

## Religious Freedom as a Human Right

Göran Gunner

“A dear child has many names” is a Swedish idiom, straightforward depicting that important things and life-changing events may be presented with a variety of names in different contexts. Religious freedom is such an expression that can be formulated through different names. Regularly used in literature, research and media are expressions such as religious freedom, religious liberty, freedom of religion, freedom of belief, freedom of conscience, all of them as a summary term for a specific human right to embrace and exercise religion.

This special right has been seen as fundamental to human rights since expressions of religion are found in most societies and cultures.<sup>1</sup> During the years, efforts to define the term religion as such has been a complex and sensitive issue in the United Nations (UN) as well as in its member States.<sup>2</sup> But, what is permitted and what is protected in connection with embracing and exercising one’s faith becomes increasingly clear through international declarations, conventions, statements from monitoring mechanisms and decisions based on legal cases. Thus, the concept of religious freedom has been further elaborated on the basis of the work with the human rights as expressed in different international legal instruments using “freedom of conscience, the profession and free practice of religion,”<sup>3</sup> “freedom of conscience and of religion”<sup>4</sup> and “right to freedom of thought, conscience and religion.”<sup>5</sup> Article 18 of the UN Universal Declaration of Human Rights (UDHR), adopted in 1948, is a fundamental example on how the human rights perspective defines this freedom:

1 See, e.g., Leonard Swidler, “Human Rights and Religious Liberty – From the Past to the Future,” in *Religious Liberty and Human Rights in Nations and in Religions*, edited by Leonard Swidler (Philadelphia: Ecumenical Press, 1986), vii.

2 See, e.g., Natan Lerner. *Religion, Beliefs, and International Human Rights*. (New York: Orbis Books, 2000), 1–8; Bahiyiyih G. Tahzib. *Freedom of Religion or Belief. Ensuring Effective International Legal Protection*. (The Hague: Martinus Nijhoff Publishers, 1996), 2.

3 “African Charter on Human and Peoples’ Rights.”

4 “American Convention on Human Rights.”

5 “Universal Declaration of Human Rights,” “International Covenant on Civil and Political Rights,” “European Convention on Human Rights.”

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This way of expressing this particular right opens up. Words like conscience and thought indicate a scope that goes far beyond a narrow conception of religion. But, not always. Instead, individual States as well as religious communities have perceived the scope of freedom of religion in a narrow sense. In some cases, the implication is to accept only officially recognized denominations, or for the State or the majority religion to exclude unfavourable religions and beliefs, or not to legitimize different minority religions and beliefs etc. In other cases, new religious movements – sometimes referred to as sects – have been excluded from the right. It has even been argued for an interpretation that implies freedom from religion in the sense of not having to encounter religious expressions in the public life. All this indicates a deviation from the international interpretation and entails a violation of the right. Violations occur in a variety of situations in societies, target victims as individuals and communities and are perpetrated by different actors with various motives. But freedom of religion or belief, according to the international standard, is for every human being.

What, then, is the meaning of religious freedom? It depends, of course, on the questioner's point of departure. Is it a separate state, is it a religious community of different kinds, is it an individual who feels violated in his or her freedom, etc.? This chapter is based on the premise that there is an international agreement and a standard for freedom of religion or belief. For those who approach the issue of religious freedom, it is crucial to know basic principles as well as interpretations based on declarations and conventions. This means that the purpose of this chapter is to describe a complex international system for the protection of religious freedom. Then it will be possible to know whether perceptions of the freedom of religion or belief are in line with, are contrary to or are improving the international norms.

## 1 Freedom of Religion or Belief – A Pluralistic Approach

A clear shift from focusing mainly on religious freedom was taken through the UN International Covenant on Civil and Political Rights (ICCPR). When codifying religious freedom in 1976, it is with the wording “freedom of thought,

conscience and religion.” The article includes “belief of his choice.” The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) goes even one step further. Article 1, section 1 in the Declaration adds the words “whatever belief of his choice”:<sup>6</sup>

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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.

The combination of religion and belief is consistently implemented throughout the declaration. The pluralistic approach is not limited to religions but applicable to whatever belief. By highlighting the expression belief, it is distinctly displayed that also nontheistic convictions are included in the protection. So, what is advocated is a pluralism of religions and beliefs and it is up to the decision of each individual with equality as a guiding principle.

The Human Rights Committee, the treaty body dealing with the ICCPR, issued a General Comment (22) in 1993, giving an interpretation of the provisions in the covenant. In addition to the traditional way of expressing the right to freedom of thought, conscience and religion, an important clarification was made by the committee stating that the right “includes the freedom to hold beliefs.” When the committee elaborates concerning the scope of the right, it is broadly constructed aiming to include a wide variety of aspects of religions and beliefs:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.<sup>7</sup>

<sup>6</sup> “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.”

<sup>7</sup> “General Comment No. 22.”

Using the terms non-theistic and atheistic as well as the right not to profess show that the intention with belief is broad. So, in order to fully understand religious freedom as a human right we need today to relate to the concept freedom of religion or belief.

