line with the international standards on freedom of religion or belief, expression and association as it is not clear which legitimate aim it serves, and in any case cannot be deemed to be “necessary in a democratic society” and is disproportionate to the aim it serves.<sup>50</sup> The prohibition of the establishment of a “public association on religious grounds” raises similar concerns. The blanket prohibition of political parties and public associations with religious attributes, should therefore be removed from this Draft Law.**

37. Article 9 para. 5 further prohibits the participation of religious organizations in the activities of “*other public associations with political goals, as well as provision of financial or other assistance to them*”. While the term “public associations with political goals” is vague, it is also not clear what is the legitimate aim of such a prohibition. In any case, this should not prevent a religious organization from establishing charitable or non-profit entities or associations that perform activities of public interest. **This prohibition should also be reconsidered** (see also para. 41 *infra*).

## **E. Mandatory Registration and Prohibition of Non-registered Religious or Belief Groups**

38. Article 3 para. 5 of the Draft Law defines the term “[i]llegal religious activity” as “*carrying out activities by a religious organization without registration in accordance with the established procedure*”. This provision defines as “*illegal*” any activity of a non-registered religious organization and thus implies that state registration of a religious or belief community is a pre-

<sup>46</sup> See *ibid.* paras. 89-90 (2011 Joint Guidelines on Political Party Regulation); and Principle 9 and paras. 108-111 (2015 Joint Guidelines on Freedom of Association).

<sup>47</sup> See e.g., paras. 13-14 of the OSCE/ODIHR-Venice Commission, [Joint Opinion on the Draft Law on Political Parties of the Kyrgyz Republic](#) (2009). See also, for the purpose of comparison, ECtHR, [Refah Partisi \(the Welfare Party\) and Others v. Turkey](#), Application nos. 41340/98, 41342/98 and 41344/98, judgment of 13 February 2003, where the Court held that although “a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy” (para. 100), it could be appropriate for a State to dissolve a political party if it appears that the party may be on the verge of obtaining political power (para. 108) and if some of its proposals are against the State’s constitutional order (paras. 59-60, 67, 93) or fundamental democratic principles (para. 98).

<sup>48</sup> See e.g., OSCE/ODIHR, [Comments on the Draft Constitution of Turkmenistan](#) (1 September 2016), para. 168. See also, for the purpose of comparison, *ibid.* ECtHR, [Refah Partisi \(the Welfare Party\) and Others v. Turkey](#), para. 98, where the Court held that “a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles”.

<sup>49</sup> See e.g., para. 42 of the OSCE/ODIHR, [Comments on the Concept Paper on State Policy in the Sphere of Religion of the Kyrgyz Republic](#) (2014).

<sup>50</sup> See e.g., OSCE/ODIHR, [Comments on the Draft Constitution of Turkmenistan](#) (1 September 2016), para. 168, which states that “the blanket prohibition of political parties with religious attributes in Article 44 appears to be disproportionate and should be reconsidered”.

condition for exercising the freedom of religion or belief collectively. Article 11 further states that “*illegal religious activities*” are prohibited.

39. This is in contrast with international human rights law, which “*accords protection to religious or belief communities, regardless of whether or not they enjoy legal personality*”.<sup>51</sup> Article 19 para. 1 of the ICCPR not only guarantees the individual freedom of religion or belief, but also the freedom to manifest a religion or belief “*in community with others*”, in public or private, in worship, observance, practice and teaching. This manner of exercising the right to freedom of religion or belief “*in community with others*” includes the right to establish a religious or belief community and for such a community to carry out its activities, without having to be recognized previously by a State authority through registration or other similar procedures,<sup>52</sup> or without having to seek legal personality.<sup>53</sup> As expressly noted in the 2014 Joint Legal Personality Guidelines, “the legal prohibition and sanctioning of unregistered activities is incompatible with international standards”.<sup>54</sup> From this it follows that the activity of a religious or belief community cannot be qualified as “*illegal*” for the simple fact that the religious or belief community is not registered, as “*the enjoyment of the right to freedom of religion or belief must not depend on whether a group has sought and acquired legal personality status*”.<sup>55</sup> **The definition of “illegal religious activity” should be removed from the Draft Law and the Draft Law should extend protection to unregistered religious or belief groups, and expressly state that they may choose to function and carry out their activities without registration.** During the videoconferences, the public authorities explained that non-registration was not preventing the individual exercise of the right to freedom of religion or belief. However, this only relates to the individual manifestation of religion or belief, whereas the collective exercise of this right should also be guaranteed, e.g., the right to worship collectively or to be collectively active in society.

40. Article 18 para. 2 of the Draft Law provides that “[a] religious organization acquires the status of a legal entity after its registration”. In light of the above, **this provision should not be interpreted as requiring a religious or belief group to acquire legal personality before being authorized to exercise its right to freedom of religion or belief and carrying out its activities.** While some procedures may seem necessary to provide certain religious or belief communities with legal personality status, religious or belief communities should not be obliged to register or seek legal personality if they do not wish to do so.<sup>56</sup>

41. At the same time, the right to legal personality status is vital to the full exercise of the right to freedom of religion or belief and a number of key aspects of organized community life<sup>57</sup> in this area become impossible or extremely difficult without having legal personality.<sup>58</sup>

<sup>51</sup> See *op. cit.* footnote 16, para. 17 (2014 Joint Legal Personality Guidelines).

<sup>52</sup> *Ibid.* para. 10 (2014 Joint Legal Personality Guidelines).

<sup>53</sup> *Ibid.* paras. 10 and 21 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 30, para. 31 (2018 Joint Opinion on Armenia). See also UN Special Rapporteur on Freedom of Religion or Belief, [Report of to the Human Rights Council](#), 22 December 2011, A/HRC/19/60, para. 58, which states that “[r]espect for freedom of religion or belief as a human right does not depend on administrative registration procedures, as freedom of religion or belief has the status of a human right, prior to and independent from any acts of State approval”. See also Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief, [Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan](#), CDL-AD(2008)032, para. 26, where the OSCE/ODIHR and the Venice Commission considered that “[t]he decision whether or not to register with the state may itself be a religious one, and the right to freedom of religion or belief should not depend on whether a group has sought and acquired legal entity status”.

<sup>54</sup> See *op. cit.* footnote 16, para. 10 (2014 Joint Legal Personality Guidelines). See also *op. cit.* footnote 53, para. 41 (UN Special Rapporteur on FORB 2011 [Report](#)); and *op. cit.* footnote 18, Recommendation 3 on page 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>55</sup> See *op. cit.* footnote 16, para. 21 (2014 Joint Legal Personality Guidelines).

<sup>56</sup> See *op. cit.* footnote 16, para. 21 (2014 Joint Legal Personality Guidelines). See also e.g., UN Special Rapporteur on Freedom of Religion or Belief, [2014 Report on the Mission to the Republic of Kazakhstan](#), A/HRC/28/66/Add.1, 23 December 2014, para. 26, which states that “registration should be an offer by the State, not a mandatory legal requirement”.

<sup>57</sup> These include for instance having bank accounts in its own name; ensuring judicial protection of the community, its members and its assets; maintaining the continuity of ownership of religious edifices; the construction of new religious edifices; establishing and operating schools and institutes of higher learning; facilitating larger-scale production of items used in religious customs and rites; the employment of staff; and the establishment and running of media operations – see *op. cit.* footnote 16, para. 20 (2014 Joint Legal Personality Guidelines). See also *op. cit.* footnote 53, paras. 45-51 (UN Special Rapporteur on FORB 2011 [Report](#)).

<sup>58</sup> *Ibid.* para. 20 (2014 Joint Legal Personality Guidelines).

Consequently, as noted on several occasions by the OSCE/ODIHR and the Venice Commission, any religious or belief group must have access on a non-discriminatory basis to legal personality status if it wishes so, even if it does not have the required number of members/believers for setting up a religious or belief organization, and should therefore be able to acquire such status<sup>59</sup> through procedures and in forms other than those provided for the registration of religious (or belief) organizations (e.g., as public associations, foundations, trusts or any other types of independent legal person).<sup>60</sup> Access to legal personality for religious or belief communities should be quick, transparent, fair, inclusive and non-discriminatory and should not be subject to burdensome requirements<sup>61</sup> (see also Sub-Section G.1 *infra*).

42. The Draft Law does not mention the option to acquire legal personality status in forms other than that of a “religious organization” and even seems to exclude that possibility since it explicitly prohibits the “*public association on religious grounds*” (Article 9 para. 5 of the Draft Law).<sup>62</sup> This also seems to follow from Article 3 para. 5, that qualifies as illegal every activity by a religious organization which is not formally registered as a religious organization. Thus, the Draft Law limits the access to legal personality of religious or belief communities, which do not meet the requirements for registering as religious organizations but could potentially gain legal personality by registering as a different type of legal entity. In light of the foregoing, **any religious or belief community should be able to acquire legal personality status, as a type of legal entity different from a “religious organization”, for instance by registering as an association or a foundation, if it so wishes, while ensuring that, regardless of the system used, access to legal personality and the rights that emanate from this status are obtained in a quick and simple, transparent, fair, accessible, inclusive and non-discriminatory manner. The Draft Law should be supplemented in that respect and the prohibition of “public associations on religious grounds” should be removed from the Draft Law.**

43. It is worth noting that Article 20 of the Draft Law lists the rights of (registered) religious organizations. Under international standards, most of these rights should also be enjoyed by unregistered religious or belief groups, and even individuals, on a par with registered religious (or belief) organizations. While the State may legitimately restrict certain benefits – such as tax exemptions on donations – to registered religious or belief organizations only, there is no reason why an unregistered religious or belief group should not enjoy basic rights as, for instance, creating “*favorable conditions in places of worship or religious rites*” (Article 20 para. 1 first indent), “*conduct[ing] events on issues related to its activities*” (Article 20 para. 1 fourth indent), “*establish[ing] international contacts for the purpose of organizing pilgrimages or participating in other religious events*” (Article 20 para. 1 sixth indent), among others. These are essential expressions of the right to manifest one’s religion or belief guaranteed by Article 18 of the ICCPR. It is thus recommended that **the Draft Law provides an open-ended list of the rights enjoyed by all religious or belief communities, both registered and unregistered**<sup>63</sup> (see also Sub-Section G.3 *infra*).

<sup>59</sup> *Op. cit.* footnote 30, para. 34 (2018 Joint Opinion on Armenia); and OSCE/ODIHR and Venice Commission, [Joint Opinion on the Draft Law on Freedoms of Conscience and Religion and on the Laws Making Amendments and Supplements to the Criminal Code, the Administrative Offences Code and the Law on the Relations between the Republic of Armenia and the Holy Armenian Apostolic Church](#), CDL-AD(2011)028, para. 64. See also, for the purpose of comparison, ECtHR, [Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria](#), Application no. 40825/98, judgment of 31 July 2008, para. 61; [Gorzelik and Others v. Poland](#), Application no. 44158/98, judgment of 17 February 2004, para. 52; ECtHR, [Sidiropoulos and others v. Greece](#), Application no. 26695/95, judgment of 10 July 1998, para. 31 et passim. See also ECtHR, [Metropolitan Church of Bessarabia and Others v. Moldova](#), Application no. 45701/99, judgment of 13 December 2001, para. 105.

<sup>60</sup> *Ibid.* paras. 17 and 22 (2014 Joint Legal Personality Guidelines); and para. 34 (2018 Joint Opinion on Armenia).

<sup>61</sup> See *op. cit.* footnote 16, paras. 24-25 (2014 Joint Legal Personality Guidelines); and See also *op. cit.* footnote 53, para. 73(d) (UN Special Rapporteur on FORB 2011 [Report](#)).

<sup>62</sup> In Uzbekistan, a “public association” is considered as a type of non-governmental non-profit organization, which is regulated by the [Law on Public Associations](#) (1991, amended 2018) and the [Law on Non-Governmental Non-Profit Organizations](#) (1999, amended 2019) and corresponds to an “association” protected under Article 22 of the ICCPR.

<sup>63</sup> Including the rights to bring together the believers, conduct ceremonies or other practices and discussions, disseminate information about their religious ideas and other beliefs, including through mass-media, decide on the matters related to the life of the religious/belief community, communicate with other groups, defend the rights of their members or of the group, etc.

## F. Limitations to the Right to Manifest One's Religion or Belief

44. The freedom to *manifest* thought, conscience and religion or belief (*forum externum*) can be limited, as opposed to the right to have, adopt or change a religion or belief (*forum internum*), which is absolute and cannot be subject to limitations of any kind.<sup>64</sup> The Draft Law contains a number of limitations to the right to manifest one's religion or belief.

