

# SPECIAL RAPPORTEUR ON FORB CALL FOR INPUT: REPORT ON FREEDOM OF THOUGHT

Response from Humanists UK, June 2021



## ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group.

We work closely with Humanists International, founded in 1952 as the global representative body of the humanist movement, with over 170 member organisations in over 70 countries, and of which our Chief Executive is also the current President. We are also a member of the European Humanist Federation (EHF). We have good relations with the UK Foreign, Commonwealth, and Development Office (FCDO), meeting regularly with ministers and officials. We are on the steering group of the UK Freedom of Religion or Belief (FoRB) Forum and are an active stakeholder of the All-Party Parliamentary Group on FoRB. We are accredited at the UN Human Rights Council – the only national humanist group to hold such accreditation – and make interventions there every session. We contribute annually to Humanists International's Freedom of Thought Report,<sup>1</sup> and co-founded the End Blasphemy Laws campaign,<sup>2</sup> which has successfully prompted ten countries to repeal their blasphemy laws since it was founded in 2015.

## EXECUTIVE SUMMARY

- Freedom of thought is an absolute right and there are no legitimate restrictions within any international framework placed on this right. Everyone has the right to hold any thoughts that they so choose without interference or fear of punishment. Once manifested those thoughts become either beliefs, opinions, or expressions. These manifestations should not be restricted by the state except in the limited circumstances laid out in Articles 18 and 19 of the International Covenant of Civil and Political Rights (ICCPR).
- But more than this, freedom of thought is not just about our private internal experiences. It is a skill set: the skill of being able to seek out, receive, comprehend, and evaluate information through various intellectual frameworks (be they theological, scientific, or philosophical), free from coercion or outside interference. As such, like any skill, it needs to be taught and developed.
- **In our view, there are, therefore, four key duties imposed on states by this right:**
  - (a) a negative duty to prevent attempts to manipulate or force a person to reveal their thoughts;
  - (b) a negative duty to refrain from criminalising or penalising the holding of certain thoughts, such as apostasy or blasphemy;
  - (c) a positive duty to be able to manifest one's thoughts – although this crosses into the territory of the rights to freedom of religion, belief, opinion, and expression; and
  - (d) a positive duty for states to create a culture in which freedom of thought and free enquiry can flourish. This means guaranteeing an environment that allows both children and adults to develop the skills and access to information required to be able

<sup>1</sup> *Freedom of Thought Report*, Humanists International: <https://fot.humanists.international/> [accessed 21 May 2021]

<sup>2</sup> End Blasphemy Laws campaign: <https://end-blasphemy-laws.org/> [accessed 21 May 2021]



to critically evaluate thoughts and ideas. In practice, this means not only enacting laws that protect the public from harmful forms of propaganda and misinformation, but also ensuring school curricula include critical thinking and the principles of scientific and philosophical enquiry; ensuring a diverse and pluralistic media; and ensuring general access to a wide variety of educational resources, whether that means through books, online, or by other means.

## RESPONSE TO CONSULTATION QUESTIONS

### 1. What is the content and scope of freedom of thought? For example:

**a) What does freedom of thought encompass?**

**b) How have regional human rights courts, UN human rights mechanisms and domestic courts interpreted and applied freedom of thought?**

**c) How could this freedom be protected in law and policy, noting inter alia that rights-holders may be at different stages of cognitive development or have varying levels of cognitive functions?**

Unlike freedom of expression or religion or belief, freedom of thought is distinct because it is an unlimited right and is not subjected to any limitations in the text of the ICCPR (Article 18) or in the European Convention of Human Rights (ECHR) (Article 9) or of the Universal Declaration of Human Rights (UDHR) (Article 18). Although the text of Article 18 doesn't define what is meant by freedom of thought, state parties can elucidate four important duties to which they are subject.

#### Duty to prevent thought manipulation or forcing a person to reveal their thoughts

Firstly, and most evidently, there is a negative duty to protect citizens from manipulation to unduly influence their thoughts, through indoctrination, propaganda, or brainwashing, as well as refraining from compelling an individual to reveal their thoughts. *General Comment 22* on Article 18 touches briefly upon this duty, by stating that '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>3</sup> But it does not go on to discuss how a thought could be coercively revealed or whether such a thought once revealed would be protected under other rights such as conscience, religion or belief, or expression.

Moreover, the Comment lacks any consideration of what is meant by the manipulation of freedom of thought or where it can come into conflict with other rights, especially freedom of religion or belief. There is no consideration of the need to balance the right to proselytise under freedom of religion or belief with the need to protect freedom of thought from religious indoctrination. Such a distinction has been made by regional human rights courts with respect to the ECHR. In the case of the European Court of Human Rights (ECtHR) case *Kokkinakis v. Greece* (1993), Judge Pettiti concluded,

'Freedom of religion and conscience certainly entails accepting proselytism, even where it is "not respectable". Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing. The only limits on the exercise of this right are those dictated by respect for the rights of others where there is an attempt to coerce the person into consenting or to use manipulative techniques. The other types of unacceptable behaviour – such as

<sup>3</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4 <https://www.refworld.org/docid/453883fb22.html> [accessed 21 May 2021].



brainwashing, breaches of labour law, endangering of public health and incitement to immorality, which are found in the practices of certain pseudo-religious groups – must be punished in positive law as ordinary criminal offences. Proselytism cannot be forbidden under cover of punishing such activities. Certainly proselytism must not be carried on by coercion or by unfair means that take advantage of minors or persons legally incapacitated under civil law, but such lapses can be alleviated by the ordinary civil and criminal law.’<sup>4</sup>

