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Lund University

Stephanie Berry

The Application of Minority  
Rights to Muslims in Denmark,  
Germany and the United  
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Asbjørn Eide

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*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

Article 1 UN Universal Declaration of Human rights

# Contents

<b>SUMMARY</b>	<b>1</b>
<b>ABBREVIATIONS</b>	<b>3</b>
<b>1 INTRODUCTION</b>	<b>4</b>
1.1 The term ‘Muslim Minorities’	5
1.2 Methodology and Limitations	7
<b>2 REVIEW OF INTERNATIONAL MINORITY RIGHTS</b>	<b>8</b>
2.1 The Sources of International Law	8
2.2 The Problem with the Definition of the term ‘Minority’	9
2.2.1 <i>Definition of a Minority, UN</i>	10
2.2.2 <i>Definition of ‘National Minority’, THE FCNM</i>	12
2.3 The Content of Relevant Minority Rights	14
2.3.1 <i>Article 27 ICCPR</i>	14
2.3.2 <i>The UN Declaration</i>	16
2.3.3 <i>The Framework Convention for the Protection of National Minorities</i>	19
2.4 The Content of Other Rights Relevant to the Muslim Community	23
2.4.1 <i>Article 2 ICCPR and ICESCR</i>	23
2.4.2 <i>Article 18 ICCPR</i>	24
2.4.3 <i>Article 26 ICCPR</i>	25
2.5 <i>Minority Rights versus Freedom of Religion</i>	26
<b>3 THE NATIONAL IMPLEMENTATION OF INTERNATIONAL MINORITY RIGHTS LAW</b>	<b>29</b>
3.1 Denmark’s International Obligations	30
3.1.1 <i>The Composition of the Muslim Minority</i>	30
3.1.2 <i>The Framework Convention</i>	31
3.1.2.1 Scope of Application	31
3.1.2.2 Issues Arising from State Reports	34
3.1.3 <i>ICCPR</i>	37
3.2 Germany’s International Obligations	41
3.2.1 <i>The Composition of the Muslim community</i>	41
3.2.2 <i>The Framework Convention</i>	42
3.2.2.1 Scope of Application	42

3.2.2.2	Issues Arising from State Reports	44
<b>3.2.3</b>	<b>ICCPR</b>	<b>45</b>
<b>3.3</b>	<b>The United Kingdoms's International Obligations</b>	<b>48</b>
<b>3.3.1</b>	<b><i>Composition of the Muslim community</i></b>	<b>48</b>
<b>3.3.2</b>	<b><i>The Framework Convention</i></b>	<b>48</b>
3.3.2.1	Scope of Application	48
3.3.2.2	Issues Arising from State Reports	49
<b>3.3.3</b>	<b>ICCPR</b>	<b>55</b>
<b>3.4</b>	<b>Conclusion</b>	<b>58</b>
<b>4</b>	<b>NATIONAL LAW</b>	<b>60</b>
<b>4.1</b>	<b>Denmark</b>	<b>62</b>
4.1.1	<i>Freedom of Religion and Related Laws</i>	62
4.1.2	<i>The Protection of the Distinctive Characteristics of the Muslim Minority</i>	66
<b>4.2</b>	<b>Germany</b>	<b>73</b>
4.2.1	<i>Freedom of Religion and Related Laws</i>	74
4.2.2	<i>The Protection of the Distinctive Characteristics of the Muslim Minority</i>	77
<b>4.3</b>	<b>The United Kingdom</b>	<b>86</b>
4.3.1	<i>Freedom of Religion and Related Laws</i>	87
4.3.2	<i>The Protection of the Distinctive Characteristics of the Muslim Minority</i>	92
<b>4.4</b>	<b>Conclusion</b>	<b>100</b>
<b>5</b>	<b>INTEGRATION STRATEGIES</b>	<b>102</b>
<b>5.1</b>	<b>Denmark</b>	<b>103</b>
<b>5.2</b>	<b>Germany</b>	<b>108</b>
<b>5.3</b>	<b>The United Kingdom</b>	<b>111</b>
<b>5.4</b>	<b>Conclusion</b>	<b>117</b>
<b>6</b>	<b>CONCLUSION</b>	<b>119</b>
	<b>TABLE OF CASES</b>	<b>134</b>

# Summary

Historically, minority rights have played a role in conflict prevention. The current situation in the West, where it is asserted that Islam is not compatible with democracy and Western values, lends itself to the application of such rights. The maintenance of Muslim group identity is a crucial factor, if the Muslim communities are to feel integrated and accepted in Western society. However, it is also asserted that the application of minority rights to the Muslim community in the West allows no more rights than the application of non-discrimination legislation and freedom of religion.

This thesis will investigate the situation regarding the application of minority rights to the Muslim communities in three different countries with vastly differing approaches: Denmark, Germany and the United Kingdom. This will ascertain whether the application of minority rights confers any benefits on the Muslim communities that are not already conferred by other rights. In order to achieve this, international obligations, national legislation and the situation in fact as well as integration strategies will be considered and compared. More specifically, the maintenance of Muslim group identity in the different countries and the extent that this is enabled both in law and in fact will be considered.

To this ends, Chapter One discusses the perceived issues surrounding Islam in the West as well as the term 'Muslim minorities' and outlining methodology and limitations. Chapter Two provides a discussion of the definition of 'minority' as well as a review of international minority rights including the Framework Convention on the Protection of National Minorities, the UN Declaration on Minorities and article 27 of the International Covenant on Civil and Political Rights, as well as other relevant international standards. Chapter Three considers the individual states' application of the Framework Convention on National Minorities and article 27 ICCPR. Chapter Four considers the national law of all three states

including freedom of religion and the protection of the distinctive characteristics of the Muslim minority, while Chapter Five looks at national integration strategies and the extent that they contribute to the fulfilment of minority rights standards. Finally, Chapter Six considers if there is any benefit to be gleaned from the application of minority rights standards to the Muslim communities considered.

# Abbreviations

ECHR	European Convention on Human Rights
Employment Regulations	Employment Equality (Religion or Belief) Regulations 2003 (UK)
FCNM	Framework Convention on the Protection of National Minorities
Framework Convention	Framework Convention on the Protection of National Minorities
GC	UN General Comment of the Human Rights Committee
HRC	UN Human Rights Committee
HRA	The 1998 Human Rights Act (UK)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMR	<i>Institut for Menneskerettigheder</i> (Institute for Human Rights) (Denmark)
MCB	The Muslim Council for Britain
MINAB	The Mosques and Imams National Advisory Board (UK)
UK	The United Kingdom
UN	The United Nations
UN Declaration	UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UN Declaration on Minorities	UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

# 1 Introduction

Democratic states in the West pride themselves on the separation between state and religion. However, it is increasingly asserted that Islam is not compatible with democracy and Western values. Many Muslims living in democratic societies feel that they need to make the choice between their religion and their country. A choice that they feel is forced upon them by the society of democratic states and that should not be necessary according to the doctrine of the separation between state and religion as promulgated in John Locke's 'Social Contract Theory' and echoed by Thomas Jefferson. This tension is arguably leading to the polarisation of Islam, with young Muslims either becoming assimilated with Western society or choosing extreme forms of their religion in a reaction to the choice that they feel that is forced upon them by the state in which they live.

Historically, minority rights have played a role in preventing conflict between the majority and minority. The Framework Convention on the Protection of National Minorities, for example, aims "to address unstable minority-majority relations that have a clear potential to destabilize peace and security in Europe".<sup>1</sup> In this case, Muslims, although not ethnically similar, increasingly perceive themselves to be a homogenous group united against the 'other', in this case the majority.<sup>2</sup> The purpose of minority rights is to allow the minority to maintain the characteristics that make them distinct, while integrating the minority in question with the rest of society, so that they can live peacefully alongside each other.<sup>3</sup> This is arguably the purpose of integration policy as opposed to an assimilationist policy. This concept would obviously benefit the Muslim communities.

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<sup>1</sup> R. Hofmann, 'The Framework Convention for the Protection of National Minorities: An Introduction', in M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press, Oxford 2006) p.6

<sup>2</sup> EUMC, *Muslims in the European Union, Discrimination and Islamophobia*, (2006) <[www.eumc.at/eumc/material/pub/muslim/Manifestations\\_EN.pdf](http://www.eumc.at/eumc/material/pub/muslim/Manifestations_EN.pdf)>, visited on 5 December 2007 p.31



However, it has commonly been argued that freedom of religion and anti-discrimination legislation are enough to allow the Muslim minority to maintain their distinctive characteristics and as a result the Muslim community as a whole within a country (in distinction to specific ethno-religious Muslim groups) does not qualify as a minority within the meaning of minority rights law.

## 1.1 The term ‘Muslim Minorities’

“Religion does not have the same meaning in Islam (and the Islamic countries) on the one hand and in Christianity (and the European countries) on the other. For Islam it has a broader scope and covers sectors of human life- what people wear, what they eat, how animals are to be killed, and so on- which today are irrelevant, religiously speaking, in Christianity.”<sup>4</sup>

Muslim communities although not as ethnically homogenous as other religious groups such as Jews and Sikhs<sup>5</sup>, still maintain a number of distinct characteristics that set them apart from the rest of the population as a whole. Muslim’s can be separated not only into ethnic groups within the countries that will be discussed, with the vast majority being Turkish in Denmark and Germany and Pakistani in the UK but also into different factions within the religion itself such as Sunni, Shi’a and Ahmadiyya. The fact of a common religion does not necessarily mean that there is cohesion between the different Muslim groups in existence in these societies. Nevertheless, recent research has shown that younger Muslims are moving “away from self-identification primarily on ethnic or national lines, or on the basis of their own or their parents’ country of origin. Today many see themselves

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<sup>3</sup> A.Eide, ‘The rights of ‘old’ versus ‘new’ minorities’, 2 *European Yearbook of Minority Issues* (2002/2003) p.366

<sup>4</sup> S. Ferrari, ‘Islam in Europe: An Introduction to Legal Problems and Perspectives’, in R.Aluffi B.-P and G. Zincone (eds.) *The Legal Treatment of Islamic Minorities in Europe* (Peeters, Leuven, 2004) p.2

collectively as Muslims”.<sup>6</sup> There are also a number of distinct characteristics that the different communities have in common which can be termed as a separate ‘identity’, which do not differ as a result of ethnic background or faction, despite the fact that they may well be rooted in culture as well as religious background. They therefore have a common interest in maintaining such characteristics as, dress (more specifically the headscarf), *halal* meat (slaughtered in accordance with Islamic law), the right to pray and observe religious festivals, the right build mosques and burial sites and establish religious schools. These characteristics are particularly relevant as “[t]he new generation, is actively, both consciously and unconsciously, separating the culturally specific from the ‘universally’ Islamic”.<sup>7</sup> There are, of course, disagreements between these different communities as to other elements of Islam that are crucial to the practice of the religion. Dress, such as the *burka*, is thought, primarily, by Sunni Muslims of *Pashtun* origin to be a requirement for modest dress; similar disagreements arise over the practice of polygamy by some communities. These characteristics are disputed, however, within the faith itself and therefore will not be considered in this discussion. The Muslim community views a number of characteristics as a legitimate manifestation of its religion, which as a result can be considered as part of its separate ‘identity’. It is these characteristics that will be discussed in the light of the application of minority rights and whether European countries’ understanding of religion and freedom of religion are sufficient to allow the Muslim minority to maintain its group identity.

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<sup>5</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the United Kingdom Adopted on 30 November 2001* (ACFC/INF/OP/I(2002)006) paras.14–15

<sup>6</sup> EUMC *supra* note 2 p.31, B. Maréchal, ‘The Question of Belonging’, in B. Maréchal *et al* (eds.), *Muslims in the Enlarged Europe, Religion and Society* (Brill, Leiden 2003) p.12

<sup>7</sup> F. Dassetto and J. Nielsen, ‘Conclusions’, in B. Maréchal *et al* (eds.), *Muslims in the Enlarged Europe, Religion and Society* (Brill, Leiden 2003) p.534

## 1.2 Methodology and Limitations

The main research question that will be addressed in this thesis is: Are freedom of religion and anti-discrimination legislation sufficient for Muslim minorities in Western Europe to preserve their distinct characteristics? The underlying hypothesis behind this question is that freedom of religion and anti-discrimination are not alone sufficient for the Muslim minority to maintain their distinct characteristics and as a result they would benefit from the application of minority rights. To challenge the doctrine that freedom of religion and anti-discrimination legislation are sufficient for the Muslim minority to manifest its religion and maintain its distinct characteristics, it is necessary to compare the application of minority rights to Muslims in democratic states. For the purpose of this thesis, this will be limited to three European states with vastly differing approaches to the application of minority rights to the Muslim community: Denmark; Germany; and the United Kingdom. In addition to the application of minority rights to the Muslim community, the protection of international standards, such as freedom of religion and anti-discrimination, as well as national legislation and integration strategies will be considered. The differing application of minority rights to the Muslim minority in these states, should therefore indicate whether any benefit is to be gained through the Muslim population through minority rights and whether such an application is necessary in order for the Muslim minority to maintain their group identity, and as such avoid forcing individual Muslims from making the choice between the state and their religion.

# 2 Review of International Minority Rights

## 2.1 The Sources of International Law

While there are a significant number of International Human Rights instruments, relatively few of them deal with minority rights and even fewer contain binding, comprehensive minority rights. As a result this paper will consider the international instruments that deal expressly with minority rights; article 27 of the International Covenant on Civil and Political Rights (ICCPR); the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the UN Declaration on Minorities or the UN Declaration) and the Framework Convention on the Protection of National Minorities (THE FCNM or The Framework Convention). There are additionally, a number of human rights provisions outside of the context of minority rights from which persons belonging to Muslim minorities and other religious minorities can benefit. Most notably, article 18 ICCPR and article 9 of the European Convention on Human Rights (ECHR) on freedom of religion, article 26 of ICCPR on non-discrimination before the law and article 2 of ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the equal enjoyment of rights without discrimination on any ground, including religion. The benefits that these basic human rights confer will be compared with the benefits that are potentially conferred by the use of minority rights to protect the Muslim minorities.

These rights taken together provide a significant amount of protection for persons belonging to Muslim minorities both in the context of minority rights and freedom of religion. However, the extent that human rights such as articles 2, 18 and 26 of the ICCPR protect the Muslim community's ability to maintain its group identity is potentially less so than

if minority rights were to be applied. Nevertheless, they provide a good basis for arguing that states have a positive obligation to protect the identity of Muslim communities. Minority rights are deemed to not only provide the rights of equality and non-discrimination for minorities, which are already provided in the majority of international human rights instruments, but also special rights such as “differential treatment, for the preservation of minority characteristics and traditions which distinguish them from the majority population”.<sup>8</sup> “[S]pecial rights and measures linked to [minority rights] address the preservation of dignity, identity, characteristics traditions, either by extending to groups guarantees for the enjoyment of certain rights and/or by imposing on states the duty to enhance and secure their enjoyment.”<sup>9</sup>

## **2.2 The Problem with the Definition of the term ‘Minority’**

In order to investigate the use of minority rights to protect Muslims it is, of course, necessary to define: what is meant by a minority for the purpose of minority rights; and if the Muslim communities meet the requirements set out by this definition. While no formal definition of what constitutes a minority has been internationally approved, the numerous studies on this topic have proved to be consistent in many areas with just a few points of contention. However, the definition of a minority is further limited by prefixes attached to the term such as ‘Religious Minority’ or ‘National Minority’. It is therefore not only necessary to decide upon a definition of ‘Minority’ but also at what was intended by the documents that will be discussed, so indicated by prefixes.

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<sup>8</sup> G. Alfredsson and A. de Zayas, ‘Minority Rights Protection by the United Nations’, 14 *HRLJ* (1993) p.2

<sup>9</sup> *Ibid.*

## 2.2.1 Definition of a Minority, UN

In his report of 1979, relating to Article 27 of ICCPR, Capotorti asserted that there were four objective criteria and one subjective when considering whether a specific community could be considered a minority. The least contentious of these criteria being the objective criteria that the community is ‘numerically inferior’<sup>10</sup> and in a ‘non-dominant position’<sup>11</sup> within the state. Furthermore, the subjective requirement that the minorities in question have the ‘will to maintain their distinct characteristics’,<sup>12</sup> is similarly uncontentious and has been echoed in the work of Eide, Alfredsson and Nowak amongst others.<sup>13</sup>

In contrast, the condition of ‘existence within a state’ has been a cause for concern. The *Greco-Bulgarian Communities* Case asserted that “the existence of communities is a question of fact; it is not a question of law”.<sup>14</sup> However, the use of ‘existence’ indicates some level of stability. The *travaux préparatoires* indicate accordingly the intention that “the provisions concerning the rights of minorities, it was understood, should not be applied in such a manner as to encourage the creation of new minorities or to obstruct the process of assimilation”.<sup>15</sup> While the intention from this is clear, it does not “reveal that immigrants were to be permanently exempted from protection”.<sup>16</sup> Given the permanent nature of many Muslim’s residence in Denmark, Germany and the United Kingdom, it is hard to conceive of this as not being stable, despite the fact that they are clearly what have been termed as ‘new minorities’.

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<sup>10</sup> F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (E/CN.4/Sub.2/384/Rev.1) p.96 para.566

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, para.567

<sup>13</sup> M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* 2<sup>nd</sup> Edition, N.P.Engel, Kehl (2005) p.664, Eide, *supra* note 3 p.374, G. Alfredsson, ‘Human Rights, fundamental freedoms and the rights of minorities, essential components of democracy’, Strasbourg Conference on Parliamentary Democracy 16-18 September 1991 SXB.CONF (III)8, Secretariat: Council of Europe, Strasbourg, p.10

<sup>14</sup> *Greco- Bulgarian Communities* Case [1930] PCIJ, Ser B, No 17 p.22

<sup>15</sup> UN Doc (A/2929), Chapter VI para.186, M.J. Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* Martinus Nijhoff Publishers, Dordrecht (1987) p.495

<sup>16</sup> Nowak *supra* note 13 p.646 para.20

Nowak argues that “[w]ith the rapid increase of migration in times of globalisation, it would be anachronistic to stick to traditional notions with respect to the definition of minorities, such as the “three generations rule” in order to exclude so-called “new minorities””. The view that stability is not essential has been repeated in General Comment No.23.<sup>17</sup> Alfredsson has, however, countered that “it would not be realistic or sustainable to grant/demand instant minority protection to actual cases of recent arrivals in a country” and has instead suggested that minority rights be applied after “one or two generations or thereabouts”.<sup>18</sup> Further discussion of this would be futile as the Muslim communities to be considered in this study have been present for the most part for at least 40 years. While this may be at odds with the *travaux préparatoires* and Capotorti’s definition, the more contemporary view is that Muslim communities do indeed satisfy the criteria of ‘existence’.

Capotorti’s final and more contentious criterion was ‘juridical status’, that the community in question were actually nationals of the state.<sup>19</sup> Nowak argues that article 27 uses the term ‘persons’ and not ‘nationals’ or ‘citizens’ as in article 26. Surely if the intention was to limit article 27 to citizens, then this would be echoed in the wording of the article. Alfredsson argues that the application of this condition could potentially lead to abuse of the provision by states arbitrarily refusing citizenship to minority communities.<sup>20</sup> This danger is particularly clear in the case of migrant workers, who have proceeded to work on temporary visas for significant periods of time. General Comment No.23 has however put paid to further discussion on this matter, stating clearly “[a] State party may not, therefore, restrict the rights under article 27 to its citizens alone”.<sup>21</sup>

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<sup>17</sup> HRC, *General Comment No.23: The rights of minorities* (CCPR/C/21/Rev.1/Add.5) para.5.2

<sup>18</sup> G. Alfredsson, ‘Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law’, in N. Ghanea and A. Xanthaki (eds.), *Minorities, Peoples and Self-Determination*, Martinus Nijhoff Publishers, Leiden (2005) p.167

<sup>19</sup> Capotorti *supra* note 10 p.96 para.566

<sup>20</sup> Alfredsson *supra* note 18 p.168

<sup>21</sup> HRC *supra* note 17 para.5.1

Therefore, a minority is defined by the objective characteristics of the existence of the minority (although not necessarily the stability), numerical inferiority and non-dominant position in addition to the subjective requirement of the collective will to maintain their distinct characteristics. The suggestion of nationality as a prerequisite, in contemporary minority rights would undermine the very purpose of these provisions.

Despite arguments, to the contrary Muslim communities in Denmark, Germany and UK can be considered to be ‘new’ minorities. They are clearly ‘numerically inferior’ and in a ‘non dominant position’. Their ‘existence’ has been stable in these states for 40 years. The subjective element of “the collective will to maintain their distinct characteristics” is harder to prove, however, as Capotorti noted “it must be said that the will in question generally emerges from the fact that a given group has kept its distinctive characteristics over a period of time”.<sup>22</sup> The fact that Muslim communities are still recognisable and have kept their distinct characteristics surely indicates that the subjective requirement of the definition has also been met.

## **2.2.2 Definition of ‘National Minority’, THE FCNM**

While the definition of ‘minority’ under the UN system appears to be relatively straight forward, even in its application to Muslim communities in Denmark, Germany and the United Kingdom, this is not so when it comes to the Council of Europe and the FCNM. While this convention contains the most comprehensive minority rights and is the only legally binding minority rights instrument, it is limited in scope to ‘national minorities’. As a result of the omission of ‘religious minorities’, which has a more immediately obvious application regarding the Muslim community, it is necessary to

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<sup>22</sup>Capotorti *supra* note 10 p.96 para.567



look further into the term ‘national minority’ to see if this can be interpreted to include the Muslim community.

Initially the term ‘national minority’ appears to be a sufficiently ambiguous term, which could easily be interpreted to include all minorities within its ambit. This indeed was the intention; the term ‘national minority’ allows states a margin of appreciation regarding which communities they apply the FCNM to. Article 2, however, provides a limitation to the margin of appreciation by stating, “the provisions of this framework Convention shall be applied in good faith in a spirit of understanding and tolerance”. Additionally the preamble to the Convention seems to further reinforce its application regarding religious minorities.<sup>23</sup> Furthermore, the clear inspiration provided by the UN Declaration on Minorities for the preamble for the FCNM would initially seem to reinforce the application of its provisions to all minorities. However, the commentary to the FCNM states that the reference to United Nations conventions and declarations “does not extend to any definition of a national minority which may be contained in these texts”.<sup>24</sup>

Many States have sought to limit the scope of the FCNM to ‘old’ or ‘traditional’ minorities,<sup>25</sup> while other states apply the FCNM without discrimination to all communities termed as ‘minorities’ within their territory. While this differentiation has been defended as being within the margin of appreciation, the Advisory Committee has stressed that “this margin of appreciation must be exercised with general principles of international law and the fundamental principles set out in Article 3 FCNM”

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<sup>23</sup> H(1995)010 The Framework Convention for the Protection of National Minorities and Explanatory Report, Preamble: ‘Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity’.

<sup>24</sup> *Commentary on the Provisions of the Framework Convention*, in, H(1995)010 The Framework Convention for the Protection of National Minorities and Explanatory Report p.14 para.26

<sup>25</sup> *List of declarations made with respect to treaty No.157*, Framework Convention for the Protection of National Minorities, Status as of:29/11/2007, Declarations by Denmark and Germany, <[conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=08/02/05&CL=ENG&VL=1](http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=08/02/05&CL=ENG&VL=1)> visited on 29 November 2007

and that the margin of appreciation should not be a source of ‘arbitrary or unjustified distinction’.<sup>26</sup>

While the margin of appreciation may lead to religious minorities being excluded by states from the majority of the rights enumerated in the FCNM, there is little doubt that Article 6(1) applies to ‘new’ as well as ‘old’ minorities. Despite claims from Denmark, to the contrary,<sup>27</sup> the wording that the provision applies to ‘all persons living on the territory’ in comparison with ‘national minority’ leaves little room for confusion.

The scope of application of the FCNM depends upon the States parties, who are free to interpret ‘national minority’, however they wish, within the margin of appreciation. While Denmark and Germany do not apply the FCNM to ‘new’ minorities, including Muslim communities, the UK applies this to immigrant groups that are almost entirely Muslim. As a result it is necessary to look at the difference this makes to the minority rights applied to the Muslim communities and if indeed this makes a significant difference as the FCNM although similar in spirit and containing similar provisions to the UN Declaration on Minorities, also contains more extensive provisions and is legally binding.

## **2.3 The Content of Relevant Minority Rights**

### **2.3.1 Article 27 ICCPR**

Article 27 of ICCPR states that:

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<sup>26</sup> Hofmann *supra* note 1 p.16

<sup>27</sup> *Second Report Submitted by Denmark Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, (ACFC/SR/II(2004)004) p.19

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>28</sup>

An initial reading of this provision indicates that for the purposes of this article, a minority consists of a group that is ethnically, religiously or linguistically different from the majority. Furthermore, the HRC has taken the position that ‘ethnic minority’, “is to be understood broadly and covers *inter alia*, racial and national minorities”,<sup>29</sup> and that minority rights cannot be limited to citizens.<sup>30</sup> The rights of the groups that are protected by article 27 have been further defined: The right ‘to profess and practise their own religion’ is not subject to the restrictions found in article 18(3).<sup>31</sup> “The term “cultural life” is to be understood in the broad sense. In addition to the customs, morals, traditions, rituals, types of housing, eating habits, etc., that are characteristic of the minority; the term covers economic activities”.<sup>32</sup> The use of language, leads to an obligation on the States not to “prohibit the common use of the language among members or the publication of books or magazines in this language”.<sup>33</sup>

The General Comment on Minority Rights establishes that States parties are “under an obligation to ensure that the existence of this right are protected against their denial or violation”.<sup>34</sup> This obligation goes beyond the prohibition of discrimination “and contains elements of a right to *de facto* equality ie., positive protection against discrimination”.<sup>35</sup> It has additionally asserted that “minorities are dependent on active support from their states...[o]therwise, they cannot over the long run withstand the

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<sup>28</sup> Article 27 ICCPR

<sup>29</sup> Nowak, *supra* note 13 p.649

<sup>30</sup> HRC *supra* note 17 para.5.1

<sup>31</sup> Nowak, *supra* note 13 p.658

<sup>32</sup> *Ibid.*, p.658-9

<sup>33</sup> *Ibid.*, p.659

<sup>34</sup> HRC *supra* note 17 para.6.1

<sup>35</sup> Nowak, *supra* note 13 p.658

assimilationist pressure normally exercised by the dominant majority”.<sup>36</sup> The HRC has established that although article 27 confers an individual right,<sup>37</sup> this in practice depends on “the ability of the minority group to maintain its culture, language or religion”.<sup>38</sup> The ‘ability of the minority group’ in turn leads to a positive obligation on the States parties to adopt positive measures “to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion”.<sup>39</sup>

Article 27 leads to a basic obligation on States to ensure that minorities, if they so desire, can maintain their distinct characteristics, this may include positive obligations if necessary. While such a right is not greatly elaborated upon in the ICCPR and the General Comment, it is also a good basis for other minority rights. The right places a positive obligation on states and as such means that States parties to ICCPR have a duty to report on the steps taken to achieve the standards enumerated, in the State Reporting Process.