### 1. General Limitation Clause

45. Article 4 para. 3 of the Draft Law states that the “*exercise of freedom to profess a religion or other beliefs (convictions) is subject only to those restrictions that are necessary to ensure public order, life, health, morals, rights and freedoms of other citizens*”, a wording also used in Article 11 of the Draft Law. Restrictions to the manifestation of the freedom of religion or belief must be prescribed by law (i.e., they must be sufficiently clear to allow individuals and legal persons to ensure that their activities comply with the restrictions) and need to be necessary in a democratic society and proportionate to the (legitimate) aims that they pursue. Apart from a reference to “necessary” in Article 4 para. 3, such principles are not mentioned under Article 4 or elsewhere in the Draft Law. In order to ensure that such principles are understood and systematically applied by public authorities and courts in the context of the right to freedom of religion or belief, it is recommended, **to specify in Article 4 para. 3 of the Draft Law that the freedom to manifest religion or belief can be subjected only to such limitations as are necessary in a democratic society and proportionate to the legitimate aims that they pursue.**<sup>65</sup>

46. Article 11 para. 2 further states that it is not permitted to use “*religion for the purpose of the violent change of the constitutional order, violation of the territorial integrity and sovereignty of the Republic of Uzbekistan, and humiliation of constitutional rights and freedoms of citizens, propaganda of a war, national, racial, ethnic or religious enmity, harm to the health and morals of citizens, violation of civil accord, dissemination of slanderous insinuation destabilizing situation, creating panic among the population and taking other actions directed against the individual, society and the state*”. The expression “*humiliation of constitutional rights and freedoms of citizens*” does not have a definite legal meaning and could potentially lead to different interpretations and arbitrary application of the law. Similar comments could be made concerning “*violation of civil accord*” and the remaining part of this provision, which is open-ended and exceedingly broad and generic. The principle of legality requires a clear and foreseeable legal basis for any decision imposing a restriction on human rights and freedoms, formulated with sufficient precision to enable legal subjects to regulate their conduct accordingly and not leaving too much discretion to the public authorities.<sup>66</sup> In any case, the content of the provision provides a wider scope for restricting the right to freedom of religion or belief than the limitation grounds permissible under international standards. **This wording should be clarified or removed from the Draft Law.** The same comments apply to the reference in Article 11 para. 3 of the Draft Law to religious organizations pursuing “*other selfish goals*”, which has no precise legal meaning.

47. Finally, it is important to regulate the process leading up to such restrictions being imposed, including an indication of the responsible decision-making body, the content and modalities of the communications of the decisions on restriction and the need to motivate them and how the person or organization affected by the restriction can engage in the process and be heard.<sup>67</sup> Moreover, access to an effective legal remedy in cases of unjustified or disproportionate

<sup>64</sup> *Op. cit.* footnote 15, para. 1, page 10 (2004 Joint Freedom of Religion or Belief Guidelines).

<sup>65</sup> See e.g., *op. cit.* footnote 30, para. 40 (2018 Joint Opinion on Armenia); and *op. cit.* footnote 59, para. 34 (2011 Joint Opinion on Armenia).

<sup>66</sup> See e.g., Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, para. 58. See also, for the purpose of comparison, ECtHR, [Koretskiy v. Ukraine](#), Application no. 40269/02, judgment of 3 April 2008, para. 48; and [The Sunday Times v. the United Kingdom \(No. 1\)](#), Application no. 6538/74, judgment of 26 April 1979, para. 49.

<sup>67</sup> See e.g., *op. cit.* footnote 30, para. 41 (2018 Joint Opinion on Armenia); and *op. cit.* footnote 59, para. 38 (2011 Joint Opinion on Armenia).

limitations to the right to freedom of religion or belief should be guaranteed, to comply with Article 2 para. 3 of the ICCPR. The Draft Law should be supplemented in that respect, unless this is provided by separate legislation.

48. In addition, several provisions of the Draft Law refer to other laws or legislative acts.<sup>68</sup> These provisions are only legitimate if the laws to which they refer to comply with international and constitutional standards on the protection of the freedom of religion or belief. Moreover, the implementation of these laws by administrative and judicial authorities will also have to comply with these standards. Both the laws and other means ensuring their implementation have to be “*necessary in a democratic society*”, which implies *inter alia* that they need to be proportionate to the legitimate aim they pursue.

## **2. Prohibition of “Proselytism” and Missionary Activity**

49. Article 11 para. 5 of the Draft Law provides that “*any form of missionary activity and proselytism that contributes to the violation of inter-confessional harmony and religious tolerance in society*” is prohibited. Article 3 of the Draft Law defines the term “*missionary activity*” as an “*activity of spreading the faith and inculcating religious views of the relevant religious association by purposefully exerting ideological influence on a person (group of persons) in order to apply for membership of this association*” while “*proselytism*” is defined as “*a form of missionary activity of religious organizations aimed at converting representatives of other religions to their own religion*”. Of note, missionary activities or “*proselytism*” are subject to administrative liability as per Article 240 of the Code of Administrative Offences and, in case of repetition, to criminal liability, with penalties of up to three years imprisonment (Article 216<sup>2</sup> of the Criminal Code). Moreover, the difference between the concepts “*missionary activity*” and “*proselytism*”, as defined in Article 3 is not clear. The activities aim at convincing other persons respectively to “*apply for membership*” or “*to convert*”, which are closely connected.

50. Article 5 para. 3 of the current 1998 Law simply bans “[*actions aimed at conversion of believers of one confession into another one (proselytism), as well as any other missionary activity*”. Article 11 para. 5 adds the caveat that such actions are banned when they “*contribute to the violation of inter-confessional harmony and religious tolerance in society*”. At the same time, the terms “*inter-confessional harmony*” and “*religious tolerance*” are vague, overbroad and may be interpreted discretionarily by the authorities. As such, it does not comply with quality of law requirement since one cannot reasonably foresee what type of activities might violate so-called “*inter-confessional harmony*” and “*religious tolerance*”. Also, they are not in themselves admitted grounds for limitation according to Article 18 para. 3 of the ICCPR. More generally, the term “*proselytism*” is an undefined term internationally and generally carries negative connotations<sup>69</sup> and the wording “*non-coercive persuasion*” should be preferred.<sup>70</sup>

51. It is important to underscore that the freedom to manifest one’s religion or belief encompasses the right to try to convince others of the validity of one’s religion or beliefs or to attempt to persuade others to convert to another’s religion, for example through “*preaching*” or

<sup>68</sup> See e.g., Article 6 para.4 (responsibility “*established by law*” and duties “*established by law*”), Article 7 (compliance with “*other legislative acts*”), Article 9 para. 4 (“*unless it contradicts the legislation*”), Article 11 (“*illegal religious activities*”), Article 13 para. 3 (“*procedure established by law*”), Article 14 para. 1 (“*procedure established by the Cabinet of Ministers of the Republic of Uzbekistan*”), Article 16 (“*compliance [...] with legislation and statutory activities*”, “*ensuring the legality of the activities of religious organizations*”), Article 17 (“*organize the implementation of legislation*”), Article 18 (“*in accordance with the legislation*”), Article 20 (religious events “*in accordance with the legislation*”), Article 22 (comply with “*other legislative acts*”), Article 29 para. 2 (“*in accordance with the legislation*”), Article 43 para. 1 (if it violates “*legislation of the Republic of Uzbekistan*”), and Article 45 para. 1 (“*on the basis of the legislation*”).

<sup>69</sup> See UN Special Rapporteur on Freedom of Religion or Belief, [Report to the United Nations General Assembly](#), UN Doc. A/67/303, 13 August 2012; and *op. cit.* footnote 18, page 64 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>70</sup> *Ibid.* page 64 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security), stating that “*non-coercive persuasion*” refers to “*communication and activities aimed at converting others without using violence, intimidation, threats or other unlawful forms of pressure*”.

“teaching”.<sup>71</sup> As such, “*inculcating religious views*” and “*exerting ideological influence on a person*” are legitimate activities protected by the right to freedom of religion or belief as long as they are not accompanied by coercion. Hence, **Articles 3 and 11 of the Draft Law should be more strictly circumscribed and only prohibit communication and activities aimed at coercively converting others using violence, intimidation, threats or other unlawful forms of pressure.**<sup>72</sup>

### 3. Limitations on the Teaching of Religion or Belief

52. Article 3 para. 5 of the Draft Law, which defines “*illegal religious activities*”, includes a reference to “*religious educational activities in private*”. Article 11 further provides that “*teaching religious beliefs in private, with the exception of parents or persons replacing them teaching their children to the basics of religious practice and ethical behavior*” is not permitted. This provision is effectively a blanket ban on teaching carried out in private by persons other than parents or guardians but also could be used to prohibit private gatherings for the purpose of discussion of religious texts in homes, among others.

53. Freedom of religion or belief entails the freedom to teach the tenets of one’s religion or belief to others. Article 18 of the ICCPR contains an explicit reference to the right to manifest one’s religion or belief in public or in private – individually or in community with others – through “*teaching*”, as does Article 9 of the ECHR. Article 5 of the 1981 UN Declaration specifically guarantees to all children “*the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents*” and its Article 6, the right “*to teach a religion or belief in places suitable for these purposes*”. In the Draft Law, there is no indication about why private places would be unsuitable for teaching religion or belief. Moreover, as religious educational institutions can only be operated by registered “religious organizations” (see Sub-Section G.2 *infra*), and given the stringent registration requirements (see Sub-Section G.1 *infra*), this limitation to religious teaching discriminates between “registered religions” and other religious or ideological (non-registered) groups that are not permitted to operate religious educational institutions.<sup>73</sup> Therefore, **the limitation indicated in Article 11, which only allows the teaching imparted by parents or persons replacing them and concerning the basics of religious practice and ethical behaviour, appears disproportionate and does not meet the requirement of being “necessary in a democratic society” and should be reconsidered altogether.**

54. Article 12 para. 4 refers to everyone’s right to receive “*professional religious education in religious educational institutions*”, and Article 20 specifies that one can be admitted to a religious educational institution only after completed mandatory secondary education. As confirmed by the public authorities during the videoconferences, this means that there is no possibility of establishing primary or secondary religious education institutions in the Republic of Uzbekistan and that only *professional* religious education is delivered in religious educational institutions. According to Article 13 para. 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>74</sup> State Parties shall “respect the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or

<sup>71</sup> See e.g., UN Special Rapporteur on Freedom of Religion or Belief, [Report to the General Assembly](#) (2005), A/60/399, paras. 59-68, where it is stated that “[m]issionary activity is accepted as a legitimate expression of religion or belief and therefore enjoys the protection afforded by article 18 of ICCPR and other relevant international instruments” and “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” (para. 67); and [Interim Report on the Elimination of All Forms of Religious Intolerance concerning a visit to Greece](#) (1996), A/51/542/Add.1, para. 134. See also, *op. cit.* footnote 30, para. 46 (2018 Joint Opinion on Armenia); and *ibid.* pages 64-65 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>72</sup> See e.g., *op. cit.* footnote 18, page 64 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security). See also *op. cit.* footnote 15, Part II.J, page 20 (2004 Joint Freedom of Religion or Belief Guidelines).

<sup>73</sup> *Op. cit.* footnote 15, Part II.C.4, page 14 (2004 Joint Freedom of Religion or Belief Guidelines).

<sup>74</sup> UN International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the International Covenant on Economic, Social and Cultural Rights on 28 September 1995.

approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions". The right of parents to provide moral and religious education to their children in accordance with their own convictions and subject to the evolving capacities of the child, is a core element of the freedom of religion or belief as set out in Article 18 para. 4 of the ICCPR,<sup>75</sup> which implies the possibility of optional religious education in public schools or other avenues for formal religious instruction. In light of the foregoing, parents should in principle have the possibility to send their children to primary and secondary private religious schools, or have other avenues for formal religious instruction,<sup>76</sup> which is not permitted by the Draft Law. At the same time, due consideration should be given to the need for protection of minors against any possible indoctrination at an age when they may be easily influenced.<sup>77</sup>

#### 4. Limitations on Religious or Belief Speech

55. Article 10 para. 5 of the Draft Law provides that "*counteract[ing] the inculcation and dissemination of various religious ideas and views that threaten public order, health and morals of citizens*" is part of the main directions of the state policy in the sphere of freedom of conscience. Such a wording should not be used to unduly restrict the manifestations of religion or belief and freedom to engage in religious or belief speech or discourse, which is protected by Article 19 of the ICCPR.<sup>78</sup> In addition to the limitation grounds listed in Article 18 para. 3 of the ICCPR, which stipulates that "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations are prescribed by law and are necessary to protect public safety, order, health, or morals of the fundamental rights and freedoms of others", Article 19 para. 2 of the ICCPR states that the exercise of the right to freedom of expression "*carries with it special duties and responsibilities*" and lists respect of the rights or reputations of others and the protection of national security, public order or public health and morals as legitimate grounds for restricting it. Freedom of expression is also impacted by Article 20 para. 2 of the ICCPR, which requires State Parties to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. At the international level, to avoid undue limitations to freedom of expression, for forms of expression to constitute "*incitement*" that is prohibited, the following three criteria should be met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>79</sup> As emphasized by the Venice Commission in its [Report on the relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred \(2008\)](#), "*in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme*" and "*[i]t is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited*".<sup>80</sup> Accordingly, **Article 10 para. 5 of the Draft Law may only be applied taking into account the requirements of Articles 18 para. 3, 19 para. 2 and 20 para. 2 of the ICCPR and to ensure**

<sup>75</sup> See UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, paras. 45-46.