Thus, freedom of religion or belief as a human right boils down to unity behind a common ground based on a diversity of expressions of religions and beliefs, religious or non-religious convictions, with for example different views on the meaning of life. These are supposed to live together in harmony with human dignity. Or in other words, it's about not accepting any form of violation, intolerance or discrimination against any form of religion or belief. The response from a large number of religious and belief communities, both more traditional and newer, is to consider freedom of religion or belief as an important accomplishment. In many societies this freedom is looked upon as a basic freedom, while at the same time recognizing the complexity of the exercise and relation to certain other freedoms. One way of describing freedom of religion or belief is as a "classical" human right being beyond dispute and at the same time being controversial.<sup>8</sup> However, to take religions and beliefs in all their dimensions seriously also implies taking pluralism seriously, including sometimes irreconcilable differences in world-views and practices.<sup>9</sup>

## 2 Human Rights Instruments and Codification of Religious Freedom or Belief

### 2.1 *United Nations System*

The human rights sources for freedom of religion or belief are an extensive and complex body of covenants, declarations and resolutions as well as case law on international and regional levels.<sup>10</sup> Two basic documents are the UDHR, Article 18 (quoted above) and ICCPR, Article 18:

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

8 Heiner Bielefeldt and Michael Wiener. *Religious Freedom Under Scrutiny*. (Philadelphia: University of Pennsylvania Press, 2020), 1–9.

9 Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, eds. *Freedom of Religion or Belief: An International Law Commentary*. (Oxford, UK: Oxford University Press, 2016), 11.

10 For a detailed review of existing documents, see e.g. Bielefeldt, Ghanea, and Wiener. *Freedom of Religion or Belief*; Tore Lindholm, W.Cole Durham Jr. and Bahia Tahzib-Lie, eds. *Facilitating Freedom of Religion or Belief: A Deskbook*. (Leiden: Martinus Nijhoff, 2004).

- 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 in conformity with their own convictions.<sup>11</sup>

Other articles in the ICCPR relevant for freedom of religion or belief are: Article 19 – freedom of opinion and expression, Article 20 – prohibition of propaganda advocating war or national, racial or religious hatred, Article 27 – the right for members of religious, ethnic or linguistic minorities as well as articles on non-discriminations, and Articles 2:1; 24:1 and 26.

A declaration that deals specifically with freedom of religion or belief is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and considered as “the most important global instrument regarding religious rights.”<sup>12</sup> Important is that the declaration establishes in Article 6 a list with manifestations of freedom of religion or belief to be generally recognized (see below).

The Human Rights Committee is a key international body in monitoring and giving clarifications based on the ICCPR. The most significant contribution so far is the General Comment 22 elaborating Article 18 of the ICCPR provisions on freedom of thought, conscience and religion. Important in the UN system are also resolutions of the Human Rights Council, the General Assembly and other UN organs in relevant parts. Also, relevant treaty bodies and provisions are the International Humanitarian Law (Geneva Conventions and Protocols), the International Criminal Law and conventions from UNESCO and ILO.

Another key actor is the Special Rapporteur on freedom of religion or belief as an independent expert appointed by the UN Human Rights Council. The duty of the Rapporteur is “to identify existing and emerging obstacles to

11 “International Covenant on Civil and Political Rights.”

12 Natan Lerner, “The Nature and Minimum Standards for Freedom of Religion or Belief,” in *Facilitating Freedom of Religion or Belief: A Deskbook*, edited by Tore Lindholm, W. Cole Durham Jr., and Bahia Tahzib-Lie. (Leiden: Martinus Nijhoff, 2004), 72.

the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles.”<sup>13</sup>

Non-Governmental Organisations including religious institutions with accreditation status in the UN and regional systems have a consultative role to play and can also create awareness in different lobby activities and media.

The international system also contains relevant articles in the Convention on the Prevention and Punishment of the Crime of Genocide (1951), the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the International Covenant on Economic, Social and Cultural Rights (1976), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), the Convention on the Rights of the Child (1990), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2003).

## 2.2 *Regional Systems*

Three regional documents can be mentioned – African, American and European. The African Charter on Human and Peoples' Rights (1986), Article 8:

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The American Convention on Human Rights (1978), Article 12:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

The European Convention on Human Rights (ECHR, 1953), Article 9):

<sup>13</sup> “Special Rapporteur on freedom of religion or belief.” OHCHR, accessed October 10, 2021, <https://www.ohchr.org/en/issues/freedomreligion/pages/freedomreligionindex.aspx>.

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

At the regional level a significant jurisprudence has emerged through court decisions – the European Court of Human Rights in Strasbourg, the Inter-American Court of Human Rights in San José, and the African Court on Human and Peoples' Rights in Arusha. The European Court of Human Rights has been characterized as “the most effective of the regional human rights systems” depending on being able to make binding decisions.<sup>14</sup> The provisions of Article 9 in the ECHR and Article 18 in the ICCPR are consistent, which means that decisions of the European Court of Human Rights may have further validity than regionally.

