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Ministers Committee on Legislative Matters
Parliament of Israel
Kiryat Ben Gurion
Jeruselem, Israel 9195016

Dear Committee Members,

I am an attorney in Paris, France, who specializes in international human rights law, in particular the defence of religious communities before international institutions and national courts, in coordination with other US based international human rights lawyers.

I have been informed that a draft law "for the handling of harmful cults" has been submitted to the Knesset and will be examined by the Committee on Sunday February 14th, 2016.

The bill contains six articles which are designed at fighting against groups labelled as "harmful cults" in order to purportedly protect the rights of their members, even if needed against their own will.

The law proposed to the Members of the Committee infringes the international human rights commitments made by the State of Israel and would seriously jeopardize the rights of religious communities, not only minority ones but also those of traditional religions .

The French experience in this field has brought condemnation by international human rights institutions of the same kind of measures as those envisaged in the Israeli law. Judges have been reluctant to apply them due to the vagueness of their terms.

I. Articulation of the Law

The draft law provides a definition of "harmful cults" which contains two elements: the mind control or undue influence allegedly exerted over the group's members, and criminal convictions decided against the group members.

The mind control element comes first and determines a special regime to be applied to those groups whose practices allegedly represent undue influence over its members:

- constitution of special files on these groups and their members,
- systematic sentencing of the head of the group to ten years imprisonment solely for heading or managing the group,
- characterization of the group as "criminal organization" in the meaning of the Law on criminal organizations and confiscation of its properties and all means of religious practice,
- possibility of considering the group members as mentally incompetent due to their religious affiliation although they wilfully adhered to it and depriving them of their civil rights by putting them under guardianship, and
- putting them under "treatment" to severe 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 and their religious choice can be ignored and their rights violated for their "own good".

II. 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 difficulty raised by this definition is that a relation of dependence or moral authority is inherent to any religious affiliation and to followers of a Church and Church leaders. Control over thought processes can be said of any religious guidance, confession, etc. 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 such as Haredi Jews and others.

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 French Experience:

France adopted a legal provision with a similar concept in 2001, in the law for the repression of sectarian movements known as the About-Picard law, by the names of the Members of Parliament who proposed it.

These members of Parliament 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).

They introduced **the 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".

This provision has been found 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,[1] the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, stated:

"87. Nevertheless, the question of the fight against sectes 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 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 has hardly ever been applied.

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

At the tenth Anniversary of the About Picard law in 2011, officials stated that it had been applied 35 times by Courts, but that only 4 or 5 of these decisions concerned so-called cults or sects, specifically identifying only one of these, the case of Néophare, a tiny mystical community of 20 members, a member of which committed suicide. Its prosecuted leader declared at the time that he did not want any defence, that the law was non sense and that he had better things to do writing his book.

So after ten years of application, this law had only been applied once for sure to a religious minority.

Indeed, judges have had difficulties in 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." [2]

The National School of Magistrates further interviewed the President of the French government agency set up to combat cults, MIVILUDES (Interministerial Mission for Monitoring and Combatting Sectarian Abuses) who explained:

"A second difficulty comes from the very nature of Article 223-15-2 which is based on psychological subjection and is right at the border between law and psychology. The judges who have to characterize psychological subjection do not have this culture. They usually deal with damage to property or persons and are confused with what call be called "damage to the soul".

He concluded: "These difficulties make it even more important to my view that Courts collaborate closely with MIVILUDES." [3]

Indeed, French authorities have made the assessment of inapplicability of the concept of psychological subjection for years and figured that a government agency in charge of collecting "information" on so-called "harmful cults" and making it available for judges and the judiciary would induce them to proceed to more criminal prosecutions and convictions on this basis.

However, classifying religious groups into "religions" and "cults" is itself a violation of international human rights standards, and especially the International Covenant on Civil and Political Rights signed and ratified by Israel (the "Covenant"). It is impermissible and arbitrary 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".

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[2] *Justice Actualités* n° 8 of 2013, page 42.
[3] *Justice Actualités* n° 8 of 2013, page 50.

III. 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 those members' rights to freedom of religion or belief under Article 18 of the Covenant 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 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" has been explicitly condemned by the United Nations.

The UN Human Rights Committee elaborated some General Comments to detail what the construction and application of the articles of the Covenant should be, and in particular General Comment 22 on Article 18. It has found that freedom of religion is not limited in its application to traditional religions and that 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 by a predominant religious community, contravenes Article 18 of the Covenant.

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

In her report on her 2005 mission to France cited above, 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 made the following recommendation:

"114. She urges judicial and conflict resolution mechanisms to no longer refer to, or use, the list published by Parliament in 1996."

French investigation judges and even prosecutors have refused to consult MIVILUDES to provide them information on the groups involved in criminal proceedings.

In the above cited 2013 interview done 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 as mentioned above) 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]

Provision of biased information on "cults" by a government body to judges and prosecutors undermines the independence of the Judiciary from the Executive Power and the right to presumption of innocence protected by international instruments such as Article 14 of the International Covenant on Civil and Political Rights, 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, as well as the UN Basic Principles on the Integrity of the Judiciary.[5]

Constitution 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 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."

The provisions on a Ministry data base intended to support criminal convictions of the heads of groups considered as "harmful cults" clearly violate the above international instruments binding on Israel.

IV. Guardianship and Treatment

The draft law also provides that members of "harmful cults" could be put under guardianship and treatment.

Article 33(a) of the Israeli Law on Legal Capacity and Guardianship Law 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".

This amounts to characterizing the followers of such groups as legally incompetent on the sole basis of their religious affiliation considered as the result of "undue influence".

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

[5] See 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.

Considering religious communities' members as incompetent due to the choice of their religious affiliation if they make the "wrong" choice amounts to an outright denial of their right to freedom of religion or belief under international law.

It also denies personal autonomy and responsibility of the followers and their accountability for their actions, although the Israeli Supreme Court ruled to the contrary in the case of the followers of Elior Hen.

The Israeli Supreme Court cannot rule on one hand that the members of such groups are legally responsible in order to decide criminal convictions against them and on the other hand the legislator considers them as irresponsible for the purpose of depriving them of their civil rights.

The draft law also provides for the creation of an infrastructure which will provide "mental care" to the "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, it recommends "exit counselling". Exit counselling should be provided to followers under the draft law 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 would 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 international human rights law.

Conclusion

In consideration of the above, I respectfully suggest that the members of the Committee scrutinize the draft law and its implications carefully before they make a decision in this regard.

The draft law as submitted to the Committee should be rejected as it is unlawful on the basis of all the reasons detailed above.

Respectfully Yours,

cc. Legal Advisor of the Knesset
Legal Advisor of the Government
Knesset Information Centre