<sup>76</sup> See e.g., Venice Commission, [Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities of Montenegro](#), CDL-AD(2019)010-e, para. 45.

<sup>77</sup> See e.g., Venice Commission, [Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities of Montenegro](#), CDL-AD(2019)010-e, para. 45. See also, e.g., ECtHR, [Çiftçi v. Turkey](#), admissibility decision, Application no. 71860/01, judgment of 17 June 2004.

<sup>78</sup> See *op. cit.* footnote 12, para. 11 (UN Human Rights Committee General Comment no. 34).

<sup>79</sup> See UN Special Rapporteur on freedom of opinion and expression (hereafter "UN Special Rapporteur on freedom of expression"), the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereafter "the International Special Rapporteurs/Representatives on Freedom of Expression"), [2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism](#), 3 May 2016, para. 2 (d).

<sup>80</sup> Venice Commission, [Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred](#), CDL-AD(2008)026-e, para. 46. See also e.g., UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [2015 Thematic Report](#), A/HRC/31/65, 22 February 2016, para. 38.

**that religious or belief speeches or discourses, including those peacefully expressing dissenting views or considered “extreme”, are not unduly restricted.**

56. Article 6 para. 4 of the Draft Law provides that “[any] offence [to] the citizens’ feelings in connection with their religious or atheistic beliefs[...], entails responsibility established by law”. Article 9 further states that the state “does not allow activities that offend the religious feelings of believers”. This wording is problematic since it may lead to undue limitation to freedom of expression and potential arbitrary application by the public authorities. It is also unclear which kind of liability is incurred in case of violation. Importantly, such a wording should not be used to prevent or punish criticism directed at ideas, beliefs or ideologies, religions or religious institutions, or religious leaders, or commentary on religious doctrine and tenets of faith.<sup>81</sup> The UN Human Rights Committee has expressly recognized that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in Article 20 para. 2 of the Covenant” i.e., when constituting incitement to discrimination, hostility or violence.<sup>82</sup> Of note, Article 156 para. 2 of the Criminal Code sanctions “intentional acts” offending “religious or atheistic convictions, committed with the aim of inciting hostility, intolerance or hatred towards population groups on national, racial, ethnic or religious grounds”. A similar caveat should be mentioned in Articles 6 para. 4 and 9 of the Draft Law providing in addition that incitement is interpreted strictly as mentioned above (see para. 55 *supra*).

### **5. Religious Rites and Ceremonies**

57. Article 13 para. 1 of the Draft Law states that “[r]eligious rites and ceremonies are held at places of location of religious organizations in religious and prayer buildings and territories belonging to them, in places of pilgrimage, in cemeteries, and in the case of ritual necessity – in citizens’ houses upon their request”. This provision thus limits the right to hold religious rites and ceremonies to specific designated places i.e., buildings belonging to a registered religious organization, places of pilgrimage and cemeteries and, in certain limited circumstances, private homes. This provision may also unduly impact those belonging to religious or belief minorities that are not registered religious organizations or do not have the required financial resources or are not allowed to build a religious building or prayer house. It may also disproportionately impact “dissenting groups” within a religious community who may not wish to practice in public.

58. Article 18 para. 1 of the ICCPR grants the right to manifest ones’ religious or belief “in worship, observance, practice and teaching” “either individually or in community with others and in public or private”. Limiting the right to hold religious rites and ceremonies to specific places requires to be justified in accordance with international standards. In that respect, the OSCE/ODIHR and the Venice Commission have acknowledged that the obligation for a religious organization to only operate at the address identified in its registration documents is burdensome

<sup>81</sup> See *op. cit.* footnote 12, para. 48 (UN Human Rights Committee General Comment no. 34). See also Venice Commission, [Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred](#), CDL-AD(2008)026-e, paras. 72 and 74, where the Venice Commission underlined that “in a democratic society, religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to incitement to hatred and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion. [...] Having said so, the Venice Commission does not support absolute liberalism. [...] when ideas which, to use the formula used by the Strasbourg Court, ‘do not contribute to any form of public debate capable of furthering progress in human affairs’ cause damage, it must be possible to hold whoever expressed them responsible. Instead of criminal sanctions, which in the Venice Commission’s view are only appropriate to prevent incitement to hatred, the existing causes of action should be used, including the possibility of claiming damages from the authors of these statements. This conclusion does not prevent the recourse, as appropriate, to other criminal law offences, notably public order offences”.

<sup>82</sup> See *ibid.* para. 48 (2011 UN Human Rights Committee General Comment no. 34); and para. 89 (2008 Venice Commission’s Report on the relationship between Freedom of Expression and Freedom of Religion). See also UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, [2010 Joint Declaration on Ten Key Threats to Freedom of Expression](#), 3 February 2010, Section 2 on Criminal Defamation.

and thus disproportionate.<sup>83</sup> It is not clear why religious rites and ceremonies could not take place in private buildings and lands that do not belong to the religious organizations but are put at their disposal. It is also unclear what the reference to a “request” to hold religious rites and ceremonies in one’s home in the case of ritual necessity implies, especially whether this would require to file a request with the authorities, which would not be compatible with international human rights law. Also, it is not clear from the Draft Law what may constitute a “ritual necessity” and who would be in position to determine this condition is fulfilled and based on what criteria. The right to manifest one’s religion or belief shall cover not only church ceremonies or other worship rituals, but also other practices and observance, thus not being limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>84</sup> Further, the use of the criterion of “ritual necessity” is likely contrary to the principle of neutrality of the State in matters of religion or belief. More generally, this provision shall not result in banning any activity at home, which is not considered a rite or ceremony. In light of the above, **it is recommended to reconsider this provision limiting the holding of religious rites and ceremonies to specific designated places.**

59. Article 13 para. 3 of the Draft Law provides that “[m]ass religious rites and ceremonies outside religious and prayer buildings are carried out in accordance with the procedure established by law”. It is not clear which legislation this refers to, presumably the legislation regulating public demonstrations or gatherings. In that respect, such legislation should be applicable to all, including registered or non-registered religious or belief groups.<sup>85</sup> In any case, religious or belief communities or organizations should be subject to the same requirements as any other organizers of peaceful assemblies, providing that they are compliance with international human rights standards.<sup>86</sup>

60. Finally, it is worth emphasizing that Article 14 para. 5 of the current 1998 Law prohibits the wearing of “religious dress” in public places by persons other than “ministers of religion”. In contrast, the Draft Law does not ban wearing religious attire in public for those who are not in the service of religious organizations, though administrative liability for such activities is still contemplated by Article 184<sup>1</sup> of the Code of Administrative Offences. This prohibition also unduly restricts the right to manifest one’s religion or belief in public, and have the potential to unduly affect women who wear the hijab or headscarves, as noted by the UN Special Rapporteur on Religion or Belief during its visit to Uzbekistan.<sup>87</sup> **It is recommended to remove such ban from the Code of Administrative Offences.**

## 6. Material of Religious Content

61. Article para. 1 of the Draft Law states that “[i]ndividuals and legal entities have the right to produce, import and distribute religious materials in accordance with the procedure established by the Cabinet of Ministers of the Republic of Uzbekistan”. Article 14 para. 2 of the Draft Law further provides that “[t]he production, import and distribution of religious materials on the territory of the Republic of Uzbekistan is carried out after receiving a positive conclusion of the religious expertise in order to prevent ideas in society that contribute to the violation of inter-confessional harmony and religious tolerance, promoting violence and arbitrariness on religious grounds”. Article 20 para. 2 similarly refers to the requirement for religious organization to obtain such a positive conclusion before being authorized to manufacture, export and import items of religious purpose, religious literature and other materials of religious content. This provision should be read together with Article 184<sup>2</sup> of the Code of Administrative Offences of the Republic of Uzbekistan,

<sup>83</sup> See *op. cit.* footnote 16, para. 25 (2014 Joint Legal Personality Guidelines). See also OSCE/ODIHR-Venice Commission, [Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan](#), 15 October 2012, CDL-AD(2012)022, paras. 80-82.

<sup>84</sup> See *op. cit.* footnote 59, para. 24 (2011 Joint Opinion on Armenia).

<sup>85</sup> See OSCE/ODIHR, [Comments on the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan](#) (2 September 2019), para. 48.

<sup>86</sup> See *op. cit.* footnote 59, para. 70 (2011 Joint Opinion on Armenia).

<sup>87</sup> See UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, para. 47. See also, for the purpose of comparison, ECtHR, [Ahmet Arslan and Others v. Turkey](#), Application no. 41135/98, judgment of 23 February 2010, para. 49.

which subject the “[i]llegal production, storage, import into the territory of the Republic of Uzbekistan for the purpose of distribution or distribution of materials of religious content” to administrative liability, and which in case of repetition entails criminal liability (Article 244<sup>3</sup> of the Criminal Code).

62. The “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”, which is applicable to material of religious/belief content, is affirmed by Article 19 para. 2 of the ICCPR and reiterated in a number of OSCE commitments.<sup>88</sup> Further, OSCE participating States specifically committed to “allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”<sup>89</sup> and “respect the rights 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”.<sup>90</sup> Moreover, to Article 6 (c) and (d) of the 1981 UN Declaration specifically refers to the freedom 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 to “write, issue and disseminate relevant publications in these areas”. Article 14 para. 2 makes the production, import and distribution of religious materials dependent on “the positive conclusion of the religious expertise” in contrast with these standards and commitments.

63. More generally, the appointment of experts to assess religious or belief materials should be considered with great caution.<sup>91</sup> The right to freedom of religion or belief includes the right of religious or belief communities to provide their own authorized interpretations of the community’s sacred texts or doctrinal works.<sup>92</sup> As such, this right – along with the principle of “separation of religion from the state”, supporting that right – in principle excludes any discretion on the part of the State to determine whether religious or other beliefs or the means used to express such beliefs, including religious literature or any other materials containing so-called “religious content”, are legitimate.<sup>93</sup>

64. Moreover, the restrictions of the freedom of expression and of the freedom to manifest one’s religion or belief cannot be based on the intention “to prevent ideas in society that contribute to the violations of inter-confessional harmony and religious tolerance”, which - as mentioned in para. 50 *supra* - are vague and overbroad terms not contemplated as legitimate limitation grounds by Articles 18 and 19 of the ICCPR. The same applies to the “promotion of arbitrariness on religious grounds”. Tolerance and respect for equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent certain forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any “formalities”, “conditions”, “restrictions” or “penalties” imposed are proportionate to the legitimate aim pursued<sup>94</sup> (see also para. 55 *supra* regarding incitement).

65. The requirement provided in Article 20 para. 2 constitutes an undue limitation both of the autonomy of religious or belief communities or organizations, which have the right to define which materials reflect the principles of their religion or belief, and of the freedom of religion or belief of individuals, which includes the right “to import religious literature from abroad and to network with

<sup>88</sup> See e.g., CSCE/OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen](#), 29 June 1990, para. 9.1

<sup>89</sup> CSCE/OSCE, [Concluding Document of the Vienna Meeting](#) (Third Follow-up Meeting to the Helsinki Conference), Vienna 1989, para. 16.10.

<sup>90</sup> *Ibid.* para. 16.9 (1989 OSCE Vienna Document).

<sup>91</sup> See *op. cit.* footnote 18, page 42 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security); and OSCE/ODIHR, [Opinion on the draft Federal Law of Austria amending the Law on the Recognition of Adherents to Islam as a Religious Society](#), 7 November 2014, paras. 25-27.

<sup>92</sup> See *ibid.* page 42 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>93</sup> OSCE/ODIHR, [Comments on the Law on Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on Issues of Religious Freedom and Religious Organizations](#), January 2009, para. 60.

<sup>94</sup> With regard to hate speech and the glorification of violence, see e.g., for the purpose of comparison, ECtHR, [Sürek v. Turkey](#) (no. 1), Application no. 26682/95, judgement of 14 June 2004, para. 62.

*co-religionists across State boundaries*"<sup>95</sup>.

66. Article 15 of the Draft Law, which lists the powers of the Committee on Religious Affairs, includes among them the carrying out of "*an expert examination of religious materials produced in the Republic or received from abroad*". At the same time, there is no indication about the individuals or organizations which are entitled to provide such "expert examination" and the procedure through which they are chosen and appointed. This contributes to making this provision exceedingly general and open to potential risk of arbitrariness.