Other important actors on regional level are the Organization for Security and Cooperation in Europe (OSCE)<sup>15</sup> and European Union (EU).<sup>16</sup>

So, to determine a current regulation concerning freedom of religion or belief is a challenging task even if the basic factors are in place. In the end, the regulations meet with the legislation and interpretation of the individual States, which in many cases leads to violations and deviations from the internationally recognized rights.

### 3 Religions, Religious Communities and Each and Everyone

Believers usually share a basic idea to come together and meet in fellowship with like-minded people. They unite in congregations, faith communities,

14 The Editors, with Nazila Ghanea, “Introduction,” in *Facilitating Freedom of Religion or Belief: A Deskbook*, edited by Tore Lindholm, W.Cole Durham Jr., and Bahia Tahzib-Lie. (Leiden: Martinus Nijhoff, 2004), LIII.

15 See e.g. “Freedom of Religion or Belief,” OSCE, accessed October 10, 2021, <https://www.osce.org/odihr/freedom-of-religion-or-belief>.

16 See e.g. “EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief,” Council of the European Union, accessed October 10, 2021, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/137585.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf).

associations etc. As the need arose to gather, premises such as temples, synagogues, mosques, churches, houses of prayer, meeting rooms or huge cathedrals are built. Being together in order to manifest a religion or belief is thus a fundamental expression in most faiths, both those that have thousands of years of traditions and those that are relatively newly established.

The ultimate purpose of human rights is to protect the individual human being in his or her rights and against violations and violence. The individual is the rights holder while the State is the duty bearer and, in these capacities, the relation between the State and the individual person is in focus. Thus, it is of the utmost importance to differentiate this right from the religions and beliefs as such and what they may consider to be their rightful right. Simply put, human rights do not protect a religion, a belief, or a religious community as such but the rights of the individual to uphold and to manifest the faith. A way of expressing this is “freedom of religion or belief protects ‘believers rather than beliefs.’”<sup>17</sup>

The right is individual but at the same time the protection is for the individual “either individually or in community with others.” It means the rights to gather, to unite in an organized form, to gather in designated premises and so on. So, the right is manifested in a social context, and not limited to what happens in specific premises, but can also be expressed in public. A number of states in the world have introduced special requirements for a religious organization to be legally recognized. This can easily become a means of government control. There may be different reasons why a group is not recognized or wants to receive formal recognition. But the individual’s freedom of religion or belief should not depend on whether a group obtains legal status. For example, the European Court of Human Rights accepts complaints about violations from religious organizations on behalf of their members.<sup>18</sup>

It can be argued that from a human rights perspective, the relationship between state and religious communities as such is complicated. Even if they are not protected as such, according to the UN General Comment 34, it is not allowed for a state to by law “discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers.” Nor is it allowed to use the law in order “to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”<sup>19</sup>

17 Bielefeldt, Ghanea, and Wiener. *Freedom of Religion or Belief*, 11.

18 See e.g. *CHA'ARE SHALOM VE TSEDEK v. FRANCE* (Application no. 27417/95, 27 June 2000); *CASE OF MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND* (Application no. 16354/06, 13 July 2012).

19 “General Comment No. 34,” United Nations Digital Library, 12, accessed October 10, 2021, <https://digitallibrary.un.org/record/715606>.



In a report to the UN General Assembly, the then UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, commented on defamation of religion and the right to freedom of religion or belief. A few quotations from the report give an indication of the tensions.

- As such, the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule. ... (par. 36)
- ... Defamation of religions may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. ... (par. 37)
- ... The rigorous protection of religions as such may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash. ... par. 42)
- According to article 20 of the Covenant, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” (par. 44)
- ... The recognition, respect and practice of religious pluralism, which encompasses criticism, discussion and questioning of each other’s values, should be the cornerstone of their relationships and their combat against all forms of discrimination. (par. 65).<sup>20</sup>

The then UN Special Rapporteur, Abdelfattah Amor, in a report on the elimination of all forms of religious intolerance, encouraged already 2001 all states as well as relevant non-governmental organizations, intergovernmental organizations and media to promote a “culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of mankind (Article 27)”<sup>21</sup>

#### 4 Normative Core of Freedom of Religion or Belief

To identify a universal human rights standard and the common norms concerning freedom of religion or belief is in one way complex and at the same time a great deal of consensus exists. In order to explain the issue, the book *Facilitating Freedom of Religion or Belief*<sup>22</sup> uses 1017 pages, *Freedom of Religion*

20 “A/HRC/2/320 September 2006,” refworld, accessed October 10, 2021, <https://www.refworld.org/docid/45c30b640.html>.

21 “Rapporteur’s Digest on Freedom of Religion or Belief,” Special Rapporteur on freedom of religion or belief, 18, accessed October 10, 2021, <https://www.ohchr.org/documents/issues/religion/rapporteursdigestfreedomreligionbelief.pdf>.

