

## **A submission by Christian Solidarity Worldwide (CSW)**

### **The UN Special Rapporteur on freedom of religion or belief: Call for evidence ahead of his 75<sup>th</sup> report to the UN General Assembly on ‘Freedom of Thought’.**

1. CSW is a human rights organisation specialising in the right to freedom of religion or belief (FoRB) for all. This submission is in response to a call from the United Nations (UN) Special Rapporteur for input into his upcoming report to the UN General Assembly on freedom of thought.

#### **Background**

2. UN Member States are called to uphold international human rights standards without discrimination. The Preamble and Article 1 of the Universal Declaration of Human Rights (UDHR) states that human beings are born free and equal in dignity and rights, and that these rights are without distinction of any kind – including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Vienna Declaration and Programme of Action (1993) describes all human rights as ‘universal, indivisible, and interdependent and interrelated’, that reinforce, not undermine, each other at on a normative level.
3. Article 18 of the UDHR and the legally binding International Covenant on Civil and Political Rights (ICCPR) identify “the right to freedom of thought, conscience and religion” as fundamental components of the right to FoRB. However, freedom of thought it is an element of FoRB that often receives inadequate attention, despite, arguably, underpinning the right and other intersecting rights, such as freedom of opinion and expression, assembly and association and the right to privacy, through common social and cultural experiences, beliefs and identities which shape a person’s sense of identity, belonging and consciousness. Critical and intellectual thought are also important for the advancement of rights, knowledge and understanding in society and accountability of governance.

#### **Forum internum v forum externum**

4. Article 18 of the ICCPR distinguishes freedom *of* thought, conscience, religion or belief from the freedom *to* manifest the right. It affords wide-ranging protections to both the forum internum (a person’s right to form, to hold and to change serious inner convictions and beliefs) and the forum externum (a person’s right to manifest or outwardly display a religion or belief, either alone or as part of a community) parts to freedom of thought, conscience, religion or belief. The distinction between forum internum and forum externum is important, especially when it comes to the imposition of limitations on the right.
5. The ‘forum internum’ component of FoRB has absolute protection. This means that there are no circumstances under which this freedom can be justifiably violated or limited, including for reasons of national security or in an emergency. Forum internum includes the right to form and hold opinions based on conscience, including those beliefs that may be deemed objectionable, or even offensive to others. It also protects the right to have or hold a religion or belief, as well as the right not to have a religion or belief. Though it is considered controversial in many parts of the world, this also allows for the right to reject or to change a religion or belief, and the right not to be coerced or forced into believing something. No one should be compelled or forced to reveal their religion or belief publicly against their will either.
6. The UN’s Human Rights Committee’s General Comment 22 is considered one of the foremost interpretations of Article 18 of the ICCPR and “does not permit any limitations whatsoever on

the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). In accordance with articles 18(2) and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief."<sup>1</sup>

7. The 'forum externum' element of FoRB protects the right to manifest a religion or belief through teaching, worship, practice, and other forms of observance. This includes the right to share one's religion or belief with others, and to encourage others to adopt similar beliefs. It includes the right to publish and distribute literature and other forms of information about a religion or belief. It also includes the right to own and use buildings for worship, and to express a religion or belief through clothing, rituals, and symbols.
8. The 'forum externum' component of FoRB can be limited by the government or state, but only in exceptional situations with a high threshold of evidence required by those enforcing any limitations, in accordance with the limitations set out in Article 18 of the ICCPR. The UN Human Rights Committee's General Comment 22 declares that international law permits "restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others". This includes public expression (Article 19) where it could cause incitement to hatred or violence and where a direct and immediate connection can be established between the expression and the threat."<sup>2</sup>
9. Heiner Bielefeldt, the former Special Rapporteur on FoRB, indicates in an article on limiting permissible limitations to FoRB (April 2020) that: "Whereas no one has to "justify" their use of FoRB, which has the status of an inalienable human right after all, any proposed limitation by contrast, needs a plausible justification, in accordance with the criteria defined for that purpose."<sup>3</sup>

### **Benchmarks for the protection of freedom of thought**

10. Article 9 of The European Convention on Human Rights (ECHR) includes three benchmarks for the protection of freedom of thought:
  - The right not to reveal one's thoughts or opinions
  - The right not to have one's thoughts or opinions manipulated
  - The right not to be penalised for one's thoughts
11. It is a state's obligation to ensure its laws and practices reflect international human rights standards. With respect to FoRB, protecting freedom of thought and respect for these benchmarks is often undermined through pressures placed on religion or belief minorities by authoritarian regimes and majority religious groups (both state and non-state actors alike). Forms of pressure and techniques used to control and self-censor thought may take the form of punishment including torture, misinformation, social control, and fear of reprisal, including

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<sup>1</sup> United Nations Human Rights Committee, General Comment No. 22 on Article 18 of the ICCPR, 'The Right to Freedom of Thought, Conscience and Religion' 1993 <https://www.refworld.org/docid/453883fb22.html>

<sup>2</sup> United Nations Human Rights Committee, General Comment 34 on Article 19 of the ICCPR, 'Freedoms of Opinion and Expression', 2011 <https://www.refworld.org/docid/453883fb22.html>

<sup>3</sup> Brill Journal: 'Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom' by Professor Heiner Bielefeldt, 23 April 2020 [https://brill.com/view/journals/rhrs/15/1-2/article-p3\\_2.xml?language=en](https://brill.com/view/journals/rhrs/15/1-2/article-p3_2.xml?language=en)

against family members. This submission includes examples from China, Cuba, India, Mexico and Nepal below.