67. In light of the foregoing, **it is recommended to remove from Articles 14, 15 and 20 of the Draft Law the requirement to obtain a "positive conclusion of the religious examination" or "expert examination of religious materials" prior to producing, importing and distributing religious or belief materials on the territory of the Republic of Uzbekistan.**

## **7. Travelling Abroad**

68. Article 15 para. 9 of the Draft Law provides that the Committee on Religious Affairs "*organizes visits by citizens of the Republic of Uzbekistan to places of religious pilgrimage outside the country [...] sending citizens abroad to study in religious educational institutions, training and exchanging experience, accepting foreign citizens and persons to study in religious educational institutions, holding international religious forums*". During the videoconferences with the representatives of the OSCE/ODHIR and the Venice Commission, the public authorities explained that the purpose of the provision was not to grant to the Committee on Religious Affairs a monopoly to organize these visits, which would be incompatible with international standards, but only to provide facultative support to the religious organizations on their demand. **The wording of Article 15 para. 9 should be amended in this sense.** It is noted that OSCE participating States have committed to allow direct personal contacts and communication between "*believers, religious faiths and their representatives*", in groups or on an individual basis, in their own and other countries, including through travel to other countries to participate in various religious events.<sup>96</sup> Moreover, the freedom of everyone to leave a country, including his/her own, as recognized by Article 12 para. 2 of the ICCPR, should not be unduly restricted.<sup>97</sup> In that respect, the UN Special Rapporteur on Freedom of Religion or Belief noted during the visit in Uzbekistan that the State imposed severe restrictions on the participation of Uzbek citizens in pilgrimage abroad.<sup>98</sup> Accordingly, **the legal drafters should therefore reconsider providing the Committee on Religious Affairs with such a competence, or more strictly and precisely circumscribe such a competence to ensure that it does not lead to undue restriction to the rights to freedom of religion or belief and freedom of movement (see also para. 118 *infra*).**

## **8. Limitation to the Right to Conscientious Objection**

69. Article 6 para. 5 of the Draft Law provides that "*[n]o one may, on the motives of their religious beliefs, evade the performance of duties established by law. Replacement of performance of one duty for another on the motives of religious beliefs is permitted only in cases stipulated by law*". Article 52 of the Constitution of the Republic of Uzbekistan states that "*[c]itizens shall be obliged to perform military or alternative service in the procedure prescribed by law*". Alternative service is regulated by Article 37 of the *Law "On Universal Military Duty"* of the Republic of Uzbekistan (2002, as amended 2020)<sup>99</sup>, though it is reserved to members of *registered* religious organizations "*whose creed does not allow the use of weapons and service in the Armed Forces*". Such alternative service lasts for two years as opposed to one year for the military service.

<sup>95</sup> See UN Special Rapporteur on Freedom of Religion or Belief, [2012 Report](#), A/HRC/22/51, 24 December 2012, para. 23.

<sup>96</sup> See *op. cit.* footnote 89, "Human Contacts", para. 32 (1989 OSCE Vienna Document).

<sup>97</sup> See also UN HRC, [Svetlana Orazova v. Turkmenistan](#), Communication No. 1883/2009, 4 June 2012, paras. 7.3-7.4.

<sup>98</sup> See e.g., *op. cit.* footnote 39, paras. 83-86 (2018 UNSR FORB [Report on the mission to Uzbekistan](#)).

<sup>99</sup> Available [here](#).

70. While the ICCPR does not explicitly refer to a right of conscientious objection, such right may be derived from Article 18 of the ICCPR on freedom of thought, conscience and religion, since the obligation to be involved in the use of lethal force could seriously conflict with the rights protected under Article 18 of the ICCPR.<sup>100</sup> OSCE commitments also recognize a right to conscientious objection to military service.<sup>101</sup> The fact that recognition of conscientious objection and the option of alternative service is only available for members of *registered* “religious organizations” excludes this right for believers of non-registered religious or belief groups. Relevant legislation should be formulated in terms that do not discriminate between religious or belief communities, whether they are registered or not, nor impose on conscientious objectors excessively burdensome alternative services, or alternative service of a punitive nature.<sup>102</sup> Applicable legislation should be amended to guarantee to all **an exception to the compulsory character of military service where such service cannot be reconciled with an individual’s religion or belief, irrespective of the registration status of the religious or belief community, and to provide possible alternatives of a non-combatant or civilian nature that are not burdensome, punitive nor discriminatory.**<sup>103</sup>

## G. Religious Organizations, Central Management Body and Religious Educational Institutions

71. As mentioned above, the autonomous existence of religious or belief communities through access to legal personality status is essential to the full realization of the right to freedom of religion or belief.<sup>104</sup> Accordingly, the conditions and procedure of registering as a “*religious organization*” in Uzbekistan should not be burdensome<sup>105</sup> and the registration process should be quick and simple, transparent, fair, accessible, inclusive and non-discriminatory.<sup>106</sup>

### 1. Establishment (Registration)

72. To be registered as a “*local religious organization*”, the community of believers should, pursuant to Article 3 para. 10 of the Draft Law, have “*at least fifty citizens of the Republic of Uzbekistan, permanently residing on the territory of the respective district (city) [...] who have reached the age of eighteen*”. The current threshold for registration as a “religious organization” is one hundred (Article 8 para. 2 of the 1998 Law). It is overall welcome that the drafters are decreasing the threshold for registration. At the same time, while a threshold of fifty members minimum may not appear excessive *per se* if applicable nationwide,<sup>107</sup> the requirement provided by the Draft Law to have *fifty citizens permanently residing in the specific district/city* – unless there is the alternative of civil law legal personality offering similar protection without the fifty

<sup>100</sup> See *op. cit.* footnote 12, para. 11 (1993 UNHRC General Comment no. 22). With respect to this matter, the UN Human Rights Committee has also stated that while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it does provide certain protection, consistent with Article 18 para. 3 of the ICCPR, against being forced to act against genuinely-held religious belief (see CCPR, *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea*, Communications nos. 1321/2004 and 1322/2004 (CCPR/C/88D/1321-1322/2004), para. 8.3). See also, for the purpose of comparison, ECtHR, *Bayatyan v. Armenia*, Application no. 23459/03, judgment of 7 July 2011, para. 110.

<sup>101</sup> See *op. cit.* footnote 11, paras. 18.1 and 18.4 (OSCE Copenhagen Document (1990), whereby the OSCE participating States agreed to consider “*introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature*”.

<sup>102</sup> *Ibid.*

<sup>103</sup> See e.g., OSCE/ODIHR, *Comments on the Law of Turkmenistan on Religious Freedom and Religious Organizations*, 25 June 2010, paras. 30-32.

<sup>104</sup> See *op. cit.* footnote 16, para. 20 (2014 Joint Legal Personality Guidelines).

<sup>105</sup> *Ibid.* para. 25 (2014 Joint Legal Personality Guidelines).

<sup>106</sup> *Ibid.* para. 24 (2014 Joint Legal Personality Guidelines).

<sup>107</sup> Previously, the Venice Commission has considered that the threshold of fifty members as a pre-condition for the registration of a religious organization does not give rise to criticism; see Venice Commission, *Opinion on the Draft Law on Amending and Supplementation of Law no. 02/L-31 on Freedom of Religion of Kosovo*, adopted by the Venice Commission at its 98<sup>th</sup> Plenary Session (Venice, 21-22 March 2014), CDL-AD(2014)012, 25 March 2014, para. 106. [ \* “Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo”].

members threshold – may be problematic for smaller religious or belief groups, especially those that organize on a congregational basis, which may thus be foreclosed from acquiring legal entity status.<sup>108</sup> Moreover, as noted in the 2014 Joint Legal Personality Guidelines, legislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign or non-citizens.<sup>109</sup> Accordingly, the requirement of citizenship and of permanent residence in the specific district/city may be excessive. In that respect, permanent residence in Uzbekistan, and not in the specific district/city, should be enough. **It is recommended to remove the requirement of citizenship and simply require permanent residence in Uzbekistan, and not in a specific district/city.** At the same time, any minimum threshold for registration, should be justified and take into account the needs of smaller religious and belief communities.<sup>110</sup> It is worth noting in that respect that Article 8 of the Law on Public Associations requires at least ten citizens in order to create a public association. While it is generally recommended at the international level to not require more than two members as a minimum to establish an association,<sup>111</sup> it is unclear why a different minimum number is provided in Uzbekistan for establishing a public association as opposed to a religious organization.

73. Pursuant to Article 3 para. 9 of the Draft Law, a “central management body”, i.e. a body coordinating the activities of local religious organizations and entitled to establish a religious educational institution, may be created by local religious organizations acting in at least eight territorial entities of Uzbekistan. This requirement of being active in “eight territorial entities” out of the fourteen territorial entities that the Republic of Uzbekistan counts is a limitation to the registration and may discriminate against smaller religious or belief communities and organizations, which may not be operating nationally, thus ultimately preventing them from setting up a religious educational institution. It may thus amount to undue interference into internal matters of religious and belief organizations and represent a burdensome requirement that is not necessary in a democratic society to pursue the grounds enumerated in Article 18 para. 3 of the ICCPR and **should be removed.**

74. Article 30 of the Draft Law elaborates on the required content of the Charter (the founding document) of a religious organization as one of its founding documents. First, in the light of the freedom of religion or belief and the principle of “separation of religion from the state”, it should not be up to the State to determine what is the founding document of a religious organization as religious or belief communities and organizations may have many different types of founding documents. Second, Article 30 para. 2 details the content of the Charter, such as information on the “type” of religious organization, the “religion”, the purposes and objectives of the religious organization, the structure and powers of governing bodies, the sources of formation of funds and other property, and “*other information related to the activities of a religious organization*”. The language of this provision is open-ended and does not provide clear and precise indications about what information is to be included. This vagueness can make it difficult for a religious organization to provide correct and exhaustive information and expose the religious organization to the risk of being sanctioned for providing inconsistent and/or inaccurate information.

75. This provision may also seem overly formalistic and may potentially exclude from registration religious or belief communities, which are less structured along formal regulations and forms of organization; indeed, not all religion or belief groups have a clear structure and “*there are also communities which are more loosely organized or have a democratic-horizontal structure*”.<sup>112</sup> As

<sup>108</sup> See *op. cit.* footnote 16, para. 27 (2014 Joint Legal Personality Guidelines), which provides that “States should ensure that they take into account the needs of smaller religious and belief communities”. See also e.g., ODIHR, [Comments on the Law on Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on Issues of Religious Freedom and Religious Organizations](#) (January 2009), para. 73.

<sup>109</sup> See *op. cit.* footnote 16, para. 29 (2014 Joint Legal Personality Guidelines).

<sup>110</sup> *Ibid.* para. 27 (2014 Joint Legal Personality Guidelines).

<sup>111</sup> *Op. cit.* footnote 17, paras. 78 and 148 (2015 Joint Guidelines on Freedom of Association)

<sup>112</sup> See e.g., *op. cit.* footnote 107, para. 69 (2014 Venice Commission’s Opinion on the Draft Amendments to the Law n° 02/L-31 on Freedom of Religion of Kosovo\*). [\* “Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo”].

noted in the 2014 Joint Legal Personality Guidelines, considering the wide range of different organizational forms that religious or belief communities may adopt in practice, a high degree of flexibility in national law is required in this area.<sup>113</sup> As further stated in the Guidelines, requiring that excessively detailed information be provided in the statute or charter of a religious or belief organization is considered as a burdensome requirement that is not justified under international law.<sup>114</sup> Generally, *“it must be left to the religious organization to decide in which way internal rules are adopted”*.<sup>115</sup> The Venice Commission took the stance that the legislation *“should only require that the religious community be able to present a representative body for the purpose of its contacts with the public authorities and its capacity to operate as a legal entity. Moreover, in order to guarantee legal certainty to the natural and legal persons dealing with other religious communities, it should be made clear which organs of the legal entity can make decisions that are binding on itself and its members”*.<sup>116</sup>

76. Accordingly, **the legal drafters should reconsider prescribing the content of the charter of a religious organization and only require information on the representative body and on which organs of the religious organizations can make decisions that are binding on itself and its members, or alternatively reconsider the above-mentioned requirements to be mentioned in the charter, especially those requiring to provide information on the “type” of religious organization, its purposes and objectives, source of funding and the “religion”**.

77. Pursuant to Article 34 (c) para. 6 of the Draft Law, religious communities seeking state registration must submit to the registering body a letter of consent issued by the Committee on Religious Affairs. Subordinating the right to submit a request for registration to the consent/permission of a state body constitutes an inadmissible restriction of the right to freedom of religion or belief. Moreover, the role of this letter of consent is unclear and the Draft Law does not indicate any criterion to guide the issuance of the letter of consent nor specify the specific grounds for potentially refusing to issue such letter of consent, which leaves too broad discretion and may lead to arbitrary application by the Committee. During the videoconferences with the OSCE/ODIHR and the Venice Commission, the Committee explained that the main aspect that it considers is whether there is a risk of potential problems between confessions and complications that could result from the establishment of the new religious organization, emphasizing that it is a simple and quick process. Such a criterion is however broad and vague, thus subject to arbitrary application by the Committee.<sup>117</sup> Further, the need for a letter of consent from another state body greatly reduces the significance of entrusting the decision on the registration of a religious organization to a specific registering authority, which can examine the application for registration only if and when it has already been positively evaluated by the Committee on Religious Affairs. During the videoconferences, it was reported to the OSCE/ODIHR and the Venice Commission that it is not possible to challenge the refusal to issue a letter of consent before a court. The request for a letter of consent also applies to the registration of both the central management body of a religious organization (Article 34 (a)) and a religious educational institution (Article 34 (b)). In light of the above, **the requirement for obtaining a letter of consent from the Committee on Religious Affairs to be able to seek registration should be reconsidered or the Draft Law should specify the the grounds for refusing to issue a letter of content in a justified way, while ensuring that such refusal may be challenged before a court.**

<sup>113</sup> *Op. cit.* footnote 16, para. 31 (2014 Joint Legal Personality Guidelines).