### 2.3.2 The UN Declaration

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, is not binding and therefore does not have a state reporting process. While, the UN Declaration is based on and expands upon the rights found in article 27 ICCPR, it provides a ‘soft law’ framework for minority rights as well as being “an important step forward in the internationalisation of minority rights”.<sup>40</sup> The protection contained within this instrument “is based on four requirements: protection

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<sup>36</sup> *Ibid.*, p.662

<sup>37</sup> HRC *supra* note 17 para.1

<sup>38</sup> *Ibid.*, para.6.2

<sup>39</sup> *Ibid.*

<sup>40</sup> P. Thornberry, ‘The UN Declaration on the Rights of Persons Belonging to a National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, and an Update’ in A. Phillips and A. Rosas, *Universal Minority Rights* (Åbo Akademi University Institute for Human Rights, Minority Rights Group (International), Turku/ Åbo and London 1995)

of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned”.<sup>41</sup> Furthermore, the Commentary suggests that not all rights contained are applicable to all minorities: “Persons belonging to groups defined solely as religious minorities might be held to have only those special minority rights which relate to the profession and practice of their religion”.<sup>42</sup> “Rather than striving to have one common definition of ‘minorities’ one should focus on which rights should be held by which type of minority under particular circumstance.”<sup>43</sup> Additionally, in the context of the Declaration, “‘old’ minorities have stronger entitlements than the ‘new’” especially regarding “those parts of positive measures which constitute significant burdens on the state”.<sup>44</sup> Therefore, the Muslim minorities as discussed in this paper will only have the rights aimed at “the profession and practice of their religion” and have weaker rights than more established religious minorities in these States.

Article 2 of the Declaration, is comparable to article 27 of ICCPR, however, the use of “have the right to...”<sup>45</sup> in comparison to “shall not be denied the right to...”<sup>46</sup> “makes it clear that these rights often require action, including protective measures and encouragement of conditions for the promotion of their identity (art.1) and specified, active measures by the State (art.4)”.<sup>47</sup> Article 2 is applicable to all minorities within a state, regardless of their status as ‘new’ or ‘old’ minorities,<sup>48</sup> however, the obligation to protect and promote the identity of ‘new’ minorities is not as far reaching as in regard to ‘old’ minorities. Article 2(3) contains the right of the minority to “participate effectively in decisions on the national, and

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<sup>41</sup> A.Eide, *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, (E/CN.4/Sub.2/AC.5/2005/2) para.23

<sup>42</sup> *Ibid.*, para.6

<sup>43</sup> *Ibid.*, p.379

<sup>44</sup> *Ibid.*, para.11, Eide *supra* note 3 p.379

<sup>45</sup> Article 2(1) UN Declaration

<sup>46</sup> Article 27 ICCPR

<sup>47</sup> Eide, *supra* note 41 para.33

<sup>48</sup> Eide *supra* note 3 p.369–370

where appropriate regional level concerning the minority to which they belong”.<sup>49</sup>

In contrast, article 1 of the Declaration provides a two-fold obligation on states: Firstly, “to protect the existence of all minorities against harassment and persecution by other members of society”, an obligation that exists regardless of the status of the minority,<sup>50</sup> secondly, “to encourage conditions for the promotion of that identity”.<sup>51</sup> Eide asserts “[i]t is more uncertain whether States can be required to encourage conditions for the promotion of the ethnic, religious or linguistic identities of non-citizens”.<sup>52</sup> Whereas, a significant amount of the Muslim communities have citizenship in the states to be discussed, it is nevertheless important to note that this provision does not necessarily apply to all minority groups. Article 1(2) additionally adds, “States shall adopt appropriate legislative and other measures to achieve those ends”. This includes, judicial, administrative, promotional and educational measures.<sup>53</sup>

Article 4(1), simply obliges the state to ensure that human rights and fundamental freedoms apply to minorities without discrimination and in full equality before the law. “While States are generally obliged under international law to ensure that all members of society may exercise their human rights, States must give particular attention to the human rights situation of persons belonging to minorities because of the special problems they confront.”<sup>54</sup> While article 4(1) applies to ‘new’ minorities, the application of article 4(2) is somewhat more controversial. The creation “of favourable conditions to enable persons belonging to minorities to express their characteristics”, places a financial burden on the state and goes beyond “mere tolerance of the manifestation of different cultures within a State”.<sup>55</sup> While some countries may have taken steps in order to fulfil this right, there is not yet “an international consensus on the duty to do so”, with

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<sup>49</sup> Article 2(3) UN Declaration

<sup>50</sup> Eide *supra* note 3 p.373

<sup>51</sup> Article 1(1) UN Declaration

<sup>52</sup> Eide *supra* note 3 p.373

<sup>53</sup> Eide *supra* note 41 para.31

<sup>54</sup> *Ibid.*, para.55

<sup>55</sup> *Ibid.*, para.56

the burden of the maintenance of cultural identity on the ‘new’ minority themselves.<sup>56</sup>

While the UN Declaration protects Muslim minorities, both their religious character and their status as a ‘new’ minority diminish their rights. However, article 1, 2 and 4(1) can be said to apply in varying degrees and as a result, the steps taken in national law to accommodate Muslims can be considered in this light.

### **2.3.3 The Framework Convention for the Protection of National Minorities**

The Framework Convention for the Protection of National Minorities is the only comprehensive minority rights instrument that is binding on the States parties. However, the flexible nature of the FCNM, regarding personal scope, for example, means that the obligations contained within the convention cannot be subject to judicial control.<sup>57</sup> Additionally, as the States parties may implement the positive obligations, however they so wish, “states parties are under no legally binding obligation to ensure the direct applicability of the substantive provisions of the FCNM before their administrative and judicial authorities”.<sup>58</sup> As a result, states’ compliance with the provisions of the FCNM are measured by the State Reporting Process, which allows a greater degree of flexibility.

The goal of the FCNM, which has allowed states to limit the scope of the convention, perhaps more so than is desirable, is “to address unstable minority–majority relations that have a clear potential to destabilize peace and security in Europe”.<sup>59</sup>

Due to the extensive nature of the rights enumerated by the FCNM, it is necessary for the purpose of this paper to limit the rights

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<sup>56</sup> Eide *supra* note 3 p.371–372

<sup>57</sup> Hofmann, *supra* note 1 p.6

<sup>58</sup> *Ibid.*, p.5

<sup>59</sup> *Ibid.*, p.6

discussed to those most relevant to the maintenance of Muslim group identity. Article 5(1) imposes the positive obligation on States Parties to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion...”. Furthermore, article 5(2) imposes a negative obligation on states; “the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities”.

While the vagueness of article 5(1) has been criticised, states must still take positive steps to “provide an environment in which the minority can flourish if the members so wish”.<sup>60</sup> Gilbert also asserts that it is necessary to consult with minorities, in line with article 15, in order to fulfil state obligations under article 5.<sup>61</sup> The inclusion of religion in article 5 imposes the obligation on States Parties, not only to refrain from interference with a minority’s freedom of religion but also to take positive steps to ensure such a freedom.<sup>62</sup>

Forced assimilation as addressed by article 5(2) is unlikely to take place in reality however; it is crucial that the minority is able to maintain its distinct characteristics to ensure that assimilation does not take place.<sup>63</sup>

Article 6(1) contains the obligation on States Parties to “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’...religious identity”. The most important thing to note about article 6(1) is that it refers to ‘all persons’ and not just to ‘national minorities’, as with the other provisions of the FCNM. It has been suggested the Advisory

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<sup>60</sup> G. Gilbert, ‘Article 5’, in, M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, Oxford (2006) p.157

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, p.163

<sup>63</sup> *Ibid.*, p.175



Committee uses article 6 as a catchall provision.<sup>64</sup> The Commentary on the FCNM elaborates that this obligation includes the encouragement of intercultural organisations.<sup>65</sup>

While article 5 discusses how minorities can maintain their distinct characteristics, article 6 elaborates on how this can be reconciled with the rest of society.<sup>66</sup> While article 6 does not confer any additional rights, it reemphasises the obligations that states have, amongst other things, to promote intercultural dialogue. “Although the language is programmatic, the mandatory obligation it imposes on states parties means that the Advisory Committee will continue to use it in matters regarding media stereotyping, policing failures and citizenship laws.”<sup>67</sup>

Article 7 protects the fundamental freedoms of minorities, more specifically freedom of religion. The Commentary states that the provision imposes “certain positive obligations to protect the freedoms mentioned against violations which do not emanate from the State”.<sup>68</sup> Article 7 imposes an obligation on the States parties to provide “a legislative and institutional framework for effective enjoyment of these rights”.<sup>69</sup> Therefore, the obligation imposed by article 7 refers to requirement of the state preventing third party interference with minorities’ freedom of religion more than it refers to the state enabling freedom of religion through positive measures.

The rights contained within article 7 are of “central importance to personal as well as group identity”.<sup>70</sup> While States parties generally don’t report on the right of freedom of religion under article 7 due to the overlap between article 7 and 8, article 7 is broader in scope than

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<sup>64</sup> G. Gilbert, ‘Article 6’, in, (Ed) M. Weller, *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, Oxford (2006) p.178

<sup>65</sup> *Commentary on the Provisions of the Framework Convention*, *supra* note 24, para.49

<sup>66</sup> Gilbert, *supra* note 64 p.179

<sup>67</sup> Gilbert, *supra* note 60 p.186

<sup>68</sup> *Commentary on the Provisions of the Framework Convention*, *supra* note 24 para.52

<sup>69</sup> Z. Machnyikova, ‘Article 7’, in, M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, Oxford (2006) p.199

<sup>70</sup> *Ibid.*, p.217–8

article 8, which leads to the Advisory Committee paying “particular attention to those aspects of this right not explicitly covered by article 8”.<sup>71</sup>

Article 8 contains two substantive elements, both the right to manifest religion or belief and the right to establish religious institutions, organisations and associations. The Commentary gives the reasoning behind the inclusion of this particular fundamental freedom as a separate right; “given the importance of this freedom in the present context, it was felt particularly appropriate to give special attention”.<sup>72</sup> However, “[t]he principal responsibility of the parties is to ensure that minorities are able to pursue their religious beliefs and customs, establish places of worship and religious institutions, and organize their internal religious affairs”.<sup>73</sup> The state has both a duty not to interfere in religious minorities affairs and a duty to protect the minority from outside interference that is derived from this right.<sup>74</sup>

While other rights such as article 12(1) regarding the fostering knowledge of the religion of national minorities, article 13 regarding private educational establishments and article 15 regarding the effective participation of national minorities in decisions that affect them, are of relevance to the maintenance of Muslim group identity, they will not be further elaborated upon here. Articles 5, 6(1), 7 and 8 provide the most relevant rights, which would enable the Muslim minority to maintain their group identity, and will make up the majority of discussion regarding the states’ application of these rights. While the FCNM is not made applicable by the respective governments to the Muslim minorities or immigrant groups, nevertheless, national law and integration strategies will be interpreted in the light of these provisions in order to illustrate what a fully-fledged implementation of minority rights to the Muslim community would imply.

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<sup>71</sup> *Ibid.*, p.222

<sup>72</sup> *Commentary on the Provisions of the Framework Convention*, *supra* note 24 para.54

<sup>73</sup> Z. Machnyikova, ‘Article 8’, in, M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford University Press, Oxford (2006)p.238

<sup>74</sup> *Ibid.*, p.235

## 2.4 The Content of Other Rights Relevant to the Muslim Community

The ICCPR contains a number of articles that although not expressly mentioning minority rights, afford protection to the Muslim communities. Articles 2 and 26 refer to non-discrimination and equality while article 18 deals with freedom of religion. It has been argued that these rights alone are sufficient for the Muslim communities to maintain their distinct characteristics thus negating the value of minority rights in this case.<sup>75</sup> It is therefore necessary to consider and investigate the extent of the rights conferred by these provisions, in order to establish whether they are sufficient to enable the Muslim community to maintain their group identity or whether additional measures, such as minority rights, are necessary.

### 2.4.1 Article 2 ICCPR and ICESCR

Article 2 provides protection against discrimination in the application of the Covenants on grounds ‘such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Additionally, article 2(1) provides that States parties must “undertake to take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant”. Discrimination under article 2 depends upon whether “the parties are in a comparable situation, whether unequal treatment is based on reasonable and objective criteria and whether the distinction is proportional in a given case”.<sup>76</sup>

While non-discrimination *per se* may not be relevant to the maintenance of Muslim group identity, a number of the steps taken in

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<sup>75</sup> Capotorti, *supra* note 10 para.227, M.Shaw, ‘The Definition of Minorities in International Law’, in Y. Dinstein and M.Tabory (eds.), *The Protection of Minorities and Human Rights* (Martinus Nijhoff Publishers, Dordrecht 1992), p.19

<sup>76</sup> Nowak, *supra* note 13 p.46

enforcing the provision may also aid the maintenance of the group identity. As article 2 refers to ICCPR, this means that Muslims' cannot on the grounds of their religion be discriminated against in comparison to other religious groups regarding article 18 or other minorities regarding article 27. The positive duty imposed not only effects "the obligation to "protect" individuals against interference by third parties (horizontal effect) and the obligation to "fulfil", which in turn incorporates an obligation to "facilitate" the enjoyment of human rights and an obligation to provide services".<sup>77</sup> The obligation to 'facilitate' is clearly of relevance to the Muslim communities. States parties are under a duty to facilitate the maintenance of group identity while still affording the same rights and privileges as the rest of society under the Covenant.

## 2.4.2 Article 18 ICCPR

Article 18(1) contains the right to religion and belief and the right "either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". This right, however, is subject to the limitations enumerated in article 18(2) on coercive influence and 18(3) that "are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others". Article 18(2) applies to the private sphere while article 18(3) applies "only to the public sphere of freedom".<sup>78</sup> It is important to note that, the limitations provided by article 18(3) are not a wide ranging as the other limitation clauses contained in the ICCPR.

Article 18 prohibits the State "from dictating or forbidding confession to or membership in a religion or belief".<sup>79</sup> However, this is not to say that a State religion or church conflicts with the principle of freedom of religion *per se*, although if membership of such a religion gives rise to privileges, this would be in contravention of article 2(1).<sup>80</sup>

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<sup>77</sup> *Ibid.*, p.38

<sup>78</sup> *Ibid.*, p.412

<sup>79</sup> *Ibid.*, p.415

<sup>80</sup> *Ibid.*

The manifestation of religion is perhaps the most relevant to the Muslim minority. While article 18(3) limits this right, Nowak contends “there is an area of purely private religious exercise, which is protected by the right to privacy under Art.17 and may not be subject to any of the limits provided in Art.18(3)”.<sup>81</sup> This relates “to the practice of religious rituals and customs in the home, either alone or in community with others”.<sup>82</sup> Therefore, freedom of religion can only be limited in exceptional circumstances, when such observance affects not only members of the religion but also members of the general public. However, ‘religious practice’, is termed “to be any conduct obviously related to a religious conviction”.<sup>83</sup>

Practice that is not so obvious is therefore not protected by article 18, however it is difficult to determine where the line between obvious and less obvious religious practice falls and this could lead to a great deal of ambiguity as many denominations of the same religion disagree about what constitutes legitimate ‘religious practice’.

### **2.4.3 Article 26 ICCPR**

Article 26 refers to equality before the law. This is, however, not necessarily aimed at legislation but rather at the enforcement of such legislation. The Human Rights Committee have found a violation of article 26 regarding the funding by the state of Roman Catholic schools, while other schools affiliated with religious denominations received no such funding.<sup>84</sup> Again, while article 26 refers to non-discrimination and equality, some of the measures taken under this provision to achieve equality before the law also affect the ability of the Muslim minority to maintain their group identity. The funding of religious schools without discrimination or distinction is one such example of this, however, it is also important to note that the state is

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<sup>81</sup> *Ibid.*, p.417

<sup>82</sup> *Ibid.*, p.418

<sup>83</sup> *Ibid.*, p.420

under no obligation to provide such funding. The state is just under an obligation not to discriminate if it chooses to provide such funding.

In the case of *Singh Bhinder v. Canada*, legislation that interfered with the right of Sikhs to wear turbans was deemed to be “reasonable and directed towards objective purposes that are compatible with the Covenant”, as it protected from potential injury.<sup>85</sup>

## 2.5 Minority Rights *versus* Freedom of Religion

While a number of human rights provisions, such as article 18 ICCPR and article 9 ECHR protect the manifestation of religion, these provisions provide negative obligations on the States parties and furthermore, are subject to limitations. Minority rights provisions on the other hand place positive obligations on the States parties and as such place the onus on the state to aid minorities in maintaining their distinctive characteristics. Furthermore, article 27 ICCPR does not have a corresponding limitation clause to article 18. It is thought that the majority should not be able to influence the religion of the minority against their will.<sup>86</sup> Although minorities need to prove their ability to maintain such distinctive characteristics, the continuing existence of such characteristics after a significant period of time is arguably proof of this.<sup>87</sup> Anti-discrimination provisions such as article 2 and 26 ICCPR again provide some degree of protection for the Muslim minority. While this provides that Muslims cannot be discriminated against in comparison to other groups in society, this again does not provide that those elements of the faith that are distinctive need to not only be protected but also encouraged by the States parties. If the rights of religious minorities were adequately protected by

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<sup>84</sup> *Ibid.*, p.615, *Waldman v. Canada*, 5 November 1999, HRC, No.694/1996 (CCPR/C/67/D/694/1996)

<sup>85</sup> Nowak, *supra* note 13 p.616, *Singh Bhinder v. Canada* No. 208/1986

<sup>86</sup> Nowak, *supra* note 13 p.667

<sup>87</sup> Capotorti, *supra* note 10 p.96 para.567

article 2, 18 and 26 of ICCPR, there surely would have been little purpose in including ‘religious minorities’ within article 27.

There appears to be some confusion over what is incorporated in freedom of religion. From state practice, it appears that as long as there is no interference on the part of the state and other religions are not given advantages, then this is considered to satisfy article 18. However, the Muslim community has a number of characteristics and needs: such as dress; *halal* food; the ability to build mosques and maintain burial sites; and have their own education, which appear to be a legitimate manifestation of Islam and yet these seemingly are not protected by freedom of religion. Ferrari asserts that there is a difference between what European countries consider to be religious practice and what Muslims consider to be religious practice.<sup>88</sup> Furthermore, the lack of positive measures required by freedom of religion provisions, leads to many of these rights not being realised.

While, the FCNM in article 5(1) places further positive obligations on States parties regarding the “promotion of conditions necessary... to preserve the essential elements of their identity, namely their religion” in respect of national minorities and article 6 in relation to ‘all persons’ provides that states should “encourage a spirit of tolerance and intercultural dialogue”. These rights do not fall within freedom of religion but are necessary if the Muslim minority is to continue to maintain their distinctive characteristics without interference from the majority. As a result of the current political climate, it is essential that the majority have at the very least a basic understanding of Islam if Muslims are to be able to integrate in Western society without the fear of diluting their religion.

“The minority rights response to religious diversity seeks to encourage a social climate of acceptance towards religious minorities. This includes respect for religious freedom as well as protection against discrimination on the basis of religious belief or association. It also emphasizes the need to educate the larger community about the

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<sup>88</sup> Ferrari, *supra* note 4 p.2

beliefs and practices of religious minorities so that they are less likely to be viewed with suspicion.”<sup>89</sup>

While the application of minority rights to the Muslim communities is limited due to both the purely religious nature of the minority and the fact that they are ‘new’ minorities, this does not necessarily mean that no benefit is to be gleaned from the application of minority rights to the group. Therefore, it is necessary to compare the situation when minority rights are applied to the Muslim community or at least to immigrant groups that are for the most part Muslim, with when freedom of religion and non-discrimination are simply applied to these groups, in order to ascertain whether there is any difference in the rights conferred by these provisions.

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<sup>89</sup> J.Jackson Preece, *Minority Rights, Between Diversity and Community* (Polity Press, Cambridge 2005) p.53



# 3 The National Implementation of International Minority Rights Law

While standards for minority rights are established by a number of international instruments, only the Framework Convention and the ICCPR (article 27) establish a system for monitoring a state's compliance with these standards. In direct comparison, the UN Declaration on Minority Rights is unmonitored and while states are free to incorporate provisions into national law, this is by no means a uniform practice. Therefore, when approaching international obligations, the author address only those that are subject to monitoring procedures.

The Framework Convention contains no definition of 'national minority' as previously discussed. Consequently, the definition applied by each state will be considered, as well as the Advisory Committee's comments on this application. Article 6 of the Framework Convention states that "[t]he Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity".<sup>90</sup> This provision undoubtedly applies to 'all persons' and not just to 'national minorities'.<sup>91</sup> Therefore, despite the margin of appreciation applied to the definition of 'national minority', states are obliged to refer to the other groups and communities on their territory in the light of the rights enumerated in article 6 in the reporting process.

In direct contrast to the FCNM, the ICCPR clearly states that article 27 is relevant to 'ethnic, linguistic and religious minorities'. While no agreed definition of 'minority' exists, there is most certainly less room

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<sup>90</sup> Article 6 FCNM

for a state to deny the existence of a minority regarding article 27 than with the FCNM. Despite the wider scope of the article, article 27 contains only the right “not to be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.<sup>92</sup> This is of course considerably less comprehensive than the rights enumerated in the FCNM, particularly after General Comment No. 23.<sup>93</sup> However, the affect of articles 2, 18 and 26 on the ability of the Muslim community to maintain their distinctive characteristics will also be considered, to the extent that they are discussed in the State Reporting Process, in order to ascertain whether or not minority rights add to this protection.

In the context of the analysis of these instruments and the application of the rights on a national level to Muslim communities, it is necessary to look at the States Parties’ attitudes towards these obligations, specifically the extension of these rights to Muslim communities, the steps taken to achieve these rights on a national level and finally the opinions of the Human Rights Committee and the Advisory Committee on the states’ application of these rights.

## **3.1 Denmark’s International Obligations**

### **3.1.1 The Composition of the Muslim Minority**

The Muslim population in Denmark consists of around 150,000 persons,<sup>94</sup> the vast majority of which are of Turkish origin and came to Denmark as workers in the 1970s.<sup>95</sup> There are also significant Bosnian and ex-Yugoslavian, Palestinian, Somali, Iraqi and Iranian communities. Out of the

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<sup>91</sup> Hofmann, *supra* note 1 p.17

<sup>92</sup> Article 27 ICCPR

<sup>93</sup> HRC, *supra* note 17

<sup>94</sup> EUMC, *supra* note 2 p.27

<sup>95</sup> T.Jensen, *Islam, Historie og udbredelse* <[www.relguide.sdu.dk/islam.html#Historie](http://www.relguide.sdu.dk/islam.html#Historie)> visited on 5 November 2007

84 recognised religious communities in Denmark, 20 are Muslim congregations.<sup>96</sup> Furthermore, in 2006 there were 140 mosques in Denmark, although none of them were full scale and purpose built,<sup>97</sup> with the exception of an Ahmadiyya<sup>98</sup> mosque.

## 3.1.2 The Framework Convention

### 3.1.2.1 Scope of Application

Denmark entered a declaration at the time of ratifying the FCNM on 22. September 1997, stating, “it is hereby declared that the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark”.<sup>99</sup> While the FCNM allows states a margin of appreciation when deciding which communities constitute a national minority, this is not without limitation.<sup>100</sup> Article 2 provides that “the provision of this Framework Convention shall be applied in good faith, in a spirit of understanding and tolerance”. Furthermore, the general principles of international law provide an additional limitation, highlighted by the Advisory Committee; “the implementation of the Framework Convention on National Minorities should not be a source of arbitrary or unjustified distinction”.<sup>101</sup> It is also important to remember that in this context, “the existence of communities is a question of fact; it is not a question of law”.<sup>102</sup> Therefore, while states are free to enter a declaration that limits the scope of the FCNM, such a declaration in itself does not mean that no other

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<sup>96</sup> Report to the Chairman-in-Office of the OSCE on the Country visit to Denmark- Ambassador Omür Orhun Personal Representative of the Chairman-in-Office of the OSCE on Combating Intolerance and Discrimination against Muslims, 29-31 May 2006 p.16

<sup>97</sup> *Ibid.*, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Denmark Adopted on 09 December 2004* (ACFC/INF/OP/II(2004)005) para.88

<sup>98</sup> A minority faction of Islam, generally considered to be heretic by other factions.

<sup>99</sup> Declarations FCNM, *supra* note 25

<sup>100</sup> Hofmann, *supra* note 1 p.16

<sup>101</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Denmark Adopted on 22 September 2000*, (ACFC/INF/OP/I(2001)005) para.14

<sup>102</sup> *Greco-Bulgarian Communities Case*, *supra* note 14

national minorities exist on a state's territory, as recognition by the state is not a prerequisite for existence.

Article 6 of the FCNM is not only applicable to national minorities but to 'all persons living on their territory'. However, if we look again at Denmark's declaration, instead of limiting the scope of 'national minority' as permitted by the margin of appreciation, the wording leads us to the conclusion that this is an attempt to limit the scope of the entire convention. Article 6 cannot be limited in the same way as the rest of the convention, despite Denmark's protestations that "according to the wording of the provision, the scope of the application of Article 6 is quite broad but must in accordance with the general principles of interpretation of treaty law be interpreted in the light of the Convention which only related to the protection of national minorities".<sup>103</sup> This would therefore make article 6 only applicable to the German minority in Southern Jutland. Article 19(c) of the Vienna Convention of the Law of Treaties states clearly that a reservation is not permissible if it is "incompatible with the object and purpose of the treaty" while article 31(1) states that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". While the Framework Convention itself is directed at national minorities, the specific wording of article 6 makes it clear that this distinction was intentional and therefore Denmark's declaration is incompatible with this specific provision. The terminology employed in article 6, is by no means ambiguous and open to interpretation as suggested by Denmark. The 'ordinary meaning' of the terms used provides a clear definition of what was intended by the parties. Therefore, "it is clear that article 6(1) FCNM applies to 'all persons living on the territory' of a given state party, including persons belonging to 'new minorities'".<sup>104</sup> It is also arguable that this declaration was not lodged in good faith but with the intention of limiting Denmark's international obligations regarding communities that may not qualify as a 'national minority', but do fall within

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<sup>103</sup> ACFC/SR/II(2004)004 *supra* note 27 p.19

the scope of article 6 if read using the guidelines laid down in article 31(1) of the Vienna Convention of the Law of Treaties.<sup>105</sup> Therefore, despite Denmark's protestations to the contrary, article 6 of the FCNM applies to the Muslim community as a 'new' minority and the Advisory Committee has treated it as such.

The Advisory Committee of the FCNM has consistently reiterated that Denmark has "not satisfactorily addressed" the personal scope of application and that within article 3 "implementation should not be a source of arbitrary or unjustified distinction".<sup>106</sup> Particular concern has been raised over Denmark's exclusion of historical groups such as Roma, Faeroese and Greenlanders. While many countries have "sought to exclude 'new' minorities from the personal scope of application of the FCNM",<sup>107</sup> Denmark has also sought to exclude long established 'old' minorities with a historical background in the country, thus bringing into question the credibility of the method used to determine 'national minority'. The stance taken by Denmark regarding the general application of the FCNM is extremely narrow, thus excluding many groups including the Muslim community. Denmark has consistently asserted that the Framework Convention contains no definition of 'national minority' and "the distinctive mark of a national minority is that it is a minority population which above all has historical, long-term and lasting links to the country in question – in contrast to refugee and immigrant groups in general".<sup>108</sup> The conditions of 'long-term and lasting links' are clearly subjective, as it could be argued that the presence of Muslims and the Turkish population in Denmark for several generations would satisfy the condition of 'long-term' and the continuance of their presence and the increasing number obtaining Danish citizenship would prove 'lasting links'. Denmark is, however, permitted to limit the scope of the FCNM in this way. The fact that Denmark has not

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<sup>104</sup> Hofmann, *supra* note 1 p.17

<sup>105</sup> Article 31(1) VCLT 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

<sup>106</sup> ACFC/INF/OP/I(2001)005 *supra* note 101 para.14

<sup>107</sup> Hofmann, *supra* note 1 p.16

<sup>108</sup> ACFC/SR/II(2004)004 *supra* note 27 p.8

been criticised by the Advisory Committee for not including immigrants in the definition of ‘national minority’, can only lead to the conclusion that this exclusion falls within the margin of appreciation and is therefore permissible.

