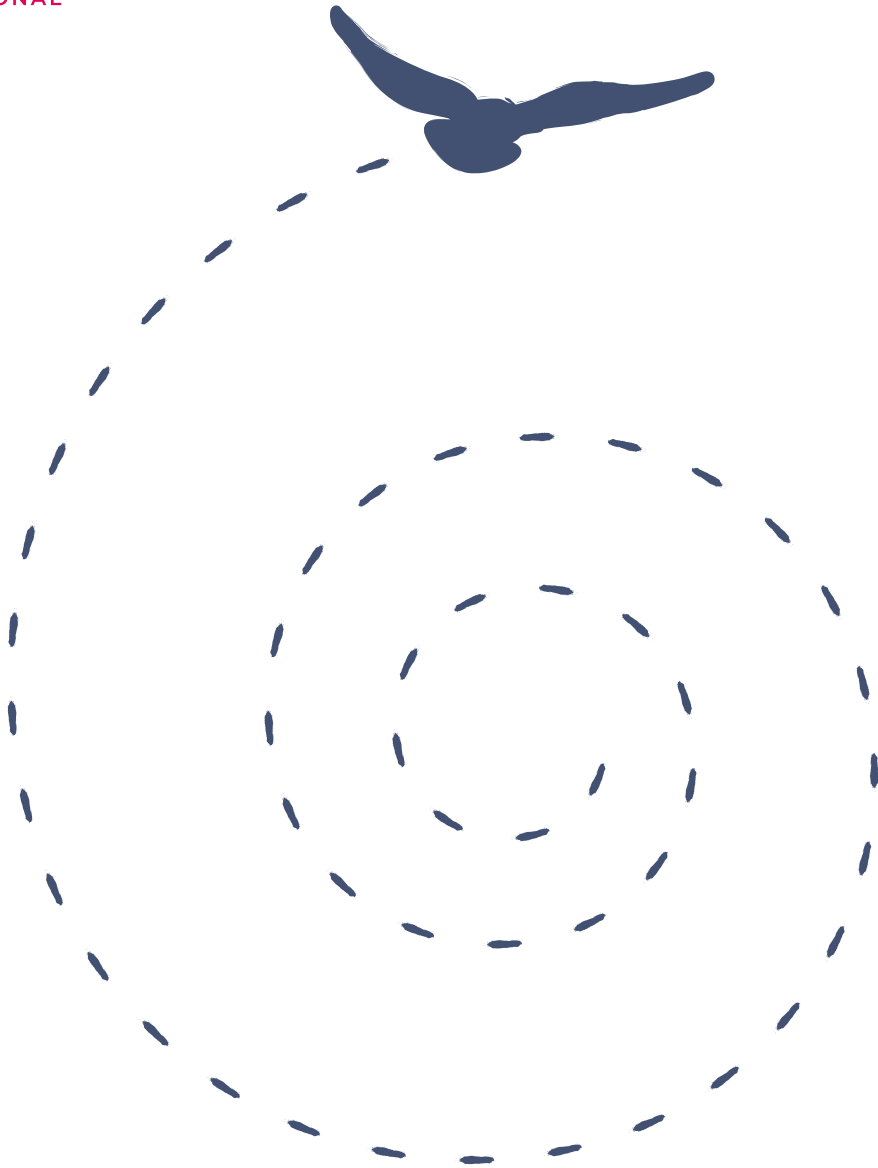




**Humanists**  
INTERNATIONAL



# The Right to Freedom of Religion or Belief:

A Good Practice Guide

The objective of this Good Practice Guide is to help readers to better understand the concept of Freedom of Religion or Belief (FoRB) as it is defined under international human rights law. This Guide hopes to dispel common misconceptions about FoRB, such as the belief that FoRB is a right that only protects religious people.

Using real world examples, this Guide will show how developing a good understanding of FoRB is essential to prevent its misuse by malicious actors, including some governments and hardline religious movements, to justify the violation of other fundamental rights and equalities.

This Guide was drafted by the Advocacy team of Humanists International. It is mainly intended for Members of Humanists International, practitioners who may encounter FoRB in their campaigning and human rights work, and anyone else who hopes to develop a well-rounded understanding, from an impartial and well-informed source, on the importance and relevance of this right.

## The Right to Freedom of Religion or Belief: A Good Practice Guide

# Contents

<b>1</b>	<b>Index of useful terms and acronyms</b>	<b>4</b>
<b>2</b>	<b>Defining Freedom of Religion or Belief</b>	<b>6</b>
	Who is protected?	6
	What actions does the right to FoRB protect?	6
	Are there any limitations to FoRB?	7
	Why is FoRB important to the global humanist community?	8
<b>3</b>	<b>International legal background and sources</b>	<b>9</b>
<b>4</b>	<b>How does FoRB interact with other protected rights?</b>	<b>10</b>
<b>5</b>	<b>The instrumentalization and distortion of FoRB</b>	<b>14</b>
	Language to use and the importance of terminology	14
	So-called “Religious Freedom” and the anti-choice/rights movement	15
	USA and “Religious Freedom”	20
	Distortion of FoRB by States at the UN: “Religious Specificities,” “Traditional Values” and “Protection of the Family”	21
	Civil Society actors distorting FoRB for anti-choice agenda	22
<b>6</b>	<b>The siloing of FoRB and the Role of Special Envoys</b>	<b>23</b>
<b>7</b>	<b>Summary of Key Points</b>	<b>25</b>
<b>8</b>	<b>Useful Resources and Background Reading</b>	<b>26</b>
	Cases to look at	27
	Training Exercises	27

# 1

## Index of useful terms and acronyms

International human rights advocacy is notorious for its usage of acronyms. In this section we cover some of the main terms and acronyms you are likely to come across while working on FoRB.