22 Lindholm, Durham Jr., and Tahzib-Lie. *Facilitating Freedom of Religion or Belief*.

TABLE 1

<i>(Facilitating ...)</i>	<i>(What Freedom ...)</i>	<i>(Freedom of...)</i>
1. Internal freedom	1. The freedom to have, choose, change or leave a religion or belief	1.1. Freedom to Adopt, Change, or Renounce a Religion or Belief
2. External freedom	2. Freedom to manifest a religion or belief	1.3. The Right to Manifest One's Religion or Belief
3. Noncoercion	3. Protection from coercion	1.2. Freedom from Coercion
4. Nondiscrimination	4. Protection from discrimination	Discrimination
5. Rights of parents and guardians	5. Parents rights, children's rights	Vulnerable Groups (Women; Persons Deprived of Their Liberty; Refugees, Asylum Seekers, and Internally Displaced Persons; Children; Minorities; Migrant Workers)
6. Corporate freedom and legal status	6. The right to conscientious objection	
7. Limits of permissible restrictions on external freedom		
8. Nonderogability	7. Employers and employees	

*or Belief*<sup>23</sup> are done with 660 pages while the booklet *What Freedom of Religion Involves and when it Can Be Limited*<sup>24</sup> gives the main points in 18 pages.

Agreement is overwhelming in general and specifically when it comes to the first four points, internal freedom, external freedom, protection from coercion and protection from discrimination. While two of the entities concentrate on parents' and, children's rights the third includes several vulnerable groups.

23 Bielefeldt, Ghana, and Wiener. *Freedom of Religion or Belief*.

24 *What Freedom of Religion Involves and when it Can Be Limited*. Bromma: Swedish Mission Council, 2012. For a series of short films, see e.g. FORB Learning Platform, <https://www.forb-learning.org/film-resources.html>.

## 5 Forum Internum – Internal Freedom

What is considered to be the internal dimension of freedom of religion or belief is labelled *forum internum*. The Convention expresses it as “freedom to have or to adopt a religion or belief of his choice.”<sup>25</sup> The important fact with *forum internum*, the core of a person’s convictions, is that this aspect of the right can never be restricted, thus having unconditional protection. Regarded as an absolute freedom, the State cannot interfere with *forum internum*.

### 5.1 *Freedom of Choice*

Freedom to adopt, change, or renounce a religion or a belief is considered as basic from a human rights’ perspective and a cornerstone since it strengthens the human being. The ICCPR states it is by “choice.”<sup>26</sup> Still, the right to change, the freedom of choice – both in terminology and in content – are controversial and challenged by some states as well as some religious authorities. A culture of unity and harmony in religion can be beneficial for both the State and the majority religion, but at the same time be offensive to dissenting views and minority communities. Examples are discrimination, pressure to reconvert, harassment, violent attacks and even killings of a person choosing to convert to or renounce faith. Another example is the protection of a specific religion or belief through for example family laws at the expense of each individual’s right to choose or renounce faith. Any restriction of the right to choose religion or belief is a threat to a pluralistic society and contrary to the unconditional protection according to freedom of religion or belief.<sup>27</sup> This means that the State does not have the right to limit in any way the freedom to adopt, change, or renounce a religion or a belief.

### 5.2 *The Right to Freedom of Conscience*

The expression “freedom of conscience” is included in declarations and conventions. It is not about every opinion that may result in manifestations but existential convictions based on, as expressed by the European Court of Human Rights, “views that attain a certain level of cogency, seriousness, cohesion and importance.”<sup>28</sup> It has been argued that on an ethical and moral level, the right calls on everyone to be responsible and to give space for freedom and

25 “International Covenant on Civil and Political Rights,” Article 18:1.

26 *Ibid.*, 18:2.

27 For the concept *forum internum*, see below.

28 *CASE OF CAMPBELL AND COSANS V. THE UNITED KINGDOM* (Application no. 7511/76; 7743/76) 25 February 1982 § 36.

limit violence and oppression with reason and empathy.<sup>29</sup> The right to follow a moral conviction or concern as expressions of an individual's identity is basic in order to protect diversity in societies. At the same time, the border line is not clear between what is protected and what is not. When the manifestation of freedom of conscience appears in international case law it is about for example participation in carrying out abortions, paying tax, saluting the flag, singing the national anthem and swearing an oath. The right can be violated by the State but also in the society as well as when it comes to employment. In all the cases, the State has an obligation to protect.

The right to conscientious objection in the form of refusing military service is an issue in states with compulsory military service for its citizens. The conventions do not explicitly mention conscientious objection. But, the Human Rights Committee states "that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."<sup>30</sup> Still, the opposition to this interpretation is strong from some states resulting in imprisonment or sanctions against the individual claiming the right.

### 5.3 *Freedom from Coercion*

Protection from coercion is unconditional not allowing any restriction. The General Comment 22 clarifies the significance of the ICCPR:

Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.<sup>31</sup>

No compulsion may occur when it comes to a person's will to change, or maintain a religion or belief. Violence and coercion in relation to religion and belief are clearly marked as incompatible with the standard of international human rights. Issues at stake are laws that prevent conversion, forced conversions, reprisals and violence against converts or exclusion from positions in society or education because a conversion. But also, regulations concerning interreligious marriage. One way of explaining it is that a critical line "runs between

<sup>29</sup> Susanne Wigorts Yngvesson, *Frihet till samvete*. (Stockholm: Timbro, 2016), 8.

