

The Road Taken: ICCPR and Discriminatory Restrictions on Religious Freedom

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INTRODUCTION

The International Covenant on Civil and Political Rights (ICCPR)¹ requires its 173 State Parties to respect and ensure some of the most basic human rights recognized at the international level. The protections the Covenant affords overlap in more than one sense: The scopes of the rights under the Covenant overlap with one another as well as with protections afforded by rights established under other international human rights treaties. Such overlaps illustrate the intensive and extensive interplay between the values protected by different human rights and the intertwined nature of the actual enjoyment of distinct rights (e.g., freedom of assembly and freedom of expression).² In addition, human rights recognized under international law have close parallels under the domestic constitutional law of many states.³ The prevalence of overlaps between human rights norms provides individuals seeking protection considerable choice between alternative legal constructions to advance their interests on the basis of different legal instruments that bind the state in question; in the same vein, human rights law-applying bodies may have broad discretion as to whether or not to accept any particular legal construction advocated to them.⁴

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1. International Covenant on Civil and Political Rights, art. 26, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

2. See, e.g., General Comment No. 37 – art. 21: Right of Peaceful Assembly, CCPR/C/GC/37, Hum. Rts. Comm., Views adopted by the Committee at its 129th session (Sept. 17, 2020), ¶ 9.

3. See, e.g., ICCPR, arts. 6, 9; S. AFR. CONST., 1996, arts. 11–12; Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, sec. 7, 10; CONSTITUTION OF FINLAND, 1999, sec. 7.

4. See, e.g., Judge v. Canada, CCPR/C/78/D/829/1998, No. 829/1998, U.N. Hum. Rts. Comm., Views adopted by the Committee under Article 5(4) of the Optional Protocol (Aug. 5, 2003), ¶ 10.10 (“Having found a violation of article 6, paragraph 1 alone and, read together with article 2, paragraph 3 of the Covenant, the Committee does not consider it necessary to address whether the same facts amount to a violation of article 7 of the Covenant.”). The choice between the competing legal constructions may depend on a multiplicity of factors, including, *inter alia*, the degree of consensus in the human rights body on any particular legal construction, the manner in which the claimant has articulated the complaint, and any conflicts between particular legal constructions and the jurisprudence of the human rights body in question.

Harvard Human Rights Journal on the right against discriminatory impact based on religion—looks at one such choice available under the ICCPR: Whether human rights monitoring bodies choose to address claims of discriminatory restrictions on religious freedom as cases of discrimination on religious grounds or as cases of impermissible intervention with freedom of religion. As the following discussion will show, the Human Rights Committee (HRC)—the treaty body responsible for monitoring compliance with the ICCPR—has taken a position going in one direction (toward reliance on freedom of religion), whereas other national and international law-apppliers have, at times, gone in the other (toward reliance on anti-discrimination norms).⁵ At an abstract level, such choices have implications for the structure of human rights norms, the methods of interpretation used by different norm-apppliers, and the differences between the protection afforded to human rights at the national level and that afforded to them at the international level. These implications transcend the specific questions discussed during the Symposium.

I. THE RIGHT TO EQUALITY UNDER THE ICCPR

The ICCPR contains three different provisions that establish a broad right to equality: Articles 2(1), 3, and 26. The first two equality provisions require states to ensure the equal enjoyment of all Covenant rights, whereas the third provision requires equality before the law, equal protection, and a legal prohibition of discrimination. The legal implication of Article 2(1) and 3 is that all the rights articulated in the Covenant effectively contain an equal enjoyment clause (complementing the few specific provisions that explicitly mention equality or non-discrimination as one of the conditions for their full realization),⁶ and the legal import of Article 26 is that domestic law and its manner of application should comply with the principle of equality. The upshot of this legal configuration is that discriminatory *laws* relating to the enjoyment of civil and political rights are prohibited by both Articles 2(1) and 26 (and also Article 3, if they discriminate between men and women), whereas discriminatory *practices* not anchored in legislation, relating to interests that do not fall within the scope of the civil and political rights enumerated in the Covenant, might not be covered by the ICCPR at all. They may, however, be covered by other international human rights instruments.⁷

The Covenant does not define the terms “distinction,” “discrimination,” and “equality,” which are used in the different equality provisions. The

5. See generally Gerald L. Neuman, *supra* 34 HARV. HUM. RTS. J. 177 (2021).

6. See, e.g., ICCPR arts. 14, 23, 24, 25.

7. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e), Dec. 21, 1965, 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women, Part III, Dec. 18, 1979, 1249 U.N.T.S. 13.