<b>ACHR</b>	the American Convention on Human Rights
<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ACHPR (Commission)</b>	the African Commission on Human and Peoples' Rights, which is the institution tasked with interpretation of the ACHPR
<b>CEDAW</b>	the Convention on the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	the Convention on the Rights of the Child
<b>ECHR</b>	the European Convention on Human Rights
<b>ECtHR</b>	the European Court of Human Rights, which is the institution tasked with the interpretation of the European Convention on Human Rights
<b>IACHR</b>	the Inter-American Court of Human Rights, which is tasked with enforcing the ACHR
<b>ICCPR</b>	the International Covenant on Civil and Political Rights
<b>ICESCR</b>	the International Covenant on Economic, Social and Cultural Rights

<b>ICERD</b>	the International Convention on the Elimination of All Forms of Racial Discrimination
<b>FBO</b>	faith-based organization
<b>FoRB</b>	the right of Freedom of Religion or Belief
<b>FreedEx</b>	the right of Freedom of Expression
<b>OIC</b>	the Organization of Islamic Cooperation, an inter-governmental body aimed at advancing the interests of Muslim-majority states
<b>SDGs</b>	the 17 Sustainable Development Goals set in 2015 by the UNGA and intended to be achieved by 2030
<b>SRHR</b>	sexual and reproductive health and rights
<b>UDHR</b>	the Universal Declaration of Human Rights
<b>UN</b>	the United Nations
<b>UNGA</b>	the General Assembly of the United Nations, which is the main policy-making body of the United Nations, headquartered in New York
<b>UNHRC</b>	the Human Rights Council, an inter-governmental body (consisting of 47 member states elected for 3-year terms) established by the UN General Assembly, which replaced the Human Rights Commission in 2006. The HRC holds regular sessions three times a year (in March, June and September). Not to be confused with the Human Rights Committee, which is a body of 18 experts established under the ICCPR
<b>UNSR or UN Special Rapporteur</b>	the individual expert charged by the United Nations Human Rights Council to investigate a specific set of human rights concerns. Their roles are independent and voluntary

1	Index of useful terms and acronyms
2	Defining Freedom of Religion or Belief
3	International legal background and sources
4	How does FoRB interact with other protected rights?
5	The instrumentalization and distortion of FoRB
6	The silencing of FoRB and the Role of Special Envoys
7	Summary of Key Points
8	Useful Resources and Background Reading

# 2

## Defining Freedom of Religion or Belief

### Who is protected?

FoRB is a right<sup>1</sup> that protects the individual conscience of **all human beings**. Under FoRB, the meaning of 'belief' and 'religion' is broadly construed. FoRB is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices. It encompasses the right of an individual to reject any religion or belief, to identify as humanist or atheist, and to manifest non-religious convictions through expression, teaching and practice. FoRB is thus a **universal** right; it does not grant special privileges for religious people, but rather extends broad protection to everyone equally.

### What actions does the right to FoRB protect?

There is both an 'inner' and an 'outer' element to FoRB. It is important to keep these two elements distinct. While the inner element lives within every human being, and is a personal matter known to themselves only, the outer expression of FoRB is one which can implicate others and is where the potential for differences arises.

FoRB grants each individual the **inner** ability to hold and to change their inner convictions and beliefs. It protects both the right to have a religion or belief, as well as the right not to have a religion or belief. Importantly, no person can be coerced or forced into believing something against their will.

FoRB also grants the **outer** freedom to manifest, practice and express a religion or belief. This includes the right to teach others about one's beliefs or to write and publish literature about a religion or belief. It includes the right to express a religion or belief through clothing, rituals and symbols, and to use buildings for worship.

### Are there any limitations to FoRB?

The 'inner' freedom to choose one's religion or belief is absolute, meaning that there are absolutely no circumstances in which it can be limited. The 'outer' element (i.e. the right to manifest) is not.

In other words, a State may set boundaries on the outward expression or practice of religious belief. Where any restrictions on FoRB do exist, they must be **prescribed by law and be necessary** to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>2</sup> For a restriction to be "necessary" it cannot be made on the basis of populism or prejudice. Evidence-based, non-discriminatory COVID-19 measures that temporarily limited public gatherings at places of worship are an example of a legitimate form of restriction put in place to safeguard public health.

Such restrictions on the outer aspect of FoRB are necessary in a diverse society where people of different religions coexist with those who are non-religious. There must be a balance to ensure that everyone's beliefs are equally respected, and care must be taken to ensure that freedom of religion or belief is not used as a cover to discriminate against minority groups, such as women and LGBTI+ people (more on this below).<sup>3</sup>



### Key takeaway:

**The right to manifest and express one's Freedom of Religion or Belief can be subject to restrictions, because it has the potential to affect other people's rights and freedoms.**

- 1 Index of useful terms and acronyms
- 2 Defining Freedom of Religion or Belief
- 3 International legal background and sources
- 4 How does FoRB interact with other protected rights?
- 5 The instrumentalization and distortion of FoRB
- 6 The silencing of FoRB and the Role of Special Envoys
- 7 Summary of Key Points
- 8 Useful Resources and Background Reading

<sup>1</sup> See Section 2 for the international legal background of the Right to Freedom of Religion or Belief

<sup>2</sup> ICCPR, Art. 18(3); UN HRC, General Comment 22.

<sup>3</sup> [https://www.ohchr.org/Documents/Issues/Religion/A\\_HRC\\_43\\_48\\_AdvanceUneditedVerison.docx](https://www.ohchr.org/Documents/Issues/Religion/A_HRC_43_48_AdvanceUneditedVerison.docx)

## Why is FoRB important to the global humanist community?

FoRB protects anyone whose personal belief system is a central aspect to their identity. It is a right that is essential to humanists.