Putting this into context, the judgment sets out,

‘First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.’<sup>5</sup>

This judgment offers some scope to this duty by citing some prohibited means of influencing freedom of thought, but is by no means exclusive. To this, we would also add a prohibition on imposed ‘confessions’ by the state or religious body and any ‘police enquiry or judicial process which is designed to rob the accused person of control of his intellectual faculties and of his conscience.’<sup>6</sup>

#### Duty to remove apostasy and blasphemy restrictions

Secondly, there is a negative duty upon states to refrain from penalising the holding of certain thoughts, where the state either believes them to be held by an individual or if they are manifested in some manner – becoming a belief or opinion or expression. This includes a duty to remove criminal sanctions for apostasy and blasphemy. The acts of apostasy or blasphemy are as much an issue of freedom of thought as of freedom of religion or belief. Before one can manifest either it is a necessary condition that the individual is able to freely form thoughts that dissent or are critical of the prevailing religious orthodoxy. Thus, freedom of thought is a necessary condition to enable someone to fulfil the ‘freedom to change his religion or belief’ and to manifest that change. We believe that this is implicit in the meaning of Article 18.

#### Duty to be able to manifest one’s thoughts

Similarly, building on the previous point, there must also be a positive duty placed on states to enable citizens to manifest their thoughts. Without such a right, it is hard to see how freedom of thought can really exist – since many thoughts will logically compel those who hold them to act in certain ways. However, this quickly crosses over into the territory of freedom of religion, belief,

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<sup>4</sup> *Kokkinakis v. Greece*, (1994) 17 EHRR 397, [1993] ECHR 20, 17 EHRR 397. <http://www.bailii.org/eu/cases/ECHR/1993/20.html> [accessed 21 May 2021].

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

<sup>6</sup> Loukis Loucaides, ‘The Right to Freedom of Thought as Protected by the European Convention on Human Rights’, *Cyprus Human Rights Law Review*, Volume 1 (2012), No 1. [https://intersentia.com/docs/CHRLR\\_2012\\_01.pdf](https://intersentia.com/docs/CHRLR_2012_01.pdf) [accessed 21 May 2021].



opinion, and expression, so we will say no more about it. Like those other freedoms, this positive duty can be legitimately limited where, for example, it prevents harm to others.

Positive duty to provide an environment where critical thinking and free enquiry flourish

We believe that freedom of thought goes beyond refraining from interfering with Article 18 rights as described above. It implies a positive duty for states to create a culture in which freedom of thought and free enquiry can flourish. This means guaranteeing an environment that allows both children and adults to develop the skills and access to information to be able to critically evaluate thoughts and ideas. In practice, this means not only enacting laws that protect the public from harmful forms of propaganda and misinformation, but ensuring school curricula include critical thinking and the principles of scientific and philosophical enquiry; ensuring a diverse and pluralistic media; and ensuring general access to a wide variety of educational resources, whether that means through books, online, or by other means. All citizens must have access to necessary information to engage in public affairs.

This is reflected in the UN Convention on the Rights of the Child (UNCRC), Article 28, which not only mandates a right to education for all children but suggests that it should support critical thinking capabilities.

*'States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the **elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods.** In this regard, particular account shall be taken of the needs of developing countries.'*<sup>7</sup> [emphasis added]

This article does not mandate that the state must provide a certain type of education and respects the rights of parents to educate their children within their own religious or philosophical convictions. However, it positively requires that states should facilitate access to scientific and technical knowledge through education. Thus, children should be given an understanding of critical thinking and the scientific method. Education 'must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely.'<sup>8</sup>

General Comment 22 touches upon this positive duty when discussing education about religions and non-religious worldviews, noting the particular vulnerability of children to indoctrination. It states,

*'The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way.'*<sup>9</sup>

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<sup>7</sup> The United Nations Convention on the Rights of the Child, Article 28.3: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [accessed 21 May 2021].

<sup>8</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 1* (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1: <https://www.refworld.org/docid/4538834d2.html> [accessed 7 June 2021].

<sup>9</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4 <https://www.refworld.org/docid/453883fb22.html> [accessed 21 May 2021].



Again, this Comment and other regional frameworks, such as the ECHR (Protocol 2 Article 1: Right to education), balance this protection against religious indoctrination with the rights of the parents. But they imply that education about religions and non-religious worldviews should be delivered by the state in a way that allows children to critically engage with the concepts taught, rather than it being used as a means of indoctrination.

**2. What does it mean in practice to respect, protect and fulfill a freedom not to:**

**a) disclose one's thoughts (mental privacy);**

**b) be penalized for one's thoughts; or**

**c) have one's thoughts free from coercive or other interference?**

Provide an environment where critical thinking and free enquiry flourish

In practice, thought is not only a private experience but also a skill. Like any crucial skill, it needs to be taught and given the freedom and opportunity to develop. This is what we mean by critical thinking: the skill of being able to seek out, receive, comprehend, and evaluate information through various intellectual frameworks (be they theological, scientific, or philosophical), free from coercion or outside interference. Therefore, freedom of thought implies a duty upon the state to provide an environment where critical thinking and free enquiry flourish. This duty breaks down into two separate parts: the duty to ensure that all citizens have the skill set to carry out critical thinking, and secondly, that they have free access to information to be able to do so.

