

**THE  
CHRISTIAN  
AND  
PERSECUTION**

# Religious Freedom in International and National Law

**MODULE 6**



# **Lesson Six**

## **Religious Freedom in International and National Law**

### **Learning Objective:**

By the end of this lesson the students will have an understanding of the development of the human rights concept of Freedom of Religion or Belief, and of the breadth of this concept. They will be equipped to assess the restrictions of Religious Freedom faced in their own country, and challenged to consider practical ways in which to stand against injustice.

**Preparatory Bible Reading:** Acts 25: 6-12

### **Lesson Outline**

Introduction

1. What is 'Religious Freedom?'
  - a. The modern Concept
  - b. Historical backdrop
  - c. Normative core
  - d. Assumptions and challenges
2. The Challenge of Religious Freedom in Islamic contexts
  - a. Challenges illustrated
  - b. Limitations of commitments under international law and national legislation
  - c. Overview of typical responses
3. Responding to the Challenge
  - a. To act or not to act?
  - b. Suggestions for local action
  - c. Engaging the international community

Conclusion

**Case Study/Learning Activity**

**Additional Reading**

**Lesson Six Test**

**Bibliography**

## Lesson Six

### Religious Freedom in International and National Law

*Most countries in the Middle East and North Africa have commitments under international law, and also within regional and national law, to prevent religious discrimination and to uphold freedom of religion. Even if not respected, these commitments provide a framework and language to challenge injustice.*

#### Introduction

The concept of human rights is based on the premise that all human beings are free, have inherent dignity and worth and should be treated with justice and equality. This is essential for promoting peaceful coexistence between individuals and societies.

An integral and important part of the modern human rights regime is the concept of religious freedom. As the world becomes increasingly more interconnected, and meetings of different religions and worldviews become more commonplace, the principles of religious freedom are challenged, and challenge. This is especially true within the Islamic world.

In this module we will consider the principles of religious freedom and the challenges that internationally accepted religious freedom norms pose within a context dominated by Islam.

In order to do this we will:

- discuss the principle of religious freedom – what it means, where it has come from and what some of the most important modern documents are that give it life;
- discuss Islamic perspectives on religious freedom and the challenges posed within a predominantly Islamic context;
- consider possible responses.

We will note that Freedom of Religion or Belief assumes a **plurality of religions** and also assumes **state neutrality** with respect to religious and non-religious life stances. We will explore how it is these two elements, together with the right to **change religion**, that are most problematic within a predominantly Islamic context.

It should be noted that, in referring to an Islamic context, we are referring to a wide range of Islamic doctrines and traditions, contemporary beliefs and practices, official interpretations and Government policies. It is beyond the scope of this module to explore that diversity in depth.

## 1. What is 'Religious Freedom?'

*The individual's freedom of religion and belief is safeguarded by international law*

### a. The modern concept

According to article 18 of the United Nations Universal Declaration of Human Rights, adopted by the UN General Assembly in December 1948:

*"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."*<sup>1</sup>

Freedom of thought, conscience and religion is often referred to as the right to Freedom of Religion or Belief. This right to Freedom of Religion or Belief is intended to be broadly understood which means that it encompasses theistic, non-theistic and atheistic worldviews. Some consider this fundamental freedom to be one of the first and foremost of human rights. In President Franklin D. Roosevelt's 'State of the Union Address' of 1941 to the American Congress, he envisioned a world of peaceful coexistence between nations in which four essential freedoms were upheld; freedom of speech, **freedom of worship**, freedom from want and freedom from fear. Seven years later the authors of the Universal Declaration of Human Rights included Roosevelt's words in the preamble of this momentous document.

Roosevelt explained that these four freedoms are what all people ultimately strive after. In a similar vein, P.C. Chang, one of the members of the human rights committee tasked with authoring the Universal Declaration of Human Rights said, "the right to freedom of thought and religion was one of 'the most important principles in the declaration' because 'from the eighteenth century, when the idea of human rights was born in Western Europe, freedom of thought had figured among the essential human freedoms.'"<sup>2</sup> Likewise, according to Manfred Nowak and Tanja Vospernik, "There is no doubt that freedom of thought, conscience, religion and belief is one of the most important human rights, enjoying as it does the privileged status of a non-derogable right [i.e. one that cannot be restricted, even in times of emergency]."<sup>3</sup>

Furthermore, the European Court of Human Rights has stated on numerous occasions that "Freedom of thought, conscience and religion is one of the foundations of a 'democratic society.'"<sup>4</sup>

But, what is this most important human right? Where did it come from? What does it mean? What implications does it have? In this section we will consider a little of the historical background of Freedom of Religion or Belief, and then discuss the normative core of this right.

