Patricia DUVAL
Avocat à la Cour
6 avenue du Coq
75009 Paris
Tel : 06 32 95 72 19
Fax : 01 55 50 21 22
E-mail : duval.patricia@gmail.com

April 14, 2016

Committee on Law, Constitution and Justice
Parliament of Israel
Kiryat Ben Gurion
Jeruselem, Israel 9195016

Re: Draft Law "For the Handling of Harmful Cults"

Dear Committee Members,

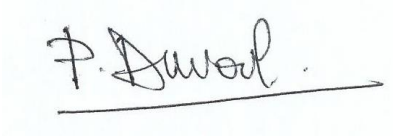
I am an attorney in Paris, France who specializes in international human rights law, in particular the right to religious freedom as guaranteed by international human rights instruments. As such, I have analysed draft legislation regarding religious matters in many countries to ensure that the legislation complies with religious freedom principles guaranteed by domestic and international human rights law

I am writing to you regarding the Draft Law "For the Handling of Harmful Cults", which has been introduced in the Knesset and will be examined by the Committee in the near future.

I respectfully submit for your consideration and attention a legal analysis of this Draft Law under both Israeli constitutional standards and International human rights norms that the State of Israel has committed to, as well as an executive summary for your convenience.

For the reasons detailed in the enclosed analysis, the Draft Law should be rejected as it violates fundamental human rights standards.

Respectfully Yours,



Patricia Duval

cc. Legal Advisor of the Knesset
Legal Advisor of the Israeli Government
Knesset Information Centre
OSCE Advisory Panel of Experts on Freedom of Religion or Belief
UN Special Rapporteur on Freedom of Religion or Belief

LAW PROPOSAL FOR THE HANDLING OF HARMFUL CULTS – 2015

EXECUTIVE SUMMARY

The Law Proposal for the Handling of Harmful Cults (Draft Law), submitted to the Knesset Committee on Law, Constitution and Justice gives a definition of "harmful cults" and provides six articles of law designed to fight against groups deemed to fall within the ambit of the definition. The Draft Law would seriously impair the rights of members of religious communities, not only minorities but also traditional religions. It cannot be countenanced in light of Israeli Basic law and principles, and international human rights standards committed to by Israel.

It would also create serious problems for the application of Israeli criminal law, in particular by sanctioning the concept of "mind control" which would allow individuals to escape personal criminal liability.

No Need for a New Law

There is no need for the Draft Law to be enacted. Abuses by "harmful cults" have been punished by Israeli Courts in the past and existing law has proven sufficient to repress harmful activities.

Under recent developments and media coverage, the issue of the Lev Tahor community and its children has been used in an attempt to have the Legislature circumvent Israeli Courts' jurisprudence. However, the Law on Legal Capacity and Guardianship as well as the Youth Law (Treatment and Supervision) currently provide for the adoption of draconian measures to protect children in danger.

The actual purpose of the Draft Law has nothing to do with children's well-being. It has everything to do with: 1) the possibility of circumventing the consent of followers to be in groups deemed to be "cults" by invalidating their consent by reliance on the discredited mind control theory; and 2) getting rid of these undesired minorities by creating a presumption of guilt in order to convict their leaders without any evidence of crimes, confiscate their properties, and declare their followers legally incompetent so they may be "treated".

Articles 2 and 3 of the Draft Law, which provide for the conviction of group managers to ten years imprisonment and the confiscation of properties, are strikingly similar to the existing provisions of the law on criminal organizations, which applies when real crimes are demonstrated. The proposed legal provisions are therefore unnecessary to repress actual criminal activities.

Additionally a draft Bill introduced in the Knesset provides for sanctions against ministers or self-proclaimed spiritual leaders who abuse their followers' faith to have sexual relations with them. These provisions should be fully sufficient to respond to the on-going concerns in Israel about sexual exploitation of adult women by so-called "cult leaders".

I. Mind Control or Undue Influence

The Draft Law defines a "harmful cult" as a group organized to exert mind control or undue influence over its followers, "acting in an organized, systematic and ongoing fashion while committing felonies". These general terms imply that the criminal activity is inherent to the usual activities of the group and no actual crime or offense is identified or evidenced; the criminal activity of the "harmful cult" is primarily the sort of mind control exerted over individuals.

Undue influence is described as the exploitation of a "relationship of dependence" or "authority" using "methods of control over thought processes" over the group members. However, dependence on a moral or spiritual authority is inherent in any Church affiliation and control over thought processes can be said of any religious guidance. This definition could be applied to any religion, especially those practices considered as very demanding and constraining, such as ultra-Orthodox faiths like Haredi Jews and others.

The theory of "mind control" applied to religious communities has been rejected by Courts and human rights institutions worldwide.

U.S. Courts: A review of U.S. jurisprudence shows that this theory, which was originated and defended by psychologist Margaret Singer, cited as the expert reference in both the 1987 Tassa-Glazer Report and the 2011 Ministry of Welfare and Social Services Report on cults, was rejected as not scientifically established and unreliable to the point where Singer was rejected as an expert in cases involving groups claimed to be "cults".

Israeli Courts: Israeli Courts rejected this theory in several cases, including the 2014 Supreme Court ruling against the followers of Elior Chen, where it found that the theory of brainwashing was inapplicable and that "extending the limits of the insanity plea to include 'cult victims' might hinder the efficiency of Criminal Law".

The European Court of Human Rights: In a 2010 landmark decision *Jehovah's Witnesses of Moscow v. Russia* the Court found that "there is no generally accepted and scientific definition of what constitutes 'mind control'" and that "it is a common feature of many religions that they determine doctrinal standards of behaviour by which their followers must abide in their private lives".

International Human Rights Instruments: The vague concepts characterizing mind control in the Draft Law contravene Article 15 of the International Covenant on Civil and Political Rights ("Covenant"), which mandates that any actions subject to criminal charges must be defined in terms that are sufficiently clear, specific and foreseeable for citizens to know beforehand what actions or omissions would involve their responsibility and to preclude arbitrary prosecution.

The French Experience: France adopted a law with a similar concept of "psychological subjection" in 2001, in the Law for the Repression of Cultic Movements. Its provisions have been condemned as vague and discriminatory by the Council of Europe and the United Nations.

The Law has rarely been applied, Judges deeming it "difficult to establish the proof of a notion which remains vague and, at the least, far from legal concepts".

II. Difference Between Cults and Religions

The Explanatory Remarks in the Draft Law provide that the definition of "harmful cults" will allow "distinguishing between legitimate cults with religious characteristics and cults".

Classifying what communities should be considered true religions and what communities should not is discriminatory and has been explicitly condemned by the United Nations, the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe. It also infringes the principles enshrined in the Declaration of Establishment of the State of Israel.

The United Nations: The UN Human Rights Committee found that under Article 18 of the Covenant, the term "religion" is to be broadly construed and is not limited in its application to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. (General Comment 22)

The successive UN Special Rapporteurs for Freedom of Religion or Belief found that there is no "acceptable distinction" between sects or cults and religions and that apart from the legal courses available against harmful activities, "it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction".

As concerns children of followers of religious minorities, the current Special Rapporteur stated that "empirical diligence is needed, inter alia, to avoid stereotypical ascriptions, possibly based on rumours, overgeneralizations or merely abstract, possibly far-fetched fears."

The OSCE and the Council of Europe: As an OSCE Partner, for Co-operation, Israel is committed to OSCE human rights standards, in particular the "Guidelines for Review of Legislation Pertaining to Religion or Belief" which were drafted by the OSCE Panel of Religious Experts together with the Council of Europe's Advisory Body on constitutional matters, the Venice Commission.

These Guidelines provide that "terms such as 'sect' and 'cult' are frequently employed in a pejorative rather than analytic way" and "to the extent that legislation includes definitions, the text should be reviewed carefully to ensure that they are not discriminatory and that they do not prejudge some religions or fundamental beliefs at the expense of others."