<sup>114</sup> *Ibid.* para. 25 (2014 Joint Legal Personality Guidelines). See also *op. cit.* footnote 59, para. 66 (2011 Joint Opinion on Armenia), where the Venice Commission and the OSCE/ODIHR stated that “[t]he law should not require the inclusion of excessively detailed information in the statute of the religious organisation” and that “[r]efusal of registration on the basis of a failure to provide all information should not be used as a form of arbitrary refusal of registration”.

<sup>115</sup> Venice Commission and the OSCE/ODIHR, [Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan](#), CDL-AD(2012)022, 15 October 2012, para. 76.

<sup>116</sup> *Op. cit.* footnote 71, para. 71 (2014 Venice Commission’s Opinion on the Draft Amendments to the Law n° 02/L-31 on Freedom of Religion of Kosovo\*). [\* “Any reference to Kosovo, whether to the territory, its institutions, or population, is to be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo”].

<sup>117</sup> See e.g., *op. cit.* footnote 39, para. 34 (2018 UNSR FORB [Report on the mission to Uzbekistan](#)).

78. Before applying for registration in Uzbekistan, applicants must also get an approval from a neighbourhood committee (*Mahalla*) where the community is located.<sup>118</sup> If the *Mahalla* opposes the registration, the community will not be able to be registered and it is unclear whether this refusal may be easily challenged before a court. The current 1998 Law does not refer to the requirement to obtain *Mahalla's* approval, which is actually regulated by a Resolution of the Cabinet of Ministers. This is problematic from a rule of law perspective as it imposes on believers certain additional (burdensome) requirements not grounded in the law. During the videoconferences, the public authorities informed the OSCE/ODIHR and the Venice Commission that this requirement will be suppressed. In any case, **such a requirement should be struck, which means that the applicable Resolution of the Cabinet of Ministers should be amended or repealed.**

79. Moreover, the request for registration must be accompanied by "a letter of guarantee from local state authorities (the Council of Ministers of the Republic of Karakalpakstan, *khokimiyats* of regions and Tashkent city) with an attachment of conclusions on the compliance of the real estate of the religious organization, which is supposed to be used as a postal address, with the requirements of urban planning standards, fire safety rules and sanitary and hygienic standards" (Article 34 (c) para. 7). First, this provision presupposes that the local religious or belief community has a real estate. If this is a prerequisite for applying for registration, it constitutes a violation of the right to freedom of religion or belief. Second, it makes the possibility of registration of a local religious or belief organization subject to compliance with town planning regulations and health and safety standards. This limitation appears clearly disproportionate to the intended purpose, which can easily be ensured through less restrictive means that do not imply refusal of registration. This could also potentially be used to arbitrarily deny registration to certain religious or belief communities. **It is recommended to remove such a document from the list of required documents to be submitted for registration.**

80. Article 34 para. 2 (c) provides the list of documents required for registering a local religious organization, which shall be submitted electronically. First, while the submission of required documentation electronically may help facilitating the registration, when putting in place such mechanisms, it is essential to ensure that the registration procedure remains accessible to all, inclusive and non-discriminatory. Especially, it is important to avoid the risk of a digital divide (i.e., the exclusion of certain categories of the population which may not have access to the Internet and new technologies or the capacities to access them). **It is thus generally better to retain alternative (non-electronically) registration system to ensure broader accessibility.**

81. Second, it contains a number of vague and imprecise terms and expressions, which leave too much room for interpretation and consequently expose religious or belief communities to the danger of discretionary application. This may also result in burdensome requests that may limit the right of religious or belief communities to obtain registration. Examples of this imprecision are the obligation to provide unspecified "information" and "documents" about "the establishment of the religious organization" (Article 34 (c) para. 2), the "initiators of a religious organization and members of its governing body" (Article 34 (c) para. 4), the "religious education of the head of the religious organization" (Article 34 (c) para. 5) and so on. Similar information is also required for the central management body of a religious organization (Article 34 (a)) and for a religious educational institution (Article 34 (b)). **Such requirements should be clarified.**

82. Third, Article 34 (c) para. 4 of the Draft Law requires the applicant to submit the "Charter of the religious organization in state language". Some religious organizations may draft their documents in a language other than that officially used in the state and sometimes this may happen for religious reasons. The right to make use of a different language falls within the scope of autonomy that the international norms relating to freedom of religion or belief recognize to religious or belief organizations. To eliminate the ambiguity of the provision, it should be made clear that if the Charter is not drafted in the state language, the religious organization can provide a translation into state language. The provisions regarding the language of the Charter applies

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<sup>118</sup> See *ibid.* para. 27 (2018 UNSR FORB [Report on the mission to Uzbekistan](#)).

similarly to the request for registration of both the central management body of a religious organization (Article 34 (a)) and a religious educational institution (Article 34 (b)).

83. Fourth, Article 34 (c) para. 5 requires to attach to the application for registration a "*document on religious education of the head of the religious organization*"; Article 29 para. 1 provides that "[t]he head of a religious organization may be a person who has the appropriate religious education". The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality, including as regards their leadership.<sup>119</sup> As such, the determination of the requirements that a person must meet in order to be appointed or elected head of a religious or belief organization falls outside the competence of the State and is protected by the principle of autonomy, which in turn is an expression of the right to collective religious or belief freedom as well as the principle of "separation of religion from the state". As noted in the 2014 Joint Legal Personality Guidelines, the right to manifest one's religion or belief includes the right to select, appoint and replace their personnel in accordance with their respective requirements and standards.<sup>120</sup> It is solely for the religious or belief organization to determine whether an "*appropriate religious education*" is a requirement for becoming its "head" and, if so, to define the level and contents of religious education that are appropriate. Also, it is unclear what would be accepted as a "*document on religious education*" and whether this would exclusively require religious education in Uzbekistan, in which case this would be limited to documents issued by registered religious educational institutions, and therefore registered religious organizations only (see also Sub-Section G.2 *infra*). This requirement may also potentially discriminate against smaller religious or belief communities with leaders without such education or *de facto* excludes religious or belief communities, which do not have the equivalent of professional priests or heads or do not require professional education for their leaders. **This requirement should therefore be removed from Articles 34 (c) para. 5 and 29 para. 1 of the Draft Law.**

84. Fifth, Article 33 of the Draft Law also provides that applicants are required to pay a fee for registering a religious organization. If the amount of the fee is too high, this obligation could be regarded as a burdensome requirement which restricts the right of a religious organization to obtain registration.<sup>121</sup> It could also violate the right to non-discrimination under Article 26 of the ICCPR and Article 2 para. 2 of the UN 1981 Declaration owing to the disproportionate burden on rights-holders with low socio-economic status. It is understood that initially, the registration fee for a religious organization was set at 50 times the minimum monthly wage<sup>122</sup> but that it was recently reduced from 50 to 10 times the minimum monthly wage (from 9,215,000 to 1,843,000 som – approximately EUR 750 to EUR 150), which is overall welcome.<sup>123</sup>

85. Finally, as mentioned above, the registration procedure itself should be quick and simple, transparent, fair, accessible, inclusive and non-discriminatory and not unduly burdensome.<sup>124</sup> Article 38 para. 3 provides the possibility to rectify errors or omissions, which is welcome, though the deadline of five days for correcting mistakes and submitting new documents appears too short, thus amounting to a cumbersome limitation<sup>125</sup> and should therefore be reconsidered.

86. Article 38 para. 4 specifies that "[t]he Registering body has the right to examine the authenticity of documents submitted for registration of a religious organization and their compliance with the legislation". As among the documents submitted for the registration of a

<sup>119</sup> *Op. cit.* footnote 16, para. 31 (2014 Joint Legal Personality Guidelines).

<sup>120</sup> *Ibid.*, para. 15 (2014 Joint Legal Personality Guidelines).

<sup>121</sup> *Ibid.* para. 25 (2014 Joint Legal Personality Guidelines), which provides that "[e]xamples of burdensome requirements that are not justified under international law include [...] that excessively high or unreasonable registration fees be paid".

<sup>122</sup> See UN Special Rapporteur on Freedom of Religion or Belief, [2018 Report on the Mission to Uzbekistan](#), A/HRC/37/49/Add.2, 22 February 2018, para. 27.

<sup>123</sup> See <<http://parliament.gov.uz/ru/events/committee/27884/>>.

<sup>124</sup> *Ibid.* para. 24 (2014 Joint Legal Personality Guidelines).

<sup>125</sup> *Op. cit.* footnote 17, para. 160 (2015 Joint Guidelines on Freedom of Association), which states that "*the law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body*".

religious organization there are documents concerning the purpose, objectives and main activities of the organization, the requirement of their compliance with legislation could be interpreted as empowering the registering body with the competence to assess whether religious beliefs or the means used to express such beliefs are legitimate, which is not congruent with international human rights standards.<sup>126</sup>

87. Moreover, while the Draft Law mentions some elements of the registration procedure, it does not provide procedural guarantees for a neutral, non-discriminatory and impartial application of the provisions pertaining to registration. Among others, it does not **impose an obligation of the registering body to hear the applicants or to motivate a potential refusal. The Draft Law should be supplemented in that respect.**

88. Article 41 of the Draft Law lists the grounds for refusal to register a religious organization, including if the purpose of establishing a religious organization is “*undermining the independence, integrity and security of the Republic of Uzbekistan*”, “*infringing on the constitutional rights and freedoms of citizens*”, “*social, national, racial and religious hatred*” and “*infringing on the health, morals and ethics of citizens*”. Under international human rights law, the refusal by the state to grant legal personality status to an association of individuals based on religion or belief amounts to an interference with the exercise of the right to freedom of religion or belief and the freedom of association, unless it has been proven that the association is engaged in unlawful activities.<sup>127</sup> Consequently, any denial of legal personality to a religious or belief community needs to be justified under strict conditions.<sup>128</sup>

89. The grounds for denying registration listed in Article 41 para. 1 do not meet these conditions. On the one hand, some of them are excessively broad and/or vague and subject to multiple interpretations and discretionary implementation (see e.g., “*infringing on the constitutional rights and freedoms of citizens*” or “*infringing on the ethics of citizens*”). On the other hand, they include a number of grounds that are not permissible limitations to the right to freedom of religion or belief under the ICCPR (e.g., the security of the state) and therefore should not prevent registration. In that respect, the OSCE/ODIHR and the Venice Commission have on several occurrences raised some concerns concerning the inclusion of “*state security*” as a ground for limiting freedom of religion or belief.<sup>129</sup> Indeed, both the UN Human Rights Committee and the ECtHR have considered that the grounds justifying exceptions to the right to manifest one’s religion or belief must be narrowly interpreted and be exhaustive.<sup>130</sup> The list of limitation grounds laid out in international instruments – which do not refer to “*state security*” – allows limitations on manifestations of religion or belief only where these involve or may lead to a concrete breach of public order or safety, but not in cases involving generalised or abstract claims of threats to state security.<sup>131</sup> The reference to “*social, national, racial and religious hatred*” should be interpreted in accordance with Article 20 para. 2 of ICCPR and as such should focus on “*incitement to discrimination, hostility or violence*” defined in accordance with international human rights standards (see para. 55 *supra*). Finally, the provision does not explain how the registering body will assess the purpose of the religious organization. The assessment should be strictly limited to

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<sup>126</sup> *Op. cit.* footnote 16, para. 31 (2014 Joint Legal Personality Guidelines), which states that “*the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization*”. See also, for the purpose of comparison, ECtHR, [Manoussakis and Others v. Greece](#), Application no. 18748/91, judgment of 26 September 1996, para. 48, where the Court held that the right to freedom of religion or belief “*excludes any discretion on the part of the State*” in this area.

<sup>127</sup> *Op. cit.* footnote 16, para. 19 (2014 Joint Legal Personality Guidelines) and references cited therein. See also e.g., *op. cit.* footnote 18, page 30 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>128</sup> *Ibid.* para. 21 (2014 Joint Legal Personality Guidelines).

<sup>129</sup> See e.g., *op. cit.* footnote 30, para. 38 (2018 Joint Opinion on Armenia); and *op. cit.* footnote 59, para. 39 (2011 Joint Opinion on Armenia). See also, in this respect, Venice Commission, [Opinion on the Draft Revised Constitution as adopted by the Parliament of Georgia at the second reading on 23 June 2017](#), CDL-AD(2017)023, para. 39.

<sup>130</sup> *Op. cit.* footnote 12, para. 8 (1993 UNHRC General Comment no. 22), which states that “[r]estrictions 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”; and ECtHR, [Nolan and K. v. Russia](#), Application no. 2512/04, judgment of 12 February 2009, para. 73. See also *op. cit.* footnote 16, para. 8 (2014 Joint Legal Personality Guidelines); and UN Commission on Human Rights, [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#), 28 September 1984, E/CN.4/1985/4.