### **China: Re-education camps in the Xinjiang Uyghur Autonomous Region**

12. Over one million individuals are believed to have been detained without charge in so-called political re-education camps since 2017. Recent estimates are as high as three million. Reasons for detention in the camps include accessing religious materials online and behaviour indicating 'wrong thinking' or 'religious extremism'.
13. Individuals sent to the so-called re-education camps do not have access to legal counsel and there is no mechanism for appeal. Their families may not be told where they are being held, or when they will be released. Inside the camps conditions are dangerously unsanitary and overcrowded; detainees are subject to beatings, sleep deprivation, forced medication and solitary confinement. There are also reports of sexual violence including rape, and violent torture. Although not all detainees are Muslim, and ethnicity appears to be the most significant factor linking the detentions, nevertheless there is a significant religious element as well. Not only have some individuals been detained in connection with their peaceful religious activities but witnesses also report that inside the camps detainees are required to renounce Islam and promise not to follow religion.

### **Cuba: freedom of conscience in the constitution**

14. Cuba adopted a new constitution following a referendum in February 2019. The Constitution of the Republic of Cuba sets out specific and basic guarantees regarding FoRB. Article 15 and 57 of the new constitution cover FoRB and Article 42 prohibits discrimination on the basis of religious belief. However, these freedoms are limited by other provisions in the penal and administrative codes and the Cuban government continues to routinely and systematically violate FoRB.
15. Moreover, in contrast to the 1992 constitution, freedom of conscience is now separated from FoRB and is covered in Article 54. It is worth noting that the clause making it illegal to invoke conscientious objection with the 'intention of evading compliance with the law' is problematic especially as it applies to the principle of conscientious objection to obligatory military service: The State recognizes, respects, and guarantees people freedom of thought, conscience, and expression. Conscientious objection may not be invoked with the intention of evading compliance with the law or impeding another from the exercise of their rights.
16. A clause in the penal code (Chapter IV, Article 206) further limits the rights laid out in the constitution and allows for the imprisonment for anywhere from three months to one year of anyone who '...having abused the freedom of creed guaranteed to all by the Constitution, places religious beliefs in conflict with the aims of education, the duties of labour, defending the nation in arms, the reverence of its symbols or any other stipulations whatsoever contained in the Constitution...' In essence, a persons' thought, conscience, religion or belief cannot differ from that which is approved by the government without fear of reprisal.

### **India and Nepal: the rise in anti-conversion laws**

17. The criminalisation of conversion is a direct infringement on FoRB, including freedom of thought. Such provisions also threaten the right to freedom of expression as they could be used to prohibit a range of legitimate expressions of religion or belief such as charitable

activities or speaking about one's faith, as permitted under Article 18 and Article 19 of the ICCPR.

18. Nepal, Myanmar and several states in India already have anti-conversion laws, which are frequently used to abused to foster social intolerance and violence towards minority religion or belief groups and peaceful religious activities.
19. Nepal adopted its new constitution in 2015 there are concerns about its 'anti-conversion' clause (Article 26 (3)), which seemed designed to specifically protect Hinduism at the expense of other religions. While Article 4 (1) of the constitution claims that Nepal is a secular state, the word secular is defined as the "protection of religion and culture being practised since ancient times and religious and cultural freedom," which has been interpreted as affording special position to Hinduism. These provisions were strengthened in the Penal Code 2017 which came into force in August 2018. Section 158 states that "No person shall convert any one from one religion to another or make attempt to or abet such conversion" and carries a punishment of up to five years imprisonment and a fine of up to fifty thousand rupees. These clauses not only contradict international law which reiterates that right to FoRB serves to protect the individual's right to religion or belief, rather than defend religious tradition per se, it also impairs a person's freedom to choose the religion or belief of their choice, subjects them to coercion and denies others the right "to seek, receive and impart information and ideas of all kinds" in accordance with Article 19 of the ICCPR.
20. In India, anti-conversion laws<sup>4</sup> are used by right-wing groups including the Rashtriya Swayamsevak Sangh (RSS) and its affiliates, to oppose conversions, presuming that 'force,' 'allurement,' and 'fraud' are the underlying contributing factors to all conversions and therefore that investigations are necessary. This undermines the personal agency of a person's choice to change their religion, to adopt a religion or belief of their choice or none at all – a key component of the right to freedom of religion or belief. These laws are fundamentally flawed and arouse communal sentiments, which can result in targeted violence, invasion of privacy, property damage and the persistent harassment, intimidation and humiliation of minority communities like Dalits, Muslims and Christians.