It is a particularly important right for many of our members who are based in countries where their humanist, atheist, or non-religious beliefs are routinely undermined by the State or the religious majority. Anyone imprisoned for criticizing religion or identifying as an atheist is known as a 'prisoner of conscience' and has had their right to FoRB, as well as their right to freedom of expression, violated.

The status of FoRB is a good indicator of the general human rights situation in a given country. When religious or non-religious expression is restricted, this tends to signal a shrinking space for other civil and political rights, such as the right to life, privacy, assembly and expression, as well as social, economic and cultural rights.

Those countries that restrict religious pluralism are also generally those with poor records on democracy and creating a permissive environment for civil society movements. On the other hand, countries who commit to upholding FoRB will often (explicitly or implicitly) be creating a safer environment for the flourishing of other human rights.



### Further resource

The **Freedom of Thought Report**<sup>4</sup> documents which countries have the worst record on FoRB and freedom of expression, and the effect of any restrictions on the general human rights environment in the country under examination. It looks at markers such as whether religious authorities have authority over the government, whether religious or ideological instruction is prevalent in schools, and what penalties exist (legal and social) for the expression of non-religious views.

# 3

## International legal background and sources

The right of FoRB is enshrined in **Article 18 of the Universal Declaration of Human Rights** (UDHR):

*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”*

This statement is given international legal authority by **Article 18 of the International Covenant on Civil and Political Rights 1976** (ICCPR). As of April 2020, 173 of the 193 member states of the UN are State Parties that are bound by the terms of the ICCPR. Even if your country has not ratified the ICCPR, FoRB is still considered to be protected as a part of customary international law.

The UN Human Rights Committee — a body of experts established under the ICCPR — has elaborated on the meaning of Article 18 in **General Comment 22**.<sup>5</sup>

In 1981, the UN General Assembly passed the **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief**. Though nonbinding in character, the 1981 Declaration nonetheless gives more concrete expression to the general principle of FoRB expressed in the UDHR and ICCPR. Article 5 outlines, for example, the right of parents and guardians to have their children educated in line with their religion or belief.

FoRB is mentioned in several regional human rights instruments as well, and can be found in:

- Article 9 in the Council of Europe's Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)
- Article 8 of the African Union's Charter on Human and Peoples' Rights
- Article 26 and 27 in the Arab Charter on Human Rights
- Article 12 in the American Convention on Human Rights

Not only do these treaties contain important State obligations relating to FoRB, they also contain legal definitions and interpretations of FoRB that form part of the common language of international human rights advocacy. As these definitions are substantive, authoritative and are understood by all States, it is useful for individuals to use these agreed definitions while conducting advocacy.

Another source for the right to FoRB is (typically) in the State's constitution. However, not all of these regional and state-specific definitions of FoRB offer the same breadth of protection as the ICCPR. State constitutions tend to use more restrictive language when compared to international treaties, particularly if they were drafted a long time ago.

<sup>5</sup> The Human Rights Committee is the body tasked with monitoring compliance of State Parties with the ICCPR. It publishes its interpretation of the provisions of the ICCPR in the form of "general comments". These General Comments can offer useful guidelines to States and civil society organizations on the substantive content of a particular right.

# 4

## How does FoRB interact with other protected rights?

### Freedom of Expression

FoRB and Freedom of Expression are closely related rights. They are “neighbours” in the Universal Declaration of Human Rights, forming Articles 18 and 19 respectively. Both rights are essential rights for the protection of minorities and those holding opinions that differ from the powers that be.

To have freedom of expression means that individuals have the right to express their religious and moral convictions in public and in private. Equally, individuals have the right to criticize religion, even if this is perceived as insulting or offensive. There is no such thing as ‘valid’ and ‘invalid’ forms of criticism. Any criticism is legitimate so long as it does not cross the boundary into promoting hatred on the basis of nationality, race or religion in a manner that constitutes incitement to discrimination, hatred or violence.



### Further resource

**The Rabat Plan of Action** offers useful guidelines for determining when speech that is critical of religion crosses the line to become hate speech. It underlines the importance of setting a very high threshold and taking into account several aspects of the speech: the context, the status or position of the speaker, the intent behind the message, the content, how widely the message is spread and the degree of risk that the message will actually provoke and lead to violent action and discrimination.

Blasphemy laws (sometimes couched as ‘hate speech’ laws or ‘defamation’ laws) which criminalize insulting religion, religious figures, or religious feelings, violate the principle of freedom of expression and cannot be justified under the right to FoRB. **This is because it is individuals, not religions, that are the recipients of human rights and that can enjoy the right to freedom of religion or belief.** Criticizing or disrespecting religion through speech, written word or art may be offensive to believers, but it does not prevent them from practising and expressing their religious beliefs in any way.

It should be remembered that the very expression of atheistic views — i.e. when the non-religious exercise *their* right to freedom of religion or belief — might be perceived by some as inherently blasphemous. This only goes to show how inherently incompatible anti-blasphemy laws are to protecting a universalist right to FoRB for all.



### Key takeaway:

**The right to FoRB and Free Expression are compatible and interdependent rights. Anti-blasphemy laws run in diametric opposition to protecting both of them.**

### Equality

Another way of conceptualizing the interaction between FoRB and freedom of expression is through the lens of the right to equality. Equality and non-discrimination clauses are found in many international treaties. The UDHR states, in Article 1, that: “All human beings are born free and equal in dignity and rights”. Article 2 entitles everyone to enjoy the rights and freedoms in the Declaration “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 7 declares that: “All are equal before the law and are entitled without any discrimination to equal protection of the law ...”.



