

INTERVIEW

“What is undeniable is that freedom of religion remains, as Manfred Nowak has pointed out, the most controversial human right, engaging a number of other human rights as well. The permissible limitations offer a means to negotiate that engagement.”

Ahmed Shaheed

Religion and Equality

Human rights law both recognises the right to freedom of religion and prohibits discrimination on the basis of religious belief. The interaction between the right to freedom of religion and the right to freedom from discrimination remains a matter of vivid debate.

As the scope of the right to freedom from discrimination has been clarified over time as encompassing and protecting a wider range of characteristics, e.g. sexual orientation, religion is increasingly cited as a reason to discriminate against others. On the other hand, religious hatred and intolerance appears to be on the rise, with religious radicalisation increasingly being seen by many as a factor in the making of terrorism.

The Equal Rights Trust spoke with two experts to discuss the tension between religion and human rights law. Dr Ahmed Shaheed is the current Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, having previously twice held the position of Minister of Foreign Affairs of the Republic of the Maldives. Professor Eva Brems is an expert in human rights law and her recent research examines the experiences of women wearing the face veil, to gain an insider perspective. Amongst other courses, Professor Brems currently teaches a course on Islam and the Law at Ghent University, as does Dr Shaheed at the University of Essex.

Equal Rights Trust: You are widely recognised as an international expert in the field of freedom of religion, including in the context of non-discrimination. How did you become involved in this area of work?

Ahmed Shaheed: As is often the case, the first victims of radical Islam are Muslims themselves – especially those who uphold moderate and tolerant traditions. I majored in international relations in college and embarked on a diplomatic career at a time when more intolerant and fundamentalist religious perspectives began to challenge the moderate attitudes that I grew up with in my country, the Maldives. These views began to govern our public discourse and to permeate the Maldives' institutions, which soon took a rather radical turn; embracing theocratic orientations and rejecting civil society demands for transparency, equality, tolerance for dissent, and rule of law.

This led me and a number of like-minded academics, human rights defenders, and political activists to lead a campaign that called for greater human rights safeguards against the

capricious and discriminatory practices that had come to characterise the Maldives' public institutions. Religious freedom and its relationship with civil, political, and social rights, as well as its impact on gender equality were core issues that required redress and that continue to challenge my country and my work as a human rights defender today.

Experiences gained as a student, government official, diplomat, civil society activist, academic, and as a UN expert over the years have allowed me to examine the relationship between religion and human rights from various angles. Over the years, I've come to recognise that what has happened in my country

is part of a broader global phenomenon that requires international attention and action, as much as it necessitates national debate and solutions. That is why I teamed up with organisations like the Universal Rights Group, a think-tank based in Geneva, to examine a range of human rights issues, including, as a primary concern, religious freedom.¹



Eva Brems: I like to think of myself as a generalist in the field of human rights law. Initially, I researched universality and diversity in human rights, looking specifically at cultural and religious challenges to promote an inclusive human rights vision in international relations. I then began to see how this inclusive interpretation could be applied at the domestic level within a multicultural context and, as issues such as the headscarf ban extended from France to Belgium in the early 1990s, I was further prompted to respond to human rights challenges in my environment. More recently, the issue of the face veil has seen a sudden political dynamic towards a ban which has been interesting to study. These and other issues, seen from a human rights angle, need to be studied further.

Equal Rights Trust: The relationship between freedom of religion and the rights to equality and non-discrimination is a complex one. How do you view the relationship between these rights?

Eva Brems: There is not just one relationship but many and sometimes I think they are alternative framings for the same issue – you can frame an issue as religious freedom,

¹ More information about the Universal Rights Group can be found at <http://www.universal-rights.org/>.

but this same issue might also be framed as non-discrimination. This is especially the case concerning minority religions. For example, consider the accommodation of religious freedom in the workplace. Depending on the legal framework you have in place, this could be framed in terms of discrimination on the ground of religion or as a violation of religious freedom. Another issue concerns conflicting rights between religious freedom on the one hand and discrimination on the other hand, for example, when discrimination occurs within the internal organisation of religion or when discrimination is motivated by or grounded within religious beliefs. Recently, this issue has gained significant attention, as can be seen with cases such as conscientious objectors to same-sex marriage.