<sup>30</sup> "CCPR General Comment No. 22," 11.

<sup>31</sup> *Ibid.*, 5.

respect for freedom on the one hand and different forms of authoritarianism—in particular the threat and use of coercion—on the other.”<sup>32</sup>

#### 5.4 *Non-discrimination*

Equality for each and every one is in the human rights system a cornerstone for a pluralistic society and require equality before the law and no one should be discriminated against.<sup>33</sup> A prohibition of discrimination – both direct and indirect – based on religion or belief is established in several conventions and declarations as well as in UN resolutions. “Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity ... and shall be condemned as a violation of the human rights and fundamental freedoms ...”<sup>34</sup> At the same time, the real situation in many states shows that discrimination occurs frequently and not least towards minorities, immigrant denominations, new religious communities or atheists. Discrimination in many cases is gender related and target specifically women. Religious intolerance can depend on for example legislation or restrictions by the State, on hostility in a society but also on the activities of religious communities.

Some states have declared a religion as State religion. It may look very different from country to country and a consequence of an established religion may be discrimination against other beliefs, sometimes under the auspices of the law. The General Comment 22 prescribes that such a situation “shall not result in any impairment of the enjoyment of any of the rights under the Covenant ... nor in any discrimination against adherents to other religions or non-believers.”<sup>35</sup> State religion as such is not prohibited according to the human rights system but a lot of crucial issues can be raised not the least in relation to discrimination by the State who at the same time is supposed to protect and promote freedom of religion or belief.

#### 5.5 *In Need of Special Protection*

Despite an international system for the defence of the individual, violations occur from the State, within society and from individuals. Here are some examples of the need for effective protection. Incitement, hatred, hate speech and violence solely because of a person’s beliefs such as anti-Semitism, Islamophobia and Christianophobia.

32 Bielefeldt, Ghana, and Wiener. *Freedom of Religion or Belief*, 70.

33 “Universal Declaration of Human Rights,” Article 7.

34 “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,” Article 3.

35 “General Comment No. 22”, par 9.

## 6. *Forum Externum* – Manifestations

An individual person may in daily life experience that the *forum externum* and *forum internum* may be interwoven and interrelated. It has been suggested that both dimensions should generally be seen in a continuum and always be seen in conjunction.<sup>36</sup> The inner conviction governs what exercises you perform and is completely dependent on the possibility of practicing religion or belief. According to the ICCPR, the conviction of a person will lead to “worship, observance, practice and teaching.”

An essential part is the right to manifest a faith which constitutes a right for the individual but may be performed in community with others. This is as important as having a religion and it can be conducted in private or in public. The UDHR puts it “to manifest his religion or belief in teaching, practice, worship and observance.” The ICCPR uses the same wording but placing “worship, observance” first in order.

The manifestations of religions or beliefs may as *forum externum* be protected. Before dealing with what is protected in relation to freedom of religion or belief some remarks on limitations. Manifestations as *forum externum* may be limited under specific circumstances according to the preconditions in ICCPR, Article 18:3. A first necessary precondition is that the limitation is prescribed by law. A second precondition is that the limitation is necessary “to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Bielefeldt and Wiener note: “What it signifies is that states do not have a general permission to impose limitations as they see fit. Instead, it is the other way around in that limitations are generally impermissible – unless and until the said criteria are fully met.”<sup>37</sup>

To be legally prescribed and with a legitimate aim may seem simple, but when it comes to individual States, it opens up for misuse when implementing restrictions. An individual component such as morality can be perceived completely differently depending on factors such as culture, religion, politics and thus justify discrimination of undesirable religious groups in the State. But according to Nowak and Vospernik “limitations that would appropriately be justified on the ground of morals could for the most part be justified by reference to protection of the fundamental rights of third parties” and the term public order can be used narrowly to prevent public disorder.<sup>38</sup>

36 Bielefeldt, Ghana, and Wiener. *Freedom of Religion or Belief*, 82, 93.

37 Bielefeldt, Heiner and Michael Wiener. *Religious Freedom Under Scrutiny*, 56.

38 Manfred Nowak and Tanja Vospernik, “Permissible Restrictions on Freedom of Religion or Belief” in *Facilitating Freedom of Religion or Belief: A Deskbook* edited by Tore Lindholm, W.Cole Durham Jr. and Bahia Tahzib-Lie. (Leiden: Martinus Nijhoff, 2004), 150–160.

The jurisprudence of the European Court of Human Rights uses the doctrine of margin of appreciation giving the member States opportunities to accommodate ethnic, cultural, or religious peculiarities, thus being context dependent and indicating that each member State may have their own approach.<sup>39</sup> On the international level, the Human Rights Committee does not usually grant states a wide margin of appreciation.<sup>40</sup> In a thematic report, the Special Rapporteur on freedom of religion or belief, Asma Jahangir, “cautioned that this doctrine should not lead to questioning the international consensus.”<sup>41</sup>

Regarding manifestations of freedom of religion or belief, there are of course not a complete or jointly established list of activities. Still, it is possible to offer guidelines about what is included in manifestation as laid down in the directives.