<sup>131</sup> See *op. cit.* footnote 12, para. 8 (1993 UNHRC General Comment no. 22). See also *op. cit.* footnote 16, para. 8 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 59, para. 39 (2011 Joint Opinion on Armenia).

the documents submitted by the religious organization. In light of the above, **the grounds for refusal to register a religious or belief organization should be more strictly circumscribed and in compliance with the limitation grounds permissible under Article 18 of the ICCPR.**

90. Article 41 paras. 3 and 5 of the Draft Law further states that registration may also be refused if “*the procedure for establishing a religious organization provided by law has been violated or there are inconsistencies in the submitted documents*” or if “*it is established that the submitted constituent documents contain deliberately inaccurate information*”. “*Inconsistencies*” is a broad and vague term that could be interpreted in very different ways by the registering body, and may include minor discrepancies in the documents that are submitted. Also, it may be difficult to establish whether the inaccuracy of the information provided by a religious organization is indeed “*deliberate*”. In any case, **making “inconsistency” or deliberate “inaccuracy of information” a ground for refusing registration appears disproportionate to the aim that is pursued and should be removed from the Draft Law.**

91. Article 41 para. 4 provides that registration may be refused if “*the organization being established is not recognized as a religious organization*”. The vagueness of the provision raises equality concerns because the required “recognition” may amount to recognition from established religious groups/majority religious or belief groups, which would raise concerns for minority groups within larger religious or belief communities, which may not be recognized by the centralized body or leadership. Such a wording also seems to imply that the registering body is in a position to determine the legitimacy of a religious or belief group which, as stated above, is not in line with international human rights standards (see para. 86 *supra*). It may be legitimate for the State to refuse registration of certain groups who hold views that do not attain a certain level of “*cogency, seriousness, cohesion and importance*”,<sup>132</sup> although it may be challenging in practice to assess such aspects in an objective manner. In any case, the registering body should never assess the truthfulness or legitimacy of the views or system of values of the applicant.<sup>133</sup> Moreover, this provision may also impede the registration of small or newly established religious or belief communities. But as stated in the 2014 Joint Legal Personality Guidelines, “*[t]he process of obtaining legal personality status should be open to as many communities as possible, without excluding any community on the grounds that it is not a traditional or recognized religion or through excessively narrow interpretations or definitions of religion or belief*”.<sup>134</sup>

92. In light of the foregoing, **it is recommended to specify more clearly in Article 41 of the Draft Law the very limited cases where registration may be refused, in line with international standards, and to explicitly provide that the principle of proportionality has to be respected in the application of these provisions, while expressly excluding any assessment of the truthfulness or legitimacy of the said religion or belief.**

93. Finally, it is welcome that Article 41 para. 6 provides that “*[t]he decision of the Registering body on refusal to register a religious organization may be appealed to the court*”. This provision is in line with the international standards, but unless developed in separate legislation, **it should provide more detailed indications about the appeal procedure including the competent court and timeframe and ensure that it is effective and expeditious.**

## **2. Religious Educational Institutions**

94. Article 12 para. 4 of the Draft Law states that “*[e]veryone has the right to receive professional religious education in religious educational institutions*”. Religious educational institutions are institutions where clergy and religious personnel are trained (Article 3 of the Draft Law). The freedom to train religious or belief leaders is of vital importance for any religious or belief community and organization. It is a fundamental element of the freedom to manifest religion or

<sup>132</sup> See e.g., ECtHR, [Campbell and Cosans v. United Kingdom](#), Application no. 7511/76; 7743/76, judgment of 25 February 1982, para. 36.

<sup>133</sup> See e.g., *op. cit.* footnote 30, para. 57 (2018 Joint Opinion on Armenia).

<sup>134</sup> *Op. cit.* footnote 16, para. 26 (2014 Joint Legal Personality Guidelines).

belief through teaching protected by Article 18 of the ICCPR. Article 6 (g) of the 1981 UN Declaration specifically refers to the freedom to train “appropriate leaders called for by the requirements and standards of any religion or belief”. The right to select the candidates for professional religious or belief education is part of the process of training religious or belief leaders who are “appropriate” according to the “requirements and standards” of the religious or belief community or organization. This right is protected by the autonomy of religious or belief communities and organizations, which includes the right to refuse the admission to professional religious/belief education of candidates who do not correspond to the standards set by the religious or belief community or organization. This excludes that “everyone” has the right to receive professional religious education, as stated in Article 12 para. 4 of the Draft Law.

95. According to Article 19 para. 1, “[a] religious educational institution acquires the right to carry out its activities after registration and obtaining an appropriate license”. Article 19 thus prevents an institution from training clergy and religious personnel without obtaining registration and an appropriate license. OSCE commitments provide that States should allow the training of religious personnel in appropriate institutions.<sup>135</sup> Defining what are the conditions of appropriateness of a religious educational institution is part of the autonomy of a religious organization, while the need of obtaining registration and licence may concern only the eventual recognition by the State of the qualifications issued by the educational institution. Limiting the right to train religious personnel only to registered and licensed institutions is an interference both with the right of everyone to “manifest his religion or belief [ . . . ] in practice and teaching” as stated in Article 18 para. 1 of the ICCPR and with the right of religious organization to freely impart this education and Article 6 (e) and (g) of the 1981 UN Declaration. Also, such registration and licensing requirement may *de facto* disproportionately restricts the right to freedom of religion or belief, especially of minority religious or belief communities, which may be unable to fulfil the registration and licensing requirements, for instance because of lack of property for conducting educational activities, lack of their teachers’ religious/belief education, lack of financial resources to pay the registration fee etc.

96. According to Article 19 para. 2 of the Draft law, “[c]itizens are admitted to religious educational institutions after they have received mandatory general secondary or secondary special education in accordance with the Law of the Republic of Uzbekistan ‘On education’”. This article makes admission to a religious educational institution dependent on the possession of particular qualifications. As such, it limits the freedom of religion or belief of individuals who, if the conditions for admission established by the religious organization are met, have the right to receive religious education in the said educational institutions. Moreover, it directly interferes with the autonomy of religious organizations, which includes the right to establish the conditions of admission to their own religious educational institutions (see also comments to Article 12 para. 4 in para. 94 *supra*).

97. Similarly, Article 19 para. 3 limits the autonomy of religious organizations, that includes the right to establish without interference by the State, the requirements to be met by teachers who carry out their activities in religious educational institutions. The requirement of the teachers’ professional religious education may concern only the eventual recognition by the State of the qualifications issued by a religious educational institution but cannot be extended to the right of teaching in such institutions.

98. Finally, as mentioned in para. 54 *supra*, parents should in principle have the possibility to organize religious education and/or send their children to primary and secondary private religious schools, which derives from Article 13 para. 3 of the ICESCR and Article 18 para. 4 of the ICCPR. This implies that religious or belief communities should be allowed to teach and to organize teaching in the setting of a private religious school, including at the primary and secondary

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<sup>135</sup> CSCE/OSCE, [Concluding Document of the Vienna Meeting](#) (Third Follow-up Meeting to the Helsinki Conference), Vienna 1989, para. 16.8.

levels,<sup>136</sup> which is not allowed by the Draft Law. This however does not oblige states to fund schools which are established on a religious basis, though if public funding is provided, it should be made available without discrimination.<sup>137</sup>

### 3. Rights and Obligations of Religious Organizations

99. According to the definition of a “*religious organization*” contained in Article 3, only registered religious organizations can enjoy the rights listed in Article 20 of the Draft Law. As emphasized in Sub-Section E *supra*, this is clearly incompatible with the fact that a number of these rights<sup>138</sup> are essential expressions of the right to manifest one’s religion or belief guaranteed by Article 18 of the ICCPR to be enjoyed irrespective of the registration status. These include the freedom to worship in public or in private in community with others, to establish seminaries or religious schools, to produce, import and disseminate religious publications and material and the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels, including through travel and pilgrimages.<sup>139</sup>

100. Article 21 para. 1 of the Draft Law provides that “[r]eligious organizations have the right to file a complaint with a higher state body or court regarding illegal decisions of state bodies or illegal actions (inaction) of their officials that violate their rights and freedoms”. Non-registered religious or belief communities should also enjoy a similar right. In particular, they should have an effective remedy at the national level against a decision not to recognize, or to withdraw, the legal personality of a religious or belief community that has an arguable claim to such a status. This right derives from Article 2 para. 3 of the ICCPR, which requires that individuals and communities have access to a court that must provide them with an effective remedy.<sup>140</sup> This provision is however rather vague and does not indicate the body in charge of receiving the complaints of a religious organization. In any case, religious or belief organizations and individual members should have the right to appeal (not only to file a complaint) to a court against any illegal decision or action of a state body and the law should provide for a detailed, expeditious and effective appeals procedure.<sup>141</sup>

101. Article 22 of the Draft Law lists the responsibilities of a religious organization, including the notification of the Committee on Religious Affairs of a variety of events with the exception of prayers, religious customs and rites (para. 4) and annual reporting (para. 6). Freedom of religion or belief includes the right of a religious or belief community or organization and its members to perform religious/belief activities without giving notice of them to State authorities, unless the nature of these activities require the co-operation of State bodies, for instance in order to protect public safety, order, health, or the fundamental rights and freedoms of others. The list of the activities to be notified includes events (meetings, round tables, seminars, etc.) that may not necessarily require such co-operation. Moreover, the scope of this requirement is unclear (in most cases the activities of religious organizations do not pose organizational issues) and the requirement would be overly burdensome and bureaucratic if applied to any such activity of a religious organization. Furthermore, smaller religious organizations may not have the staff and capacity to carry out all such notifications with the Committee. As such, it contradicts the principle

<sup>136</sup> See e.g., Venice Commission, [Opinion on the draft Law on Freedom of Religion or Beliefs and legal status of religious communities of Montenegro](#), CDL-AD(2019)010-e, para. 45. See also, e.g., ECtHR, [Kjeldsen, Busk Madsen and Pedersen](#), Application nos. 5095/71, 5920/72, 5926/72, judgment of 7 December 1976.

<sup>137</sup> See e.g., CCPR, [Waldman v. Canada](#), Communication no. 694/1996, CCPR/C/67/D/694/1996, 3 November 1999, para. 10.6.

<sup>138</sup> For instance, “create[ing] favorable conditions in places of worship or religious rites” (Article 20 para. 1 first indent), “establishing religious educational institutions” (Article 20 para. 1 second indent), “conduct[ing] events on issues related to its activities” (Article 20 para. 1 fourth indent), “manufactur[ing], export[ing] and import[ing] [...] religious literature and other materials of religious content” (Article 20 para. 1 fifth indent), “establish[ing] international contacts for the purpose of organizing pilgrimages or participating in other religious events” (Article 20 para. 1 sixth indent), among others.

<sup>139</sup> See *op. cit.* footnote 16, para. 15 (2014 Joint Legal Personality Guidelines).

<sup>140</sup> *Ibid.* para. 35 (2014 Joint Legal Personality Guidelines). For the purpose of comparison, see also ECtHR, [Biserica Adevărat Ortodoxă Din Moldova and others v. Moldova](#), Application no. 952/03, judgment of 27 February 2007, paras. 49–54.

<sup>141</sup> *Ibid.* para. 35 (2014 Joint Legal Personality Guidelines), which states that “States have a general obligation to give practical effect to the array of standards spelled out in international human rights law, as outlined, for example, in Article 2 para. 3 of the ICCPR and Articles 6 para. 1 and 13 of the ECHR, which require that individuals and communities have access to a court that must provide them with an effective remedy”.

of “separation of religion from the state” and violates the principle of autonomy and non-interference in the activities of religious or belief communities and organizations and the right to privacy of members of religious or belief organizations under Article 17 of the ICCPR. **The obligation to notify the Committee of Religious Affairs about events is unjustified limitation of freedom of religion or belief and freedom of expression and should therefore be removed from the Draft Law.** The annual reporting requirement poses similar challenges. It is important to emphasize that where they exist, such reporting requirement should not be burdensome, should be appropriate to the size of the association and the scope of its operations in order not to unduly limit the right to freedom of religion or belief and freedom of association.<sup>142</sup> Article 22 para. 3 also refers to the “*obligation of a religious organization to preserve objects of material cultural heritage that are under state protection*”. This may be a reasonable requirement assuming that the said objects are in legal ownership or possession of religious organizations. However, the Draft Law is rather unclear in this respect and places on a religious organization an important responsibility without indicating who is the owner of these objects of material cultural heritage.

