

## **Input for the Special Rapporteur on Freedom of Religion or Belief’s Report on Respecting, Protecting and Fulfilling the Right to Freedom of Thought**

Jubilee Campaign, in special consultative status with ECOSOC, submits this analysis as a contribution to the Special Rapporteur on Freedom of Religion or Belief’s call for input on respecting, protecting and fulfilling the right to freedom of thought.

### ***Scope and Content of Freedom of Thought as a Construct***

(1b) “How have regional human rights courts, UN human rights mechanisms and domestic courts interpreted and applied freedom of thought?”

Freedom of thought, as outlined in Article 18 of the Universal Declaration of Human Rights<sup>1</sup> (UDHR) and Article 18 of the International Covenant on Civil and Political Rights<sup>2</sup> (ICCPR), is inalienable; however, the declaration itself includes no further elucidation regarding what exactly constitutes thought. Numerous other international conventions and comments have further elaborated on what the term ‘thought’ covers. The UN Human Rights Committee’s General Comment 22 of 1993 states that freedom of thought applies to “all matters”, including “personal conviction”, and asserts that Article 18 (ICCPR) “does not permit any limitations whatsoever on the freedom of thought”.<sup>3</sup> Moreover, the Office of the High Commissioner for Human Rights’ Manual on Human Rights for Judges, Prosecutors and Lawyers in Chapter 12 further solidifies that “the right to freedom of thought, conscience and religion is far-reaching” and “protects not only religious people but also, for instance [...] the indifferent.”<sup>4</sup>

The ambiguity of the term ‘thought’, is purposeful; it is to be interpreted broadly and therefore applied to protect a broader range of thought, rather than being narrow in nature and thus exclusive in its protection. Similarly, Article 9 of the European Convention on Human Rights guarantees freedom of thought, conscience, and religion. In its Guide on Article 9, the European Court of Human Rights explains that:

“...The scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions [...] In that connection, the Court points out that the Convention is designed

<sup>1</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999.

<sup>3</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, CCPR/C/21/Rev.1/Add.4, 30 July 1993.

<sup>4</sup> Office of the High Commissioner for Human Rights (OHCHR) & the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9, 2003.

to guarantee not rights that are theoretical or illusory but rights that are practical and effective. [...] Limitative definitions have a direct impact on the exercise of the right to freedom of religion [or thought] and are liable to curtail the exercise of that right.”<sup>5</sup>

Article 13 of the American Convention on Human Rights states that “everyone has the freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”<sup>6</sup> The Inter-American Court of Human Rights in 2001 confirmed a former advisory opinion – regarding the case of *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* – that “no one may be arbitrarily harmed or impeded from expressing his own thought and therefore represents a right of each individual.”<sup>7</sup>

(1a) “What does freedom of thought encompass?”

(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) [...] either depend upon, support or otherwise relate to freedom of thought?”

(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?”

Psychologists, who specialize in ‘thought’, tend to break it down into several processes, including “memory, attention, inner speech, mental imagery, decision making, [...] planning”, abductive and deductive reasoning, introspection, judgement, observation, conclusion, and more.<sup>8</sup> Further, the Equality and Human Rights Commission explains that freedom of thought includes the “right to put your thoughts and beliefs into action”, not just religious beliefs, but also secular beliefs. Examples of manifesting one’s thoughts can include how one dresses, eats, behaves, speaks, and more.<sup>9</sup> In addition to the purposeful vagueness of the term ‘thought’ in international and domestic legislations and conventions, numerous scholars have highlighted that, in some cases, certain actions and expressions can be considered as extensions of freedom of thought and therefore the right to freedom of thought should not be limited only to internal thinking but also to the outward manifestations of thought processes:

“The right to FoT [Freedom of Thought] should protect thought wherever it is found, not just in the head. This is important because if external thinking (e.g., internet searches, diaries, notebooks) is not deemed thought then it will only be protected by rights that can be permissibly violated under certain circumstances (e.g., the right to privacy). If it is deemed thought, then it will be protected by the absolute right of FoT.”<sup>10</sup>

It is therefore reasonable to conclude that freedom of thought is intrinsically tied to freedom of religion or belief in a few different ways. First, religious belief is a derivative of the thought process

<sup>5</sup> European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights*, 31 December 2020.

<sup>6</sup> Organization of American States (OAS), *American Convention on Human Rights, “Pact of San Jose”, Costa Rica*, 22 November 1969.

<sup>7</sup> *Supra note 4*.

<sup>8</sup> Simon McCarthy-Jones, “The Autonomous Mind: The Right to Freedom of Thought in the Twenty-First Century”, *Frontiers*, 26 September 2019.

<sup>9</sup> Equality and Human Rights Commission, *Article 9: Freedom of thought, belief and religion*.

