

Other human rights and religious intolerance

7.1 This Chapter deals with the second of the Terms of Reference for this inquiry:

Implications for other human rights arising from:

- a lack of religious freedom, and
- religious differences.

7.2 Much of this material has already been touched on in the survey of violations of freedom of religion and belief in Chapter 5, but has been given a more specific focus here. Some of this material provided the opportunity for short studies about what can happen to minority groups.

7.3 This Chapter also examines the right not to believe in a religion, or not to have any religious beliefs.

First principles

7.4 Article 1 of the Charter of the United Nations sets out its purposes, including ‘...promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...’ This principle is reinforced in Article 18 of the UDHR:

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 teaching, practice, worship and observance.

- 7.5 Given the principle of universality and indivisibility of all human rights, every individual is entitled to freedom of religion and belief as a fundamental right. These principles are central to the Charter of the UN and its various instruments. In particular, the UDHR provides the basis for regarding freedom of religion and belief as a fundamental human right.
- 7.6 The UN has subsequently adopted a number of Conventions and Declarations that have sought to make the UDHR's provisions into binding obligations, notably through instruments such as the ICCPR, the ICESCR and the Religion Declaration.¹
- 7.7 DFAT's submission pointed out that the concepts enshrined in these UN instruments are not new. They represent a modern affirmation by the international community of its commitment to eliminate religious intolerance, and to combat discrimination on the grounds of religion or belief.²
- 7.8 Tolerance and respect for others, for their human rights, are promoted in all of the world's major religions. The view that we must respect our neighbours as we would respect ourselves is at the core of the teachings of all these major faiths.³
- 7.9 DFAT stated that the right to religious belief was 'a core human right' and that, if such rights were restricted, attitudes to other basic human rights would also be relaxed.⁴
- 7.10 While the principle of the right to freedom of religion and belief is not in itself contentious, problems arise with its implementation. It was suggested that restrictions on this right are often accompanied by constraints on other rights, leading to such things as imprisonment, torture and restrictions on freedom of belief and association.⁵
- 7.11 For example, infringements of human rights by the PRC in areas such as its 'one child' policy and forced abortions have been seen as restrictions on freedom of religion and belief.⁶

1 DFAT: Submissions, p. 244, Transcript, 24 September 1999, p. 3. See paragraphs 2.33-2.52 for some consideration of the UN's major instruments.

2 Submissions, p. 244.

3 DFAT, Submissions, p. 244. See also Rev Helen Summers, Submissions, p. 864.

4 Transcript, DFAT, 24 September 1999, p. 23.

5 Transcript, DFAT, 24 September 1999, pp. 26, 24.

6 See ACSJC, Submissions, p. 803.

Patterns

Persecution of minorities

- 7.12 While restrictions on freedom of religion and belief seem to be relatively clear cut matters, in fact they are often part of more thorough patterns of the abuse of a range of human rights. This is particularly likely in the case of minority groups.
- 7.13 In a Report tabled in 1994, this Committee discussed at length complaints about the persecution of minorities. While conflicts were 'usually on the grounds of race or religion', and although each situation had its own history, a pattern emerges from a number of cases. A national government:
- denies the existence of the separate identity of a minority;
 - refuses to allow the teaching of a minority language;
 - denies the right of assembly or an ethnic press;
 - imposes restrictions on entry into tertiary institutions and public sector employment;
 - restricts or prohibits acquisition of land;
 - restricts or prohibits religious practices, and
 - treats any protest as subversion.⁷
- 7.14 It is significant that among these measures, repressive governments always move against the religious practices of minorities.

