

REPORT ON FREEDOM OF THOUGHT

GIN-SSOGIE is providing input for the upcoming report of the Special Rapporteur on Freedom of Religion or Belief on Freedom of Thought to be presented at the 76th session of the General Assembly. GIN-SSOGIE has taken note that the Special Rapporteur would like to explore "freedom of thought" as both a distinct and foundational aspect of international human rights law, focusing on what the freedom encompasses, how it is protected and how it relates to other fundamental rights and freedoms. We have prepared a report on this basis.

The report is a consolidated compilation of 4 different regional contributions; the first one from a faith based organization in Latin America - Nicolás Panotto, "Otros Cruses", the second one from a catholic leader in Southern Africa – Dr. Nontando Hadebe, the third one from an LGBTI activist working at the regional and global level on sexuality, gender and faith issues based in Indonesia - Dédé Oetomo and the fourth by Dr. & Imam Ludovic-Mohamed ZAHED (Director of CALEM Institute) from France.

Background information: GIN-SSOGIE is a global organization headquartered in South Africa, focusing on LGBTI rights at the intersections of faith, religion, politics and culture. As a member-led organization, with 420+ members around the world, it is working to provide safe spaces to convene, document best practices, develop resources, and together create local, regional, and international strategies for the inclusion and mainstreaming of LGBTI identities.

To the report key questions, GINSSOGIE's input wishes to address the following elements:

1. What is the content and scope of freedom of thought? For example:

(a) What does freedom of thought encompass?

(Southern Africa) The gift of thought is a God given gift and right that all human beings are endowed with. It allows human beings to express them in a distinctive way. Thoughts hold great power and therefore require both freedom and responsibility for the rights of others. Ideologies that oppress and create divisions came from the thoughts of individuals and became collective thoughts. To be able to express thoughts freely is a right that is exercised in relation to rights of others which require accountability and non-harm or violence. Great initiatives were started with thoughts just as were great destructive thoughts that led to ideologies of violence and harm such as genocide, sexism and homophobia. Freedom of thought starts with the prior recognition and acknowledgement of the social status of the person, thinking whether they are privileged or oppressed is the basic starting point. Freedom of thought is to also be looked as a reflection of the individualism – the famous philosopher Descartes said 'I think therefore I am' whereas other cultures that uphold relationship and mutuality would say 'I relate therefore I am' these are two views that bring two different outcomes. The individual as a self-contained person can do and think what they want without any consideration for others. On the other hand, in oppressed contexts thoughts of liberation, dignity and resistance are key for both oppressed and oppressor

(c) How could this freedom be protected in law and policy, noting inter alia that rights-holders may be at different stages of cognitive development or have varying levels of cognitive functions?

(Latin America) The limits are not universal either, but rather movable, in the light of the ever-changing consensus of social groups, States and regional/international bodies. For this reason it is imperative to continue to deepen the differences between freedom of conscience (which is subjective, personal and framed in the inalienable freedom of each subject), freedom of expression (which is related to freedom of

conscience, but under the limits imposed by the encounter with the Other, the affectation of his/her/their right and the rights already guaranteed) and freedom of religion (which must always be understood in the two-way relationship between society and religious groups, without appealing to any kind of exclusivism or privilege but framed within the right and the limits that any group in civil society has). To question that religious groups oppose these types of issues and policies, implies a violation not only of the principle of freedom of expression but also of religious freedom (e.g. Sandra Pavez vs. State of Chile).

(Southern Africa) Because human beings are social, individual rights are connected to the rights of others as expressed in the human rights code. Our thoughts evolve over time through new learnings, development from childhood to adulthood, so centers of learning need to encourage freedom of thought while recognizing that these have consequences for others that may or may not violate the rights of others. There are however thoughts both individual and collective that are destructive and these need to be subject to legal constraints. Protection by law and policy needs to have a framework and work together with other rights so that oppressive thoughts and ideas are subject to prosecution.

(Indonesian perspective) It should be explicitly mentioned in human rights legislation that take into account the different stages of cognitive development or the varying levels of cognitive functions. The legislation should include explicit mention of implementation and safeguards. Law enforcement personnel need to be educated well about it.

