

The Heritage Foundation’s Submission to the United Nations (UN) Special Rapporteur on the Freedom of Religion or Belief (FORB) on Eliminating Intolerance and Discrimination Based on Religion or Belief (FORB) and Achievement of Sustainable Development Goal (SDG)16

To achieve SDG 16, peaceful and inclusive societies for sustainable development, member states should enact and enforce robust protections of freedom of religion or belief (FORB) and freedom of expression. In addition, they should take concrete steps to ensure that religious minorities are able to exercise their freedom of peaceful assembly and association without harassment. The call for submissions (“UN Call”) states that the SDG 16 targets “will only be achieved through effective integration of minority and marginalized voices, including members of religious communities.” Unfortunately, there are efforts from member states, the UN itself, and civil society to limit freedoms that are protected in the Universal Declaration of Human Rights (UDHR).¹ The UN and member states should seek to strengthen “good practices” as outlined below.

1. Promote Inclusion of Religious Minorities by Protecting Conscience Rights

To integrate minority and marginalized voices, member states should strengthen protections of the fundamental right of all human beings to freedom of religion or belief, including the right to conscientious objection.² As the UN has long recognized, an individual’s rights to FORB is so fundamental that it is considered non-derogable (the state cannot limit it even in the case of “public emergency which threatens the life of the nation.”)³ Increasing efforts by member states and the UN itself to promote rights to abortion, contraception, and sterilization (in the name of gender equality) and assisted suicide could jeopardize the freedom of religion or belief of religious medical professionals and faith-based institutions who believe in protecting life from conception to natural death, marriage as the union of one man and one woman, and the immutability of biological sex.⁴ Not a single treaty recognizes a human right to abortion, contraception, sterilization or assisted suicide.

¹The mandate of the UN Special Rapporteur includes the protection of article 18 of the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). Furthermore, as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states, “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief, Article 2, para. 1

²UDHR Article 18 states that everyone has the “right to freedom of thought, conscience and religion...either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

³ ICCPR Article 4, Sections 1-2.

⁴For example, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have both called upon states to prioritize women’s and girls’ access to sexual and reproductive health information and services in the case of a healthcare provider’s conscientious objection. (See CEDAW General Recommendation 24, para 11 and CRC General Comment 15, para 69.) Furthermore, the Special Rapporteur on freedom of religion or belief recently described the application of conscientious objection accommodations for “healthcare providers and institutions unwilling to perform abortions or provide access to contraception on religious grounds” as an “area of particular concern.” (Report of the Special Rapporteur on freedom of religion or belief A/HRC/43/48 para. 44. “SR on FORB Report”)

The UN Human Rights Committee found that Article 18 of the ICCPR includes the right to conscientious objection to performing military service, reasoning that “the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”⁵ The same justification applies to those who believe that abortion or assisted suicide is tantamount to murder. In addition, this principle applies to those who believe that marriage is between one man and one woman or that biological sex is immutable. The freedom of conscience is a fundamental principle in international human rights because as UDHR Article 1 states all human beings are “endowed with reason and conscience.”

The U.S. Congress has enacted legal protections to prevent any government authority from discriminating against or coercing an individual or entity to participate in abortion, contraception or sterilization because of their sincere moral, ethical, or religious beliefs.⁶ Section 1553 of the Affordable Care Act also prohibits federal, state, or local governments that receive funding from discriminating against individuals or health care entities that do not assist in suicide.

The Trump Administration established a Conscience Division at the Department of Health and Human Services (HHS) to receive complaints from individuals and entities and issued a regulation to protect individuals and health care providers from discrimination or coercion because of their beliefs about abortion, sterilization, and assisted suicide in programs funded by the federal government.⁷

The UN Call notes that religious discrimination may include “laws and policies with regard to the registration of such faith-based organizations and associations.” HHS issued regulations to protect faith-based adoption and foster care providers from discrimination by states because of their beliefs that every child deserves both a mother and a father. A pending U.S. Supreme Court case, *Fulton v. City of Philadelphia*, will address the application of a policy on sexual orientation that discriminated against Catholic adoption agencies’ beliefs about marriage and childrearing. Because the conviction that every child deserves both a mother and a father is true, acting on it should never be penalized by any government. The legal protection of individuals and entities who believe that marriage is between one man and one woman or that biological sex is

⁵ Human Rights Committee General Comment 22, para. 11.