---

<sup>1</sup> Accessed at <http://www.un.org/en/documents/udhr/index.shtml#a18> on 12<sup>th</sup> September 2013

<sup>2</sup> Morsink:281

<sup>3</sup> Lindholm et al:147

<sup>4</sup> Accessed at <http://www.legislationline.org/documents/action/popup/id/15778> on 12th September 2013

*b. Freedom of Religion or Belief – A historical backdrop*

It is important to recall that Freedom of Religion or Belief, like all other human rights, did not spring up, fully developed, after the Second World War with the adoption of the Universal Declaration of Human Rights. Many precursors to the modern human rights concept, of which Freedom of Religion or Belief is a key component, can be identified which are the seeds of the modern concept.

One necessary seed for the understanding of and implementation of human rights is the idea of **rule of law**. This concept constitutes one of the key seeds of modern human rights and Freedom of Religion or Belief. The idea of rule of law comes from many geographical locations and religious and philosophical traditions. Some build on one another while others appear to have developed independently. Some of the oldest examples of this can be found in ancient Egypt around 3000 BC when boys of the ruling class were taught moral precepts to be used to limit their own power, and in the Babylonian code of Hammurabi of around 1200 BC, which provided a set of written laws that were to be upheld by the general public.

The two tablets, containing the Ten Commandments, carried, down the mountain of God by Moses are another example of ancient examples of limited rule of law. In China, around 500 BC, Confucius admonished people and kings that virtue and justice, or just laws, were of utmost importance in order for society to function best. Likewise, the Indian ruler Asoka (c. 250 BC), after conquering surrounding kingdoms regretted his violent actions and established his new kingdom on the principles of religious tolerance and equality before the law.

In the 6<sup>th</sup> century AD, Islam provided a new way of looking at how to deal with religious diversity – the dhimmi system (also later known as the Millet system under the Ottomans). While this system would clearly be in breach of modern human rights, it was a leap forward in its day for how to treat religious minorities, affording them rights they would never have had in Christian Europe at that time. All of these are examples, from many parts of the world, of the seeds that were sown for the establishment of freedom of religion prior to the modern period.

Turning to the modern period, it has been noted that “Freedom of religion is one of the oldest and most controversial of all human rights and has been the object of international concern from the very beginnings of the modern international state system.”<sup>5</sup> It could be argued that the concept of Freedom of Religion or Belief was developed most explicitly in Europe during the Reformation period and its aftermath with its incessant religious wars. Around this time the Holy Roman Empire was crumbling; both politically and religiously. Gradually the rights of individuals and not just rulers or groups became more prevalent.

Evans and Lindholm identify three overlapping stages (or models) of development in the relationship between the state and religion in Europe. One way of considering these models is to think of a scale of tolerance where intolerance and tolerance are two opposite poles. On the intolerant side of the scale we find the first model; **cuius region, eius religio**. At the other end (tolerant) we find the **human rights model**. In between, and often sliding one way and then the other, is the **minority protection model**.

---

<sup>5</sup> Evans in Lindholm et al.:1

The first model, **cuius region, eius religio** means literally “whose territory, his religion”. In other words, the ruler of a territory determined the faith of the inhabitants of the territory, assuming that religion would act as ‘glue’ to ensure societal cohesion. It also provided a way for secular leaders to get out from under the yoke of troublesome religious leaders. During this stage, concessions were often granted to smaller enclaves of dissenting religious adherents, but these concessions could be and often were revoked, entailing a sharp reduction in the already limited rights these minority groups had. Focus was on freedom for the ruler of the territory and not for its inhabitants. Religious plurality was looked at as a threat to the order of society which therefore needed to be limited. Religious conversion was looked at as treason and not accepted. It was expected that the ruler would be favourable towards his co-religionists and discriminate against other religious adherents. The Peace of Augsburg in 1555 is often looked at as the start of this model, although the term was not coined until later.<sup>6</sup> This was the dominating model until the Treaty of Westphalia in 1648 ended the wars of religion (albeit not fully) and established the concept of the sovereign state. While this in and of itself did not immediately lead to the full demise of this model, it did open the door for other solutions and led to the next model.

The second model is called the **minority protection** model. As the concept of sovereign states grew, the idea began to germinate that citizens from state A, all or most of whom were adherents of the same religion, living in state B, where another religious tradition was dominant, needed to be protected. This led to bilateral and multilateral agreements between sovereigns whereby they each agreed to offer some form of toleration and protection to enclaves of religious adherents/citizens from the other sovereignty within the geographical confines of the their domain. Religious pluralism was tolerated, but religious minorities were looked at with suspicion. Religious conversion could be considered treasonous and the state was expected to be partial to and give benefits to the majority religion.

