



UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

LEGISLATION FACTSHEET

LIMITATIONS ON THE FREEDOM OF RELIGION OR BELIEF

June 2020

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USCIRF's Mission

To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

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Overview

Freedom of religion or belief (FoRB) is a fundamental human right, but like all rights, it is not absolute. Under international human rights law, when certain conditions are met, states may lawfully limit a right in furtherance of an identified state interest. While this holds true for all rights, FoRB is a right that is uniquely protected and can only be restricted in particularly narrow circumstances.

Human Rights Standards

The [Universal Declaration of Human Rights \(UDHR\)](#) and the [International Covenant on Civil and Political Rights \(ICCPR\)](#) are the primary international instruments securing FoRB. These instruments use similar language in providing robust protections to FoRB (Article 18 in each of these instruments) and other related rights.

Although the UDHR contains a general limitations clause applicable to all rights and freedoms in Article 29(2), the limitations language in the ICCPR is in the substantive provisions themselves. Article 18(3) of the ICCPR provides that the “[f]reedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” In other words, FoRB cannot be restricted unless the limitation (1) is prescribed by law, (2) serves one of the listed purposes, and (3) is necessary for attaining this purpose.

General Rules of Interpretation for Limitations on Rights

Important [guidelines](#) support the interpretation of all restrictions on human rights. These rules dictate that limitations are not allowed except when specific conditions are met, including:

- Expressly provided by international treaties
- Narrowly applied only for the purposes proscribed and construed in favor of the right at issue, and rights are interpreted broadly
- Not used to destroy a protected right (i.e., human rights are the norm, and limitations are the exception)
- Not discriminatory in language and application, and only restricts rights for the neutral purpose of protecting citizens
- Not [discriminatory](#) against one religion or belief system or between believers and non-believers, even when states maintain an official religion

Specific Restrictions on Limitations on FoRB

Alongside the general rules of interpretation, there are additional requirements for limitations on FoRB pursuant to Article 18(3) of the ICCPR.

1. *States can only limit manifestations of one's religion or belief, but never can place limits on holding beliefs.* Manifestations of FoRB that can be limited by states extend to (1) worship, (2) observance, (3) practice, and (4) teaching, which encompass a broad range of acts. These acts can be exercised either individually or in community with others and in public or private. These four dimensions of FoRB are defined by the UN Human Rights Committee (HRCttee)¹ in [General Comment 22](#).

States can never limit the right of individuals to hold beliefs. This includes the freedom of thought and conscience, the freedom to have or adopt a religion or belief of one's choice without coercion, and parents' freedom to ensure the religious and moral upbringing of their children. Article 19(1) of the ICCPR also protects the right to hold opinions without interference.

2. *States can only prescribe limitations by narrowly tailored laws.* No limitations on the exercise of FoRB can be made unless provided for by law. The law must be accessible, foreseeable, and drafted with sufficient precision to enable a rational person to regulate his or her conduct. The law must also contain precise criteria and not leave its application to the discretion of those applying it. Adequate safeguards and effective remedies must exist to ensure that limitations on human rights are not abused.

3. *Any restrictions imposed by a state must be necessary to achieve a permitted ground.* In addition to requiring that restrictions directly relate to the pursuit of a legitimate aim, the strict test of necessity requires that states consider alternatives before restricting rights. Necessity also incorporates a test of proportionality dictating that both the law and its application utilize the least intrusive instrument among those that might achieve the protective function.

Scope of Manifestations of FoRB that May Be Limited by States as Defined by HRCttee

Dimension	Meaning	Examples
Worship	Ritual and ceremonial acts giving direct expression to belief and various practices integral to such acts	<ul style="list-style-type: none"> ▪ Building of places of worship ▪ Use of ritual formulae and objects ▪ Displaying of symbols ▪ Observing of holidays and days of rest
Observance and practice	Ceremonial acts and customs	<ul style="list-style-type: none"> ▪ Observing of dietary restrictions ▪ Wearing of specific clothing or head covering ▪ Participating in rituals associated with certain stages of life ▪ Using a language customarily spoken by a group
Practice and teaching	Acts integral to the basic affairs of religious groups	<ul style="list-style-type: none"> ▪ Choosing religious leaders, priests, and teachers ▪ Establishing religious schools ▪ Preparing and distributing religious texts

Checklist of Requirements that Must Be Met Before Considering Any Narrow Limitation on FoRB

- ✓ Only applicable to manifestations of FoRB
- ✓ Prescribed by law
- ✓ Necessary for the purpose of protecting a legitimate aim (public safety, order, health, or morals, or the fundamental freedoms of others)
- ✓ Conforms to the principle of proportionality
- ✓ Applied in a way that does not vitiate the rights guaranteed under FoRB
- ✓ Not discriminatory in purpose or effect

¹ The [HRCttee](#) is the treaty body of independent experts charged with monitoring state parties' compliance with the ICCPR. Along with publishing its interpretation of the content of human rights provisions in its general comments, the HRCttee receives reports regularly from states on their implementation of rights. Through the [First Optional Protocol to the ICCPR](#), the HRCttee is empowered to examine individual complaints with regard to alleged violation of the ICCPR by state parties. It is a different entity from the [UN Human Rights Council](#), which is an inter-governmental body.