Firstly, the state must ensure that educational curricula promote critical thinking and free enquiry, allowing children to develop thinking skills. In the UK this duty is widely ignored by the state. For example, we are concerned with the curricula of religious schools. The teaching in religious schools is not specifically inspected by Ofsted, instead being inspected by someone chosen by the governors (which invariably means the diocese or other religious group that runs the school). It is usually 'confessional' in nature, with the aim of instructing children in the doctrine and practices of a particular religion, rather than about different religions and humanism from a critical, objective, and pluralistic point of view. In such schools, religious education does not have to cover other religions and almost certainly fails to give a fair or detailed account of non-religious worldviews. Ethical issues such as abortion or assisted dying are often approached from an explicitly religious perspective, with all the potential for misinformation that this entails.

More generally, we believe that all pupils in all types of school should have the opportunity to consider philosophical and fundamental questions, and that in an open society we should learn about each other's beliefs, including humanism. We want the school curriculum to be inclusive, impartial, objective, fair, balanced, and relevant, allowing pupils to explore a variety of religions and humanism. It should include the historical and social contexts of the emergence and development of religions and humanism.

In 2015, the High Court of England and Wales found, in a case supported by us, that the UK Government had made an 'error of law' when it claimed that an English school that simply teaches GCSE Religious Studies,<sup>10</sup> the specification for which does not substantially include non-religious worldviews like humanism, would be providing sufficient teaching to meet its mandatory duty to provide religious education. This was because the failure to ensure that pupils at this stage of their education would receive religious education that considered both religious and non-religious perspectives amounted to a breach of the duty, under the European Convention on Human Rights,

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<sup>10</sup> GCSEs being the primary age 16 qualification in England.





to ‘take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner’.<sup>11</sup>

Despite this ruling, many schools in the UK still exclude non-religious beliefs. Following the case, the landmark report of the Commission on Religious Education (CoRE) also argued that the subject should be fully inclusive of humanism and renamed Religion and Worldviews to reflect the fact it should cover both religious and non-religious perspectives.<sup>12</sup> Nevertheless, the UK Government has again chosen not to take further steps to ensure that they do. Indeed, one of the reasons that was given for not implementing the CoRE recommendations was that ‘some stakeholders have concerns that making statutory the inclusion of “worldviews” risks diluting the teaching of Religious Education,’<sup>13</sup> a discriminatory view of non-religious beliefs that has been repeated on several occasions by the Catholic Education Service.<sup>14</sup>

Further, despite repeated requests from Humanists UK, the Department for Education has refused to instruct English local authorities that humanist representatives may participate as full voting members of the bodies that oversee and produce the locally agreed RE syllabuses, saying that this is a decision for LAs. Unfortunately, this means that, contrary to the Human Rights Act 1998 which treats religious and non-religious beliefs equally, many still exclude humanists and the syllabuses they set are not adequately inclusive as a result.

Conversely, the approach of including only non-religious worldviews that are considered to be analogous to religions can be seen in the 2021 Curriculum and Assessment (Wales) Act.<sup>15</sup> The Act explicitly states that the Religion, Values, and Ethics school curriculum, as well as ‘reflect[ing... the] principal religions represented in Great Britain’:

‘must also reflect the fact that a range of non-religious philosophical convictions are held in Great Britain.’<sup>16</sup>

The Act’s explanatory memorandum outlines the reasoning for this explicit inclusion as that ‘it reflects the need under the [ECHR] to include non-religious philosophical convictions as well as

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<sup>11</sup> *R (Fox) v Secretary of State for Education* 2015, para 39 <https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf> [accessed 21 May 2021].

<sup>12</sup> Commission on Religious Education, *Religion and worldviews: the way forward, a national plan for RE* (2018) <https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf> [accessed 21 May 2021].

<sup>13</sup> Letter to the Chair of the Commission on RE from Secretary of State for Education, Damian Hinds, 6 December 2018 <https://www.religiouseducationcouncil.org.uk/wp-content/uploads/2018/12/Letter-to-The-Very-Reverend-Doctor-John-Hall-from-Rt-Hon-Damian-Hinds-MP...-1.jpg> and <https://www.religiouseducationcouncil.org.uk/wp-content/uploads/2018/12/Letter-to-The-Very-Reverend-Doctor-John-Hall-from-Rt-Hon-Damian-Hinds-MP...-2.jpg> [accessed 21 May 2021].

<sup>14</sup> Catholic Education Service (2019) <https://www.catholiceducation.org.uk/component/k2/item/1003674-statement-from-the-catholic-education-service-on-the-consultation-to-re-and-rse-in-wales> [accessed 21 May 2021].

<sup>15</sup> Curriculum and Assessment (Wales) Act 2021 <https://gov.wales/curriculum-and-assessment-wales-act> [accessed 21 May 2021].

<sup>16</sup> Welsh Government, *Curriculum and Assessment (Wales) Bill [AS INTRODUCED]* 62, 3(b) <https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf> [accessed 21 May 2021].



established religions found in Great Britain.<sup>17</sup> It goes on to say: ‘the reference to “philosophical convictions” is to philosophical convictions within the meaning of Article 2 of the First Protocol to the European Convention on Human Rights.’ We believe that such an inclusive approach to religious education in all types of school is the only one that can truly support freedom of thought.

We are also concerned about compulsory worship in state schools as a means of indoctrination. Despite the UN Committee’s recommendation that the requirement be repealed,<sup>18</sup> schools in England, Wales, and Northern Ireland are still legally mandated to carry out a daily act of collective worship that is ‘wholly or mainly of a broadly Christian character’.<sup>19</sup> Although schools can opt – through a process called ‘determination’ – to have worship that aligns with an alternative faith, they are not permitted to opt out of delivering worship altogether.

Parents have a legal right to withdraw their children from collective worship in England, Wales, and Northern Ireland. And, since 2006, sixth-form pupils in England and Wales have been permitted to withdraw themselves from these sessions. However, this ignores the fact that, under both the Human Rights Act 1998 and Article 14 of the United Nations Convention on the Rights of the Child (UNCRC), younger children also have the right to freedom of thought and religion or belief; a right that is not respected when religious worship is imposed upon them. Furthermore, by treating Christian worship as the default, the current system illegitimately favours one faith perspective over other religious and non-religious beliefs and presupposes that children will participate in religious activities unless they or their parents opt-out. This not only risks the freedom of thought and conscience of pupils and families who are not aware of the right to withdraw, but indirectly requires those who do exercise this option to reveal information about what they believe in a way that could risk the right to privacy outlined in Article 16.

By only allowing children to opt out of collective worship at the age of 16, we also do not feel that UK law currently enables children to fully realise their ‘Gillick competence’<sup>20</sup> rights in a ‘manner that is consistent with’ their ‘evolving capacities’, as established in European case law and reflected in Articles 12 and 14 of the UNCRC. This view has been repeatedly endorsed by the Joint Committee

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<sup>17</sup> Welsh Government, *Curriculum And Assessment (Wales) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2020 <https://gov.wales/sites/default/files/publications/2020-07/curriculum-and-assessment-bill-explanatory-memorandum.pdf> [accessed 21 May 2021].

<sup>18</sup> UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (July 2016) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskHOj6VpDS%2F%2FJqg2Jxb9gncnUyUgbnuttBweOlyfyYPkBBwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIE0vA5LtW0GL> [accessed 21 May 2021].

<sup>19</sup> School Standards and Framework Act 1998 <https://www.legislation.gov.uk/ukpga/1998/31/part/II/chapter/VI/crossheading/religious-worship> [accessed 21 May 2021].

<sup>20</sup> NSPCC, ‘Gillick competency and Fraser guidelines’ December 2018. <https://www.icmec.org/wp-content/uploads/2019/04/gillick-competency-factsheet.pdf> [accessed 21 May 2021]



on Human Rights (JCHR), for example in reports in 2006<sup>21</sup>, 2008,<sup>22</sup> and 2010.<sup>23</sup> The issue of withdrawal is particularly pertinent for young people in the latter stages of secondary education who may even have reached the age of 16 but, because they have not yet begun sixth-form, may still not be able to opt out of worship.

What's more, even when parents request an exemption, the process of withdrawal is often difficult (not least because the law is not always well understood by schools). Children who have been removed from worship are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship. Indeed, in 2019 two non-religious parents, Lee and Lizanne Harris (supported by Humanists UK), took a legal challenge against their children's school in England because it refused to provide just such an alternative.<sup>24</sup> When the trust that runs the school eventually backed down after the Harrises won permission to have their case heard at the High Court, the school agreed to provide an inclusive alternative to the Harris children and any other withdrawn children whose parents wished them to receive it.

Although this logically ought to mean that similar arrangements are possible at other schools, the case did not set a legal precedent, and the Department for Education explicitly stated that the outcome 'does not require the provision of meaningful alternatives across all schools'. Not every parent who would like to see a meaningful alternative to collective worship in their child's school will be in a position to mount time-consuming legal proceedings. What's more, such action may risk alienating the family from the school. For this reason, this is clearly not the most desirable means by which to ensure that children get the kind of non-discriminatory provision to which they are entitled under article 2 of the UNCRC. Instead, this aim would be far better met by a change to the law.

We are also concerned about what happens within certain coercive and high-control religious communities. For example, a significant number of unregistered, illegal schools are operating in England, many of which are religious. Such settings serve a variety of different communities, including Muslim, Jewish, and Christian – all of which, in some respect, tend to be fundamentalist, extreme, or isolationist in their outlook. In 2019, the English schools inspectorate Ofsted revealed that close to 6,000 pupils are being educated in illegal schools.<sup>25</sup> The education provided in many unregistered religious schools is known to be narrow in its scope, predominantly scriptural in its

<sup>21</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Thirteenth Progress Report, Twenty-fifth Report of Session 2005-06*, paragraphs 2.1-2.6 <https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf> [accessed 21 May 2021].

<sup>22</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Education and Skills Bill, Nineteenth Report of Session 2007-08*, paragraphs 1.40-1.45 <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf> [accessed 21 May 2021].

<sup>23</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Children, Schools and Families Bill; other Bills, Eighth Report of Session 2009-10*, paragraphs 1.30-1.40 <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf> [accessed 21 May 2021].

<sup>24</sup> Humanists UK, 'School concedes in collective worship case – will provide alternative assemblies' <https://humanism.org.uk/2019/11/20/school-concedes-in-collective-worship-legal-case-will-provide-alternative-assemblies/> [accessed 21 May 2021].

<sup>25</sup> Humanists UK, 'New data on illegal schools reveals "grave situation", says Humanists UK' 12 April 2019. <https://humanism.org.uk/2019/04/12/new-data-on-illegal-schools-reveals-grave-situation-says-humanists-uk/> [Accessed 7 June 2021].





content, and deeply conservative, intolerant, and extreme in its outlook. In a series of advice notes to the UK Secretary of State for Education in 2015 and 2016, former Ofsted Chief Inspector Sir Michael Wilshaw detailed the findings of inspectors in a number of unregistered Muslim settings, including 'a narrow Islamic-focused curriculum', 'inappropriate books and other texts including misogynistic, homophobic and anti-Semitic material', and 'children and young people... at significant risk of harm and indoctrination'.<sup>26</sup>

In March 2018, the current Chief Inspector, Amanda Spielman, told the UK Parliament's Education Select Committee that intolerant and extremist teaching in unregistered faith schools was 'as bad as it has ever been and is deteriorating rather than improving'.<sup>27</sup> She also expressed serious concerns about teaching materials found in these schools, including 'books by people banned from entering the country,' and 'books advocating men beating their wives as punishment'. Similarly, Ofsted reports exposed the situation within illegal Charedi Jewish schools, revealing that the curriculum 'encourages cultural and ethnic insularity' and prevents pupils from 'developing a wider, deeper understanding of different faiths, communities, cultures and lifestyles, including those of England'.<sup>28</sup> Former pupils report that they only study the Talmud and the Torah, often for fourteen hours a day, six days a week, and leave education as adults unable to speak any English, in spite of sometimes being third or fourth generation Londoners. It is impossible under such circumstances for children to develop the skills necessary to exercise their freedom of thought.

Freedom of thought is also dependent upon the right to freedom of information. There is a positive duty upon the state to ensure that the public has enough knowledge to participate in public and civil life. Although this covers prohibiting indoctrination, propaganda, and dissemination of false information, it should also extend to guaranteeing access to information. States should be required by law to publish relevant information about their activities and the public should have a legal mechanism for requesting such information.

Given their role as a crucial medium for the expressing and imparting of ideas in our society, the media has a role to play in informing and educating citizens and by extension in fostering freedom of thought. This would include allowing citizens uncensored access to the internet and free access to books, without censorship, through a system of public libraries. Public sector broadcasting needs to take an objective and pluralistic approach to the content that it broadcasts. The Communications Act 2003 lays down that public service television broadcasting must 'meet the needs and satisfy the interests of as many different audiences as practicable' and be 'properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests' of those audiences.<sup>29</sup> However, in practice the British Broadcasting Corporation (BBC), as the main public sector broadcaster in the UK, has interpreted this narrowly with regards to religious content

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<sup>26</sup> Sir Michael Wilshaw, Unregistered schools: Ofsted advice notes, 10 November 2015. <https://www.gov.uk/government/publications/unregistered-schools-ofsted-advice-note> [Accessed 7 June 2021].

<sup>27</sup> Humanists UK, 'Intolerant teaching at private and unregistered faith schools "as bad as it has ever been", says Ofsted Chief Inspector', 8 March 2018. <https://humanism.org.uk/2018/03/08/intolerant-teaching-at-private-and-unregistered-faith-schools-as-bad-as-it-has-ever-been-says-ofsted-chief-inspector/> [Accessed 7 June 2021].

<sup>28</sup> Humanists UK, 'BHA reveals illegal Jewish school allowed to stay open for years despite repeated Ofsted warnings' 15 January 2015. <https://humanism.org.uk/2016/01/15/bha-reveals-illegal-jewish-school-allowed-to-stay-open-for-years-despite-repeated-ofsted-warnings/> [Accessed 7 June 2021].

<sup>29</sup> Communications Act 2003, section 264. <https://www.legislation.gov.uk/ukpga/2003/21/contents> [accessed 21 May 2021].



and therefore has to a large extent excluded humanism and other non-religious content from it. To expand the point, there are three relevant types of programmes:

1. Current affairs programmes and documentaries related to religion or belief – e.g. *Young, Sikh and Proud* (BBC One), *My Mate's A Muslim* (BBC Three), *Britain's Easter Story* (Radio Four).
2. Magazine and discussion programmes about religion and belief designed to educate, entertain, and inform – e.g. *Sunday* (BBC Radio Four), *The Moral Maze* (BBC Radio Four), *The Big Questions* (BBC One), *Sunday Morning Live* (BBC One).
  - a. Programmes by believers about their religion or belief and addressed to fellow-believers – e.g. the daily service on BBC Radio Four, *Songs of Praise* (BBC One), and programmes to mark specific religious festivals (Easter, Diwali etc). We will consider these in turn.

In terms of (a), the BBC has not broadcast a single documentary programme about humanism or humanists either on television or radio since a short interview series on the then Home Service in 1965. With reference to (b), humanists and the non-religious are generally invited to take part in discussion programmes and so this is less of a problem. However, such inclusion is still far from proportionate to the demographics of the population. In regard to (c), there is an unbroken daily sequence of programmes specifically serving the Christian community (e.g. *Thought for the Day* and *Prayer for the Day* (BBC Radio Four), the daily service (BBC Radio Four), and *Songs of Praise* (BBC One) are all predominantly Christian), plus occasional programmes devoted to the observances of other religions such as Passover or Eid. But there has never been a single programme in which humanists have been given a platform to talk to like-minded humanists. We believe that the exclusion of humanist content reduces the inclusivity of public service broadcasting and thereby is a failure to ensure that the public has access to the plurality of information necessary to develop freedom of thought.

#### Penalisation under apostasy and blasphemy

The imposition of criminal sanctions for apostasy and blasphemy cannot be compatible with respect for freedom of thought. The UN Human Rights Council put forward Resolution 36/17 in 2017, which demands an end to the death penalty for apostasy and blasphemy.<sup>30</sup> We believe that this instrument should go further by stating that blasphemy and apostasy should not be regarded as crimes at all, let alone ones that are punishable by death. In 2015, humanists from around the world came together to found the End Blasphemy Laws campaign, spearheaded by Humanists International.<sup>31</sup> Since then, Denmark, Norway, Iceland, the Republic of Ireland, Malta, France, New Zealand, Canada, Scotland, and Greece have repealed their blasphemy laws. We hope that under the mandate of the Special Rapporteur on FoRB abolition of these laws will remain a priority.