A case study

- 7.15 The ATC used the situation of Buddhism in Tibet to set out the implications for other human rights as a result of a lack of religious freedom.
- 7.16 Buddhism is not only a religion in Tibet, it was also stated to be a system of beliefs and actions defining everyday life for Tibetans. In many ways, it is seen to be synonymous with the identity of these people. Religious

7 Joint Standing Committee on Foreign Affairs, Defence and Trade, **A Review of Australia's Efforts to Promote and Protect Human Rights**, November 1994, p. 212.

belief is also attached to many traditional rituals and customs of the Tibetan population, its holidays, ceremonies, art and literature.⁸

- 7.17 The ATC saw the repression of Buddhism as a violation of the cultural and social rights of Tibetans, including the rights to education, to work and to take part in cultural life. All these rights are protected by the ICESCR, signed by the PRC in October 1997.
- 7.18 As many of Tibet's mountains and lakes are regarded as sacred spiritual sites, development activities have had environmental, cultural and religious consequences.
- 7.19 While some traditional religious practices and public manifestations of belief are permitted, those viewed as vehicles for political dissent are not tolerated and are promptly and forcibly suppressed. Such violations of the right to freedom of religion and belief have strong and direct implications for the civil and political rights of Tibetans.
- 7.20 The ATC's submission drew attention to various acts of religious repression in Tibet, including:
- patriotic re-education campaigns;
 - expulsions from monasteries of nuns and monks who refuse to renounce independence, or the Dalai Lama;
 - secular control of monasteries;
 - official limits on numbers of monks and nuns in monasteries, and
 - detention and torture of Buddhist activists.
- 7.21 Such actions clearly violate a number of other rights, such as the rights to freedom of expression, to be free from arbitrary arrest and to be free from torture.
- 7.22 Both the Dalai Lama and the Panchen Lama have traditionally played secular as well as religious roles in Tibet, and are considered as both spiritual and secular leaders by a majority of Tibetans. Prohibiting support for such leaders, in the ATC's view, represents a violation of the political rights of the Tibetan people. However, the Dalai Lama is on the public record as declaring that, if he were to return to Tibet, he would expect only to pursue a religious and not a political life.

8 Unless specified otherwise, material in this Section was drawn from Submissions, pp. 560-561. See paragraphs 5.84-5.93 for consideration of the situation in Tibet.

Another perspective

- 7.23 In their submission, Ms Anita Chauvin and others cited a World Health Organisation Bridge for Peace project that argued that 'genocide by attrition' occurs when a group is stripped of its human rights. This leads to deprivation of conditions essential to the maintenance of health.⁹
- 7.24 This submission argued that the attitudes that underpin the abuse of the right to freedom of thought, belief, conscience and religious expression 'are the same that generate a disregard for the range of rights set out in the UDHR. If a group or individual thinks it acceptable to deny another person's freedom to express their beliefs and carry out their religious practices, whatever the motivation, the aggressor then has no compunction about imposing their will on others.
- 7.25 Abuse of Article 18 was seen as the wedge that breaks open the individual or the community to the abuse of all other freedoms, because this removes the basis of resilience, endurance and the development of strategies to solve problems. Freedom of thought, belief and conscience, and the freedom to express these beliefs, allows a range of skills and other protective factors to develop.
- 7.26 Removing these protective factors, particularly in the face of trauma or other increased risk factors, lays the groundwork for the establishment of a cycle of violence. In turn, this sets up conditions for the deterioration of society: crime, self-harming behaviour and a range of other practices that have risks attached.
- 7.27 Where a minority culture exists with a dominant and different one, every effort needs to be made to preserve the minority group. It is, therefore, necessary to look at hidden repression in the world, whether it be action alleged by the Chinese against the Tibetans or other ethnic minorities under their control, or Australia in its dealings with its own Indigenous people.
- 7.28 The submission referred to a more insidious phase undertaken by the Chinese Government, to 'reinvent' Tibetan Buddhism. This is for display purposes, for tourists or 'cultural tours', where people are seen with prayer wheels and prostrating themselves in front of temples, creating the impression that Buddhism can be practised without restrictions in Tibet. The TIO commented that such measures are only allowed to implement a deeper ban on religious activity in the country. Thus, at the same time, China refuses permission for traditional texts to be taught and imprisons

9 Unless specified otherwise, material in this Section was drawn from Submissions, pp. 345-348 (*passim*).

those trying to maintain traditional Tibetan Buddhism, such as by the celebration of traditional festivals.¹⁰

- 7.29 Once such a process has taken place, this submission concluded, the inhabitants can only become acceptable by denying their heritage, beliefs, their entire source of meaning and the things that gave them pride and a sense of community. Denial of the freedom to choose the guidance under which beliefs are practised undoes the basis of a society.