Committee's General Comment no. 18 alludes, however, to a broad prohibition of "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."⁸ The Comment also refers to the prohibition of discrimination in law and in fact,⁹ and to the need to take affirmative action to address discriminatory conditions.¹⁰

Differentiated treatment of individuals, which affects their ability to enjoy religious freedom or to manifest their religious beliefs, raises issues under Articles 2(1) and 26 of the Covenant because membership in a religion is mentioned explicitly in these articles as one ground for prohibited discrimination. As a result, the HRC might view governmental acts or omissions intended to, or resulting in, differentiated treatment of or disparate impact on persons belonging to a specific religion as discriminatory. The Committee might regard such difference in treatment or disparate impact as constituting discrimination in law or in fact, depending on whether the relevant act or omission emanates directly from legal norms or from the actual practice of state or non-state actors.¹¹ Furthermore, the Committee may view the acts or omissions in question as constituting an indirect form of discrimination if they emanate from facially neutral laws or policies that nonetheless have a disparate impact.¹²

A key question that arises when religious discrimination is claimed before the Committee is whether the differentiation amounts to a prohibited form of discrimination or merely constitutes a permissible distinction. General Comment 18 cites the following factors as decisive of which one it is: the objectiveness and reasonableness of the criteria used and the legiti-

8. CCPR General Comment No. 18: Non-Discrimination, U.N. Hum. Rts. Comm., Views adopted by the Committee at its 37th session (Nov. 10, 1989), ¶ 7. General Comments are standard-setting instruments adopted by the human rights treaty bodies by way of consensus, following extensive consultation with stakeholders, with a view to providing State Parties with specific guidance concerning their legal obligations under human rights treaties and recommending best practices for their effective implementation. Though, strictly speaking, General Comments are not legally binding, they carry great influence because of the promulgating treaty bodies' professional expertise and special roles as "guardians of the treaties." See generally Helen Keller & Leena Grover, *General Comments of the Human Rights Committee and their Legitimacy*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 116 (Hellen Keller & Geir Ulfstein eds., 2012) (section 2.3 is particularly illustrative).

9. See CCPR General Comment No. 18: Non-Discrimination, *supra* note 8, ¶ 9.

10. *Id.* ¶ 10.

11. *Id.*

12. For an example of application by the HRC of indirect discrimination on religious grounds, see *Singh Bhinder v. Canada*, CCPR/C/37/D/208/1986, No. 208/1986, U.N. Hum. Rts. Comm., Views adopted by the Committee under art. 5(4) of the Optional Protocol at its 37th session (Nov. 9, 1989), ¶ 7 (finding that the requirement to wear a hard hat did not amount to indirect discrimination against a Sikh worker). For a discussion of some of the doctrinal differences between direct and indirect discrimination under the ICCPR and the margin to be afforded to states in deciding how to respond to indirect discrimination claims, see Gerald L. Neuman, *supra* 34 HARV. HUM. RTS. J. 177 (2021).

macy of the purpose of the distinction.¹³ Subsequent views issued by the HRC have identified proportionality as an additional relevant factor, i.e., the differentiation must not produce an excessive impact on the enjoyment of individual rights and freedoms.¹⁴ It is in connection with the latter condition that questions sometimes arise relating to the duty of the state to introduce reasonable accommodation to mitigate the harmful consequences stemming from differentiation between members of distinct groups.¹⁵

II. FREEDOM OF RELIGION

The Covenant does, however, contain Article 18 as another avenue for protecting persons belonging to religious groups from what they might perceive to be discriminatory restrictions.¹⁶ Under the Article, such persons can claim that the restricting laws, policies, or practices adversely affect their right to religious freedom. This option may constitute a particularly effective way to protect religious interests, because Article 18 is formulated broadly—(a) it protects freedom of religion *and belief*, and (b) freedom to *manifest* religion or belief—and is not encumbered by the requirement, found in anti-discrimination norms, to compare across different groups.