### **3. How and to what extent do other fundamental rights and freedoms (including but not limited to freedom of conscience, and freedom of religion or belief in Article 18 of the ICCPR, and the rights to privacy (Article 17 of the ICCPR), opinion and expression (Article 19 of the ICCPR)) either depend upon, support or otherwise relate to freedom of thought?**

Freedom of thought is 'the matrix, indispensable condition, of nearly every other freedom. With rare

<sup>30</sup> Humanists International, 'UN Human Rights Council condemns punishing apostasy, blasphemy and same-sex relations with death penalty', 30 September 2017. <https://humanists.international/2017/09/un-human-rights-council-condemns-punishing-apostasy-blasphemy-sex-relations-death-penalty/>

<sup>31</sup> End Blasphemy Laws Campaign, <https://end-blasphemy-laws.org/> [Accessed 7 June 2021].



aberrations, a pervasive recognition of that truth can be traced in our history, political and legal.<sup>32</sup> Above, American Judge Benjamin Cardozo describes freedom of thought as the keystone that holds together and gives meaning to the other fundamental rights of conscience, religion or belief, and expression among others. We agree with this view of freedom of thought, for without the ability to think freely, you cannot freely hold or express ideas or beliefs.

#### **4. Is there a difference between 'freedom of thought' and 'freedom of belief'? If so, what is the distinction?**

Yes. The three rights guaranteed within Article 18 are closely interlinked, for as Loukis Loucaides describes, 'what a man believes is a matter of conscience and as a matter of religion is an aspect of his thoughts.'<sup>33</sup> There are nonetheless practical differences between these rights. As described above, freedom of thought is a skill and as such it requires positive action on the part of the state to ensure that its citizens can develop and improve it. The state must refrain from unlawfully interfering with the manifestations of a person's belief, such as choosing to worship in a certain way, but it doesn't have a duty to promote any particular religion or belief above and beyond others. In fact it should actively seek not to do so through allowing citizens to develop and improve their beliefs through pluralistic teaching and providing relevant information in the media.

The scope of freedom of thought is wider than that of freedom of belief. Thoughts can be speculations, questions, or alternative explanations on any subject, and they do not have to be fully formed. *Comment 22* specifies that 'it encompasses freedom of thought on all matters.'<sup>34</sup> However, the meaning of belief within Article 18 is limited to religious beliefs, the lack of religious beliefs, or beliefs that are analogous to those of religions – like humanism. Within Article 18 the term 'belief' is only used in conjunction with religion (or lack thereof) and the list of ways in which beliefs can be manifested in paragraph four of *Comment 22* only relate to religious practices. The everyday use of the term 'belief' to mean anything that is held as true by the holder has a broader meaning and as such falls under Article 19 – the right to hold opinions – but it does not fall under Article 18 protections.

Additionally, implicit in the notion of 'belief' is that the believer must hold that the belief is true, i.e. that it accurately reflects reality. This is not the case with thoughts, where the holder may know or believe them to be false or morally unacceptable.

As described above, another key difference is that freedom of thought, when taken alone, is an absolute and unlimited right. Whereas freedom of belief is subject to certain limitations prescribed by law for certain purposes. In *C. v. the United Kingdom*, the Judge described the scope of the ECHR's Article 9 protections and limitations. The judgement stated,

*'Article 9 primarily protects the sphere of personal beliefs and religious creeds, i.e. the areas which are sometimes called the forum internum. In addition, it protects acts which are intimately linked to these attitudes, such as acts of worship or devotion which are aspects*

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<sup>32</sup> Loukis Loucaides, 'The Right to Freedom of Thought as Protected by the European Convention on Human Rights', *Cyprus Human Rights Law Review*, Volume 1 (2012), No 1. [https://intersentia.com/docs/CHRLR\\_2012\\_01.pdf](https://intersentia.com/docs/CHRLR_2012_01.pdf) [accessed 21 May 2021].

<sup>33</sup> *Ibid.*

<sup>34</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4 <https://www.refworld.org/docid/453883fb22.html> [accessed 21 May 2021].



*of the practice of a religion or belief in a generally recognised form. However, in protecting this personal sphere, Article 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dedicated by such a belief.’<sup>35</sup>*

Such restrictions are not considered to be part of freedom of thought.

**5. Is there a difference between ‘freedom of thought’ and ‘freedom of opinion’? If so, what is the distinction?**

Yes. Opinion is a broader category than ‘belief’ and can encompass a wide variety of social and political viewpoints. Similar to above, the main difference is that unlike freedom of opinion, freedom of thought is not subject to any limitations. Article 19 of the ICCPR states that everyone has the right to hold opinions. A person can have thought, but that does not mean that the holder believes that thought to be true or necessarily agrees with it or holds it as an opinion. It may be a speculation or indeed a question. An opinion, whilst a sub-set of thought, is a thought from the holder’s point of view. An expression is the manifestation of a thought or opinion in the *forum externum*.

**6. What is the relationship between the *forum externum* of a rights-holder (e.g. manifestations of one’s religion or belief, or expression) and freedom of thought (part of one’s *forum internum*)? Would violations or limitations of the former affect the latter? If so, how does this occur and is it permissible under IHRL?**

It is undoubtedly the case that a state might want to encourage or discourage the expression of certain opinions or beliefs. For example, a state may wish to encourage its citizens to respect human rights or democratic institutions or discourage racial stereotypes or prejudices. However, it is limited in the means by which it can do so. It can enact laws against the harmful expression of opinions such as slander and incitement to violence. Through these means it may hope to foster a culture in which its citizens are more likely to hold thoughts in accordance with the state’s narrative. But it cannot use these restrictions on the expression of opinions or beliefs to try to exert control over a person’s underlying thoughts. It should not seek to use criminal sanctions, involuntary re-education programmes, or any other form of manipulation to restrict thoughts that it deems undesirable. Citizens have the freedom to hold morally repugnant thoughts, such as ideas about racial hierarchies, without interference. Most people from time to time hold thoughts that they themselves believe to be morally unacceptable, such as to use violence against someone who has wronged us, but agree that the expression of this should not be permitted and have no intention to express this as an opinion or action. International human rights law makes these limited restrictions on the *forum externum* clear in Articles 18 and 19 of the ICCPR and they are reflected in other regional frameworks such as the ECHR.

**7. Do certain self-expressions (e.g. one’s diary or digital footprint, language and non-verbal expression) ever constitute ‘thought’ in and of themselves? If so, how and under what conditions?**

Potentially. Thoughts can compel a person to make choices or pursue actions, and these debatably might not strictly speaking be covered by the definition of expression or opinion under Articles 18 and 19. Loucaides says the following:

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<sup>35</sup> *C. v The United Kingdom*, (1983), Case No. 10358/83  
<https://co-guide.org/jurisprudence/case-c-v-united-kingdom-application-no-1035883> [accessed 21 May 2021].



*'Thoughts may lead a person to a certain attitude, conduct, behaviour or activity that cannot, strictly speaking, fall within the scope of freedom of "expression" within the meaning of Article 10 of the [ECHR]. Thinking covers all possible subjects and positions and may end up with certain options of conduct or behaviour. Take for example a person who, after thinking freely, decides to join a political party, an association, a movement, or he decides to become a contributor to a particular event. One cannot speak of freedom of "expression" in respect of this kind of conduct. Is it permissible by the state to interfere and prevent such implementation or manifestation of a person's thoughts? It is necessary to mention here that although it may not fall within the concept of freedom of expression, the manifestation of a person's thought may come within the ambit of another right (for instance the right to freedom of association or the right to protection of private life), Other than freedom of expression, and be subjected to the limitations applicable to such a right. But again the solution suggested above should apply, namely maintaining absolute protection in respect of the manifestation of thoughts on the basis of a criterion of non-applicability of such limitations to them which aim at suppressing the thought or the freedom of thought itself rather than at regulating the form and effects of its expression.'*<sup>36</sup>

So there may be attitudes, conduct, or behaviours that are a manifestation of thoughts which are not covered by the definitions of opinion, expression, or belief. If this is indeed so, these types of self-expression perhaps should be considered thoughts in and of themselves. Although Loucaides does consider whether such self-expression could also be considered part of other convention rights such as private life or freedom of association.

**8. How could the law assess whether attempts to unduly affect one's freedom of thought are impermissible under IHRL? To this end, what principles or factors could be considered? Are there any aggravating or mitigating factors?**

We do not know where the exact limits should be. However, there are some areas where there is a clear case that there should be no interference. As we have described above, one such area is criminal sanctions on apostasy and blasphemy. Similarly, all attempts to shut down or inhibit the free function of thinking, such as brainwashing, must also always be considered an undue effect.

**9. Are there evidentiary challenges for proving a violation of freedom of thought? If so, what are they and how could they be overcome?**

There will always be the inherent problem that the contents of the mind cannot be directly experienced by another and so whether a particular thought exists or not will always be contestable. Nevertheless, this can be overcome by looking at thought not only as a private experience but as a skill and an action of itself. Therefore, a violation of freedom of thought does not centre on proving that a thought was unduly influenced, but as whether the action intended to disrupt or interfere with a person being able to pursue free enquiry. This could be through direct pressure, such as brainwashing, or through the denial of access to sufficient information or education.

**10. Do certain practices and policies have undue influence on 'freedom of thought'? If so, which ones, why and in what circumstances? This may occur in various contexts – whether offline or online, involving State or non-State actors – such as in media and technology,**

<sup>36</sup> Loukis Loucaides, 'The Right to Freedom of Thought as Protected by the European Convention on Human Rights', *Cyprus Human Rights Law Review*, Volume 1 (2012), No 1. [https://intersentia.com/docs/CHRLR\\_2012\\_01.pdf](https://intersentia.com/docs/CHRLR_2012_01.pdf) [accessed 21 May 2021].





**healthcare, national security and education sectors.**

Yes. We have described several such policies above, most notably criminal sanctions imposed upon apostatic or blasphemous thoughts. These are examples of policies or practices that are designed to change a person's *forum internum* identity. Other practices of this type that are of concern to us include the criminalising of atheism and homosexuality, requiring all citizens to identify as one of a number of state-sanctioned religions, and the practice of so-called 'conversion therapy' where it is falsely claimed that the internal thoughts about sexuality or gender identity can be altered.

