THE DANISH INSTITUTE FOR HUMAN RIGHTS

FoRB LEADERSHIP NETWORK

BRIEFING PAPER

***LEAVING NO ONE BEHIND*: A SERIES OF BRIEFING PAPERS ON FREEDOM OF RELIGION OR BELIEF AND THE SUSTAINABLE DEVELOPMENT GOALS. BRIEFING PAPER # 2[1]**

FREEDOM OF RELIGION OR BELIEF AND HEALTH

Marie Juul Petersen

The right to freedom of religion or belief is linked in important ways to the achievement of Agenda 2030 and its Sustainable Development Goals (SDGs). This includes SDG no. 3 on health. If we want to ensure healthy lives and promote well-being for all, we must ensure due attention to those who are subject to discrimination, inequality and marginalisation on the grounds of religion or belief. Parliamentarians and religious/belief leaders can play an important role in this. This brief provides a brief introduction to the relationship between freedom of religion or belief and health, identifying key areas of concern and suggesting concrete actions that parliamentarians and religious/belief leaders can take to address them.

THE RIGHT TO FREEDOM OF RELIGION OR BELIEF[2]

The right to freedom of thought, conscience and religion – commonly known as the right to freedom of religion or belief (FoRB) – is a human right. It endows all individuals with the right to have, adopt, change or leave a religion or belief; to manifest and practice this religion or belief, alone or in community with others; and to be free from coercion and discrimination on the grounds of their religion or belief. It also protects the right not to have or practice a religion or belief. And it protects the right of parents to raise their children in conformity with their own beliefs.

The right to have, adopt, change or leave a religion or belief can never be limited or restricted. The right to manifest and practice a religion or belief, however, can be limited in certain circumstances, most importantly when religious or belief manifestations or practices violate the rights and freedoms of others. Limitations must always be strictly necessary, proportionate and non-discriminatory in their application.

As such, the legal responsibility to uphold the right to FoRB lies with the State. Non-state actors with power to affect the lives of rights-holders may, however, be said to have a moral responsibility to contribute to the respect, protection and promotion of FoRB and other human rights. This includes e.g. religious/belief leaders, politicians and other non-state actors who hold powerful positions in society or otherwise enjoy strong authority and social influence.[3]

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RIGHTS RELATED TO FREEDOM OF RELIGION OR BELIEF IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

Article 2: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 18: 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. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 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. 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

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

* For a full overview of human rights standards related to FoRB, see the website of the OHCHR: https://www.ohchr.org/en/issues/freedomreligion/pages/standards.aspx

FoRB is a universal right. It is a right of all individuals, regardless of citizenship status and what religion or belief they adhere to, or if they do not adhere to any religion or belief. Religious/belief minorities and indigenous peoples are often vulnerable to FoRB violations, but violations also affect other groups and individuals, in particular converts, atheists, women, sexual orientation and gender identity minorities, refugees, and children.

FoRB entails both collective and individual rights. While due attention should be given to respect the autonomy of religious/belief communities, individuals always have the right to interpret and practice their religion or belief as they want, including to criticise or leave their religion or belief, even when this challenges the mainstream orthodoxy of religious/belief authorities.

FoRB is closely intertwined, interrelated and mutually interdependent with other human rights. To enjoy FoRB fully, several other rights must also be protected – and the other way around. FoRB is also related to other human rights in the sense that discrimination on the grounds of religion or belief rarely concerns only restrictions of religious practices and manifestations, but also entails violations of other rights.

FoRB is important in the implementation of Agenda 2030 and the Sustainable Development Goals. If we want to improve the lives and prospects of everyone, 'leaving no one behind', we must ensure due attention to those who are subject to discrimination, marginalisation and inequality on the grounds of their religion or belief (or lack thereof).

RIGHT-SIZING FORB

Discrimination on the grounds of religion or belief is not only about FoRB. For instance, if people are being excluded from job markets, discriminated against in the health care system, or persecuted on grounds of their religious or belief identity, a range of other rights are typically also being violated, and the violation of FoRB is not necessarily the most pressing concern for these people. Also, marginalisation, discrimination or persecution of people with a particular religious identity is not necessarily religiously motivated. Even hostility that seems to have a clear religious motivation is rarely *only* religiously motivated. Conflicts are complex and multifaceted, and the role of religion is intertwined with many other factors, including economic, political, cultural, social, and historical ones. It is vital not to underestimate the role of religion in marginalisation, discrimination and persecution, but also not to overestimate its role.[4]

SDG 3: ENSURING HEALTHY LIVES AND PROMOTING WELL-BEING FOR ALL

Agenda 2030 is a universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere. Consisting of 17 SDGs, each with their specific targets and indicators, Agenda 2030 calls for action in a wide range of areas, including health.