In the following, four different sources are used: The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 6 (referred to as Declaration 1981), UN Human Rights Committee’s General Comment No. 22, § 4 (referred to as General Comment), and the Digest made by the Special Rapporteur on freedom of religion or belief, part 1:3 (referred to as Special Rapporteur).<sup>42</sup> For the countries belonging to the European Union, there is the EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief, § 40 (referred to as EU Guidelines).<sup>43</sup> It is important to remember that the General Comment is the elaboration of the intention of the ICCPR. The Rapporteur is appointed by the United Nations Human Rights Council and is acting as an independent expert. Even when headlines are presented, it is important to keep in mind that they are never exhaustive but indicative.

### 6.1 *Worship and Places of Worship*

The Declaration 1981 states that the freedom includes “a) worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.” The General Comment rephrases with “building of places of worship” while the Special Rapporteur emphasises freedom to worship and places of worship as well as questions related to registration. In comparison, the EU Guidelines note that “limitation on places of worship and state registration of religious or belief groups, must be exceptional.”

39 “Margin of Appreciation,” Council of Europe, accessed October 10, 2021, [https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp).

40 Bielefeldt, Ghana, and Wiener. *Freedom of Religion or Belief*, 565.

41 *Ibid.*, 154.

42 “Rapporteur’s Digest on Freedom of Religion or Belief,” <https://www.ohchr.org/documents/issues/religion/rapporteursdigestfreedomreligionbelief.pdf>.

43 “EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief.”

Individuals can exercise their right together with others which includes having a building or place for, for example, worship and the celebration of holy days even if this may differ from community to community. Violations of this right are ongoing in different states through unequal registration requirements, and for certain communities bans against or special restrictions on the construction of a building for worship. Social tensions between different groups in societies sometimes result in attacks and violations of sacred sites with devastating results. Religious buildings and cemeteries are frequently exposed to destruction, damage, vandalism, desecration, graffiti etc. Communities and individuals are targeted by threats, assaults, hostile writings, hate crimes, extreme violence and terrorist attacks.<sup>44</sup> In its capacity as the duty bearer, the State has an obligation to protect the believer who visits a holy place, to protect religious leaders, priests and teachers, as well as to safe-guard the buildings and cemeteries as such. When clarifying the range of the ICCPR, the General Comment includes on the freedom the “use of a particular language customarily spoken by a group.” In summary it is possible to use the phrasing from the EU Guidelines “Individuals, have the right to decide for themselves whether and how they wish to manifest their religion or belief” (§ 40).

## 6.2 *Ritual, Ceremonial Acts, Symbols and Dietary Regulations*

The right to manifestation includes according the Declaration 1981 to “c) make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.” The General Comment further explains this in three points, “ritual and ceremonial acts giving direct expression to belief”, “use of ritual formulae and objects” and “display of symbols.” The Special Rapporteur talks about “religious symbols” and “participation in rituals associated with certain stages of life.” This clarification offers more details compared to the more general concept of worship and enables parts of what the conventions describe as observance and practice.

The use of symbols in the public sphere gives expression of religious pluralism in a society but also raises questions about how public officials, such as police, teachers and even pupils at public schools, can wear religious symbols. At stake is also if a state or other actors force a person to use a religious symbol, a violation to the freedom. Distinctive clothing as garments and head coverings

44 Organisations regularly reporting violations against freedom of religion or belief in different parts of the world are for example Human Rights Without Frontiers (HRWF) – <https://hrwf.eu/> and Forum 18 – <https://www.forum18.org/>. The homepage Safer and Stronger Communities in Europe (SASCE) gives information for individuals and religious communities that may be targeted – <https://www.sasce.eu/>.



are often closely connected to the identity of an individual, both for clergy and the believers in general. The General Comment clarifies the range of freedom of religion or belief to include “wearing of distinctive clothing or head-coverings.” Further, the General Comment includes in the freedom according to ICCPR “observance of dietary regulations.” This has caused questions of interpretation about the right to slaughter based on religious regulations. The European Court of Human Rights states that “ritual slaughter must be considered to be covered by a right guaranteed by the Convention [ECHR], namely the right to manifest one’s religion in observance ...”.<sup>45</sup>

The UN system has also made clear there are limits, for example excluding rituals that are harmful traditional practices and rituals violating the fundamental rights of others such as female genital mutilation.<sup>46</sup>

### 6.3 *Holidays and Days of Rest*

According to the Declaration 1981, freedom of religion or belief includes the right to “h) observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief.” Both the General Comment and the Special Rapporteur writes “observance of holidays and days of rest.”

It is an integral part of most religious systems to be able to celebrate Holy days and specific festivals. This may be done in the family setting or in the special places for worship. Also, this includes the manifestation of annual Holy days in the public sphere through for example pilgrimages and decoration of sacred buildings and places. In a pluralistic society, this aspect of the right is of great importance as it gives visible expression to the presence of members belonging to different religions.