#### **Mexico: Violations of FoRB, including freedom of thought**

21. Human rights enjoy strong protections in Mexico's constitution and under the many human rights conventions to which it is party, which take precedence in Mexican law. In practice, however, a variety of factors lead to a high incidence of all types of human rights violations, including freedom of thought and related rights such as freedom of conscience, freedom of religion or belief and freedom of expression. These types of violations are particularly high in areas with significant indigenous populations as well as in areas with a high presence of criminal groups. In both cases, the government at all levels has a poor track record in ensuring that these rights and others are protected and that those who violate these rights are held accountable through legal mechanisms. Mexico has some of the highest rates of impunity in the world<sup>5</sup> meaning that those who violate fundamental rights, including freedom of thought

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<sup>4</sup> Jharkhand (2017) and Uttarakhand (2018) are the Indian states that have introduced legislation on anti-conversion most recently, joining Odhisa (1967), Madhya Pradesh (1968), Arunachal Pradesh (1978), Chhattisgarh (2000), Gujarat (2003) and Himachal Pradesh (2006).

<sup>5</sup> The Global Americans, Mexico: measuring impunity through the 2020 global impunity index, 11 January 2021 <https://theglobalamericans.org/2021/01/mexico-measuring-impunity-through-the-2020-global-impunity-index/>

and associated rights, are almost never made to answer for their actions creating a culture in which such violations become normalised.

22. In areas with a very high presence of criminal groups, rule of law is low to non-existent. Government institutions are either debilitatingly weak, corrupt or both. Criminal groups tend to operate in a way that demands tolerance if not outright support from local civilian populations. Individuals whose beliefs conflict with the aims or actions of the criminal group are forced into a position of hiding their thoughts and beliefs or in extreme cases renouncing their thoughts and beliefs in order to prove their loyalty to the criminal group. Christian religious leaders, both Catholic and Protestant, tend to hold deeply held beliefs and to think in way that is direct conflict with the aims and actions of criminal groups. These leaders are in a particularly difficult position as their duties include preaching and teaching in a public setting about the values and beliefs of their religion. This means that their thoughts and beliefs are easily monitored by criminal groups and their associates and can make them targets. Over the past decade more Catholic priests have been killed in Mexico than in any other country. Protestant pastors have also been targeted.
23. Mexican law includes strong protections for the cultural rights of indigenous peoples. Under the Law of Uses and Customs, indigenous communities maintain the right to govern themselves according to their traditions. According to the constitution, this must be carried out in line with national and international protections for fundamental human rights. In practice, the government does little to ensure that violators of human rights are held to account and this allows for frequent violations of women's rights and children's rights as well as universal rights such as freedom of religion or belief, freedom of assembly, freedom of expression and freedom of thought. In some traditionalist communities, operating under the Law of Uses and Customs, "when any member of these communities exhibits strange behavior that goes against the integrity of the community, traditions and customs, this is considered a serious crime."<sup>6</sup>
24. In many of these communities, thinking differently and the outward manifestation of that thought is met with punishment. This includes freedom of thought linked to religious beliefs. Some communities have declared and posted signs that members of other religious groups are not permitted. Indigenous members of the community who do not belong to the majority religion are ordered to renounce their own beliefs and join the majority religion. They are not permitted to share their thoughts or religious beliefs with others. Punishment for those who think or believe differently than the majority can range from cutting access to basic services such as water and electricity, barring children from attending school, destruction of property, confiscation of land, arbitrary detention, violence and forced displacement. While many of these cases are made public and reported to the government, there is rarely any attempt to hold those responsible for the violations, which under Mexico's law are crimes, to account.

### **Recommendations**

25. Guarantee constitutional protections for the full right to FoRB in accordance with Article 18 of the ICCPR for all ethnic, religious and belief groups, amending or repealing discriminatory clauses which curtail freedom of thought, conscience, religion or belief.

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<sup>6</sup> Molina Utrilla, Dr. Artemio; "El Ejercicio de los Derechos Políticos de la Mujer Indígena de la Zona Altos de Chiapas, Mexico de la Luz del Enfoque de Genero" *Revista Jurídica Derecho* Jul-Dec 2019  
[http://www.scielo.org.bo/pdf/rjd/v8n11/v8n11\\_a05.pdf](http://www.scielo.org.bo/pdf/rjd/v8n11/v8n11_a05.pdf)

26. Amend or repeal anti-conversion laws, to ensure the law only prohibits forceful conversion, and that any clause prohibiting conversion in and of itself is removed.
27. Protect freedom of conscience, including an individual's right to conscientious objection from military service, in law and practice.
28. Actively identify and monitor practices or policies that may unduly affect freedom of thought and address these where they arise in accordance with the protections under international law.
29. Identify and promote freedom of thought in law and practice, including ensuring information on the full right to FoRB, including freedom of thought, is available for law enforcement, the judiciary, educators and religion or belief leaders.
30. Investigate instances of discrimination and violence on account of freedom of thought, bringing perpetrators to justice in accordance with the law and supporting those who have been subjected to practices or policies that may unduly affect their right to freedom of thought.
31. Abolish and end the use of re-education camps, and all forms of extra-legal detention, enforced disappearance and arbitrary detention, and release detainees immediately and without condition.