Religious differences

- 7.30 All faiths are marked out, and can be differentiated from others, by their beliefs. Minority religious groups within a nation can find themselves in a very difficult position, even in a society as nominally 'tolerant' as Australia. This is especially so for those with beliefs and practices that can be seen as 'strange'. The consequences for the exercise of freedom of religion and belief can be serious.
- 7.31 At the most basic level, concerns about the intrusive effects of the call to prayer could lead to local opposition to the siting of a Muslim complex. Such action could result in difficulties with building approvals for planned facilities at the local level.¹¹
- 7.32 Some minority groups have strong views on a range of subjects, sufficient to differentiate them clearly from the rest of society.

Three other cases

- 7.33 Jehovah's Witnesses believe that religious intolerance is increasing around the world, by both secular authorities and religious groups. In this inquiry, they drew attention to a range of matters that are central to their beliefs, including:¹²
- blood transfusions and worship;
 - blood transfusions and religious freedom;
 - parental authority and the choice of medical treatment for minors;
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10 Transcript, TIO, 24 September 1999, p. 36.

11 Submissions, pp. 331-332. See also Submissions, p. 645, for some detail on the difficulties of building a Hindu Tamil temple in Sydney in the 1990s.

12 Transcript, Jehovah's Witnesses, 15 October 1999, p. 124.

- adoption of children, and
- a range of civic obligations, such as voting in elections, the pledge of allegiance in the USA, and the bearing of arms.

7.34 While the ECAJ noted Australia's outstanding record in the preservation and promotion of freedom of religion and belief, it drew attention to the following conflicts between:¹³

- religious requirements and employment:
- discrimination in the workplace;¹⁴
- prayers on civic occasions;
- the gazettal of public holidays;
- elections are held on Saturdays, the dedicated day of worship for some faiths;
- scheduling of classes and examinations and school activities generally;
- religious teaching at schools;
- recognition of religious requirements for circumcision;
- slaughtering of animals for food;
- post-mortem examinations and Family Law, and
- blasphemy.

7.35 The submission from the Christian Science Federal Representative in Australia noted and appreciated the measure of Constitutional protection for the establishment and practice of religion in Australia. It noted that Tasmania is the only State/Territory to provide for religious freedom in its Constitution, 'if of somewhat limited scope.' Some States have also enacted legislation prohibiting discrimination on religious grounds. Christian Science recognised that there have been no major issues for its community, nor has there been anything to prevent the establishment of congregations in Australia.¹⁵

7.36 This submission specifically addressed, however, the need for governments in Australia to have a fuller understanding of the needs of the Christian Science community, and to ensure protection for its religious freedom. There are areas of concern that present some limitations on the

13 Submissions, pp. 652-653.

14 Transcript, ECAJ, 15 October 1999, p. 97.

15 Submissions, p. 449.

full and free practice of religion for those who choose to rely on the practice of Christian Science for healing through prayer alone.¹⁶

The right not to believe

- 7.37 In Chapter 2, mention was made of the fact that several of the UN's international instruments failed to include any reference to the right not to believe. Further, this was seen as discrimination against those with non-religious beliefs. It was also suggested that freedom of belief included the right not to have religious beliefs.¹⁷
- 7.38 In his Report on his 1997 visit, the UN's Special Rapporteur on Religious Intolerance drew attention to the absence of belief in Australia. He noted that censuses in 1988 and 1991 had revealed that 12.9 per cent of the population described themselves as 'non-believers'. This phenomenon related primarily to the majority Christian religions, and he noted that this group was apparently larger in size than shown by the censuses: 'The majority of citizens do not practice their religion, but, the main factor that has contributed to the increase is indifference as religious feeling becomes less strong.'¹⁸
- 7.39 The Humanist Society of Queensland Inc noted that the use of the term 'violations of religious freedom' in the Terms of Reference for this inquiry seemed to presume that it was important to give more freedoms to religions.¹⁹
- 7.40 The Humanist Society drew attention to the unequal treatment accorded to religious beliefs and to the secular alternatives to those beliefs. It noted that awkward language would be avoided if words such as 'religion and/or belief' were simply replaced by word 'belief'. As all religions are forms of belief and would be included in such a definition, this seemed to be a logical change to make. The Society believed that Australia should agitate for the adoption of such a usage in all international documents.²⁰
- 7.41 The Society suggested that some aspects of the UN's instruments were unsatisfactory because they were the results of compromises with governments that had vested interests in preserving religious hegemonies.