⁶ The Church Amendments (42 U.S.C. §300a-7(b)–(e)) ensure that entities (such as hospitals) or individuals that receive certain federal funds do not require participation in abortion and sterilization procedures; prohibit employment discrimination on the basis of unwillingness to participate in the performance of abortion or sterilization; provide a general conscience protection for individual performance or assistance in programs or activities funded by the U.S. Department of Health and Human Services (HHS); and prohibit entities receiving federal grants from discriminating against applicants who object to participating in the performance of abortion or sterilizations). The Coats-Snowe Amendment (42 U.S.C. §238n) to the Public Health Service Act (PHSA) protects a health care entity from discrimination by local, state or federal government if the entity will not train, provide, or refer for abortions. The Weldon Amendment limits the appropriation of funds to federal, state, or local government that discriminates against a health care entity, including physicians, medical specialists, nurses, hospitals, and health insurance plans that will not perform, cover, refer, or pay for abortion.

⁷ U.S. Department of Health and Human Services, “Protecting Statutory Conscience Rights in Health Care: Delegations of Authority,” Federal Register Volume 84, p. 23170, May 21, 2019, <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

immutable is essential to their ability to “manifest religion or belief...in public.” Conscience protections protect religious minorities and promote peaceful and inclusive societies.

2. Combat Anti-Semitism By Protecting Freedom of Religion or Belief for All

The protection of FORB also combats anti-Semitism. When governments restrict public manifestations of religion that increases the stigmatization of religious minorities and the likelihood of social hostilities.

French law has erased religious symbols (including yarmulkes, crosses, and hijabs) from public view under a policy of secularism known as *laïcité*. The policy has exacerbated religious division.⁸ The U.S. Supreme Court, in *American Legion v. American Humanist Association*, protected a cross-shaped memorial to World War I soldiers against a legal challenge by plaintiffs who were offended by its presence.⁹ As the Jewish Coalition for Religious Liberty observed, when the government allows feelings of “offense” to limit the public presence of religious symbols, religious minorities are the most likely to suffer. The public’s unfamiliarity with the symbols of religious minorities are more likely to feed “distrust, suspicion, and even hostility” toward them.¹⁰

Anti-Semitic violence against Jews in Europe is rising.¹¹ Member states should recognize the pacifying effect of religious freedom on violent religious persecution.¹² More than one-third of Jews in Europe report fear of being physically attacked.¹³ To create peaceful and inclusive societies, governments should strengthen protection of public expressions of religion.

3. Combat Anti-Semitism By Protecting Freedom of Expression for All

⁸ Emilie Kao, “Why the Peace Cross Case Represents the Best of America,” Daily Signal, March 5, 2019, <https://www.heritage.org/religious-liberty/commentary/why-the-peace-cross-case-represents-the-best-america>. (“Peace Cross Article”)

⁹ 588 U.S.__(2019).

¹⁰ Peace Cross Article

¹¹ See Pew Forum, “Pew Global Restrictions Survey,” February 26, 2015, <https://www.pewforum.org/2015/02/26/sidebar-religious-hostilities-and-religious-minorities-in-europe/>. (In 2015, Jews were harassed by individuals or social groups in 34 of Europe’s 45 countries (76%), a higher share than in any other region of the world).

¹² See Emilie Kao and Joshua Meservey, Heritage Foundation Backgrounder, *Minding the “God Gap”: ISIS’ Genocide of Religious Minorities and American Statecraft*, November 8, 2018, https://www.heritage.org/sites/default/files/2018-11/BG3362_0.pdf. (A 195 country cross-national comparison by Dr. Brian Grim and Dr. Robert Finke found that countries that scored highest on indices of social restriction and government restriction of religion were also the most likely to experience violent religious persecution. The reverse is also true. “When social and government restrictions on religion are reduced, violent religious persecution is reduced.”)

¹³ European Union’s Fundamental Rights Agency, *Experiences and Perceptions Anti-Semitism*, ## 2018, <https://fra.europa.eu/en/publication/2018/experiences-and-perceptions-antisemitism-second-survey-discrimination-and-hate> (The December 2018 survey included Jews living in Austria, Belgium, Denmark, Germany, France, Hungary, Italy, The Netherlands, Poland, Spain, Sweden, and the UK. 89% of Jews in these countries feel anti-Semitism has increased in their country over the past decade. Almost half worried about being insulted or harassed in public because they are Jewish.)

UDHR Article 19 protects freedom of expression, including the right to seek, receive, and impart information.¹⁴ To combat anti-Semitic speech (particularly online) there should be more philo-Semitic speech. Therefore, all speech should be protected. Governments that can censor one group can censor any group, including those who merely disagree with government policies or even those who are the targets of social hostility.

The U.N. Secretary General's (UNSG) Strategy and Plan of Action on Hate Speech to combat anti-Semitism is well-intended, but counterproductive. "Hate speech" laws have been ineffective at combatting anti-Semitism in Europe.¹⁵ The U.S. has entered a reservation to ICCPR Article 20 which prohibits "advocacy of national, racial or religious hatred that constitutes incitement...to discrimination or hostility."¹⁶ Eleanor Roosevelt who led the drafting committee of the UDHR warned that totalitarian states would "punish all criticisms in the name of protection against religious or national hostility." Her warning remains true today.