International law allows for non-discriminatory *anti-conversion laws* that protect people from being subject to coerced conversions, while allowing conversions based on the convert's free will and consent. Some countries maintain anti-conversion laws that, in contrast, broadly prohibit conversions, including consensual legal conversions. While supporters often seek to justify these laws by the need to protect public order, they are inconsistent with the international human rights framework. In addition to other human rights concerns, these laws impermissibly interfere with the unqualified right to have or adopt a religion or belief of one's choice.

Legitimate Aims

The state imposing the restriction bears the burden of demonstrating the exact threat and the necessity of the particular action through specific and reliable details.

Article 18(3) of the ICCPR only allows limitations on FoRB in the interest of (1) public safety, (2) public order, (3) public health, (4) public morals, or (5) the fundamental rights and freedoms of others. Unlike other rights, FoRB cannot be limited in the interest of national security. Pursuant to Article 4 of the ICCPR, FoRB also cannot be derogated from in times of public emergency. The UN Special Rapporteur on freedom of religion or belief has *expressed concern* that countries have adopted unlawful regulations that restrict FoRB based on broad and vague concepts such as “national identity,” “national unity,” or “culture,” none of which are permitted aims under Article 18(3). Some of the most common unlawful limitations that use these justifications directly interfere with the autonomy and internal management of faith communities, such as the right to proselytize, the freedom to operate religious and humanitarian institutions, and the right to train and select religious leaders.

The protection of a majority religion is not a permissible ground for limiting FoRB. In *Sister Immaculate Joseph v. Sri Lanka*, a Catholic Order brought a claim to the HRCtee after being denied incorporation by the Supreme Court of Sri Lanka, which found that the propagation and spreading of Christianity would impair the existence of Buddhism. The HRCtee noted that a central tenet of numerous religions is to spread knowledge, propagate their beliefs to others, and provide assistance. These acts are protected as both manifestations of religion or belief and free expression. The HRCtee concluded that Sri Lanka provided no evidence that the Order's activities would coercively propagate religion or harm Buddhists, holding that the limitation was not necessary for one or more of the enumerated purposes and thus a violation of Article 18.

1. **Public Safety:** The *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR* (“Siracusa Principles”)² define public safety as used in the ICCPR as protection “against danger to the safety of persons ... or their physical integrity, or serious damage to their property.” Public safety cannot be used to justify vague or arbitrary limitations and, like all limitations, requires adequate safeguards and effective remedies against misuse.

The interest of public safety cannot be used as an excuse to limit the rights of persons belonging to a specific religion or belief community. The UN Special Rapporteur on freedom of religion or belief has *noted* that some states have equated the public safety and order limitations to mean “public interest restrictions,” often to impermissibly promote a restrictive form of secularism or justify restrictions based on perceived national security interests.

Limitations on FoRB to ensure workplace safety can be permissible. In *Bhinder v. Canada*, the HRCtee held that the requirements for Sikhs to wear safety headgear during work was justified under Article 18(3) of the ICCPR because it was reasonable and directed towards objective purposes of protecting public safety.

2. **Public Order:** In Article 18(3) of the ICCPR, public order is read in the strict sense to mean the absence of public disorder. In contrast, Article 19 on the freedom of expression or opinion permits limitations for public order (*ordre public*). Referring to the concept under French civil law, the Siracusa Principles defined *ordre public* as used in the ICCPR as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded.” This difference emphasizes that the scope of permissible limitations on FoRB in the interest of public order is narrower than those allowed in relation to other rights.

² The Siracusa Principles is a document providing interpretation guidance on these provisions that reflects the outcome of an international conference of human rights experts held in 1985.

Some states, such as *Pakistan* and *Indonesia*, premise *blasphemy* provisions on protecting public order. However, the HRCtee expressly states in *General Comment 34* that blasphemy laws are incompatible with the ICCPR except in the specific circumstances envisaged in Article 20(2), which allows narrow restrictions on advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Blasphemy laws are also problematic because states may only restrict the freedoms of religion and expression for the non-discriminatory neutral purpose of protecting citizens. In contrast, blasphemy laws often aim to protect the majority religion in a way that impermissibly discriminates against other groups.

As with public safety, public order is not *equivalent* to “public interest.” States cannot use public order as an excuse to limit the rights of persons belonging to specific religious groups or promote a specific religion or secularism. An example of a permissible limitation on FoRB is registration requirements for political demonstrations that also apply to funerals and other religious processions to control traffic and avoid disturbances to the peace.³

The HRCtee has rejected public order justifications in several cases concerning restrictions on religious clothing. In *Hebbadi v. France* and *Yaker v. France*, the HRCtee considered a French law that banned face covering in public spaces, restricting Muslim women from wearing the niqab. France argued the law was necessary to protect public safety and order as the state needed to be able to identify individuals to prevent security threats. However, the HRCtee found that France failed to demonstrate the existence of a real and meaningful threat to public safety and public order, particularly as covering the face for religious purposes was strictly prohibited but covering the face for other purposes was allowed. The HRCtee noted that while there may be circumstances where it is necessary to see individuals’ faces, the law as a blanket ban was not limited to those circumstances.