16 Submissions, pp. 448, 449.

17 See paragraphs 2.14-2.18 and 2.77-2.78.

18 Exhibit No 55, paragraph 34.

19 Submissions, p. 965.

20 Submissions, p. 953, 125.

It believed that these instruments gave enormous power to religions, to the point where they may negate the rights of ‘non-religionists’, or even contradict basic rights guaranteed in other documents.²¹

- 7.42 While the Society saw Article 8 of the Religion Declaration as providing a ‘blanket exception clause’, those supporting religions did not take notice of it:

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.²²

- 7.43 The Society had two particular concerns. The first was about the provisions of Article 5 of this Declaration, believing that it gave parents unfettered rights to impose their religious views on their children. Although this Article did not explicitly provide that children shall be inculcated with the religion of parental choice, the Society suggested that in practice this would be the result. In its view, this was perhaps ‘the greatest blemish’ in current religious rights documents, and it stated that there was no understanding of how this provision detracted from the human rights of children.²³
- 7.44 The second concern of the Society was that UN documents had failed to define ‘religion’, and suggested that there should be a common declaration covering freedom of belief in the widest sense. There was also a need to remove the existing disadvantages experienced by those with non-religious beliefs.²⁴
- 7.45 Both the Victorian and Queensland Humanist Societies recommended that educational programs should be designed to include the study of comparative religions, the major traditions of belief in the world, including Indigenous religious traditions.²⁵
- 7.46 The Rationalist Society of NSW Inc urged that Australia should honour its secular Constitution. It referred to what it saw as ‘religious indoctrination of a broadly Christian nature’ in schools and other State institutions, while blasphemy laws and censorship existed largely to defend Christianity and its taboos.²⁶

21 Submissions, pp. 955, 961-962.

22 Submissions, p. 962.

23 Submissions, pp. 962, 966.

24 Submissions, pp. 965-966.

25 Submissions, pp. 128, 177.

26 Submissions, pp. 66, 128, 178. See also paragraph 2.18.

- 7.47 Mr Brian Hurlock drew attention to the need for those who believe in a religion to respect the equal right of others to have different beliefs, to convert from one religion to another, and the equal right not to have religious beliefs.²⁷
- 7.48 Dr Max Wallace noted that Article 1 of the Religion Declaration did not include any guarantee for freedom from religious belief. He suggested that discrimination against non-belief was ‘a property’ of this Declaration, but noted that the Australian Constitution gave equal weight to both belief and non-belief. Views on the implications of the provisions in the Constitution are explored in Chapter 4.²⁸
- 7.49 In its submission to this inquiry, HREOC recommended that a Religious Freedom Act should be enacted in Australia. It stated that such an Act should include a provision for freedom not to hold a particular religion or belief. This proposal was also supported by the Humanist Societies of Victoria and Queensland.²⁹
- 7.50 In its Report, **Article 18: Freedom of religion and belief**, HREOC also recommended that in the proposed Act:
- ‘religion and belief’ should be given a wide meaning, covering the broad spectrum of personal convictions and matters of conscience. It should include theistic, non-theistic and atheistic beliefs.³⁰

27 Submissions, pp. 235-236.

28 Submissions, pp. 367-368.

29 Submissions, pp. 575, 126, 178. See Exhibit No 17, R2.3, p. 26. The issue of a Religious Freedom Act for Australia is addressed in Chapter 8.

30 Exhibit No 17, R2.5, p. 27. See paragraph 2.7.