### 3.1.2.2 Issues Arising from State Reports

The most consistent and seemingly pressing issues to arise from the State Reports and the Advisory Committee’s Reports is that; “a strong seam of intolerance has developed in Danish society...particularly towards immigrants and also Muslims”.<sup>109</sup> Similar sentiments have been echoed throughout other Advisory Committee Reports and resolutions.<sup>110</sup> While of course such a ‘seam of intolerance’ would seriously impinge upon the minority rights of Muslims, the steps taken by the government to counteract such a tendency is of utmost importance. However, the Danish Government maintained that “the general question of intolerant attitudes in the States and the question of discrimination against foreigners etc who do not belong to a national minority, as raised by the Advisory Committee, are thus outside the scope of application of the Convention”.<sup>111</sup> This is an opinion that they repeated in the State Report of 2004. However, mention was at least made of “a number of initiatives...aimed at promoting mutual respect and understanding between all people regardless of their ethnic identities”.<sup>112</sup> The Advisory Committee in the Second Round of State Reporting stated concern over “an anti-immigrant agenda in the political arena”, “concern about portrayal of Muslims in the media” and ‘integration policy’. Particular

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<sup>109</sup> ACFC/INF/OP/II(2004) 005 *supra* note 97 para.20

<sup>110</sup> ACFC/INF/OP/I(2001)005 *supra* note 101 para.27, Council of Europe, Committee of Ministers, *Resolution ResCMN(2005)9 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark*, p.2

<sup>111</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Comments of the Government of Denmark on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Denmark*, (GVT/COM/INF/OP/I(2001)005) para.76, ACFC/INF/OP/II(2004)005 *supra* note 97 p.19

<sup>112</sup> ACFC/SR/II(2004)004 *supra* note 27 p.19

emphasis was placed on the fact that “a solution has still not been found for the opening of, the first full-scale mosque in Denmark”.<sup>113</sup>

The state was praised for the Act on Ethnic Equal Treatment (Act Number 374 of 28 May 2003), which will be discussed in more depth in the chapter on national law.<sup>114</sup> The main criticism was levelled at the “lack of consultation with representatives of civil society and representatives of different ethnic and religious groups”.<sup>115</sup> These issues were at least addressed by the Danish Government in their comments on the Advisory Committee’s opinion.<sup>116</sup> Previous criticism about the treatment of minorities that were not the German minority in South Jutland were simply declared as being outside of the scope of the convention.<sup>117</sup> Amongst these comments, the Danish Government enumerated some of the steps taken to include other minorities in society as well as addressing the issue of the alleged ‘seam of intolerance’ in Danish society. The Minister for Integration has a statutory obligation to consult ‘The Council for Ethnic Minorities’ (*Rådet for Etniske Minoriteter*) which represents local refugee and immigrant associations.<sup>118</sup> As well as claiming, “the Danish Government therefore makes great efforts to have a dialogue with representatives of civil society and with different ethnic group” including an action “promoting equal treatment and diversity and combating racism”.<sup>119</sup>

Furthermore, the Danish Government discussed studies into racism in Europe. A study by EUMC into ‘Majority Attitudes towards Migrants and Minorities’ found that “resistance to a multicultural society [in Denmark] has been falling since 1997”.<sup>120</sup> However, the CATINÉT survey found that “an increasing number of immigrants and refugees feel that

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<sup>113</sup> ACFC/INF/OP/II(2004)005 *supra* note 97 para.88

<sup>114</sup> *Ibid.*, para.177

<sup>115</sup> *Ibid.*, para.181

<sup>116</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Comments of the Government of Denmark on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Denmark* (GVT/COM/INF/OP/II(2004)005)

<sup>117</sup> ACFC/SR/II(2004)004 *supra* note 27 p.19

<sup>118</sup> GVT/COM/INF/OP/II(2004)005 *supra* note 116 p.3

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*, p.6

politicians and the media have become more discriminating”.<sup>121</sup> The Government put emphasis on the fact that “the media and politicians are responsible for promoting inter-human tolerance and understanding”.<sup>122</sup>

The fact that the Danish Government is willing to address these points shows considerable progress between the first and second round of state reporting and at least some acceptance that article 6 is applicable to groups that are not part of the German minority in South Jutland. While Muslims may not be a ‘national minority’ in Denmark, they are at least on paper afforded a small degree of minority rights, through article 6.

Despite this considerable change of attitude, the Committee of Ministers’ Resolution still emphasised that “there are shortcomings as regards, consultation with representatives of civil society and with representatives of different ethnic and religious groups, including in relation to the monitoring under the Framework Convention”.<sup>123</sup> Even more strikingly, the Committee of Ministers linked the ‘seam of intolerance in Danish society’ to government policy, stating, “there are concerns that legislation such as the reform of the Aliens Act, and policy, such as the Government’s policy towards integration may contribute to a climate of hostility towards different ethnic groups”.<sup>124</sup> This link may perhaps suggest that the Danish government, if contributing to the issues facing Muslim minorities in society is not best placed to report objectively on the use of minority rights to protect this group of society.

While it is unlikely that article 8 on freedom of religion under the FCNM is applicable to the Muslim community in Denmark, the Advisory Committee’s discussion regarding freedom of religion in Denmark is relevant. The main criticism levelled, concerns the privileged position of the Danish National Church in society. The church receives funding from ‘Church tax’, which makes up 10.3 per cent of its income and is furthermore responsible for the administrative function of registering names.<sup>125</sup> This

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<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Resolution Res/CMN (2005) 9 *supra* note 110 p.2

<sup>124</sup> *Ibid.*

<sup>125</sup> ACFC/SR/II(2004)004 *supra* note 27 p.20



position raised raises issues of equality of treatment in the view of the Advisory Committee.<sup>126</sup> While the Government claims that the tax is only collected from members of the Danish Church, this does indicate a difference in the treatment of religions.

The Government did not accept this criticism, stating that the “financing of the Danish National Church and the question of which authority manages the registration of names in Denmark fall outside the sphere of the Framework Convention on National Minorities”.<sup>127</sup> While the Government’s response, in the light of the scope of the Framework Convention is understandable, the existence of such inequalities raises important questions regarding freedom of religion in Denmark and the ability of the Muslim community to maintain its group identity.

### 3.1.3 ICCPR

Regarding the ICCPR, Denmark again appears to have taken a restrictive approach to minority rights. Article 27 protects the rights of ethnic, linguistic and religious minorities “to enjoy their own culture, to profess and practice their own religion, or to use their own language”.<sup>128</sup> As established by the Human Rights Committee in General Comment No. 23, the term ‘minority’ should be interpreted widely and in accordance with these guidelines must therefore include Muslim minorities.<sup>129</sup> Despite this wide interpretation, Denmark has consistently avoided the question of measures taken to protect such rights. In the State Report of 1995, the Human Rights Committee was simply referred back to measures taken under article 2.<sup>130</sup> This would indicate that Denmark deems that the right enumerated in article 27 goes no further than the right to equality and non-discrimination.

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<sup>126</sup> ACFC/INF/OP/II(2004)005 *supra* note 97 para.25

<sup>127</sup> GVT/COM/INF/II(2004)005 *supra* note 116 p.6

<sup>128</sup> Article 27 ICCPR

<sup>129</sup> HRC, *supra* note 17 para.5.2

<sup>130</sup> HRC, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Third periodic reports of States parties due in 1990, Addendum Denmark*, (CCPR/C/64/Add.11) para.140

However, “if the protection of minorities does not go beyond the general right to equality and non-discrimination...the legitimate question as to the added value of Art.27 arises”.<sup>131</sup> Article 27 imposes positive obligation on states parties that are not necessarily conferred by article 2. The limitation placed on article 27 by simply referring back to article 2 must indicate that not all rights enumerated, are granted in practice to minorities. As “the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole”.<sup>132</sup>

Furthermore, in the State Report of 1999 appeared to attempt to further limit the scope of application of article 27 by only referring to the Framework Convention and the application of minority rights to the German minority in South Jutland.<sup>133</sup> Although ‘national minority’ has been established as coming within the ambit of ‘ethnic minority’,<sup>134</sup> and this is clearly of relevance to article 27, the fact that this is the only reference to minority rights is of concern. Additionally, in the new report under article 27, reference is made to steps taken under article 3 as well as the European Charter for Regional or Minority Languages and reporting process, which again only applies to the German minority in South Jutland. The omission of other minority groups in the discussion about article 27 leads to the conclusion that only the German minority are afforded such rights, in direct contradiction to the Human Rights Committee’s conclusion in General Comment No.23.<sup>135</sup>

Due to the lack of information contained under article 27 in the State Reports, it is important to examine other provisions, which can at least be seen to afford a small degree of protection to the Muslim community, and enable them to maintain their group identity. Article 2 and

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<sup>131</sup> Nowak, *supra* note 13 p.649

<sup>132</sup> HRC, *supra* note 17 para.9

<sup>133</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Fourth Periodic Reports of States Parties due in 1998, Denmark*, (CCPR/C/DNK/99/4) para.241

<sup>134</sup> Nowak, *supra* note 13 p.649

<sup>135</sup> HRC, *supra* note 17

26 on non-discrimination and equality and Article 18 on freedom of religion are perhaps most relevant to achieve this ends.

Article 2, which was referred to in Article 27 of the 1995 State Report, enumerates a number of steps taken to eliminate discrimination. While this paper does not discuss ‘non-discrimination’ but rather ‘maintenance of group of identity’, a number of these measures are relevant. The Racial Equality Board, established by Act No.466 of 30. June 1993, recognises that “ethnic equality comprises both judicial, behavioural and cultural conditions”.<sup>136</sup> Furthermore, “the cultural field of contribution comprises questions concerning values, standards and religious affiliation, including methods of ensuring cultural equality and the possibility of maintaining cultural diversity”.<sup>137</sup> The recognition of the importance of cultural diversity should indicate that the Muslim community’s right to maintain their group identity is not only recognised but also protected by the Board for Racial Equality. However, the Race Equality Board lacks the competence to address issues regarding religious groups unless the discrimination suffered is on ethnic or racial grounds.

Less encouraging, is paragraph 17 of the 1995 State Report that states, “the International Covenant of Civil and Political Rights is essentially a part of the European Convention on Human Rights”.<sup>138</sup> The Danish government seems to feel that its human rights obligations are exhausted after the incorporation of the ECHR into national law; however, the ECHR does not contain an equivalent to article 27. The referral in article 27 back to article 2 and this statement seems to indicate that Denmark does not recognise any of the separate rights guaranteed by article 27.

Regarding article 18, in the State Report of 1998, mention was made of the fact that “congregations are entitled-without permission of the state-to build churches, temples or mosques for the worship of God”.<sup>139</sup> However, the fact that in 2004 the Advisory Committee of the Framework

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<sup>136</sup> CCPR/C/64/Add.11 *supra* note 113 para.12

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*, para.17

<sup>139</sup> CCPR/C/DNK/99/4 *supra* note 133 para.197

Convention criticised the lack of a “full-scale mosque in Denmark”,<sup>140</sup> would indicate that while legally Muslims are permitted to build mosques, conditions ‘in fact’ do not make it possible. The previously discussed collection of ‘church tax’ for the Danish National Church, which provides a significant amount of the income of the religion, should be compared with the current lack of financial means of the Muslim community to fund a mosque.

While the Committee has failed to criticise Denmark’s lack of transparency regarding article 27, in the Concluding Observations of the 1999 State Reporting Process, the Committee expressed concern “about reports of discrimination against ethnic minorities”, suggesting that “Denmark should ensure equality of treatment for ethnic minorities”.<sup>141</sup> Disappointingly, the Committee expressed these concerns within the context of articles 3 and 26 without mentioning minority rights. While to a small degree, minority rights come within the scope of other rights, this is by no means comprehensive. Article 18(3) contains limitations on freedom of religion that are not found in article 27.<sup>142</sup> The Committee appears unwilling to address this issue and Denmark appears unwilling to confer minority rights on any group other than the German minority in South Jutland.

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<sup>140</sup> ACFC/INF/OP/II(2004)005 *supra* note 97 para.88

<sup>141</sup> HRC, *Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant Concluding Observations Of The Human Rights Committee, Denmark* (CCPR/CO/70/DNK) para.14

<sup>142</sup> Nowak, *supra* note 13 p.658

## 3.2 Germany's International Obligations

### 3.2.1 The Composition of the Muslim community

The Muslim population in Germany is comprised of between 3.2 and 3.5 million persons, but only 1 million are German citizens.<sup>143</sup> The vast majority of which are of Turkish origin, although there are also significant Bosnian, Iraqi, Moroccan, Iranian, Afghan and Pakistani communities.<sup>144</sup> The majority of the Turkish population entered Germany at 'Gastarbeiter' in the 1960s.<sup>145</sup> Until recently, the majority of this population was largely excluded from obtaining German citizenship although there is still a prohibition on dual citizenship, which is thought to inhibit a significant number of immigrants from obtaining German citizenship.<sup>146</sup> Sunnis comprise approximately 80 percent of the Muslim population and there are some 2,500 mosque associations.<sup>147</sup>

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<sup>143</sup> Federal Office for Migration and Refugees, *Islam and the Muslim Life in Germany* <[www.integration-in-deutschland.de/cln\\_006/nn\\_285170/SubSites/Integration/EN/02\\_\\_Zuwanderer/ThemenUndPerspektiven/Islam/Deutschland/deutschland-node.html?\\_\\_nnn=true](http://www.integration-in-deutschland.de/cln_006/nn_285170/SubSites/Integration/EN/02__Zuwanderer/ThemenUndPerspektiven/Islam/Deutschland/deutschland-node.html?__nnn=true)> visited on 29 November 2007

<sup>144</sup> Statistisches Bundesamt, *Fachserie 1 Reihe 2, Bevölkerung und Erwerbstätigkeit Ausländische Bevölkerung*, (Ergebnisse des Ausländerzentralregisters Statistisches Bundesamt, Wiesbaden 2007)

<sup>145</sup> M. Rohe, 'The Legal Treatment of Muslims in Germany', in R. Aluffi B. -P and G Zincone (eds.), *The Legal Treatment of Islamic Minorities in Europe*, (Peeters, Leuven 2004) p.83

<sup>146</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Second Report Submitted by Germany Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, (ACFC/SR/II(2005)002) para.13

<sup>147</sup> Federal Office for Migration and Refugees, *supra* note 141

## 3.2.2 The Framework Convention

### 3.2.2.1 Scope of Application

Germany, like Denmark, lodged a declaration at the time of signing the Framework Convention, which limited the scope of application. Stating that:

“National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship.”

In contrast to Denmark, this declaration defines what is meant by ‘national minority’, however, the second part of this declaration also enumerates ethnic groups that the convention will apply to without officially recognising them as a national minority. While this declaration seemingly shows Germany’s willingness to extend the notion of ‘national minority’, this could also be an attempt to limit the scope of article 6, which as previously established applies to all persons on a states’ territory and not just national minorities and without the requirement of citizenship. Overall, Germany has interpreted the FCNM to have a narrow scope of application, although not as narrow as Denmark.

Germany establishes the existence of a minority through the fulfilment of five criteria, namely:

“[T]heir members are German nationals;  
they differ from the majority population insofar as they have their own language, culture and history, in other words; they have their own identity;  
they wish to maintain this identity;  
they are traditionally resident in Germany; and

they live in the traditional settlement areas.”<sup>148</sup>

While the Advisory Committee praised the waiver of the requirement of the ‘traditional settlement area’,<sup>149</sup> thus allowing the Roma and Sinti to be brought within the ambit of the Framework Convention, they were also highly critical of these criteria. The main criticism levelled again was based on the principle that “the Framework Convention should not be a source of arbitrary or unjustified distinctions”,<sup>150</sup> highlighting the existence of other groups that they don’t consider to be covered by the Framework Convention on National Minorities at this stage, including some 7.49 million persons that are non citizens.<sup>151</sup> The setting out of criteria to establish the existence of a minority is clearly arbitrary, not allowing for the individual circumstances of a minority to be taken into account. For example, the lack of traditional settlement area has excluded the Roma from the definition of ‘national minority’ they are simply an ‘ethnic group’ to whom the convention will apply. Furthermore, the exclusion of non-citizens, has for a considerable time been deemed unnecessary, as this would allow states to deny the existence of a minority by simply denying them the right to citizenship. The existence of 7.49 million non-citizens on German territory should therefore be of concern.

The Advisory Committee, however, did not demand the widening of the scope of application to include these groups automatically. Instead, they found “that it would be possible to consider the inclusion of persons belonging to other groups in the scope of the Framework convention on an article-by article basis”.<sup>152</sup> Germany countered that taking such an approach “would also entail the risk of creating first and second-

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<sup>148</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Comments by the Federal Republic of Germany on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in The Federal Republic of Germany*, (GVT/COM/INF/OP/I(2002)008) p.5

<sup>149</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Opinion on Germany Adopted 1 March 2002*, (ACFC/INF/OP/I(2002)008) para.16

<sup>150</sup> *Ibid.*, p.5

<sup>151</sup> *Ibid.*, para.17

<sup>152</sup> *Ibid.*, para.73

class national minorities” as well as diluting the specific objective of the Framework Convention.<sup>153</sup> While Germany is perfectly within its rights not to extend its interpretation of the scope of application of the FCNM providing that there are not any ‘unjustified or arbitrary distinctions’, which it is arguable that there are, this narrow scope has led to immigrants particularly the Muslim community to be excluded from article 6 as well. Nevertheless, immigration and integration measures are discussed to a smaller degree, although mainly by the Advisory Committee.

### 3.2.2.2 Issues Arising from State Reports

Several issues were deemed to be of concern by the Advisory Committee that would affect the Muslim community in Germany. This included the overrepresentation of immigrants in lower secondary schools and special schools for under-achievers.<sup>154</sup> The lack of statistical data on the social and economic situation of minorities was also heavily criticised, with the Advisory Committee stating, “the absence of reliable data on the situation of minorities obstructs the prevention of racial discrimination and the development of suitable policies to further the equal opportunities of persons belonging to minorities”.<sup>155</sup> While the benefits of the collection of such data is of course highly beneficial when measuring the effectiveness of minority rights and the situation of minorities, the historical background to the collection of data on minorities should be taken into account when considering the criticism. “Ever since the end of World War II, data on members of national minorities have not been collected as part of the official statistics, particularly because of Germany’s history and the persecution of minorities during the Nazi regime.”<sup>156</sup>

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<sup>153</sup> GVT/COM/INF/OP/I(2002)008 *supra* note 148 p.6

<sup>154</sup> ACFC/INF/OP/I(2002)008 *supra* note 149 para.36, Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Second Opinion on Germany, Adopted on 1 March 2006* (ACFC/OP/II(2006)001) para.15, Council of Europe, Committee of Ministers, *CM/ResCMN(2007)M on the implementation of the Framework Convention for the Protection of National Minorities by Germany*, para.2

<sup>155</sup> ACFC/OP/II(2006)001 *supra* note 154 para.12

<sup>156</sup> *Ibid.*



While racist crime and discrimination was considered to be of concern, including the increase of ‘islamophobia’, the German government was praised for showing “determination to battle offences such as racist propaganda”.<sup>157</sup> Furthermore, in the first round of State Reporting, Germany was praised for the amendments to the Citizenship Law, which enabled 787,217 foreigners to obtain German citizenship between 2000 and 2004.<sup>158</sup> This made it possible for a significant number of the Turkish minority to obtain German citizenship and thus allowed them to satisfy one of the criteria laid down for the establishment of a minority in German law. Additionally, the Immigration Act of 2004 “represented a substantial step forward as it laid down the foundation for an active policy on foreigners’ integration”.<sup>159</sup> The Act was also the first time that Germany was recognised as a country of immigration and “that it therefore needs to develop an integration policy for immigrants”.<sup>160</sup> All of these developments are considerable steps forward for the Muslim community’s rights, despite the fact that the German government is unwilling to discuss them in the context of the Framework Convention.

### 3.2.3 ICCPR

The attitude of the German government to their minority rights obligations under article 27 of the ICCPR has altered radically in the last ten years. In Germany’s fourth state report, the definition of ‘minority’ was limited very clearly to “the Danish minority in the north of Schleswig-Holstein and the Sorbian minority in Lusatia”,<sup>161</sup> with the complaint that “[p]roblems arise time and again in connection with the protection of minorities, because groups which are not recognized minorities claim to be a privileged

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<sup>157</sup> ACFC/INF/OP/I(2002)008 *supra* note 149 para.9

<sup>158</sup> ACFC/SR/II(2005)002 *supra* note 146 para.13

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*, para.67

<sup>161</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Fourth Periodic Reports of States Parties Due in 1993, Addendum, Germany*, (CCPR/C/84/Add.5) para.236

protected minority in the sense of article 27”.<sup>162</sup> The Human Rights Committee was highly critical of this approach, stating “article 27 applies to all persons belonging to minorities whether linguistic, religious, ethnic or otherwise including those who are not concentrated or settled in a particular region or who are immigrants or who have been given asylum in Germany”.<sup>163</sup> In the State Report of 2002, however, there was a complete change in attitude by the German government. This change can be attributed to a change in the government of Germany in 1998.<sup>164</sup> The most notable change in policy is the inclusion of immigrants within article 27.<sup>165</sup> The promotion and funding of immigrants cultural projects,<sup>166</sup> and the change in integration policy is of note.<sup>167</sup> “The goal of integration policy is to enable aliens living in Germany to lead a life with equal rights and to enable as full a participation as possible in social fields.”<sup>168</sup> The government also cites a change in the attitude of the German population and the “positive contributions towards the social and economic development” of Germany that immigrants make.<sup>169</sup>

Regarding the application of articles 2 and 18 little mention was made of provisions in the State Reporting process that would affect the Muslim community. However, under article 26, integration policy and measures taken, to combat racism and xenophobia as well as discrimination, were mentioned. In 1996, the Government recognised that “combating xenophobic attitudes and violence is a task for society as a whole. The government has a special responsibility in this respect goes with out saying.”<sup>170</sup> The measures taken that were enumerated in this report were

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<sup>162</sup> *Ibid.*, para.242

<sup>163</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Germany* (CCPR/C/79/Add.73) para.13

<sup>164</sup> M.Mesghena, ‘Immigration to Germany: The Long Way to Reality’, in: The British Council, *Pausing to Reflect: on Europe’s culture wars*, (2006) p.3

<sup>165</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fifth Periodic Report, Germany*, (CCPR/C/DEU/2002/5) para.374

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*, para.375

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*, para.377

<sup>170</sup> CCPR/C/84/Add.5 *supra* note 161 para.193

welcomed by the HRC.<sup>171</sup> In the next round of state reporting, the Government further enumerated measures taken in order to strengthen civil society regarding the opposition to extremism.<sup>172</sup> There was also a focus on education and the measures taken by the Conference of Ministers of Culture and Education to stress the importance of human rights education.<sup>173</sup> Additionally, the drafting of a new ‘Act to Prevent Discrimination under Civil Law’ was discussed.<sup>174</sup> While these measures are all important for the Muslim community, especially regarding education, which would help foster tolerance, they are by no means sufficient for the Muslim community to be able to maintain its distinct characteristics.

Despite the considerable progress made in recent years regarding the promotion of integration and tolerance in Germany, the Human Rights Committee still considered that Muslims were at risk “from stereotypes associated them with terrorism, extremism and fanaticism”.<sup>175</sup>

The general attitude of the German government has changed considerably in recent years; however, they are still hesitant to recognise immigrant groups such as the Muslim community to be a national minority within the scope of the Framework Convention. The inclusion of immigrant groups within the scope of article 27 is extremely positive as are the measures taken to ensure these groups full participation in society. Recent legislation such as the Integration Act and the Immigration Act have been praised by the Advisory Committee of the FCNM, despite Germany’s unwillingness to address this topic within this arena.

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<sup>171</sup> CCPR/C/79/add.73 *supra* note 163 para.9

<sup>172</sup> CCPR/C/DEU/2002/5 *supra* note 165 paras.327–330

<sup>173</sup> CCPR/C/DEU/2002/5 *supra* note 165 para.352

<sup>174</sup> CCPR/C/DEU/2002/5 *supra* note 165 para.368

<sup>175</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Germany*, (CCPR/CO/80/DEU) para.20 b

## 3.3 The United Kingdom's International Obligations

### 3.3.1 Composition of the Muslim community

The Muslim population in the UK is composed of at least 1,588,890 persons.<sup>176</sup> The largest groups are of Pakistani and Bangladeshi extraction that came to the UK in the 1950s as labour or in the 1960s when the Commonwealth Immigrants Act 1962 “curtailed automatic entry to the UK for Commonwealth citizens”.<sup>177</sup> Other significant Muslim communities include Egyptians, Indians, Iraqis, Moroccans, Somalis and Turks.<sup>178</sup> In the mid-1990s, there were an estimated 838 mosques in the UK and some 950 Muslim organisations.<sup>179</sup>

### 3.3.2 The Framework Convention

#### 3.3.2.1 Scope of Application

In comparison to Denmark and Germany, the UK interprets the scope of application of the FCNM widely. While other countries have entered declarations limiting the scope of the instrument, the UK has interpreted a national minority to be “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins”,<sup>180</sup> as set out in the Race Relations Act 1976. Despite adopting such a wide definition, this has not been without criticism. The definition is subject to interpretation by the courts; “it is the sole responsibility of the courts to determine in case

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<sup>176</sup> EUMC, *supra* note 2 p.29

<sup>177</sup> H. Ansari, *Muslims in Britain*, Minority Rights Group International, August 2002 p.6

<sup>178</sup> *Ibid.*, p.7

<sup>179</sup> *Ibid.*, p.6

<sup>180</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Report Submitted by the United Kingdom Pursuant to Article 25 , Paragraph 1 of the Framework Convention for the Protection of National Minorities*, (ACFC/SR(1999)013) para.2

law the various groups to be racial groups”.<sup>181</sup> While religious groups with a homogenous ethnic background have been covered by ‘racial group’, such as Jews and Sikhs, groups of a purely religious nature have been excluded such as Muslims.<sup>182</sup> Therefore, Pakistani Muslims are included in the term ‘racial group’ due to their distinct ethnic background although Muslims *per se* are not. It is, however, important to note that the UK has discussed and reported measures relevant to the Muslim community throughout the reporting process and has not questioned the competence of the Advisory Committee to address such issues. This would indicate that the British government deems Muslims to come within the definition of a national minority although the British courts have not addressed the issue as of yet. Additionally, the scope of application of the FCNM must be determined without ‘arbitrary or unjustified distinctions’,<sup>183</sup> the exclusion of Muslims from such a definition when other religious groups such as Sikhs and Jews are protected would appear to be unjustified.