### 6.4 *Contributions and Charitable or Humanitarian Institutions*

The Declaration 1981 declares the right to “b) establish and maintain appropriate charitable or humanitarian institutions” and to “f) solicit and receive voluntary financial and other contributions from individuals and institutions.” This corresponds to what is mentioned by the Special Rapporteur as “solicit and receive funding” but is not mentioned by the General Comment. This aspect of the freedom relates to the ICCPR concept “practice” and to some degree to “teaching.”

45 *CHA’ARE SHALOM VE TSEDEK v. FRANCE* (Application no. 27417/95, 27 June 2000), 73.

46 See e.g. “Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children,” Unites Nations, accessed December 11, 2021, <https://www.un.org/ruleoflaw/files/FactSheet23en.pdf>.

Several states have put restrictions on receiving funds from abroad or accusing the receiving part for collaboration with foreign powers. In many cases, the pluralism of religions and beliefs do not know about geographical boundaries and these kinds of violations of the right can be very harmful for believers.

### 6.5 *Disseminating Materials, Teaching and Missionary Activities*

The Declaration 1981 states the right to “d) write, issue and disseminate relevant publications in these areas” and “e) teach a religion or belief in places suitable for these purposes.” The General Comment choose to note that this part of the freedom includes the right to “establish seminaries or religious schools” as well as “prepare and distribute religious texts or publications.” The Special Rapporteur clarifies one aspect of teaching as well as of disseminating materials with “including missionary activity.” The EU Guidelines adds an additional condition namely, that it should be peaceful through “right to peacefully share one’s religion or belief with others.” Discussions are ongoing on reaching out to numerically small isolated indigenous peoples. Even if the right includes the conversion of others non-coercively, in some states there is a discussion about the right to convert as such and proselytising.

### 6.6 *Children and Parents*

The Special Rapporteur includes “the right of parents to ensure the religious and moral education of their children.” This is not included in the list of the Declaration 1981 but of such importance that it has been given a specific Article 5. The parents or the legal guardians “have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up” (5:1). The child “shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents ... the best interests of the child being the guiding principle” (5:2). It is also possible to read out a limitation since the child “shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of other” (5:3).

In the EU guidelines, the perspective completely changes to also include a clear child-oriented perspective when noting “the right of children to learn about the faith/belief of their parents, and the right of parents to teach their children in the tenets of their religion or belief.”

The expressions “best interest of the child” brings to mind the Convention on the Rights of the Child where the best interest of the child is one of the bearing principles. Article 14 give “the right of the child to freedom of thought, conscience and religion” (14:1) and to the parents/legal guardians “to provide direction to the child in the exercise of his or her right in a manner consistent

with the evolving capacities of the child” (14:2). It is thus about satisfying both parents’ right to the spiritual upbringing of the child and the child’s right to religious freedom consistent with its evolving capacities.

### 6.7 *Religious Leaders and Communication*

The Declaration 1981 includes the right to: “(g) train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief.” The General Comment uses an explanation “freedom to choose their religious leaders, priests and teachers” while the Special Rapporteur, in short, establishes “appointing clergy.” This aspect of the freedom relates to the ICCPR concepts “practice” and “teaching.” This means that direct state restriction or interference against the will of the faithful are a violation against a religious community that wishes to appoint a religious leader. But important is also the right to train people for leadership.

Also, the Declaration 1981 talks about communication and the right to “(i) establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels” with more or less the same formulation by the Special Rapporteur.

## 7 **Vulnerable Groups and Intersectional Violations**

Violations of freedom of religion or belief need to be viewed from an intersectional perspective where different power structures and grounds for discrimination affect and sometimes reinforce each other. Bielefeldt, Ghana, and Wiener deal with vulnerable groups like women, persons deprived of their liberty, refugees, asylum seekers, and internally displaced persons, children, minorities and migrant workers.<sup>47</sup>

Belonging to a minority religion may cause violations but being female and belonging to the minority may cause experiencing more violations from the majority but also from inside the minority group. The combination minority, female and disabled or migrant worker may give another set of severe violations and so on.

Some of the vulnerable groups have got special conventions for protection. The *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of Persons with Disabilities* do not have specific articles on religion or belief. The *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* guarantee the right to

47 Bielefeldt, Ghana, and Wiener. *Freedom of Religion or Belief*, part 3.

freedom of thought, conscience and religion in Article 12. Already in 1951, the *Convention relating to the Status of Refugees* stated in Article 4 that the state “shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.”

## 8 Human Rights, Universality and Particularistic Claims

Freedom of religion or belief overlap partly and thus intersects with other rights as e.g. freedoms of assembly, freedoms of association, freedoms of movement, freedoms of expression and minority rights. This may in particular states cause controversies on how to relate the different rights.

One of the important challenges for freedom of religion or belief comes from within established religions and communities that argue that their tradition, culture, practice of religion is crucial even if they go against freedom of religion or belief as expressed through the human rights. Examples are freedoms of expression, the rights of the child and of women, the right to change religion, proselytism, the protection of animals, gender issues and sexual orientation. The core of the international system of religion and freedom or belief states that the fundamental implications of the right are universal. To talk about a human right as universal is made in the light of the equality of all human beings. The UDHR provides a starting point in Article 1: “All human beings are born free and equal in dignity and rights.” As Nazila Ghanea and editors state: “It constitutes a *universal* call to respect *particular* world views and requires *particular* faith to endorse *universal* religious freedom.”<sup>48</sup>

The Vienna Declaration and Programme of Action from 1993 has become a guiding principle on how to look upon the multitude of different human rights in relation to each other.