The third model is the **human rights** model. Here the starting point is a neutral state with regard to religion or belief and the assumption that there is a religious plural society. Pluralism is not looked at as something negative. Religious conversion is not a threat to the social order. There is a focus on the rights of the individual and on religious communities, not on the state. These rights are extended to all individuals everywhere and the nationality or religious adherence of the individual should not play any role. This model has given rise to a number of documents that have been instrumental in establishing the normative core of the human rights ideal, of which Freedom of Religion or Belief is an important part. It is to these documents that we now turn.

### c. *Normative core*

There are various ways of describing the normative core of Freedom of Religion or Belief. In a short presentation of Freedom of Religion or Belief one might simply state that there are three main components. Everyone has the right: (1) to **have** a religion or belief, (2) to **change** his or her religion or belief, and (3) to **practise/manifest** his/her religion or belief.

---

<sup>6</sup> see Evans in Lindholm et al:4, Zagorin:10 and Kaplan:104

The editors of *Facilitating Freedom of Religion or Belief: A Deskbook* provide a more elaborate description, identifying the following eight core normative elements:<sup>7</sup>

- i) **Internal Freedom** – This corresponds to what we summarised above as the right to **have** a religion or belief. It also encompasses the right to change one's religion or belief. This component has to do with the innermost being of a person and may not be legitimately limited under any circumstances (see component viii below).
- ii) **External freedom** – This allows for the manifestation or practice of religion in private or public, alone or corporately. It is here that most abuses of Freedom of Religion or Belief occur.
- iii) **Non-coercion** – No one should be forced to change his or her belief; nor should he or she be forced to maintain a religion or belief he or she wants to leave.
- iv) **Non-discrimination** – All people should be treated equally, regardless of religious belief. Majority religions should have no advantage over non-majority religions. This is emphasized in common article 2 of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and other international mechanisms.
- v) **Rights of parents and guardians** – It is the right of parents or guardians to raise their children in the belief of their choice. This is, of course to be done with respect to the evolving capacities of the child (see Article 14 of the Convention on the Rights of the Child for more on this).
- vi) **Corporate freedom and legal status** – Religious groups have the right to organize themselves and be recognized as legal entities. This also includes the right to handle their own affairs such as determining doctrine, appointing clergy, establishing institutions, etc. Article 22 of the International Covenant on Civil and Political Rights elaborates further on the right to association with others.
- vii) **Limits of permissible restrictions on external freedoms** – Any restrictions are to be interpreted narrowly and concern only the external freedoms, not the internal freedoms – the right to have or change one's religion or belief should never be subject to restriction. In order for a state to limit a religious practice three criteria must be met:
  - The limitation must be **prescribed by law**.
  - The limitation must have a **legitimate aim** – It must protect at least one of the following:
    - Public safety
    - Public order
    - Public health
    - Public morals
    - Other fundamental rights or freedoms of others.

---

<sup>7</sup> Lindholm et al pp xxxvii – xxxix

- The limitation must be **necessary** and proportionate. If the aim can be realised in any way other than by limiting the religious practice, it must be done in that other way.

**viii) Non-derogability** – Article 4 of the International Covenant on Civil and Political Rights stipulates that the rights and freedoms in the Covenant can be derogated in times of war or state emergency. There are a few exceptions to this rule. The internal freedoms provided by Article 18 are among these exceptions.

#### *d. Assumptions and Challenges*

Before moving on to consider the specific challenges to Freedom of Religion or Belief within a predominantly Islamic context, we should briefly examine two key assumptions that underlie Freedom of Religion or Belief – the presuppositions that societies are **religiously pluralistic** and that **state neutrality** is maintained.<sup>8</sup> In addition, we will examine in more detail an aspect of the internal freedom of Freedom of Religion or Belief that is especially relevant as we then come to consider application within Islamic contexts – the **right to change** (or not to change) one's religion.

Firstly, Freedom of Religion or Belief assumes the existence of **religious pluralism**. Where pluralism exists there will be a need for toleration as a tool for helping to build peaceful coexistence between individuals and groups of differing beliefs. Respect for Freedom of Religion or Belief can help provide this. As Morsink puts it, article 18 of the Universal Declaration of Human Rights is “governed by the underlying idea that a plurality of religious and secular ideologies should be able to live peacefully under the security umbrella of a single state” (Morsink:259). It is assumed that a pluralistic society can exist with equal treatment of all members of society.

Secondly, not only is religious pluralism assumed to exist within a state, but the state is assumed to be **neutral** with respect to religion and life stance. No religions or life stances are to be accorded any special benefits, even if they are the majority religion. Members of a majority religion do not have any rights that members of any other group do not have.

These two elements are important to have in mind when we come on to consider the challenges to Freedom of Religion or Belief within an Islamic context. But arguably the most controversial aspect of Freedom of Religion or Belief, particularly within Islamic contexts, is the **right to change one's religion** or belief.