2. What does it mean in practice to respect, protect and fulfill a freedom not to:

(a) Disclose one's thoughts (mental privacy);

(Southern Africa) Mental privacy is an ideal because private thoughts are not isolated from actions that may or may not harm others. As feminists have articulated so well, the personal is political. However in different contexts particularly oppressive ones, thoughts that contradict accepted norms need to be allowed to be kept private and no one needs to be pressured to reveal their thoughts in these environments.

(b) be penalized for one's thoughts; or

(Southern Africa) Thoughts need to be subject to the rights of everyone and honor the human dignity of others. No one exists as an isolated individual whose actions have no consequences. So thoughts that are a threat to life including the life of the thinker. Again this is western thinking that separates the individual from the wider community so that they can do as they please at the cost of the community. So all rights must be held together and not treated in isolation including the right to think different from family, community and religion as long as it does not violate the rights of others and the individual.

(Indonesian perspective) In cases where one reveals or expresses their thoughts, there should be safeguards against penalization.

(c) have one's thoughts free from coercive or other interference?

(Southern Africa) Again the starting point is different for each person depending on their social location as either privileged or oppressed – those in power seek to control thoughts of those they oppressed and also to sustain oppression and privilege through manipulating thoughts – so even thoughts themselves are not isolated from the social context of the person thinking. So this freedom needs to be both protected and interrogated so that the thinking is free and not unduly coercive. There is need for definitions as to what

coercive is and what is considered coercive so that the rights of the oppressed are protected and those within privileged groups who are in solidarity with oppressed are not victimized.

4. Is there a difference between "freedom of thought" and "freedom of belief"? If so, what is the distinction?

(Latin America) One of the great challenges faced, looking in Latin America is the articulation and identification of clear boundaries between freedom of expression and freedom of religion or belief. Both in the context of pandemics and the application of health restrictions, as well as in the treatment of public policy linked to inclusive and human rights agendas, many conservative religious sectors have appealed to the principle of "freedom of expression and belief" in order to refuse their treatment and approval. This is a somewhat historical problem and one that is projected globally.

(Southern Africa) Freedom of thought is far more encompassing than freedom of belief – thoughts are multiple; from the time one wakes up one is thinking and thinks even outside of religion and about all issues so thoughts are pervasive and affect all aspects of life. Beliefs are particular and relate to fundamentals of a particular faith or non-faith.

5. Is there a difference between "freedom of thought" and "freedom of opinion"? If so, what is the distinction?

(Southern Africa) Freedom of thought is private and relates to a range of situations and contexts whereas freedom of opinion is subject related – you have an opinion on something or a subject or a religious belief whereas thoughts are less binding and can easily change.

6. What is the relationship between the forum externum of a rights-holder (e.g. manifestations of one's religion or belief, or expression) and freedom of thought (part of one's forum internum)? Would violations or limitations of the former affect the latter? If so, how does this occur and is it permissible under IHRL?

(Latin America) National sovereignties and their legal demarcations are the limit of any political debate that may be proposed within the framework of the international system, beyond its binding status.

Given that the religious field has its specificities, governments must appeal to the voice of religious leaders and specialists in the field (generally linked to the legal field; e.g. lawyers) to deal with these issues, and not to civil society, as they support very different agendas from those of the religious world.

(Southern Africa) The manifestation of one's beliefs is pre-determined by the faith community who have power to decide what correct belief is and what is not, so a person in some cases chooses faith and in some cases it is the faith they are born in. Freedom of thought in religion is tough because it is sometimes perceived as rejection of the fundamentals of faith therefore punishable by exclusion or excommunication while on the other hand those who have exercised freedom of thought in challenging have brought positive change but at great cost to themselves because religions are extremely protective of the fundamentals of their faith. For example during apartheid era Byers Naude challenged his faith community in their beliefs of the inferiority and subservience of non-white which was the theological justification for apartheid and he had to endure exclusion and persecution but eventually his church recognized his contribution. So freedom of thought is different in that it brings a critical lens on what is believed and is often suppressed and viewed as a threat to the faith.