All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.<sup>49</sup>

48 The Editors, with Nazila Ghanea, “Introduction,” in Tore Lindholm, W.Cole Durham Jr., and Bahia Tahzib-Lie (eds.) *Facilitating Freedom of Religion or Belief: A Deskbook*. Leiden: Martinus Nijhoff, 2004.

49 “Vienna Declaration and Programme of Action,” OHCHR, accessed December 20, 2021, <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

Taking freedom of religion or belief seriously as a universal human right is made in the light of the equality of all human beings because of being human. As the UDHR states in Article 1:

All human beings are born free and equal in dignity and rights.

## Bibliography

### Books

- Bielefeldt, Heiner, and Michael Wiener. *Religious Freedom Under Scrutiny*. Philadelphia: University of Pennsylvania Press, 2020.
- Bielefeldt, Heiner, Nazila Ghanea, and Michael Wiener (eds.). *Freedom of Religion or Belief: An International Law Commentary*. Oxford, UK: Oxford University Press, 2016.
- Lerner, Natan. *Religion, Beliefs, and International Human Rights*. New York: Orbis Books, 2000.
- Lindholm, Tore, W. Cole Durham Jr., and Bahia Tahzib-Lie (eds.). *Facilitating Freedom of Religion or Belief: A Deskbook*. Leiden: Martinus Nijhoff, 2004.
- Tahzib, Bahiyih G. *Freedom of Religion or Belief. Ensuring Effective International Legal Protection*. The Hague: Martinus Nijhoff Publishers, 1996.
- What Freedom of Religion Involves and when it Can Be Limited*. Bromma: Swedish Mission Council, 2012.
- Wigorts Yngvesson, Susanne. *Frihet till samvete*. Stockholm: Timbro, 2016.

### Book Chapters

- The Editors, with Nazila Ghanea. "Introduction." In *Facilitating Freedom of Religion or Belief: A Deskbook* edited by Tore Lindholm, W. Cole Durham Jr. and Bahia Tahzib-Lie, xxvii–xlivi. Leiden: Martinus Nijhoff, 2004.
- Lerner, Natan. "The Nature and Minimum Standards for Freedom of Religion or Belief." In *Facilitating Freedom of Religion or Belief: A Deskbook* edited by Tore Lindholm, W. Cole Durham Jr. and Bahia Tahzib-Lie, 63–83. Leiden: Martinus Nijhoff, 2004.
- Manfred Nowak and Tanja Vospernik, "Premissible Restrictions on Freedom of Religion or Belief." In *Facilitating Freedom of Religion or Belief: A Deskbook* edited by Tore Lindholm, W. Cole Durham Jr. and Bahia Tahzib-Lie, 147–172. Leiden: Martinus Nijhoff, 2004.
- Swidler, Leonard, "Human Rights and Religious Liberty – From the Past to the Future," in *Religious Liberty and Human Rights in Nations and in Religions*, edited by Leonard Swidler, vii–xvi. Philadelphia: Ecumenical Press, 1986.

### Cases

- Cha'are Shalom ve Tedek v France* (Application no. 27417/95), ECHR June 27, 2000.

*Case of Mouvement Raëlien Suisse v Switzerland* (Application no. 16354/06), ECHR July 13, 2012.

*Case of Campbell and Cosans v The United Kingdom* (Application no. 7511/76; 7743/76), ECHR February, 25 1982.

### *Legal Instruments*

African Charter on Human and Peoples' Rights, 1981.

A/HRC/2/3, 2006.

American Convention on Human Rights, 1969.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981.

European Convention on Human Rights, 1950.

General Comment No. 22, 1993.

General Comment No. 34, 2011.

International Covenant on Civil and Political Rights, 1966.

Universal Declaration of Human Rights, 1948.

Vienna Declaration and Programme of Action, 1993.

### *Website Content*

Council of Europe, "Margin of Appreciation," [https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp) (accessed October 10, 2021).

Council of the European Union, "EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief," [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/137585.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf) (accessed October 10, 2021).

OHCHR, "Special Rapporteur on freedom of religion or belief," <https://www.ohchr.org/en/issues/freedomreligion/pages/freedomreligionindex.aspx> (accessed October 10, 2021).

OSCE, "Freedom of Religion or Belief," <https://www.osce.org/odhr/freedom-of-religion-or-belief> (accessed October 10, 2021).

Special Rapporteur on freedom of religion or belief, "Rapporteur's Digest on Freedom of Religion or Belief," <https://www.ohchr.org/documents/issues/religion/rapporteursdigestfreedomreligionbelief.pdf> (accessed October 10, 2021).

United Nations, "Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children," <https://www.un.org/ruleoflaw/files/FactSheet23en.pdf> (accessed December 11, 2021).