Condemnation of the French Anti-Cult Policy: Classification of cults resulted in the blacklisting of 173 minority communities as "sects" in a 1996 French Parliamentary Commission report. In her 2005 report on France, the UN Special Rapporteur for Religious Freedom found that the list had "negatively affected the right to freedom of religion or belief " and urged French "judicial and conflict resolution mechanisms to no longer refer to" the list.

The French policy on "cults" has also recently been condemned by the Parliamentary Assembly of the Council of Europe through the rejection of a proposed resolution recommending that the Member States adopt legislation on "psychological subjection" (mind control) similar to the French Law and now the Israeli Draft Law. Instead, the Parliamentary Assembly called on member States "to ensure that no discrimination is allowed on the basis of whether a movement is considered a sect or not", "when it comes to the application of civil and criminal law".

The French system has also been condemned internally in France by Judges and Prosecutors who have refused to solicit MIVILUDES in their cases, a government body which collects information on so-called "cultic" groups, "invoking secrecy of criminal investigations and the existing link between MIVILUDES, an agency placed directly under the Prime Minister and the Executive Power".

III. Violation of the Principle of Independence of the Judiciary

Similarly, the Draft Law provides for the formation of a data base on "harmful cults" by the Ministry of Welfare and Social Services (Article 4) including information on their heads and executives, so as to allow their conviction (Article 2).

Under *Israel Basic Law on the Judiciary*, judges are not supposed to receive any directions from the Executive on who should be considered a member of a "harmful cult" and should be prosecuted or convicted. These provisions also violate international instruments binding on Israel: 1) *Article 14 of the Covenant*, which guarantees the right to an independent and impartial tribunal; 2) the *UN Basic Principles on the Integrity of the Judiciary* which provide that Judges must be free from undue influence by the executive and legislative branches; and 3) the UN *Guidelines on the Role of Prosecutors*, which provide that Prosecutors must carry out their functions impartially and avoid any religious discrimination.

IV. Violation of the Right to Presumption of Innocence

Article 2 of the Draft Law provides for the conviction of individuals to a 10-year jail term for the mere fact of heading a group which has been labeled by the Executive as a "harmful cult". **No criminal actions have to be established and no violation of criminal law has to be characterized**. This violates the principles of presumption of innocence and personal accountability for precise criminal acts and charges under the Covenant.

Article 14, as interpreted by the UN Human Rights Committee in General Comment 32, "imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt", and requires that defendants should not be "presented to the court in a manner indicating that they may be dangerous criminals".

Contrary to these provisions, the Draft Law establishes an **irrefutable presumption of guilt**, and allows for systematic convictions of the heads of "harmful cults" without a proper trial.

V. Guardianship and Treatment

The Draft Law also provides that members of "harmful cults" can be put under guardianship and treatment. Considering religious communities' members as incompetent due to their religious affiliation violates their right to freedom of religion in contravention of Israeli basic principles and international human rights standards. It also denies believers accountability for their actions, in spite of the Israeli Supreme Court's ruling to the contrary in the case of the followers of Elior Chen. This provision would open the door to evasion of criminal liability and would seriously hinder the repression of crimes.

The Draft Law also lays out the creation of an infrastructure which would provide "mental care" to "harmful cults" members. The treatment would be "exit counselling" provided to followers by a mental care unit granted with "intervention methods in this area".

As detailed in the 2011 Report, these methods make use of "rehabilitated" former members to persuade the follower to leave his community. The Report refers to Rick Ross, an American deprogrammer who claimed to have intervened in hundreds of deprogramming cases but had to stop after a multimillion-dollar judgment for the injuries caused to a minority faith follower by "the oppressiveness of [his] actions" and the "incapability of appreciating the maliciousness of [his] conduct".

The Draft Law provisions on "treatment" would allow a "re-set" of condemned deprogramming practices of Ross under the label "exit counselling". Coercion of followers of religious communities to recant their faith by demeaning their religious beliefs under pressure is harmful, violates their right to freedom of religion or belief and is specifically prohibited under Article 18.2 of the Covenant.

Conclusion

The Draft Law does not comply with basic legal standards under Israeli and international human rights law and should be rejected.

LAW PROPOSAL FOR THE HANDLING OF HARMFUL CULTS – 2015

LEGAL ANALYSIS

Introduction

The Law Proposal submitted to the Committee on Law, Constitution and Justice gives a definition of "harmful cults" and then provides six articles of law which are designed at fighting against groups deemed to fall within the ambit of the definition in order to protect the rights of their members even if it is against their own will.

The definition of "harmful cults" itself poses serious legal problems; so do the other articles of the law. The law proposed to the Members of the Committee infringes the international human rights commitments made by the State of Israel and would seriously impair the rights of members of religious communities, not only minorities but also traditional religions.

It also violates the constitutional and fundamental rights standards set by the Organization for Security and Co-operation in Europe ("OSCE"), to which the State of Israel adhered when becoming an OSCE Co-operating Partner.

A similar French law has been condemned by international human rights institutions. French judges have been unable to apply the law due to the vagueness of its terms and have refused to be part of a system where the Executive Branch would infringe the independence of the judiciary by providing biased information in criminal cases.

The Parliamentary Assembly of the Council of Europe has recently rejected a French proposal to recommend the adoption of a similar law by other European countries.

The Israeli law proposal is even more extreme and cannot be countenanced in light of both Israeli Basic law and principles and international human rights standards committed to by Israel. It would also create serious problems for the application of Israeli criminal law, in particular by sanctioning the concept of "mind control" which would allow followers of "cults" to escape from personal criminal liability.

But primarily there is no need for such a Law to be enacted.

I. No Need for a New Law

The Explanatory Remarks in the Draft Law note that this Bill follows the findings of the Tassa-Glazer Committee which concluded back in 1987:

> "That some of the cults are harmful and dangerous and that the unlawful activities taking place inside cults touches upon a number of areas, including tax evasion, violation of immigration laws, trafficking and consumption of drugs, stocking up and training in weapons without a license, fraud in the fundraising process and other monies, and violence used against those opposing the group or its members."

On this basis, per the Explanatory Remarks, the Tassa-Glazer Committee made several recommendations, one of them being the adoption of special legislation on cults.

However, the Tassa-Glazer Committee, while identifying various areas of possible unlawful activities, recommended to the contrary to not seek new laws or regulations but to simply use the existing ones. As it rightfully pointed out, all of the above activities are already sanctioned under existing Israeli law as shown by the criminal characterizations given, and the Committee did not find any need for new special legislation.

The Explanatory Remarks also refer to the 2011 Report by the Ministry of Welfare and Social Services. The Report reviewed various definitions and classifications of so-called "cults" and finally adopted a definition based on the concept that "harmful cults" use methods of control of thought and behaviour and mental dependence and obedience of their followers in order to abuse them. It recommended adopting new special legislation in this regard.

Nonetheless, abuses by "harmful cults" have been sanctioned by Israeli Courts in the past and existing law has proven sufficient to repress harmful activities.

In the case of *The State of Israel v. D.A.* (Sep. 10, 2013), the District Court of Jerusalem convicted the head of a community, D.A., and one of his aids for multiple violent and sexual offenses, including enslavement. The Court convicted D.A. and sentenced him to twenty-six years imprisonment (CrimC (Jer) 6749-08-11, *The State of Israel v. D.A.* (Oct. 17, 2013)). The case is currently under appeal.

In another case concerning a "cult" *The State of Israel v. Ratzon* (Sep. 9, 2014), the District Court of Tel-Aviv-Jaffa rejected the enslavement offense. Aba Goel Goeli Ratzon, a 64-year-old polygamist, led a community with his illegal twenty-one wives and thirty-eight children. He claimed to have supernatural powers and to be the Messiah while treating the women as mere property, to his financial, sexual or other benefit.

Ratzon was charged and convicted for several sexual offenses against six women and girls, including aggravated rape, sexual offenses involving a family member, sodomy and indecent assault, and was sentenced to thirty years imprisonment (CrimC (TA) 23751-02-10 The State of Israel v. Aba Goel Goeli Ratzon (Oct. 28, 2014)).