Significantly, Article 18 is not directed principally at protecting religious pluralism *per se* or the collective right of groups of individuals to practice their religion (such an interest is covered, to some extent, by Article 27 of the Covenant).¹⁷ Rather, it is primarily aimed at protecting the free adherence by individuals to one of the systems of belief mentioned in the first sentence of Article 18—thought, conscience, or religion—and the freedom to manifest this adherence. From this point of view, it matters little whether an individual's religious belief conforms to the teachings of an established religion or whether the specific manifestation is the dominant tradition among adherents of the same religion.¹⁸ It also matters little

13. CCPR General Comment No. 18: Non-Discrimination, *supra* note 8, ¶ 13. See e.g., Waldman v. Canada, CCPR/C/67/D/694/1996, No. 694/1996, U.N. Hum. Rts. Comm., Views adopted by the Committee under art. 5(4) of the Optional Protocol at its 67th session (Nov. 3, 1999), ¶ 10.6.

14. See, e.g., Jacobs v. Belgium, CCPR/C/81/D/943/2000, No. 943/2000, Views adopted by the Committee under art. 5(4) of the Optional Protocol at its 81st session (JULY 7, 2004), ¶ 9.5.

15. See, e.g., General Comment No. 36 – art. 6: Right to Life, CCPR/C/GC/36, U.N. Hum. Rts. Comm., Views adopted by the Committee at its 124th session (Oct. 30, 2018), ¶ 24.

16. ICCPR, *supra* note 1, art. 18.

17. See CCPR General Comment No. 23: Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, U.N. Hum. Rts. Comm., Views adopted by the Committee at its 50th session (Apr. 8, 1994), ¶ 6.2.

18. See CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4 (1993), U.N. Hum. Rts. Comm., Views adopted by the Committee at its 48th session (July 30, 1993), ¶ 2.

whether the interference with religious freedom by the relevant state or non-state actor was intentional or unintentional.¹⁹

The HRC's views in the *Yaker* case—a case dealing with the Covenant compatibility of French legislation imposing a criminal fine on individuals who fully cover their face in public, including *niqab*-wearing Muslim women—illustrates this broad scope of protection. It is uncontested that most Muslim women in France do not wear the full-face veil and that most Islamic religious scholars do not consider this practice to be mandated by religious doctrine.²⁰ Still, the Committee was of the view that the ban on wearing the full-face veil in public infringed the author's religious freedom under Article 18, because it limited her ability to manifest what *she* considered to be a religious custom.²¹

The right to freely manifest religion or belief is not absolute in nature (unlike the freedom to adopt or have a religion or belief, which is formulated in Article 18(1) as an absolute right)²² and is subject to the Article 18(3) limitations clause,²³ which requires any restriction on the enjoyment of freedom of religion to be justified on the basis of its legality, necessity, and specific aim. Here, too, the Committee has read in a requirement that limitations should also be proportionate in nature²⁴ and has opined that restrictions need to be “strictly interpreted.”²⁵

III. THE CHOICE

The HRC employs broad discretion when confronted with claims alleging multiple violations of overlapping provisions of the Covenant.²⁶ Sometimes, it considers each claim separately.²⁷ At other times, it decides after finding a violation of one provision not to decide the claims brought under the other (implicitly employing a principle of judicial economy).²⁸ Still, at other times, it may rely on the findings reached with respect to one provi-

19. Cf. Thomas R. McCoy & Gary A. Kurtz, A Unifying Theory for the Religion Clauses of the First Amendment, 39 VANDERBILT L. REV. 249, 258 (1988) (discussing cases of inadvertent interference of government regulation with freedom of religion).

20. *Yaker v. France*, CCPR/C/123/D/2747/2016, No. 2747/2016, U.N. Hum. Rts. Comm., Views adopted by the Committee under Article 5(4) of the Optional Protocol (July 17, 2018), ¶ 8.13 (“the Act is applied mainly to the full-face Islamic veil, which is a form of religious observance and identification for a minority of Muslim women”); *Id.* ¶ 5 (Ben Achour, dissenting) (“the most knowledgeable authorities on Islam do not recognize concealing the face as a religious obligation”).

21. *Id.*, ¶ 8.3.