Religious extremists will often try to characterize the two rights as being in competition with one another, where one right must 'give way' to the other. For example, when the UN Special Rapporteur on Freedom of Religion or Belief published his report<sup>6</sup> examining the way in which religious influence on state laws and practices can affect gender equality, a representative of the Vatican lamented:

*Particularly unacceptable and offensive are the numerous references that recommend that freedom of religion or belief and conscientious objection must be surrendered for the promotion of other so-called "human rights," which certainly do not enjoy consensus, thus being a sort of "ideological colonization" on the part of some states and international institutions.<sup>7</sup>*

The Vatican's conception of FoRB as a right that cannot be 'surrendered' in any circumstances is incorrect. The freedom to manifest one's religion is not an unrestricted right, and it can never be used as a pretext to justify the violation of other human rights or discrimination against others.<sup>8</sup>

<sup>6</sup> [https://www.ohchr.org/Documents/Issues/Religion/A\\_HRC\\_43\\_48\\_AdvanceUneditedVerison.docx](https://www.ohchr.org/Documents/Issues/Religion/A_HRC_43_48_AdvanceUneditedVerison.docx)

<sup>7</sup> <https://www.ncronline.org/news/opinion/grace-margins/un-report-blasts-religions-overreach-and-holy-see-not-amused>

<sup>8</sup> In relation to the rights of women, the Human Rights Committee explicitly confirmed in General Comment 28 that, "Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes...States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights." <https://www.refworld.org/docid/45139c9b4.html>

International human rights law does provide a framework for the practical resolution of situations where freedom of religion or belief comes into conflict with other rights. The human rights based approach employs the following principles:<sup>9</sup>

-  **The principle of non-discrimination,** meaning that there is no 'right to discriminate' against a particular minority, on religious grounds or otherwise.
-  **Human rights are indivisible and non-hierarchical,** and should not be treated as if they are in competition with one another, with one right being sacrificed for another.
-  **Neutrality and impartiality** of the State between religions and between religious and non-religious forms of belief.
-  **Pluralism and tolerance,** entailing acceptance that there is no right not to be offended.
-  **Proportionality** in determining whether an interference with the right to manifest one's religion or belief is justified; the restriction must have a legitimate aim and the means used to achieve that aim must be proportionate and necessary.

However, as the Vatican official's statement suggests, some religious extremists and conservatives are unhappy with the human rights based approach to resolving differences between FoRB and equality rights, and frequently campaign to weaken equality laws by introducing greater exceptions for religious expression. More on this below.



### Key takeaway:

**The Right to FoRB does not allow individuals or organizations to discriminate against others**

<sup>9</sup> [https://www.ilga-europe.org/sites/default/files/Attachments/the\\_right\\_to\\_freedom\\_of\\_religion\\_or\\_belief\\_and\\_its\\_intersection\\_with\\_other\\_rights\\_0.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights_0.pdf)

# 5 The instrumentalization and distortion of FoRB

## Language to use and the importance of terminology

Generally, when we discuss FoRB issues, we use the full, all-encompassing term **“freedom of thought, conscience and religion”** (acceptably shortened to “freedom of religion or belief”) rather than the term “religious freedom”. This is not just a case of semantics. The two terms signify two divergent understandings of FoRB.

“Freedom of religion or belief” is the language enshrined in the UDHR and is the accepted language by UN Member States: crucially ‘thought’ and ‘belief’ should always be mentioned at the same time as ‘religion’. This ensures that ‘religion’ and ‘thought’ or ‘belief’ are put on equal footing. Reference to “religious freedom” without ‘thought’ or ‘belief’ suggests an interpretation that the right is purely one that protects religious people, rather than all people. By creating such a binary, this language is exclusionary of humanists, atheists, freethinkers and other non-religious groups, and is antithetical to the very nature of FoRB, which is a right that protects all people regardless of belief.

As we adopt the UN understanding of FoRB — and indeed all human rights — as being designed to protect all people, our view is that there is no need for a standalone ‘Declaration for Atheists’. Seeking to carve out specific protections may serve to weaken the system as a whole by creating competition and fragmentation between different minority groups.



### Key takeaway:

**Insist on inclusive terminology. i.e. “Freedom of Religion or Belief”**

## So-called “Religious Freedom” and the anti-choice/rights movement

Notably, those who use the “religious freedom” terminology are often some of the same people who wish to distort and instrumentalize the right in order to undermine the rights and equality of others.

Increasingly, religious actors have weaponized the term “religious freedom” to advance an agenda that is opposed to the universality of human rights.<sup>10</sup> Their aim is to promote a rebalancing of human rights in accordance with traditional values and a return to ‘natural rights’, where ‘religious freedom’ is repositioned as an unalienable right to which other human rights should be ceded. This message finds expression in discourse from States that defend blasphemy laws, or that elevate ‘family values’ to the exclusion of women’s and LGBTI+ peoples’ right to equality.<sup>11</sup>

One area where the tension between religious belief and equality laws has come to the fore is the practice of claiming a right of ‘conscientious objection’. As a concept, conscientious objection is not new. Historically, people including pacifists, quakers and humanists and others, have relied on it to refuse to perform military service. More recently, anti-choice religious activists have lobbied to expand the use of conscience clauses to justify refusals to provide certain lawful services. For example, religious members of the medical profession have argued a right to refuse to assist with abortion or IVF treatment, and some faith-based adoption agencies have argued a right to exclude LGBTI couples from their services.