He was acquitted of enslavement. The Court found that the theory of mind control put forward by the prosecutor had reached no consensus in the academic community and that in the precise case the complainants were not under physical, mental or legal limitation that would prevent them from leaving the defendant or opposing him. The women were not kept against their will, they could go out to work and they chose to live in the community. Nevertheless, he was heavily sentenced for all his crimes under Israeli criminal law.

In another case of *The State of Israel v. Kugman et al.* (May 12, 2010), the Court had to judge the followers of Elior Chen, a self-proclaimed rabbi, leader of a group that committed violent and brutal abuses on minors. Four of Chen's followers, for their defence, claimed that they were under the destructive influence of Chen and had lost their ability to understand the evil of their acts. They maintained that Chen's community should be characterized as a "cult", which members were under mind control by Elior Chen, and that consequently they should not be held liable for the crimes they were indicted for.

The judges rejected this argument and Elior Chen and his 4 followers were convicted of abusing children, beating them with hammers and rods, and other sadistic treatments which resulted in one child being still in a coma to this day. Elior Chen was sentenced to 24 years in prison and his four disciples to up to 20 years in prison for their sadistic brutalization of children by the Jerusalem District Court.

In the appeal, *Kugman v. The State of Israel* (Apr. 27, 2014), the Supreme Court upheld the District Court judgment, finding that the argument of widening mental incompetence to include "cult victims" would prevent the application of criminal law and its efficiency in the repression of crimes, and could be seen as a *carte blanche* to extremists, by giving them a way to escape personal criminal responsibility (CrimA 9612/10 *Kugman* v. *The State of Isr*ael (Apr. 27, 2014), § 76).

Under recent developments and media coverage, the issue of the Lev Tahor community and its children has been used in an attempt to have the legislator circumvent Israeli Courts' jurisprudence.

A woman, Orit Cohen, has publicly voiced her concern about her sister's children living in this community, although together with their parents, and pushed for a new legislation on "cults" to be adopted. Her main protest according to the media was that the group was allowed to flee to Guatemala.

However, from an outside point of view, it appears that: 1) what was actually at stake was the slowness of the Canadian authorities and not the Israeli ones to take action; and 2) Mrs. Cohen had already obtained in 2011 an Israeli Family Court order to prevent two of her nieces to join the community abroad. The girls had been intercepted at the Montréal airport and sent back to Israel. It can thus be inferred that Family Law was sufficient to remedy the emergency situation at the time.

Mrs. Cohen's sister was living in the community on her own will with her family, raising her children according to an ultra-orthodox interpretation of Judaism. Mrs. Cohen disagreed with her sister's way of life and religious choices and pushed for the adoption of the draft law. However, nothing in the proposed new law concerns the protection of children or controls about their well-being. In addition, other allegations of criminal behaviour could be dealt with under existing criminal law.

In the D.A. case above, nobody can contest that the authorities had means drastic enough to intervene based on Family and Criminal Laws. The Ministry of Welfare and Social Action and the police raided D.A.'s home following a claim of abuses on women and children. His six wives were separated from their children, who were taken away by the Welfare Services.

The Law on Legal Capacity and Guardianship as well as the Youth Law (Treatment and Supervision) provide for the adoption of draconian measures to protect children in danger.

The actual purpose of the law proposal has nothing to do with children's well-being. It has everything to do with: 1) the possibility of circumventing the consent of followers to be in groups deemed to be "cults" by invalidating their consent by reliance on the discredited mind control theory; and 2) getting rid of these undesired minorities by creating a presumption of guilt in order to convict their leaders without any evidence of crimes, confiscate their properties, and declare their followers legally incompetent so they may be "treated".

Articles 2 and 3 of the Draft Law, which provide for the conviction of group managers to ten years imprisonment and the confiscation of properties, are strikingly similar to the existing provisions of the law on criminal organizations that applies when real crimes are demonstrated. The proposed legal provisions are therefore unnecessary to repress actual criminal activities. They are only justified by the fact that the intent with the new law is to be able to sentence "cults" and their followers in the absence of evidence of any crime.

The Draft Law poses serious problems under Israeli and international law.

As stated at the outset of the OSCE "Guidelines for Review of Legislation Pertaining to Religion or Belief", a standard to which Israel adheres as Co-operating Partner of the OSCE:

> "Sometimes special legislation dealing with religious issues is proposed in response to an incident that excited public opinion, but that might in fact be better addressed by normal criminal or administrative actions."

Israeli existing law and jurisprudence are sufficient to sanction abuses committed in religious communities, while respecting Israel Basic Principles and international commitments.

This is even more true since another draft Bill has been introduced in the Knesset which provides criminal sanctions for ministers engaged in sexual relations with adults within the framework of spiritual counseling or guidance, using consent elicited by exploiting their actual mental dependence stemming from the consultation or guidance. A minister is broadly defined in the Bill so as to include one who purports to be one or one who is known or purports to have special spiritual abilities.

These provisions, similar to the existing ones regulating sexual relations between mental therapists and their patients, should be fully sufficient to respond to the on-going concerns in Israel about sexual exploitation of adult women by so-called "cult leaders".

II. Articulation of the Law

The Draft Law provides first a definition of a "harmful cult" which contains two elements: the mind control or undue influence allegedly exerted over the group's members, and the commission of crimes.

Pursuant to the definition, it is a group of people organized to exert mind control on its followers and commit crimes. The law does not state precisely whether the commission of crimes is suspected, alleged or confirmed by criminal convictions of the group members, but the

terms used in the definition: “acting in an organized, systematic and ongoing fashion while committing felonies” imply that the criminal activity is suspected as inherent to the usual activities of the group.

The purpose of the law is to repress groups before any actual crime or offense has been identified or evidenced, as the criminal activity is deemed to be some sort of mind control exerted over individuals. The mind control element is thus the main element which determines a special repressive regimen to be applied to “harmful cults” detailed in the following law articles:

- constitution of special files on these groups and their members;
- systematic sentencing of the leaders of the group to ten years imprisonment solely for heading or managing the group and confiscation of their properties;
- declaration of the group members as mentally incompetent due to their religious affiliation although they wilfully adhered to it and deprivation of their civil rights by putting them under guardianship; and
- “treatment” of the group members to sever them from the group’s beliefs and practices and have them recant their faith.

The mind control element relies on the theory that the consenting adult followers of such religious communities are victims without realizing it. Their consent is thus deemed to be null, their religious choice can be ignored, and their rights, including their right to religious autonomy, may be violated for their “own good”.

III. Mind Control or Undue Influence

A "Harmful Cult" is defined in the bill as a group of people, incorporated or not, coming together around an idea or person, in a way that exploitation of a relationship of dependence, authority or mental distress takes place of one or more of its members by the use of methods of control over thought processes and behavioural patterns, acting in an organized, systematic and ongoing fashion while committing felonies.

The main difficulties in this definition lie in the “relationship of dependence” or “authority”, as well as the “methods of control over thought processes”. Dependence on a moral or spiritual authority is inherent in any religious affiliation and to followers of a Church and Church leaders. Control over thought processes can be said of any religious guidance. The definition in the Draft Law could be applied to any religion indeed, especially those practices considered as very demanding and constraining, e.g. those of ultra-Orthodox faiths such as Haredi Jews and others.

The theory of “mind control” applied to religious communities has been rejected as not scientifically proven and unreliable by Courts and human rights institutions worldwide, including primarily U.S. Courts, where it was first maintained in the 70-80s.

A. U.S. Courts

This theory was originated and defended by psychologist Margaret Singer, who was cited as the expert reference in both the 1987 and 2011 Israeli reports on cults to support the adoption of specific legislation on “mind control”.

The 2011 report of the Ministry of Welfare and Social Services explains: “Thought reform facilitates the achievement of total control of the thought processes and patterns of behavior of the members of the cult, by disconnecting them from their original personality. This prolonged condition is referred to as 'mind control' and is the subject of dispute among the scientific community and therapists engaged in this field. On the one hand, there is the position of Professor Thaler-Singer, who cemented the use of the concept in the context of harmful activities of cults.”