22. CCPR General Comment No. 22: Article 18, *supra* note 18, ¶ 3.

23. ICCPR, *supra* note 1, art. 18(3).

24. See, e.g., *Yaker*, *supra* note 20, ¶ 8.8.

25. CCPR General Comment No. 22: Article 18, *supra* note 18, ¶ 8.

26. See *Judge v. Canada*, *supra* note 4, ¶ 10.10.

27. See, e.g., *F.A. v. France*, CCPR/C/123/D/2662/2015, No. 2662/2015, U.N. Hum. Rts. Comm., Views adopted by the Committee under Article 5(4) of the Optional Protocol (July 16, 2018), ¶¶ 8.2–8.13.

28. See *Judge v. Canada*, *supra* note 4, ¶ 10.10.

sion to determine whether a violation has also occurred of another provision requiring common or similar elements.²⁹ In this context, it often makes sense for the Committee to first ascertain which of the two or more overlapping provisions imposes more rigorous obligations on states because judicial economy considerations generally support focusing on those violation claims that are easier to establish. Once the less controversial violation has been established, legal conclusions pertaining to the other claimed violation(s) may flow therefrom relatively straightforwardly or may even be redundant.

A comparison between the elements of Articles 2(1) and/or 26, on the one hand, and those of Article 18, on the other, when applied to cases involving discriminatory restrictions on religious freedom, suggests a similarity between the two legal frameworks. This is because the Covenant's non-discrimination and religious freedom provisions are both built around principles of legality, reasonableness (i.e., necessity and proportionality), and legitimate aim. However, there are also important differences between the relevant Covenant provisions,³⁰ leading, so it seems, to a higher level of protection for religious freedom under the Covenant than that afforded to protection from discrimination on religious grounds.

The first difference is that Article 18 provides a closed list of grounds capable of justifying restrictions on the manifestation of religion or belief: public safety, order, health, morals, and the fundamental rights and freedoms of others. In contrast, the non-discrimination provisions do not necessarily prohibit the application of justifiable distinctions for purposes other than those listed in Article 18(3).³¹ The second difference is that the *prima facie* violation threshold for freedom of religion is an objective one (i.e., interference with the freedom to have, adopt, or manifest a religion or belief), whereas the analogous threshold for religious discrimination cases is a relative one (i.e., *different* treatment than that afforded to similarly situated

29. See, e.g., General Comment No. 36, *supra* note 15, ¶ 61 (“Any deprivation of life, based on discrimination in law or fact, is *ipso facto* arbitrary in nature.”).

30. See generally Sarah H. Cleveland, *supra* 34 HARV. HUM. RTS. J. 217 (2021); Tarunabh Khaitan, *supra* 34 HARV. HUM. RTS. J. 231 (2021); Christopher McCrudden, *supra* 34 HARV. HUM. RTS. J. 249 (2021).

31. For example, restrictions on the wearing of all conspicuous religious symbols in all public schools—see, e.g., Loi n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics - Law No. 2004-228 of 15 March 2004 [Law 2004-228 of March 15, 2004, regulating, in application of the principle of secularism, the wearing of symbols or garbs that show religious affiliation in public primary schools, colleges, and secondary schools]—or in the workplace can be defended under Article 2(1) or 26 of the Covenant, even if justified on the basis of the principle of neutrality, which does not appear to qualify as one of the grounds listed in Article 18. See e.g., Case C-157/15, Achbita v. G4S Secure Solutions NV, ECLI:EU:C:2017:203, ¶ 37. Still, questions remain relating to the reasonableness of the restrictions (which may amount to indirect discrimination), cf. F.A. v. France, *supra* note 27, ¶ 8.13, and with regard to the duty to afford reasonable accommodation in certain circumstances, cf. General comment no. 6 (2018) on equality and non-discrimination: Committee on the Rights of Persons with Disabilities, CRPD/C/GC/6, U.N. Comm. On the Rts. Of Persons with Disabilities, Part D (Apr. 26, 2018).

individuals, or *similar* treatment to that afforded to differently situated individuals).³² In practical terms, this means that certain measures, which represent an objective failure to protect religious freedom, would not be deemed discriminatory if applied to everyone (unless it can be shown that they have a disparate impact on individuals from different comparison groups).³³ Finally, the non-discrimination norm is premised on the existence of a comparison group, precise identification of which, especially in cases of indirect and intersectional discrimination,³⁴ is sometimes difficult to establish.³⁵ Such a challenge might be exacerbated were the Committee to embrace, in the future, those approaches to comparison groups found in the academic literature on legal discrimination that insist on identifying only groups that have stable or semi-stable characteristics³⁶ and that advocate for the introduction of gradations in the stringency of judicial or quasi-judicial review in accordance with a complex “suspect class” categorization.³⁷ No similar requirement for identifying a comparison group (with or without nuanced review criteria) exists under Article 18.