While the specifics of the UNSG's plan have yet to be fully articulated, the UN Human Rights Council's anti-Israel resolutions are cause for concern. And the OHCHR's report on businesses in Israeli settlements has lent approval to the Boycott, Divestment, Sanctions (BDS) movement which seeks to delegitimize Israel.¹⁷ Leaders should speak out against any form of hatred, including anti-Semitism, but philo-Semitic speech requires the protection of free speech, not censorship.

¹⁴ "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

¹⁵ See Jacob Mchangama, "The U.N. Hates Hate Speech More Than It Loves Free Speech," Foreign Policy, February 28, 2019, <https://foreignpolicy.com/2019/02/28/the-u-n-hates-hate-speech-more-than-it-loves-free-speech/>. A 2017 study on right-wing extremist violence in Western Europe found, "Countermeasures intended to constrain radical right politics appear to fuel extreme right violence" and that open-mindedness "and dialogue might then work better than exclusion, public repression, or aggressive confrontation." A study commissioned by the UN Office of the High Commissioner for Human Rights (OHCHR) concluded that hate speech laws in Latin America do not "seem to have made a meaningful contribution to reducing racism or ... discriminatory conducts."

¹⁶ The U.S. Congress entered a reservation that states "That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States." <https://www.congress.gov/treaty-document/95th-congress/20/resolution-text>. U.S. law only prohibits speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

¹⁷ See Brett Schaefer, "How the U.S. Should Respond to the UN's Latest Anti-Israel Action," Daily Signal, February 16, 2020, <https://www.heritage.org/middle-east/commentary/how-the-us-should-respond-uns-latest-anti-israel-action>. (Resolutions at the UN Human Rights Council routinely delegitimize, demonize, and apply double standards to the Jewish state of Israel. The OHCHR just released a report including a database of businesses active in Israeli settlements in the Palestinian Territories in compliance with UN Human Rights Council resolution A/HRC/43/71. Singling out Israel while not requiring a database for businesses active in territories like Crimea, the Georgian territories of Abkazia and South Ossetia, Northern Cyprus, Western Sahara, and other situations is a clear double standard.)

4. Combat Anti-Semitism By Protecting Freedom of Peaceful Assembly and Association for All

To combat anti-Semitism, member states should strengthen protections of freedom to peaceful assembly and association according to UDHR Article 20.

Increasing anti-Semitic activity on American college campuses limits the ability of Jewish students to exercise their freedom to peaceful assembly and association and their ability to receive an education. Anti-Semitic acts including vandalism, physical assault, and trespass have silenced Jewish speakers at private events.¹⁸ Examples provided by the International Holocaust Remembrance Alliance (IHRA) are helpful in identifying when anti-Zionist rhetoric are manifestations of contemporary anti-Semitism.¹⁹

To respond to the failure of universities to prohibit anti-Semitic activity President Trump issued an executive order²⁰ stating that Title VI of the Civil Rights Act protects Jewish students at taxpayer-funded universities.²¹ Jewish students must be accorded the same civil rights protections as other students.²² Member states and universities should endeavor to stop anti-Semitic activity that breaches the bounds of free speech to protect the civil rights of all.

¹⁸ Joel Griffith, "Trump's Executive Order Against Anti-Semitism Will Protect US Jews," Daily Signal, December 30, 2019, <https://www.dailysignal.com/2019/12/30/trumps-executive-order-against-anti-semitism-will-protect-us-jews/>.

¹⁹ See International Holocaust Remembrance Association's Working Definition of Antisemitism, <http://www.holocaustremembrance.com/working-definition-antisemitism>. These examples include accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust; accusing Jewish citizens of being more loyal to Israel than to the interests of their own nations; denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a state of Israel is a racist endeavor; holding Jews collectively responsible for actions of the state of Israel; drawing comparisons of contemporary Israeli policy to that of the Nazis; applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation; using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

²⁰ Executive Order on Combating Anti-Semitism, Executive Order 13899, December 11, 2019, <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.

²¹ <https://www.justice.gov/crt/fcs/TitleVI>.

²² The language in Executive Order 13899 mirrored a 2010 letter issued by the Civil Rights Division of the U.S. Department of Justice stating, "Although Title VI does not prohibit discrimination on the basis of religion, discrimination against Jews, Muslims, Sikhs, and members of other religious groups violates Title VI when that discrimination is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than its members' religious practice." Letter from Assistant Attorney General Thomas E. Perez to The Honorable Russlynn H. Ali, September 8, 2010, https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf.