

National Security and the Freedom of Religion or Belief
Project Partner: United Nations Special Rapporteur on the freedom of religion or belief
Dr Ahmed Shaheed)

Project Overview

The United Nations Special Rapporteur on freedom of religion or belief is mandated by the Human Rights Council to submit two thematic reports annually identifying challenges and opportunities to the enjoyment of the right to freedom of religion or belief (FoRB). One of the key challenges facing the right freedom of religion or belief today is rooted in the commonly held perception that freedom and security are mutually incompatible. Indeed, state responses to threats emanating from violent extremism and radicalisation that lead to terrorism (VERLT) have brought the interrelationship between FoRB and national security into sharp focus in many states around the world. The right to FoRB, a fundamental right explicitly protected in the vast majority of state constitutions, is increasingly under attack. In a large number of states, undue restrictions on FoRB in the form of legislation and policies have been permitted (or at the very least tolerated) in the name of protecting national security.

The Special Rapporteur is keen to address this misperception in order to avoid further erosion of the right to FoRB in the name of national security. Rather than viewing FoRB and security as a “zero-sum game,” the UN Special Procedures mandate on FoRB will spend the coming months conducting research intended to highlight the importance of adopting policies that view both rights as mutually enforcing. This research will inform his report to the UN General Assembly in September 2018 (due in July 2018), which will delve into challenges regarding the increasing securitisation of FoRB. As part of this research, the UN Special Rapporteur will develop reflections on the interrelationship between FoRB and national security, including how the enjoyment of FoRB can increase societal harmony and contribute to reducing insecurity and instability. He will identify states’ practices across a range of VERLT/CVE/PVE¹ programmes, and map out their impacts (direct and indirect) on the right to FoRB. He will examine practices and cases, highlight important violations and conclude by proposing a framework for solutions.

More specifically, the September 2018 report to the UNGA will provide

- a) an overview of the challenges to FoRB from securitisation and the vicious cycle of insecurity that zero-sum thinking on FoRB and security entail;
- b) a review of a range of prominent securitised responses (laws/policies/practices), from the UN Secretary General’s PVE Strategy and Security Council/DPKO practice to Europe/North American responses in conflict-stricken countries to authoritarian regimes and covering different state-religion configurations;

¹ CVE= countering violent extremism; PVE= preventing violent extremism;

- c) the gender dimension of the relationship between security and FoRB;
- d) a review of the literature on security and FoRB including work of think tanks/centres for de-radicalisation;
- e) the human rights law framework including a review of jurisprudence and practice/engagement of UN's human rights mechanisms;
- e) identification of good practices, including roles for states and civil society/media.

Project Output:

The University of Essex Human Rights Centre Clinic will conduct research, culminating in a report, which will constitute a key source of research and analysis for the Special Rapporteur's report to the General Assembly. The project will comprise the following elements:

I. Orientation: Definition of the scope of the research, e.g. focus on particular countries/regions, or whether this would draw on an existing database or primary research on the topic, or whether it involves primary research—in coordination with the Special Rapporteur.

II. Literature review:

- a) A literature review of the relationship between FoRB and security, including from the perspectives of international law (eg 'doctrine of necessity'); IHRL (eg limitations/derogations/non-discrimination); and Peace Research (eg common security, structural violence).
- b) Review of the work of think-tanks and centres that focus on de-radicalisation/CVE and the models they advocate.

III. Review and synthesis of all UN Human Rights mechanism reviews/reports and relevant UN jurisprudence on FoRB and security:

- a) UNSC/HRC/UNGA resolutions or declarations
- b) UNSR reports and communications
- c) UPR recommendations
- d) Treaty Body reviews
- e) OHCHR reports

Notes: This research should lead to a collection of "best practices" that states should adopt (or a checklist) to ensure protection of both FoRB and security within IHRL framework

IV. Review and synthesis of a selection of key regional jurisprudence on FoRB and security, such as that of the ECtHR:

Through the students' literature review and review of UN mechanisms and regional jurisprudence, the research will hopefully provide sufficient materials to assist the Special Rapporteur in other tasks he plans to carry out for the report, including:

-Mapping out state security laws/practices that negatively impact FoRB across regions

For example: a) laws policies that negatively impact FoRB in the name of national/public security strategies, including counter-terrorism ones; b) identify the specific problems that lead to violations of the right to FoRB; c) examine the gender dimension of these laws and practices; and d) identify the role of the civil society/media.

-Developing Typologies re types of unlawful restrictions on FoRB that result from national security laws/policies

For example: a) Where has legislation/policies presented a challenge to the realisation of FoRB? What have been the challenges? b) Which legislation/policies are reactive and which are preventative? c) What is the difference re impact on FoRB?

The outcomes of these different components of research will form the basis of the project report, and be the basis of sections in the report of the UN Special Rapporteur to the 73rd Session of the UN General Assembly in September 2018. The maximum word limit of the UNGA report is 10,700 words, inclusive of footnotes.

Project Outline:

- Phase 1: (November-December)
 - Meeting with the UN Special Rapporteur on freedom of religion or belief and the outset to discuss the project
 - Research, understanding the project, developing an outline, and so on.
 - Literature Review (output 1 above) (5 pages, submitted by the end of term 1)
 - Review of UN treaty body jurisprudence (General Comments and Concluding Observations) (part of output 2 above) (5 pages, submitted by end of term)
- Phase 2 (January-April)
 - Meeting with UN Special Rapporteur on freedom of religion or belief at the start of term to discuss last term's output and plan for the term ahead, and once during the term to discuss progress and challenges
 - Review of remaining UN jurisprudence and regional jurisprudence (part of output II above)
 - First draft of report, by the end of term
- Phase 3 (May-June)
 - Finalisation of report
 - Optional opportunities to participate in meetings regarding the development of the report

- Time-permitting and on a voluntary basis, students may volunteer to support the drafting of a section of the report of the UN Special Rapporteur

Project Bibliography:

- OHCHR, Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism- Report of the High Commissioner for Human Rights A/HRC/33/29 (21 July 2016),
- OHCHR Submissions by States and civil society on best practice and lessons learned on CVE/PVE . Online at <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/PCVE.aspx>
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- Reports of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
- Karen Murphy, *State Security Regimes and the Right to Freedom of Religion or Belief: Changes since 2001*. London: Routledge, 2013
- International Religious Liberty Association, *Fides Et Libertas- Journal of the International Liberty Association*. Special Issue on “Security or Religious Freedom”. 2003. <https://www.irla.org/fides-2003.pdf>
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- Manfred Nowak and Tania Vospernik, “Permissible Restrictions on Freedom of Religion or Belief.” In *Facilitating Freedom of Religion of Belief: A Deskbook*. By Tore Lindholm et al, eds.,2004.
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