While this important aspect of Freedom of Religion or Belief is mostly an internal freedom, many people associate changing of religion with some sort of ritual and would thus think of it in terms of an external freedom. Ghanea, for instance, addresses this when she writes, “Apostasy, therefore, cannot solely be located either within the right to “have” freedom of thought, conscience, and religion, or within the freedom to “manifest” religion or belief.”<sup>9</sup>

<sup>8</sup> For a more thorough treatment of the nuances of these assumptions, see Ahdar and Leigh:84-92

<sup>9</sup> Ghanea in Lindholm et al.:671



In the drafting of Article 18 of the Universal Declaration of Human Rights, the concept of the right to change one's belief was hotly debated. In particular, Islamic countries reacted to what they asserted was the 'unnecessary' phrase "to change his religion." Jamil Baroodi, the delegate from Saudi Arabia stated that he felt that the text placed too much emphasis on this aspect of the right and should be struck from the text. In his view, "This was the kind of thinking which he said had led to the crusades and religious wars."<sup>10</sup> Several Latin American countries supported this line of thinking.

Others were as vehement about ensuring that the right to change clause must be included, and these included Muslim and Arab voices. An Indian delegate, Mohammed Habib, a Muslim, stated that accepting the Saudi Arabia amendment would be "a tragedy."<sup>11</sup> In addition, one of the three most important authors of the Universal Declaration of Human Rights was Charles Malik, from Lebanon, representing the Arab League.

In the end the right to change one's belief was accepted and when the time came to vote on the entire Universal Declaration of Human Rights, including article 18, no countries voted against it (although eight did abstain; Saudi Arabia being the only Islamic country among them).

Since the adoption of the Universal Declaration of Human Rights several other international documents have addressed the question of religious freedom and to some extent expanded on the meaning of this right. There has arguably been some narrowing in scope, especially with respect to the right to change religion or belief.

Two of the key documents are the International Covenant on Civil and Political Rights of 1966 (entered into force in 1976) and the Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief of 1981 (also known as the 1981 Declaration). It is interesting to note that while Article 18 of the International Covenant on Civil and Political Rights adds three paragraphs to Article 18 of the Universal Declaration of Human Rights, thus expanding and deepening the understanding of this right, the first paragraph is almost identical to the Universal Declaration of Human Rights except where it comes to the word "change." Here is a comparison of the two texts.

Article 18, Universal Declaration of Human Rights - *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to **change** his religion or belief... (emphasis added)*

Article 18, International Covenant on Civil and Political Rights - *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to **have or to adopt** a religion or belief of his choice... (emphasis added)*

In the International Covenant on Civil and Political Rights the wording has been changed in a direction that might indicate that there is a watering down of this aspect of Freedom of Religion or Belief.

---

<sup>10</sup> Morsink:25

<sup>11</sup> ibid

Even more drastic is the change in the 1981 Declaration which states –

*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice...*

No mention is made at all of the right for an individual to leave his or her current belief and adhere to another. It is noteworthy for our present discussion that this omission occurred because of “...the insistence of delegates from Islamic states.”<sup>12</sup> It should be noted that the 1981 Declaration does not have the legally binding status that the International Covenant on Civil and Political Rights has (for state parties).

It is important to note that the wording of the International Covenant on Civil and Political Rights is not as ambiguous as it first appears. The committee responsible for monitoring and interpreting the Covenant, the UN Human Rights Committee, has in General Comment 22 explained that the phrase, to **have or adopt**, makes no sense unless it means to leave one religion or belief and enter into another:

*“The Committee observes that the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”<sup>13</sup>*

### **Review and Discussion Questions**

- a. Do you agree with the premise that freedom is universal and inherent to human nature? Or, rather could it be a cultural value acquired through socialization and upbringing? Explain.
- b. According to part b. of the above section, what factors commonly appear to have limited human rights and freedoms throughout history? Give three examples or more from the text.
- c. Would you agree that the expression “individual rights” better explains what is meant by “human rights”? Discuss with your colleagues and tutor.
- d. Based on your understanding of part c. of the section, can a state deny the rights to externally manifest ones religion or belief and yet remain in compliance with the normative core of the Freedom of Religion or Belief? How? Give evidence from the text.

## **2. The challenge of Religious Freedom within Islamic Contexts**

*Significant challenges persist in Islamic contexts to practical adoption of religious freedom*

---

<sup>12</sup> Ghanea in Lindholm et al.:677

<sup>13</sup> Accessed at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15> on 12th September 2013

a. *The challenges illustrated*

We have just noted three issues that are problematic in Islamic contexts – the issues of **religious pluralism** and **state neutrality** and the right to **change religion or belief**. Very many examples could be given.

