

Freedom to Believe

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Introduction

Over fifty years ago, the Universal Declaration of Human Rights boldly proclaimed the inherent dignity and the equal rights of all members of the human family. Guided by the vision of equality for all, the Declaration enshrined the fundamental right of every human being to freedom of thought, conscience and religion. Despite the international community's unanimous¹ adoption of this Declaration and its codification in subsequent instruments of international law², the world bears witness to persistent intolerance and discrimination based on religion or belief, the proliferation of violence in the name of religion, the manipulation of religion in the interest of political ideology, and increasing tensions between religion and State policies³. The rising tide of religious extremism has fuelled these developments, threatening security, human development, and efforts towards peace. Widespread violations of this right -- most often targeting women and minorities -- have continued. Given the interdependence of human rights, such violations have compromised, among others, the right to education, employment, peaceful assembly, citizenship, political participation, health, and at times, life itself. Indeed, the promise of freedom of religion or belief for all remains one of the most contested and pressing human rights of our time.

The freedom to hold beliefs of one's choosing and to change them is central to human development. It is the individual's search for meaning and the desire to know who we are as human beings that distinguishes the human conscience. As such, we applaud the United Nations Development Programme for its 2004 Human Development Report titled, 'Cultural Liberty in Today's Diverse World,' which, for the first time in the Report's fifteen year history, acknowledged cultural liberty as a 'vital part of human development' and affirmed the 'profound importance of religion to people's identities.'⁴ Indeed, the concept and analysis of human development throughout the Human Development Reports have evolved dramatically out of a materialist approach centered on wealth and income to embrace the concept of development as the expansion of human freedoms. By including cultural freedom in its analysis -- including the freedom of religion or belief - the UNDP once again broadened the conceptual framework underpinning the evaluation of progress in human development.⁵

The UNDP's focus could not be more timely. Human development and security - two issues at the heart of today's global agenda - have refocused the attention of the international community on the question of human freedom. In the United Nations Millennium Declaration and the ensuing Millennium Development Goals, the nations of the world identified freedom as a 'fundamental value essential to international relations in the twenty-first century.'⁶ Similarly, the widely noted 2002 Arab Human Development Report -- a pioneer effort by Arab scholars -- identified freedom as both the 'guarantor and the goal' of human development

and human rights, singling it out as a primary requisite for development in the region. In preparation for the comprehensive review process at the upcoming High-Level meeting of the United Nations General Assembly, the Secretary General, in two pivotal reports to the General Assembly, stressed the critical relationship between development, security and human freedom.⁷ Indeed, there can be no development without security, no security without development, and both must be anchored in a firm commitment to the protection of human rights and freedoms for all.

The UNDP Report has set the stage for an earnest re-examination of the role of freedom of thought, conscience and religion in human development -- an examination anchored in the recognition of the dignity of the human conscience and guided by the standard of equality set by the Universal Declaration of Human Rights. As a worldwide religious community, which regards the human conscience as sacred and believes in the independent search for truth, we urge the UNDP to give serious consideration to four critical issues intimately related to its Report: (1) the right to change one's religion or beliefs; (2) the right to share one's beliefs with others; (3) the responsibilities of the international community and national governments vis-à-vis marginalized and peacefully organized religious communities; and (4) the responsibilities of religious leaders vis-à-vis the promotion and protection of the right to freedom of religion or belief. We will address each issue in turn and conclude with recommendations for United Nations' work in this arena.

The right to change one's religion or beliefs

The Human Development Report defines cultural liberty as the 'capability of people to live and be what they choose, with adequate opportunity to consider other options.'⁸ The Report, however, focuses primarily on cultural exclusion⁹ based on 'external' manifestations of one's religion or belief while omitting from its discussion the core dimension of cultural exclusion -- namely a denial of the 'internal' right to change one's religion or belief.¹⁰ The Universal Declaration of Human Rights, in Article 18, explicitly affirms that,

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.¹¹

The right to change one's religion or belief is accorded the status of a non-derogable right -- a right that is protected unconditionally and is, at no time, subject to government regulation.¹² The special measure of protection accorded to this right reflects its place in safeguarding the dignity of the human being. Indeed, the individual's search for truth and meaning is an activity most intimately linked with the human conscience and with the desire to see the world through one's own eyes and to understand it through one's own faculties of perception and intelligence. As such, it is inextricably linked with all facets of human development.