### 3.3.2.2 Issues Arising from State Reports

Due to the wide scope of application of the FCNM in the UK, the minority rights of Muslims are discussed in the light of a significant number of the articles. It is therefore, relevant to consider only those rights that protect the ability of the Muslim minority to maintain their group identity. The most relevant articles are articles 5, 6, 7 and 8 and to a lesser degree articles 12(1) and 15. The rights enumerated contain the basic elements necessary for Muslims to maintain their group identity but without going into the realm of non-discrimination.

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<sup>181</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in the United Kingdom*, (GVT/COM/INF/OP/I(2002)006) p.4

<sup>182</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Opinion on the United Kingdom, Adopted on 30 November 2001*, (ACFC/INF/OP/I(2002)006) paras.14–15

<sup>183</sup> *Ibid.*, para.12

Article 5 of the FCNM discusses measures taken by the Government to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity”,<sup>184</sup> while refraining “from policies or practices aimed at assimilation of persons belonging to national minorities”.<sup>185</sup> While the Government does not discuss Muslims specifically in the context of article 5, the UK states that their integration policy is “based upon the principle that cultural diversity should be valued and promoted. Our aim is to enable members of ethnic minorities to play a pull part in national life, with all the rights and responsibilities which that entails, whilst still being able to maintain their own culture, traditions, language and values.”<sup>186</sup> While the Government acknowledges that it has an important role to play if this is going to be possible,<sup>187</sup> there is a clear lack of information regarding policies and campaigns to achieve such a goal in the First Round of State Reporting.<sup>188</sup> However, in the Second Round of State Reporting, the Government explains the function of the Commission for Racial Equality, which “works to promote equality by seeking to educate and inform the public, to influence attitudes and so encourage good race relations”,<sup>189</sup> and a number of the campaigns carried out by CRE in order to achieve these ends. In the Advisory Committee’s opinion on the second State Report, it was stated: “While recognising the efforts already made to assist minority ethnic communities in preserving and developing their culture, the Advisory Committee considered that more could be done to demonstrate, recognise and value the cultural diversity of minority ethnic communities”.<sup>190</sup> While the assistance available for projects promoting

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<sup>184</sup> Article 5(1) FCNM

<sup>185</sup> Article 5(2) FCNM

<sup>186</sup> ACFC/SR/(1999)013 *supra* note 180 para.92

<sup>187</sup> *Ibid.*, para.81

<sup>188</sup> ACFC/INF/OP/I(2002)006 *supra* note 182 para.39

<sup>189</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Second Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, (ACFC/SR/II(2007)003rev) para.150

<sup>190</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Second Opinion on the United Kingdom, Adopted on 6 June 2007*, (ACFC/OP/II(2007)003) para.86

racial equality and stronger community relations, it was also noted that some minority ethnic communities had reported difficulties in gaining funding for cultural initiatives.<sup>191</sup>

Regarding article 6, in which “parties shall encourage a spirit of tolerance and intercultural dialogue”,<sup>192</sup> the UK again addressed the work of CRE as well as the school curriculum and Broadcasting. Most notably, education on citizenship that highlights “the need for pupils to have an understanding of diversity and respect for individuals from different cultures and backgrounds” was introduced in Primary and Secondary schools.<sup>193</sup> In the light of racism in the area of broadcasting, the UK was criticised for ‘islamophobia’ in the media, despite having measures to punish racism in the media.<sup>194</sup> Previously, the crime of incitement to racial hatred meant hatred directed against a group defined by colour, race, nationality (including citizenship) or ethnic or national origins.<sup>195</sup> However, the Racial and Religious Hatred Bill, which came into force in April 2007, extended such a crime to “stirring up hatred against a group of people because of their religious belief or lack of religious belief”.<sup>196</sup> “The law applies to racial and religious hatred through the internet as well as by other media, such as print.”<sup>197</sup> This, however, is criticised by the Advisory Committee for the inconsistencies “between the thresholds for proving the offences of incitement to religious hatred and incitement to racial hatred”,<sup>198</sup> the Government concurred with this view but had experienced difficulties with getting consistent legislation approved on the grounds of freedom of expression.<sup>199</sup> Additionally in the context of article 6 the UK government discussed a national strategy launched in January 2005 to increase race

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<sup>191</sup> *Ibid.*, paras.90–91

<sup>192</sup> Article 6 FCNM

<sup>193</sup> ACFC/SR(1999)013 *supra* note 180 para.97

<sup>194</sup> ACFC/INF/OP/I(2002)006 *supra* note 182 para.51

<sup>195</sup> ACFC/SR/II(2007)003rev *supra* note 189 para.199

<sup>196</sup> *Ibid.*, para.200

<sup>197</sup> *Ibid.*, para.201

<sup>198</sup> ACFC/OP/II(2007)003 *supra* note 190 para.131

<sup>199</sup> Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in the United Kingdom*, (GVT/COM/II(2007)003) p.16

equality and community cohesion, ‘Improving Opportunity, Strengthening Society’.<sup>200</sup> The move to create a ‘Commission on Integration and Cohesion’ in June 2006 was welcomed by the Advisory Committee.<sup>201</sup> Additionally, the Government in October 2007 “announced a 10-point action plan to promote cohesion and tackle community tensions, including £50 million of investment”.<sup>202</sup>

Article 8 enumerates the right to manifest religion and belief and “to establish religious institutions, organisations and associations”.<sup>203</sup> The UK failed to address article 7, regarding freedom of religion in the first round of state reporting, and in the second round dealt with it in conjunction with article 8. Therefore, the following discussion will consider both article 7 and 8 jointly. In this context, the UK addresses primarily Religious NGOs, Religious Education in schools and Faith Schools. “There are a number of non-governmental organisations within the UK which have been set up to promote the specific needs of particular religious groups. The Government consults with these groups regularly”.<sup>204</sup> The consultation with these groups is a positive step regarding the Muslim minority, as it means that their opinion can be taken into account when the Government adopts measures, which affect the community. However, the amount of influence that these groups have in reality is not discussed. Furthermore, regarding article 15 and participation in economic and public life, concerns were raised by the Advisory Committee in the opinion of 2007 regarding “complaints it has received from representatives of minority ethnic communities of Muslim faith regarding the difficulties they encounter in establishing a dialogue with the Government”.<sup>205</sup> This concern was again addressed by the Government who acknowledged that they “have more to do on this and are developing a range of ideas to increase our access to a range of credible and influential voices”.<sup>206</sup>

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<sup>200</sup> *Ibid.*, p.2

<sup>201</sup> ACFC/OP/II(2007)003 *supra* note 190 para.110

<sup>202</sup> GVT/COM/II(2007)003 *supra* note 199 p.2

<sup>203</sup> Article 8 FCNM

<sup>204</sup> ACFC/SR(1999)013 *supra* note 180 para.138

<sup>205</sup> ACFC/OP/II(2007)003 *supra* note 190 para.253

<sup>206</sup> GVT/COM/II(2007)003 *supra* note 199 p.33



Religious Education in the UK must “reflect the fact that the religious traditions are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in the UK”.<sup>207</sup> Parents can additionally, withdraw children from religious education,<sup>208</sup> however the fact that the ‘principal religions’ are taught would indicate that tolerance is likely to be increased by such an education. In the Second Opinion of the Advisory Committee, issues were raised regarding the lack of activities provided for children that opt out of Religious Education and daily worship,<sup>209</sup> and additionally that Religious Education is often taught in Scotland without addressing non- Christian religions.<sup>210</sup> The Government did not respond to the issues surrounding acts of daily worship in its reply to the Advisory Committee’s opinion, merely stating, “[s]chools are responsible for those students who do not attend RE lessons or collective worship”.<sup>211</sup> However, a new Framework “which will come into effect in September 2008, both clearly stress the importance of learning about different faiths, including interfaith dialogue”.<sup>212</sup>

Faith schools are of course crucial in order for Muslims to maintain their group identity. It is possible for Muslim schools to obtain Government funding and in the 1999 State Report it was noted, “the Government recently agreed to fund two Muslim schools”.<sup>213</sup> While this number is seriously under representative of the population in the UK, 2.7 per cent of which is Muslim,<sup>214</sup> private funding of Muslim schools is not limited. The main limitation on Government funding is related to objective criteria;<sup>215</sup> however, more could be done to encourage the opening of such publicly funded schools. It is furthermore expected that “the cultural and religious needs of children who attend non-religious schools should be

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<sup>207</sup> ACFC/SR(1999)013 *supra* note 180 para.139

<sup>208</sup> *Ibid.*

<sup>209</sup> which should be wholly or mainly of a ‘broadly Christian nature’- ACFC/OP/II(2007)003 *supra* note 190 para.155

<sup>210</sup> *Ibid.*, para.156

<sup>211</sup> GVT/COM/II(2007)003 *supra* note 199 p.21

<sup>212</sup> *Ibid.*

<sup>213</sup> ACFC/SR(1999)013 *supra* note 180 para.144

<sup>214</sup> ACFC/SR/II(2007)003rev *supra* note 189 para.245

<sup>215</sup> ACFC/SR(1999)013 *supra* note 180 para.145

recognised and validated by the school”.<sup>216</sup> This includes *halal* food, adjustments to the school uniform and provision of prayer facilities.<sup>217</sup>

The Advisory Committee in 2007 raised concerns over plans to ban the ‘*niqab*’- veil in schools in the UK on the “grounds of security, safety or learning concerns”.<sup>218</sup> However, the Uniform Guidelines referred to by the Advisory Committee were not adopted and the Government has not suggested such a ban. However, regarding school uniform policy, “schools should act fairly and reasonably, bearing in mind their duties under the Human Rights Act 1998 and anti-discrimination legislation”, factors such as health and safety, security and teaching and learning may be taken into account.<sup>219</sup>

Despite the positive measures taken by the UK Government to promote freedom of religion, the Advisory Committee raised the omission of a discussion of the blasphemy law. The law only covers Christianity, raising serious questions of freedom and equality of religion in the UK. “The Advisory Committee considers that this lack of effective equality, which adversely affects ethnic minorities in particular, raises concern from the point of view of Article 8.”<sup>220</sup> The Advisory Committee suggested that that the Government should either extend the law to cover other religions or abolish the law completely. Such an inequality is clearly of concern. However, the Government pointed out “there have been no public prosecutions for blasphemy since 1922, and only one successful private prosecution since then which was brought twenty five years ago”.<sup>221</sup> This would indicate that the law has fallen into disuse due to it no longer being relevant to society. Yet, in an instance such as this where the existence of such a law, albeit one that is not used, creates a feeling of inequality and lack of freedom of religion it would be beneficial to abolish the law.

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<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*

<sup>218</sup> ACFC/OP/II(2007)003 *supra* note 190 para.158

<sup>219</sup> GVT/COM/II(2007)003 *supra* note 199 p.21

<sup>220</sup> ACFC/INF/OP/I(2002)006 *supra* note 182 para.60, ACFC/OP/II(2007)003 *supra* note 190 para.152

<sup>221</sup> GVT/COM/INF/OP/I(2002)006 *supra* note 181 para.117

However, in 2007 the Government reiterated that it had no plans to change this law.<sup>222</sup>

The exclusion of Muslims from the definition of national minority was also criticised by the Advisory Committee regarding article 8.<sup>223</sup> However, the discussion of measures relating specifically to Islam in the First Report in the context of Article 8, indicates the clear intention on the behalf of the Government to include Muslims in this definition.

Article 12(1) addresses the obligation to “foster knowledge of the culture, history, language and religion of their national minorities and of the majority”.<sup>224</sup> The inclusion of Citizenship Classes in Primary and Secondary education is the biggest step taken in this area towards achieving tolerance and knowledge of other communities’ cultures.<sup>225</sup> This will be further revised and from 2008 include a new pillar called “Identities and diversity: Living together in the UK”, which will include emphasis on shared values and the changing nature of UK society as well as reasons for migration.<sup>226</sup>

### 3.3.3 ICCPR

While the UK has adopted a wide interpretation of ‘national minority’ in the context of the FCNM, it has adopted a restrictive approach regarding the rights contained in article 27 of the ICCPR: In the past, the UK has chosen to discuss non-indigenous minorities in the context of the maintenance of culture and language, stating that; “the Government recognises the benefits of cultural and linguistic diversity but believes the main responsibility for maintaining it lies with the minority communities themselves”.<sup>227</sup> The Government repeatedly does not take responsibility for measures to

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<sup>222</sup> GVT/COM/II(2007)003 *supra* note 199 p.21

<sup>223</sup> ACFC/INF/OP/I(2002)006 *supra* note 182 para.57

<sup>224</sup> Article 12(1) FCNM

<sup>225</sup> ACFC/INF/OP/I(2002)006 *supra* note 182 para.76

<sup>226</sup> GVT/COM/II(2007)003 *supra* note 199 p.26

<sup>227</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Addendum, the United Kingdom of Great Britain and Northern Ireland*, (CCPR/C/UK/99/5) Para.635

maintain the culture and language of non-indigenous minorities and does not even mention the maintenance of religion. Such an omission seems contradictory in the light of the number of measures taken by the Government to ensure compliance with the FCNM that contains far more obligations. Furthermore, the Committee stated its concern “at levels of support offered for the protection of cultural and ethnic diversity”.<sup>228</sup> However, under the last round of State Reporting the United Kingdom did refer to the measures taken under the FCNM.

While the UK provides little information under article 27, a number of measures affecting the maintenance of Muslim group identity, are discussed in the light of article 18. In the 1995 State Report, the UK discussed the case of *Mohd Azam and Others v. J.H.Walker Ltd*. In this case, “it was found that the refusal to allow the employees to take leave for a religious festival constituted indirect discrimination”.<sup>229</sup> The ability to celebrate religious festivals is clearly essential for the maintenance of Muslim group identity. Therefore, the precedent set by this case goes a long way to ensure that Muslims can exercise this right. Further measures have since been adopted via the Race Relations Employment Advisory Service, to aid the maintenance of group identity, including encouraging flexibility regarding practice of religion and religious dress.<sup>230</sup> Religious Education, as with the FCNM, is repeatedly discussed in the State Reports,<sup>231</sup> as is the establishment of religious schools.<sup>232</sup>

In response to the Human Rights Committee being “deeply disturbed by the recent repeated, violent outbreaks of serious race and

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<sup>228</sup> HRC, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Comments of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland*, (CCPR/C/79/Add.55) para.18

<sup>229</sup> HRC, *Consideration of Reports Submitted by States Parties under Article 40 of the, Covenant, Fourth Periodic Reports of States Parties due in 1994, Addendum United Kingdom of Great Britain and Northern Ireland* (CCPR/C/95/Add.3) para.359

<sup>230</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Sixth Periodic Report, United Kingdom of Great Britain and Northern Ireland*, (CCPR/C/GBR/6) para.611

<sup>231</sup> CCPR/C/UK/99/5 *supra* note 227 para.460, CCPR/C/GBR/6 *supra* note 230 para.608

<sup>232</sup> CCPR/C/95/Add.3 *supra* note 229 para.360, CCPR/C/UK/99/5 *supra* note 227 para.463, CCPR/C/GBR/6 *supra* note 230 para.609

ethnicity based rioting”,<sup>233</sup> the UK Government cited the measures taken following the July disturbances in Bradford, including the establishment of “an interdepartmental Ministerial Group on Public Order and Community Cohesion”.<sup>234</sup> The Government also further emphasised its policy that “it is essential to pursue policies and programmes that will build community cohesion and encourage interaction between different groups, rather than to attempt to integrate minorities into one dominant culture”.<sup>235</sup> While the Governments’ policy on this is to be commended, the action taken in response to considerable racial and religious tension, however, is insufficient. The Ministerial Group may well foster cohesion between different communities over a period of time but the situation of ‘race riots’ does not afford time and requires much more urgent action.

In addition, to the positive steps taken by the UK, enabling the Muslim minority to maintain their group identity, a number of less positive developments have occurred. The Government, as a result of terrorist attacks, has become more involved in the affairs of the Muslim community, which would usually be self-regulated. These steps include consulting “on a new power to order the closure of a place of worship which is used as a centre for fomenting extremism”.<sup>236</sup> While the reasoning behind such a measure is clear, ‘fomenting extremism’, is an extremely subjective term, which would require far more interpretation in order not to interfere with Muslims’ right to manifest their religion. The Government has also “consulted with Muslim leaders in respect of those clerics who are not

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<sup>233</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland and Overseas Territories of the United Kingdom of Great Britain and Northern Ireland*, (CCPR/CO/73/UK) para.11

<sup>234</sup> HRC, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee United Kingdom of Great Britain and Northern Ireland and Overseas Territories of the United Kingdom of Great Britain and Northern Ireland, Addendum, Comments by the Government of the United Kingdom of Great Britain and Northern Ireland on the Reports of The United Kingdom*, (CCPR/CO/73/UK/Add.2) para.28

<sup>235</sup> CCPR/CO/73/UK/Add.2 *supra* note 234 para.29

<sup>236</sup> CCPR/C/GBR/6 *supra* note 230 para.607

British citizens to draw up a list of those suitable to preach”.<sup>237</sup> While consultation with Muslim leaders on measures that affect their community is to be commended, this instance constitutes an interference with article 18. While derogations are permitted under article 18, to ‘protect public safety’,<sup>238</sup> which perceived terrorist activity would constitute, this derogation is not permitted under article 27.<sup>239</sup> As such, this can be seen as an interference with Muslim’s right to maintain their group identity. However, the launch of ‘The Mosques and Imams National Advisory Board’ that works alongside the Government, allows Muslims to self regulate to some degree.<sup>240</sup>

For the most part the Government of the UK appears, through the adoption of policies, to encourage the maintenance of Muslim group identity. The reporting processes under the FCNM and ICCPR have highlighted a number of legislative measures and campaigns to foster tolerance. However, as highlighted by the State Reports under ICCPR, the Government is becoming increasingly involved in the affairs of the Muslim community and is willing to derogate from the rights afforded to them if there is a perceived threat. The non-revocation of the Blasphemy Law is also of concern. Despite the fact this law is not in use, revocation would send a clear message of equality.

### **3.4 Conclusion**

The attitude of the different states towards the application of minority rights to Muslim communities on their territory is highlighted by their attitudes to the State Reporting processes under the different international instruments that they are party to. Whereas the United Kingdom attempts to extend the definition of a minority beyond what is generally required in international law, Germany attempts to limit this definition to the few groups which

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<sup>237</sup> CCPR/C/GBR/6 *supra* note 230 para.607

<sup>238</sup> ICCPR Article 18(3)

<sup>239</sup> Nowak, *supra* note 13 p.667

satisfy five criteria, which it is impossible for immigrant groups, more specifically the Muslim community to satisfy, while Denmark limits the concept of minority to one specific group and arbitrarily excludes other well established minority groups such as the Roma never mind the Muslim minority. The lack of willingness to extend the definition of minority can be seen by the limited number of steps taken to satisfy international standards and lack of willingness to discuss the measures taken to protect immigrant groups under article 6 of the FCNM. While the United Kingdom, is willing to discuss the measures in place to protect Muslims, there is not data to determine whether these steps are successful or indeed adequate. In spite of the positive policy of the British Government, there are a few worrying issues, such as the Blasphemy Law and the interference the affairs of the Muslim community, which bring into question whether conditions actually exist which allow Muslims to maintain their group identity.

The discussion by the UK Government regarding by the FCNM and article 18 of ICCPR, addresses the extent to which the Muslim community can manifest their religion and maintain their group characteristics. However, the lack of discussion from Denmark, that fails to apply minority rights to the Muslim community and Germany, that only recently accepted article 27 in this respect, means that an investigation into national law provisions is also necessary.

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<sup>240</sup> CCPR/C/GBR/6 *supra* note 230 para.607

## 4 National Law

It is of course necessary to consider the role of national law, when looking at the rights afforded to Muslims in Denmark, Germany and the UK. This will allow not only insight into the amount of protection afforded by freedom of religion and anti-discrimination laws but also a comparison, between the rights afforded to Muslims in a country that does not recognise the Muslim community or immigrant groups as minorities; Denmark, a country that has only recently accepted Muslims and immigrant groups as a minority; Germany and the UK which has for a considerable time applied minority rights to these groups.

In order to fully appreciate the situation of Muslims in these countries, it is necessary, not only to consider the basic rights of freedom of religion and anti-discrimination laws but also to consider their ability to maintain their group identity. In doing so, it is vital to establish the characteristics that the group shares, regardless of their ethnic background. As such, an investigation into Muslims rights regarding, burial sites and mosques, *halal* meat, headscarves and varying forms of education will be carried out. This includes, the laws available to the Muslim communities, which allow them to maintain these characteristics and the varying policies employed by the states. The characteristics which will be considered, are those most commonly associated with the Muslim community. Additional characteristics may be deemed by particular factions of Islam to be vital to the maintenance of their group identity; however, they may also be a point of contention within the faith itself, issues such as the *burka* and polygamous marriage are examples of this. Furthermore, additional issues such as the financial aspects of Islam, and the measures needed to accommodate this, will not be considered here due to the elaborate nature of such characteristics and the extensive laws required.

When addressing the protection of these characteristics, it is necessary to not only consider article 2, 18 and 26 of the ICCPR but also



how minority rights could add to the maintenance of these characteristics. Regarding article 27 ICCPR states are “under an obligation to ensure that the existence of this right are protected against their denial or violation” including the enforcement of a type of *de facto* equality in respect of characteristics such as customs, traditions and eating habits.<sup>241</sup> Therefore, it can be interpreted that the right to *halal* meat falls within the protection afforded by this provision. Furthermore, the UN Declaration establishes that states should take positive measures to promote the identity of the minority regarding article 1. Article 2(1) concerns the right of religious minorities to profess and practise their own religion and article 2(3) concerns the participation in public life of the minority especially regarding decisions that affect them. Article 4 also asserts that measures should be taken to ensure that the human rights of minority groups are not interfered with.

While the FCNM is not currently made applicable by the respective governments to the Muslim minorities, national law will nevertheless be interpreted in the light of this, in order to establish whether these standards have been met and what further measures would be necessary in order to comply with these standards. Article 8 of the FCNM has been interpreted to include the establishment of places of worship and religious institutions,<sup>242</sup> while article 7 further imposes an obligation on the States parties to provide “a legislative and institutional framework for effective enjoyment of these rights”.<sup>243</sup> Therefore, the ability of the Muslim community to maintain its distinct characteristics will be considered in the light of the minority rights discussed in Chapter Two and whether these rights add anything to the protection already provided by articles 2, 18 and 26 ICCPR.

When considering the extent of measures taken in each country it is also necessary to bear in mind the size of the Muslim population. For example, the number of mosques in each county should be proportionate to the number of adherents to the faith.

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<sup>241</sup> HRC, *supra* note 17 §6.1, Nowak, *supra* note 13 pp.658–9

<sup>242</sup> Machnyikova, *supra* note 73 p.238

<sup>243</sup> Machnyikova, *supra* note 69 p.199

## 4.1 Denmark

Denmark has both a significantly smaller population and Muslim community than Germany and the UK. Nevertheless, the Muslim community makes up around three percent of the overall population. The legislation, law and policy that affect the Muslim community are on the whole decided at a national level. Similarly, to Germany, the majority of the immigrants that make up the Muslim community were originally guest workers, which it was thought would return to their countries of origin.

### 4.1.1 Freedom of Religion and Related Laws

Freedom of religion is protected in its most basic form by §67 of the Danish Constitution, '*Grundloven*'. This states that, "citizens have the right to meet and to worship God in the way that fits best with their own beliefs".<sup>244</sup> In addition to '*Grundloven*', other provisions that are related to freedom of religion exist such as the Blasphemy paragraph,<sup>245</sup> and the Racism paragraph,<sup>246</sup> as well as anti discrimination laws.<sup>247</sup> However, there is an ongoing discussion on the difference between '*anerkendte*' or 'recognised' and '*godkendte*' or 'approved' religions. For the most part, the difference is historical, with 'recognised' religions such as the Danish Church, (*Folkekirke*), having been 'recognised' prior to the 1970 Resolution by the Monarch. After 1970, religious communities have been 'approved' including some 46 Islamic communities. This approval is linked to the permission of the religion to perform marriage ceremonies within the Marriage Law (*Ægteskabsloven*). While such a distinction is not *per se* forbidden, if this gives rise to any privileges to one of the religions then this

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<sup>244</sup> Danmarks Riges Grundlov nr.169 af 5.Juni 1953 §67 Borgerne har ret til at forene sig i samfund for at dyrke Gud på den måde, der stemmer med deres overbevisning, dog at intet læres eller fortages, som strider mod sædeligheden eller den offentlige orden.

<sup>245</sup> LBKG 2006-10-05 nr.1000 Straffeloven §140

<sup>246</sup> LBKG 2006-10-05 nr.1000 Straffeloven §266b

violates article 18 ICCPR in conjunction with article 2, as discussed in Chapter 2.<sup>248</sup> Although many Muslim communities have been given permission to perform marriage ceremonies, this does not lead to it being automatically registered by the civil authorities, as would be the case if you were to be married in the Danish Church. Furthermore, the registration of all newborn babies continues to be performed exclusively by the Danish Church, with there being no other possibility for other religions to register their children with their own place of worship or the municipality directly.<sup>249</sup> There is a clear difference of treatment between Muslims and members of the Danish Church. However, the deficiencies in anti-discrimination laws, as will be discussed later, mean that this difference does not constitute discrimination in Danish national law, although it may do under ICCPR.

Other differences also exist between the religions when you look at funding. While Muslim communities receive tax breaks regarding property and income,<sup>250</sup> the Danish Church is actually funded by tax. While these tax breaks are not available to members of the Danish Church, the support provided for the Danish Church constitutes ten percent of the Church's annual income.<sup>251</sup> These subsidies come from the national budget, so there is concern that Muslims are funding the Danish Church.<sup>252</sup> While these differences may not lead to a big disparity in reality, it most definitely creates a feeling of inequality. Although Denmark has freedom of religion, there is most definitely not 'equality of religions'.<sup>253</sup> The subsidising of a religion by the Government is of course advantageous to the particular religious community and ten percent of the annual income of the Danish Church is by no means a small amount. While the adherents to the Danish Church may be far more in number in comparison to Islam, in Denmark,

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<sup>247</sup> LBKG 1987-09-29 nr.626 om forbud mod forskelsbehandling på grund af race mv., LBKG 1995-05-17 nr.309 Lov om forbud mod forskelsbehandling på arbejdsmarkedet mv.

<sup>248</sup> Nowak, *supra* note 13 p.415

<sup>249</sup> Orhun, *supra* note 96 p.6

<sup>250</sup> Økonomisk støtte til trossamfund, <[www.km.dk/trossamfundstoette.html](http://www.km.dk/trossamfundstoette.html)> ,visited on 7 November 2007

<sup>251</sup> ACFC/SR/II(2004)004 *supra* note 27 p.20

<sup>252</sup> Orhun, *supra* note 96 p.25

such subsidisation should and could easily be based on the number of adherents to a particular faith and therefore diminish the disparity that currently exists.