As a result of these considerations, it is not surprising that the recent practice of the HRC suggests a propensity to focus on Article 18 in religious discrimination cases and to use Articles 2(1) or 26 in a largely supplementary manner. For example, in the *Baby Loup* case, involving the application of a headscarf ban to a Muslim early childhood educator in a childcare center in France, the Committee found the ban not justified under any of the grounds provided in Article 18(3) and the sanction imposed on her (dismissal without severance payment) disproportionate.³⁸ It then proceeded to find, on the basis of essentially the same analysis, that the treatment of the complainant also constituted a violation of Article 26 by treating a veil-wearing Muslim differently than other members of the soci-

32. For further discussion of the comparative nature of religious discrimination law, see Christopher McCrudden, *supra* 34 HARV. HUM. RTS. J. 249, 254–56 (2021).

33. See, e.g., *Genero v. Italy*, CCPR/C/128/2979/2017, No. 2979/2017, U.N. Hum. Rts. Comm., Views adopted by the Committee under article 5(4) of the Optional Protocol (Mar. 13, 2020), ¶ 7.6.

34. The Committee has recently explained the concept of “indirect discrimination” as referring to “a rule or measure that is apparently neutral or lacking any intention to discriminate but has a discriminatory effect.” See *Genero, id.*, ¶¶ 7.3, 7.6. It views “intersectional discrimination” as discrimination on the basis of a combination of group identities (e.g., gender and religion). See e.g., *Yaker, supra* note 20, ¶ 8.17.

35. See, e.g., *Mellet v. Ireland*, CCPR/C/116/D/2324/2013, No. 2324/2013, U.N. Hum. Rts. Comm., Views adopted by the Committee under article 5(4) of the Optional Protocol (Mar. 31, 2016), at 20 (Sarah H. Cleveland, concurring) (arguing that limits on abortion constitute a form of gender discrimination and discussing the objection of Ireland to the comparison between men and women in this regard).

36. See, e.g., John Corvino, Ryan T. Anderson, & Sherif Girgis, *Debating Religious Liberty and Discrimination* 164 (2017).

37. See Christopher McCrudden, *supra* 34 HARV. HUM. RTS. J. 249, 277 (2021).

38. *F.A. v. France, supra* note 27, ¶¶ 8.4–8.9.

ety without a showing of a legitimate aim proportionately served by this treatment.³⁹

In the *Yaker* case, too, the Committee rejected the main justification offered by the state—that wearing of the full-face veils hinders life together in a community (*vivre ensemble*)—as falling outside the scope of legitimate aims enumerated in Article 18(3).⁴⁰ It also found the measures taken—the application of criminal law to enforce the ban—to be disproportionate in nature.⁴¹ When it proceeded to decide the discrimination claim, the Committee relied on its finding that religious freedom had been violated to hold that the ban was not premised on a reasonable distinction between full-face veil-wearing Muslim women and others “who may legally cover their face in public,” implying that a distinction based on a Covenant-incompatible practice cannot be regarded as reasonable in nature.⁴² Interestingly enough, the Committee’s conclusion on religious discrimination appeared to hinge, to a large extent, on the unequal distribution of exceptions to the ban on full-face coverage, with other face-covering individuals serving as the relevant comparison group, and not on a harder-to-establish discrimination claim comparing persons who cover their faces in public to those who do not.