There is no international consensus on the right of conscientious objection beyond the military service. Clearly, however, a completely unlimited appeal to conscience is both ethically and pragmatically harmful. In Italy, where abortion is legal but around 70% of gynaecologists are registered as conscientious objectors, many individuals seeking terminations have to spend money to travel long distances, which can delay essential care and increase health risks to them.<sup>12</sup>

<sup>10</sup> As made clear in the Vienna Declaration and Programme of Action (1993) “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” (S5)

<sup>11</sup> <https://blogs.lse.ac.uk/religionglobalsociety/2016/12/freedom-from-religion-is-fundamental-to-the-human-rights-system-but-it-is-under-threat/>

<sup>12</sup> <https://www.theguardian.com/world/2016/mar/11/italian-gynaecologists-refuse-abortions-miscarriages>



Reasonable conscience clauses should carefully strike the balance between the right for people to follow their conscience with the respect of other people's rights and freedoms, including autonomy, equality before the law and access to lawful services. The ECtHR has ruled that once a State has allowed abortion, it has a duty to ensure that pregnant individuals can effectively exercise their right in practice.<sup>13</sup> It also found no violation of the right to FoRB or the prohibition on discrimination where a Christian employee of a local authority was dismissed for refusing to register LGBTI civil unions.<sup>14</sup> Other guiding principles that have been articulated by various public institutions for navigating this difficult balance include:

- Conscientious objection should only be available to individuals and not to collective entities such as hospitals or health institutions.<sup>15</sup>
- Patients should be informed of any conscientious objection in a timely manner.<sup>16</sup>
- Healthcare providers who refuse to perform a procedure refer the patient to another professional who does not object in the same or to another easily accessible health-care facility.<sup>17</sup>
- In cases of emergency where the patient's life or health is imminently threatened, the medical professional should perform the procedure even if they are an objector.<sup>18</sup>

13 *P. and S. v. Poland*, 30 Oct. 2012; *A, B, and C v. Ireland*, 16 Dec. 2010; *Tysiąc v. Poland*, No. 5410/03, 2007

14 *Eweida and others v. United Kingdom*, 15 Jan. 2013.

15 French Constitutional Council, Decision 2001-446DC of 27 June 2001 (Voluntary Interruption of Pregnancy and Contraception Act)

16 Parliamentary Assembly of the Council of Europe (PACE), Resolution 1763, 2010 "The right to conscientious objection in lawful medical care".

17 World Health Organization (WHO) - Department of Reproductive Health and Research Safe abortion, "Technical and Managerial Guidelines for Prevention and Treatment of Abortion Complications", 1995; WHO "Safe Abortion Guidance", 2003; International Federation of Gynaecology and obstetrics (FIGO), "Resolution on Conscientious Objection", 2006; Parliamentary Assembly of the Council of Europe (PACE), Resolution 1763, 2010 "The right to conscientious objection in lawful medical care"

18 World Health Organization (WHO) - Department of Reproductive Health and Research Safe abortion, "Technical and Managerial Guidelines for Prevention and Treatment of Abortion Complications", 1995



## Case Study

● Good Ruling

### Macfarlane vs UK (European Court of Human Rights, 2010)

Mr MacFarlane, an orthodox Christian who was employed by a private company, complained to a UK employment tribunal that his employer had indirectly discriminated against him on the ground of his religious beliefs in dismissing him after he refused to comply with an equal opportunities policy which required him to provide psycho-sexual counselling services to same-sex couples on an equal basis as to heterosexual couples. His claim was unsuccessful in the UK courts and so Mr MacFarlane argued that the UK had failed to protect his Right to Freedom of Religion or Belief (Article 9) and had also violated his Article 14<sup>19</sup> right when read with Article 9. The European Court of Human Rights unanimously held that there had been no violation of his rights.



## Case Study

● Good Ruling

### Ladele vs UK (European Court of Human Rights, 2009)

Ms Ladele was a registrar for a local authority. She believes that same-sex civil partnerships are contrary to God's law. She had been employed by the authority since 1992 and as a registrar since 2002. The authority had a "Dignity for All" policy in which the authority agreed to challenge discrimination in all its forms. This applied to staff, residents and services users and covered discrimination on the grounds of sexuality. The policy stated that the authority had no tolerance for discrimination. In 2005, the Civil Partnership Act 2004 came into force, providing for legal registration of civil partnerships between same-sex couples. In December 2005 the authority designated all registrars as civil partnership registrars, a role that Ms Ladele felt she could not undertake given her beliefs. Ms Ladele claimed that she had been discriminated against in respect of her right to freedom of religion.

The European Court, by a five to two majority, rejected that claim. It considered that it was "clear" that Ms Ladele's objection to participating in the creation of same-sex civil partnerships was directly motivated by her religious beliefs. As the events "fell within the ambit" of Article 9, the Article 14 obligations applied.

19 Article 14 of the European Convention on Human Rights states: The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights and the Human Rights Act shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.



## Case Study

● Bad Ruling

### Burwell v. Hobby Lobby (United States Supreme Court, 2014)

The Patient Protection and Affordable Care Act (2012) required companies with 50 or more employees to provide insurance coverage of the 20 contraceptive methods then approved by the Food and Drug Administration (FDA). Despite scientific consensus to the contrary, the Hobby Lobby — a crafts store — owners believed that four of those methods—two types of “morning after” pills and two types of intrauterine devices (IUDs)—were abortifacients (abortion inducers). On that basis they also believed that providing coverage of those methods in their employees’ health insurance plans would be tantamount to facilitating abortion and therefore inconsistent with the tenets of their Christian faith. They argued that, because considerable penalties (regulatory taxes of \$100 per day per affected employee) were imposed on companies whose health insurance plans failed to provide “basic essential coverage,” including contraceptive coverage, the contraceptive mandate constituted a “substantial burden” on their exercise of religion—a violation of both the Religious Freedom Restoration Act (1993) (RFRA) and the free-exercise clause of the US Constitution’s First Amendment<sup>20</sup>. Their claim partly depended on a for-profit company being conceived as a “person” with the right to conscientious objection.

