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Report

Developing multilateral approach to Freedom of Religion or Belief: a European perspective

Monday 9 – Wednesday 11 February 2015 | WP1383

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INTERNATIONAL CENTER FOR
LAW AND RELIGION STUDIES

AT
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GEORGETOWN UNIVERSITY



The Center for
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FORTY YEARS OF PROMOTING HUMAN DIGNITY



UNIVERSITÀ DEGLI STUDI DI MILANO
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"CESARE BECCARIA"



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In June 2013 the European External Service adopted its Guidelines for the Promotion and Protection of Freedom of Religion or Belief. In doing so, EU member states reaffirmed and embedded the promotion of freedom of religion or belief for all within their wider international commitment to Human Rights. The Guidelines have been published at a time where there is a growing recognition in the foreign policy community on both sides of the Atlantic of the need to engage with religion. Recognising this need for more coordinated policymaking, the conference aimed to:

- Encourage a dialogue among policymakers, diplomats, FoRB experts and religious actors about how to work more closely together to promote and protect FoRB in key countries and regions of the world.
- Explore how to build up the religious literacy of diplomats/policymakers to better understand the religious worldviews that shape international policy including FoRB.
- Identify from recent practical initiatives and experiences how governments can most effectively work with stakeholders to promote FoRB.
- Analyse the specificities of the European and North American approaches to the opportunities and challenges of multilateral actions on international religious freedom.

Key points

- The profile of FoRB promotion has increased significantly since 2012 due to institutional change on both sides of the Atlantic and the increased existential threat level from militant extremism exploiting religious identity. This presents both opportunities and obstacles for future FoRB promotion.
- The different national traditions for church/state relations in Europe mean that the EU FoRB voice has to be a matter of harmony, not unison, and there is no single secular state model to be pushed. These differences are an asset for building a European strategy for the international promotion of FoRB.
- Notwithstanding cultural criticism from other continents, the EU FoRB Guidelines are solidly grounded in international jurisprudence and human rights norms and should be insisted upon as universal. But European recent history is such that we cannot and should not preach as though having a perfect record of FoRB implementation ourselves. Rather vigilance is needed to ensure consistency between the EU's internal and external priorities and actions.

- FoRB cannot be considered in total isolation. Not only are FoRB violations generally symptomatic of wider political repression of human rights and fundamental freedoms, but FoRB promotion can be a catalyst for wider acceptance of human rights norms and facilitate other beneficial social, economic and cultural improvements in society.
- Effective FoRB promotion, as well as effective strategies to counter terrorism exploiting religious extremism depend on an improved practical level of religious literacy and greater informed commitment to FoRB principles on the part of state and non-state actors alike seeking to promote human rights. A willingness to engage in genuine bilateral and multilateral dialogue with religious communities is also called for based on humble listening and respectful discussion.
- The right to change religious affiliation and broader individual conscience rights are on the frontline of the battle to promote FoRB. The mere existence of anti-conversion/apostasy and blasphemy laws provides an outlet for violent prejudice against religious minorities including extra judicial assaults and killings.
- Groups of states making common cause together or international institutions such as the EU, Council of Europe, OSCE and particularly the UN are the most effective means to combat FoRB violations. Third party actors have an invaluable role to play in providing reliable country and international reports and access to victims' stories.

The promotion of Freedom of Religion or Belief in the international arena

1. The profile of freedom of religion or belief has been significantly increased in the last two years both by institutional change, including the adoption of the EU Guidelines on the subject and the opening of the Office of Religious Freedom in Canada and by the accelerating pace of incidents of violent extremism justified by appeal to religious sentiment, both by isolated terrorists such as those involved in the Paris shootings and on a corporate scale by the rise of transnational extremist movements such as the so-called 'Islamic State'. But this enhanced profile presents both opportunities and challenges.
2. Globally a consciously religious worldview is overwhelmingly dominant, but there can be a tendency for Western diplomatic and government actors (often unacquainted with religious thought) to see religion and its expression as a minority private interest and part of the problem rather than the solution to troubling events. This has sadly led to a lack of contact and engagement with religious communities at precisely the time when keeping channels of communication open is most needed. In part this lack of engagement has been the result of an ill-conceived (though sometimes well-intentioned) projection of domestic understanding of secularism into the international arena. But if religious minority groups perceive government as being at best indifferent this plays into the extremist narrative. There is a crying need for better training of Western diplomats for encounter with cultures where religion is embedded in the national culture.
3. The various government initiatives in North America and Europe to promote religious freedom abroad have taken different forms and approaches. A key distinction is whether they are embedded within a unit that monitors human rights across the piece or are an arm's length standalone institution. The fact that violations of religious freedom are most common in countries with authoritarian regimes would seem to argue for religious freedom being pursued in the context of an holistic human rights framework. It should not be as an afterthought, though, but rather as a key which can unlock other freedoms, like expression and association, to which it is closely related. There is also a need to strengthen multilateral activity as demarches by individual states are easier to ignore than strategic efforts made on behalf of the wider

