

PROTECTING AND PROMOTING THE RIGHT TO FREEDOM OF RELIGION AND BELIEF FOR ALL

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- *Challenges and Opportunities* •

ABSTRACT

Freedom of thought, conscience, and religion or belief (FoRB) is one of the cornerstones of pluralism, and growing evidence indicates that respect for religious pluralism is indispensable to peace and security. The protection for the right to FoRB enables people of all faiths and none to live together, learn from each other, and be treated equally. In other words, the right to FoRB is fundamental to peaceful and inclusive societies. However, religious persecution and discrimination worldwide continue to speak to the widespread challenges facing our ability to adequately promote and protect this right. This article examines some of the reasons for these deficits, including widespread misconceptions about the normative content of FoRB, and the challenges of securitisation and politicisation of religion. It also identifies some of the emerging opportunities to address them, including increasing international investments in promoting FoRB and relevant normative and practical tools to guide actions by stakeholders.

KEYWORDS

Human rights | Religion | Religious intolerance

[T]he disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind...¹

It is widely recognized that the freedom of thought, conscience, and religion or belief (FoRB) is one of the cornerstones of pluralism, and growing evidence indicates that respect for religious pluralism is indispensable to peace and security.² The protection for the right to FoRB enables people of all faiths and none to live together, learn from each other, and be treated equally. In other words, the right to FoRB is fundamental to peaceful and inclusive societies. However, religious persecution and discrimination worldwide continue to speak to the widespread challenges facing our ability to adequately promote and protect this right.

The challenges facing FoRB vary among countries and regions based on differences in culture, history, structures of governance, and other variable factors. Some restrictions on the right result from government actions, policies and laws while others result from hostile acts by private individuals, organizations and social groups. The UN special procedures mandate on freedom of religion or belief, throughout its 33-year history,³ has also had to contend with misconceptions worldwide about the scope of the right that present a fundamental challenge to the task of promoting and protecting FoRB for all. These include misperceptions that religious freedom is absolute; mischaracterisations of this freedom as majoritarian privilege rather than a universal human right; misconceptions about how, when, why and to what extent FoRB may be limited. These misconstructions about FoRB are engendered by both the complexity of this right and the political and ideological dispute over the norms of the international legal framework that underpin it. For some, FoRB is a foundational human right which sets the pluralistic context in which all other rights can be realised.⁴ For others, FoRB is less important, because it intersects with and depends on a range of other human rights such as freedoms of expression, peaceful assembly and association, and among other rights, the right to privacy and equality before the law. To operationalize respect and protection for the right to freedom of religion or belief, we must therefore enhance understanding of the right itself and better promote the tools available for protecting freedom of religion or belief for inclusive, peaceful societies. Norm clarification, and hence, FoRB literacy, is a pre-requisite to effective implementation.

1 • International normativity

The right to FoRB is recognized by Article 18 of the Universal Declaration of Human Rights and Article 18 of the legally-binding International Covenant on Civil and Political Rights and further clarified by General Comment 22 of the UN Human Rights Committee.⁵ While there are numerous sources articulating the right in international law,⁶ the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration”)⁷ is one of the most detailed, but perhaps underused, international documents we have to advance the right to freedom of religion or

belief. When adopted on 25 November 1981, the Declaration was the culmination of about twenty years of work following the United Nations' mandate of 7 December 1962, to draft a document that would spell out the specific guarantees of freedom of religion or belief.⁸ Importantly, it addressed concern that protecting "religion" would "imply a discrimination of atheist or non-religious convictions." The Declaration addressed this by adding the word "whatever" before the word "belief," implying that belief could be defined in the negative.⁹ As a UNGA resolution, the Declaration has no institutional machinery for supervision or implementation of the principles it stipulates, it has an indefinable legal effect as a UN statement agreed by consensus and is regarded as part of customary international law.¹⁰

Article 6 of the 1981 Declaration details some of the rights central to the manifestation of the right to freedom of thought, conscience, and religion or belief. These include the right (a) "[t]o worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes"; (b) "[t]o establish and maintain appropriate charitable or humanitarian institutions"; (c) "[t]o make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief"; (d) "[t]o write, issue and disseminate relevant publications in these areas"; (e) "[t]o teach a religion or belief in places suitable for these purposes"; (f) "[t]o solicit and receive voluntary financial and other contributions from individuals and institutions"; (g) to train appropriate leaders (h) "[t]o observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief"; and (i) "[t]o establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels." The remaining articles in the 1981 Declaration deal primarily with religious discrimination and intolerance, and the parental right to education of their children.