Margaret Singer’s theories however have been rejected not only by the scientific community but also by Courts to the point where she was not admitted as an expert in cases involving groups claimed to be “cults”.

In a landmark decision, *United States v. Stephen Fishman* of 13 April, 1990 (No. CR–88–0616 DLJ), the Federal District Court of California provided detailed information about Margaret Singer’s theories before rejecting them.

Defendant Fishman was charged with eleven counts of mail fraud, which required a specific intent to deceive. He claimed for his defence to have been “brainwashed” by a “cult” and called two experts witnesses, Dr Margaret Singer and Dr Richard Ofshe, to testify.

For Fishman’s defence, Singer maintained that he had been brainwashed and “that his mental state evolve[d] to a point of extremely clouded reasoning and judgment”. She concluded that “his entire view of reality during this period was delusional”.

The US government challenged the admissibility of the expert testimonies arguing that “the theories regarding thought reform [mind control] espoused by Dr Singer and Dr Ofshe are not generally accepted within the applicable scientific community”.

The California District Court explained first the origin of these theories, stating that they derive from studies of American prisoners of war during the Korean conflict in the 1950s and that “seeking to explain why some POWs [Prisoners Of War] appeared to adopt the belief system of their captors, journalist and CIA operative Edward Hunter formulated a theory that the free will and judgment of these prisoners had been overborne by sophisticated techniques of mind control or “brainwashing.”

The Court noted that the application of the concept of coercive persuasion to religious cults by persons such as Dr Singer and Dr Ofshe was a more recent development and had met resistance from members of the scientific community who believe that legitimate thought reform theory is necessarily limited to persuasion accompanied by physical restraint or mistreatment.

The Court retained a “**significant barometer of prevailing views within the scientific community**” provided by professional organizations such as the American Psychological Association (“APA”) and American Sociological Association (“ASA”) and found:

"The evidence before the Court, which is detailed below, shows that neither the APA nor the ASA has endorsed the views of Dr Singer and Dr Ofshe on thought reform. (…)

The APA considered the scientific merit of the Singer–Ofshe position on coercive persuasion in the mid–1980s. Specifically, the APA commissioned a task force to study and prepare a report on deceptive and indirect methods of persuasion and control. The APA named Dr Singer to chair the task force. (…) Significantly, the APA ultimately rejected the Singer task force report on coercive persuasion when it was submitted for consideration in October 1988. The APA found that Dr Singer's report lacked scientific merit and that the studies supporting its findings lacked methodological rigor.

The American Sociological Association has also recently considered the merits of the Singer–Ofshe thesis applying coercive persuasion to religious cults. (…) As the APA had done, the ASA brief took a position in sharp contradiction to the Singer–Ofshe thesis."

The Court concluded:

"[Dr Singer and Dr Ofshe's] theories regarding the coercive persuasion practiced by religious cults **are not sufficiently established to be admitted as evidence in federal courts of law**." [emphasis added]

Since the APA's rejection of their findings, Dr Singer and her disciples were barred by several courts from testifying as experts concerning their discredited theories of "coercive persuasion."

Dr Singer then sued the APA and other social scientists who criticized her mind control theory twice, alleging that her income from this professional activity had been substantially diminished.

In the first case, *Margaret Singer and Richard Ofshe v. American Psychological Association et al.* of August 9, 1993 (No. 92 CIV. 6082 (LMM), the District Court of New York dismissed the case and ruled that statements made in the course of judicial proceedings were privileged. In the second case, *Margaret Singer et al. v. American Psychological Association et al.* of June 17, 1994 (No. 730012-B), the Superior Court of the State of California found that the case "clearly constitute[d] a dispute over the application of the First Amendment [freedom of speech] to a public debate over matters both academic and professional."

Singer and Ofshe were ordered to pay $80,000 in attorneys' fees under California's SLAPP suit law, which penalizes those who harass others for exercising their First Amendment rights.[1]

In light of the above case law of US Courts, it is clear that Margaret Singer should not be taken as a reliable source and that her theory on "mind control" in the field of religion or belief has never proven to be valid.

B. Israeli Courts

Israeli Courts rejected this theory as well.

[1] A strategic Lawsuit Against Public Participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition. Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech.

In the Ratzon case previously mentioned, expert psychologist Dr David Green, who testified for the Prosecutor and put forward the mind control theory to support the charges of enslavement, maintained that the main criterion for characterizing people under mind control is the measure of deviation from acceptable social norms.

The Court held that this criterion raised difficulties in identifying the relevant “society”, its “values” and the “measure of deviation” from those social norms. The lack of accepted and conclusive clinical tools raises the concern that significant elements in determining the legal outcome in such cases will be based on non-legal and unprofessional standards. In light of these arguments, the Court ruled that there is no place for the theory of mind control in Israeli courts.

The Court also found that the prosecution’s theory of someone being implanted with thoughts and intentions which are not his creates significant problems in the legal sphere, especially in Criminal Law, where the state of mind of the perpetrator bears great importance. The Court noted that even if these arguments are brought up by the prosecution in this case, they could easily be brought up in the next case by the defendants as an insanity defence. The Court said, "these things bring up the troubling possibility whereby any defendant in any offense, who is a member of some specialized group or even claims to be, will have the door open for him to raise claims denying his criminal intent", and this, "without the court or the investigators having any real tools from professionals to examine the truthfulness of these claims”.

In the case against the followers of Elior Chen, *The State of Israel v. Kugman et al.* (May 12, 2010), the Supreme Court rejected a similar defence. Dr Eliezer Viztum, psychiatrist, was the expert witness for Mr. Kugman. He maintained that Kugman and the two other defendants were in a cult, were brainwashed and therefore should not be held liable for their crimes. The Supreme Court refuted his claim with the following findings.

Pursuant to article 34h of the Criminal law, when using the insanity defence, either of two elements need to be shown: 1) either the person was not capable of understanding what he was doing or the wrongness of what he was doing; or 2)he did not have the ability to stop himself from doing it. However, the Court found that in this case the defendants were very well aware of the wrongness of their deeds and tried to cover them up.

The Court also found that there was no factual basis for Dr Viztum’s testimony since the "conditions of being in a cult" were lacking: the three defendants were not isolated from the outside world and there were no techniques of "duress" applied to them, the only duress - violence, sleep deprivation, etc. – being the one applied by them to the children.

Concerning the claim that the defendants, from a young age, were taught to believe that Elior Chen had superpowers, the Court noted that many in Israel are brought up in the same way but they nevertheless refrain from committing horrible deeds like the ones the defendants were found guilty for.

Indeed, many followers in the Jewish religious community (especially Hassidic Jews and some parts of the Jewish Repenting movement) believe that some Rabbis or Kabbalists have magic powers and that some places and things (e.g. tombs of well-known religious figures or sacred strings made into bracelets and blessed) contain magic powers.

This mysticism however does not result in crimes against children like those incriminated in the case.

Finally the Supreme Court Judge found that:

> "Professor Viztum noted in his examination that the important motifs in Kugman's case are faith and fear. In the aspect of proper legal policy it is hard to accept that faith and fear are enough to rid one of criminal liability. As the previous court noted in its verdict, dismissing the liability of an adult who abused a child on the basis of faith or fear cancels Man as a moral and autonomous entity."

And the Court concluded that:

> "Extending the limits of the insanity plea to include "cult victims" might hinder the efficiency of the Criminal Law in the fight against crime and be interpreted as a license for those with extreme views in certain areas, the weirdoes and people displaying oddities of various kinds and types, to escape criminal liability."

The brainwashing or mind control theory was thus found to be irrelevant and inapplicable.

C. European Human Rights Court and International Human Rights Instruments

The European Court of Human Rights rendered a landmark decision in this regard in the case of *Jehovah's Witnesses of Moscow v. Russia* on 10 June 2010.