(Indonesian perspective) The forum externum is a possible representation of the forum internum, though not always directly. Circumstances may make one "censor" oneself. Violations or limitations of the former

may affect the latter, to the point of suppressing the latter completely. Legislation or law enforcement practice may have this effect, though it is not permissible under IHRL.

(European perspective) In France, as in other parts of Europe and the world, we have seen freedom of religion being invoked to attack other freedoms, including of thought and of consciousness. In recent years, the criminal differentiation between freedom of belief and an appeal to misogynistic, homophobic and Transphobia hatred has been the subject of debate. Indeed, some religious leaders have freely invoked their right to interpret their sacred texts (Freedom of Religion), in order to justify their discrimination against women, Jews, sexual or gender minorities and exclude them from spirituality and faith practices (affecting individuals' Freedom of Thought and of Consciousness). Indeed, since the early 2000s, we have observed an attack from certain radical religious movements, which claim that our sexual or gender identities must be normalized. This is happening despite the fact that amongst the younger generations, in France in particular, spirituality tends more and more to be considered as a philosophy of life and not as an "Islamic" law, an emancipatory and non-binding cultural factor, centered on the well-being of individuals and not on the dogmatic control of individual freedoms. Despite this, some religious authorities still continue to spread the idea that "THE" religion, which they claim to represent exclusively, would be incompatible with certain types of freedom, particularly that of sexual or gender liberties. Some religious movements/authorities hold, in particular, that their exclusive interpretations of sacred texts would force them to excommunicate homosexual or transgender individuals. However, nowhere, neither in the Qur'an nor in the Sunnah of the Prophet of Muslims, minority sexual behavior or non-heteronormative gender identities are not condemned ad nominem. What is condemned by the Islamic tradition, from its origins nearly fifteen centuries ago, is on the contrary patriarchal violence, whether political or sexual, and not individual freedom or love between people of same sex. These patriarchal and fascistic interpretations of Islamic texts only flout the very principles of our spiritual traditions, which are by nature humanistic and Universalist. Further, these self-proclaimed religious authorities do not represent the majority of French Muslims' attitudes, thus campaign to impose certain patriarchal interpretations of religious texts, stimulate discrimination and the suffering of minorities within Islam in France and elsewhere.

10. Do certain practices and policies have undue influence on "freedom of thought"? If so, which ones, why and in what circumstances? This may occur in various contexts – whether offline or online, involving State or non-State actors – such as in media and technology, healthcare, national security and education sectors.

(Southern Africa) For example in the oppressive ISMS and homophobia, those in power hold the means of communication in media, films and newspaper and so the information itself is in the hands of the powerful and they influence either explicitly and implicitly that influence 'freedom of thought' so that people express these as their thoughts but where in fact are ideas promoted by those in power. Free thinking is rare because the information that comes through newspapers, TV and social media is in the hands of the powerful who mould thinking into ways that sustain privilege and power. For example powerful religious messages that sustain patriarchy and homophobia so that Christians believe it is their thoughts whereas it is the influence from those with religious power and interpretation of texts

11. What is the effect (if any) of the following on freedom of thought:

(c) "treatment" for one's thoughts – including for mental health reasons.

(Latin America) Speaking out against issues linked to the LGBTI community, women (feminist groups), sexual and reproductive health, among other issues that touch on the value agenda of some groups, is related to freedom of expression and not to hate speech or discrimination.

(Sothorn Africa) History has revealed that mental health can be manipulated to serve the status quo and interests of the powerful – a woman who protests patriarchy is deemed ‘insane’ there are numerous examples of labelling people in mental health categories in order to sustain power and subvert freedom of thought to oppose oppression

12. Information about what practices and policies may unduly affect freedom of thought of individuals in vulnerable situations, including:

(c) girls, women, and LGBT+ persons;

(Southern Africa) Vulnerable groups live in contexts that are controlled by those in power whether culture, religion or state policies and so the freedom of thought without protection poses threats to their lives and therefore needs to be protected at all costs and even the freedom of those who are in solidarity with vulnerable groups in their opposition of oppressive powers. Adverse practices and policies may prevent LGBTI persons from living their lives freely and fully, which in turn may cause mental health problems

(f) members of minority religious or belief communities.