Due to pressure from dissenting States, however, subsequent United Nations

treaties have used weaker language to define this right, failing to uphold the unambiguous standard set by the Declaration.¹³ Even the General Assembly's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief issued by the General Assembly does not explicitly affirm the right to change one's religion or belief.¹⁴ In what is perhaps the most comprehensive articulation of the right to date, the Human Rights Committee has identified the freedom to change religion or belief, freedom to manifest beliefs, non-coercion in matters of religion, and non-discrimination on the basis of religion as core components of this right as provided for in the Declaration.¹⁵ Alongside United Nations jurisprudence, global conferences and gatherings¹⁶ over the last 15 years have generated near universal commitments to promote and respect freedom of religion or belief. As signatories to the Universal Declaration and subsequent treaties and global commitments, governments bear the primary responsibility to create, safeguard, and promote the necessary conditions for the enjoyment of the freedom of conscience, religion or belief for all of their citizens.

The right to teach one's religion or beliefs

Intimately connected with the freedom to hold and to change one's religion or belief is the freedom to share those beliefs with others. Within the broad range of activities potentially encompassed by the freedom to manifest one's religion or beliefs- the right to teach one's religion or beliefs has been particularly contentious.¹⁷ While the Declaration calls for the unconditional protection of the 'internal' right to freedom of religion, the 'external' right to manifest one's beliefs is subject to limitations: Governments are permitted to place restrictions on this right for purposes of 'meeting the just requirements of morality, public order and the general welfare in a democratic society'.¹⁸ This latitude extended to States, however, has too often been abused in efforts to quell minority populations and has raised questions about what constitutes legitimate governmental interference in manifestations of religion or belief.

States argue that limiting the teaching of religions and the sharing of beliefs is necessary to preserve particular traditions and to protect the rights of the targeted populations, yet the right to freedom of religion or belief is necessarily contingent on the exposure to new ideas and the ability to share and receive information.¹⁹ Limitations on the basis of 'maintaining public order' and 'morality' have also been applied with considerable latitude and in a matter inconsistent with the principle of non-discrimination.²⁰

Non-democratic and theocratic States in particular have repeatedly issued such reservations without the burden of proof, calling into question not only their interpretation of this right but also their protection of related rights and freedoms such as the right to employment and education, and the freedom of speech and peaceful assembly, to name but a few.²¹ While the ability to place restrictions on the freedom of religion or belief can be meaningfully applied, States' abuse of these restrictions only exacerbates the marginalization of oppressed minorities.

The protection of the freedom of religion or belief must also entail vigilance in safeguarding citizens from the forces of extreme orthodoxy. Incitement to violence, extremism, or hostility in the name of religion must be forcefully sanctioned and unreservedly condemned.²² Similarly, States must consistently uphold the equality of women and men as a moral principle and article of international law, condemning actions in the name of religion, which deny human dignity and freedom of conscience to women. Ultimately, a long-term preventive strategy must be rooted in efforts to educate children and adults alike, equipping them with literacy skills and opportunities to learn about other systems of belief. Within a culture of education, people who can read the writings of their own religion as well as those of others, who are free to question and discuss, and who are able to participate in the generation and application of knowledge will be better prepared to counter the forces of ignorance and fanaticism.²³

Marginalized religious minorities

The challenge before States, and one of their central concerns as addressed in the Human Development Report, is the maintenance of social cohesion and national unity in the face of increasing cultural pluralism. The report cites the threats of social instability and violent protest as a primary imperative for States' need to accommodate minority claims. Indeed, marginalized groups seeking redress can become violent, forcing States to address their claims in order to prevent social unrest and potential threats to national security. Yet this reactive mode breeds a dangerous pattern and itself gives a preference to violence, particularly where peacefully organized groups find their pleas repeatedly ignored. It increases the level of discrimination as groups find themselves excluded on the basis of religion and ignored as a result of non-violent modes of seeking redress.

The actions of States therefore must go beyond purely material and practical considerations and be guided by the force of moral principles and the rule of law. Foremost among these principles is that of unity -- at the local, national, and global level -- grounded in the peaceful accommodation of cultural diversity. States must discard outmoded notions of cultural homogeneity and ideological uniformity as a guarantor of peace and security and come to embrace a plurality of identities and beliefs, gathered together under the canopy of just laws and universal human rights, as the foundation for a cohesive and prosperous society.

Religious leaders

The responsibility to uphold universal principles of freedom of religion or belief rests not only with States but with religious leaders as well. In a world harassed by violence and conflict in the name of religion, leaders of religious communities bear tremendous responsibility for guiding their followers towards a peaceful coexistence and mutual understanding with those who think and believe differently. Too often, those acting in the name of religion have fanned the flames of hatred and fanaticism, themselves serving as

the greatest obstacles in the path of peace. Despite these painful truths, we bear witness to the fact that the religions and faiths of the world with which the majority of the earth's inhabitants stand identified, have imparted a vast spiritual, moral, and civilizational legacy, which continues to succor and guide in these troubled times. Indeed, religions have reached to the roots of human motivation to lift our vision beyond purely material conceptions of reality to embrace higher notions of justice, reconciliation, love, and selflessness in the service of the common good.