Article 26 ICCPR, provides for equality before the law. The HRC decided in *Waldman v. Canada* that the funding of Roman Catholic school but not other religious schools as a matter of policy was a violation of this right.<sup>254</sup> The case of the state funding the State religion but not minority religions is therefore not only a violation of article 18 ICCPR but also article 26, as the state has a duty to ensure the equal enforcement of the law. Again, the shortcomings of the anti-discrimination legislation mean that this disparity has not been legally challenged within Denmark. However, on an international level, the Advisory Committee of the FCNM has been critical of this system, considering it as a violation of article 8.<sup>255</sup>

The Blasphemy paragraph, as previously mentioned, is not limited to Christianity as is the case in the UK, however, it has also never been applied in relation to Islam.<sup>256</sup> This again raises question of article 26 ICCPR, regarding equality before the law. However, this is most likely related to the fact that the Blasphemy paragraph has not been used successfully since 1938. The fact that this case involved Judaism also indicates that the law is not limited purely to Christianity. In reality, the Blasphemy paragraph has not been used to protect Islam as it fell into disuse before Islam became a significant religion in Denmark. There have also been recent discussions in Danish society regarding the line between the Blasphemy paragraph and freedom of speech. While a high price is placed on freedom of speech, there is a considerable risk that “speech, that is given by non-members [of the faith], that are blasphemous or are perceived as such, can also be perceived as an attack on a specific group of people”.<sup>257</sup> It is of course difficult to know where the line falls between blasphemy and

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<sup>253</sup> *Ibid.*

<sup>254</sup> Nowak, *supra* note 13 p.615, *Waldman v. Canada*, *supra* note 84

<sup>255</sup> ACFC/INF/OP/II(2004)005 *supra* note 27 para.25

<sup>256</sup> Orhun, *supra* note 96 p.3

<sup>257</sup> Institut for Menneskerettigheder, Notat om Ytringsfriheden, Høringssvar: <humanrights.palermo.magenta-aps.dk/hoeringssvar/notat2006/hoeringssvar> , visited on 7 November 2007, para.1

freedom of speech, especially in a largely secular or non-practicing society. In the case, that a particular speech attacks a minority group due to their ethnic background or faith it would be more effective to utilise the Racism paragraph. Although, “it can be discussed whether the Blasphemy paragraph gives extra and necessary protection, in that it protects against extreme interpretations of religious holy texts that could be used to inflame hatred against religious followers”.<sup>258</sup> Furthermore, the Racism paragraph has not been widely used. One of the major criticisms of the OSCE Report on ‘Combating Intolerance and Discrimination against Muslims’ was that “Article 266b in particular, is seldom ever applied to those who make inflammatory statements. This has served to create a *de facto* sense of impunity which has in turn contributed to a further deterioration of the public climate”.<sup>259</sup>

Despite the Act on Ethnic Equal Treatment (Act Number 374 of 28 May 2003) being praised by the Advisory Committee, the anti-discrimination laws have been criticised by the Danish Institute for Human Rights (IMR) for creating a hierarchical order amongst grounds of discrimination.<sup>260</sup> “The Danish Law does not currently give equal protection to all the different areas of discrimination.”<sup>261</sup> Certain types of discrimination are only forbidden regarding the work market including religion and belief. In contrast, the prohibition of discrimination the grounds of race and ethnic background are valid both in and out of the work market. In an attempt to combat this inequality, IMR suggested that a horizontal Complaints Authority be set up in order to secure effective protection against discrimination and to promote equality.<sup>262</sup> However, the Muslim community can within national law be discriminated against outside of the work market, without being protected by the Danish government, raising

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<sup>258</sup> Institut for Menneskerettigheder, *supra* note 257 para.1

<sup>259</sup> Orhun, *supra* note 96 p.36

<sup>260</sup> Institut for Menneskerettigheder, Bemærkninger til Ligestillingsafdelingens Notat om Lovgivning om Ligestilling og Ikke- Forskelsbehandling, <menneskeret.dk/Danmark/HÅ,ringssvar/2006/n06\_27> visited on 7 November 2007 para.1

<sup>261</sup> Institut for Menneskerettigheder, *supra* note 257 para.1

<sup>262</sup> *Ibid.*

questions as to whether they are afforded the equal protection of the law, within the meaning of article 26 ICCPR, compared to other minority groups which can be distinguished on the grounds of race or ethnic background.<sup>263</sup> Furthermore, article 4(1) of the UN Declaration obliges States to ensure that human rights and fundamental freedoms apply to minorities without discrimination and in full equality before the law and is therefore contravened by this inequality.

#### **4.1.2 The Protection of the Distinctive Characteristics of the Muslim Minority**

While there is no overarching law protecting the distinctive characteristics of minorities in Denmark, there are several laws and policies which effect the community's ability to do so themselves. Therefore, it is necessary to consider these rights and the affect that they may have on the Muslim minority. If, indeed, it is possible for the Muslim minority to maintain their distinctive characteristics without the direct application of minority rights.

Despite the existence of several mixed-faith graveyards in Denmark, it was felt by the Muslim population that this still inhibited the practice of their religion.<sup>264</sup> However, it took until September 2006 for a Muslim cemetery to open, and this was not without difficulty. The graveyard is owned and run by the 'Danish Islamic Burial Fund (*Dansk Islamisk Begravelsesfond*), however, the opening of the graveyard was delayed due to administrative difficulties with the municipality, after the land was purchased in 2004.<sup>265</sup> The Ministry for Religious Affairs cited 'bureaucratic red tape and misunderstandings' as the reasons for such a delay.<sup>266</sup>

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<sup>263</sup> Article 26, ICCPR

<sup>264</sup> Denmark: Islamic Practice. <[www.euro-islam.info/pages/denmark.html](http://www.euro-islam.info/pages/denmark.html)> visited on 7 November 2007

<sup>265</sup> Orhun, *supra* note 96 p.25

<sup>266</sup> Orhun, *supra* note 96 p.33

There currently exists only one purpose built mosque in Denmark, which belongs to Ahmadiyya Muslims, a community generally not accepted by other Muslims. The other fifty or so mosques in Denmark are all makeshift buildings. The lack of cohesion in the Muslim community has been blamed for the lack of mosques as well as the same issues as with the graveyard. The current Government takes the stance that “nothing in the legislation made it more difficult to build a mosque as opposed to a church...it was the communities who were supposed to build their temples”.<sup>267</sup> However, it has also been claimed, “every time a permission is asked to build a mosque, an excuse is found by the authorities not to grant this permission”.<sup>268</sup> While it is not possible to prove whether or not this opinion is based on fact, it is also clear that the Muslim community, which has managed to found several umbrella organisations such as the *Islamisk Trossamfund* and the *Dansk Islamisk Begravelsesfond*, has managed a degree of cohesion regarding other projects. There have been recent discussions regarding the building of purpose built mosques in Århus and Copenhagen.<sup>269</sup> Land has been set-aside for this purpose in Copenhagen. However, nothing has come of this as of yet. Furthermore, it has also been reported that Muslims have not been consulted regarding the plans for the mosque in Copenhagen, which have already been drawn up.<sup>270</sup>

While such plans to build a mosque are encouraging, the lack of consultation with the Muslim community is equally worrying. If minority rights were to be applied in this case, article 2(3) of the UN Declaration as well as article 15 the FCNM indicates that minority groups should be consulted regarding decisions that affect them. Furthermore, article 26 of ICCPR, not only refers to equality within the law itself but also to the enforcement of the legislation. While no legal hindrance exists that has

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<sup>267</sup> Orhun, *supra* note 96 p.21

<sup>268</sup> Orhun, *supra* note 96 p.25

<sup>269</sup> H. Ravn Iversen, *Er muslimer reelt anerkendt in Danmark?*, <[www.ikstudiecenter.dk/undersider/litteratur/pdf/12\\_Er%20muslimer%20reelt%20anerkennt%20i%20Danmark.pdf](http://www.ikstudiecenter.dk/undersider/litteratur/pdf/12_Er%20muslimer%20reelt%20anerkennt%20i%20Danmark.pdf)> , visited on 7 November 2007 p.6

<sup>270</sup> *Moskéforberedelser uden Muslimer*, 27 April 2007 <[www.dr.dk/Nyheder/Kultur/2007/04/27/094706.htm?nyheder](http://www.dr.dk/Nyheder/Kultur/2007/04/27/094706.htm?nyheder)> visited on 7 November 2007

prevented the Muslim community from establishing their own burial site or building their own mosque, the fact that this has taken so long to achieve, with bureaucratic difficulties would indicate that there exists some form of inequality in the application of the legislation. This provision would be further backed up by article 8 of the FCNM, were this to be applied in the case of the Muslim community in Denmark, which establishes that the state has a duty not to interfere with establishment of places of worship and religious institutions and to protect this from outside interference.<sup>271</sup> Article 27 of ICCPR also refers to the establishment of *de facto* equality, going beyond anti-discrimination and the provision of positive measures to ensure this, and is reaffirmed by article 2 of the UN Declaration. Article 7 FCNM further provides that it is the responsibility of the state to provide “a legislative and institutional framework for effective enjoyment of these rights”.<sup>272</sup> Although the minority rights contained within the FCNM are not applicable in this case, article 26 ICCPR is, and it is arguable that article 27 is as well. While article 26 should in theory be enough to allow the Muslim community to build their own mosques and establish their own burial sites, within the principle of the equality of religions it is not as easy to establish discrimination in fact as opposed to discrimination in law. Articles 7 and 8, FCNM place positive duties on states parties not only to ensure that the establishment of such institutions is possible but also provide the means through a ‘legislative and institutional framework’ for them to do so.

While an exception has been made in the Animal Welfare Law, allowing for ritual killings and therefore permitting *halal* meat,<sup>273</sup> there have been discrepancies in the application of anti-discrimination laws regarding headscarves. In the ‘*Torklædesag*’ of 2000 it was held that “the firing of an employee by a department store, just because she, as a result of her religious belief- wore a headscarf, constitutes indirect discrimination”.<sup>274</sup> However, since then, in a similar case in 2005, the High Court held that the demand of a uniform of certain clothing in a place of

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<sup>271</sup> Machnyikova, *supra* note 73 p.238

<sup>272</sup> Machnyikova, *supra* note 69 p.199

<sup>273</sup> LBKG 2005-05-13 nr344 Dyreværnsloven §13, BKG 2007 S83



work, with no further reasoning such as hygiene or security, was an objective criterion that justified the indirect-discrimination that the employee suffered.<sup>275</sup> The inclusion of a company headscarf was not considered as a solution to the issue. Under article 26 and article 2 in conjunction with article 18 of ICCPR, the HRC in *Singh Bhinder v. Canada* decided that the risk of injury outweighed the discrimination suffered as a result of the wearing of a turban for religious reasons was considered as “reasonable and directed towards objective purposes”.<sup>276</sup> It seems dubious that the justification of a uniform, alone, is considered sufficiently ‘reasonable and objective’ to negate the indirect-discrimination that the employee suffered. Furthermore, the wearing of a headscarf arguably falls within the realm of ‘religious practice’,<sup>277</sup> which may only be interfered with on the grounds of public safety, morals and the fundamental rights and freedoms of others. In this particular case, it does not appear that this was the case. In this particular case, it is clear that the religious freedom of the applicant under article 18 ICCPR was violated, as the only justification given for such a decision was the existence of a uniform policy. Furthermore, under article 4(1) of the UN Declaration, there is an obligation on the state to ensure equal human rights for persons belonging to minorities. This decision can therefore be said, not to be within the spirit of the UN Declaration.

The concept of prayer rooms in places of work have been discussed in Denmark, however, there has been no discussion or cases regarding the observance of religious festivals or prayer times. This leads to the conclusion that there have not been issues in accommodating these particular demands of the Muslim minority. However, regarding prayer rooms the Employment Minister criticised workplaces for establishing prayer rooms while the Integration Spokesperson stated that “prayer rooms

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<sup>274</sup> *Torklædesag* Ugeskrift for Retsvæsen 2000 s2350

<sup>275</sup> *Handels- og Kontorfunktionærernes Forbund i Danmark som mandatar for A (adv. Ulrik Jørgensen, Kbh.) v. Føtex A/S (adv. Mariann Norrbom, Kbh.)*, 21 January 2005, Højesteret, U.2005.1265H

<sup>276</sup> Nowak, *supra* note 13 p616, *Singh Bhinder v. Canada* No. 208/1986

<sup>277</sup> Article 18 ICCPR

are misunderstood goodness, by treating Muslims differently, we are making them different from everyone else”.<sup>278</sup> There seems to be a misunderstanding of equality. While Muslims are different and may require different measures to accommodate their needs to the rest of society, this should not be the source of unjustified distinction. To claim that all groups in society are the same is a fundamental misunderstanding of equality and non-discrimination laws. There is no law requiring the provision of prayer rooms and this is unlikely to be, practically speaking, possible, especially for small businesses. However, the attitude of the Government in criticising businesses for attempting to accommodate the religious needs of their employees is disconcerting. Article 6 FCNM, which is applicable to the whole of society and is not just limited to national minorities, states that States Parties should “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory”. The statements made by the government in reference to the development of ‘a spirit of tolerance’ can be said to undermine the purpose of this clause.

Despite the change in law of 2007, regarding the establishment of Private schools, providing for increased regulation and the additional provision that the school’s goal must be to “prepare students to live in a society, like Denmark, with freedom and democracy”<sup>279</sup> this should not theoretically effect the establishment of Islamic schools. There currently exist around 20 such schools in Denmark.<sup>280</sup> In comparison, the teaching of Religious Education in public schools is not so accommodating to Muslims. The subject literally translates as ‘Christianity Studies’ (*Kristendomskundskab*), and only covers religions other than Christianity in the last years of school.<sup>281</sup> In their report on ‘Integration Policies’ OSCE noted that Denmark views “intercultural awareness as raising awareness of

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<sup>278</sup>Ravn Iversen, *supra* note 269 p.2

<sup>279</sup>LBKG 2007-07-08 nr.891 om friskoler og private grundskoler mv. §1 Stk 2

<sup>280</sup>Orhun, *supra* note 96 p.31

<sup>281</sup>LBKG 2007-08-28 nr.1049 Folkeskoleloven §5 Stk 2, 1 (c) notat 36 ‘*undervisning i fremmede religioner og andre livsanskuelser er omfattet af kristendomsundervisninger på de ældste klassetrin*’

foreign cultures” and not necessarily as raising awareness of the different cultures in Danish society.<sup>282</sup> The fact that more efforts are not made to educate the majority population about the other cultures that exist in society and their religion is always likely to cause friction. Even the name ‘Christianity Studies’ can be a source of misunderstanding and feelings of inequality. While the manifestation of Christianity is aided by ‘Christianity Studies’, this is not the case regarding other religions and as this education privileges the state religion, can be deemed to be a violation of article 18 in conjunction with article 2. Article 1 of the UN Declaration establishes that states shall “protect the existence and the... religious...identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”. The steps to be taken to achieve this include educational measures. Regarding the protection of the minority against harassment and persecution, it is arguable that the education of the majority about the minority would be the most effective way to prevent this type of behaviour. Therefore, the lack of education regarding Islam can be considered to be a hindrance to the fulfilment of article 1 of the UN Declaration. This is reaffirmed by Article 29 of the Convention on the Rights of the Child which establishes that education should prepare the child “for responsible life in a free society, in the spirit of understanding, peace, tolerance...friendship among all peoples, ethnic, national and religious groups”. Additionally, under article 6(1) of the FCNM, the Danish government has the obligation to “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding” particularly through educational measures. This does not only apply to minority groups and equally applies to educating the minority about the majority culture. Additionally article 12 adds, in respect to national minorities, that “[t]he Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority”. While Denmark does not accept the Muslim minority as a

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<sup>282</sup> High Commissioner for National Minorities, OSCE Integration Policies,

national minority, it is clear that it is consider advantageous to educate the whole of society about different cultures. However, again the Education Ministry has blamed the diversity of the Muslim community for the reluctance to introduce lessons on Islam.<sup>283</sup>

In respect of imams, the 1986 agreement between Denmark and Turkey on residence permits for Turkish imams has recently been repealed as a result of ‘The Governments Vision and Strategies for Better Integration’.<sup>284</sup> In 2005 the ‘Imam Law’ meant that imams coming to Denmark from foreign countries needed to be able to “speak Danish and demonstrate democratic values”,<sup>285</sup> in order to gain a residence permit. While this restriction has been placed on foreign imams, no steps have been taken to provide a theological education for imams within Denmark, although, the Government did suggest this in ‘Visions and Strategies’.<sup>286</sup> “The Government, that controls the Danish Church and finances its Priest’s education, has not itself taken any active initiative.”<sup>287</sup> The religious community would have to finance the education of religious leaders themselves and Government educational grants (*SU*) would not be approved. While it is understandable that the Government wants to restrict the entry of foreign imams into its territory, the fact that it has not provided an alternative for the Muslim community is inadequate. The Government as well as subsidising the Danish Church, subsidises the education of priests and yet cannot find a viable solution for the education of imams. A state funded education is provided for the priests of the Danish Church, however, this is not the case for imams or religious leaders of other faiths and as such raises questions of discrimination under article 2 in conjunction with article 18 and article 26 of ICCPR. However, the most relevant point is that in restricting the access of the Muslim minority to imams and at the same time

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(HCNM.GAL/6/06) 3 July 2006 p.11

<sup>283</sup> Orhun, *supra* note 96 p.31

<sup>284</sup> Ministergruppen om bedre integration, ‘Regeringens vision og strategier for bedre integration’, Regeringen, June 2003

<[www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2003/regeringens\\_vision\\_og\\_strategier/vision\\_og\\_strategier/index.htm](http://www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2003/regeringens_vision_og_strategier/vision_og_strategier/index.htm)>, visited on 5 Decmber 2007 p.35

<sup>285</sup> Orhun, *supra* note 96 p.32

<sup>286</sup> Ministergruppen om bedre integration, *supra* note 282 p.34 Initiative 56

not providing an alternative is limiting the Muslim minority's ability to manifest their religion and as such maintain their distinctive characteristics under both article 18 and 27 of ICCPR.

Although the Muslim community appears to have been provided for, for the most part, in law. This does not seem to be the case in fact. The absence of anti-discrimination law outside of the employment arena, additionally, appears to have prevented Muslims from fully exercising their right to equality. Furthermore, while nothing legally prevents Muslims from obtaining burial grounds and building mosques, the fact that they do not exist would indicate the existence of some other impediment. Many of the obstacles encountered by the Muslim are to some extent forbidden under articles 2,18 and 26 of ICCPR. In this regard, the equal application of human rights to the Muslim minority, as established by article 4(1) of the UN Declaration has not been fulfilled. Furthermore, the rights contained within the UN Declaration, the FCNM and article 27 ICCPR, would in many cases provide much more comprehensive protection for the Muslim community. While Muslims in Denmark, have freedom of religion; there are no positive measures that are attached to this that would aid them in the maintenance of their group identity. In contrast the obligations contained in article 7 and 8 FCNM would go a long way to solve the inequalities that are suffered in fact by the community by imposing a positive duty on the Danish state.

## 4.2 Germany

There are several issues that should be taken into account when considering the legal provision made for Muslims in national law. Germany, despite having significantly more Muslims residents than Denmark, has only

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<sup>287</sup> Ravn Iversen, *supra* note 269 p.6

recently accepted that it is a country of immigration.<sup>288</sup> Previously it was thought that ‘*gastarbeiter*’ would return to their countries of origin. An estimated four percent of the German population is now Muslim. Furthermore, immigrant groups have been accepted as minorities within the meaning of article 27 ICCPR since 2002, so any minority rights that are derived from this change in stance will be more recent.

The majority of rights that are relevant to Muslims are decided on a State (*Länder*) level, as opposed to nationally. This has led to a significant amount of incoherence regarding the measures taken to accommodate Muslims. On a national level, there is on the other hand a considerable amount of discussion regarding the neutrality of the state and the limitations that this places on freedom of religion.

#### **4.2.1 Freedom of Religion and Related Laws**

Article 4 of the German Constitution states that “the freedom of belief and conscience and the freedom to profess religious and philosophical beliefs are inviolable” and that “the free practice of worship is guaranteed”. While this right is undoubtedly well protected in German law,<sup>289</sup> issues still exist regarding the recognition of Islam as a Public Religious Corporation. This status does not affect religious choice and assembly, however it does confer a number of rights.<sup>290</sup> Up until now, this status has only been conferred on the Catholic and Protestant churches, while the Jewish, Greek Orthodox and New Apostolic Church congregations have received a number of advantages.<sup>291</sup> On the other hand, no Islamic congregation has thus far been

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<sup>288</sup> Mesghena, *supra* note 164 p.2

<sup>289</sup> D. McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, (Hart Publishing, Oxford, 2006) p.119

<sup>290</sup> J.Blaschke, ‘Tolerated but Marginalised- Muslims in Germany’, in M. Anwar *et al* *State Policies towards Muslim Minorities. Sweden, Great Britain and Germany* (Editin Parabolis, Berlin 2004) p.151

<sup>291</sup> *Ibid.*, p.153

afforded recognition or any privileges, despite several applications from different congregations to this ends having been made.<sup>292</sup>

“This is attributed to the fact that there is no safeguard in assuring the continual number of members, the lack of historical relevance of the association in Germany, the lack of just one binding contact person or leader, the reality of the various subgroups detracting from the overall common goal necessary for the recognition of a public corporation, etc.”<sup>293</sup>

Essentially, the structure of Islam is alien to German society, as it does not mirror “the official hierarchical structure of the Christian churches”.<sup>294</sup> However, it is clear that “there were no ideas of a long-lasting presence among larger groups of Muslims until recent times”.<sup>295</sup> While this belief used to exist, the acceptance of Germany as a country of immigration and the increased naturalisation of ethnic Turks,<sup>296</sup> would seem to negate this argument. While this may have been valid in the past, it most certainly is not now.

The benefits that the status of a ‘Public Religious Corporation’ confers include: the ability to collect ‘Church’ taxes;<sup>297</sup> state funding for schools and charitable and social activities;<sup>298</sup> and the Government repeatedly turning to them, valuing their stance on a number of political issues.<sup>299</sup> Further legal rights include, §9 Para. 2P. 1. Nr. 8 of the GjS legal code, which grants rights regarding becoming more involved in society as a whole and §1 Para. 5P.2 Nr.6 of the Legal Building Code which would give Muslims the right to build mosques, “taking into account the need for parking spaces on Fridays and Muslim religious holidays”, as well as

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<sup>292</sup> *Ibid.*

<sup>293</sup> *Ibid.*

<sup>294</sup> *Ibid.*

<sup>295</sup> Rohe, *supra* note 145 p.87

<sup>296</sup> ACFC/SR/II(2005)002 *supra* note 146 para.13

<sup>297</sup> Blaschke, *supra* note 290 p.151

<sup>298</sup> *Ibid.*, p.152

<sup>299</sup> *Ibid.*, p.154

Islamic burial grounds and funeral homes.<sup>300</sup> The ability to influence lesson plans regarding religious education would also be gleaned from this status. As discussed regarding Denmark, under article 18 of ICCPR, privileges should not be conferred upon a particular religion and not upon a minority religion. This, however, is an issue of equality before the law. Islam is not afforded the same legal status as the dominant religions in Germany and as such is subject to discrimination in contravention of article 26 ICCPR as well as article 4(1) of the UN Declaration. Were THE FCNM to be applicable it is suggested that under art. 8, “it is common practice among the states parties to have specific rules for how religious organizations can acquire legal personality and establishing a basis for relations between the state and religious groups”.<sup>301</sup> While this in itself is reasonable, what remains the issue in Germany is that “Constitutional requirements for public corporate status for religious groups presume a structure of organisation easily compatible with, and in reality springing from, the very tradition of Christian life”.<sup>302</sup>

The continual denial of Islam, the status of a ‘Public Religious Corporation’ can be seen as the denial of Islam a place in society. The arguments put forward indicate a general lack of understanding of Islam as a whole. While the sub-divisions within Islam may cause some issues, these are not insurmountable. They are not dissimilar to the differences that exist in Christianity between the Roman Catholic Church and the various forms of Protestantism. The idea of sub-divisions within a religion is not an alien concept. What can be seen is a hesitance to accept several factions of Islam as separate faith groups and a wish to classify them all as ‘Islam’. This, however, this leads to issues regarding the satisfaction of the requirements for becoming a ‘Public Religious Corporation’. Furthermore, as already stated, an estimated 80 percent of Muslims in Germany are of the Sunni denomination, so the notion of their not being a dominant group within

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<sup>300</sup> *Ibid.*

<sup>301</sup> Machnyikova, *supra* note 73 p.238

<sup>302</sup> G.Robbers, ‘The legal status of Islam in Germany’, in S.Ferrari; A.Bradney, (eds.), *Islam and European legal system*. (Ashgate, Aldershot, 2000) p.151



Islam in Germany is clearly not valid. However, this is not to say that this group should represent all Muslims.

German law does not contain any provision regarding blasphemy. This may be regarded as a lack of protection afforded to religious groups, however, the non-existence of such a clause avoids further discussion regarding discrimination and the hierarchy of religions.

Article 3(3) of the German Constitution addresses discrimination and as such “prescribes that no one may be discriminated against, or given preferential treatment, for reasons of their religious belief”.<sup>303</sup> Furthermore, the Anti-discrimination Law §1 states that discrimination may not happen on the grounds of religion, however, under §5 Special Measures are permitted if they are both practical and adequate.

## **4.2.2 The Protection of the Distinctive Characteristics of the Muslim Minority**

A number of issues have arisen in Germany regarding the traditional burial rites and provision of Muslim cemeteries. As a result it is claimed that 80 percent of Muslims who die in Germany are transported back to their countries of origin,<sup>304</sup> although many would prefer to be buried in Germany.<sup>305</sup>

The burial rite of being buried within 24 hours of death has caused significant issues as this does “not coincide with the provisions in Germany”, although exceptions can be made.<sup>306</sup> The fact that this rite stems from the heat in those countries, which are traditionally Muslim, means that it is often perceived that “the time limit is less significant, which is problems to the Muslim community who wants to maintain its burial

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<sup>303</sup>Rohe, *supra* note 145 p.86

<sup>304</sup>Blaschke, *supra* note 290 p.159

<sup>305</sup>*Ibid.*, p.158

<sup>306</sup>*Ibid.*, p.157

traditions”.<sup>307</sup> Furthermore, the use of a shroud as opposed to a coffin causes issues as most facilities “prescribe burial in a coffin”.<sup>308</sup> However, Aachen and Essen both permit burial in shroud.<sup>309</sup> Undoubtedly, these issues stem from the fact that Islam is not permitted the status of ‘Public Religious Corporation’. “[O]nly those confessions that have been granted the status of a public corporation should be permitted to act as a body responsible for managing a cemetery.”<sup>310</sup> In 2004 there were three operative Islamic cemeteries in Germany and 70 burials burial grounds that had designated areas that were Muslim.<sup>311</sup> There were also a significant number of plans underway to provide more burial grounds, many of which have now been completed. As discussed regarding Denmark, separate sections in existing cemeteries are by no means ideal, as they may not be sufficient for all burial rites to be observed. However, the development of increased provision is nevertheless to be welcomed. Additional measures have been taken in North Rhine-Westphalia, which in 2002 enacted a burial law that responded to the burial needs of Muslims and the city of Hamburg that agreed to burials without a coffin.<sup>312</sup> It has been suggested, “these small steps on behalf of the German government can only be interpreted as symbolic gestures, merely attempting to pacify the Muslim community, rather than truly meeting its members’ needs”.<sup>313</sup> However, these steps could also be interpreted as the increased acceptance of the Muslim community, not only regarding their presence in Germany, but the validity of their religion and the permanence of their presence.