A significant part of my research has looked broadly at conflicts in human rights, not just in the sphere of religion and discrimination. At present, there is no clear methodology for addressing issues of conflicts in international human rights law and even constitutional law. Instead, these issues are addressed on a rather ad hoc basis. For example, before the European Court of Human Rights you sometimes get requests for a wide margin of appreciation to be given to states where they decide to give priority to one right or the other. On the other hand, you also get claims before the same court that it should not give states this right and instead argue that anti-discrimination claims should carry more weight than religious freedom claims. Generally speaking, you cannot say one claim carries more weight than that other, especially where religious freedom claims could have been framed as anti-discrimination claims.

These are important and significant issues to be addressed as these are often very contentious issues in society. There is a lot of work to be done in this field and I think we have an interest in doing that work and it is important to avoid the impression of arbitrariness in solving these issues. From a legal perspective, it is a lot better if a consensus can be reached as to a clear approach that should be taken to solving these issues.

Ahmed Shaheed: International human rights law affirms the importance of equality and non-discrimination in applying legal protections for human rights. However, the law offers very little instruction for addressing tensions in the relationship between a number of rights where the exercise of certain rights come into conflict with protections for other rights. This is evident when the right to manifest religious beliefs is used to justify violations of rights to expression, assembly, or association, or to perpetuate discriminatory practices against women, girls, religious and ethnic minorities, and members of the LGBT community.

Thus, reducing tensions between both individual and communitarian rights to manifest rituals and practices and interests to strengthen protections against patriarchal attitudes and traditions that undermine equality and nondiscrimination undoubtedly constitutes one of the biggest challenges facing the modern human rights movement today.

Perhaps the process of reconciling tensions between the principles of equality, non-discrimination and freedom of religion must, therefore, first involve inclusive efforts to understand the potential for conflict, as well as a commitment to designing strategies for establishing a delicate balance between the views of actors that wish to preserve certain traditions, and of those that seek protection from the discrimination and inequality of such traditions and practices.

Equal Rights Trust: Do you think religion as a ground of discrimination should be treated differently from other grounds?

Ahmed Shaheed: International jurisprudence² affirms that laws and practices that have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of all rights, by all persons, on an equal footing is prohibited. This includes those purported to be rooted in cultural traditions or religious beliefs. Challenges to this concept often represent deeply held beliefs and existential convictions that bring people meaning, or that help them to find a sense of place and order in the world, and that are, therefore, more resistant to external pressures for change.

Equality laws work to address discrimination and exist within a wider system of measures designed to address deep rooted social and economic disadvantages, where those disadvantages are linked to gender or membership of a particular group. Exempting religious groups from non-discrimination laws can work to reinforce the acceptability of stereotypes, discrimination or inequality and can nullify the intent of equality laws. Religious organisations should, therefore, not be completely excluded from legal accountability in relation to fundamental rights of non-discrimination.

The question is, of course, how to balance the rights of religious individuals or groups against the rights of others to equality and non-discrimination. The condition of proportionality may provide some guidance in the imposition of anti-discrimination laws or policies that promote a gender perspective.

Limitations on the exercise of religion must be prescribed in law, serve a legitimate aim, and be proportionate to the aim. One does observe that, while derogation from this right is permissible, it is more narrowly construed than other derogable rights, in that national security is not provided as a ground for derogation; and the rights of others that qualify for protection against freedom of religion are their “fundamental” rights. This is not the case with regard to the permissible limitations say, in regard to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), for example.

2 Human Rights Committee, General Comment No. 22, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993.

Religions usually make universalist claims and dominant religions often get tied up the political structures of states and may enjoy a special relationship to the constitution - as official religion or state religion - which may impinge negatively on the enjoyment of the rights of religious minorities. Likewise, where the state eschews any religion or all religions in the public square, there might be hidden discrimination. While the emerging concept of “reasonable accommodation” could address concrete situations of difficulties between dominant and minority interests, the concept clearly cannot be applied to justify the violation of human rights, such as gender equality or right to life or freedom from torture or from other harmful practices.