The Court found that "there is no generally accepted and scientific definition of what constitutes 'mind control'" (§129) and explained further:

"It is a known fact that a religious way of life requires from its followers both abidance by religious rules and self-dedication to religious work that can take up a significant portion of the believer's time and sometimes assume such extreme forms as monasticism, which is common to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism." (§111)

The Court noted that nevertheless "as long as self-dedication to religious matters is the product of the believer's independent and free decision and however unhappy his or her family members may be about that decision", the believers' rights had to be protected.

The Court emphasised that "it is a common feature of many religions that they determine doctrinal standards of behaviour by which their followers must abide in their private lives" and that "By obeying these precepts in their daily lives, believers manifested their desire to comply strictly with the religious beliefs they professed and their liberty to do so was guaranteed by Article 9 of the Convention [protecting the right to freedom of religion] in the form of the freedom to manifest religion, alone and in private." (§118)

Mind control or undue influence is therefore a concept which is totally irrelevant to religious affiliation and dedication.

The Court further noted concerning the accusation of family break-ups:

"It further appears from the testimonies by witnesses that what was taken by the Russian courts to constitute "coercion into destroying the family" was the frustration that non-

Witness family members experienced as a consequence of disagreements over the manner in which their Witness relatives decided to organise their lives in accordance with the religious precepts, and their increasing isolation resulting from having been left outside the life of the community to which their Witness relatives adhered."

And the Court concluded that "the ensuing estrangement cannot be taken to mean that the religion caused the break-up in the family. Quite often, the opposite is true: it is the resistance and unwillingness of non-religious family members to accept and to respect their religious relative's freedom to manifest and practise his or her religion that is the source of conflict."

The accusations of family break-ups by non-religious family members who refuse to accept and respect the religious choices and way of life of their relatives should therefore be taken with extreme caution.

And so should their accusations of mind control to reject the choices of their relatives, which is a concept that could in fact apply to any religious community, or any other strong commitment.

Laws which are excessively vague like the present one on mind control, which are discriminatory in intent and application, and which allow for the imposition of draconian measures on religious communities and their parishioners are incompatible with the rule of law in a democratic society and thus violate fundamental rights protected by all major international human rights treaties.

The vague nature of the definition of "harmful cults" in the Draft Law directly contravenes Article 15 of the International Covenant on Civil and Political Rights ("Covenant"), which mandates that any actions subject to criminal charges must be defined in terms that are sufficiently clear, specific and foreseeable for citizens to know beforehand what actions or omissions would involve their responsibility and to preclude arbitrary prosecution.

The vagueness and unpredictability of application of the concepts, contained in the draft law, of "exploitation of a relationship of dependence" or "authority", or "the use of methods of control over thought processes and behavioural patterns" in the area of religious dedication cannot be squared with the principles of legal security and fairness of criminal prosecutions. It imposes on Israeli Courts the need to make arbitrary and discriminatory decisions.

D. The French Experience

France adopted a legal provision with a similar concept of brainwashing in 2001, in the Law for the Repression of Cultic Movements, popularly known as the About-Picard law, after Members of Parliament Nicolas About and Catherine Picard who proposed it.

Catherine Picard wanted to amend Article 313-4 of the French Criminal Code which repressed abuse of a position of weakness as it only applied, according to what they themselves claimed, "to persons who are **objectively already vulnerable**, due to their age or for physical reasons" (namely minors or persons with particular vulnerability, owing to their age, illness, disability, physical or mental deficiency or pregnancy).

She claimed to introduce a **subjective factor of "psychological subjection"** in order to incriminate proselytizing by so-called "cults" or "sects". New Article 223-15-2 represses the abuse of a position of weakness of objectively vulnerable persons listed above but also of "a person in a state of physical or psychological subjection resulting from serious or repeated pressure or from techniques used to affect his/her judgement in order to induce the minor or other person to act or abstain from acting in any way seriously harmful to him/her".

French legal experts have expressed their concerns about these "subjective" provisions. In an article published in the law journal *La Semaine Juridique* of 28 November 2001, Annick Dorsner-Doliver, Professor at the Legal, Political and Social Sciences University of Lille II, explained:

> "This new offense, sometimes designated as mental manipulation, has the advantage, in the legislator's view, of overcoming the difficulties related to the consent given by the followers of a cult to any behaviour requested from them. However, it is likely to cause other difficulties. In particular, the state of subjection is a delicate notion to define and therefore to delimit. It might be indispensable to systematically use expert opinion to characterize it. The requirement of serious or repeated pressure or from techniques used to affect one's judgement is not a sufficient guarantee against the arbitrary since it can apply, generally, to any speaker having a natural ascendant on his public and, more precisely, for example, to parents desiring to obtain obedience from their children, for the first ones, and to a psychiatrist doctor using certain techniques of deconstruction of personality as part of his patient's care, for the second ones. As for the necessity of the seriously harmful character of the act or the abstention induced, it inevitably leads to a very subjective assessment. As an example, couldn't the rules presently applied by certain religious communities – fasting, poverty, chastity, obedience… - be one day considered as seriously harmful to the individual? Critics can also be addressed to the structure of the provision. By trying to protect too much the victims against themselves, the risk is to create a police of the thought. One can foresee the risks of misappropriation of the mental manipulation offense by the State which would become totalitarian."

The About-Picard provisions have been condemned as too vague and discriminatory by the Council of Europe and the United Nations.

In her report after her mission to France on 18-29 September 2005,[2] the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, stated:

> "87. Nevertheless, the question of the fight against cults raises an issue under the right to freedom of religion or belief, as protected by international standards. Following the adoption of the above-mentioned About-Picard Law, the Parliamentary Assembly of the Council of Europe, in its resolution 1309 (2002) emphasized that, "Although a member State is perfectly at liberty to take any measures it deems necessary to protect its public order, the authorized restrictions on the freedoms guaranteed by Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression) and 11 (freedom of

[2] E/CN.4/2006/5/Add.4, 8 March 2006.

assembly and association) of the ECHR are subject to specific conditions […] [and] **invite[d] the French Government to reconsider this law**."

The law has not been repealed to this day but it is rarely applied.

At the tenth anniversary of the About Picard law in 2011, officials stated that it had been applied 35 times by Courts, but only 4 or 5 of these decisions concerned so-called cults. However, the officials identified only one case concerning the suicide of a member of the Néophare, a tiny mystical community of 20 members. Its prosecuted leader declared at the time that he did not want any defence, that the law was nonsense and that he had better things to do writing a book. So after ten years of existence, this law has apparently only been applied once to a religious minority.

Judges have had difficulty applying such a vague concept as that of psychological subjection. In its journal *Justice Actualités*, the National School of Magistrates (ENM) made the following assessment:

> "When the 2001 law came into force, numerous critics were expressed on the concept of psychological subjection which is the basis of the criminal proceedings in this matter. This concept, deemed by some to be too vague and a factor of arbitrary (evoking a "police of the thought, "witch hunt", etc.), is considered by all to be very difficult to use. As a matter of fact, it is difficult to establish the proof of a notion which remains vague and, at the least, far from legal concepts." [3]

Vague notions in legislation such as "psychological subjection" or mind control of believers require Judges to make decisions that are not only arbitrary but also discriminatory.

Classifying religious groups into "religions" and "cults" is itself a violation of international human rights standards, especially the International Covenant on Civil and Political Rights signed and ratified by Israel, as well as the basic principles of the State of Israel. It is impermissible and discriminatory for the government to confer protection on groups it classifies as "religions" while denying protection and enacting oppressive measures against groups it classifies as "cults".

IV. Difference Between Cults and Religions

The constitution of special files on "harmful cults" and their members envisaged by the Draft Law submitted to the Committee would violate members' rights to freedom of religion or belief and undermine the independence of the Judiciary.

The Explanatory Remarks in the Draft Law provide:

> "This law proposal comes to order the legislation surrounding this undefined area of harmful cults, which often causes difficulty in proving the connection between the heads and leaders of organizations of this kind and the commitment of offenses. While doing so, this law proposal defines what is a harmful cult while balancing and distinguishing

[3] *Justice Actualités* n° 8 of 2013, page 42.

between legitimate cults with religious characteristics and cults characterized by relationships of control and authority and operate while committing legal felonies."

"Distinguishing between legitimate cults with religious characteristics and cults", classifying what communities should be considered true religions and those which should not be deemed so has been explicitly condemned by the United Nations, the OSCE and the Council of Europe.

Freedom of religion or conscience is also protected by the principles enshrined in the Declaration of Establishment of the State of Israel, 14 May 1948:

"The State of Israel will … guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations."

Under the Charter, the member States of the United Nations committed to *inter alia* "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." (Article 55 c) of the Charter)

A. The United Nations

Article 18 of the Covenant protects freedom of religion or belief.

The UN Human Rights Committee elaborated General Comments to detail what the construction and application of the Articles of the Covenant should be, in particular General Comment N°22, para. 1, on Article 18:

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community."

The UN Special Rapporteur for Freedom of Religion or Belief is an independent UN observer assigned the task of reviewing religious freedom country by country worldwide (through on site visits, reports received, etc.) and reporting to the UN member states at the annual meetings of the UN Human Rights Council and to the General Assembly.

The Rapporteur's mandate includes recommending the adoption of national measures to ensure the protection of the right to freedom of religion or belief, identifying existing and emerging obstacles to the enjoyment of such right and recommendations on ways to overcome them, as well as examining incidents and governmental actions that are incompatible with this right.

Then Special Rapporteur Asma Jahangir, in her 2006 Report to the Human Rights Council, summarized the positions taken by the successive Special Rapporteurs on the issue of religious minorities, labelled as "sects" or "cults". (26 December 2006, A/HRC/4/21)

She noted that the first mandate-holder, d'Almeida Ribeiro, stated that "aspects having to do with the antiquity of a religion, its revealed character and the existence of a scripture, while important, are not sufficient to make a distinction [between religions, sects and religious associations]. Even belief in the existence of a Supreme Being, a particular ritual or a set of ethical and social rules are not exclusive to religions but can also be found in political ideologies. So far, a satisfactory and acceptable distinction has not been arrived at". (E/CN.4/1990/46, para. 110.)

His successor in the mandate, Abdelfattah Amor, added that "[r]eligions cannot be distinguished from sects on the basis of quantitative considerations, saying that a sect, unlike a religion, has a small number of followers. This is not in fact always the case. It runs absolutely counter to the principle of respect and protection for minorities, which is upheld by both domestic and international law and morality. Besides, following this line of argument, what are the major religions if not successful sects?". (E/CN.4/1997/91, para. 95.)"

The Special Rapporteur then reiterated the approach of interpreting the scope of application for freedom of religion or belief in a large sense, bearing in mind that manifestations of this freedom may be subject 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.

The Rapporteur concluded as far as limitations by States are concerned:

> "Rosalyn Higgins, who is currently President of the International Court of Justice and was a member of the Human Rights Committee when its general comment No. 22 was drafted, "resolutely opposed the idea that States could have complete latitude to decide what was and what was not a genuine religious belief. The contents of a religion should be defined by the worshippers themselves; as for manifestations, article 18, paragraph 3, existed to prevent them from violating the rights of others". (CCPR/C/SR.1166, para. 48.) A similar statement was made by Abdelfattah Amor in his 1997 report to the Commission on Human Rights. There, the second mandate-holder emphasized that, **apart from the legal courses available against harmful activities, "it is not the business of the State or any other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction**". (E/CN.4/1997/91, para. 99)" [emphasis added]

Therefore, States should not adopt a definition of "cults" allowing them to distinguish "between legitimate cults with religious characteristics and cults", as proposed in the draft law. It is not the business of States to decide what groups present legitimate religious characteristics or not, what communities are true religions or not.

This is especially true when the rights of parent believers and their children are at stake.

Special Rapporteur Heiner Bielefeldt made the following findings in his interim report to the UN General Assembly on 5 August 2015: (A/69/261)

> 61. (…) When dealing with religious minorities, small communities or new movements, often branded as "sects", some State agencies seem to operate on the assumption that, in case of doubt, children should be separated from their parents. Lack of diligence and

respect, possibly based on prejudice, is thus a source of major human rights concerns, also from the perspective of the Convention on the Rights of the Child.

62. In some situations, State interventions may actually prove necessary to safeguard the best interests of the child, for instance if the child's rights to life, health or education are imperilled. However, any such situation warrants a careful empirical and normative assessment. **Empirical diligence is needed, inter alia, to avoid stereotypical ascriptions, possibly based on rumours, overgeneralizations or merely abstract, possibly far-fetched fears**. Members of small religious communities or new religious movements often run an increased risk of having their rights infringed. In extreme cases, parents have lost their custody rights without any serious empirical investigation having taken place and without being granted effective legal remedies. Besides empirical negligence, **there is also the danger of normative negligence if due weight is not given to all the human rights concerns at stake and the criteria set out for limitations are ignored**." [emphasis added]

A law classifying certain religious communities as "harmful cults" and declaring the follower parents mentally incompetent, effectively allowing the deprivation of their parental rights without any empirical assessment, infringes the rights of followers and the rights of their children. Therefore, the law proposed to the Committee violates the human rights commitments made by the State of Israel.

B. The OSCE and the Council of Europe

Israel is a Partner for Co-operation of the Organization for Security and Co-operation in Europe. As such, it is committed to OSCE standards in the fields of democracy and human rights.

The European Commission for Democracy through Law - better known as the "Venice Commission" as it meets in Venice - is the Council of Europe's Advisory Body on constitutional matters. Its role is to provide legal advice to its member states to keep up with European standards and international experience in the fields of democracy, human rights and the rule of law.

Together with the OSCE Advisory Panel of Experts on Freedom of Religion or Belief, the Venice Commission drafted guidelines for States wanting to enact legislation on religions, namely the OSCE "Guidelines for Review of Legislation Pertaining to Religion or Belief".

These Guidelines, written by some of the most prominent international experts in Constitutional Law and fundamental freedoms, cover at the outset the "Substantive Issues that Typically Arise in Legislation" and provide as Preliminary Review: (CDL-AD(2014)023)

1. Whether legislation is necessary. It is important to bear in mind that legislation may not be necessary with regard to many of the issues for which a State might be considering enacting laws. **Sometimes special legislation dealing with religious issues is proposed in response to an incident that excited public opinion, but that might in fact be better addressed by normal criminal or administrative actions**. If a religious group is involved in a fraud or assault, for example, it is not necessarily best to respond by enacting new laws on religion. Thus, it is appropriate to consider whether the general laws on fraud or assault may be sufficient to address the problem without enacting a

new statute to cover offences when committed in conjunction with religious activity. [emphasis added]

Then the Guidelines address the very notion of "religion" and give the following directions concerning the definition of "religions" and "cults":

"2. *The definition of "religion."* Legislation often includes the understandable attempt to define "religion" or related terms ("sects", "cults", "traditional religion", etc.). There is no generally accepted definition for such terms in international law, and many States have had difficulty defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counterexamples are classical Buddhism, which is not theistic, and Hinduism, which is polytheistic. **In addition, terms such as "sect" and "cult" are frequently employed in a pejorative rather than analytic way. To the extent that legislation includes definitions, the text should be reviewed carefully to ensure that they are not discriminatory and that they do not prejudge some religions or fundamental beliefs at the expense of others**."

Therefore, under these constitutional standards for democracy, human rights and the rule of law, Participating States to the OSCE as well as Co-operating Partners such as Israel should refrain from adopting legislation which gives definitions "distinguishing between legitimate cults with religious characteristics and cults" as the one proposed to the Knesset and this Committee.

C. Condemnation of the French Anti-Cult Policy

Classification of cults resulted in the stigmatizing and blacklisting of 173 minorities of religion or belief as "sects" in France by a 1996 Parliamentary Commission report.

In the previously mentioned report on her 2005 mission to France, the UN Special Rapporteur found:

"Concerning the question of the cult groups and certain new religious movements or communities of belief the (sectes), the Special Rapporteur considers that the policy of the Government may have contributed to a climate of general suspicion and intolerance towards the communities included in a list established further to a parliamentary report, and has negatively affected the right to freedom of religion or belief of some members of these communities or groups."

Consequently, she "urge[d] the Government to ensure that its mechanisms for dealing with these religious groups or communities of belief deliver a message based on tolerance, freedom of religion or belief and on the principle that no one can be judged for his actions other than through the appropriate judicial channels." (§112)

The Special Rapporteur also "urge[d] judicial and conflict resolution mechanisms to no longer refer to, or use, the list published by Parliament in 1996." (§114)

The setting up by the French authorities of a government agency such as MIVILUDES (the Interministerial Mission for Monitoring and Combatting Cultic Abuses) which keeps files on

"cults" and makes them available to Judges and the Judiciary constitutes a blatant violation of these recommendations.

The French policy on "cults" has also been condemned recently by the Council of Europe, by the rejection of a proposal of recommendation to the Member States to adopt the French model to combat "cults".

On 17 March 2014, a French Member of Parliament, Rudy Sales, with the support of MIVILUDES, filed a report on "The protection of minors against the excesses of sects" which included a proposal of resolution and recommendation to the Member States to be adopted by the Parliamentary Assembly of the Council of Europe.

Mr. Sales' draft resolution included a call to the Member States to "set up or support, if necessary, national or regional information centres on sect-like religious and spiritual movements", giving MIVILUDES as an example as "a structure that is unique in Europe".

The draft resolution also included a call from the Assembly to the Member States to "adopt or strengthen, if necessary, legislative provisions punishing the abuse of psychological and/or physical weakness", explaining that following the example of France "making the abuse of psychological and/or physical weakness a criminal offence by introducing a provision in the Criminal Code would be extremely useful and could have an effect in terms both of punishment and also of dissuasion" against such "sect-like religious and spiritual movements". This call intended to have Member States adopt legislation on "psychological subjection" or "mind control" like the French one and the Israeli draft law.

Provisions stigmatizing "sect-like" religious movements cannot be squared with international human rights standards, including Articles 9 (freedom of religion or belief) and 14 (freedom from discrimination) of the European Convention on Human Rights. Therefore, Mr. Sales' attempt to have the French "model" adopted by the Council of Europe Member States was rejected and the final text adopted was more respectful of the rights of minorities.

The draft resolution was drastically amended (the recommendation was dropped) and the Final Resolution 1992 (2014) stated:

> "4. The Assembly is concerned when any minors are abused in any way. It is vital that existing legislation be firmly applied and that this is done within the context of respecting the rights of children and their parents in line with Articles 9 and 14 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.
>
> (…)
>
> 9. The **Assembly calls on member States to ensure that no discrimination is allowed on the basis of whether a movement is considered a sect or not**, that no distinction is made between traditional religions and non-traditional religious movements, new religious movements or sects **when it comes to the application of civil and criminal law**, and that each measure which is taken towards non-traditional religious movements, new religious movements or sects is aligned with human rights standards as laid down by the

European Convention on Human Rights and other relevant instruments protecting the dignity inherent to all human beings and their equal and inalienable rights."

The French system has also been condemned internally in France by Magistrates in charge of applying the law.

While the President of MIVILUDES recommended that "Courts collaborate closely with MIVILUDES" in the application of the abuse of weakness offence to "cults", French Magistrates have refused the intervention of this Executive organ in the Judiciary.

In a 2013 interview by the National School of Magistrates, the President of MIVILUDES stated that the first difficulty in applying the abuse of weakness law (in addition to the vagueness and inapplicability of the concept) is that magistrates (judges and prosecutors) flatly refuse to solicit MIVILUDES in their cases, "invoking secrecy of criminal investigations and the existing link between MIVILUDES, an agency placed directly under the Prime Minister and the Executive Power".[4]

The French Magistrates should be complimented for this stand as they apply French Constitutional and international human rights standards notwithstanding the Executive's incitement to violate the independence of the Judiciary.

V. Violation of the Principle of Independence of the Judiciary

Provision of biased information on "cults" by a government body to judges and prosecutors undermines the independence of the Judiciary and the right to presumption of innocence protected by:

- *Israel Basic Law on the Judiciary;*
- international instruments such as *Article 14 of the Covenant*, which guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;
- the *UN Basic Principles on the Integrity of the Judiciary,* enshrined in the Bangalore Draft Code of Judicial Conduct 2001, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002; and
- the *Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

The formation of a data base on "harmful cults" envisaged in the Draft Law submitted to the Committee is clearly designed at supporting criminal convictions of the heads of groups

[4] *Justice Actualités* n° 8 of 2013, page 50.

considered as “harmful cults” under Article 2 of the law. The Explanatory Remarks in the Draft Law are very clear:

> “It is further proposed that the Ministry of Welfare and Social Services establish a data base that will concentrate all the information surrounding the activity of Harmful Cults in Israel. This data base will include, inter alia, information regarding the heads and executives of the cult as well as information about its areas of operation.”

Under Israel Basic Law on the Judiciary, judges are not supposed to receive any directions from the Executive on who should be considered a member of a “harmful cult” and should be prosecuted or convicted.

The UN Human Rights Committee noted in its General Comment N°32 on Article 14 of the Covenant:

> “The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to (…) the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making (…).”

The Committee added that the requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them; and second, the tribunal must also appear to a reasonable observer to be impartial.

The *UN Basic Principles on the Integrity of the Judiciary* provide that “A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.” (§1.3)

The UN *Guidelines on the Role of Prosecutors* provide that prosecutors shall “carry out their functions impartially and avoid all political, social, *religious*, racial, cultural, sexual or any other kind of discrimination.”

The Draft Law providing that a Ministry data base will be constituted to support criminal convictions of the heads of groups considered as “harmful cults” clearly violates Israeli Basic Law and the above international instruments binding on Israel.

VI. Violation of the Right to Presumption of Innocence

Additionally, the Draft Law entails conviction of individuals to a 10-year jail term for the mere assumption of the functions of directing a group alleged to be a “harmful cult”.

As the Explanatory Remarks in the Draft Law provide:

> “This law proposal comes to order the legislation surrounding this undefined area of harmful cults, which often causes difficulty in proving the connection between the heads and leaders of organizations of this kind and the commission of offenses.”

In order to solve this "difficulty in proving the connection between the heads and leaders of organizations of this kind and the commission of offenses", Article 2 of the law provides:

> "The person who heads a Harmful Cult or a person who manages or organizes the activity in a Harmful Cult will be sentenced to 10 years in prison."

It is important to note that no criminal actions have to be established and no violation of criminal law has to be characterized. The crime is constituted by the mere fact of heading a group which has been labeled by the Executive as a "harmful cult". This violates the principles of presumption of innocence and personal accountability for precise criminal acts and charges.

Article 14 of the Covenant provides:

> "3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;"

As no precise charges must be established, the fundamental right to presumption of innocence is violated under the Draft Law.

General Comment n° 32 of the Human Rights Committee provides the following explanations on what is binding on States like Israel who signed and ratified the Covenant:

> "According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, **imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt**, and requires that persons accused of a criminal act must be treated in accordance with this principle. **It is a duty for all public authorities to refrain from prejudging the outcome of a trial**, e.g. by abstaining from making public statements affirming the guilt of the accused. **Defendants should normally not be** shackled or kept in cages during trials or otherwise **presented to the court in a manner indicating that they may be dangerous criminals**. The media should avoid news coverage undermining the presumption of innocence." [emphasis added]

Contrary to these provisions and guarantees afforded by the Covenant, the Draft Law establishes an **irrefutable presumption of guilt**, and allows for **systematic convictions of the heads of "harmful cults" to be pronounced without any precise charges or crimes, without any demonstration of guilt or even any trial in its proper meaning.**

VII. Guardianship and Treatment

The Draft Law also provides that members of "harmful cults" can be put under guardianship and treatment.

A. Guardianship

Article 33(a) of the Israeli Law on Legal Capacity and Guardianship 1962 provides that the court may appoint a guardian mainly to minors, legally incompetent persons or persons who cannot, permanently or temporarily, handle their affairs.

The Draft Law envisages that this would apply also to "a person under the influence of a Harmful Cult as defined in the Law for the Handling of Harmful Cults – 2015".

It amounts to characterizing the followers of such groups as legally incompetent on the sole basis of their religious affiliation.

This provision corresponds to a recommendation made in the 2011 Report from the Ministry of Welfare and Social Services:

> "**Legislative amendments in respect of the Legal Capacity and Guardianship Law-1962** - the team recommends that an amendment be considered to this Law, so that it would explicitly provide that a situation in which a person is under the significant control of another person in his life or is the subject of undue influence will be deemed a situation in which a person is incapable of looking after his own affairs, and consequently the Court may appoint a guardian for him."

If such a law were to be enacted, it would allow depriving believers of their civil rights on the sole basis of a suspicion or accusation of mind control being exerted on them.

Considering religious communities' members as incompetent due to their choice of religious affiliation amounts to an outright denial of their right to freedom of religion or belief, which is not permitted under Israeli basic principles and international human rights standards.

It also denies believers religious autonomy and accountability for their actions, in spite of the Israeli Supreme Court's ruling to the contrary in the case of the followers of Elior Chen.

By considering the followers of "cults" irresponsible and depriving them of their civil rights, the legislator would circumvent the Israeli Supreme Court's ruling that the members of such groups are liable for their criminal actions. This would open the door to evasion of criminal liability and would seriously hinder the repression of crimes.

B. Treatment

The Draft Law also lays out the creation of an infrastructure which would provide "mental care" to "harmful cults" members. Although the 2011 report from the Ministry of Welfare and Social Services does not recommend openly "deprogramming" because it has been outlawed in the countries where it was practiced, it recommends "exit counselling". Under the draft law, exit counselling would be provided to followers by a mental care unit which will be able to use, according to the Explanatory Remarks, "intervention methods in this area".

However, pressures by family or an "exit counsellor" on members of so-called "cults" to recant their faith violate Article 18-2 of the International Covenant on Civil and Political Rights which provides:

> "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

Israel has signed and ratified the Covenant. Undesired “treatment” of followers of religious communities would be unlawful under this commitment.

In the 2011 report, the Ministry of Welfare and Social Services explains:

> “At the exit stage or thereafter a distinction must be made between victims leaving the cult by choice and those who drop out of the cult as the result of processes, either within or external to the cult, and the method of treatment and means of support that must be adapted to each individual victim according to the diagnosis of his mental and physical state. The counselling procedures that are available to the therapists at this stage are based on the intervention model, which on many occasions is applied in the treatment of persons suffering from drug addiction. Methods of this kind were developed in the 1980's and 1990's, including the "exit-counselling" method, which makes use of close friends of the member who is on the verge of leaving the cult, and of former members of the same cult who have undergone the rehabilitation process.”

These explanations demonstrate the following:

- “Exit counselling” attempts to handle believers who may have not made the choice to leave their religious community,
- The intervention model is the one applied for drug-addiction, which means that the follower is under the “undue” influence of his religious community and wants to return to it, and the “rehabilitation” concept implies that the follower’s beliefs must be eradicated,
- The “methods of this kind developed in the 1980’s” which make use of “rehabilitated” former members to persuade the follower to leave his community are without a doubt “deprogramming” methods, even though there is no kidnapping and seclusion.[5]

All this evidences that “exit counselling” consists of pressuring followers to abandon their beliefs. This is specifically prohibited under Article 18.2 of the Covenant as coercion to recant one’s faith.

The report goes on detailing the nature of the intervention of the “cult-exit therapist” in order to “neutralize the psychological influence of the cult” “by focusing on questions such as what is a harmful cult; How does the cult harm its members; Can the group to which the victim belongs be identified as a cult; and so forth (Ross, Personal Communication, October 2010).”

The report openly refers to Rick Ross who provided advice and contributed to the report. Rick Ross was an American deprogrammer who claimed to have intervened in hundreds of deprogramming cases. He stopped after a civil lawsuit was filed for the 1991 forcible deprogramming of United Pentecostal Church International member Jason Scott, which resulted in a multimillion-dollar sentence.

[5] “Deprogramming” was a method which appeared in the 1980s in the United States to forcefully “deprogram” believers of religious minorities, considering they had been brainwashed and had to be coerced into recanting their faith through abduction, confinement and forceful persuasion. It was outlawed after a series of Court cases by harmed victims.

By a judgment of 3 October 1995, the United States District Court for the Western District of Washington found the plaintiff Jason Scott's abduction by a team of three deprogrammers had violated Scott's civil rights. The jury awarded Scott $ 875,000 in compensatory damages and $4 million in punitive damages, 3$ million against the three deprogrammers and $1 million against the anti-cult organization, Cult Awareness Network ("CAN").

The leading deprogrammer, Ross, and CAN filed motions to the Court for a new trial and for reduction in damages. The Court denied the motions with the following reasoning:

> "Considering the extensive testimony on the destruction of Mr. Scott's family life as well as his physical and emotional problems after the deprogramming, the Court finds that evidence does not justify a new trial or a reduction of compensatory damages. Again, numerous witnesses verified the extent of these injuries. (…)Mr. Ross' use of terminology cannot avoid the uncontradicted evidence that **he actively participated in the plan to abduct Mr. Scott**, restrain him with handcuffs and duct tape, and hold him involuntarily **while demeaning his religious beliefs**.
>
> A large award of punitive damages is also necessary under the recidivism and mitigation aspects of the factors cited in Haslip. Specifically, the Court notes that Mr. Ross himself testified that he had acted similarly in the past and would continue to conduct "deprogrammings" in the future."

Finally, the Court noted "each of the defendants' seeming incapability of appreciating the maliciousness of their conduct towards Mr. Scott" and concluded "Thus, the large award given by the jury against both CAN and Mr. Ross seems reasonably **necessary to enforce the jury's determination on the oppressiveness of the defendants' actions and deter similar conduct in the future**." [emphasis added] The judgment was appealed and the Appeals Court confirmed the findings of the District Court.

It is of particular concern that Ross, who was sanctioned by US Courts for "the oppressiveness of [his] actions" and the "incapability of appreciating the maliciousness of [his] conduct", was nevertheless used as a reference for drafting the 2011 report. The Draft Law provisions on "treatment" submitted to the Committee should be rejected as they would allow a "re-set" of condemned deprogramming practices of Ross and others under the label "exit counselling".

A study done by Japanese psychiatrists demonstrated that not only confinement provokes Posttraumatic Stress Disorder (PTSD), but also infringement of the right of self-decision on one's religious belief. They detailed their findings in an article in the peer-reviewed International Journal of Law and Psychiatry, published by the Elsevier Group, the biggest publisher for law and sciences worldwide.

The article provided:

> "In the United States, where religions are more active than in Japan and many cases of deprogramming have been experienced (Ikeda, 1996; Watanabe, 1999), the expressions brainwashing and mind control have been criticized from psychiatric and psychological points of view (Galanter, 1989; Lewis, 1987; Lifton, 1961, 1989; Maleson, 1981). In

addition, forced deprogramming is assumed to infringe on fundamental human rights and to be an illegal act due to the fact that **withdrawal from a religion is harmful unless it is spontaneous** (Watanabe, 1999)." [emphasis added]

The study concluded that "the situation in which autonomy in religious belief is harmed can cause trauma and PTSD".[6]

Coercion of followers of religious communities to recant their faith by "demeaning their religious beliefs" under family's and exit counsellors' pressure, as proposed in the Draft Law before the Committee, is harmful, violates their right to freedom of religion or belief and should not be allowed.

Conclusion

As detailed in this analysis, the Draft Law does not comply with basic legal standards under Israeli and international human rights law. Under these circumstances it is respectfully submitted that the Draft Law be rejected.

[6] "Forced deprogramming from a religion and mental health: a case report of PTSD", Keiko Ikemoto and Masakazu Nakamura, International Journal of Law and Psychiatry, available online at www.sciencedirect.com.