

Annex

Follow-up of the missions to Australia and Germany

1. Since 1996, the Special Rapporteur has defined and implemented a visit follow-up procedure. This procedure consists in asking States which have received an in situ visit to send their comments and any information on action taken or envisaged by the authorities concerned to implement the recommendations made in the mission reports. It takes the form of "follow-up tables" which are sent to States and refer to the Special Rapporteur's recommendations.

2. Paragraph 21 of this document contains the list of reports submitted since 1996 to the General Assembly and to the Commission on Human Rights, in which follow-up tables and the replies of States appear.

3. On 28 September 1998 a follow-up table was sent to the Australian Government: it reproduced the text of paragraphs 114 to 127 of the report on the visit to Australia (E/CN.4/1998/6/Add.1). On the same day, a follow-up table was sent to the German Government: it reproduced the text of paragraphs 89 to 91, 96 to 98, 101 to 103 and 105 and 106 of the report on the visit to Germany (E/CN.4/1998/6/Add.2).

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tradition of tolerance which, notwithstanding certain vicissitudes, is no less real. It is within, and thanks to, this overall framework that freedom of religion and freedom of belief can and do express themselves.

87. Where religious minorities are concerned, the Jewish community is generally satisfied with its situation and sometimes goes so far as to describe it as privileged in comparison with that in other democratic countries.

88. The Jewish community is able to flourish as a religious minority and enjoys very active political, institutional and financial support from the State. Not only have the German authorities adopted and implemented an immigration policy that is favourable to the arrival of Jews from the former USSR, to ensure the continued existence of the Jewish communities in Germany, but they also keep a very close watch on any manifestations of hostility towards the Jewish community.

89. The situation of the Muslim minority is markedly less favourable, although on the whole it is not unsatisfactory. Many Muslims in Germany are concerned about a number of issues and problems.

90. The first issue is granting of the status of legal person in public law which Muslims have applied for but not yet obtained. Admittedly, the fact that they do not enjoy this status in no way means that Muslims are denied the constitutional guarantees applicable to religion. However, this status makes it possible to institutionalize a form of cooperation with the State with the common aim of dealing with the same group of people. In conformity with article 140 of the Constitution and with German case law, the Muslim community satisfies the criteria regarding its statute, the size of its membership, the guarantee of permanence and respect for the legal order of the State. In view of the pragmatic approach to this issue shown by German officials during the Special Rapporteur's visit, and as it is not possible to treat Islam in the same way as a Christian Church or for it to be represented by an authority, the Special Rapporteur believes that it would be useful to hold broad consultations with Muslim organizations with a view to granting the status of legal person in public law to those that agree to cooperate with the State. This would create a momentum vis-à-vis the other organizations and it would be spelled out that a distinction between a legal person in public law and community with the status and advantages of a legal person in public law might usefully be envisaged. Practical, pragmatic, and hence operational solutions cannot be excluded unless they have been actively sought, tried out or desired.

91. In view of the wish to introduce the teaching of Islam into State schools in order to provide genuine religious instruction free from indoctrination and regimentation, granting public status, or at least its equivalent, would be extremely useful. This legal status, together with the rights and advantages associated with it (which include public funding), would enable the Muslim minority to enjoy greater independence from foreign influence. It would offer a better guarantee that the teaching of Islam would convey values of tolerance and openness towards religious diversity and would ultimately ensure better integration of Muslims within German society, thereby halting any drift towards exclusion or isolation. This necessary integration

of Muslims, as distinct from assimilation, would be an essential tool in resolving difficulties, such as the occasional opposition between part of the population and Muslims over plans to build mosques and other Muslim religious activities. Nevertheless, the image of Muslims among broad fringes of German public opinion is often negative. This is often attributable to a certain sector of the popular press which seeks sensationalism at any price and often, and almost implicitly, assimilates Muslims with extremists or even terrorists. This injustice towards Muslims tends to make problems more complex. The authorities are responsible for protecting the Muslim minority, for helping to combat this iniquitous portrayal of Muslims and for tackling the manifestations of hatred or intolerance towards them that occasionally marked the early years of this decade. Efforts to combat the ignorance propagated by a certain sector of the popular press and to strengthen education in tolerance could constitute priorities in this sphere.