Eva Brems: Not all grounds of discrimination are treated in the same way. The example of quotas across many countries clearly demonstrates this. Some countries have certain gender quotas to fulfil, yet quotas for other grounds of discrimination such as ethnicity or disability are not considered. At a national level, in discrimination law, there is an obligation to provide reasonable accommodation for people with disabilities, but reasonable accommodation does not apply to some other groups protected under discrimination law. This difference in approach to different grounds of discrimination can be justified as the underlying realities are different. However, I personally support the use of the notion of reasonable accommodation in respect to the ground of religion given the freedom to practice your own religion is a human right, and limitations on religious practice should be as limited as possible.

Equal Rights Trust: Discrimination on the basis of religion continues to be an area of wide-ranging public debate. What do you observe to be the public perception of religious discrimination in your own country or in a country that you are highly familiar with? Do you think that religious hatred is increasing?

Eva Brems: Although Belgium’s majority religion is Catholicism, believers have become the minority and religion is not a significant part of most people’s lives. Increasingly, arguments based on religion enjoy very little credit with the public and authorities. Although this isn’t discrimination per se, it does involve negative stereotyping. For example, the media’s treatment of representatives of the majority religion, such as bishops, has been very critical.

Islamophobia has also become an important phenomenon; it has become justified in public opinion to see Islam negatively, especially since 9/11 and other terrorist attacks, and the rise of ISIS, all of which have seen negative connotations attached to Islam. I’m not sure whether it is on the rise as such or whether it is a new iteration of what we used to call racism. Previously in Belgian society, there was a dislike for people of Moroccan origin whereas now this dislike is framed differently and considered to be a dislike for Muslims. There is a particularly high level of intolerance and aggressive reaction towards visible displays of Islamic practices, which has not been the case in relation to other religious minorities or religions in general. If a school were to introduce Halal foods, in certain instances, the parents of other religions would be outraged, some restaurants refuse to serve women wearing a headscarf, and people would shun people who look like Muslims. These reactions, based partly on associations relating to fundamentalism and terrorism, have created an unpleasant atmosphere.

Ahmed Shaheed: Respect and tolerance for different religions in Iran, a country with which I am most familiar, is rooted in its long history of religious diversity and the recognition of a number of pre-Islamic religions. However, Iran, like most other multicultural societies, grapples with religious discrimination.

Perhaps, somewhat unique to Iran, is the country's Constitution, which establishes Islam as the official religion and goes on to identify Zoroastrianism, Judaism and Christianity as the only other religions recognised by the State. Consequently, Iranians are left with a hierarchy that, in effect, gives preferential treatment to followers of the country's official religion, and either nullifies or impairs the equal enjoyment of a wide range of civil, political, social, cultural, and economic rights by adherents of both recognised and unrecognised faiths.

It is difficult to say how strongly Iranian society as a whole may embrace the underlying discriminatory precepts of this hierarchy. However, it should be noted that the ongoing persecution of, and discrimination against members of the recognised and unrecognised faiths in Iran, such as the Baha'i, have been particularly rooted in a number of Iranian laws and policies, and have been perpetuated by government actions. These practices have resulted in the well documented persecution of new converts from Islam to Christianity, have given rise to the arbitrary arrest, detention, prosecution, and discrimination against Baha'is in academic settings and in the workplace, but do not predominantly appear to be the actions of non-government actors.

Equal Rights Trust: Gender equality and freedom of religion intersect at two different points – on one hand stereotypical gender roles are sometimes defended on the basis of religious belief; on the other, perceptions of women based on their religion or belief may also lead to intersectional discrimination. What is your view on the relationship between religion, gender and equality?

Eva Brems: I think this is somewhat of an understatement when you think that discrimination is actually being practised within religious organisations, and it is a feature of religious law as it is applied in many states. In the case of the Catholic Church for example, women as a group are excluded from central functions within this organisation. In the Netherlands, there is a religion-based political party, the Staatkundig Gereformeerde Partij (SGP Party), which does not put women forward as candidates in elections for religious reasons. In many European countries, religious law is applied both formally and informally in some cases with even some of the formal rules being discriminatory such that women don't get the same rights, for example, in terms of inheritance and access to divorce.