SDG 3 is dedicated to 'ensure healthy lives and promote well-being for all at all ages,' including 13 specific targets on e.g. on maternal and child health, sexual and reproductive health care services, universal health coverage, equitable and affordable access to high-quality vaccines and medicines, sustainable financing, a strong health workforce and capacity to address health emergencies all underpin the achievement of SDG 3.[5] Universal access to sexual and reproductive health and rights is also part of SDG 5 on gender equality.

KEY SDG 3 TARGETS

Target 3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes

Target 3.8 Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.

The right to health is a key human right. It was first articulated in the 1946 WHO Constitution, which declares that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."[6] Two years later, the 1948 Universal Declaration of Human Rights included health as part of the right to an adequate standard of living in its Article 25. This was further emphasised in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights.

The right to sexual and reproductive health services, an integral component of the right to health, is also included in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which guarantees all women the right to decide "freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."[7]

THE RIGHT TO HEALTH

Article 25 of the Universal Declaration of Human Rights:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

FORB AND HEALTH: WHAT ARE THE MAIN CHALLENGES?

There are a vast number of FoRB-related challenges that pose obstacles to achieving SDG 3 and its targets. To ensure healthy lives and well-being for all, these challenges must be properly identified and addressed. The following provides a brief introduction to some of the main challenges:

DISCRIMINATION OF RELIGIOUS/BELIEF MINORITIES

Religious or belief minorities, including also indigenous peoples, sometimes experience restrictions on their access to health services and quality treatment because of their identity or affiliation. This is a threat to their right to FoRB and non-discrimination on the grounds of religion or belief. It is also a serious obstacle to achieving target 3.8 which aims to provide universal health coverage and access to essential health-care services for all.

In the most extreme cases, health facilities may be destroyed, and staff attacked as part of violent oppression of minorities. In other contexts, access may be restricted through discriminatory state policies and practices. Bias in health budgeting and priorities, for instance, may mean that infrastructure is lacking or of low quality in areas with a predominance of religious/belief minorities or indigenous peoples.[8] Displaced minority groups living in refugee camps are particularly vulnerable, with health services severely lacking, and refugees having to rely on very basic primary health care. Health crises such as the COVID-19 pandemic may expose and accentuate existing inequalities and discrimination, disproportionately affecting world's most vulnerable, including religious/belief minorities and indigenous peoples, leaving them with fewer possibilities for prevention and less access to treatment if they get sick.

SCAPEGOATING IN THE CONTEXT OF EPIDEMICS

Crises often lead to an increase in harassment, discrimination and stigmatisation, and the COVID-19 pandemic is no exception. Economic insecurity, health concerns, fear and frustration are fertile grounds for scapegoating—and it is often those who are already marginalised or vilified who are targeted. Throughout the world, various religious and belief minorities have been accused of spreading COVID-19 and have experienced hate speech, vandalism and violent attacks during the pandemic. COVID-19 has also in some cases resulted in heightened government discrimination against religious or belief minorities. In some places, what seem to be proportionate measures are enforced discriminatorily. There have also been examples of governments using precautionary measures as a pretext for increased surveillance or restrictions on minorities' movement.[9]

Religious/belief minorities and indigenous peoples may also experience institutionalised discrimination, prejudice and bias in treatment. Qualitative studies indicate that health staff may provide uneven quality of services depending on the characteristics of clients.[10] This can include: verbal and physical abuse; refusal of treatment; insufficient or wrong treatment; or involuntary treatment.[11] In contexts where there is a requirement to display one's religious identity in relation to registration in health facilities, the risk of discrimination may be even greater. Lack of culturally and religiously appropriate services may also constitute a barrier for minorities. When health workers ignore, disparage or disrespect traditional, non-harmful, health remedies or practices that are prevalent in certain religious/belief communities, people from these communities may be less likely to access the health system.

Women in religious/belief minorities may experience uneven quality of services in much the same ways as men, as well as gender-specific forms of discrimination, in particular in contexts where women are seen as 'inferior', 'vulnerable' or otherwise incapable of making their own decisions. Such forms of discrimination include: breaches of confidentiality; denial of autonomous decision-making, e.g. requiring parent, husband or other guardian's consent; and lack of free and informed consent.