<sup>10</sup> *Supra note 9*.

and its various components; observing the natural world, reasoning and making judgements, and contemplation are often precursors to an individual's identification with a set of religious/spiritual beliefs, and therefore religion and thought are inseparable in nature. Secondly, certain religious practices can be manifested as 'external thought'; reading texts, singing, praying, meditating, and wearing religious dress or hairstyles, though they are all actions, are indicative of an individual's religious belief and, by extension, their thought.

### ***Policies that Dually Violate Freedom of Thought and Freedom of Religion***

(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 media and technology, healthcare, national security and education sectors.

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

- (a) Misinformation / disinformation
- (b) Proselytism or 'anti-conversion' efforts;
- (c) 'treatment' for one's thoughts – including for mental health reasons

Certain policies can be observed which dually infringe upon both freedom of religion or belief and freedom of thought, specifically by (1) punishing certain thoughts/beliefs or outward expression of thoughts/beliefs, by (2) altering or otherwise unjustly influencing a person's thoughts/beliefs, or by (3) violating the privacy of one's thoughts/beliefs. This occurs in violation of the three tenets of freedom of thought numerous researchers and experts, such as B. Vermeulen, have recognized: "a right not to reveal one's thoughts, a right not to have one's thoughts manipulated, and a right not to be penalized for one's thoughts."<sup>11</sup>

#### **(i.) Policies that punish certain thoughts and the expression of such thoughts**

Blasphemy laws and apostasy laws, which penalize the act of insulting or criticizing certain aspects of a religion, and the act of renouncing and converting away from a religion, inherently violate freedom of thought. Genuine internal thought and contemplation is necessary for an individual to find fault with a religion they once identified with, become disillusioned with it, and renounce it. There are multiple specific examples from various countries of how such laws criminalize thought. Golrokh Iraee, a notable Iranian human rights activist, had been charged and convicted of blasphemy, or more specifically "insulting Islamic sanctities" for her vocal criticism of the practice of stoning women to death for adultery.<sup>12</sup> Mauritanian blogger Mohamed Cheikh Ould Mkhaitir was arrested and charged with blasphemy in 2017 and spent five years detained for publishing an online article criticizing Islam and condemning the Mauritanian caste system.<sup>13</sup> In April 2020, Nigerian activist and former-Muslim-turned-humanist Mubarak Bala was charged with "insulting the Prophet Muhammed" and making remarks "provocative and annoying to Muslims" for writing a Facebook post in which he expressed his disbelief of an afterlife.<sup>14</sup>

<sup>11</sup> Simon McCarthy-Jones *Supra* note 8.

<sup>12</sup> United States Commission on International Religious Freedom (USCIRF), *Golrokh Ebrahimi Iraee*.

<sup>13</sup> Human Rights Watch, "Mauritania: Blogger in 'Blasphemy' Case Freed After 5 Years", 30 July 2019.

<sup>14</sup> United States Commission on International Religious Freedom (USCIRF), *Mubarak Bala*.

It is important to mention that, in some cases, individuals – in particular, religious minorities – are charged with blasphemy despite that the allegations against them are baseless or otherwise dubious. One of the most noteworthy current cases is that of Pakistani couple Shagufta Kausar and Shafqat Emmanuel. The couple was accused by a Muslim cleric of sending him a blasphemous text message in English, and they were charged with “insulting the Qur’an” and “insulting the Prophet” and subsequently sentenced to death by hanging. These charges were delivered in spite of the fact that the couple was illiterate in their native language Urdu, let alone English, and therefore would be unable to send such a text; and that the phone which the alleged blasphemous texts were sent from was unrecovered and the couple had no SIM card registered under their names.<sup>15</sup>

(ii.) Policies that alter or unjustly influence a person’s thoughts

Perhaps the best example of policies that unjustly influence a person’s thoughts are those of re-education and indoctrination. Such is a common initiative taken place in China against members of various religious minority communities, including Uyghur and Turkic Muslims, as well as Christians. In April 2021, a Radio Free Asia article revealed that numerous Christian, Protestant, and Catholic house church members as well as Falun Gong practitioners have been arbitrarily detained and brainwashed in mobile “transformation facilities”. There, they would be “threaten[ed], insult[ed] and intimidate[d]” in order to convince them to “admit their mistakes” and renounce their religious and/or spiritual beliefs.<sup>16</sup> Eastward, in Xinjiang, Uyghur and Turkic Muslims are detained by the millions in detention facilities for involuntary “ideological transformation, study and training, and compliance with discipline”.<sup>17</sup> In reality, detainees are forced to give up their language, religious beliefs, cultural traditions, and are imbued with patriotic, pro-CCP, pro-atheist attitudes against their will, all with the goal of “repentance and confession”, lest they face severe punishment.<sup>18</sup>