It is important to keep in mind that achieving gender equality is always a cultural challenge. You have to get patriarchy taken out of legislation, out of the minds of people, and out of practices – you need to realise cultural change. Religion can be seen as part of culture, but a particularly hard nut to crack because of the way it is institutionalised and formally organised, whereas a lot of cultural traditions and perceptions are not written down and protected by people who have the function to protect the orthodoxy. At the same time cases should not be overstated – we should not project discriminatory intentions onto minority practices,

which is something that can be seen happening quite a lot now. I often hear Muslim women and girls' frustration at being seen as embracing or even promoting women's subordination because they wear religious dress. These insider perspectives are very important, and women and girls and other affected groups should be listened to in order to ensure they are empowered and taken seriously.

Ahmed Shaheed: A key conflict between non-discrimination and freedom of religion relates to gender discrimination and the role of women and girls in religious beliefs and communities. Patriarchal views grounded in religious discourses are frequently used to justify gender hierarchy or to violate a number of other rights of girls and women, including physical integrity rights. Likewise, homophobic views may be advanced on the basis of religious beliefs, and serve, on the basis of rights claimed under religious freedom, to perpetuate discrimination or to violate the human rights of others.

But whether a claim is advanced under religious freedom rights or cultural relativism, where such claims undermine the equal enjoyment of all human rights or cause harm to any of the rights of an individual, such claims have no legitimacy at all. Women's rights often become a magnet for religion-based reservations, and of these, the right to equal rights in marriage and divorce is the lightning rod of faith-based reservations. And there is even greater faith-based resistance to recognising the right of LGBTI communities to the equal enjoyment of all human rights. But the human rights edifice must provide equal respect and protection to all, if it is not to become the berth of a select few or the tool of a tyrannical majority.

Similarly, violations resulting from stereotypes of women based on their religion or belief disproportionately affect women from religious minority communities. These women often comprise the most vulnerable of their societies and suffer from multiple or intersectional discrimination or other forms of human rights violations perpetrated by both adherents and non-adherents of their faiths. As a result, initiatives meant to promote gender equality and to protect the rights of women can leave whole populations of women on the margins.

Measures undertaken to combat religious discrimination must, therefore, be holistic in their approach to understanding the sources of discrimination and must pay special attention to inclusivity, avoiding the exclusion of these women from initiatives that promote and protect human rights on various grounds of the very stereotyped perceptions they are meant to confront and address.

Equal Rights Trust: The recent decision of the European Court of Human Rights in *S.A.S. v France* that the French blanket ban on wearing the full-face veil did not amount to a violation of freedom of religion was criticised by several NGOs. Are you familiar with the case and the discussion? If so, what is your view? What do you think should be the defining principles in deciding religious dress cases?

Ahmed Shaheed: While the Human Rights Committee has not expressed a general view on the ban on the full-face veil, European practice in this regard is quite clear: 45 of 47 countries

do not impose a blanket ban on the full-face veil. In this particular case, the ruling of the Court therefore appeared to give a wide margin of appreciation to the French authorities. The judgment of the court hinged on the alleged impact on the rights of others as a result of the practice by a minority of the full-face veil – the rights in question being linked to the ground rules of social communication in French society associated with the requirements of living together; and the negative impacts on those requirements from the non-disclosure of the face in public. The negative impact on the living space was seen as a public order interest and therefore linked to a legitimate aim of upholding democratic society where living together is essential for the expression of pluralism, tolerance and broadmindedness.

The question of whether or not the ban was proportionate to the aim sought, especially in regard to the restrictions of the rights of those affected, as well as potential exclusion of those affected was, in my view, abandoned by the Court by reference to its duty to exercise restraint where the margin of appreciation was applicable. It is clear from the reasoning that some of the very values for which protection is sought by the ban – pluralism, tolerance, living together – could in fact be undermined by a blanket ban. In fact, the joint partially dissenting opinion issued by Judges Nussberger and Jaderblom highlights a number of these issues - including whether the concept of living together could be cited as a legitimate aim under the Convention.