92. As to other groups and communities in the field of religion and belief and the Church of Scientology, the Special Rapporteur wishes first of all to recall the relevant international law and jurisprudence.

93. In its general comment 22 of 20 July 1993 concerning article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that the right to freedom of thought, conscience and religion is far-reaching and profound. It observed that freedom of thought and freedom of conscience were protected equally with the freedom of religion and belief. The fundamental character of those freedoms was also reflected in the fact that the provision could not be derogated from, even in time of public emergency, as stated in article 4, paragraph 2, of the Covenant. The Committee also emphasized that restrictions on the freedom to manifest religion or belief were permitted only if limitations were prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and that they must not be applied in a manner that would vitiate freedom of thought, conscience and religion. The Committee also considered that the "limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner". The Special Rapporteur also wishes to point out that international law provides no legal definition of the concept of religion and that the international human rights instruments make no reference to the concepts of sects or psycho-groups.

94. Against the background of a highly emotional international debate on sects or new religious movements, a debate which is not without interest for all the parties concerned, there is, as the Jehovah's Witnesses and the Mormons have observed, total confusion in which all groups and communities in the field of religion and belief are generally considered to be dangerous and using religion for other ends, whether financial or criminal. This confusion generates a climate of suspicion or even manifest or latent intolerance within society. In this regard, numerous representatives of groups and communities emphasized that the use of the terms "persecution", "official State policy of discrimination", "religious apartheid" and any comparison or parallel with Nazism to describe the situation in Germany in the field of religion and belief was "shocking", "inappropriate", "false", "unworthy" and "highly

reprehensible". In this connection there is no need to emphasize that any comparison between modern Germany and Nazi Germany is so shocking as to be meaningless and puerile.

95. According to the representatives of the groups and communities, with the exception of those of the Church of Scientology, there is, strictly speaking, no obstacle to the exercise of their activities. What they face can be described rather as a climate of suspicion, or latent intolerance, responsibility for which, in their view, lies with the major Churches, which are anxious to preserve their dominant religious status and stem the loss of members to other groups and communities in the field of religion and belief. The major Churches allegedly use their influence with the State for this purpose through its political and administrative institutions, and in particular through public information campaigns on sects, assistance for victims of sects and the Bundestag's Study Commission. This climate is allegedly maintained by the popular press and sometimes reflected among low-ranking civil servants. However, according to these same representatives, by satisfying the demands of the major Churches in the areas referred to above, the State is violating the principle of neutrality. In the view of the Church of Scientology, in addition to the measures described the German State practises a policy of discrimination against it, notably by denying its religious nature and thus refusing to grant it the rights and advantages linked to that status, such as tax exemption, and by applying discriminatory measures such as placing it under surveillance, public information campaigns on Scientology and measures to exclude it from society.

96. On the question of competition between the major Churches and other groups and communities in the sphere of religion or belief, the Special Rapporteur believes there is a need for an ongoing dialogue to avoid maintaining a climate of mistrust or even intolerance within society.

97. In this respect, it is worth mentioning that information should be expanded and diversified. It is only normal for the State to make available to the public information which is objective and as comprehensive as possible, so as to guard it against anything that might undermine its freedom of choice or expose it to unnecessary risks, on the understanding that the right to employ legal means must be preserved and guaranteed to all, particularly those who believe that their interests have been harmed by unsubstantiated or incorrect information.

98. Conducting public information and education campaigns untouched by any form of ideological or partisan indoctrination is one of the proper functions of any contemporary State. The State's obligation to remain neutral applies to the content of the information, which should not be discriminatory, defamatory or slanderous. As has been pointed out in Part II. C, the State's legitimate role in informing and educating citizens has to be performed within precise limits (principles of necessity, fair balance, equity, and value judgements based on facts that have been properly and fairly assessed) and in conformity with the law. In any event, remedies must remain available to individuals and groups wishing to dispute the content of official information and, where necessary, oppose its dissemination.