3. **Public Health:** Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to its population’s health or that of individual members. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

Certain limitations on the right to practice one’s religion through the use of drugs are compatible with the ICCPR. In *Prince v. South Africa*, the complainant contested his denial of admission as an attorney due to convictions for possession of cannabis. He argued the use of cannabis was a central aspect of his Rastafari religion. Although the HRCtee accepted that the use of cannabis is inherent to the manifestation of the Rastafari religion, it held that the limitation was necessary because of the “harmful effects of cannabis.” The HRCtee noted that allowing Rastafarians to import, transport, and distribute cannabis may “constitute a threat to the public at large, were any of the cannabis [to] enter into general circulation.” The prohibition was based on objective grounds and applied equally to all religious minorities that may also believe in the beneficial nature of drugs.

4. **Public Morals:** Morals is a ubiquitous term that is not defined in any of the international human rights instruments. The HRCtee explained in *General Comment 22* that “the concept of morals derived from many social, philosophical, and religious traditions; consequently limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.” Because public morals differ across cultures and evolve over time, states have a margin of discretion in defining morality. However, the Siracusa Principles note that in justifying restrictions based on the protection of public morality, states must demonstrate that a limitation on this ground is essential to the maintenance of respect for the fundamental values of the community. Further, morality restrictions are understood in the light of the universality of human rights and the principle of non-discrimination.

As public morals are relative and changing, restrictions must allow for this evolution by ensuring the protection of minority opinions. As explained by the HRCtee in *Hertzberg v. Finland*, the concept of public morals should not be used “to perpetrate prejudice or promote intolerance”; rather, “it is of special importance to

³ Example taken from the UN Convention on Civil and Political Rights: CCPR Commentary by Manfred Nowak (2005).

protect freedom of expression as regards to minority views, including those that offend, shock or disturb the majority.”

States often cite morality as the ground to restrict expression about homosexuality. However, the HRCttee in *Fedotova v. Russian Federation* (2012) rejected Russia’s defense of a law prohibiting “propaganda of homosexuality,” finding the law to be discriminatory. While the HRCttee noted that Russia “invokes the aim to protect the morals, health, rights, and legitimate interests of minors,” the HRCttee found that the government had “not shown that a restriction on the right to freedom of expression in relation to ‘propaganda of homosexuality’—as opposed to propaganda of heterosexuality or sexuality generally—among minors is based on reasonable and objective criteria,” nor had the government provided evidence justifying that distinction.

5. Fundamental Rights and Freedoms of Others:

Fundamental rights are often mutually reinforcing, but can also conflict. FoRB empowers individuals to manifest their religion or belief as they see fit, provided that this freedom remains compatible with the equal freedoms of others. Rights holders are human beings, not religions or belief systems, which means that FoRB protects believers and not beliefs.

Where the freedom of religion clashes with other fundamental rights, states must aim to protect all rights, including through the implementation of reasonable accommodations to reconcile them. Although the process of harmonizing rights can be complex, the assertion of any human rights claim cannot be utilized to extinguish other rights. The Siracusa Principles explains that when balancing rights, special consideration should be given to the fundamental rights and freedoms protected in the ICCPR, especially those rights not subject to limitations.

In *Hebbadi v. France* and *Yaker v. France*, described earlier, France argued the ban on face coverings was necessary to protect the rights of others and to establish the “minimum level of trust required to live together in an open and egalitarian society.” The HRCttee rejected France’s argument that the face covering ban could be upheld on the interest of “living together,” noting that this is not a fundamental right and the concept is general and vague. Further, the Committee found that France failed to establish a connection between any fundamental rights of others and the ability to see veiled women’s faces in public.

The freedom of religion or belief and the right to equality and non-discrimination⁴ are inextricably linked. However, these fundamental rights can clash when states raise religious freedom concerns to justify differential treatment of members of communities that are protected from discrimination under international human rights law. The UN Special Rapporteur on freedom of religion or belief has *noted* that when these rights collide, “every effort must be made, through a careful case-by-case analysis, to ensure that all rights are brought in practical concordance or protected through reasonable accommodation.” Although balancing competing rights can be challenging, states should aim to protect all rights equally.

As explained in USCIRF’s report *Women and Religious Freedom: Synergies and Opportunities*, the freedom of religion or belief cannot be used to justify gender inequality or harmful practices against women and girls, including female genital mutilation, child and forced marriage, and polygamy.

⁴ Article 1 of the UDHR provides that “All human beings are born free and equal in dignity and rights.” According to Article 2, everyone is entitled to enjoy the rights and freedoms in the UDHR “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 2 of the ICCPR contains a guarantee similar to Article 2 of the UDHR, and Article 26 contains a prohibition on discrimination on grounds “such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”



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