international community.

4. Freedom of expression as against a supposed 'right' of religions to be protected from 'defamation' continues to be at the heart of the cultural tensions between the Muslim and the Western worlds. When western actors proclaim both religious freedom and freedom of expression as universal rights they are accused of double standards if they at the same time impose restrictions on religious dress and practices. A balance needs to be struck between standing firm on the principle of religious freedom, being coherent and consistent whilst not using what can be perceived to be arrogant means to do so. Megaphone diplomacy can occasionally have its place, but it is not usually the way to win the hearts and minds of religious leaders and their communities – who are the only ones who can effectively root out the extremists by denying them sanctuary. Discrete demarches through private lines of communication are often more effective.
5. Alongside the promotion of the freedom of religion or belief there is a growing work of direct engagement with religious communities along with the fostering of dialogue between religions to promote mutual understanding. But there could be a danger if this is seen as an alternative to human rights dialogue rather than a complementary activity. This type of dialogue also needs to move on from formulaic encounters with dignitaries to the encouragement of grass roots encounters and a spirit of openness in which it is clear that it is permitted to disclose deep anxieties and resentments and openly disagree, rather than feeling that the conversation must be confined to what we already agree about.

Can Europe speak with one voice on FoRB? National traditions and external approaches – What are the opportunities and risks?

6. Europe can speak with one voice but it is not a monolithic one – more like a choir singing in harmony. Although there is agreement on the principles of FoRB, the way they are interpreted and applied varies from country to country, even within the EU. Internally the EU has no competence to rule on religious freedom matters; it is only the European Court of Human Rights in Strasbourg at Strasbourg which comes under the Council of Europe aegis that can make rulings on contentious cases. Because this Court's jurisdiction extends beyond the EU to another 19 neighbouring countries, some of them with a Muslim majority, it contradicts the assertion that FoRB is somehow the instrument of a Christian club, even if some recent Court's rulings might have given this impression. But, of course, Christianity in Europe is not in any case monochrome. Historically Europe has appeared to oscillate between the aggressive secularism of Jacobinism and the integralism of the Catholic Church prior to Vatican II. From a religious perspective, it has been argued that Orthodox and Catholic countries in the south and east have been less tolerant of religious diversity than is the case in predominantly Protestant northern Europe even if these have maintained national churches. In countries like Germany and France, cults (like scientology) are outlawed.
7. The Strasbourg Court's doctrine of giving states a 'margin of appreciation' to account for cultural, historical and constitutional differences has meant sometimes conflicting interpretations of FoRB tailored to the local context. Whereas for France it upheld bans on religious symbols and dress in schools, for Italy (in a case supported by both Orthodox and Catholic countries) it upheld the right of the state to require the display of crucifixes in public schools. But there is a core of common values like respect for individual choice to the extent that there are no negative consequences for atheists or converts, and some degree of separation and distinction between church and state. Even where there is a recognised state church it can only use moral suasion in public life rather than being able to directly dictate legislative outcomes.
8. All 28 EU Member States have approved the FoRB Guidelines. But when these are applied by the EEAS in relation to third parties the diversity within Europe has to be taken into account – eg the outright abolition of blasphemy laws cannot be called for as

these still exist in some EU states, but the abolition of criminal sanctions can be. The adoption of Lisbon Treaty Article 17 committing the EU Institutions to recognise the status of organised religions in society and undertake a regular and open dialogue with them as well as with non-religious belief associations can be pointed to as indicative of Europe being neither a Christians-only club nor a militantly secular union.