99. On the question of the granting of the status of legal person in public law, the Special Rapporteur found that many representatives of non-governmental organizations with whom he spoke were confused and associate such status with recognition of religious status. However, in conformity with German legislation and legal precedent, granting of the status of legal person in public law does not depend on the religious nature of the organization concerned but on whether it is in the public interest. For this reason, the Jehovah's Witnesses are recognized as a religious community by the authorities, who have not in fact granted them the status of legal person in public law. Similarly, although the Mormons have been granted this legal status, they are nonetheless listed in a brochure on sects published by the State. What is indisputable is that freedom of religion and belief may not as such be challenged.

100. Where tax exemptions granted by the State to legal persons in public law are concerned, the Special Rapporteur wishes to point out that these privileges do not extend to their industrial or commercial activities. For this reason, a religious community recognized as being in the public interest has to keep its commercial activities separate from its non-commercial activities. In other words, the fact that an organization is religious in character and has been recognized as being in the public interest does not automatically mean that all its activities are exempt from taxation.

101. Generally speaking, and in conformity with international law, State intervention in the field of religion and belief cannot involve taking responsibility for people's conscience and promoting, imposing or censoring a particular faith or belief. And no group or community may arrogate to itself responsibility for the conscience of individuals. The State is, however, responsible for ensuring observance of the law, and in particular of criminal legislation relating to the preservation of public order, embezzlement, breach of trust, assault and battery, failure to assist a person in danger, indecent behaviour, procuring, unlawfully practising medicine, kidnapping and abduction of minors, etc. In other words, the State possesses a sufficiently broad range of legal instruments to combat the various guises adopted by groups and communities cloaking themselves under religion, and to deal with any misunderstandings that arise in respect of groups and communities involved in matters of religion and belief. The various legal instruments must be rigorously enforced, particularly in the social and tax spheres, in a substantiated and non-discriminatory manner. Likewise, any community or group that considers that its rights and freedoms have been undermined by the State must avail itself of legal procedures, i.e. the courts. In both situations, it is of vital importance, when conflicts arise, for the State and communities and groups in the field of religion and belief to put themselves in the hands of the judicial system, which decides on the facts, rather than to court the passions of the masses or to act on the spur of the moment. These principles of behaviour must be unequivocally observed and applied, so that persons are properly informed and shielded from confusion, suspicion and intolerance. It is equally necessary for everyone to be aware and duly informed of the nature of any measures taken by the Government in the field of religion and belief, of their mandate and their objectives. The purpose, ultimate goal and function of the Bundestag Study Commission should be further clarified. It should also be emphasized that the Commission is not a court of law responsible for conducting trials. Similarly, where surveillance of the

Church of Scientology is concerned, it must be clearly and precisely recalled that the measures involved are for the purpose of observation and in no way prejudice the organization's nature and activities, in respect of which the evidence gathered by the authorities will be confirmed or invalidated or still under examination at the end of the observation period. The measures will in no way prejudice or replace the decisions taken by the courts. In any event, the law must be enforced and enable conflicts to be resolved.

102. The Special Rapporteur also believes that the State, beyond day-to-day management, must implement a strategy to prevent intolerance in the field of religion and belief. He believes that sustained efforts are required to promote and develop a culture of tolerance and human rights. The State must play an active role in developing awareness of the values of tolerance and non-discrimination in the field of religion and belief. Lasting progress may be achieved, mainly through education and above all the school, by ensuring that a human rights culture is imparted by school curricula and textbooks and by properly trained teachers. This educational strategy must not only propagate a culture of tolerance among the population, by inculcating values underpinned by human rights, but also develop awareness and reasoned and reasonable vigilance towards any form of abuse or threat in the field of religion and belief. There is a fundamental and immediate need for analysis and education to prepare young people to deal with questions of identity, religion and belief and to provide them with points of reference, models and reasons for living, so as to prevent them from falling victim to manipulation, extremism and fanaticism and to enable them freely to assume full responsibility for their lives. In this context, the Special Rapporteur also calls for an examination and analysis of the human condition today, which is frequently characterized by standardization, anonymity, depersonalization or even a vacuum, which religions, whose very nature makes them vehicles for human rights, have not always managed to fill. This phenomenon needs to be studied in order to identify its origins and possible remedies; this requires the involvement of all protagonists in the social, political and religious fields.