Eva Brems: I am very familiar with this case, and the Human Rights Centre at Ghent University actually played a third party role in it. I have also worked on the issue of the niqab in Belgium and France for a long time, carrying out interviews with women who wear or who wore a face veil so that women’s perspectives can be brought into the discussions. However, these perspectives have been largely overlooked at the national level.

Overall, although the judgment had a couple of merits, it is a bad judgment. On the plus side, it dismissed two of the three arguments to justify this radical ban on face covering. Firstly, it dismissed the security argument based on proportionality reasoning, and secondly it dismissed the gender equality argument in a very careful and nuanced way. The latter is particularly important when you consider that the French and the Belgian constitutional courts readily accepted both the security and gender equality arguments on the basis of theoretical statements and unchecked assumptions without looking to evidence. Evidence based reasoning is important to make accurate assessments, to not simply say it is about women’s subordination, but to check what the motivations and impact are.

However, the judgment is problematic to the extent that it accepts that religious freedom can be restricted legitimately in pursuit of a newly invented “aim” of “le vivre ensemble” (living together). This is a very problematic concept and it doesn’t take much deconstruction to see what the concept is doing. The notion of “le vivre ensemble” allows the dominant groups to claim control over the entire public sphere and to use criminal law to ban things that are strange to them and which make them feel uncomfortable. So I think the notion is a cover for majority prejudice.

The European Court of Human Rights, or indeed any other court addressing these issues, should be able to see through this and should take a critical approach, deconstructing such

problematic concepts. It should not simply accept and use the whole philosophical rhetoric but rather check whether a restriction corresponds to a real need, what this need is, what response is required and is a less restrictive alternative available? Decent evidenced-based reasoning is needed and this is lacking in the aspect of the judgment which deals with “le vivre ensemble”.

Equal Rights Trust: On a related matter, religious symbolism has been the subject of several cases before the European Court of Human Rights. Do you think that the court has got the balance right? How great should the margin of appreciation be for states in restricting such symbolism?

Eva Brems: Firstly, the concept of what constitutes a religious symbol is not a clear one, particularly when talking about someone wearing something like a crucifix or headscarf. This is a practice to them but becomes a symbol in the eyes of someone else. In cases of religious symbols, the margin of appreciation is justifiable in principle. Member states have very different histories in terms of the relationship between the church and the state. I don't have any big concerns with the outcome of the *Lautsi v Italy* in which the Grand Chamber of the European Court ruled crucifixes could be displayed in classrooms of state schools. However, I do have procedural concerns as there are clear suggestions that the court had given into outside pressure. In addition, I do have a problem with the reasoning – it is hard to square the decision with the court's jurisprudence on headscarfs and so it is arguable that the majority and minority religions were not treated equally by the court.

When talking about the margin of appreciation of a state, I think it is important to look at what kind of harm we are talking about. In my opinion, the harm felt by someone being confronted with the symbol of another person's religion is a lot smaller than the harm felt by someone who is not allowed to uphold a religious practice because others see in it a problematic symbol.

Ahmed Shaheed: Religious symbolism is regarded as belonging to the *forum externum* or manifestation of religion rather than to *forum internum* or inner convictions, and is therefore subject to limitation on specified grounds of public interest. It refers to both a positive right of religious freedom (the freedom to wear or display religious symbols voluntarily) and a negative right of religious freedom (the right not to be coerced into wearing or displaying religious symbols). In practice, this has proved to be contentious, with no clear consensus on where to draw the line, and the general approach has been that contentious cases are best addressed on a case-by-case basis.

Moreover, given the great diversity, even in the European context, not only in the relationship between religion and state, but also in societal attitudes towards religion, across time and space, it is clear that there is no consensus on the specific boundaries between religious symbolism and public interest, beyond certain core standards, as clarified at a general level by various international judicial and quasi-judicial bodies. The application of the doctrine of margin of appreciation under the supervision of the European Court recognises the need to

give a special weight to the domestic policy-maker in matters of general policy, where opinions within a democratic society differ widely.