9. However, the FoRB approach based on international human rights norms adopted by the EU clearly does not have universal acceptance across religious communities. The recent *Charlie Hebdo* violent events are unfortunately symptoms of a wider and deeper malaise of sections of the Muslim community in Europe. Many Muslims experience feelings of dissatisfaction with the secular liberal approach and have a nostalgia for the religious society they associate with their family's country of origin – although many of those caught up in jihadist violence are European-born and are fed a false picture of life in a caliphate by extremist internet sites. One positive by-product of the outrages in Paris and elsewhere has been a clear denunciation of such violence by a wide range of Muslim leaders.
10. In Europe freedom of religion or belief (FoRB) is emphasised whereas in North America reference tends only to be to freedom of religion. But both approaches tend to come together at the global level where common cause is made in the world institutions such as the UN General Assembly and Human Rights Council. The UN Special Rapporteur on FoRB also assisted in the drafting of the EU FoRB Guidelines. This work is growingly seen in the EU's external action as part of a broader agenda to engage religious leaders and communities abroad to promote tolerance and social cohesion among communities. For example, in reconciliation and conflict prevention work in third countries the EU has been active in recruiting and training religion leaders in dialogue techniques to defuse ethnic tensions. There, as in Europe, there has often been a disconnect between religious leaders who have been willing to talk to each other and to Government and their grass roots masses where there may still be considerable mutual hostility.

Europe and other regions of the world

11. Historians have questioned whether the promotion of international human rights standards is not just Eurocentrism by another means, based on a Western model of a secular state and privatised religion in a compartmentalised society and therefore alien to the experience of countries where religion and state are integrated. But the EU Guidelines on the promotion and protection of FoRB are solidly grounded in universal human rights norms agreed at the UN level. The rights advocated are not compartmentalised but an interrelated basket of norms permeating all spheres of life. They are both individual and expressed in community. They cover both private practice and public manifestation. They overlap with freedom of expression and of assembly. They are specifically a protection against the potential coercive power of a secular or theocratic state to try to enforce one public worldview and compartmentalise minority beliefs.
12. We need to avoid an ideologisation of FoRB and must work for contextualisation of their application. Great sensitivity is needed in their application to societies where religion and identity are interwoven and a sense of community grievance can easily be aroused. Human beings are holders of profound and deep convictions which govern their life practices. Their conviction holds them to account. If we take the pluralism of religions seriously we have to acknowledge that the convictions which spring from them can often be irreconcilable with each other and attempts to override or ignore or outlaw reference to these differences can only stoke the fires of future unrest. Therefore FoRB promoters must start their engagement in serious listening mode, with respect and open-heartedness before pronouncing on the mores of such societies.
13. The most serious clash of cultures arises over the issues of conversion/apostasy, proselytism and blasphemy. Extreme reprisals for these eventualities have become

commonplace in many societies in Asia and North Africa, whether or not there is legal or constitutional legitimation for this. The community's right not to be offended or deserted is felt to override any individual right of choice. To commit apostasy or blasphemy is to deny a given social identity and community solidarity. But this attitude can also exist within Europe where the approach to so-called 'cults' or 'sects' in some countries assumes that conversion can never be a free choice and *ipso facto* must result from brainwashing or coercion.

14. But international human rights norms and the EU FoRB Guidelines are clear that individual choice to join or leave a religion has to be respected. Islam and Christianity are both missionary religions, but it cannot be accepted that their freedom to preach and teach is abused by advocacy of hatred and violence against religious minorities (cf the Rabat Plan of Action). Although mutual respect between religious communities cannot be legislated for, the preaching of respect for the other can be encouraged through inter-faith dialogue at both leadership and grass roots level. But past dialogue has tended to concentrate on the elites and its benefits have not percolated down to the broader society often afflicted by poverty, inequality, social segregation, illiteracy and often held back by denial of schooling, particularly for girls. Socio-economic factors alone, however, do not explain religious persecution or discrimination as we have also still to understand how educated European-born young men and women who have lived under democracy decide to become jihadis.
15. Those who have hijacked religion for agitation purposes are quick to stir up feelings of righteous indignation when Western freedom of expression culture is used to justify public words or images deemed offensive or blasphemous to their religion. But we must be clear that FoRB rights are there to protect believers, not beliefs. When one religion's creed can be another religion's blasphemy it cannot be accepted that the state can choose to criminalise the one and protect the other. Blasphemy laws are frequently asymmetric only protecting the dominant religion. There is a fine line between causing offense by criticism of religious beliefs (which has to be allowed in a free society) and incitement to hatred of persons likely to cause violence which may legitimately be outlawed, but it is essential that this fine line be observed.