Given the weight of culture and religion in shaping motivation and behavior, it is clear that legal mechanisms alone will not engender the commitment and mutual understanding required to sustain a culture of peaceful co-existence. The role of religious leaders as partners -- in word and deed - in the creation of a culture of respect for human dignity and freedom of conscience, religion, or belief cannot be understated. The forces of history now challenge every person of faith to identify spiritual principles within his or her own scriptures and traditions that answer the difficult questions posed by an age hungering for unity and justice in human affairs. In this common undertaking, based on an understanding of the inherent dignity, reason and conscience of every human being, religious leaders must uphold the sacred nature of the human conscience and unreservedly accord each individual the freedom to search for truth.

Recommendations

Urgent action is now needed to reaffirm the vision of equal rights for all without discrimination on the basis of religion or belief. As a first step, the United Nations must unequivocally affirm an individual's right to change his or her religion or belief under international law.²⁴ Such a clarification would help to remove fallacious interpretations of this right and lend moral force to the condemnation of State policies and practices that violate the principle of non-discrimination in matters of religion or belief.

Following this clarification, concrete actions - investigative, legal, and operational - must follow. First, research and analysis are needed to clarify minimum standards for compliance with international law and to develop indicators, marking the presence or absence of freedom of religion or belief. An annual world report, prepared by the United Nations, assessing the state of this freedom throughout the world would provide further substance and facilitate comparisons over time and across geographic regions.²⁵

In addition to clarifying the questions above, the United Nations needs to comprehensively and definitively address religious extremism as a major obstacle in the processes of peace.²⁶ While the United Nations has denounced religious intolerance and persecution, it has been hesitant to acknowledge and forcefully condemn religious extremism motivating violent and terrorist acts.²⁷ As women often bear the greatest burden of religious extremism and ensuing violations of human freedoms, the Committee on the Elimination of All Forms of Discrimination Against Women should consider formulating a comment on issues

specific to women's freedom of religion or belief.²⁸

We fully support the Secretary General's call for Human Rights Council with a view to restoring the primacy of human rights as set forth in the Charter of the United Nations.²⁹ Alongside the proposed reforms, the Office of the High Commissioner for Human Rights should undertake steps to strengthen the role of the Special Rapporteur on Freedom of Religion, increasing funding for her mandate to allow for the closer monitoring of trends worldwide and at a country level.³⁰ Given that the mandate of the Special Rapporteur represents one of the principal means of bringing issues of religious freedom to the attention of the United Nations, we recommend that more attention be given to the implementation of recommendations put forth by the Special Rapporteur. The High Commissioner may consider expanding the mandate of the Special Rapporteur beyond reporting strictly on violations to include reports of States' efforts to implement her recommendations. In general, the Rapporteur's reports would significantly benefit from a more substantial and interactive debate between the Rapporteur and States in question. For their part, beyond cooperating with United Nations human rights mechanisms, States should allow any visits requested by the Special Rapporteur and endeavor to meet her full investigative needs in the process.

By focusing on cultural liberty and religious freedom as core components of human development, the 2004 Human Development Report paved the way for a timely discussion, highlighting the interdependence of freedom, development and security in today's world. In an effort to push the debate further, we have brought to the fore the standard of equality articulated in the Universal Declaration of Human Rights and its implications for the construction of a culture respectful of the dignity and conscience of every human being. We believe that the protection of the right to freedom of conscience, religion or belief is not merely a legal exercise or a pragmatic necessity; it is part of a much larger and essentially spiritual undertaking of shaping attitudes and practices that allow human potential to emerge and flourish. The human mind, endowed with reason and conscience, must be free to search for truth and to believe.

Notes

U.N. Doc A/810 at 71 (1948). New York: United Nations. The Declaration was adopted with no dissenting votes, with eight countries abstaining from approval: Poland, Byelorussia, Czechoslovakia, Ukraine, Yugoslavia, South Africa, Saudi Arabia, and the Soviet Union.

No fewer than 28 international human rights instruments contain provisions specifically pertaining to freedom of religion or belief.

U.N. Doc. E/CN.4/1999/58 (1999).