102. Article 13 para. 4 of the Draft Law stipulates that “[r]eligious organizations do not have the right to carry out compulsory money collections and levy believers”. At the same time, some religions impose mandatory financial obligations on their members as a matter of doctrine, expecting or even requiring that members of these religions financially support the religious organization activities or pay some donations for maintaining the community’s activities (for example, some protestant communities, the Church of Jesus Christ of Latter-day Saints, etc.). These aspects are protected by the right of the religious organization to autonomy and self-administration and soliciting and receiving financial contributions is one of the manifestations of freedom of religion or belief.<sup>143</sup> While soliciting funds through fraud or coercion is clearly not protected by international instruments, these actions are presumably already punishable by criminal law. Forbidding religious organizations from collecting money from their members, even in a more or less compelling manner, is not “*necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others*” and thus does not meet the requirements of Article 18 para. 3 of the ICCPR on limitations to the right to freedom of religion or belief.<sup>144</sup> **This provision should be clarified to only cover coercive (i.e., using violence, intimidation, threats or other unlawful forms of pressure) or fraudulent solicitations.**<sup>145</sup> Of note, Article 23 para. 1 of the Draft Law seems to imply that only citizens are entitled to make donations to religious organizations. Limiting this right to citizens requires a reasonable justification that is not provided by the Draft Law.

103. Article 13 para. 4 further states that “[r]eligious organizations do not have the right to apply measures that infringe on the honor and dignity of the individual”. Such a wording is excessively vague and open to different interpretations, which may lead to arbitrary and discretionary application by competent authorities. To avoid this risk, **the provision should be either reformulated with more precise terminology and making explicit reference to non-discrimination, or be removed altogether. The criteria provided in Article 18 para. 3 of the ICCPR may serve as a useful guidance.**

104. Article 3 para. 5 of the Draft Law, read together with Article 43, sets territorial limits to the activity of a religious organization as it implies that a religious organization must perform its activities within a given territory. This requirement is further specified in Article 42, according to which the “*territory of activity of a religious organization*” must be indicated in the Register of religious organizations. The right of a religious or belief community or organization to carry out its

<sup>142</sup> *Op. cit.* footnote 17, para. 225 (2015 Joint Guidelines on Freedom of Association).

<sup>143</sup> See 1981 [UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#), Article 6(f), which states that the right to freedom of religion or belief shall include, inter alia, the freedom “[t]o solicit and receive voluntary financial and other contributions from individuals and institutions”; and [Concluding Document of the Vienna Meeting](#) (Third Follow-up Meeting to the Helsinki Conference), Vienna 1989, para. 16.4, which refers to the right to “solicit and receive voluntary financial and other contributions”.

<sup>144</sup> See, regarding a similar provision, OSCE/ODIHR-Venice Commission, [Joint Opinion on Freedom of Conscience and Religious Organizations in the Republic of Kyrgyzstan](#), CDL-AD(2008)032-e, 28 October 2008, para. 129.

<sup>145</sup> *Ibid.* para. 129.

activities is protected by the right of collective religious freedom which does not suffer territorial limitations unless these are established by law, necessary and proportionate to the aims listed in Article 18 para. 3 of the ICCPR. It is unclear from the Draft Law why such territorial limitations are necessary and proportionate to a legitimate aim. Moreover, the right to “*establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels*”<sup>146</sup> does not only encompass transmitting or receiving verbal or written religious messages but includes also engaging in religious events and activities throughout the national territory and abroad.<sup>147</sup> Any limitation of this right must respect the conditions indicated in Article 18 para. 3 of the ICCPR. **It is recommended to remove such territorial limitation to the activities of a religious organization.**

105. Finally, Article 22 para. 2 of the Draft Law states that “[a] religious organization may have other responsibilities in accordance with the legislation”. Read together with Chapter 6 of the Draft Law, this *de facto* would confer to the public authorities a nearly unfettered right to suspend/liquidate a religious organization for failures to eliminate any breach of the law whatsoever, even those not listed in the Draft Law. At the very least, there should be a relation of proportionality between the breach of the law and the sanction imposed (see Sub-Section G.5 *infra*).

#### **4. Accreditation of foreign employees**

106. The head and employees of a religious organization, who are foreign citizens, as well as members of their families who are dependent on them, need to be accredited by a justice body (see Articles 16 para. 3 and 29 para. 2 of the Draft Law). This provision thus makes a distinction between employees of religious organizations who are citizens and employees who are foreigners, requiring only the latter to be accredited by a justice body. The Draft Law does not offer any indication as to the goal pursued by the accreditation and the procedure to be followed to obtain it. In this way, it may leave too much room for discretion to the body in charge of issuing the accreditation. While it may be justifiable to require some sort of registration for all foreigners seeking to reside and work in Uzbekistan, it is not clear whether the above-mentioned accreditation is required only for foreigners who are employed in religious organizations or for all foreigners seeking to work in Uzbekistan in legal entities of any kind. If such a requirement is only applicable to the former, the provision would constitute a limitation of the collective right of freedom of religion or belief, would require to be justified on the basis of the criteria indicated in Article 18 para. 3 of the ICCPR and, in the absence of a reasonable justification, could constitute discrimination against religious organizations whose activity would be subject to more onerous conditions than those imposed on other legal entities.

107. In any case, the legal and administrative framework for such accreditation should be drafted and implemented in such a way as to maintain and safeguard human rights and fundamental freedoms, and not inhibit the enjoyment of such rights, particularly the freedom of movement and the right to choose one’s residence as well and the right to protection of privacy and family life.<sup>148</sup>

#### **5. Suspension and Dissolution of Religious Organizations**

108. Chapter 6 of the Draft Law regulates the suspension and termination of the activities of a religious organization. Article 43 para. 1 stipulates that “*the activities of a religious organization*

<sup>146</sup> See 1981 [UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#), Article 6.

<sup>147</sup> [Concluding Document of the Vienna Meeting](#) (Third Follow-up Meeting to the Helsinki Conference), Vienna 1989, para. 32; [UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#); 2004 OSCE/ODIHR-Venice Commission Joint Guidelines on Legislation pertaining to Religion or Belief, II. J; Venice Commission Report on funding of associations, CDL-AD (2019)002 para. 19.

<sup>148</sup> Articles 12 para. 1 and 17 of the ICCPR. See also the [Concluding Document of the Third Follow-up Meeting](#), Vienna, 15 January 1989, Questions Relating to Security in Europe: Principles, para. 20.

may be suspended by a court if it violates the Constitution and legislation of the Republic of Uzbekistan"; if the said violation is not eliminated, this may ultimately lead to the liquidation of the religious organization pronounced by a court (Article 44 para. 3). The "violation of the legislation of the Republic of Uzbekistan" is a very broad and undefined ground for suspending or terminating the activities of a religious organization. A literal interpretation of this article may result in suspension for any violation of any provision of any piece of legislation, irrespective of the nature and seriousness of the violation, potentially concerning even minor infringements, for instance a failure to timely report a new address, to pay a fine within the set period, or other minor non-compliance with labour or civil law. Considering the wide-ranging and significant consequences that suspending or withdrawing the legal personality status of a religious or belief organization will have on its status, funding and activities, **any decision to do so should be a matter of last resort, only in case of grave and repeated violations endangering public order or where the breach gives rise to a serious threat to fundamental democratic principles or when there is a clear and imminent danger deriving from a particularly serious violation of the State law.**<sup>149</sup> Moreover, the decision to terminate the activities of a religious organization must be "*proportionate to the legitimate aim pursued*"<sup>150</sup> as required by Article 18 para. 3 of the ICCPR and should be taken only when less intrusive measures are insufficient.

109. Pursuant to Article 43 para. 2 of the Draft Law, the violation of the religious organization's statutory objectives is also mentioned as a ground for suspension. As underlined in the 2015 Joint Guidelines on Freedom of Association, "*under no circumstances should associations suffer sanctions on the sole ground that their activities breach their own internal regulations and procedures, so long as these activities are not otherwise unlawful*".<sup>151</sup> **This ground for suspension should be removed from the Draft Law.** Article 43 para. 2 of the Draft Law also refers to a "deadline" for eliminating the violation. It is important for the religious organization to have a reasonable time to eliminate such violation.

110. The Draft Law seems to contemplate only two types of sanctions, i.e., suspension and dissolution, unless other legislation also applies. In principle, any sanctions introduced must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective.<sup>152</sup> As stated in the 2014 Joint Legal Personality Guidelines, in order to be able to comply with the principle of proportionality, "*legislation should contain a range of various lighter sanctions, such as warning, a fine or withdrawal of tax benefits, which – depending on the seriousness of the offence – should be applied before the withdrawal of legal personality is completed*".<sup>153</sup> In light of this, **Chapter 6 of the Draft Law should be supplemented to include a system of warnings allowing for the possibility to rectify the violation or omission,**<sup>154</sup> and more gradual and proportionate sanctions that should be applied before the sanction of suspension or dissolution is imposed. Moreover, the Draft Law should detail the type of violation of the Draft Law that might incur these various types of sanctions, including clear and precise definitions of the serious grounds that may justify the suspension or liquidation of a religious organization, as a measure of last resort, while explicitly providing that the principle of proportionality has to be respected in the application of these provisions. The Draft Law should also prescribe with greater

<sup>149</sup> See *op. cit.* footnote 16, para. 33 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 17, para. 225 (2015 Joint Guidelines on Freedom of Association). See also e.g., OSCE/ODIHR-Venice Commission, [Interim Joint Opinion on the Law on Making Amendments and Supplements to the Law on Freedom of Conscience and Religious Organizations and on the Laws on Amending the Criminal Code, the Administrative Offences Code and the Law on Charity of the Republic of Armenia](#), CDL-AD(2010)054, para. 98, which states that "*it is appropriate that a religious organisation may only be liquidated or abolished by a court decision and only for 'multiple or gross violations' of laws*"; and *op. cit.* footnote 18, page 32 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security). See also, for the purpose of comparison, See ECtHR, [Biblical Center of the Chuvash Republic v. Russia](#), Application no. 33203/08, judgment of 12 June 2014, para. 54.

<sup>150</sup> *Op. cit.* footnote 16, para. 9 (2014 Joint Legal Personality Guidelines). See also e.g., ECtHR, [Jehovah's Witnesses of Moscow and Others v. Russia](#), Application no. 302/02, judgment of 10 June 2010, para. 108.

<sup>151</sup> *Op. cit.* footnote 17, para. 178 (2015 Joint Guidelines on Freedom of Association).

<sup>152</sup> *Ibid.* para. 237 (2015 Joint Guidelines on Freedom of Association).

<sup>153</sup> *Op. cit.* footnote 16, paras. 33-34 (2014 Joint Legal Personality Guidelines).

<sup>154</sup> See *op. cit.* footnote 17, para. 238 (2015 Joint Guidelines on Freedom of Association).

**precision which procedure and time limits the authorized body may impose.**<sup>155</sup>

111. Article 44 para. 1 of the Draft Law states that, in case of suspension, “*it is prohibited to organize events*”. This prohibition cannot include the organization of religious events without violating the freedom of religion or belief of the individual members of the said organization. As noted in the 2014 Joint Legal Personality Guidelines, “[*t]he withdrawal of legal personality from a religious or belief organization should not in any way imply that the religious or belief community in question, or its individual members, no longer enjoy the protection of their freedom of religion or belief or other human rights and fundamental freedoms*”.<sup>156</sup> Therefore, **the organization of religious events cannot be discontinued even after a religious organization has been suspended and this prohibition should be removed from Article 44 para. 1 of the Draft Law.**

112. Decisions to withdraw legal personality, **should state the reasons for doing so in a clear and specific manner.**<sup>157</sup> The provisions of the Draft Law on termination and liquidation are silent in that respect, apart from a vague reference to violating the law, and **should be supplemented accordingly.**

113. The termination of the activities of a religious organization is pronounced by a court decision (see Articles 44-46). Once a court has decided on the suspension or termination of a religious organization, there does not seem to be further recourse, unless provided by other legislation. In principle, the decisions of courts or tribunals that review an administrative act should, at least in important cases, be subject to appeal to a higher court or tribunal, unless the case is directly referred in the first place to a higher tribunal in accordance with the national legislation.<sup>158</sup> Accordingly, where denial of legal personality or de-registration has been authorized, **the procedure should be subject to an effective process of appeal and/or review by the courts, which should be quick, transparent and non-discriminatory.**<sup>159</sup> Moreover, given the serious impact on the right to freedom of religion or belief, **the actual termination and liquidation/deregistration of religious or belief communities should be suspended until all avenues of appeal have been exhausted**, meaning that the decision should not be enforced until the appeal or challenge is decided.<sup>160</sup> Exceptionally, this stay in execution shall not apply in cases where there exists exceptionally strong evidence that a serious crime has been committed.<sup>161</sup> **The Draft Law should be supplemented in that respect.**

## H. Role and Powers of the Committee on Religious Affairs and Other State Authorities

114. Overall, the Draft Law, in particular Article 15, confers various functions to the Committee on Religious Affairs and other state bodies in terms of “coordinating”, “assisting” and monitoring the activities of “religious organizations”.<sup>162</sup> All these prerogatives of the state bodies may result

<sup>155</sup> See e.g., *op. cit.* footnote 30, para. 79 (2018 Joint Opinion on Armenia); and *op. cit.* footnote 59, para. 84 (2011 Joint Opinion on Armenia).

<sup>156</sup> *Op. cit.* footnote 16, para. 34 (2014 Joint Legal Personality Guidelines).