In 1974 the government of Pakistan declared the Ahmadi Muslims to be a heretical, non-Muslim sect. Since then, members of the Ahmadi sect in Pakistan have been discriminated against, abused and murdered. In particular, the blasphemy laws (295 A and C) have been used to imprison, intimidate and kill many Ahmadis. For example, on Friday 29<sup>th</sup> May 2010 more than 80 Ahmadis were brutally murdered as they attended Friday prayers in two mosques near Lahore.<sup>14</sup> (accessed at <http://news.bbc.co.uk/2/hi/10181380.stm> on 7 June 2010). There is little or no respect or appreciation for **religious pluralism**.

In Iran the Baha'i faith is not recognized as an accepted religion and its members are looked at as apostates. According to Iranian law, Baha'i blood is 'mobah,' which means members of the Baha'i faith can be killed with impunity.<sup>15</sup> Although there is no civil law forbidding conversion from Islam, in 2008 a bill was brought before the Iranian parliament that proposed that apostasy must be punished by death. The Iranian **state** is definitely *not neutral* with respect to all religious traditions. All religious groups other than the state-endorsed school of Islam are discriminated against and/or persecuted in various ways.

In spite of a conversion certificate from the Coptic Church Egypt refuses to allow Maher Al-Gohary's religious identity to be changed in his ID card. Since filing to change his ID card he has been the target of harassment, violence and has received threats on his life and has had to constantly move so as not to be identified as an apostate and killed.<sup>16</sup> There is little understanding or toleration in Egypt for Muslims who choose to **change their religion**.

b. *Limitations of commitments under international law and national legislation*

Most MENA countries have ratified most of the major international human rights treaties. Within the Arab League, only Comores, Djibouti, Oman, Qatar, Saudi Arabia and UAE are not state parties to the International Covenant on Civil and Political Rights, which upholds Freedom of Religion or Belief as a fundamental freedom.

Within the MENA region, various other human rights instruments may also apply, including:

- The Cairo Declaration on Human Rights, 1990 (Organisation of Islamic Cooperation)<sup>17</sup>
- The Arab Charter on Human Rights, 1984 (Arab League)<sup>18</sup>

<sup>14</sup> Accessed at: <http://news.bbc.co.uk/2/hi/10181380.stm> on 12th September 2013

<sup>15</sup> Accessed at: <http://www.uscirf.gov/reports-and-briefs/did-you-know/4025.html> on 12th September 2013

<sup>16</sup> Accessed at <http://news.bbc.co.uk/2/hi/7888193.stm> on 12th September 2013

<sup>17</sup> text available at: <http://www.oic-oci.org/english/article/human.htm>

<sup>18</sup> text available at: <http://www.refworld.org/docid/3ae6b38540.html>

- The African Charter on Human and Peoples' Rights, 1986 (African Union)<sup>19</sup>

While these regional Charters and Declaration contain references to Freedom of Religion or Belief, they are more general than the International Covenant on Civil and Political Rights and the 1981 Declaration, and they do not have the legally binding force of the International Covenant.

However, a key limitation of regional human rights instruments is the inclusion of caveats that allow for the negation of the rights they pertain to uphold through reference to the Islamic Shari'a as a guiding principle, which in practice ensure that no interpretation of any article is permitted that is contradictory to the Shari'a. Clear examples of this are articles 24 and 25 of the Cairo Declaration on Human Rights.<sup>20</sup>

This limitation is also reflected in constitutional and other national legislation in the MENA region. Many MENA countries are either officially declared as Islamic nations (Bahrain, Iran, Mauritania, Oman, Saudi Arabia, Yemen) or state in their constitutions that Islam is the official state religion (Algeria, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Qatar, Tunisia, UAE). Many of these declare Shari'a law as a source (or *the* source) of legislation. While laws may on the surface appear to promote human rights and religious freedom, but these are negated by stipulations that these must be subject to Shari'a law. A further limitation is that such references to Shari'a law are often ill-defined, with the various schools of Islamic jurisprudence not always coinciding in their interpretation of Shari'a provisions.

The issue of apostasy, already noted, is perhaps the most striking example of divergence between human rights standards and common Islamic interpretations. A few MENA countries proscribe apostasy from Islam within national codified legislation – the Penal Codes of Sudan (Article 126), Mauritania (Article 306) and Yemen (Article 259) contain such a prohibition, and this was also proposed as an amendment to Iran's Penal Code (approved by Parliament in 2008 but not yet implemented). However, the Constitutions of most MENA countries declare Shari'a law as a source (or *the* source) of legislation. Almost all schools of Islamic jurisprudence hold apostasy to be an offence punishable by death for a sane male adult who has been given opportunity to return to Islam.