However, these developments have not been nationwide. The inhibition of ritual burials is a violation of article 18 ICCPR and the right to practice and manifest religion. Article 27 ICCPR and article 2 of the UN Declaration, which is more explicit in conferring positive action, regarding the right to *de facto* equality beyond anti-discrimination and the right to

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<sup>307</sup> *Ibid.*

<sup>308</sup> *Ibid.*, p.162

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*, p.161

<sup>311</sup> *Ibid.*, pp.161-2

<sup>312</sup> *Ibid.*, p.163

<sup>313</sup> *Ibid.*,

maintain customs and traditions is also interfered with. The lack of measures taken to protect this element of the religious identity of the Muslim minority can also be seen to interfere with article 1(2) of the UN Declaration. If the provisions contained within the FCNM were to apply, it would be arguable that the issues surrounding Muslim burial rites contradict states' obligations under articles 5(1), 7 and 8.

The issue of mosques in Germany appears to be a source of confusion. One recent report claims that there to be over 2,000 mosques in existence in Germany,<sup>314</sup> while another claims the existence of only 77 mosques with another 123 planned.<sup>315</sup> The latter report claims, however, that some 2,300 prayer houses and cultural centres exist. This confusion highlights the legal ambiguity that surrounds the Islamic faith in Germany, particularly the establishment of mosques. Again, this can be attributed to the fact that Islam is not afforded the status of a 'Public Religious Corporation'.

While no legal impediments stand in the way of the Muslim community building mosques, restrictions exist in fact. Issues concerning; "noise pollution, traffic flow, parking problems etc" are often raised by local residents as objections to the building of a mosque.<sup>316</sup> While these restrictions only serve to delay the building process in the majority of cases, restrictions such as those placed on the *Yavuz Sultan Selim* Mosque in Mannheim, that the minaret must be "half the height of the neighbouring Catholic Church tower", are commonplace.<sup>317</sup> Limits are similarly placed on the call to prayer from a *muezzin*, which were "not accorded the same rights as the ringing of bells from Christian Churches".<sup>318</sup> Such restrictions, Baumann claims serve to promote the "unspoken hierarchy of legitimacy to claim space in the public domain".<sup>319</sup> There is, however, a distinct

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<sup>314</sup> Rohe, *supra* note 145 p.88

<sup>315</sup> Blaschke, *supra* note 290 p.184

<sup>316</sup> *Ibid.*, p.182

<sup>317</sup> *Ibid.*, p.183

<sup>318</sup> *Ibid.*

<sup>319</sup> *Ibid.*, p.182, M.Baumann, 'Religious conflicts, public incorporation, and the study of diaspora communities in Germany', Panel on *Contemporary German*

difference in the frequency of the call to prayer and church bells that may lead to such a restriction to be objective and reasonable. It, on the other hand, would not be unreasonable for a compromise to be found, where, for example, the call to Friday prayer would be permitted as this is directly comparable with church bells. Rohe defends the restrictive approach; “it is not too surprising that the well-visible erection of minarets could cause some irritations due to the local circumstances. Some people consider the erection of minarets to be a symbolic attack on the predominant Christian culture”<sup>320</sup> Despite this attitude, the existence of a not insignificant number of mosques in Germany, although again hard fought for by the Muslim community, at least indicates that their right of freedom of religion and practice of their religion is not drastically interfered with. However, the restrictions that are placed on mosques are inherently influenced by a predominantly Christian society that does not wish to confer an equal status to a different religion and as such contradict the principles contained within article 26 ICCPR and article 2 in conjunction with article 18.<sup>321</sup> Furthermore, article 4(1) of the UN Declaration, to ensure human rights, as well as article 1, have not been fulfilled. These rights do not confer a financial burden on the state and as such can not be seen to be limited to the ‘traditional’ minorities present in Germany.

The Muslim community gained the right to slaughter animals in a *halal* manner in 2002 in a case in the Federal Constitutional Court. This was a right conferred on the Jewish community since the end of World War II.<sup>322</sup> §4a Para. 2. Nr.2 of the Animal Protection Law allows for an exception to the anaesthetising of animals prior to slaughter, if it is necessary in order, “to adhere to the regulations of their religion”. Previously it had been claimed by the courts that, “the use of electrical means to anaesthetise an animal intended for butchering is supposedly

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*Religionswissenschaft* (Boston, 20.11.1999). <[www-user.uni-bremen.de/~mbaumann/lectures/boston99.htm](http://www-user.uni-bremen.de/~mbaumann/lectures/boston99.htm)>, visited on 7 December 2007

<sup>320</sup> Rohe, *supra* note 145 p.89

<sup>321</sup> Cf discussion regarding burial sites and mosques in Denmark, pp.57–59

<sup>322</sup> Rohe, *supra* note 145 p.90

compatible to the laws of Islam”.<sup>323</sup> The sources used included *fatwas* (a ruling on Islamic law issued by an Islamic scholar) and explanations from the Al-Azhar University in Cairo. Essentially, the State took it upon itself to decide which doctrines should be held as ‘true’ thus contradicting “the demands of the states neutrality towards religions”.<sup>324</sup> The importance of this case reaches far further that *halal* meat, as “for the first time it was made clear that it is upon the Muslims in Germany (only) to decide on their creed and needs”.<sup>325</sup> The ability of a minority community to maintain their eating habits is protected by article 27 of ICCPR.<sup>326</sup> The Muslim community was granted the right to slaughter animals in a *halal* manner in 2002, the same year that Germany accepted immigrant groups as a minority with the ambit of article 27. Prior to this, the permission granted to the Jewish and not to the Muslim community can again be seen as an inequality in the application of the law that allowed for an exception to be made to the Animal Protection Law but was only conferred upon one religious community and thus was a violation of article 26 ICCPR.

The approach in Germany to Islamic dress, namely headscarves, can be broadly speaking be split into two categories. Firstly, the right to non-discrimination in the private workforce and secondly, the principle of the neutrality of the state and the Civil Service. These different instances will be discussed separately.

There have been a number of cases regarding the wearing of the headscarf in the private workforce. “[A]ccording to the German Constitution, the practice of religious freedom includes the right to show religious symbols in public space.”<sup>327</sup> In 1991 the Local Labour Court in Frankfurt ruled in favour of an employee who was dismissed on the grounds of her wearing a headscarf. The court held that “it is the responsibility of employers to respect the religious needs of the employees” and furthermore that ““intolerance, fear and lack of understanding by the consumers” is not a

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<sup>323</sup> Blaschke, *supra* note 290 p.176

<sup>324</sup> Rohe, *supra* note 143 p.91

<sup>325</sup> *Ibid.*

<sup>326</sup> Nowak, *supra* note 13 pp.658–9

<sup>327</sup> Rohe, *supra* note 145 pp.92–3

sufficient reason for dismissing an employee”.<sup>328</sup> This approach was reiterated in 2002 by the Federal Labour Court who held that the employee was still capable of performing her duties and was entitled to accommodation, regarding the protection of her fundamental rights.<sup>329</sup>

While this approach to the wearing of the Islamic headscarf fully accommodates Muslims without discrimination, the attitude towards teachers in State schools wearing the headscarf is very different. The *Ludin* case set the precedent, when the Constitutional Court held that *Länder* “had the power to ban teachers from wearing headscarves-*hijab* as they passed specific legislation on the matter and that the legislation complied with the Constitution”.<sup>330</sup> The majority stressed that this matter was based on a balance between freedom of religion and the neutrality of schools. This case has been compared to the *Crucifix* case,<sup>331</sup> regarding the hanging of crucifixes in schools in Bavaria, as this may influence the development of children.<sup>332</sup> “In practice, crucifixes continue to hang in some classroom if there are no objections from pupils.”<sup>333</sup> While the ruling of the court in both the *Crucifix* and the *Ludin* case regarding state neutrality and the possible impact on children is similar, the fact that the *Länder* was willing to find a compromise in the case involving a Christian symbol in the former situation and in contrast was quick to enact legislation that banned headscarves in the latter, would indicate a different in treatment at least on a local level. Additionally, “the majority in the *Ludin* case considered that there was insufficient empirical data to indicate any harmful influence of the headscarf-*hijab* on children”,<sup>334</sup> which would indicate that the discrimination suffered under article 2, 18 and 26 of ICCPR was not based on the objective reasoning required unless neutrality alone satisfies this requirement.<sup>335</sup>

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<sup>328</sup> Blaschke, *supra* note 290 pp.170–1

<sup>329</sup> McGoldrick, *supra* note 289 p.110

<sup>330</sup> *Ibid.*, p.112

<sup>331</sup> *Crucifix Decision*, BVerfG 1BvR 1087/91, 16 May 1995 93

<sup>332</sup> McGoldrick, *supra* note 289 p.113

<sup>333</sup> *Ibid.*, p.113 FN 37

<sup>334</sup> *Ibid.*, p.113

<sup>335</sup> Nowak, *supra* note 13 p.616

However the European Court of Human Rights has taken the stance in *Dahlab v. Switzerland*, in respect of the right of a teacher to wear a headscarf that interfered with the neutrality of the state;

“weighing the right of a teacher to manifest her religion against the need to protect pupils by preserving religious harmony, the Court considers that, in the circumstances of the case and having regard, above all, to the tender age of the children for whom the applicant was responsible as a representative of the State, the Geneva authorities did not exceed their margin of appreciation and that the measure they took was therefore not unreasonable.”<sup>336</sup>

Therefore, the reasoning behind the banning of the headscarf in German schools is not *per se* a violation of freedom of religion and anti-discrimination laws. However, as a result of the Constitutional Court’s ruling a number of *Länder* introduced legislation that banned headscarves but not all of these provisions were religiously neutral. In cases such as Saarland, it was stated, “school has to teach and educate pupils on the basis of Christian educational and cultural values”.<sup>337</sup> Many *Länder* also provided an exception to the neutrality of the state in the case of religious education, which will be discussed later on in this chapter. While the neutrality of the state is an objective reason for the interference with freedom of religion, using the reasoning in *Dahlab v. Switzerland*, this must nevertheless be carried out in a non-discriminatory fashion. The fact that some states have distinguished between Christian religious symbols and those of minority religions is a clear differentiation between religions and while neutrality may be an objective, the banning of religious symbols cannot be carried out in a discriminatory fashion and as such is a violation of article 26 and article 2 in conjunction with article 18.

In the case of non-discrimination on the grounds of religion, it is generally thought that the State should lead by example. However, in this

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<sup>336</sup> *Dahlab v. Switzerland* (no. 42393/98, ECHR 2001-V)

<sup>337</sup> McGoldrick, *supra* note 289 p.116

case the State does not allow discrimination in the private workforce but feels that it is justified in discriminating on the grounds of state neutrality.

While a number of States have proceeded to ban the headscarf for teachers in State schools, states such as Hamburg and Brandenburg have not.<sup>338</sup> This brings into doubt how necessary these measures are in order to maintain state neutrality. It is important to recognise that *Länder* have complete control over education as long as it does not contradict the Constitution. However, the necessity of these measures be brought into question as the interpretation of the neutrality of the State is left to individual *Länder* instead of national legislation being agreed upon.

Regarding the ability of Muslims to pray and to celebrate religious festivals, there have been no cases since 1964.<sup>339</sup> This would indicate that acceptable alternatives have been found, including praying in breaks at work, finishing work early on a Friday and the use of annual vacation periods to cover religious celebrations.<sup>340</sup>

In contrast to prayer and religious festivals, it seems that no acceptable alternative has been found regarding religion and education. This is primarily organised by individual states, which leads to a lack of consistency in the policy towards Islam.<sup>341</sup> There is no public funding for Muslim schools, as Islam does not have the same status as the Catholic and Protestant Churches.<sup>342</sup> There is additionally a fear of ‘extremist Islamic teachings’, regarding private schools.<sup>343</sup>

The State is obliged to provide religious education for a religious denomination if there are sufficient numbers of pupils in the same school.<sup>344</sup> However, for the most part this has not been fulfilled, with the lack of community cohesion being blamed. “State authorities are unable to “find any official representatives of the Muslim religious communities to set

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<sup>338</sup> *Ibid.*, p.118

<sup>339</sup> Rohe, *supra* note 145 p.99

<sup>340</sup> *Ibid.*, p.98

<sup>341</sup> Blaschke, *supra* note 290 p.165

<sup>342</sup> *Ibid.*, p.152

<sup>343</sup> *Ibid.*, p.164

<sup>344</sup> *Ibid.*, p.164



the religious content of the curriculum and to recommend appropriate teachers”.”<sup>345</sup> It has been claimed that as;

“both Protestant and Catholic religious communities, the only two religions recognised as public corporations, act as powerful instruments that, likewise, influence political and social structures in Germany; these religions tend to be more easily incorporated in the school lessons and are, thus, perceived as the traditional religions implied in basic law”.<sup>346</sup>

Effectively, the fact that Islam is neither recognised nor subject to the hierarchical formation of traditional Christian denominations, is used as an excuse not to provide religious education for Muslim students. Thus violating article 26 of ICCPR.

However, some *Länder* provide Islamic religious education, with North Rhine-Westphalia providing classes in German. Thirty schools in Berlin in the 2003/4 school year provided such lessons. Most encouraging though is the development in Hamburg of ‘inter-religion religious classes’, in order “to create more understanding and tolerance among the participants, while at the same time, strengthening their already existing religious values and beliefs”.<sup>347</sup> Such an initiative fulfils article 1 of the UN Declaration regarding education measures as well as article 12(1) of the FCNM, to foster knowledge of the religious minority as well as article 6(1) which emphasises the encouragement of a spirit of tolerance and intercultural dialogue. Additionally, the *Länder* of Bavaria, Lower Saxony and North Rhein Westphalia have recently begun to offer two hours of Islamic instruction a week for children of Turkish or Arab origin.<sup>348</sup> This can be viewed as the promotion of the necessary conditions by the

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<sup>345</sup> *Ibid.*, p.166

<sup>346</sup> *Ibid.*, p.165

<sup>347</sup> *Ibid.*, p.169

<sup>348</sup> High Commissioner for National Minorities, *supra* note 280 para.445

Government to preserve the elements of the identity of the minority that are distinct.<sup>349</sup>

While the Muslim community has increasing rights in Germany, these rights have been hard fought for. Many of the tenets of Islam that have been discussed are not perceived to fall within freedom of religion. Additionally, a measure of inequality between the majority faiths and minority faiths is apparent. If the legislation regarding headscarves were to be all brought into line with the principle of non-discrimination, the principle of neutrality would provide a significant legal hindrance to the maintenance of Muslim group identity. The German government has recently accepted immigrants as a minority within the meaning of article 27 ICCPR but not within the meaning of the FCNM. Since this change in 2002, the right to *halal* butchery, take part in religious education in several states and the provision of burial grounds have been won by the Muslim community. This can either be attributed to increasing minority rights being applied to the Muslim community or their gradual acceptance as part of society as a distinct group that deserves a measure of protection.

### **4.3 The United Kingdom**

The Muslim community of the UK makes up an estimated two and a half percent of the overall population. Although this is less than in Germany and Denmark, this population is extremely concentrated around cities and industrial towns, such as London, Birmingham and Sheffield. Although all countries within the UK have a Muslim population, the vast majority resides in England. As a result, when considering national laws this will be limited to English law, as Scotland has a separate legal jurisdiction and Northern Ireland has different legal provisions regarding freedom of religion. Historically, it was accepted that the ethnic minorities of the UK would remain, as they originated from the Commonwealth. This could in turn

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<sup>349</sup> Article 5(1) FCNM

explain a different attitude and policy towards the Muslim community especially regarding integration.

### 4.3.1 Freedom of Religion and Related Laws

Freedom of religion is protected in the UK under article 9 of the 1998 Human Rights Act (HRA). Prior to this act, there was no explicit protection of freedom of religion, with the UK not having a written constitution and adhering to the common law principle that if something is not prohibited, it is permitted. The Act of Settlement of 1701 is the major limitation placed upon freedom of religion in England, which prohibits the monarch from being a catholic and from marrying one. However, this is not to the detriment of Islam, which was legalised in 1812 by the Trinitarian Act. While “Muslim migration to Britain from many different parts of the world has been an important feature of the last 150 years”,<sup>350</sup> the absence of an explicit right to freedom of religion is striking. This may in part be due to the common law system and the history of the UK, however, the fact that the UK has ratified both the ICCPR and ECHR would indicate that the importance of this right was realised and simply not enacted. The enactment of ECHR into national law in 1998, regarding article 9, has been termed as a “significant development”.<sup>351</sup> However, great weight has been placed on the fact “the HRA only applies to public bodies, not to private bodies”.<sup>352</sup>

While the UK does not directly subsidise the Anglican Church or any other religious group, the government does fund “the 5,000 or so Church of England schools” and the upkeep of many churches as a result of paying for the conservation of monuments, 40 percent of which are churches.<sup>353</sup> This, however, is not an issue of discrimination, as it is possible for the Muslim community to gain funding for its schools, as it has done and there is no provision preventing mosques from becoming ‘monuments’, this, however, is a matter of time. Additionally, in contrast

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<sup>350</sup> Ansari, *supra* note 177 p.6

<sup>351</sup> H, Ansari, ‘The Legal Status of Muslims in the UK’, in R.Aluffi B.-P and G. Zincone *The Legal Treatment of Islamic Minorities in Europe* (Peeters, Leuven 2004) p.278

<sup>352</sup> Ansari, *supra* note 351 p.278

to Germany, “there is no strict separation between Church and State and there exists no mechanism by which the state can “acknowledge” religious communities”.<sup>354</sup> This is permitted under article 18 as long as members of the state religion do not gain privileges from this. However, the Anglican Church holds a considerable amount of political sway including two archbishops and 24 senior bishops sitting in the House of Lords,<sup>355</sup> which can be seen as a considerable privilege. This, however, has not been addressed by the HRC during the state reporting process regarding article 18 ICCPR. The Queen as Head of State is also the Head of the Church. Legally speaking the UK still favours the Church of England as the dominant religion, and as a result “degrades all others [*religions*]”, by not privileging them the same or proportionate rights.<sup>356</sup> It is also suggested that “that, in plural Britain, it is no longer appropriate for the Monarchy to be so closely allied with one religion”.<sup>357</sup> The political privileges conferred upon the Church of England can be compared to the case of *Waldman v. Canada*,<sup>358</sup> although they are not economic privileges, as they are discrimination in law within the meaning of article 26 of ICCPR.

Another cause of debate in the UK, regarding the inequalities between religions, concerns the Blasphemy Law. This law, a construction of the Seventeenth Century, only protects the Anglican faith.<sup>359</sup> However, as mentioned in Chapter 3, has fallen into disuse over the course of the last hundred years. The Law Commission in 1985 discussed the abolition of the law, while other groups have called for it to be extended to include other religions including Islam.<sup>360</sup> Either way, the current situation is not acceptable. The law has fallen into disuse; however, the existence of a discriminatory blasphemy law leads to the perception of injustice and inequality in law if not in fact and as such is a violation of article 26 of

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<sup>353</sup> *Ibid.*, p.260

<sup>354</sup> *Ibid.*, p.259

<sup>355</sup> *Ibid.*

<sup>356</sup> *Ibid.*, p.260

<sup>357</sup> *Ibid.*

<sup>358</sup> Nowak, *supra* note 13 p.615, *Waldman v. Canada*, *supra* note 84

<sup>359</sup> Ansari, *supra* note 351 p.268

<sup>360</sup> *Ibid.*, p.269, Ansari, *supra* note 177 p.24

ICCPR. The Law Commission in 1985 suggested that the Blasphemy Law be replaced “by offences to religious hatred”. Although it did not ‘replace’ the Blasphemy Law, the Racial and Religious Hatred Act received royal assent in 2006, providing protection explicitly for Islam.<sup>361</sup> While this is not adequate, it can be considered as a step further towards the abolition of the Blasphemy law and towards equality between religions.

Article 9 HRA may only protect against public actors, however, a series of other legislation, to varying degrees, protects the Muslim community from discrimination. The 2001 Anti-Terrorism Crime and Security Act included the offence of “racially or religiously aggravated” crime.<sup>362</sup> Furthermore, the introduction of the Employment Equality (Religion or Belief) Regulations 2003 (Employment Regulations) was a significant move. However, the fact that this only related to discrimination in the field of employment was a cause of serious concern for the Muslim Council of Britain (MCB). The Employment Regulations do not “deal sufficiently extensively with the breadth of existing anomalies under our race relations laws and provisions, but create further and new inconsistencies and inequities minority ethnic and faith communities”.<sup>363</sup> The major inconsistency is, “the lack of a positive duty as currently available for race and in the pipeline for disability and gender”.<sup>364</sup>

The Race Relations Act 1976, as amended in 2000, refers only to “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins”. As discussed in Chapter Three, this leads to the exclusion of religious groups from anti-discrimination legislation, leaving them open to discrimination by private actors outside the employment arena. This loophole has been partially closed as the courts apply the Act to ethnically similar religious groups such as Jews and Sikhs. However, this still leaves the Muslim community in an unequal situation. While the Race Relations Act has not been applied to Muslims as an ethnic

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<sup>361</sup> Racial and Religious Hatred Act 2006, Explanatory Notes, para.12

<sup>362</sup> Ansari, *supra* note 351 p.278

<sup>363</sup> A Response from the Muslim Council of Britain (MCB), *Government White Paper: Fairness for all- a new Commission for Equality and Human Right*, August 2004 p.4

<sup>364</sup> MCB, *supra* note 363 p.4

group, which they clearly are not, in *J.H Walker v. Hussain and Others.*, the fact that an employee was not permitted to take vacation during *Eid*, was considered a violation of section 57(3) of the Race Relations Act 1976, with the Employment Appeal Tribunal specifying that “[t]he employers knew that *Eid* was important to the Muslim employees” although linking this directly to the racial group of the Muslims affected, as South East Asians.<sup>365</sup> Therefore, without explicitly stating that the Race Relations Act applies to Muslims, the ruling in this case would indicate that this is the case in fact. However, application in fact does not make up for the lack of legislation on this point. After a detailed consideration on the point the MCB has suggested that ‘religion’ be added as a defining characteristic of race within the Race Relations Act.<sup>366</sup> The Race Relations Act does not explicitly protect religious groups, however, the extension of the Race Relations Act to cover Jews and Sikhs, and through case law to cover Muslims would indicate that the application of the law is not in itself discriminatory. Furthermore, the “innovative system of positive duties which requires public authorities to actively promote race equality and good race relations”, that is established under non-discrimination and equality provisions, is to be commended.<sup>367</sup> The link between minority rights and positive duties is clearly established under the FCNM. While freedom of religion and non-discrimination provisions confer rights on individuals, minority rights confer obligations on states, not only to allow such rights but also to take positive steps to ensure that they are achieved.<sup>368</sup>

However, in 2006, the Equality Act, extended anti-discrimination legislation to religious groups with the purpose of addressing “an imbalance that had emerged from case law under the Race Relations Act in which Jews and Sikhs were afforded protection in the areas outlined above while members of other, multi-ethnic religions were not”.<sup>369</sup> This

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<sup>365</sup> *J.H Walker v. Hussain and Others.*, [1996] I.C.R.291

<sup>366</sup> MCB, *supra* note 363 p.7

<sup>367</sup> ACFC/OP/II(2007)003 *supra* note 190 para.11

<sup>368</sup> Alfredsson and de Zayas, *supra* note 8 p.2

<sup>369</sup> Improving Opportunity, Strengthening Society Two years on – A progress report on the Government’s strategy for race equality and community cohesion, August 2007  
Department for Communities and Local Government: London

provides protection from direct discrimination, indirect discrimination and victimisation but is not as far reaching as the Race Relations Act as it does not provide positive measures. This can be seen to be an unequal protection of the Muslim minority's human rights in comparison to other minorities that are established on racial grounds, and as such not within the spirit of article 4(1) of the UN Declaration. However, there are plans to harmonise Discrimination Law in a single 'Equality Bill' and for this to come into force in 2008.<sup>370</sup>

As the UK accepts minority rights for immigrant groups and it can be inferred as a result of the FCNM State Reports that this includes Muslims, a number of these inequalities have been addressed on an international level by both the HRC and Advisory Committee of the FCNM. While the UK does not necessarily provide explicit rights to the Muslim population, it is clear that in the majority of cases these rights exist in some form. However, the question is whether this is sufficient, in a country that prides itself on multiculturalism. As the rights are provided in fact, and the courts often extend the law to incorporate the Muslim community, there should be no issues with unifying the system. The system of several acts relating to different types of discrimination or on different grounds only serves to create a hierarchy amongst these grounds and the single act is therefore to be welcomed. The fact that a country that as early as 1966 recognised that integration involved "equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance",<sup>371</sup> until recently did not have freedom of religion and has an out-of-date blasphemy law and inconsistent anti-discrimination legislation is woefully inadequate. However, provision for the most part appears to have been made for the Muslim community through additional legislation and the extension of provisions by the courts.

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<[www.communities.gov.uk/publications/communities/opportunity-progress-report](http://www.communities.gov.uk/publications/communities/opportunity-progress-report)>, visited on 5 December 2007 p.94

<sup>370</sup> GVT/COM/II(2007)003 *supra* note 190 pp.4–5

<sup>371</sup> MCB's Research and Documentation Committee, *Briefing Paper: Our stand on Multiculturalism, Citizenship, Extremism, and Expectations from the Commission on Integration and Cohesion*, January 2007 p.2

### 4.3.2 The Protection of the Distinctive Characteristics of the Muslim Minority

As *per* the Local Cemeteries Order 1977, burial sites are organised by local authorities. This it would seem to have been sufficient for the Muslim community to carry out burials in accordance with Islamic law. A significant number of Muslim burial sites and cemeteries with Muslim areas exist in England. Furthermore, “[m]any local authorities have responded to the expressed needs and wishes of Muslims to be able to carry out burials soon after death”.<sup>372</sup> The extra costs incurred by local authorities due to the extra provision required have been problematic. However, solutions for the most part have been found, with Coventry City Council making “provisions for Muslims to carry out the actual burial themselves if it is required at a weekend or on a Bank Holiday”.<sup>373</sup>

The 1852 and 1855 Places of Worship Registration Act and the 1971 Town and Country Planning Act regulate the establishment of Mosques in England. While there have been reports of councils refusing planning permission for new mosques on the grounds of traffic congestion or noise pollution, this does not appear to have inhibited the growth in the number of mosques in the UK. In the mid 1990s there were at least 839 mosques in the UK,<sup>374</sup> which had grown to 1,000 in 2004.<sup>375</sup> Currently the Muslim information website ‘www.salaam.co.uk’ has 1,702 mosques in its database. These mosques include a significant number of purpose built mosques including London, Birmingham and Manchester Central Mosques and the East London Mosque. While local authorities may not have always have been accommodating, MCB notes that “[t]he East London Mosque in

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<sup>372</sup> Ansari, *supra* note 351 p.274

<sup>373</sup> *Ibid.*

<sup>374</sup> Ansari, *supra* note 177 p.6

<sup>375</sup> M. Anwar and Q.Bakhsh, ‘State Policies Towards Muslims in Britain’ in M. Anwar *et al State Policies towards Muslim Minorities. Sweden, Great Britain and Germany* (Editin Parabolis, Berlin 2004) p.414



Whitechapel gives the call to prayer on a public address system - something unthinkable in France or Germany".<sup>376</sup>

The number of Umbrella Organisations representing the Muslim community has additionally grown significantly, with the MCB enjoying a consultative status with the British government. While the Muslim Parliament, the Muslim Association of Britain and the British Muslim Forum are all of note as is the Mosques and Imams National Advisory Board (MINAB). MINAB has been charged with "the task of capacity building of Mosques to discharge their functions as community hubs promoting Islam and facilitating cohesion of the society as a whole".<sup>377</sup> Additional issues such as the accreditation of Imams, better governance of mosques and interfaith activity also come within its ambit.<sup>378</sup>

The UK, in respect of Islam satisfies the requirements in article 8 "to ensure that minorities are able to pursue their religious beliefs and customs, establish places of worship and religious institutions, and organize their internal religious affairs".<sup>379</sup> Article 7, in respect of creating "a legislative and institutional framework for effective enjoyment of these rights",<sup>380</sup> has also been provided, regarding the Muslim community's ability to build mosque and burial sites.