The 1981 Declaration unequivocally condemns discrimination between human beings on the ground of religion or belief, as an offence to human dignity and a denial of the principles of the UN Charter and the Universal Declaration of Human Rights.¹² Thus religious discrimination does not only take place when an individual's right to manifest their religion or belief freely is restricted or interfered with by the State or non-State actors. It can also take place when an individual's enjoyment of other fundamental rights – for example the right to health, education, expression, peaceful assembly – is restricted or interfered with by State or non-State actors in the name of religion, or on the basis of a person's religion or belief.¹³ Additionally, the Declaration concludes that "nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights,"¹⁴ respect for the rights and duties set forth in those declarations and covenants are implicitly included in the 1981 Declaration.

While international law does not explicitly prescribe any particular form of State-religion relationship, the State must act as an impartial guarantor of FoRB rights for all. In practice, what facilitates this outcome is for the State to adopt a position of 'respectful distance'

towards religion or belief, rather than rejecting or embracing religion or belief. Evidence shows that FoRB rights are most frequently violated where the State is either closely entangled with religion or is hostile towards religion. In the former case, blasphemy laws and coercive measures based on religious doctrine could suppress the rights of all, particularly those of women, dissenters and minorities. In the latter case, ideological commitments to secularisation could suppress a range of fundamental freedoms of everyone.¹⁵

In recent times, many of the most pernicious manifestations of intolerance and consequential violations of the right to freedom of religion or belief have been carried out by non-State actors. Attacks on synagogues, churches, mosques and other places of worship and the terrorisation of minorities in the name of religion or belief or because of their religious identity have become a global challenge to which no country or community appears to be immune. Implicated in these attacks are religious extremists and far-right groups who may be mobilised to do so through incitement to violence, hostility and discrimination towards dissenters and those who are perceived to be different. To protect the right to FoRB, UN member States have a duty to protect individuals from discrimination by third-party non-State actors, including threats stemming from ‘religious’ vigilante groups and terrorist groups.¹⁶ Yet non-State actors operate with impunity in States with poor rule of law and are empowered by laws and policies that discriminate against religious minorities. Even if a State does not explicitly discriminate against minority religious groups, sectarian policies empower religious-political extremists to act without fear of reprisal.¹⁷

2 • A challenge for the international community

Combating discrimination and other forms of intolerance against persons based on religion or belief has been a primary objective for the international community for decades but at a national level, many States have responded to violence in the name of religion by ‘securitizing’ human rights.¹⁸ As Special Rapporteur, I continuously receive reports alleging violations of freedom of religion or belief as a result of counter-terrorism measures or efforts to combat religious extremism. For example, unjustified charges of “extremism” are increasingly used by authoritarian regimes to hinder the freedom of religious groups that are not favored by those in political power.¹⁹ Some States have officially instituted discriminatory practices that intentionally or unintentionally target individual adherents, or groups of persons of a particular faith they perceive to be predisposed to terrorist or other violent acts. While international human rights law allows, with high thresholds, for certain limitations related to the manifestation of one’s religion or belief (often referred to as *forum externum*), any and all limitations must be the exception, not the rule.²⁰ Moreover, extensive research has demonstrated that such excessive measures further compound the corrosive conditions that already undermine human rights, including the right to freedom of religion or belief.²¹

A more insidious threat to FoRB from non-State actors includes false invocations of ‘religious liberty’ for political ends. The right to hold and express one’s beliefs should not

be conflated with a non-existent right to arbitrarily discriminate against people on the basis of their gender, sexual orientation, or religious identity. Such discrimination is indeed prohibited under international law. The right to FoRB can serve as a shield to protect religious institutions from attack and allow for the freedom of all beliefs to flourish – not a sword to cause harm to others. Many religions have formal doctrines that reflect a negative perspective on same-sex sexuality. Yet religious leaders' views do not always coincide with the formal doctrines, and religious leaders can also be instrumental in promoting social acceptance of same-sex sexuality and gender nonconformity responses.

In recent years, the international community has increasingly focused on manifestations of intolerance involving religion or belief, including discrimination, hostility or violence, and incitement thereto, resulting in a number of key developments. As Special Rapporteur, I have urged States to operationalize various tools developed by the United Nations system in the context of freedom of religion or belief and the prevention of mass atrocities, and which are grounded in the human rights framework, to build societal resilience against violent extremism. One instrument is Human Rights Council resolution 16/18 of 2011 on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons based on religion or belief.²² Another major landmark is the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²³ These provide organising frameworks to mobilise policymakers and civil society, including faith-based actors, to combat the tsunami of hate and intolerance that is drowning communities everywhere, and to advance freedoms for all.