The United Nations Development Programme 2004 Human Development Report titled, 'Cultural Liberty in Today's Diverse World,' for the first time in the Report's fifteen year history, acknowledged cultural liberty as a 'vital part of human

development' and affirmed the 'profound importance of religion to people's identities.' It is significant that the analysis of human development throughout the Human Development Reports has evolved from a predominantly materialist approach centered on wealth and income to embrace the concept of development as the expansion of human freedoms. Equally important has been the release of the United Nations Development Programme's annual Arab Human Development Reports, marking a pioneer effort by Arab scholars in this area. The widely noted 2002 Report identifies freedom as both the 'guarantor and the goal' of human development and human rights, singling out freedom as a primary requisite for development in the Arab region. The 2004 Report, which discusses the deficits of freedom and good governance in the region, examines the religious, legal, and political structures impeding human freedoms and calls for immediate action to address the priority of 'ending all forms of discrimination against any minority group.'

U.N. Doc. A/60/L.1

U.N. Doc A/RES/55/2 (2000).

In the latter, the Secretary General stressed the enduring relevance of the United Nations' Charter call to "promote social progress and better standards of life in larger freedom," and the interrelatedness of development, security and human rights. The former report, calling for a more holistic vision of human security, framed development as "the indispensable foundation for a new collective security."

note 3.

, p. 6. The Report notes two forms of cultural exclusion: 'living mode exclusion' and 'participation exclusion.' Living mode exclusion, "denies recognition and accommodation of a lifestyle that a group would choose to have"; participation exclusion occurs when "people are discriminated against or suffer disadvantage in social, political and economic opportunities because of their cultural identity."

, pp. 56-57. While the Report notes that, "individuals must be free not only to criticize the religion into which they were born, but to reject it for another or to remain without one," the issue of the 'internal' right of freedom of religion or belief is referred to only in passing and without further elaboration. As a core dimension of cultural liberty, this issue merits greater consideration. As the Report itself acknowledged, "The normative weight of freedom can hardly be invoked when no choice?real or potential?is actually considered." (p.17)

note 1.

A non-derogable right is not subject to governmental regulation, even in times of a national emergency.

(1950) explicitly provide for the freedom to change one's religion or belief.

U.N. Doc. A/36/684 (1981). The Declaration affirms the "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." It is unfortunate that this Declaration has not yet attained the status of a legally binding Covenant.

18, U.N. Doc. HRIGEN1Rev.1 at 35 (1994). The remaining core components of this right include: the rights of parents, legal status, limits on government's permissible restrictions, and non-derogability.

(2001).

explicitly provides for the right to teach one's religion.

similarly provides for 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" (Article 18).

A change of identity resulting from conversion does not constitute a violation of the individual's human rights. Rather it is one's desire to maintain an identity that requires legal protection. Similarly, States cannot use the rationale of preserving particular traditions, religions, or ideologies to support limitations on freedom of religion or belief.

Limitations on the basis of preserving 'morality' are the most controversial and lend themselves to abuse as one religiously based moral principle can be used to override another's religious belief. The Human Rights Committee's General Comment 22 asserts that, "limitations on the protection of FRB must not be based on principles deriving from one single tradition," supra note 15.

(ICCPR) which provides for limitations that are proscribed by law and are "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." Furthermore, in its General Comment on Article 18 of the ICCPR, the Committee on Human Rights notes that any limitations on the freedom to manifest a religion or belief for the purpose of protecting morals "must be based on principles not deriving exclusively from a single tradition."

(1960), States should condemn and forcefully sanction those who, in the name of religion, use education and the media to oppress freedom of conscience and to promote division, hatred, terrorism, violence and bloodshed.

The former Special Rapporteur on Freedom of Religion or Belief, Mr. Abdelfattah Amor, emphasized education -- particularly concerning human rights -- as a key component of establishing a culture of tolerance and nondiscrimination. Mr. Amor convened the 2001 International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-discrimination and called on participants to design an worldwide education strategy for combating intolerance and discrimination based on religion or belief. (U.N. Doc. E/CN.4/1999/58).

Under Article 96 of the United Nations Charter, the General Assembly, Security Council or other United Nations organ authorized by the General Assembly may

request advisory opinions of the Court 'on legal questions arising within the scope of their activities.' Article 36 of the Statute of the International Court of Justice provides for the jurisdiction of the Court in legal disputes concerning, among others, questions of international law.

note 3.

, 125 (a).

The UN has been reticent to identify religious fanaticism as a source of terrorism, referring to it indirectly, as for example, "terrorism motivated by intolerance or extremism" (S/RES/1373 (2001)). Even the various resolutions issued by the Security Council, the General Assembly and the Commission on Human Rights in response to the terrorist acts of 11 September 2001, failed to identify religious fanaticism as the force fuelling these acts.

Oslo, Norway: Martinus Nijhoff Publishers.

note 7.

Only a small fraction of member states have ever been monitored for compliance with the articles of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

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