Engaging policymakers with issues of faith and belief in advocacy

16. Tensions within Europe based on cultural clashes exacerbated by links with co-religionists elsewhere, tensions in the EU's near neighbourhood to the east and tensions in the South Asian sub-continent all throw up particular challenges for FoRB advocates and policymakers wishing to respond to their concerns. Within Europe a series of events starting with the publication of the Satanic Verses by Salman Rushdie in the late 1980s, and continuing through the murders of Pim Fortyn and Theo van Gogh in the Netherlands, the Mohammed Cartoons in Denmark and the Fitna film in the Netherlands preceded this year's events in Paris. Over this period there was a softening of the absolutist line on freedom of expression and a change in the attitude of European Muslim leaders to the stirring up of controversy directed from within the Muslim majority world. Whilst there are undoubtedly more lessons to be learnt a combination of dialogue with and between religious leaders and greater sensitivity on the part of Government seems to be the way to follow in order to isolate extremists within local Muslim communities and facilitate a new willingness of community leaders to speak up against violent extremism.
17. Meanwhile in Europe's eastern neighbourhood FoRB has been threatened by a combination of hostility towards minority churches by traditional orthodoxy and Russian cultural (and occasionally military) expansionism. In parts of the Ukraine no longer controlled by the central Government in Kiev churches are now being required to register under the strict conditions of Russian law, although this clearly does not comply with the recent OSCE Guidelines on the Legal Personality of Religious or Belief Communities. The Moscow Patriarchate is also exerting pressure on minority churches in Moldova. Meanwhile in the majority of Ukraine, the Moscow Patriarchate

church is experiencing a collapse in support.

18. In South Asia, there are contrasting issues within the two major players on the sub-continent. In India, the constitution protects the right of every group to profess, practice and propagate its religion and the right of individuals to change religions and these rights tend to be upheld in Supreme Court case law. But at the state and local level things can be very different. A number of states have passed anti-conversion laws. But negative reactions against conversion are not restricted to them. Resistance against conversion seems to come most strongly from the majority Hindu population who complain of 'proselytism' if Christian evangelism involves foreign nationals, especially if they are donors of aid in the form of education or healthcare. A religion, which has actually been in India since the first century AD, is now talked of as being a conveyor of 'foreign culture'. As a result attacks against Christians and the destruction of religious property have increased recently.
19. In Pakistan there has been a growing breakdown in the tolerance of minority religions since the regime of Zia Al-Haq in the 1980s. This led to the growth in size and influence of Madrassas and the setting of a hard line religious tone in state schools preaching intolerance of other religions and especially converts. The blasphemy laws have been progressively extended and ever harsher penalties mandated by them since then, although often the mere suspicion or allegation of an offence effectively leads to an extra-judicial death sentence being carried out before the judicial proceedings are concluded. The costs of a defence in such cases is also prohibitive because of the danger of violent attack on the lawyers concerned. External FoRB defenders and promoters might do better to help with defence funding in these cases rather than seeking a trial by international media. As well as lawyers, politicians and judges who speak out against the blasphemy laws and seek reform make themselves the targets of violent attack. The radicalisation of Islam in Pakistan, funded by large donations from Saudi Arabia has increased significantly causing mainstream Sunni Muslims in Islamabad to be afraid of attending their own mosques.
20. In the key flashpoint areas of blasphemy and conversion the observance of FoRB standards is clearly under pressure in both countries. In India this is still mainly extra-constitutional and partisan activity, whereas in Pakistan both the law and society are being used to stoke an Islamist agenda and there is strong community resistance to the official Government stance of opposition to the Taliban.