Even young children in China are not spared from brainwashing and manipulations at the hands of the CCP; for Uyghur kids whose parents have been detained in mass concentration camps, the reality is being shuffled off to state-run orphanages or boarding schools. There, they undergo nearly identical thought ‘transformation’, including by unlearning their native Uyghur language, learning Mandarin, being forced to abandon their religious belief and practices, and being forced to consume pro-government and patriotic propaganda.<sup>19</sup> Moreover, in Aksu Province of Xinjiang, under a regional version of the Prevention of Juvenile Delinquency Law, minors under the age of 18 can be arrested and punished for praying, fasting, or studying religion, all of which are considered crimes and all of which are manifestations of freedom of thought and freedom of religion.<sup>20</sup>

In other nations, and observably throughout 2020 and during the COVID-19 pandemic, government-sponsored disinformation propaganda has been spread across media falsely blaming religious minorities for the spread of the novel coronavirus. For example, in India journalists with special ties to the BJP government and supportive of Hindutva have circulated stories baselessly accusing the nation’s Muslims of holding religious gatherings for the purpose of spreading coronavirus. In September 2020, a civil society organization of former judges with ties to Hindutva

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<sup>15</sup> Church in Chains, *Shagufta & Shafqat*, updated 20 April 2021.

<sup>16</sup> Radio Free Asia, *“Chinese Christians Held in Secretive Brainwashing Camps: Sources”*, 1 April 2021.

<sup>17</sup> BBC News, *“Data leak reveals how China ‘brainwashes’ Uighurs in prison camps”*, 24 November 2019.

<sup>18</sup> DW News, *“China: Extreme brainwashing at Uighur prison camps exposed in new leak”*, 24 November 2019. ;

The Washington Post, *“Opinion: China is brainwashing more than a million Uighurs. The world must demand justice.”*, 12 February 2019.

<sup>19</sup> Li Ping, *“Xinjiang Children Sent to Inland Schools for ‘Sinicization’”*, *Bitter Winter*, 12 October 2019.

<sup>20</sup> Radio Free Asia, *“China’s New Law Targets Muslim Children For ‘Correction’”*, 21 October 2016.

groups published a report regarding the February Delhi pogrom by which 39 Indian Muslims were killed by radical Hindu mobs; in the report, the group called Muslims “urban naxals” and “anti-nationals”.<sup>21</sup> Such disinformation violates freedom of thought by manipulating the perceptions of the audience towards religious minorities, and thus has the potential to further incite religious persecution, violence, and intolerance.

### (iii.) Policies that violate the privacy of one’s thoughts

Surveillance technology is increasingly being used in countries by repressive governments to spy on their citizens; such is the case in China, where cameras and recording devices can be found on nearly every street corner, especially in provinces and regions with substantial religious minority populations. In Xinjiang, the homeland of the Uyghur Muslims, government authorities can pull up footage of civilians at any point, identify them via facial recognition devices, and flag them as ‘suspicious’ for actions such as visiting a mosque, praying, wearing headscarves, having a beard, reading the Qur’an, and other external manifestations of religious belief and, by extension, thought. At police checkpoints, officers can confiscate Uyghurs’ phones and search through their messages, photos, videos, and, importantly, for using a file exchange phone application called Zopya which allows users – primarily Muslims – to share prayers, and read transcripts and interpretive texts of the Qur’an.<sup>22</sup>

The unlawful surveillance of religious minorities also extends to China’s Christian community. Ironically, even though there are numerous state-approved churches in China that are allowed to operate relatively freely, the majority of them are fitted with cameras both inside and outside the premises to monitor who visits the church, whether they are engaging in ‘suspicious’ religious behavior, and whether they should be treated punitively.<sup>23</sup> Now, the international human rights community is concerned that China is exporting its surveillance technology to other nations in which religious minorities are persecuted and political dissidents are targeted simply for their thoughts and beliefs, such as in Pakistan, Uzbekistan, Laos, Saudi Arabia, Venezuela<sup>24</sup>, and more.

## **Conclusion**

Freedom of thought and freedom of religion are so intrinsically tied that it is almost impossible to separate one from the other. Nations that don’t protect freedom of religion almost certainly don’t value freedom of thought in general; inversely, nations that don’t permit freedom of thought thereby eliminate the prospect of religious freedom whatsoever. It is no coincidence that nations whose governments view unfavorably and even persecute religious minorities are often the same nations where political dissidents are targeted; both of these groups of people are singled out because of their thoughts and the external manifestations of such thoughts.

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<sup>21</sup> Shakuntala Banaji & Ram Bhat, “How anti-Muslim disinformation campaigns in India have surged during COVID-19”, *London School of Economics Blogs*, 30 September 2020.

<sup>22</sup> Scilla Alecci, “How China Targets Uighurs ‘One by One’ for Using a Mobile App”, *International Consortium of Investigative Journalists*, 24 November 2019.

<sup>23</sup> Seth Gray, “China Is Exporting Surveillance Technology Used To Track The Christians It Persecutes To Other Countries”, *Christian Daily*, 13 February 2021.

<sup>24</sup> Diálogo, “Chinese Technology Helps Maduro ‘Control’ Venezuelans”, 8 September 2020.