The Court found in Hobby Lobby’s favour (in a 5 – 4 decision). It held that Congress intended for the RFRA to be read as applying to corporations since they are composed of individuals who use them to achieve desired ends. Therefore, companies can deny contraception coverage to employees based on a religious objection.



## Case Study

● Bad Ruling

### Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (United States Supreme Court, 2018)

The case originated as a complaint made to the Colorado Civil Rights Commission by a gay couple against a baker who refused to bake a custom wedding cake for their wedding back in 2012 due to his religious objection to same-sex marriage (though the baker did offer to sell any other product to the couple, just not a custom wedding cake). The Commission ruled in favor of the couple, finding that the baker’s refusal to make the wedding cake violated Colorado’s Anti-Discrimination Act. The Commission’s decision was affirmed by the Colorado Court of Appeals. The owner of Masterpiece Cakeshop, Jack Phillips, argued that Colorado’s Anti-Discrimination Act violated his First Amendment rights of free exercise of religion and freedom of expression. The Commission countered that a cake was not a form of expression and that the act of baking a cake was neither participating in nor condoning same-sex marriage.

The Supreme Court ruled in favour of Mr Phillips and reversed the decision by the Colorado Court of Appeals on the ground that the Commission violated Mr. Phillips’ right of free exercise of religion. The judgement also held that the Colorado administrative agency that ruled against Phillips treated him unfairly by being too hostile to his sincere religious beliefs.



## Case Study

● Bad Ruling

### Z. v. Poland (European Court of Human Rights, 2008)

A case brought by a mother, known as Z, on behalf of her daughter, a pregnant woman who died as a result of having been denied necessary and available medical care for a treatable disease. The daughter was two months pregnant when she was diagnosed with the painful colon disease that was aggravated by her pregnancy. When she sought medical care in her Polish hometown and other cities, however, doctor after doctor refused to treat her illness because she was pregnant. They repeatedly expressed concern about the fetus, but none of them formally raised a moral or religious objection so they did not have to refer Z to a doctor that would treat her. Edyta’s symptoms grew worse until she miscarried and, eventually, died. The lawsuit aimed to ensure that Poland maintains enough healthcare workers who are willing to provide all legal health services and that patients get timely referrals. The suit also asked the court to prohibit hospitals and other institutions from invoking conscientious objection or using it to deny patients information or emergency care.

The Court failed to rule that in this case Poland violated any of its obligations under the European Convention on Human Rights.

## USA and “Religious Freedom”

The reshaping of human rights discourse in favour of “religious freedom” was a policy strongly favoured by the former Trump administration. Both internationally and at home, the Trump administration sought to promote a global faith-based conservative order with its own ‘hierarchy’ of human rights at its core. This policy was spearheaded by former Secretary of State Mike Pompeo’s “Commission on Unalienable Rights”, which expressed scepticism towards certain ‘new and ad hoc rights’ and aimed to establish the existence of certain ‘unalienable rights’ (such as religious liberty and property) derived from natural law.

The current Biden administration has discontinued this approach<sup>21</sup>, but the dominance of “religious liberty” arguments will continue to shape decisions from the United States Supreme Court in years to come. Repercussions will also be felt in States led by autocratic governments that continue to push faith-based exceptionalism to human rights, such as Hungary, Poland, Turkey and Brazil.

- 1 Index of useful terms and acronyms
- 2 Defining Freedom of Religion or Belief
- 3 International legal background and sources
- 4 How does FoRB interact with other protected rights?
- 5 The instrumentalization and distortion of FoRB
- 6 The silencing of FoRB and the Role of Special Envoys
- 7 Summary of Key Points
- 8 Useful Resources and Background Reading

<sup>20</sup> “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

<sup>21</sup> <https://www.politico.com/news/2021/03/30/blincken-pompeo-global-report-478513>

The episode is an important lesson in strategies that ideological opponents of a rights-based system employ to undermine a common understanding of the right of FoRB. As advocates, we must be conscious to avoid using the loaded term “religious freedom” and question any sources that propose a ranking system for human rights.



### Key takeaway:

**Refrain from using the loaded term “religious freedom” and question sources that propose a ‘hierarchy’ of human rights.**

## Distortion of FoRB by States at the UN: “Religious Specificities,” “Traditional Values” and “Protection of the Family”

A number of Muslim majority countries often unite in the Organisation of Islamic Cooperation (OIC) to attack human rights deemed incompatible with their ultra conservative interpretation of Islam. Their main goal is to develop and diffuse an interpretation of human rights compatible with their reading of Islam. This restrictive vision of human rights is embodied in the Cairo Declaration of Human Rights in Islam, signed by OIC States in 1990. The nonbinding Cairo Declaration presented a restrictive interpretation of the UDHR in line with principles of Shariah law, with a differentiation of gender roles, no reference to fundamental rights such as the freedom of belief and conscience and free assembly, and with religious limits placed on the right to freedom of expression.

In 2019, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution declaring the Cairo Declaration and Sharia law in general to be incompatible with the European Convention on Human Rights.<sup>22</sup>

Following criticisms, the OIC in 2020 revised the Cairo Declaration in an effort to bring the document closer to international human rights norms.<sup>23</sup> While the new document now expressly includes the right of freedom of thought and conscience, and refers more broadly to “Islamic values” rather than “Shariah law”, it still falls short of international standards (it states, for example, that the right of freedom of expression is “not to be used for the denigration of religions”).