Yet despite these and other United Nations efforts to strengthen international protection for freedom of religion or belief, acts of intolerance have been on the rise in many parts of the world, revealing an alarming gap between international commitments to combat intolerant acts and national practices. As such, it is incumbent upon State and non-State actors to continue to increase literacy about the right to FoRB. It is integral that States abstain from adopting restrictions that limit the right in ways not recognized by fundamental standards integral to the enjoyment of FoRB, and it is necessary for States to address violations or acts of abuse, while ensuring that the right is not being used to undermine protections for myriad other rights on which FoRB depends, or to deprive persons of their equal enjoyment of freedom of religion or belief and other rights.

3 • Conclusion

Despite increasing violations of FoRB worldwide, it is heartening to note the rising importance attached to promoting this fundamental right by the international community. Indicators of this positive trend include the growing number of funds committed to promoting FoRB, the appointment of envoys on FoRB by several countries, the formation of global networks to promote FoRB, and the dedication of an International Day for

Victims of Acts of Violence Based on Religion or Belief. In order for these endeavours to realise their full potential, it would be vital to frame these efforts within international human rights law and to achieve coherence between actions at home and energies abroad. For civil society actors, including faith-based groups, it would be useful to work in broad coalitions, to build bridges amongst stakeholders, and develop narratives of inclusion, as recognised by the 2017 Beirut Declaration on Faith for Rights.²⁴ For all stakeholders, it would be important to harvest synergies across institutions, actors and activities, including those working on peace-building and development and ‘to leave no one behind’. It requires the recognition that ‘seeking to protect some from persecution necessarily requires seeking to protect all from persecution’.²⁵

NOTES

1 • U.N. Doc. A/36/684 (1981) [hereinafter 1981 Declaration], preamble, UNOHCHR, November 25, 1981, accessed July 10, 2019, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

2 • See e.g. Brian J Grim and Roger Finke, *The Price of Freedom Denied* (Cambridge: Cambridge University Press, 2011): 2-3. See also “Plan of Action to Prevent Violent Extremism,” A/HRC/70/674 para 26 & 28, United Nations General Assembly, December 24, 2015, accessed July 10, 2019, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674.

3 • The mandate, when created in 1986, was called the special rapporteur on religious intolerance. The current title was adopted in 2001.

4 • For more see, “Report of the Special Rapporteur on Freedom of Religion and Belief,” A/HRC/34/50 para 22, United Nations General Assembly, January 17, 2017, accessed July 10, 2019, <https://undocs.org/A/HRC/34/50>.

5 • “General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights,” CCPR/C/21/Rev.1/Add.4, United Nations, September 27, 1993, accessed July 10, 2019, <https://undocs.org/CCPR/C/21/Rev.1/Add.4>. See also

“General Comment 34” on freedom of expression, CCPR/C/GC/34, International Covenant on Civil and Political Rights, September 12, 2011, accessed July 10, 2019, <https://undocs.org/CCPR/C/GC/34>.

6 • Virtually all modern human rights instruments contain provisions protecting freedom of religion and prohibiting discrimination based on religion. The most salient of these is Article 18 of the International Covenant on Civil and Political Rights which reads: 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious

and moral education of their children.

7 • U.N. Doc. A/36/684 (1981) [hereinafter 1981 Declaration].

8 • During its 1187th plenary meeting, the GA asked the Human Rights Commission to work on a draft declaration and a draft convention against all forms of religious intolerance. "Preparation of a Draft Declaration and a Draft Convention on the Elimination of all Forms of Religious Intolerance," U.N. GAOR, 17th Sess., 1187 plen mtg. at 33, U.N. Doc A/RES/1781 (XVII), United Nations General Assembly, December 7, 1962, accessed August 13, 2019, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0192/89/IMG/NR019289.pdf?OpenElement>.

9 • Christian Walter, "The Protection of Freedom of Religion Within the Institutional System of the United Nations 589," in *Universal Rights in a World of Diversity – The Case of Religious Freedom, Political Academy Of Social Sciences*, eds. Mary Ann Glendon and Hans F. Zacher (Vatican City: The Pontifical Academy of Social Sciences, 2012): 591.

10 • Carolyn Evans, "Time for a Treaty? The Legal Sufficiency of the Declaration on the Elimination of All Forms of Intolerance and Discrimination," *Brigham Young University Law Review* 2007, no. 3 (2007): 617-638. See also, Sean D. Murphy, *Principles of International Law* (Minnesota: West Academic Publishing, 2006): 65-88.