The relationship between FoRB and religions engagement in foreign policy

21. In addition to the Office of Religious Freedom, the USA established in 2013 a new Office of Faith-Based Community Initiatives, recently expanded and renamed Office of Religion and Global Affairs. Part of its mission has been to develop religious literacy training for diplomats in order to move beyond the secular bias of those recruited in the past. This training hopes to establish religion as a mainstream dimension of US foreign policy as well as to increase the awareness that religion can be part of the solution to many challenges in the fields of development, humanitarian crisis and conflict. In Canada FoRB promotion and engagement with faith communities has been merged. Also engagement there goes beyond bringing in leaders, Government staffs go out to visit the communities concerned and worship with them. But they make it clear that they are dialoguing from a human rights and human dignity perspective and are not there to engage in theological discussion.
22. A variety of relationships between FoRB promotion and religious engagement were reported from other countries, as well as differing approaches to the relationship between FoRB promotion and secular human rights advocacy. Seamless co-ordination of effort for maximum effort was seen as the ideal, but many practical problems were encountered on the ground. Should dialogue be mainly bilateral between government (perhaps with NGO involvement) and each religion or should Government be

promoting multilateral dialogue and expecting religions to resolve issues by dialoguing with each other? A particular problem arose when minority religions which were discriminated against were expected to reconcile with majority religions with whom they had an asymmetric power relationship. This was likened to expecting Martin Luther King (who well recognised that 'privileged groups seldom give up their privileges voluntarily') to have 'negotiated' with the segregationists in the US south. A need to move on from only having formal dialogue sessions with the same old (male) religious leaders to a more dynamic process engaging a wider representation was recognised

23. Another issue of significance is the extent to which other human rights issues should be introduced to FoRB dialogue discussions. In order to build confidence do issues like gender equality and sexuality get left at the door, or must all discussions embrace all human rights issues? Religious engagement should start with humble listening and respectful discussion, whereas traditional mainstream human rights encounters are seeking outputs from a check list and involve making sharp judgments. Increased attempts at engagement with Muslims post 9/11 has been accompanied by a perception that there is no general genuine interest in Islam per se, but everything being seen through the lens of violent extremism..
24. The global monitoring process for the prevention of torture could possibly be used as a model for a procedure for FoRB prevention, rather than having to rely on post hoc remedial action. However, as FoRB offences are not so easy to find as they are not confined to places of detention, nor even a monopoly of state actors, there is only limited applicability to FoRB monitoring at present. Prevention might work for some issues such as registration requirements and conversion sanctions, but this is only a small part of the FoRB gamut.
25. US President Obama's speeches in Cairo and New Delhi were held out as positive examples of empathetic religious engagement. His reference to Martin Luther King's indebtedness to Ghandi's thinking in particular. But the follow up in subsequent bilateral relations with the countries concerned is seen as inadequate. But the US is now considered to be better on pursuing situations where Muslims are persecuted and not just seen as protecting Christians.

Enhancing coordination between the national and international level

26. Project work, transnational networks and standards and reporting systems can be aligned and complement each other. Key questions which come to the fore are who could be considered an honest broker in monitoring FoRB violations, and whose voice is most likely to be responded to by perpetrators. By and large individual national Governments appear to have the potential to be effective in reporting on FoRB violations in third countries, but unlikely to be as thorough in monitoring the failings in their own country. Participation by third parties such as NGOs and representatives of minority religious communities seems to be essential, but only likely to be truly effective if the FoRB monitoring agency is seen to be clearly independent and at least at arm's length from Government. However, reports of violations originating from only one foreign Government tend not to be taken too seriously by offenders, wider international support for criticisms is needed to elicit an effective response from the Government of the country being scrutinised. The benefits of establishing an ongoing network of academic institutions in a number of countries (maybe starting with a spectrum of European states) which could co-ordinate research and monitoring activity for FoRB should be considered.
27. The benefits of project work that embeds eg. academics in a local university in the country being studied and/or makes full use of local NGO staff and volunteers to gain an understanding of the host country from within and access the stories of victims of discrimination and persecution were appreciated. The process has to start with closed door sessions in which mutual trust can be built up, but can go on to more public

sharing or testimonies and other evidence. These can both improve and extend accurate reporting of FoRB violations and prepare training materials for future FoRB investigators in either the Governmental or third sectors where there is a will for change. In places where media may reflect local prejudice against minorities training for journalists can also be beneficial.