OIC states are on record at the UN as citing “religious specificities” as a pretence for why human rights are not universal and do not extend to equality and the right to non-discrimination for LGBTI+ people or women.<sup>24</sup> In the past, a number of OIC States have lobbied the U.N. to classify religious defamation as a violation of human rights, by attempting to frame defamation of religion as a form of hate speech:

The notion of ‘the family’ has also gained currency as a tool which works side-by-side with the notion of “religious specificities” in its efforts to re-orient the human rights framework toward a traditionalist, conservative, and often religious understanding of sexuality.

This has been heavily promoted by Russia also — in conjunction with the use of “traditional values” as another euphemism for using “religious freedom” to undermine the rights of women and LGBTI+ minorities. Since its revival at the domestic level, the Russian Orthodox Church has also become a major figure in shaping Russia’s foreign policy and influence at the UN, especially in relation to social issues. Close ties to the Russian state permit the Orthodox Church to push their ‘pro-family’ and anti-LGBTI+ agenda at the international level.



### Key takeaway:

**Be aware of the hijacking of terms such as “Traditional Values” and “Protection of the Family.”**

<sup>22</sup> <http://assembly.coe.int/nw/xml/Votes/DB-VotesResults-EN.asp?VoteID=37500&DocID=16838&MemberID=&Sort=1>

<sup>23</sup> [https://oic-iphrc.org/ckfinder/userfiles/files/FINAL%20OHRD%20CLEAN%20%20VERSION%2024\\_12\\_2020.pdf](https://oic-iphrc.org/ckfinder/userfiles/files/FINAL%20OHRD%20CLEAN%20%20VERSION%2024_12_2020.pdf)

<sup>24</sup> <https://humanists.international/blog/cultural-practices-and-religious-specificities-and-the-shame-of-some-states-at-the-human-rights-council/>

## Civil Society actors distorting FoRB for anti-choice agenda

Along with States, religious fundamentalist organizations are gaining ground in today's human rights system, and instrumentalising "religious freedom" to pursue an anti-rights agenda. They have modernized their approach and employ new strategies and tactics to push their regressive goals. Like the "Commission on Unalienable Rights," they are often fixated on sexual and reproductive health and rights (SRHR) and LGBTI+ rights, and use the right to FoRB in a distorted way to undermine such rights.

In recent decades, ultra conservative actors have successfully shifted from being protesting outsiders to influential insiders. They endanger the work of progressive organizations such as Humanists International by replicating their organizing strategies, and by adapting successful national-level tactics for the international sphere.

These actors mainly come from a range of Christian backgrounds including the Catholic Church, Evangelicals, Mormons and Orthodox Christians. Diverse cross-faith institutions also play a role. They unite around "pro-life" and "natural family" ideas. The Howard Centre for Family Religion and Society and the World Congress of Families are such institutions.



### Key takeaway:

**Be aware of opposition and how they mischaracterize and misuse the right to FoRB to discriminate and undermine other human rights.**

# 6

## The siloing of FoRB and the Role of Special Envoys

A notable feature of the right to FoRB is that it is a right that is often siloed from other rights in terms of those who work on it and in terms of how it is discussed. In the main, it tends to be religious (often conservative) groups or Faith-based Organizations ("FBOs") who make up the majority of groups working in the area of the right to FoRB, rather than secular mainstream human rights NGOs. This means that there is a danger of it being understood and promoted in a non-inclusive and non-intersectional way.

One good reflection of this separation of the right to FoRB from other mainstream human rights is the creation of the role of "Special Envoy" on FoRB specifically appointed by (mainly European) national governments and the European Union.

Over the past few years many new posts of Special Envoys, Special Representatives — or equivalent — have been created. Currently, the UK, France, Germany, Norway, Netherlands, Denmark, Hungary, Poland, and the USA all have one.

Whilst other rights tend to be encompassed within a general human rights responsibility, very often the right to FoRB is distinguished and given as a sole responsibility. The danger of this is that it is not situated in relation to other human rights, such as the rights of women, children, LGBTI+ minorities, freedom of expression or issues surrounding security. It discourages an honest discussion about the intersection between the right to FoRB and these other rights, and clarity on where and when legitimate limits to the manifestation of FoRB can be placed.

Sometimes the history of the creation of these mandates also reveals worrying motives. For example, with the EU Special Envoy on FoRB, many European Parliamentarians had originally envisaged the role to focus solely on the protection of Christians, and Jan Figel, was formally appointed to the role at the Vatican (in May 2016).<sup>25</sup> Throughout Figel's mandate anti-rights Christian conservative groups lobbied to have his mandate strengthened, and for more money to go to it. The Special Envoy also shared a platform with some of them. Indeed, one MEP was so concerned about the Special Envoy's interactions with these organizations, she made a complaint to the European Ombudsman. In response, the Ombudsman made clear that "EU staff members with a prominent role, such as the Special Envoy [must] fully adhere to EU values, which include all human rights".<sup>26</sup>

<sup>25</sup> However, it should be noted that despite the exclusionary origins of the role and his personal anti-choice views, on FoRB itself he was even handed; he reached out and met with us, spoke about humanists in public, and was a panelist at the launch of the Freedom of Thought Report one year. The personal conservatism and anti-choice views of Mr Figel have been well documented (see eg. [https://www.epfweb.org/sites/default/files/2020-05/rtno\\_epf\\_book\\_lores.pdf](https://www.epfweb.org/sites/default/files/2020-05/rtno_epf_book_lores.pdf); <https://humanistfederation.eu/meps-to-j-c-juncker-is-eu-special-envoy-for-forb-able-to-carry-out-his-mandate/>; <https://sophieintveld.eu/letter-to-j%C3%A1n-figel-special-envoy-for-the-promotion-of-freedom-of-religion-or-belief-outside-the-eu-about-a-press-conference-with-anti-choice-organisations/>)

<sup>26</sup> Decision in case 1553/2019/NH on the role of the EU's Special Envoy for the promotion of freedom of religion or belief outside of the EU



Other countries have been more explicit in showing the motive behind a Special Envoy to be one concerned primarily with Christians. For instance, the equivalent envoy in Hungary is the “state secretary in charge of helping persecuted Christians.” He has been invited both by the US and EU to share panels with other FoRB envoys. The UK government in 2019 commissioned a report on the persecution of Christians. The government then decided all its recommendations were to be implemented, including the use of the term “Christianophobia”.