**11. What is the effect (if any) of the following on freedom of thought:**

- a) misinformation / disinformation;**
- b) proselytism or 'anti-conversion' efforts; or**
- c) 'treatment' for one's thoughts – including for mental health reasons.**
- d) If there is an effect, how and when does this occur?**

We would like to focus on the effects of laws restricting apostasy and blasphemy. These laws have a disproportionate and devastating impact upon non-religious people. In 13 countries being non-religious is a capital crime under blasphemy and apostasy laws and it is an imprisonable offence in over 40 more. In the past five years there has been a worrying global trend of increased communal and vigilante violence against humanists, which has resulted in numerous high-profile murders – for example, that of Mashal Khan, who was beaten to death by fellow students at his University in Pakistan, simply for calling himself 'The Humanist' on Facebook.<sup>37</sup> The result is that in many countries, there is virtually no openly non-religious community at all – it is simply impossible to be so.

These laws have a bigger impact upon freedom of thought in society, driving extremism. As Andrew Copson, in his capacity as President of Humanists International commented,

“Blasphemy” and “apostasy” laws not only violate the rights of the individual, it is not even true that “society” as a whole somehow benefits. On the contrary, time and time again, it is clear that where there are cultural taboos against sacrilege, non-belief, or religious conversion, to codify those taboos in law only increases the confidence of religious radicals, diminishes the space for both personal freedoms and civil society, and propagates ever more extreme beliefs, extreme taboos, and the primacy of religious beliefs, particularly conservative religious beliefs, over the welfare of everyone in society.<sup>38</sup>

**12. Information about what practices and policies may unduly affect freedom of thought of individuals in vulnerable situations, including:**

- a) refugees and migrants;**
- b) children;**
- c) girls, women, and LGBT+ persons;**
- d) disabled persons;**
- e) the elderly; and**
- f) members of minority religious or belief communities.**

<sup>37</sup> Humanists International, ““Humanist” murdered by fellow university students for alleged “blasphemy””, 13 April 2017: <https://humanists.international/2017/04/humanist-murdered-fellow-university-students-alleged-blasphemy/> [Accessed 7 June 2021].

<sup>38</sup> Andrew Copson, *Freedom of Thought Report 2019*, Preface. <https://fot.humanists.international/preface/> [accessed 7 June 2019].



We would like to focus on the effects of laws restricting apostasy and blasphemy upon minority religious or belief communities. It is generally accepted that forbidding dissenting thought against religion (apostasy) or the manifestation of those thoughts (blasphemy) promotes religious intolerance rather than protecting adherents. Dr Ahmed Shaheed himself made this case strongly in his report to the UN General Assembly in 2017 on the elimination of all forms of religious intolerance.

*'Anti-blasphemy, anti-apostasy and anti-conversion laws, some of which are falsely presented as "anti-incitement" legislation, often serve as platforms for enabling incitement to discrimination, hostility or violence against persons based on religion or belief. Such laws also frequently afford varying levels of protection to different religions and are often applied in a discriminatory manner. Those who support criminalizing blasphemy argue that criticism of religion or defamation of religious figures is a variant of hate speech. **In reality, however, anti-blasphemy laws are generally focused on the degree to which speech causes offence or outrage to religious sentiments, and not the extent to which that speech undermines the safety and equality of individuals holding those religious views.***

*'Anti-blasphemy laws often give States licence to determine which conversations on religion are admissible and which ones are too controversial to be voiced. The Special Rapporteur notes that when governments restrict freedom of expression on the grounds of "insult to religion", any peaceful expression of political or religious views is subject to potential prohibition. In practice, those laws can be used for the suppression of any dissenting view in violation of international human rights standards protecting freedom of opinion and expression and freedom of religion or belief. Consequently, the international community, in several recent action plans, have called upon States that still have blasphemy laws on the books to repeal them because such laws have a stifling impact on the enjoyment of the right to freedom of religion or belief, not to mention the ability to engage in healthy dialogue and debate about religion. **Legislation on religious offences is thus often used to facilitate the persecution of members of religious minority groups, dissenters, atheists and non-theists.**'<sup>39</sup> [emphasis added]*

### **13. What steps could States take to ensure that an individual's freedom of thought is not unduly affected by certain practices and policies? For instance, it is recalled that the Committee on the Rights of the Child has encouraged States to take certain measures with respect to the digital environment.**

As stated above, we believe that there is a positive duty upon the state to ensure that everyone has the opportunity and is encouraged to develop their critical thinking abilities and to protect against practices that prevent this. This means that the right of parents to determine the type of education for their children must be balanced against the right of the child to freedom of thought. This could be achieved through enshrining the UN Convention on the Rights of the Child into national legal frameworks. States should reform educational curricula to include scientific and philosophical enquiry from primary level.

In state schools, whether of a religious character or not, education about religions and humanism needs to be critical, objective, and pluralistic. It must be equally inclusive of a range of different

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<sup>39</sup> Dr Ahmed Shaheed, UN General Assembly, Seventy-second session. *Interim report of the Special Rapporteur on freedom of religion or belief*, 2017. [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/72/365](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/365) [accessed 21 May 2021]



religions and non-religious worldviews and encourage critical engagement with the content. It must not be confessional in nature. The state should not require by law acts of worship and should repeal such laws especially in school and educational settings. In closed religious communities, as described above, the state needs to take appropriate steps to ensure that religious instruction is not indoctrinating and if it is found to be such institutions should be shut down. . All educational facilities providing full-time education should be registered, standards inspected and a register of home educated pupils required. Broadcast media needs to be regulated to ensure that it not only protects against manipulation of the viewers right to freedom of thought but also must take a objective and pluralistic approach to its content to ensure that the viewers are given enough information to be able to make informed and critical judgements and pursue free enquiry.

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