11 • "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief," A/RES/36/55, supra n. 2, Art. 6, United Nations General Assembly, November 25, 1981, accessed July 10, 2019, <https://www.un.org/documents/ga/res/36/a36r055.htm>.

12 • Article 2, supra n. 1, Art. 6.

13 • See "Report of the Special Rapporteur on Freedom of Religion and Belief," A/HRC/37/49, para. 37, United Nations General Assembly, February 28, 2018, accessed July 10, 2019, <https://undocs.org/A/HRC/37/49>.

14 • A/RES/36/55, 1981 Declaration, supra n. 1, Art. 8.

15 • See A/HRC/37/49, para 77.

16 • See, Article 4 of the 1981 Declaration imposes a positive obligation on States to "take effective measures to prevent and eliminate discrimination... in all fields of civil, economic, political, social, and cultural life" and "to take all appropriate measures to combat intolerance on the grounds of religion." See also "Report of the Special Rapporteur on Freedom of Religion and Belief," A/HRC/34/50, para. 47b, United Nations General Assembly, January 17, 2017, accessed July 10, 2019, <https://undocs.org/A/HRC/34/50>.

17 • See e.g. Brian J. Grim and Roger Finke, *The Price of Freedom Denied* (Cambridge: Cambridge University Press, 2011): 2-3. See also A/HRC/70/674 para 26 & 28; Anthony Gill and Timothy Shah, "Religious Freedom, Democratisation and Development," Paper presented at the Annual Meeting of the Association for the Study of Religion, Economics, and Culture Washington, D.C., April 13, 2013, accessed July 10, 2019, <http://www.asrec.org/wp-content/uploads/2015/10/Gill-Shah-Religious-freedom-democratization-and-economic-development.pdf>.

18 • States have responded to violent extremism by (1) enacting new laws and policies which directly restrict freedom of religion or belief; (2) curtailing its enjoyment as a consequence of limitations on other fundamental rights; or (3) scrutinizing religious organizations and intruding into the religious affairs of religious communities. For more see, "Report of the Special Rapporteur on Freedom of Religion or Belief," A/73/45410, United Nations General Assembly, September 4, 2018, accessed July 10, 2019, https://www.ohchr.org/Documents/Issues/Religion/A_73_45410.docx.

19 • Kirsten Lavery, "Overview of Anti-extremism Legislation." United States Commission on International Religious Freedom, Legislation Factsheet Anti-Extremism Laws, March 2019, accessed July 10, 2019, <https://www.uscirf.gov/sites/default/files/Legislation%20Factsheet%20-%20Extremism.pdf>.

20 • Article 18 (3) of the International Covenant on Civil and Political Rights provides that all limitations

on the right to freedom of religion or belief must be prescribed by law, and they must be necessary and directly related to the pursuit of a legitimate aim: the protection of “public safety, order, health, or morals or the fundamental rights and freedoms of others”. These restrictions must also be applied in a non-discriminatory manner and be proportionate to the realization of the legitimate aim and, therefore, be the least restrictive among all the adequate measures that could possibly be applied, without vitiating the right itself. Unlike some other provisions of the Covenant, the right to freedom of religion or belief cannot be restricted on the grounds of national security, and the non-discriminatory nature of the right ensures that nationality cannot form a basis for imposing restrictions on minorities, migrants or non-nationals. See also, A/HRC/34/50 para 30.; A/73/45410.

21 • See for e.g. Ben Emmerson, “Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,” A/HRC/31/65, para 54, United Nations General Assembly, April 29, 2016, accessed July 10, 2019,

<https://undocs.org/A/HRC/31/65>.

22 • “Resolution Adopted by the Human Rights Council 16/18 Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief,” A/HRC/RES/16/18, United Nations General Assembly, April 12, 2011, accessed July 10, 2019, https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.18_en.pdf.

23 • “Annual report of the United Nations High Commissioner for Human Rights,” A/HRC/22/17/Add.4, United Nations General Assembly, January 11, 2013, accessed July 10, 2019, <https://undocs.org/A/HRC/22/17/Add.4>.

24 • “Faith for Rights,” UNOHCHR, April 2019, accessed July 10, 2019, <https://www.ohchr.org/Documents/Press/Faith4Rights.pdf>.

25 • Ahmed Shaheed, Nazila Ghanea, and Sir Malcolm Evans, “Letter to the Editor.” The Sunday Telegraph, February 10, 2019, accessed July 10, 2019, <https://www.pressreader.com/uk/the-sunday-telegraph/20190210/281960314006362>.



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