After a meeting between Hungary and the UK Special Envoy on FoRB, Hungary’s Foreign Minister Szijjártó said ““We agreed with the British prime minister’s commissioner for religious freedom that since Christianity is the most persecuted religion in the world — eighty percent of those persecuted for their religion are Christian — special attention must be given to supporting persecuted Christian communities.”

We recommend that the right to FoRB is treated like others, and not provided for with a separate mandate (unless a number of other individual rights — such as freedom of expression, peaceful assembly, non-discrimination, rights of women, etc. — have distinct mandates also). Where the mandates do exist, we recommend working in close partnership with the relevant envoy and ensuring they pursue an inclusive human rights-oriented vision of FoRB.<sup>32</sup>



### Key takeaway:

**Encourage the mainstreaming of the right to FoRB via advocacy, education and involving all.**

**Do not encourage the establishing of a separate envoy role focussing only on FoRB. However, where that role already exists, do engage and encourage an inclusive human rights-oriented vision of the right to FoRB.**

# 7 Summary of Key Points

- **The right to FoRB protects individuals, not ideas, religions or institutions.**
- **The right to FoRB encompasses the right of an individual to reject any religion or belief, to identify as humanist or atheist, and to manifest non-religious convictions through expression, teaching and practice.**
- **The freedom to choose one’s religion or belief is absolute, meaning that there are absolutely no circumstances in which it can be limited. The right to manifest one’s religion or belief is not. Anti-blasphemy laws run in diametric opposition to upholding both the right to FoRB for all and the right to free expression.**
- **Article 18 of the International Covenant on Civil and Political Rights enshrines the right to FoRB in international law.**
- **Religious beliefs can never be used to legally justify discrimination against others.**
- **Proportionality must be used in determining whether an interference with the right to manifest one’s religion is justified.**
- **FoRB terminology must be inclusive (“Freedom of Religion or Belief” rather than “Religious Freedom”).**
- **Right to FoRB must be viewed in the context of all other human rights and not siloed or left to FBOs to monopolize.**

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8	Useful Resources and Background Reading

# 8

## Useful Resources and Background Reading

- FoRB Learning Platform <https://www.forb-learning.org/>
- UN Special Rapporteur Thematic reports: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>. Of particular interest here:
  - “Freedom of religion or belief and Gender Equality” (2020)
  - “Safeguarding freedom of religion or belief for the successful implementation of the 2030 Agenda for Sustainable Development” (2020)
  - “Restrictions imposed on expression on account of religion or belief” (2019)
  - State-Religion Relationships and their Impact on Freedom of Religion or Belief” (2018)
- Lobbying for faith and Family <https://www.oursplatform.org/wp-content/uploads/lobbying-for-faith-and-family.pdf>
- Rights at Risk <https://www.oursplatform.org/wp-content/uploads/Rights-At-Risk-OURs-Trends-Report-2017.pdf>
- “Drawing the Line: Tackling Tensions between Religious Freedom and Equality” <https://www.inclo.net/pdf/drawing-the-line.pdf>
- Thinking about Humanism: <https://www.thinkingabouthumanism.org/religion/>

## Cases to look at

- Lautsi v. Italy <https://www.thinkingabouthumanism.org/miscellany/a-critique-of-the-grand-chamber-judgement-in-the-case-of-lautsi-v-italy/> (by opposition: [https://classic.iclrs.org/content/blurb/files/ARTICLE\\_LAUTSI\\_PUPPINCK\\_English\\_BYU\\_Law\\_Review.pdf](https://classic.iclrs.org/content/blurb/files/ARTICLE_LAUTSI_PUPPINCK_English_BYU_Law_Review.pdf))
- Case of Eweida & Others vs the United Kingdom <https://www.equalrightstrust.org/ertdocumentbank/Case%20Summary%20Eweida%20and%20others%20v%20UK.pdf>
- European Court of Human Rights Issues Judgment in Z v. Poland, <https://www.reproductiverights.org/story/poland-abortion-z-european-court-human-rights-judgment>
- Lee v Ashers Baking Company Ltd. <https://www.blackstonechambers.com/news/lee-v-ashers-baking-company-ltd-and-others/#:~:text=The%20County%20Court%20held%20that,of%20the%20Appellants'%20religious%20beliefs.>
- Catholic Midwives vs UK Supreme Court <https://www.bbc.com/news/uk-scotland-glasgow-west-30514054>
- Hobby Lobby <https://www.oyez.org/cases/2013/13-354>

## Training Exercises

<https://www.forb-learning.org/freedom-of-religion-or-belief-exercises.html>:

- <https://ihs.smc.global/documents/D3BE1B5E-BE3F-4794-AEA1-D50E3E1D0735/Traffic%20light%20exercise%20KC.pdf>
- <https://ihs.smc.global/documents/79086B84-C71E-4AA8-9575-5288E2435B47/The%20heart%20of%20FORB%20KC.pdf>
- <https://ihs.smc.global/documents/CEB54E31-9DFB-4B66-9D3B-B65268E56E52/Dots%20and%20stickers%20KC.pdf>





# Humanists

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Founded in Amsterdam in 1952, our vision is a Humanist world; a world in which human rights are respected and everyone is able to live a life of dignity. We work to build and represent the global Humanist movement that defends human rights and promotes Humanist values world-wide

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