HARMFUL PRACTICES

In some contexts, traditions and practices that harm the health of women and girls are justified with reference to religion or cultural beliefs. This can include e.g. female genital mutilation, menstruation huts, and harmful widowhood practices. Such practices are not protected by FoRB. In fact, States are obliged to eliminate all harmful practices, and repeal laws that diminish the seriousness of such practices.[12] As noted by the UN Special Rapporteur on FoRB, "the principle of institutional autonomy does not extend to State deference to harmful discriminatory gender norms. Nor does it oblige States to defer from intervening to prevent harmful practices because said practices are informed by 'religious ethos.'"[13]

Religious leaders have a moral obligation to clarify religious doctrine on this matter and ensure that religion is not (mis)used to justify or legitimise harmful practices. The former Special Rapporteur on freedom of religion or belief, Abdelfattah Amor, noted already in 2002 that "[e]nlightened religious officials have an important role to play in informing women of their rights, especially when such rights, which have been established by religious precepts, are misunderstood, infringed or manipulated by conflicting patriarchal traditions or customs."[14]

RESTRICTIONS ON ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES

Another set of challenges related to FoRB and health concern restrictions on access to sexual and reproductive health services. Target 3.7 aims to achieve access to sexual and reproductive health-care services for all. This is also an essential part of women's rights, as outlined in the Convention on Elimination of All Forms of Discrimination Against Women as well as in the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action.

Laws and policies around the world restrict access to this aspect of health in various ways, e.g. through restrictions on women's access to contraception and family planning, including required consent from a legal guardian; and restrictions on the provision of sexual and reproductive education and information. Sexual orientation and gender identity minorities also experience severe restrictions on their right to health.[15] Religion often plays an important role, whether explicitly or implicitly, in justifying restrictions on sexual and reproductive health services. But FoRB does not protect religious practices that violate the rights and freedoms of others, including rights related to sexual and reproductive health. FoRB cannot, for instance, be invoked to deny women access to contraceptives or to condition their access to contraceptives on their husband's consent.

There are, however, grey areas and dilemmas that are not easily resolved. The issue of abortion is particularly contentious. Restrictions on women's access to abortion services do not ***per se*** constitute a violation of human rights; according to international human rights standards, States may adopt measures designed to regulate voluntary terminations of pregnancy. However, such measures must not result in violation of the right to life of a pregnant woman or girl, or any other human rights.

Some people argue that restrictions on access to abortion constitute a violation of women's right to FoRB. The Religious Coalition for Reproductive Choice, for instance, states that "religious liberty […] upholds the human and constitutional rights of all people to exercise their conscience to make their own reproductive health decisions without shame and stigma."[16] Others use FoRB as an argument for restrictive abortion laws and for 'conscientious objection' clauses that guarantee medical staff the right to refuse participation in abortion-related services.

While the human rights framework does accommodate 'conscientious objection', there are limits. For example, conscience cannot justify a refusal to perform a life-saving abortion when no other suitable alternatives exist for a woman to obtain the abortion.[17] Also, in contexts where abortion is legal, but the vast majority of medical staff refuse to carry out abortions, 'conscientious objection' effectively hinders women from enjoying their legally guaranteed access to such health services. The UN Human Rights Committee has called upon States to remove barriers to safe and legal abortion, including 'barriers caused as a result of the exercise of conscientious objection by individual medical providers;' a statement which has been reiterated by the UN Special Rapporteur on FoRB. [18]

HOW TO ADDRESS CHALLENGES IN THE AREA OF FORB AND HEALTH? SUGGESTED ACTIONS FOR RELIGIOUS/BELIEF LEADERS AND PARLIAMENTARIANS

Religious/belief leaders and parliamentarians can play important roles in contributing to ensuring healthy lives and well-being for all, challenging discrimination of religious/belief minorities and indigenous peoples in the health system as well as restrictions in access to sexual and reproductive health-care, making sure that no one is left behind.

Parliamentarians are responsible for proposing, scrutinising and eventually adopting laws, including those related to health care provision, as well as for overseeing and passing budgets to allocate funding for health care. In addition, parliamentarians must represent their constituents, ensuring that their perspectives, experiences and needs are taken into consideration and promoting citizen participation in political processes.[19] They can contribute to raising awareness of FoRB and religiously related discrimination in the context of health.