The Malaysian women's rights activist, Zainah Anwar identifies "... three juristic positions on apostasy. The first position is that all unrepentant apostates deserve the death penalty... The second view prescribes the death penalty only if apostasy is accompanied by rebellion against the community and its legitimate leadership. The third view holds that even though apostasy is a grave sin, it is not a capital offence in Islam. Therefore, a personal change of faith merits no punishment." (Anwar in Vogt et al.: 184). While Anwar describes three possible ways of dealing with a Muslim who changes religion, An-Na'im remarks, "Nevertheless, the majority of jurists have classified apostasy as *hadd* punishable by death."<sup>21</sup>

### c. Overview of typical responses

<sup>19</sup> text available at: <http://www.achpr.org/instruments/achpr/>

<sup>20</sup> for more discussion on this, see Mayer:63-82

<sup>21</sup> An-Na'im:109

We have noted that **religious plurality**, **state neutrality** and the **right to change one's religion** are not well established or accepted within the MENA region. The concept of human rights and especially religious freedom is not well understood, nor generally accepted. Why is this?

There are a number of views amongst Muslim scholars on the issue of human rights, from outright denial of human rights as compatible with Islam to the opposite, and everything in between. Professor Heiner Bielefeldt, current UN Special Rapporteur on Freedom of Religion or Belief, notes four main positions within the Islamic world on how to approach Human Rights:

- i) **Islamisation of Human Rights.** This is where human rights are subject to Shari'a.
- ii) **Pragmatic reform of Shari'a**, wherein elements of Shari'a which might have undesired consequences can be suspended.
- iii) **Liberal re-conceptualisation of Shari'a** – a critical evaluation of Shari'a which undertakes to revise the main sources of Shari'a.
- iv) **Secular positions** which posit a separation of religion and religious law from the political sphere.

Although a range of responses can be identified, there appears to be a large consensus within the Islamic world relating to Freedom of Religion or Belief. Many Muslims dismiss human rights as “Western” values and thus un-Islamic (yet many are content to endorse other “Western” concepts such as the nation state). Wider exploration of this issue is outside the scope of this module, but it is important to note especially as the concept of state neutrality with regard to religion is an important aspect of our discussion.

The Iranian intellectual and reformer, Mohsen Kadivar, posits that there are six main points of contention between traditional Islam and human rights. Two of these are especially relevant for our discussion: *inequality between Muslims and non-Muslims, and freedom of religion or belief versus punishment for apostasy*.<sup>22</sup> The first corresponds to the contention above that, within a predominantly Islamic context, regimes struggle with accepting religious plurality and the state is not a neutral part. The second addresses the issue of changing one's religion.

Historically, non-Muslims living in Muslim ruled areas have been faced with a number of different practices. Nevertheless, Kadivar, Abdullahi Ahmed An-Na'im<sup>23</sup> and others point out the main approach to non-Muslims was to put them into one of two categories: non-believers and *dhimmi*, (protected people). Dhimmi were accorded some rights but not equal rights to Muslims. Non-believers had little or no rights. While the term 'dhimmi' is not officially used today, many of the practices associated with dhimmitude are still in place. The cases of Iran and Pakistan mentioned above illustrate this.

The traditional Islamic views relating to treatment of non-Muslims (religious plurality), the position of the state with respect to religious plurality (state neutrality) and the treatment of Muslims who change religion are challenged by the modern principle of religious freedom.

---

<sup>22</sup> Kadivar in Vogt et al.:47

<sup>23</sup> An-Na'im:8 & 88-91

### ***Review and Discussion Questions***

- a. How do the accusations voiced against Stephen in Acts 6:9-15 compare with the approach of some Islamic states as described in this section. To what extent you find the sacredness of the Law in Acts similar to the importance of the Shari'a in Muslim communities today?
- b. At closer scrutiny, was the Law at issue in the conflict of the Early Church with the Jewish authorities? In your opinion and in light of Acts 2:36, 3:13-16, 4:8-18, and 5:26-32, how did the disciples' direct charge against the Jewish leaders affect the outcome of the situation?
- c. Describe the level of religious or belief freedom you experience in the region or the state you come from.
- d. To what extent do the laws of your land and the authorities uphold state neutrality, tolerate religious pluralism, and allow change of religion or belief. Describe and compare with the answers of your colleagues.
- e. On what basis discrimination seemed to have taken place in Acts 6:1-6? How did the church resolve the issue? Do some believers in your faith community experience similar injustice? Explain.
- f. To what extent you find the leadership of the church you belong to fail in its neutrality as it manages the affairs of members from different backgrounds. Support your answer with examples.

### **3. Responding to the Challenge**

*Believers in Christ have a variety of options for responding to religious injustice*

- a. *To act or not to act?*

What can we do in the face of discrimination, harassment and persecution? Is there hope? As Christians, how should we respond to this type of injustice?