*Halal* meat has been available since the 1960s and 70s, under the Welfare of Animal (Slaughter or Killing) Regulations 1995.<sup>381</sup> There has, however, been an ongoing debate regarding the compatibility of *halal* methods of slaughter and animal rights. The 1999 amendment to the Regulations brought English Law into line with EU standards to the effect that the slaughter of animals may only take place in slaughterhouses. However, the 'eating habits' of the minority group within article 27 ICCPR,

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<sup>376</sup> MCB, *supra* note 371 p.4

<sup>377</sup> 'MCB Welcome MINAB' <[www.mcb.org.uk/features/feature\\_print.php?ann\\_id=1653](http://www.mcb.org.uk/features/feature_print.php?ann_id=1653)> visited on 19 November 2007

<sup>378</sup> Draft MINAB Standards, Standards Based Assessment through Self Regulation of Members, the way forward for MINAB para.1.0

<sup>379</sup> Machnyikova, *supra* note 69 p.238

<sup>380</sup> Machnyikova, *supra* note 69 p.199

<sup>381</sup> Ansari, *supra* note 351 p.267

have been maintained by this legislation and thus allowed the Muslim community to maintain one of their distinct characteristics.

While the discussion about Islamic dress is ongoing in the UK, the headscarf is rarely considered an issue. Under the 2003 Employment Regulations, discrimination on the grounds of religion may only take place in the exception of “genuine occupational requirement”. The criterion of proportionality is applied in this case and under section 26, the protection of Sikhs regarding the wearing of helmets at work is not deemed to be “a proportionate means of achieving a legitimate aim”. However, in the case of Aishah Azmi, the wearing of a veil was deemed to be a hindrance to her performance as a teaching assistant,<sup>382</sup> and “[t]he tribunal found there was a potential case of indirect discrimination but that it was a proportionate means of achieving a legitimate aim”.<sup>383</sup> While article 2 in conjunction with 18, would indicate that such a ruling would discriminate against the employee, as this is a religious practice that arguably is related to the Muslim faith, the limitation in order “to protect the fundamental rights and freedoms of others” could, in theory be applied here, as the wearing of a veil by a teaching assistant, as noted in the case, would affect the education of the child involved.<sup>384</sup> In the field of education, where there is no anti-discrimination legislation to protect the Muslim community, few issues have arisen recently. In 1967 and 1969, the issue of pupils wearing the *shalwar kameeze*,<sup>385</sup> as opposed to the regulation skirt arose at schools in Leicester and Walsall.<sup>386</sup> This was, however, quickly solved after the intervention of the Local Education Authorities. “However since those early cases many local education authorities have adopted very liberal policies on the

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<sup>382</sup> A. Vakulenko, ‘Islamic Dress in Human Rights Jurisprudence: A Critique of Current Trends’, HRLR (2007) p.19

<sup>383</sup> ‘No discrimination in ban on veil in classroom’, 17 April 2007

<[business.timesonline.co.uk/tol/business/law/reports/article1662485.ece](http://business.timesonline.co.uk/tol/business/law/reports/article1662485.ece)> visited on 22 November 2007

<sup>384</sup> Article 13 ICESCR

<sup>385</sup> “a sleeveless smock-like dress with a square neckline, worn over a shirt, tie and loose trousers which taper at the ankles” *R(on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15 p 18

<sup>386</sup> McGoldrick, *supra* note 289 p.177

religious aspects of clothing.”<sup>387</sup> While there is no national legislation regarding school uniforms, “schools must take sex and race discrimination when creating school uniform policies” and follow the Department for Education and Skills ‘School Uniform Guidance’, which requires schools to be “sensitive to the needs of different cultures, races and religions”.<sup>388</sup> It is thus noted, “the wearing of the headscarf- *hijab* is usually regulated rather than prohibited”.<sup>389</sup> However, in 2003 a school in Luton attempted to Muslim girls from wearing headscarves, however, this was again reversed after pressure from the Local Education Authority.<sup>390</sup>

The *Begum* Case,<sup>391</sup> in 2004, referred to the right to freedom of religion regarding the wearing of a *jilbab*<sup>392</sup> in place of school uniform. However, the House of Lords overruled the Court of Appeal and stated that the availability of a religiously sensitive school uniform option (the *shalwar kameeze*) as well as the availability of several schools in the area that either permitted the *jilbab* or where it would not have been necessary, was sufficient to suggest that the respondent’s right to freedom of religion had not been interfered with. “The House of Lords’ decision in *Begum* would suggest that when public institutions take decisions in a thoughtful, sensitive and participatory manner that seeks to balance the relevant considerations, their decisions will not be interfered with lightly by the courts on human rights grounds.”<sup>393</sup>

In respect of Islamic clothing, considerable steps have been taken to accommodate this within the UK, which has resulted in relatively little discussion about the wearing of the headscarf. Only more ‘extreme’, and controversial forms of dress have caused an issue, and only when this affects the ability of the individual to carry out their work. Thus, for the most part the ability of the minority to maintain their distinctive

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<sup>387</sup> *Ibid.*

<sup>388</sup> *Ibid.*, p.178

<sup>389</sup> *Ibid.*

<sup>390</sup> *Ibid.*, p.179

<sup>391</sup> *R(on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15, *supra* note 383

<sup>392</sup> “a long coat like garment” *R(on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15, *supra* note 383 p.3

characteristics has not been interfered with and articles 5(1), 7 and 8 of the FCNM have been complied with.

While “the observance of Friday prayers, *Eid* and fasting by Muslims has been problematic”, the 2003 Employment Regulations make discrimination on these grounds illegal.<sup>394</sup> The case of *J.H. Walker Ltd v. Hussian and Others.*, had previously made it illegal to deny time of work for the celebration of religious festivals. It has also been reported “places of work had taken steps to enable prayer, to make halal food available and were extremely supportive during the month of Ramadan and flexible to allow staff to break fast. One mentioned that the borough had a day’s holiday for Eid”.<sup>395</sup> It is clear that Muslims in the UK have a variety of experiences when trying to practice their religion. While some may be met with resentment when taking time off work for religious festivals,<sup>396</sup> their right to do so is protected by law and employers are expected to take steps to accommodate their Muslim employees.<sup>397</sup> It is the state’s responsibility to provide “a legislative and institutional framework for effective enjoyment of the rights” contained within article 7 FCNM, including freedom of religion. Although, there may have been resistance from the majority, in respect of prayer and the ability to celebrate religious festivals, anti-discrimination legislation and case law has prevented this resistance from spilling over into becoming practice.

The education of the Muslim community in the UK can be, broadly speaking, divided into three areas: faith schools; State schools; and the education of imams. There are currently seven state funded Islamic schools in the UK, in comparison to the 5,000 or so Church of England schools.<sup>398</sup> The funding of minority faith schools was introduced in 1997, therefore the disparity between the number of schools belonging to the majority faith compared with Muslim schools is not surprising. While, steps

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<sup>393</sup> McGoldrick, *supra* note 289 p.204

<sup>394</sup> Ansari, *supra* note 351 p.279

<sup>395</sup> Anwar and Bakhsh, *supra* note 375 p.419

<sup>396</sup> Ansari, *supra* note 177 p.17

<sup>397</sup> CCPR/C/95/Add.3 *supra* note 229 para.359

<sup>398</sup> MCB, *supra* note 371 p.4

could be taken to encourage more Muslim schools, the number of state funded Muslim schools has significantly increased from four in 2004 to seven.<sup>399</sup> There were a further 61 privately funded Muslim schools in 2001,<sup>400</sup> and there are currently three institutes of higher learning.<sup>401</sup> Thus, the educational facilities available for the Muslim population are considerable, with the number of state funded Muslim schools ever increasing. While this may raise questions of integration, providing the Muslim community with the choice between sending their children to a ‘multi-ethnic’ school and a faith school allows them the opportunity to consider this themselves. As such the right of the minority to maintain private education establishments within article 13 of the FCNM has not been interfered with.

Regarding mainstream education, the issues of Christian based assemblies and religious education have been sources of potential conflict. Religious education is taught in schools as part of the national curriculum under s375(3) Education Act 1996. This education “must reflect the fact that the religious traditions in Great Britain are in the main Christian, whilst taking account of the teaching and practices of the other principal religions represented in Great Britain”.<sup>402</sup> The setting of the national curriculum within this framework is left up to the Local Education Authorities and as previously discussed, is more likely to breed tolerance as it teaches the ‘principal religions’, of which Islam is undoubtedly one. The representative nature of this education has meant that there has not been a great deal of difficulties, especially as parents may choose to opt their children out of it.<sup>403</sup> The fact that “school assemblies should be “mainly and broadly” Christian acts of worship”,<sup>404</sup> has been a sticking point with the Muslim community. However, “[t]here is provision for exemption from the

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<sup>399</sup> Ansari, *supra* note 351 p.272

<sup>400</sup> Ansari, *supra* note 177 p.22

<sup>401</sup> ‘Higher Education Institutions’

<[www.salaam.co.uk/education/index.php?file=highered.htm](http://www.salaam.co.uk/education/index.php?file=highered.htm)> visited on 20 November 2007

<sup>402</sup> McGoldrick, *supra* note 289 p.174

<sup>403</sup> *Ibid.*

<sup>404</sup> Ansari, *supra* note 351 p.260

requirement for broadly Christian worship, for some or all pupils, in schools where it is inappropriate because of pupils' faith backgrounds".<sup>405</sup> Therefore, state schools in a multi-religious or Muslim area do not have to conform to this provision. This situation is by no means ideal, especially within the context of the UK being a multi ethnic society. However, the 'opt out clause', at least indicates that there is some recognition by the government that Christian acts of worship may not always be appropriate. The inclusion of compulsory citizenship classes in schools in order to give pupils "an understanding of diversity and respect for individuals from different cultures and backgrounds" is another step in state schools to breed understanding and cohesion between the different communities in society.<sup>406</sup> On the whole the responsibility of the government to foster knowledge of the religious minority through religious education,<sup>407</sup> and "encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory" is met by citizenship classes.<sup>408</sup> However, the provision for Christian worship in state schools, without any similar provision for schools that may have a majority of a different faith, can be deemed to be discriminatory in the light of article 26 ICCPR.

The Government has made a concerted effort to support the Muslim community in the UK in training its own imams. MINAB, is a supervisory body that was organised in cooperation with the government. Thus allowing the Muslim community effective participation in the decisions that affect them.<sup>409</sup> Several institutions in 2004 provided Islamic Studies, with the Muslim College in Ealing offering a Masters' degree in Imamship and the Markfield Institute of Higher Education in Leicestershire, a certificate in Muslim Chaplaincy.<sup>410</sup> More recently a report commission by the Department for Education and Skills concluded, "the teaching of

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<sup>405</sup> ACFC/SR(1999)013 *supra* note 180 para.142

<sup>406</sup> *Ibid.*, para.97

<sup>407</sup> Article 12(1) FCNM

<sup>408</sup> Article 6(1) FCNM

<sup>409</sup> Article 15 FCNM

<sup>410</sup> J. Klausen, 'Is there an Imam Problem?' <[www.prospect-magazine.co.uk/printarticle.php?id=5945](http://www.prospect-magazine.co.uk/printarticle.php?id=5945)> visited on 20 November 2007

Islam in English Universities is based on “out-of-date and irrelevant issues”<sup>411</sup>. As a result Islamic Studies was labelled a ‘strategic subject’ along with Science and Engineering, meaning, “it is in the national interest to safeguard research and graduates with the right knowledge and skills”.<sup>412</sup> Additionally, an “extra £1m was being invested in the training of imams”.<sup>413</sup> Clearly, this investment in Islamic Studies is encouraged by a fear of foreign imams and ‘Islamism’. However, the result is beneficial to society as a whole and for the Muslim community. The funding of an Islamic education especially with respect to Imams goes a long way to put Islam on a similar footing with the Church of England, as well as catering for the minority’s needs. Essentially, this departure can be seen as the encouragement of religious difference but within the ambit of multi-cultural society. The state is therefore enabling freedom of religion through the adoption of positive measures as required by article 7 FCNM.

While there are clearly a considerable number of gaps in the UK’s legislation especially regarding anti-discrimination to protect the Muslim community, for the most part this does not appear to have affected their rights. The existence of a considerable number of purpose built mosques and burial grounds and the lack of discussion surrounding the wearing of the headscarf and the provision of education for imams would indicate that the Muslim community has been provided for by the state, in accordance with minority rights aimed at enabling the Muslim community to maintain their distinctive characteristics. However, this does not help with the feeling of inequality that the community has especially regarding the blasphemy law and non-discrimination legislation. The extension of the Race Relations Law would go along way to appease the community. Despite the considerable legal inequalities that exist in the UK, regarding religion, Ansari claims that:

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<sup>411</sup> BBC, ‘Teaching of Islam is Outdated’ 4 June 2007 <[news.bbc.co.uk/go/pr/fr/-/hi/education/6713373.stm](http://news.bbc.co.uk/go/pr/fr/-/hi/education/6713373.stm)> visited on 20 November 2007

<sup>412</sup> BBC, *supra* note 411

<sup>413</sup> BBC, *supra* note 411

“one could speak of a partial *de facto* recognition of minority denominations, based upon a complex set of laws and rules concerning ethical and specific socio-religious areas, such as education, spiritual care, slaughtering, personal law etc. This set of rules results in eliminating, as much as possible, the inequality existing between the State Church and other religious confessions”.<sup>414</sup>

## 4.4 Conclusion

The situation of Muslim communities in national law varies tremendously between the three countries. Whereas Muslims may for the most part be provided for in law in Denmark, this is not the case in fact and as a result the Muslim minority suffers discrimination in the enforcement of legislation in contravention of article 26 ICCPR: The situation of Muslims in Germany has improved significantly in recent years, partly due to a hard fought battle on the part of the Muslim community and partly due to a change in policy by the German state, finally accepting that Muslims are no longer just ‘*gastarbeiter*’ and are a significant part of the German state that should be accommodated. As a result, a number of the characteristics of the Muslim community that previously had not been protected are gradually being accommodated either in national law or through the enforcement of legislation. The attitude in the UK has been somewhat different, with Muslims being provided for by both a number of *ad hoc* measures and the extension of existing provisions. While this may appear on paper to be inadequate, the protection and number of rights afforded to the Muslim community in the UK far out number those provided in Denmark and to a lesser extent Germany. Minority rights in the UK are for the most part fulfilled in the case of the Muslim communities most common and least controversial characteristics including the wearing of headscarves.

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<sup>414</sup> Ansari, *supra* note 351 p.262



“Most analysts believe that one important measure of the extent of immigrants’ social integration is how far they are able to practice their religious beliefs in the public sphere.”<sup>415</sup> If this is the case, then the Muslim minority of the UK can be seen to be more integrated than the minorities in Germany and to a larger extent Denmark. If this is the case, then the integration policy of the UK in comparison to Germany and Denmark should highlight the differences that have made this possible.

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<sup>415</sup> Blaschke, *supra* note 290 p.174

## 5 Integration Strategies

The integration of minorities, whether they are citizens of the state or migrant workers, takes on many forms. It is important that states address issues such as access to education and work. However, for the purpose of this thesis, it is important to focus on the maintenance of group identity and how integration policies and strategies affect this. Article 1 of the UN Declaration refers to educational measures in order to “protect the existence” and “encourage conditions for the promotion of that identity”. Again the standards enumerated in the FCNM, although not applicable in the cases of Denmark and Germany will be used as a benchmark, in order to illustrate the extent of these rights and which standards have been met. Article 5(1) of the FCNM refers to the promotion of “the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion...”, while article 6(1) talks about taking steps to “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding”. While methods of consulting minorities in accordance with article 2(3) of the UN Declaration and article 15 of the FCNM are also crucial for the integration of minority groups. This is where a comprehensive integration policy can come into play, as integration involves the cooperation of the majority as well as the minority. The OSCE report on Integration Policies, states that “the impact of the ‘war on terror’ has resulted in an increased focus on Muslim immigrants, often problematising their ability to integrate into liberal Western societies” and that “[t]he upshot of these concerns has been a trend towards using integration policy as a means to promote social cohesion”.<sup>416</sup> Therefore, this chapter will address the integration policy of the States from this angle, looking at the Governments’ general position as well as strategies

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<sup>416</sup>High Commissioner for National Minorities, *supra* note 282 paras.2–3

and initiatives and how far they comply with the standards enumerated under the UN Declaration and the FCNM.

## 5.1 Denmark

The Danish Government has in recent years composed several policy papers addressing the issue of integration, including ‘The Governments Vision and Strategies for Better Integration’<sup>417</sup> (Vision and Strategies), ‘The Action Plan’<sup>418</sup> and ‘A New Chance for All’<sup>419</sup>. ‘Vision and Strategies’ lays down the general position of the Government regarding integration as being that, “we need to learn to make place for difference and use it to our advantage”.<sup>420</sup> Additionally, the priority areas of ‘ensuring a cohesive and open democratic society’, ‘ensuring that people with a different ethnic background than Danish do better in the education system’ and ‘getting more foreigners in work’ are established. ‘Ensuring a cohesive and open democratic society’, is particularly encouraging from the perspective of the maintenance of group identity and article 6(1). The areas of ‘combating racism and discrimination’ and ‘freedom of religion and societal responsibility’ are addressed within this area. However, the main part of the discussion is addressed at perceived issues with minority groups, which are incompatible with democratic society. These include: equality between the sexes; responsible citizenship for all; combating forced marriages; female circumcision and; combating tax fraud and misuse of social benefits.<sup>421</sup>

In order to combat racism and discrimination, the Government suggests two initiatives. The first being: the strengthening of anti-

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<sup>417</sup> Ministergruppen om bedre integration, *supra* note 284

<sup>418</sup> ‘Handlingsplan til fremme af ligebehandling og mangfoldighed og til bekæmpelse af racisme’ Regeringen, November 2003

<[www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2003/Handlingsplan\\_lige\\_behandling/pdf/Handlingsplan\\_ligebeh\\_FINAL.pdf](http://www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2003/Handlingsplan_lige_behandling/pdf/Handlingsplan_ligebeh_FINAL.pdf)>, visited on 5 December 2007

<sup>419</sup> En ny chance til alle- regeringens integrationsplan, Regeringen, May 2005

<[www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2005/En\\_ny\\_chance\\_til\\_alle/pdf/En\\_ny\\_chance\\_til\\_alle.pdf](http://www.nyidanmark.dk/bibliotek/publikationer/regeringsinitiativer/2005/En_ny_chance_til_alle/pdf/En_ny_chance_til_alle.pdf)>, visited on 5 December 2007

<sup>420</sup> Ministergruppen om bedre integration, *supra* note 284 p.4

<sup>421</sup> *Ibid.*, p.8

discrimination legislation, regarding race and ethnic background. This initiative, therefore, is of little value to the Muslim community. As discussed in Chapter Four, this legislation does not protect religious groups. Secondly, the ‘Action Plan’, which will be discussed in more depth later in this chapter, is identified as “contributing to different institutions dealing better with the challenges that diversity poses”.<sup>422</sup> Regarding ‘freedom of religion and societal responsibility’, several initiatives are suggested as possible ways of aiding integration. This includes, Initiative 53, which suggests making the rules regarding tax breaks for religious communities clear by enacting legislation.<sup>423</sup> Initiative 54 states that, non-Danish Church religious leaders must prove that they are worthy to carry out religious rites with official validity.<sup>424</sup> This refers to the right to carry out marriage ceremonies, as it excludes ‘Danish Church priests’ from its ambit, discriminates against the religious leaders of other faiths. It is reasonable that persons in positions of trust should prove that they are worthy of such trust but surely this is true of all faiths. Furthermore, Initiative 55 states that such leaders must speak Danish.<sup>425</sup>

Initiative 56, suggests a religious education for religious leaders for ‘the large religious communities in the country’, with the goal being to avoid the use of unqualified religious leaders or with poor knowledge of Danish society.<sup>426</sup> Regarding foreign missionaries and preachers, standards were suggested, such as having a relevant background and education and a connection with a religious community in Denmark, in order to receive a residence permit. The revocation of the Danish-Turkish agreement, as discussed in Chapter Four, was suggested in order to fulfil this. Initiatives such as an education for imams are to be commended, however, the majority of these suggestions, while clearly rooted in a fear of Islamic extremism, restrict the Muslim population’s freedom of religion. This is even more true when considering that no education for imams has

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<sup>422</sup> *Ibid.*, p.14

<sup>423</sup> *Ibid.*, p.33

<sup>424</sup> *Ibid.*

<sup>425</sup> *Ibid.*, p.34

<sup>426</sup> *Ibid.*

been established while the restrictions on foreign imams have been enacted in law. The fact that the rights granted to imams, regarding the carrying out of marriage ceremonies are subject to additional conditions, which priests for the Danish Church are not subject to, is also of concern. Additionally, these concerns can be said to interfere with the rights of minority groups under article 1, to promote the conditions necessary to encourage the promotion of the Muslim minorities' identity. Furthermore, article 5(1), 7 and 8 of the FCNM, could also be applied, were this to be applied to Muslims in Denmark. The previously mentioned 'Action Plan', focussed on 'diversity and tolerance through dialogue and debate',<sup>427</sup> and should be commended for this. The 'Action Plan' contains initiatives for fulfilling this, such as an 'Information Campaign' with the aim of creating knowledge about the principles of equality and diversity.<sup>428</sup> Apart from producing educational material with IMR, there were not any further concrete initiatives set out in order to achieve this. 'Local arrangements focussing on diversity' are also suggested, however, again there was nothing set out in order to achieve this.<sup>429</sup> The guidance given suggests, "this can be carried out in schools, colleges and other educational institutions, municipalities, unions, organisations and workplaces".<sup>430</sup> There is also a focus on "tolerance going both ways", and a "dialogue about democracy, citizenship and diversity", is suggested both centrally between politicians, ombudsmen and experts and on a local level.<sup>431</sup> However, again there is no suggestion of how and when this will be achieved, while it is suggested that 'Integration Advice' (*Integrationsråd*) become involved, this is just a suggestion.

No definitive plans are put forward to achieve a "dialogue about democracy, citizenship and diversity". The 'Action Plan', while showing an understanding of what is required in order for society to become more tolerant, shows little commitment. It contains little more than

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<sup>427</sup> Regeringen, *supra* note 418 p.12

<sup>428</sup> *Ibid.*, p.13

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

<sup>431</sup> *Ibid.*, p.17

ideas. So, while the Government shows some understanding of the commitments under article 6(1) of the FCNM, there is little put in place in order to achieve this.

‘A New Chance for All’ in 2005, followed up from ‘Visions and Strategies’ and the ‘Action Plan’ contains nothing about fostering tolerance and understanding. This document focuses on the issues with ‘immigrants’, with an emphasis on education and work. The Government in this report seems to have stepped back from taking responsibility for the problems suffered by the immigrant community regarding discrimination and intolerance. Even the section on ‘prevention of extremism and ghettos’ avoids this issue. A RAXEN report on Legislation in Denmark noted that “it is the general opinion of the Government that there are norms of behaviour among foreigners, hampering integration” and “[t]he responsibility for integration first and foremost lies with the immigrants”.<sup>432</sup>

In addition to the criticism levelled regarding the integration policies of the Government, the RAXEN report stated that in 2004 “the Government or the ministries have initiated no particular activities concerning reduction of racism and support of diversity, except the policy paper”.<sup>433</sup> The report also states the hope that the ‘Action Plan’, would “among other things contain awareness raising campaigns concerning equality and diversity”.<sup>434</sup>

However, reports in 2006 by OSCE on Integration Policies and EUMC on Muslims in the European Union, Discrimination and Islamophobia discuss additional measures that were not discussed in the policy papers. The OSCE report discussed “measures promoting intercultural awareness”, and notes that Denmark views this in an educational setting as “raising awareness of foreign cultures” as opposed to “countries that focus on awareness of cultural diversity at home”.<sup>435</sup>

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<sup>432</sup> Analytical Report on Legislation, RAXEN National Focal Point DENMARK, Documentary and Advisory Center on Racial Discrimination- DACoRD, Copenhagen, VIENNA, 2004 <[fra.europa.eu/fra/material/pub/RAXEN/4/leg/R4-LEG-DA.pdf](http://fra.europa.eu/fra/material/pub/RAXEN/4/leg/R4-LEG-DA.pdf)>, visited on 5 December 2007 p.13

<sup>433</sup> *Ibid.*, p.33

<sup>434</sup> *Ibid.*

<sup>435</sup> High Commissioner for National Minorities, *supra* note 282 para.47

However, the “various categories of private schools” that exist in Denmark which include “immigrant schools such as Muslim schools”, are also mentioned.<sup>436</sup> It is also mentioned that “support for cultural activities is often subject to local and municipal discretion”.<sup>437</sup> While it is possible for Muslims to maintain their distinct characteristics, it is largely left for them to take the initiative. The Government in this sense takes very little responsibility and doesn’t directly encourage diversity

In contrast, the EUMC report, mentions a number of initiatives that have helped to encourage tolerance in society. These include the Minister of Integration meeting with Imams to discuss integration and increased interfaith cooperation, which has been funded by the Ministry of Ecclesiastical Affairs.<sup>438</sup> In addition, the Islamic- Christian Study Centre was established and the integration initiative ‘Muslims in Dialogue’, an NGO “to promote the integration of ethnic minorities and Muslims into Danish society through involvement in social and cultural work”.<sup>439</sup> Furthermore, the public service television channel DR2 aired an interfaith television debate in 2004.<sup>440</sup> All of these developments are encouraging but do not make up for a lack of comprehensive integration policy that provides concrete initiatives. It would appear that such integration measures take place on an *ad hoc* basis, rather than being part of an overall government strategy. Were the FCNM to be applied to the Muslim community in Denmark, few of the standards enumerated would be satisfied by integration strategies. There is a distinct lack of education for the majority, especially regarding the promotion of tolerance and while a few initiatives regarding inter-cultural dialogue have taken place, this is by no means what can be termed a strategy. The fact that the integration policy of Denmark does not even satisfy article 6(1) of the FCNM, which applies to ‘all persons’ and not just national minorities, is a cause of concern. The lack of educational measures taken under article 1(2) of the UN Declaration, although not

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<sup>436</sup> *Ibid.*, para.447

<sup>437</sup> *Ibid.*, para.470

<sup>438</sup> EUMC, *supra* note 2 p.93

<sup>439</sup> *Ibid.*, p.100

<sup>440</sup> *Ibid.*

obligatory can be termed as hindrance to the application of minority rights, as can the lack of opportunity for participation in public life in accordance with article 2(3). Articles 7 and 8 of the FCNM, were Denmark to apply the FCNM to Muslims, would not be furthered by the current integration policy; neither would articles 5(1) and 15.