They can:

- Engage in dialogue with religious/belief minorities, indigenous peoples and other groups who may be vulnerable to discrimination and inequalities on the grounds of religion or belief, ensuring that their perspectives, experiences and concerns are included in health-related laws and policies

- Work to abolish institutionalised discrimination in the health system, including analysis of health budget to identify potential bias or under-prioritisation of religious/belief minorities and indigenous peoples, and advocacy to encourage greater attention to these groups

- Work to introduce and implement laws for the elimination of harmful practices. Work to abolish laws that restrict women's access to sexual and reproductive health services, including e.g. requirement of guardian or third-party consent to access health care, restrictions on access to family planning, and overly restrictive abortion laws.

Religious/belief leaders often enjoy popular support, legitimacy and authority. They have vast networks and relations and have extensive knowledge of the local context in which they work. All this means that they can play a key role in raising awareness of FoRB and discrimination on the grounds of religion or belief in the context of health. They can:

- Engage in the promotion of sexual and reproductive health and rights and contribute to dismantling religiously related opposition, e.g. by promoting religious interpretations in support of sexual and reproductive health rights and contributing to the development of context-sensitive approaches to sexual and reproductive health.

- Engage in dialogue and bridge-building between advocates of sexual and reproductive health and rights (religious as well as secular) and their critics. Such dialogues should stay clear of dogmatism from both sides and involve pragmatic representatives who share a common goal of reducing suffering and increasing health and wellbeing.[20]

- Encourage faith-based health providers to take a non-discriminatory and inclusive approach in the provision of health services, actively reaching out to minorities and indigenous peoples

- Communicate the health needs and experiences of marginalised minorities and communities to authorities and the broader public

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ABOUT THE PAPER

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NOTES

1 The series include six papers: Freedom of Religion or Belief and the Sustainable Development Goals (paper #1), Freedom of Religion or Belief and Health (#2), Freedom of Religion or Belief and Education (#3), Freedom of Religion or Belief and Women's Rights (#4), Freedom of Religion or Belief and Climate Change (#5), and Freedom of Religion or Belief and Freedom of Expression (#6). All briefs build in part on the author's report *Promoting Freedom of Religion or Belief and Gender Equality in the Context of the Sustainable Development Goals: Reflections from the 2019 Expert Consultation Process*, Danish Institute for Human Rights, 2020

2 See also Marie Juul Petersen and Katherine Marshall, *The International Promotion of Freedom of Religion or Belief. Sketching the Contours of a Common Framework, Danish Institute for Human Rights,* 2019

3 A number of declarations, resolutions and action plans point to the roles and responsibilities of religious actors as moral duty-bearers, including e.g. the *UN Declaration on Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), the Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2012), and the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes (2017).*

4 Marie Juul Petersen and Katherine Marshall, *The International Promotion of Freedom of Religion or Belief, Danish Institute for Human Rights,* 2019, p. 24

5 WHO et al, *Global Action Plan for Healthy Lives and Well-being for All,* 2018, p. 2.

6 WHO, *Constitution of the World Health Organization,* 1946

7 UN, Convention on the Elimination of All Forms of Discrimination Against Women, article 16. See also *International Covenant on Economic, Social and Cultural Rights, article 12.2; Convention on Elimination of All Forms of Discrimination against Women,* articles 5, 10, 11 12.1 and 16; and Committee on Economic, Social and Cultural Rights, *General Comment no. 14*, E/C.12/2000/4, 2000. See also Anand Grover, *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* (main focus: criminalisation of sexual and reproductive health), A/66/254, 2011, paragraph 48.

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16 Religious Coalition for Reproductive Choice, website, www.rcrc.org

17 Human Rights Watch, *International Human Rights Law and Abortion in Latin America,* HRW, 2005

18 Human Rights Committee, *General comment no. 36,* CCPR/C/GC/36, 2018, para. 8; *Ahmed Shaheed, Report of the Special Rapporteur,* A/HRC/42/48, 2020, par. 44

19 Kevin Deveaux and Charmaine Rodrigues (2017) *Parliament's role in implementing the Sustainable Development Goals, UNDP, GOPAC and Islamic Development Bank.*

20 Deutsche Stiftung Weltbevoelkerung; Cordaid; African Council for Religious Leaders-Religions for Peace; Al-Azhar University's International Islamic Centre for Population Studies and Research; Christian Connections for International Health; and Muslim Family Counselling Services, *Advancing sexual and reproductive health and rights through faith-based approaches: A mapping study*, Faith in Action Network, 2014, p. 62