28. The EU is seen as a most significant transnational player in FoRB promotion and the adoption of the EEAS Guidelines has reaffirmed its determination. Its global network of representation offices, co-ordinating with the work of national diplomats from the 28 member countries forms a formidable resource. The initiative of establishing an International Panel of Parliamentarians for the promotion of FoRB launched in Oslo in November 2014 is also commended. The very existence of the group had propelled pledges to uphold FoRB from parties that do not usually 'do God'.
29. But there is a strong consensus that the international player with the greatest potential to influence the FoRB agenda is the United Nations. Through its Special Rapporteur on FoRB and his direct country investigation missions and the Universal Periodic Review process which covers all member states and is open to both civil society and Member State input. These possibilities should be used more because the UN system has the highest level of international legitimacy.
30. World reports on FoRB violations are now being produced by a range of state and non-state actors. They vary in their scope and reliability. No one report is a fully comprehensive source of information. The US annual report which started in 1998 originally covered the situation country by country in some depth, but now tends to focus on trends and changes. The UK Foreign & Commonwealth Office annual reporting system has FoRB cases buried within its few pages on each country covering the full range of human rights. But given resource limitations and political reality it is recommended that it would be better to target reporting and studies on 'countries of opportunity' where a Governmental change or desire for a better international profile or membership of a particular international body means that outside criticism of rights abuses are likely to have a greater internal effect.

Looking forward – developing a European approach to promoting Freedom of Religion or Belief

31. The EU FoRB Guidelines are still far from being fully embedded in the work of foreign policy personnel or practice at EU or Member State level. This leads to some situations where actions are taken without consulting the guidelines and others where actions which should be taken are not because of ignorance of the Guidelines. Intensive training and awareness-raising can catalyse improved implementation of the Guidelines. This needs to cover not only Foreign Service staff, but actors back in national capitals and third party actors (journalists, civil society, academics) in countries of interest. Improving the general knowledge of religion is foundational, followed by the necessity for a religious freedom dimension in all human rights monitoring processes – eg responsibility to report, protection of whistle blowers and rights defenders, support and legal aid for victims.
32. Individual states will need to prioritise their actions to play to national strengths and opportunities. What is the nature and degree of the FoRB problems in a particular third country? Through history and/or strength of diplomatic presence does the state have preferential access to the ear of Government? Is an oppressed minority affected for which assistance is being given on other fronts already? They will also want to reinforce their actions by collaborating with other like-minded states within or outside Europe. Careful consideration also needs to be given to any parallel actions of religious engagement or dialogue – especially if there are diaspora communities of co-religionists resident in the Member State concerned.
33. FoRB promoters also need to act wisely in view of the current climate of heightened concern around the rise of violent extremism done in the name of religion. It has had

the advantage of bringing religious issues centre stage, but also holds the danger of distorting priorities and could lead to a selective and partial rather than an holistic approach to FoRB and religious engagement activity. Steps also need to be taken to seek to avoid giving the impression that FoRB is only the concern of a small club of rich nations preaching at inferiors. The EU and its Member States could develop closer co-ordination with the Council of Europe and OSCE in this regard as well as making fuller use of well embedded United Nations processes (like the Universal Periodic Review) for the monitoring of human rights in general under the auspices of the General Assembly and the Human Rights Council.

34. European states also need to have the humility to remind themselves that FoRB principles have taken a long time to take root on their own continent, with protestant countries discriminating against Catholics until well into the nineteenth century and catholic and orthodox countries oppressing religious minorities until late in the twentieth century. Europe also experienced the intolerance of Communism and Fascism. In our dealings with third countries we must remember that the ordering of church/state relations still varies widely as between European states, so there is not one uniform model to be exported to the rest of the world.
35. At the heart of FoRB is a civic immunity from coercion in religious matters which is aspired to worldwide. This has to be backed up by an autonomous space for religions to develop their worldviews and to translate it into positive services for the benefit of all humankind, without faith-based distinctions. The need for it is clearest where it is most absent – notably in Syria, Iraq, Afghanistan, Pakistan – where both formal state actors and non-state actors have called into question the right to life of members of minority religious communities on a massive scale, let alone any freedom to practise their religion openly. But also in secular totalitarian states like China and North Korea where detention in labour camps and worse is still a commonplace occurrence for those considered religious deviants.

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