103. The Special Rapporteur also recommends a campaign to develop awareness among the media, and in particular the popular press, which all too often portrays matters relating to religion and belief in a grotesque, not to say totally distorted and harmful light. The recommendations made by the Special Rapporteur under the programme of advisory services (E/CN.4/1995/91, p. 147) should therefore be implemented, in particular training workshops for media representatives to develop their awareness of the need to publish information that respects the principles of tolerance and non-discrimination. These measures would also make it possible to educate and shape public opinion in accordance with these principles.

104. The views of Mr. Habib Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding the advisability of introducing legislation which makes punishable any writings or statements fomenting hatred, particularly in the press, would also be extremely valuable.

105. The Special Rapporteur reiterates his recommendation (E/CN.4/1997/91, para. 103) regarding the organization of a high-level intergovernmental meeting to consider and arrive at a collective approach to sects and religions that respects human rights.

106. Finally, the Special Rapporteur again draws attention to the need to shield questions of religion and belief from the tension and clashes of interests, in particular political and economic interests, that exist in the international sphere so that the freedoms of religion and belief may be exercised with the serenity proper to them and not diverted from their purpose, for the benefit of every faith, of citizens and of society as a whole, and also of human rights.

Note

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Article 136

(I) Civil and civic rights and duties shall be neither dependent on, nor restricted by, the exercise of freedom of religion.

(II) The enjoyment of civil and civic rights and eligibility for public office shall be independent of religious faith.

(III) No one shall be required to disclose his religious belief. The authorities shall not have the right to inquire into a person's membership of a Church or cult except to the extent that a statistical survey ordered by law makes it necessary.

(IV) No one may be compelled to perform any religious act or ceremony or to participate in religious exercises or to use a religious form of oath.

Article 137

(I) There shall be no State Church.

(II) Freedom of association to form Churches or cults shall be guaranteed. The union of Churches or cults within the territory of the Reich shall not be subject to any restriction.

(III) Every Church or cult shall regulate and administer its affairs independently, within the limits of the law applicable to all. It shall confer its offices without the participation of the State or the communes.

(IV) Churches or cults shall acquire legal capacity according to the general provisions of civil law.

(V) Churches or cults shall remain corporate bodies in public law if they have been previously. The other Churches or cults shall be granted the same rights upon application if their statute and the number of

their members offer an assurance of their permanence. If several such Churches or cults in public law unite in one organization, that organization shall also be a corporate body in public law.

(VI) Churches or cults that are corporate bodies in public law shall be entitled to levy taxes in accordance with Land law, on the basis of the civil taxation lists.

(VII) Associations whose purpose is the joint cultivation of a philosophical ideology shall have the same status as Churches or cults.

(VIII) Such further regulations as may be required for the implementation of these provisions shall be the responsibility of Land legislation.

Article 138

(I) State contributions to Churches or cults, based on law, contract or special legal title, shall be redeemed by means of a Land regulation. The principles for such redemption shall be established by the Reich.

(II) The right to own property and other rights of Churches and cults, and also religious associations, in respect of their institutions, foundations and other assets destined for purposes of worship, education or charity are guaranteed.

Article 139

Sundays and legal holidays continue to be guaranteed by the law as days of rest and spiritual contemplation.

Article 141

To the extent that there is a need for religious services and spiritual care in the army, hospitals, prisons and other public institutions, the Churches and cults shall be permitted to perform religious acts, which shall be free from all constraint.

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