As will have been made clear in other modules of this course, there are a number of ways that we, as Christians, can respond when we face discrimination, harassment and persecution. The three most prominent are: (a) no response – suffer in silence, (b) run away – leave the immediate situation, at least until things cool off, and (c) stand up for one's own rights and the rights of others. All three of these responses are legitimate Christian responses with biblical justification. For each situation we trust that the Holy Spirit will give great wisdom and discernment to know which of these responses is most appropriate.

The international human rights norms for Freedom of Religion or Belief, do, however, provide a language and a framework that can be used to challenge injustice – to stand up for our own rights and for the rights of others.

Before considering some practical suggestions, here are a couple of general thoughts. Firstly, **be proactive**. Don't expect someone else (e.g. the United Nations, the USA, Europe or others) to fix the problem for you. Historically, sustainable positive change in society has come from within the society itself not from outside. Expecting someone else to change your present situation makes you passive. Secondly, **there will always be a cost**. Should you choose to work for justice, you may become a target – be prepared in advance.

*b. Suggestions for local action*

If you choose to work for justice, standing up for what is right, it may be worth considering the following ideas or tools:

- i) Find out what your country's own constitution and domestic laws say about Freedom of Religion or Belief. Then hold your governments responsible. For ideas about how to do this see point iv below.
- ii) Support and collaborate with Muslim partners who honestly want to reform Islam to be more in line with international Human Rights standards, including in the area of Freedom of Religion or Belief.
- iii) In a like manner, support civil society actors trying to reform MENA governments in to bring their legislation and implementation of laws in line with international Human Rights standards – not just in the area of Freedom of Religion or Belief but also in the many other important areas of human rights in which abuses are common.

One of many examples is the Cairo Institute for human Rights studies ([www.cihrs.org](http://www.cihrs.org)); an organisation that monitors the human rights situation across the MENA region and offers policy briefs to governments and international actors such as the European Union and the United Nations (through their office in Geneva). In addition they provide training for those who want to learn more about Human Rights.

- iv) Join with others (especially other minority religious groups who are facing difficulties because of their belief) to promote Human Rights and Freedom of Religion or Belief in your country. As mentioned before, this is seldom without danger. A good place to start for ideas on how to organize campaigns, lobbying, awareness raising and other strategies is at the website for New Tactics in Human Rights, a global partnership of human rights activists – [www.newtactics.org](http://www.newtactics.org). Here you will find creative ideas for peacefully bringing about change in your situation.

*c. Engaging the international community*

The above suggestions are geared toward what you can do locally. There may be further action that can be taken to engage the international community.

- v) Find out which conventions your country has ratified (to find out which conventions your country has ratified see here: <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>). Then hold them accountable for these commitments they have made under international law.

For each United Nations Convention, there is a Committee that is responsible for overseeing the implementation of the Convention. It is the responsibility of each state that is a party to a Convention to submit a report approximately every four years describing the situation for the rights encompassed by that Convention. Recognising that not all states report accurately on the state of affairs within their jurisdictions, the Committees are allowed to accept alternate reports submitted by interested parties. Local people have the opportunity to prepare such reports that will be read by the Committee and used in the examination of that state. For more information on how this process works and how you can submit a report see here: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>. See also point iv above for more ideas.

- vi) Even if your country has not ratified a major Convention such as the International Covenant on Civil and Political Rights, your government is still responsible to uphold universal Human Rights standards and will be monitored and examined in what is known as the Universal Periodic Review (UPR) every 4.5 years. This is a process similar to the reporting process for the individual Conventions, but encompasses all areas of human rights, not just the ones described in each Convention. Here, as with the individual Committees, other interested parties may submit alternate reports. For more information see here: (<http://www.upr-info.org/>) On this webpage you will also find tutorials and videos describing how to submit an alternate report.
- vii) Never give up! He who is in you is greater than he who is in the world! (1 John 4:4)

### **Review and Discussion Questions**

- a. According to Acts 2, what brought out the resurrection experience from an *internal* affair among the disciples' small group (Acts 1:9-14, 10:40-41) to the wider *external* attention of the larger community (Acts 2:1-13)? Describe.
- b. How crucial was the role and contribution of the Holy Spirit in making the disciples' experience a success story. Explain with examples from Acts 2-12.
- c. In some instances, the church in its early testimony have resorted to alternative options in the face of persecution (Acts 4:23-31, 8:1, 4, 11:19-21, 9:23-25, 29-30, 12:16-19, Acts 25:6-12). List them as they appear in the above references.
- d. What response to injustice from what the author suggests you find most appropriate to your own situation? Why? How would you go about implementing it? Discuss with your colleagues and tutor.



## **Concluding remarks**

We have seen that Freedom of Religion or Belief is arguably one of the oldest and most important human rights and fundamental freedoms. We have seen that, within predominantly Islamic contexts, there are a number of issues that are problematic. Islamic law does not recognize the right of Muslims to convert to another religion (or to no religion). In addition, the principles of state neutrality or religious plurality – both of which underpin religious freedom – are often not respected.