(Southern Africa) In cases where certain segments of religion have power, minority groups face persecution and their rights to think differently is threatened. They may have to leave their places of residence for fear for their lives. This may have negative consequences on livelihood etc.

(European perspective) In France, regulation of these vast growing fascist dynamics, within Muslim communities of the diaspora, themselves already scarred by decades of discrimination and an appeal to ethnic-religious hatred, remains a real political puzzle. That will have to be resolved one day or another, under penalty of seeing the same dynamics of double radicalization perpetuated: between Islamophobic racism and Islamist patriarchy, at the expense of sexual or gender minorities.

The debates around the recent law against "separatism" and for secularism in France, has given rise to many concerns, between those who thought that Muslims would once again bear the brunt of ambient Islamophobic, and those who have been campaigning during several years for the outright prohibition of calls to hatred against certain minorities, through the political interpretation of certain sacred texts, and under the guise of religious freedom.

13. What steps could States take to ensure that an individual's freedom of thought is not unduly affected by certain practices and policies? For instance, it is recalled that the Committee on the Rights of the Child has encouraged States to take certain measures with respect to the digital environment

(Indonesian perspective) States could place legal and law enforcement guarantees and protections, but this is not always possible when States have a stake at majority groups etc.

14. Civil society / National Human Rights Institutions:

(Latin America) An example to mention where we can see these dynamics, was in the process that took place between 2019 and 2020 around the Resolution on Religious Freedom issued by the OAS, the first in its field. In 2019, the OAS approved this resolution in the format of a brief document, which its importance was to highlight the importance of this issue in the organism. It alluded to the various demarcations on the subject within the international jurisdiction and gave a series of mandates for its treatment in the Council on Juridical and Political Affairs (CAJP) and within civil society. But the process of debate following the approval of the first version of the document and the shaping of the second text in 2020 shows an important

shift. In this line, there are two elements to highlight. First, pro-life / pro-family organizations related to the most politically conservative governments in the region requested that civil society should not participate in the debate, but that only governments should deal with it, through the assistance of “professionals in the legal field”. It is striking that these organizations, being from civil society, call for the non-participation of this conglomerate. This clearly shows that there are sectors within civil society (especially religious conservatives) that take advantage of their articulation with political actors for their own agendas. (*Indonesian perspective*) Civil society and NHRIs have been known to do these things, often in confrontation with less human rights respecting agencies such as the military and police and intolerant religious institutions.

(b) Information on tools for defining and respecting parameters of freedom of thought in theory and practice;

(*Latin America*) The second element has to do with the configuration of the resolution itself. The first version approved in 2019 was a very simple document that addressed the importance of religious freedom and plurality in the framework of the international system. It was composed by a diverse group, including representatives of the State, OAS legislatures and civil society. But the second version was proposed by a group of governments, leaving aside civil society actors. In this document, three new issues were added: 1) the problem of religious persecution, “including minorities”; 2) the responsibility and independence of the religious communities to establish their leadership structures without State intervention; 3) the inalienable right of parents in the moral formation of their children. This second version of the resolution shows an important turn into what we could call the exclusivism of the religious world with respect to the management of its internal structures, the approach to moral issues and any questioning they may have from other social actors under the name of “persecution”. We could say that, in terms of rights, this second version shows a major setback, as well as the empowerment of hegemonic religious structures in the face of public policies and rights. This can be disseminated through education and training, also through regular media campaigns.

15. International organizations

(*Indonesian perspective*)- (a) Efforts taken by international organizations to (i) monitor and analyze practices or policies that may unduly affect freedom of thought; or (ii) mitigate such practices and policies, including in relation to the technology sector

International organizations are often at the forefront of engaging challenges and finding mitigations. The work needs to continue regularly and effectively.

(b) Examples of how international organizations are engaging and supporting those who have experienced practices or policies that may unduly affect their freedom of thought (e.g. access to justice, public forums, intergroup dialogues and consultations etc.).

Pressuring the government, through international mechanisms and engaging with the government.