<sup>157</sup> See *op. cit.* footnote 16, para. 32 (2014 Joint Legal Personality Guidelines); and *op. cit.* footnote 18, Recommendation 5 on page 35 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>158</sup> See e.g., for the purpose of comparison, Council of Europe, [Recommendation Rec\(2004\)20 on Judicial Review of Administrative Acts](#), 15 December 2004, para. B.4.i.

<sup>159</sup> See e.g. *op. cit.* footnote 18, page 33 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security).

<sup>160</sup> See e.g. *ibid.*, page 33 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security); and *op. cit.* footnote 17, para. 120 (2015 Joint Guidelines on Freedom of Association).

<sup>161</sup> *Ibid.* para. 120 (2015 Joint Guidelines on Freedom of Association).

<sup>162</sup> These include, e.g., the right of the Committee on Religious Affairs to provide coordinating assistance to the activities of religious organizations and participate in their events (Article 15), to carry out expert examination of religious materials produced in Uzbekistan or received from abroad and coordinate this activity (Article 15), to organize licensing of religious educational institutions and monitor compliance (Article 15), to organize visits by citizens of the Republic of Uzbekistan to places of religious pilgrimage outside the country (Article 15), to be notified of events of religious organization (Article 22), to provide agreements for the allocation of land for a religious organization and construction of religious buildings (Article 24), to provide a letter of consent required for registering a central management body, an religious educational institution or a local religious organization (Article 34). Further, “state assists and supports religious organizations in carrying out charitable activities, as well as in implementing socially significant cultural and educational programs and events” (Article 25 para. 2); justice bodies “monitor compliance of religious organizations with legislation and statutory activities” (Article 16) and ensure accreditation of foreign

in potential interference into the internal affairs of religious organizations and also potentially contradicts the principle of neutrality and impartiality of the state.

115. The Draft Law does not specify the nature and composition of the Committee on Religious Affairs. It is therefore unclear whether it is a political, administrative, or technical body and who and how its members are chosen, among others. This creates a situation of objective uncertainty that increases the possibility of undue interference with the activities of religious organizations. It is generally considered as a good practice to involve some members of religious or belief communities and organizations, at least in an advisory role.

116. Article 15 para. 6 provides that the Committee “*reflects the interests of registered religious organizations in state policy*”. As emphasized in the 2014 Joint Legal Personality Guidelines, the autonomous existence of religious or belief communities and organizations is indispensable for pluralism in a democratic society and is an issue that lies at the very heart of the protection that the freedom of religion or belief affords.<sup>163</sup> The autonomy of religious or belief communities and organizations implies that they have the right to define their interests and, if they deem it appropriate, to express them to the competent State authorities in complete freedom and without the intermediation of other bodies. The expression “*reflects the interests*” can be understood as empowering the Committee to act on behalf of religious organizations and to represent their interests in the relations with State bodies. In this case, that would constitute an inadmissible limitation to the autonomy of religious organizations.

117. Pursuant to Article 15 para. 8, the Committee “*provides coordinating assistance to the activities of religious organizations, including religious educational institutions (educational process and programs, educational work, curricula of disciplines, scientific research on religious topics), provides them with organizational, legal and methodological assistance in conducting these activities, and participates in events held by them that are related to their activities*”. This paragraph is formulated in a way that suggests that religious organization may be obliged to make use of the assistance provided by the Committee. If this is the case, this would limit the autonomy of religious organizations which have the right to perform their activities without any assistance of state bodies. **The provision could specify that such assistance is only provided at the request of a religious organization, which would be helpful to dispel these doubts.** The autonomy of religious organizations is even more severely restricted by the participation of the Committee in events held by them and related to their activities. The right to autonomy includes the power to decide the subjects who are entitled to participate in the events held by religious organizations.<sup>164</sup> **This prerogative of the Committee should be removed from the Draft Law.**

118. Article 15 para. 9 further provides that the Committee “*organizes visits by citizens of the Republic of Uzbekistan to places of religious pilgrimage outside the country, including performing the rites of Hajj and Umrah, sending citizens abroad to study in religious educational institutions, training and exchanging experience, accepting foreign citizens or stateless persons to study in religious educational institutions, holding international religious forums*”. The same remarks made above apply to this paragraph. It should be made clear that the Committee is not the only channel through which visits abroad and invitation of foreign citizens to Uzbekistan can be organized. The 1981 UN Declaration emphasizes that freedom of religion or belief includes the freedom to establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.<sup>165</sup> Compelling individuals and religious

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heads and employees (Articles 16 para. 3 and 29 para. 2 of the Draft Law); local state authorities “*ensure interaction and cooperation of state bodies with religious organizations in the relevant territory*” (Article 17).

<sup>163</sup> *Op. cit.* footnote 16, para. 18 (2014 Joint Legal Personality Guidelines).

<sup>164</sup> See e.g., *op. cit.* footnote 18, page 25 (2019 OSCE/ODIHR Policy Guidance on Freedom of Religion or Belief and Security), which underlines that “[d]ialogue and engagement initiatives between participating States and religious or belief communities” should “*respect the autonomy of religious or belief communities*” and “*respect the voluntary nature of participation by religious or belief communities*”.

<sup>165</sup> See Article 6(i) of the 1981 [UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#). See also the CSCE/OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen](#), 29 June 1990, para. 9.1, where it is stated that “*everyone will have the right to freedom of expression including the right to communication*”.

organizations to exercise this right through the channel of the Committee on Religious Affairs would improperly prevent individuals from exercising their right to freedom of religion or belief, freedom of expression and right to education, as protected under Articles 13-14 of the International Covenant on Economic, Social and Cultural Rights.<sup>166</sup>

119. The last paragraph of Article 15 states that the Committee “*may exercise other powers in accordance with the legislation*”, which may potentially lead to an undue expansion of the powers of the Committee.

120. Article 17 para. 3 of the Draft Law provides that local state authorities “*develop and implement measures to ensure the stability of the socio-spiritual sphere, strengthen inter-confessional harmony and religious tolerance in society*”. The wording “[s]tability of the socio-spiritual sphere” is very vague and has no definite legal meaning. As emphasized in para. 27 *supra*, such vagueness could open the way to interventions of local state authorities to limit or eliminate religious pluralism when this risks producing tensions between different religious or belief groups. **Such a wording should therefore be reconsidered.**

121. Article 25 of the Draft Law provides that “[t]he state assists and supports religious organizations in carrying out charitable activities, as well as in implementing socially significant cultural and educational programs and events”. In order not to interfere with the exercise of the activities of religious organizations, **such assistance and support should be contingent upon a request made by a religious or belief community and not imposed on a religious organization which is unwilling to receive it and should be provided in a non-discriminatory manner.**

#### I. Re-registration of Religious Organizations

122. Article 36 para. 1 provides that “[a]mendments and additions to the Charter shall be subject to re-registration in accordance with the procedure provided for by the present Law.” However, the title of this article as well as the title of the following one seem to suggest that a new registration of the religious organization is required each time amendments and additions are made to its Charter. To avoid such misinterpretation, it is recommended that the title of Article 36 is changed to “[r]egistration of amendments and additions to the Charter”. Similarly, Article 36 para. 2 may be interpreted as requiring a new registration of the religious organization when there is any amendment and addition to the Charter as well as the submission of all the documents submitted on occasion of the first registration. This interpretation would impose on the religious organization a disproportionate burden. **It is suggested to reformulate this article in a way that makes clear that only the documents indicated in Article 37 paras. 2-5 must be submitted.**

123. At the same time, requiring that every change in the statute be re-registered may appear overly burdensome. Allowing greater flexibility in charter regulations and not requiring re-registration of any amendment would allow religious organizations to keep pace with changing circumstances and evolving perceptions within the group and the society in general and would help ensure respect to the inherent right of the religious or belief community to autonomy in structuring its affairs as well as adequate observance of the right to freedom of association.<sup>167</sup> **The Draft Law could require that certain key changes to the Charter, such as the name of the legal representative or the registered address, be registered instead of every amendment/addition.**

124. Article 35 of the Draft Law regulates the registration of a religious organization created through reorganization, which implies the dissolution of the original religious organization but it is unclear whether it constitutes a de facto re-registration. First, a new registration appears neither

<sup>166</sup> The Republic of Uzbekistan acceded to the International Covenant on Economic, Social and Cultural Rights on 28 September 1995.

<sup>167</sup> See e.g., OSCE/ODIHR, [Comments on the Law of Turkmenistan on Religious Freedom and Religious Organizations](#), 25 June 2010, para. 51.

necessary nor proportionate to the aim that it is intended to achieve, i.e., the orderly transfer of the passage of legal relations from the old to the new religious organization. Second, Article 35 para. 5 provides that it is not “*permitted to reorganize a religious organization into the organizational-legal form of another legal entity*”. This provision sets a limit to the right of a religious organization to adopt the legal form that it deems preferable, which is not in line with international standards. A religious organization cannot be compelled to register as a religious organization if the legal personality status can be obtained by registering as a different type of legal person (see paras. 41-42 *supra*). **Such limitation does not appear to be necessary and proportionate and should be reconsidered.**

125. Finally, the Draft Law does not include transitional provisions to clarify the status of existing (registered) religious or belief organizations when the new Law will enter into force. During the videoconferences, the public authorities confirmed that existing registered religious organizations will not be required to re-register, though some stakeholders emphasize that the adoption of the Draft Law will require substantial changes to be made to their charters, and therefore that it be re-registered with the payment of the relevant fee. In any case, where new provisions regulating religious or belief communities are introduced, adequate transition rules should guarantee the rights of existing communities and should not require reapplication for legal personality according to the newly-introduced criteria unless the state can demonstrate that such restrictions are necessary and proportionate to a legitimate aim.<sup>168</sup>

#### **J. Recommendations Related to the Process of Preparing and Adopting the Draft Law**

126. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).<sup>169</sup> Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).<sup>170</sup> The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>171</sup> The 2015 Joint Guidelines on Freedom of Association also specifically recommend that associations always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.<sup>172</sup> As also specifically recommended in the recent OSCE/ODIHR Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan, “[p]ublic consultations should become a routine feature of the overall and a meaningful part of every stage of the legislative process, particularly in the Legislative Chamber”.<sup>173</sup>

127. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society and religious and belief communities, as also specifically recommended by the UN Special Rapporteur on Freedom of Religion or Belief.<sup>174</sup> They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.<sup>175</sup> To guarantee effective participation, consultation mechanisms must

<sup>168</sup> *Op. cit.* footnote 16, para. 36 (2014 Joint Legal Personality Guidelines).

<sup>169</sup> Available at <<http://www.osce.org/fr/odihr/elections/14304>><http://www.osce.org/fr/odihr/elections/14304>.

<sup>170</sup> Available at <<http://www.osce.org/fr/odihr/elections/14310>><http://www.osce.org/fr/odihr/elections/14310>.

<sup>171</sup> See Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

<sup>172</sup> *Op. cit.* footnote 17, para. 186 (2015 Joint Guidelines on Freedom of Association).

<sup>173</sup> See OSCE/ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan* (11 December 2019), Recommendation N.

<sup>174</sup> UN Special Rapporteur on Freedom of Religion or Belief, *2018 Report on the Mission to Uzbekistan*, A/HRC/37/49/Add.2, 22 February 2018, para. 101 (b).

<sup>175</sup> See e.g., *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

allow for input at an early stage *and throughout the process*,<sup>176</sup> meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings).

128. The Draft Law was published on 19 August 2020 on the website of the Legislative Chamber of the Parliament (Oliy Majlis) as a bill for public discussion, with the possibility to submit comments via email.<sup>177</sup> During the videoconferences, the authorities reported having received more than 500 comments, which they reported are being analysed in preparation for the second reading. They also informed that prior to the publication of the Draft Law, they had consulted with the sixteen confessions operating in the Republic of Uzbekistan. The First Deputy of the Legislative Chamber also informed the OSCE/ODIHR and the Venice Commission that a second round of consultation will be organized prior to the second reading. At the same time, as informed during the videoconferences, the Draft Law submitted in the first reading on 15 September 2020 is the same as the one subject to public consultation. During the videoconferences, several stakeholders also expressed concerns about the lack of transparency of the review and discussion process. While the willingness to organize public consultations throughout the law-making process is welcome, the modalities of such public consultations and the lack of adequate and timely feedback mechanism may raise doubt as to whether the public consultations were or will be effective and inclusive as mentioned above.

129. Given the potential impact of the Draft Law on the exercise of the right to freedom of religion or belief, it is essential that the development of legislation in this field be preceded by an in-depth regulatory impact assessment, including on human rights compliance, completed with a proper problem analysis using evidence-based techniques to identify the most efficient and effective regulatory option.<sup>178</sup>

130. In light of the above, **the public authorities are encouraged to ensure that the Draft Law is subjected to inclusive, extensive and effective consultations, including with civil society and representatives of various religious or belief communities, including minority religious or belief communities, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.**<sup>179</sup>

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<sup>176</sup> See e.g., *op. cit.* footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders).

<sup>177</sup> See <<http://parliament.gov.uz/ru/laws/discussed/>>.

<sup>178</sup> See OSCE/ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan* (11 December 2019), Recommendations L and M; and Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

<sup>179</sup> See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).