## 5.2 Germany

Integration policy in Germany developed as a result of a political change of direction when a coalition of Social Democrats and the Green Party came into office in 1998.<sup>441</sup> Prior to this, it had not been accepted that Germany was a country of immigration and as a result a comprehensive integration policy was not necessary. The German government's strategies regarding integration are currently based upon four main areas: language support; integration in the workplace; education; and social integration.<sup>442</sup> Under §45 of the 2004 Immigration Act,<sup>443</sup> a nationwide integration programme has been established.<sup>444</sup> The area of social integration is based upon the precept that "[i]ntegration policy should foster good relations between new and old members of society and enable people to co-operate with one another with respect and have equal rights of participation in society".<sup>445</sup> Furthermore, it is stated that integration is "the responsibility of society as a whole".<sup>446</sup> While there is no formal approach regarding intercultural sensitivity, it is

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<sup>441</sup> U.Davy, 'Integration of Immigrants in Germany: A Slowly Evolving Concept', 7 *European Journal of Migration and Law* 123-144 2005, p.123-124

<sup>442</sup>Federal Office for Migration and Refugees, Nationwide Integration Programme <[www.integration-in-deutschland.de/cln\\_006/nn\\_285446/SubSites/Integration/EN/01\\_\\_Ueberblick/Integrationsprogramm/integrationsprogramm-node.html?\\_\\_nnn=true#doc285584bodyText3](http://www.integration-in-deutschland.de/cln_006/nn_285446/SubSites/Integration/EN/01__Ueberblick/Integrationsprogramm/integrationsprogramm-node.html?__nnn=true#doc285584bodyText3)> visited on 15 November 2007

<sup>443</sup> Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und ausländern (Zuwanderungsgesetz), 30 July 2004, Bundesgesetzblatt Jahrgang 2004, Teil I, No. 41, Bonn 5 August 2004.

<sup>444</sup> Federal Office for Migration and Refugees, *supra* note 442

<sup>445</sup>Federal Office for Migration and Refugees, Social Integration <[www.integration-in-deutschland.de/cln\\_006/nn\\_284518/SubSites/Integration/EN/03\\_\\_Akteure/Programm/Gesellschaft/gesellschaft-node.html?\\_\\_nnn=true](http://www.integration-in-deutschland.de/cln_006/nn_284518/SubSites/Integration/EN/03__Akteure/Programm/Gesellschaft/gesellschaft-node.html?__nnn=true)> visited on 15 November 2007

<sup>446</sup>Federal Office for Migration and Refugees, *supra* note 445



acknowledged, “[t]he development of an intercultural sensitivity on the part of the receiving society is crucial to the integration process”.<sup>447</sup> This attitude shows an understanding by the German government that integration is not just the responsibility of ‘new’ members of society and complies with article 6(1) of the FCNM regarding the encouragement of “a spirit of tolerance and intercultural dialogue”. The referral to ‘the receiving society’ would also reaffirm the view that Germany has only just accepted that it is a country of immigration. Furthermore, while the acceptance of responsibility is crucial to a successful integration policy, so is positive action in the form of initiatives and projects and thus satisfies article 6(1) the FCNM.

German integration measures include a special emphasis on Islam and encouraging dialogue about prejudice. Initiatives include: the German Islam Forum; the (inter-religious dialogue) project, ‘Do you understand who I am?’; and the Meeting and Education Centre for Women. Projects are considered as an opportunity “to find common ground in promoting understanding and acceptance and to prevent potential conflicts or to solve these constructively”.<sup>448</sup>

Furthermore, in 2006, ‘The German Islam Conference’ was established, in which on both the German government and Muslim society meet to discuss amongst other things: the German social system and German values; and religious issues and the German understanding of Constitution. An emphasis on dialogue with the Muslim community in integration policy is clear and to be welcomed, as are the steps taken to achieve this. Furthermore, this practice establishes the effective participation of Muslims regarding decisions that affect them, in line with article 2(3) of the UN Declaration and article 15 the FCNM.

The Federal Office for Migration and Refugees (*BAMF*) further considers as a matter of urgency, issues such as, the regulation of the relationship between the German state and Muslim religious communities,

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<sup>447</sup> Federal Office for Migration and Refugees Intercultural Sensitivity <[www.integration-in-deutschland.de/cln\\_006/nn\\_284728/SubSites/Integration/EN/03\\_\\_Akteure/Programm/The men/Oeffnung/oeffnung-node.html?\\_\\_nnn=true](http://www.integration-in-deutschland.de/cln_006/nn_284728/SubSites/Integration/EN/03__Akteure/Programm/The%20men/Oeffnung/oeffnung-node.html?__nnn=true)> visited on 15 November 2007

<sup>448</sup> Federal Office for Migration and Refugees, *supra* note 143

the introduction of Islamic religious instruction in the German language in state-funded schools, the training of Imams at public institutions of higher education, burials in accordance with Islamic regulations and the building of representative mosques in public areas.<sup>449</sup> Although these issues are yet to have been completely solved, the previous discussion of national law indicates that progress has been made in many of these areas. Furthermore, the recognition by a government office of the importance of these issues both to the Muslim community and for integration is welcome progress. Article 5(1), establishes that there are positive obligations on States Parties to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion...”. Although, Germany does not accept these obligations contained in the FCNM in respect of the Muslim minority, the government has accepted responsibility for the promotion of the conditions necessary for the Muslim minority to maintain and preserve essential elements of their culture, although it is also necessary for progress to be made.

In addition to the measures currently enumerated by the Federal Office for Migration and Refugees, the EUMC report of 2006 on Muslims in the European Union refers to a policy paper by the Federal Commissioner entitled ‘Fighting Islamism, - incorporating the Islam: 20 Suggestions’, as well as the establishment of the Migration and Religion Network.<sup>450</sup> Steps have also been taken to educate children about “other cultures, religions, prejudice, human rights and their universal validity, present and past migrations and multicultural societies generally”.<sup>451</sup> Civil society initiatives to foster tolerance and promote integration include ‘Open day at the mosque’ organised by *Zentralrat der Muslime*, involving approximately 1,000 mosques, the Körber Foundation initiated ‘Learning

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<sup>449</sup> *Ibid.*

<sup>450</sup> EUMC, *supra* note 2 p.93

<sup>451</sup> High Commissioner for National Minorities, *supra* note 282 para.467

from each other: Forum School and Islam’ and the Abrahamic Forum which was founded by *Interkulturelle Rat* in 2001.<sup>452</sup>

German integration policy, involves both the education of new and old members of society, in order to foster tolerance and reduce prejudice in accordance with article 1 of the UN Declaration. The involvement of civil society in this indicates that this practice is accepted and appreciated. While more measures are necessary in order to fully integrate the Muslim community, for example, the issues of urgency discussed by the Office for Migration and Refugees, the responsibility for integration is being taken by the government and should be welcomed. Current German integration policy and the positive measures taken go a long way to satisfy the requirements of both UN Declaration and the FCNM, were it to be applied to Muslims as a national minority. While further measures would have been required under article 5(1), 7 and 8 if Germany had included Muslims in the scope of application of the FCNM the fact that a system of consultation exists and the fact that steps are taken in order to create inter-cultural dialogue and tolerance is extremely encouraging.

### **5.3 The United Kingdom**

The British Government provides a plethora of information, studies and reports on the subject of integration as well as inter-faith cooperation. While there are many more far-reaching policies, for the purposes of this chapter, the areas of integration policy can be broadly speaking split into national and local initiatives and within these areas, education and inter-faith cooperation.

The most recent national initiative was the Commission on Integration and Cohesion, a fixed term body, charged with amongst other things: “examining issues that raise tensions”; “suggesting how local community and political leadership can push further against perceived

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<sup>452</sup> EUMC, *supra* note 2 p.101

barriers to cohesion and integration”; as well as considering “the needs of communities defined by a shared characteristic (such as race or faith) which may require regional or national solutions”.<sup>453</sup> The final report, presented in June 2007, included a new analysis of what influences integration and cohesion.<sup>454</sup> A crucial discussion in the Commission’s work was the concept of Britishness. Previously in ‘Improving Opportunity, Strengthening Society’, it was stated that:

“we consider that it is important for all citizens to have a sense of inclusive British identity. This does not mean that people need to choose between Britishness and other cultural identities, nor should they sacrifice their particular lifestyles, customs and beliefs. They should be proud of both”.<sup>455</sup>

The Commission, however, further emphasised that:

“the concept of Britishness is constantly evolving and is not a fixed identity. There needs to be a shared understanding of Britishness wide enough to reflect the complexity of the more diverse society. It needs to be inclusive so that some groups are not seen as less British than others”.<sup>456</sup>

These statements infer an inclusive attitude that uses Britishness as a common point from which tolerance and understanding of diversity flows. Article 6 of the FCNM, deals with both intercultural dialogue and a spirit of tolerance, while article 5 deals with the promotion of “the conditions

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<sup>453</sup> Commission on Integration and Cohesion - Terms of Reference <[www.integrationandcohesion.org.uk/terms\\_of\\_reference.aspx](http://www.integrationandcohesion.org.uk/terms_of_reference.aspx)> visited on 5 December 2007

<sup>454</sup> Department for Communities and Local Government, *supra* note 367

<sup>455</sup> Improving Opportunity, Strengthening Society: The Government’s strategy to increase race equality and community cohesion, January 2005 Home Office, London <[www.homeoffice.gov.uk/documents/race\\_improving\\_opport.pdf](http://www.homeoffice.gov.uk/documents/race_improving_opport.pdf)>, visited on 5 December 2007 p.45 para.14

<sup>456</sup> Themes, Messages and Challenges, A Summary of Key Themes from the Commission for Cohesion and Integration Consultation, Commission on Integration and Cohesion, June 2007, <[www.integrationandcohesion.org.uk/upload/assets/www.integrationandcohesion.org.uk/themes,\\_messages\\_and\\_challenges.pdf](http://www.integrationandcohesion.org.uk/upload/assets/www.integrationandcohesion.org.uk/themes,_messages_and_challenges.pdf)>, visited on 5 December 2007p.15

necessary” for national minorities to maintain their identity. The emphasis that there is no overlap between the concept of Britishness and other cultural elements such as belief and therefore there is no need to choose between the two, is of particular relevance to minority rights and thus satisfies the non-assimilation requirement of article 5(2) in addition to article 6(1) FCNM.

The Commission’s report put emphasis on the fact that “there is much work to be done to repair the sense of attack and siege felt by the British Muslim community and an open genuine debate is required in a spirit of partnership and real consultation with Muslim organisations”.<sup>457</sup> The recognition of the issues facing the Muslim community and the barriers that this creates for cohesion and integration is vital. Furthermore the need for consultation with Muslim organisations is in line not only with article 6 FCNM regarding intercultural dialogue but also article 15 and active participation in society, not to mention article 2(3) of the UN Declaration. There is also emphasis on the role of Local Authorities, as their “cohesion strategies tend to reflect the degree of diversity in the area”,<sup>458</sup> situations vary throughout the UK regarding the background of immigrants, the level of diversity and the level of integration and cohesion. This system moves away from a ‘one size fits all’ approach,<sup>459</sup> and allows problems to be tackled where needed. The result of the Commission’s findings is a ten-point government action plan and GBP 50 million investment over three years in Local Authorities. The action plan includes: specialist integration and cohesion teams; Citizens’ days; and a new inter-faith strategy.<sup>460</sup>

The 2005 ‘Improving Opportunity, Strengthening Society’ paper, discusses a number of areas that need to be addressed in order to build cohesion and suggestions on how to achieve this .<sup>461</sup> This includes: “helping young people from different communities grow up with a sense of

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<sup>457</sup> *Ibid.*, p.11

<sup>458</sup> *Ibid.*, p.18

<sup>459</sup> Our Shared Future, Commission on Integration and Cohesion, 2007  
<[www.integrationandcohesion.org.uk/upload/assets/www.integrationandcohesion.org.uk/our\\_shared\\_future.pdf](http://www.integrationandcohesion.org.uk/upload/assets/www.integrationandcohesion.org.uk/our_shared_future.pdf)>, visited on 5 December 2007 p.45

<sup>460</sup> *Bleas- £50 million investment in community cohesion*  
<[www.communities.gov.uk/news/corporate/500396](http://www.communities.gov.uk/news/corporate/500396)> visited 28 November 2007

<sup>461</sup> Home Office, *supra* note 455

common belonging”,<sup>462</sup> “helping people from all sections of society to understand and celebrate the contribution made by a range of cultures to Britain”,<sup>463</sup> “helping ensure that racism is unacceptable”,<sup>464</sup> and “promoting cohesion at a local level”.<sup>465</sup> However, very few national strategies were established, as “it is often best to work with local communities and civil organisations in order to effectively respond to the challenges faced by each particular area, many of the individual measures will be small scale, and vary from place to place”.<sup>466</sup> While the logic behind this policy is undeniable, there is a difference between establishing good policy and establishing good practice. The lack of a national framework in theory could lead to Local Authorities simply not establishing effective mechanisms to deal with points of division in their communities.

The follow-up paper ‘Improving Opportunity, Strengthening Society, Two years on’,<sup>467</sup> enumerates the measures that have been taken on both a local and national level in order to achieve the aims mentioned in the original report. This ranges from the Commission on Integration and Cohesion to case studies on local projects. On a national level, from September 2007, the duty on Local Authorities to promote cohesion was extended to schools.<sup>468</sup> Thus, extending the positive measures associated with minority rights. A pilot scheme for an accredited Continuous Professional Development programme for faith leaders has been run from September 2007,<sup>469</sup> and the importance of engaging with faith communities was recognised.<sup>470</sup> Consultation with the Faith Communities Consultative Council continued to this ends.<sup>471</sup> Additionally the previously mentioned changes to citizenship education were discussed. The lack of a cohesive national action plan has not lead to a lack of implementation on a local

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<sup>462</sup> *Ibid.*, p.43

<sup>463</sup> *Ibid.*, p.46

<sup>464</sup> *Ibid.*, p.48

<sup>465</sup> *Ibid.*, p.52

<sup>466</sup> *Ibid.*, p.43

<sup>467</sup> Department for Communities and Local Government, *supra* note 369

<sup>468</sup> *Ibid.*, p.71

<sup>469</sup> *Ibid.*, p.74

<sup>470</sup> *Ibid.*, p.89

<sup>471</sup> *Ibid.*

level, with Local Authorities carrying out a number of initiatives, suitable for their area with the aim of creating cohesion and respect for diversity.

The 2004 report ‘Working Together: Cooperation between Government and Faith Communities’ recognised the importance of consulting faith communities on issues that affect them and established best practices to achieve this.<sup>472</sup> The importance of the Government recognising not only the diversity of religions but also diversity within religions was emphasised: “There is no one faith voice”.<sup>473</sup> Additional discussions surrounded “celebrations, and how to involve the different faith communities in these in a way that reflects the multi faith diversity of the UK without compromising the integrity of the different faiths”.<sup>474</sup>

“Preventing Violent Extremism- winning hearts and minds” discussed working in partnership with the Muslim community,<sup>475</sup> and the promotion of shared values.<sup>476</sup> “Bradford Council of Mosques, are already producing high-quality teaching material in citizenship for use in madrassahs.”<sup>477</sup> Again the strengthening of faith institutions and leaders is emphasised, particularly MINAB, in order to create voices for the Muslim community.

Additional strategies to aid integration include a new Muslim Women’s Advisory Group, which has the aim of acting “as ambassadors for women at grassroots and represent their views and concerns to Government” and to “provide leadership in communities and act as positive

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<sup>472</sup> Working Together: Cooperation between Government and Faith Communities, Home Office Faith Communities Unit, February 2004  
<[www.communities.gov.uk/documents/communities/pdf/151393](http://www.communities.gov.uk/documents/communities/pdf/151393)>, visited on 5 December 2007 pp.15,30

<sup>473</sup> Home Office, *supra* note 455 p.30

<sup>474</sup> *Ibid.*, p.9

<sup>475</sup> Preventing violent extremism- Winning hearts and minds, Department for Communities and Local Government: April 2007

<[www.communities.gov.uk/publications/communities/preventingviolentextremism](http://www.communities.gov.uk/publications/communities/preventingviolentextremism)>, visited on 5 December 2007 p.4

<sup>476</sup> *Ibid.*, p.5

<sup>477</sup> *Ibid.*

role models for Muslim women is society”.<sup>478</sup> Strategies also exist to help local councils in preventing ethnic conflict.<sup>479</sup>

The 2006 OSCE report on Integration Policies further discusses the role of the national curriculum that states values that,

“schools should promote including contributing to students’ sense of identity by providing knowledge and understanding of the spiritual, moral, social and cultural heritages of Britain’s diverse society, developing understanding and appreciation of different beliefs and cultures, promoting equal opportunities and enabling pupils to challenge discrimination and stereotyping”.<sup>480</sup>

The national initiative of Black History Month is also discussed.<sup>481</sup> The EUMC mentions the Commission for Racial Equality working closely with MCB and the Forum against Islamophobia and Racism,<sup>482</sup> although whether this will carry on with the newly establish Equality and Human Rights Commission remains to be seen. The practice of several Local Government Authorities is also discussed, such as Birmingham working in collaboration with Birmingham Central Mosque to develop written guidelines for “meeting the pastoral, religious and cultural needs of Muslim pupils”.<sup>483</sup>

This chapter enumerates a few examples of government integration strategies in the UK, the general philosophy being the use of Britishness as a common point of shared values from which tolerance of diversity can flow. There is also an emphasis on celebrating diversity and no-tolerance for racism. There is certainly a long way to go regarding the Muslim community, as noted by the Commission on Integration and Cohesion. However, steps are being taken and the increased consultation of

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<sup>478</sup> *Muslim women to advise Government on preventing violent extremism*

<[www.communities.gov.uk/news/corporate/554064](http://www.communities.gov.uk/news/corporate/554064)> visited on 28 November 2007

<sup>479</sup> *What can councils do about unfounded myths and rumours that are likely to impact badly on community cohesion and cause conflict?*

<[www.communities.gov.uk/communities/racecohesionfaith/communitycohesion/combatingmisinformationabout/whatcancouncils/](http://www.communities.gov.uk/communities/racecohesionfaith/communitycohesion/combatingmisinformationabout/whatcancouncils/)> visited on 28 November 2007

<sup>480</sup> High Commissioner for National Minorities, *supra* note 282 para.464

<sup>481</sup> *Ibid.*, para.470

<sup>482</sup> EUMC, *supra* note 2 p.98

<sup>483</sup> *Ibid.*, p.99



Muslim groups is to be commended although this is by no means an ideal situation, as the remarks in the last Comment of the Advisory Committee of the FCNM show.

The policy of the Government and the implementation at both a national and local level, can be seen to “encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ...religious identity”, in accordance with article 6(1) of the FCNM. While the concept of Britishness does not rely on a particular culture, lifestyle or religion and the use of education and inter-faith cooperation to ensure this, also would seem to satisfy article 5(1) and the positive obligation that it applies as well as article 12. Unlike Germany, the UK does not have measures aimed specifically at the Muslim community; however, Local Authorities do implement, in practice, measures to inform about Islam especially in regard to Religious Education. There is also an acknowledgement that the Government needs to do more regarding the consultation of Muslim communities especially MINAB, in line with article 15 of the FCNM.

## **5.4 Conclusion**

The application of minority rights to the Muslim community appears to have a distinct effect on the integration policies of states. When comparing the integration strategies of Denmark it is clear that the main onus is placed on the minority group itself and the emphasis is placed on the differing values of these communities and their incompatibility with Western society. In contrast the UK places emphasis on Britishness and the concept of shared values and the benefits that diversity brings to society. While Danish integration policy does not seem to add anything to the rights of immigrants groups, specifically Muslims, the UK seems to use this as an opportunity to fulfil its obligations under the FCNM. Germany in contrast to Denmark fulfils a number of requirements of the FCNM through its integration strategies, even though it does not recognise immigrant groups or Muslims

as a national minority. However, Germany does recognise immigrant groups as a minority within article 27 ICCPR and this could explain the inclusive approach taken. In Germany, as in the UK there is an emphasis on the whole of society taking responsibility for integration and becoming more tolerant. The UK could improve practice by using an initiative similar to the ‘German-Islam Conference’. However, as recognised by the German government, there are a number of urgent steps to be taken in order for the Muslim community to be able to “preserve the essential elements of their identity, namely their religion”, in accordance with article 5(1) as well as articles 7 and 8 of the FCNM.

While the UK applies all minority rights to immigrant groups and *de facto* to Muslims, Germany only applies article 27 of ICCPR and this is a relatively recent development, in contrast, Denmark does not apply any minority rights to these groups. As can be seen from the above discussion, in accordance with the application of minority rights, there are differing levels of inclusiveness in the integration strategies of these states. Therefore, it can be deduced that the application of minority rights has some form of effect on the integration strategies of states. As a result, the ability of Muslims to maintain their distinct characteristics is improved due to residence in a state that not only permits but also promotes the practice of their faith. “Loyalty is a two-way street. States must be loyal to their citizens which in turn encourages all citizens, including minority members who have often good reason to complain about discrimination, to be loyal to states.”<sup>484</sup> Therefore, for the purposes of integration it would be desirable for states to extend the scope of application of the FCNM by incorporating non-traditional minorities, as the Advisory Committee has urged them to do.

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<sup>484</sup> Alfredsson, *supra* note 13 p.1

## 6 Conclusion

The acceptance of minority rights for the Muslim community is without a doubt a controversial subject, with none of the three discussed States explicitly accepting these obligations. However, while Denmark explicitly excludes all groups that are not the German minority in Southern Jutland from the application of all minority rights, Germany has more recently accepted minority rights under article 27 ICCPR for immigrant groups and the UK accepts the obligations associated with minority rights for immigrant groups under both ICCPR and the FCNM. However, the acceptance of the Muslim community as a 'minority' regarding the ICCPR and UN Declaration is not necessary, providing that the Muslim community itself satisfies the criteria.

Whereas immigrant groups are not synonymous with the Muslim community, the discussion surrounding the UK's application of the FCNM regarding Muslims would suggest that these obligations have also been accepted. Furthermore, a large proportion of the immigrant groups in all three countries come from an Islamic background and as such require measures to be taken in order for them to be able to preserve their religion in accordance with, not only article 18 of ICCPR, but also article 27 as well the UN Declaration. These measures by default will have a positive effect on the whole Muslim community and not just the specific immigrant group that they are aimed at.

Without a doubt there exists a correlation between the explicit acceptance of immigrant groups as a minority and the minority rights granted by states to the Muslim communities and their ability to maintain their distinct characteristics. While Muslims in the UK, have had minority rights for a considerable time, they have also had the right to maintain all of the characteristics of their identity that have been discussed. In Germany, the ability of the Muslim community to maintain its distinct characteristics has increased recently; this has coincided with the acceptance by the

German government of immigrant groups as minorities within article 27 ICCPR. As discussed, while immigrant groups and the Muslim community are not synonymous, the ability of the immigrant community to maintain its distinct characteristics, due to its mainly Turkish background, is closely linked, culturally to that of the Muslim population. When the Turkish immigrant community gained the right to slaughter animals in a *halal* manner, this had a positive impact on the whole Muslim community. In direct contrast, in Denmark, the Muslim community has issues even maintaining the most fundamental of its characteristics such as purpose built mosques and burial grounds.

The integration strategies of the three States also vary immensely. While diversity is valued in the UK and viewed as a positive attribute, the opposite situation has arisen in Denmark with the majority of integration policies being aimed at the perceived negative attributes of the Muslim population, instead of educating all sectors of society. Again Germany falls somewhere between the UK and Denmark and provides for the most part a well thought out integration strategies incorporating the whole of society. However, some fundamental gaps exist in this policy, especially regarding the matters of urgency discussed by *BAMF*.

The difference in treatment of the Muslim community cannot be proven as being directly attributable to the application of minority rights without their direct enactment into national law. However, the application of minority rights to Muslims or immigrant groups that are for the most part Muslim can be seen as society and the government accepting the presence of this group within society and in the case of Germany, as a change in attitude towards this group. This acceptance, thus leads to the ability of the minority groups to push for the maintenance of their characteristics on a national level. However, as can be seen in the UK, the ability to maintain these characteristics leads to the effective application of minority rights contained in the UN Declaration and the FCNM to the group in question. In contrast, the ability of the Muslim community in Denmark, to maintain its distinct characteristics and group identity is brought into question as a result of opposition to diversity.

As a result of the comparison between the situation in Denmark, Germany and the UK, it is clear that the ‘Muslim minority’ stands to benefit from the application of minority rights to them. While freedom of religion and anti-discrimination laws, allow the group to practice their religion, their ability to maintain the characteristics that make them distinct as a group is inhibited without the application of minority rights. These characteristics are protected by article 18 ICCPR; however, the issues that the Muslim minority faces when trying to protect them are perhaps more adequately counteracted by minority rights. The lack of special measures associated with article 18 ICCPR, in comparison to the UN Declaration, the FCNM or indeed articles 27 ICCPR, is striking. While Muslim minorities, as ‘new’ minorities, may not have rights which confer a burden on the state, the majority of the issues that they face simply require legislative, administrative or judicial measures to be taken, in accordance with article 1(2) of the UN Declaration. Regarding the issues faced in connection with *halal* meat, the ability to build mosques and graveyards, wear headscarves as well as prayer and the celebration of festivals, the Muslim minority requires little more than protection from interference and equal application of the law. Therefore, the lack of protective measures taken by the Danish state in respect of the Muslim minority, is not compatible with articles 1 and 4 of the UN Declaration. Furthermore, the application of the Framework Convention, to both Muslim and immigrant groups would be prudent, in order to aid both integration and to ensure compliance with other international standards.

Article 6 FCNM regarding ‘all persons’, establishes that the State shall encourage “a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory”. This is further strengthened, in respect of minorities, by article 5 FCNM and article 1 of the UN Declaration, regarding the promotion of the identity of minority group. This obligation, however, confers a burden on States parties. While the status of the Muslim communities as a ‘new’ minority, may exclude them from minority rights that confer such a burden, article 6 is nevertheless

applicable. The education of the majority, in the long-term regarding the identity of the minority, makes it easier to prevent discrimination on the basis of religion and prevent persecution and thus makes it easier for the Muslim community to practice their religion without fear of intolerance and ignorance. The introduction of these rights into national integration strategies thus allows the Muslim community not only to flourish but also to become a cohesive part of society. This in the light of the current situation and the fear of Islamic extremism can only be seen to be desirable. If the purpose of minority rights is seen to be: “to ensure full enjoyment of human rights for everyone...to ensure the preservation and evolution of cultural pluralism or diversity in society...and... to preserve or strengthen peace and security, nationally and regionally”,<sup>485</sup> then the application to the Muslim minority seems to be ideal.

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<sup>485</sup> Eide, *supra* note 3 p.366

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