These tensions will, undoubtedly, continue in the foreseeable future. However, it is imperative that we strive for enhanced respect for these three values. Such respect can contribute greatly to strengthening the equal treatment of all inhabitants of a country, and may also play a role in promoting peaceful coexistence between adherents of all religious and other life stances.

## **Case Study/Learning Activity**

### **Evaluating Freedom of Religion or Belief in My Community**

In response to the lesson we suggest that you engage in evaluating Freedom of Religion or Belief in your community/country. The aim of this learning activity is to consider addressing the situation in more active terms. The first necessary step would be to explore the current and official legal status of your context in this respect, and to compare it with the actual practice. Below are some activities that will guide you in the process.

1. Collect legal documents of state law, constitution, civil law, and agreements signed at the international level that would help you describe the official standing of your community/country.
2. Compile a number of incidents or stories that illustrate the actual non-official practice of your community/country with respect to Freedom of Religion or Belief.
3. Identify local individuals and organizations that have been addressing and advocating for greater freedom, describe their methods, and evaluate their achievements.
4. Make a list of how you think greater freedom of religion or belief would improve the condition of the believers in your community.
5. Develop an action plan that you think would help improve the situation in your ministry context.
6. Discuss your findings and your plan with your church leadership, listen to their suggestions, and consider together in prayer what possible constructive steps should be taken.

## **Additional Reading**

"Freedom of religion or belief for everyone," Stefanus Alliance International, Oslo, 2012  
[http://www.stefanus.no/filestore/Rapporter\\_notater\\_blader\\_etc/FoRBbooklet.pdf](http://www.stefanus.no/filestore/Rapporter_notater_blader_etc/FoRBbooklet.pdf)

## Lesson Six Test

- 1) The author postulates that two assumptions about Freedom of Religion or Belief coupled with a third element constitute the greatest challenge to traditional Islam. What are these and what are your thoughts about each?
- 2) Why is Rule of Law so important for the protection of Freedom of Religion or Belief?
- 3) Identify and describe each of the 3 stages in the historical development of the relationship between the state and religion in Europe?
- 4) What are the main components of Freedom of Religion or Belief? Short version? Long version? Describe each.
- 5) What component of Freedom of Religion or Belief (short version) is most controversial in Islamic contexts? Reflect on this. Why is this the case? What are your thoughts?
- 6) Why does Freedom of Religion or Belief face challenges in Islamic contexts despite constitutional and legislative ordinances that ostensibly protect it?
- 7) In the booklet "Freedom of Religion or Belief for Everyone," the authors describe some common misunderstandings about Freedom of Religion or Belief. Thinking about your own situation and context, what are the common misunderstandings and how would you counter them?
- 8) In the booklet "Freedom of Religion or Belief for Everyone," the authors provide several case studies. Choose one of these. Which aspect of Freedom of Religion or Belief was curtailed? Reflect on who was responsible for the injustice or the abuse.
- 9) How can you get involved in protecting Freedom of Religion or Belief?

## Bibliography

Ahdar, Rex and Ian Leigh, *Religious Freedom in the Liberal State*. Oxford: Oxford University Press, 2005.

An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. Syracuse: Syracuse University Press, 1990.

Bucar, Elizabeth M. and Barbra Barnett, (editors)., *Does Human Rights Need God?* Grand Rapids: Wm. B. Eerddmans Publishing Co. 2005.

Brekke, Torkel, *Kains Barn: Religion og vold fra Det gamle testamente til 11. september*. Oslo: Humanist forlag, 2004.

Ishay, Micheline R., *The History of Human Rights: From Ancient Times to the Globalization Era*. Berkeley and Los Angeles: University of California Press, 2004.

Haas, Michael, *International Human Rights: A comprehensive Introduction*. London: Routledge, 2008.

Kaplan, Benjamin J., *Divided by Faith: Religious conflict and the Practice of Toleration in Early Modern Europe*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2007

Lindholm, Tore, W. Cole Durham, Jr., Bahia G. Tahzib-Lie (editors), Elizabeth A. Sewell and Lena Larsen (associated editors). *Facilitating Freedom of Religion: A Deskbook*. Leiden: Marinus Nijhoff Publishers, 2004.

Mayer, Ann Elizabeth, *Islam and Human Rights: Tradition and Politics*. Boulder: Westview Press. 1999.

Morsink, Johannes, *The Universal Declaration of Human Rights: Origins, Drafting & Intent*. Philadelphia: University of Pennsylvania Press, 1999.

Vogt, Kari, Lena Larsen & Christian Moe, *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*. London: I.B. Tauris & Co Ltd, 2009.

Zagorin, Perez, *How the Idea of Religious Tolerance Came to the West*. New Jersey: Princeton University Press, 2004.