



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights  
including the right to development**

### **Written statement\* submitted by Himalayan Research and Cultural Foundation, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 January 2019]

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\* Issued as received, in the language(s) of submission only.

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## Freedom of religion or belief and freedom of expression: New challenges for human rights

The Human Rights Council has been regularly deliberating on the theme of Freedom of Religion and Belief as an inalienable human right. The Council has rightly laid great emphasis on the relationship between the right to freedom of religion or belief and the right to freedom of opinion and expression. The Human Rights Council Resolution 22/20 of 2013 highlighted the interdependence, interrelatedness and mutuality of freedom of religion or belief and freedom of expression. Approaching these two rights as complementary and interdependent rather than separate should enable appropriate solutions and a greater understanding of the tensions surrounding these rights. The empirical evidence supports the contention that non-recognition and/or non-observance of this intricate relationship lies at the very root of many a conflict in the world.

The Report of the Special Rapporteur on freedom of religion or belief of the Human Rights Council (A/HRC/31/18) dated 23 December 2015 by Heiner Bielefeldt elucidated the close relationship between right to freedom of religion or belief and freedom of opinion and expression. The Special Rapporteur examined the “interplay of the two rights in the implementation of Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping, stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief...” The Special Rapporteur refers to an earlier report (2006) of the UN Council (A/HRC/2/3, para 37) which stressed that freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion *itself protected from all adverse comment* [emphasis added].”

Special Rapporteur has invoked the UN Human Rights Council Resolution 16/18 dated 12 April 2011 and Articles 18 and 19 of the International Covenant on Civil and Political Rights. The Council resolution 16/18 dated 12 April 2011 lays down the intimate relationship between the right of freedom of religion or belief and the right of freedom of opinion and expression. It reaffirms “the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance.”

The Human Rights Council Resolution aptly deals with the threats which undermine the freedom of religion or belief as well as freedom of opinion and expression. The Resolution condemns a) any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; b) calls for measures to criminalise incitement to imminent violence based on religion or belief; c) recommends to putting an end to the practice of religious profiling, which inevitably leads to stigmatization as an effective protection for places of worship and religious sites, including in conflict situations. Advocacy of religious hatred leading to incitement to hostility and violence is being carried out with impunity and there is appalling proliferation of incidents in this regard in different parts of the world. In some cases the perpetrators enjoy overt or covert protection and even approval of the state. Places of worship and religious sites, which have great historical significance, have been specifically targeted during ongoing present day violent conflicts.

Special Rapporteur has critically examined the entitlement of human beings to hold their religious beliefs or to have no beliefs and their right to freedom of expression. He stresses that both these rights qualitatively are rights to freedom which play an indispensable role in shaping free and democratic societies, “in which the diversity of, inter alia, thoughts, ideas, opinions, interests, convictions, conscientious positions, religions and beliefs can be manifested and defended freely, including by getting together with others and by establishing adequate institutions and infrastructures with that purpose.” However, the report has clearly mentioned that freedom of religion or belief should not be construed as a human right pertaining to a particular religion, hence *protecting religions or belief systems in themselves* (emphasis added). This clarification needs to be sharply underlined in any discourse or analysis of human right of freedom of religion or belief. Special Rapporteur stresses in clear terms that “*freedom of religion or belief protects believers rather than religions or beliefs*” (emphasis added). Empirical evidence from social situations indicates that this message is neither being followed in letter nor in spirit. That constitutes the first

challenge to the Council of Human Rights as it is directly dealing with states on human rights issues. It needs to be recognised that in case the Council does not assert itself in this matter, the hapless victimised people and societies would be caught in a vortex of violence and conflict.

Articles 18 and 19 of the International Covenant on Civil and Political Rights provide a concrete legal framework on the right of freedom of religion or belief and right of freedom of expression. Special Rapporteur, in view of the language used in both the articles and the clarifications provided by Human Rights Committee, rightly holds that the right to freedom of thought, conscience and religion does not permit any limitations whatsoever, and these freedoms are protected unconditionally. According to him “such unconditional guarantees are rare in international human rights law.”

The Special Rapporteur’s report provides an insightful and scholarly discussion on *forum internum* (a person’s inner realm of thinking) and *forum externum* (criteria for drawing limitations with regard to their external manifestations) dimensions of the rights under discussion and concludes that: “there are good reasons to conclude that the rights to freedom of religion or belief and to freedom of expression do not stand in opposition to each other, but are quite close in spirit and formulation. *Yet this positive interrelatedness does not preclude concrete conflicts, as controversial issues may at times emerge at the intersection of both rights.*” (emphasis added).

The Special Rapporteur underlines the religious and philosophical pluralism and stresses the freedom to believe and pursue a particular faith. It equally underscores the right to not holding a religion or belief. Both these right holders have complete freedom in terms of *forum internum* and *forum externum* to hold, pursue and follow their belief. They equally have a right to express themselves through varied devices on their beliefs. Thus, both these guarantees uphold the principles of interfaith and inter-religious coexistence of human beings leading to a peaceful and democratic social and political order.

It is well established that individuals and groups of people have expanded and through creative interpretations projected an alternative vision of their religions which they follow. Gradually, new sub-religious groups or sects have come into existence. It is these groups and/or opinion holders which are at the receiving end of groups-extremist or fanatical. *This formidable challenge has not received adequate attention of Human Rights Council and its experts* (emphasis added). The continuing violence in which thousands of people are perishing should prod the Council to take note of this menace.

While religion in itself is not the cause of terrorism, it is being misinterpreted by the jihadi groups through their preaching, sermons, social or print media, televangelism etc. to spread hate and justify acts of terror. Some states use this ideological resource dangerously to promote cross-border terrorism for achieving their strategic objectives. Invocation of blasphemy laws against religious minorities by some states is discriminating and gross violation of human rights. The challenge is to address the issues of blasphemy, defamation, hate campaigns against other faiths and politicisation of religion and extremism for terrorism, in an effective and fair manner.

The approach adopted by the Human Rights Council and the experts may take into account the legal and political framework based on religion and belief of some of the states. This framework should accommodate sectarian differences or new approaches adopted by individuals or groups of people. The authority to impose limitations in the name of “protection of national security or public order” gives unbridled powers to states which are run on their view of the religion to not only exclude the other sects but even discriminate and persecute them. This contradiction has encouraged the extremist groups to eliminate the minority sects and in West Asia thousands of people are being killed in this violence. Millions have been forced to abandon their homes and hearths. This menace has raised its head in South Asia with devastating repercussions. For instance, the entire community of half a million people belonging to indigenous minority of Kashmiri Pandits in the Valley of Kashmir, who were hounded out of their ancient habitat by terrorists and religious zealots 28 years ago, is facing extinction due to their forced exodus, loss of homes, dispersal, total apathy and continued violence by the terrorists.

It requires regular monitoring of situations and appropriate censure of erring states sponsoring such extremists and terrorists. Educational and cultural institutions, civil society groups, media, theological establishments need to raise awareness about the importance of religious and cultural diversity, pluralism and inter-faith dialogue. We need to work together to build societies based on religious tolerance, compassion and respect for all.

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