Finally, in a number of discriminatory religious treatment cases, after finding a violation of Article 18, the Committee has held it unnecessary to examine claims separately under Articles 2(1) or 26. For example, in *Leven v. Kazakhstan*, a case involving the application of criminal law to the religious activity of a foreign national, whom the state required to register as a “foreign missionary,” the Committee held that freedom of religion was violated and did not proceed to examine the religious discrimination claims.⁴³ In *Nuryllayev v. Turkmenistan*, the Committee considered multiple allegations of legal harassment raised by members of a minority religious group (Jehovah’s Witnesses). Having found a violation of Articles 18 and 14 of the Covenant (freedom of religion and due process), the Committee perceived no need to explore the religious discrimination claims.⁴⁴

39. For a similar analysis, see *Türkan v. Turkey*, Communication, CCPR/C/123/D/2274/2013, No. 2274/2013, U.N. Hum. Rts. Comm., Views adopted by the Committee under article 5(4) of the Optional Protocol (July 17, 2018), ¶¶ 7.5-7.8.

40. *Yaker*, *supra* note 20, ¶¶ 8.9-8.10. The Committee also dismissed the security justification provided by France as inadequate, because it had not shown the ban to be a necessary and proportionate response to the claimed security risk. *Id.*, ¶¶ 8.7-8.8.

41. *Id.*, ¶ 8.11.

42. *Id.*, ¶ 8.17.

43. *Leven v. Kazakhstan*, CCPR/C/112/D/2131/2012, No. 2131/2012, U.N. Hum. Rts. Comm., Views adopted by the Committee at its 112th session (Oct. 21, 2014), ¶ 9.5.

44. *Nuryllayev v. Turkmenistan*, CCPR/C/125/D/2448/2014, No. 2448/2014, U.N. Hum. Rts. Comm., Views of the Committee adopted under article 5(4) of the Optional Protocol (Mar. 29, 2019), ¶ 7.6; *see also* *Yachnik v. Belarus*, CCPR/C/111/D/1990/2010, No. 1990/2010, U.N. Hum. Rts. Comm., Views of the Committee adopted at its 111th session (July 21, 2014) (Gerald L. Neuman & Yuval Shany, dissenting), ¶¶ 1 and 5 (opining that a refusal to afford a pension to an individual who objects on religious grounds to self-identify using an ID number is a disproportionate infringement of freedom

It is noteworthy that a similar choice, between primarily addressing discriminatory restrictions on rights and freedoms as restrictions on substantive rights under the Covenant or as cases of discrimination, also presents itself in other contexts. Here, too, a narrow list of legitimate aims for restrictions and the difficulties of identifying comparison groups and drawing comparisons across different groups of individuals, especially in indirect discrimination cases, seem to push the Committee in the direction of emphasizing the impermissible nature of the restrictions more than their discriminatory nature. This trend is illustrated by the Views of the Committee on restrictions on abortion in Ireland. In this context, the Committee found the restrictions to violate Articles 7 (torture/ill-treatment) and 17 (privacy) of the Covenant but struggled to find indirect discrimination on broad grounds of gender (finding, instead, discrimination on narrower socio-economic grounds on the basis of unjustified differentiation in treatment of women using the self-induced method for terminating pregnancy versus those using the non-self-induced method).⁴⁵

CONCLUSION

Because the ICCPR both protects freedom of religion and prohibits unlawful discrimination, the HRC has a *de facto* choice in cases involving discriminatory restrictions on religious freedoms as to whether to focus on one right or the other, or fully address both rights. This Commentary has claimed that reviewing discriminatory restrictions through the lens of religious freedom probably offers an easier-to-establish avenue of protection in light of Article 18's limits on the legitimate aims that may be invoked to justify restrictions of its protections and the difficulties of identifying comparison groups and comparing treatment in indirect discrimination cases. As a result, some of the practical difficulties of applying nebulous concepts such as indirect discrimination or statistical discrimination, which have pushed law-appliers in certain domestic or regional contexts to focus on individualized reasonable accommodation,⁴⁶ appear to have induced the HRC to focus—albeit without explicitly so acknowledging—on the broad and relatively straightforward category of freedom of religion.

of religion, whereas other members of the Committee found both the religious freedom and religious discrimination claims inadmissible for lack of substantiation).

45. See Mellet, *supra* note 35, ¶¶ 7.10–7.12; Whelan v. Ireland, CCPR/C/119/D/2425/2014, No. 2425/2014, U.N. Hum. Rts. Comm., Views adopted by the Committee under article 5(4) of the Optional Protocol (Mar. 17, 2017), ¶¶ 7.10–7.12.

46. See generally Katayoun Alidadi, *supra* 34 HARV. HUM. RTS. J. 281 (2021).