Nevertheless, the European Court's handling of religious symbolism has created a number of controversies, in the context of the margin of appreciation that has been granted for states in regard to religious symbolism. Controversies have arisen where the view was taken that neutrality requires the state to eschew association with any religion. Perhaps greater controversy has arisen where the view has been taken that boundaries may have been drawn based not on demonstrable facts, but on what appears to be speculation as to the cause, significance and impact of wearing certain religious symbols. A frequently heard argument is that limitations on certain types of religious symbolism are warranted by the need to protect the public against religious fanaticism. Here I tend to agree with Judge Tulkens' statement in *Sahin v Turkey* that "the best means of preventing and combating fanaticism and extremism is to uphold human rights".³

In terms of what the scope of the margin should be for states, a useful framework was offered by Ms Asma Jahangir, UN Special Rapporteur on Freedom of Religion or Belief, when she proposed a set of aggravating indicators and neutral indicators to assess the legitimacy of restrictions on the manifestation of religious symbols. The former referred to those actions that typically were incompatible with international human rights law - an example would be if exceptions to the prohibition of wearing religious symbols were tailored to the predominant or incumbent religion or belief. Neutral indicators would be those that showed that the limitation was crucial to protect the rights of women, religious minorities and vulnerable groups or that the wearer required to be identified for a legitimate purpose, for example, on an identity card photograph or at security checks. By contrast, an action would not be neutral where limitations did not take into due account the specific features of the religions or beliefs in question.

Equal Rights Trust: The current Rapporteur on Freedom of Religion and Belief had stated: "it seems difficult if not impossible to conceive of the application of a concept of the Official Religion that in practice does not have adverse effects on religious minorities, thus discriminating against their members".⁴ Do you agree?

Ahmed Shaheed: I agree with that statement. The negative consequences posed for religious minority rights where a particular religion or religions are elevated to official status present serious challenges to the promotion of respect for religious minority rights. Perhaps

3 *Leyla Şahin v Turkey*, Application No. 44774/98, 10 November 2005, Dissenting Opinion of Judge Tulkens, Para 20.

4 Office of the High Commissioner for Human Rights, "Statement of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, during the 19th session of the Human Rights Council", 5 March 2012, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11934&LangID=E#sthash.6tib22u0.dpuf>

these consequences are most profound when the tenets of a particular religion become the foundation of the legal framework in the country or when it is used to qualify citizenship. Notwithstanding the clear negative impact that frequently results from the identification of a particular religion as the official religion of the state, international law does not require that states desist from such identification. What is incumbent upon the state, as clarified by the Human Rights Committee in General Comment No. 22, is that there is neither *de jure* nor *de facto* discrimination against religious minorities. Thus policies and practices that restrict eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths are violations of the prohibition on discrimination.⁵

International standards also provide other specific safeguards to religious minorities, such as those provided in Articles 20 and 27 of ICCPR. Moreover, as stated by the Human Rights Committee, where states invoke the protection of public morals as a ground for limiting the manifestation of a religion or belief, such concerns cannot be based on principles deriving exclusively from a single religious tradition. The principle of reasonable accommodation may be a useful tool in improving the situation of religious minorities where conflicts of rights occur; but again in practice, where a particular religion is given the status of official religion, except where it is in practice only in a symbolic sense, minorities are open to varying degrees of hidden and/or open discrimination.

Eva Brems: Although I do agree with the statement, it should be rephrased to emphasise that having a state religion is an acceptable choice when placed within a human rights framework. This framework is needed when there are challenges between the state and official religions in regard to religious freedom and equality. Where official religions are in place, states have specific responsibilities in respect to religious freedom and the equal treatment of minority religions and non-believers. Adapting the statement in this way adds an important nuance.

Equal Rights Trust: What are your views on religious schools? Do you think the existence of such schools within the school system is discriminatory or can be justified?

Eva Brems: Religious schools can be justified from a human rights perspective, both on the basis of the freedom of education and religious freedom. Freedom of education includes the right not only to be a consumer of education but also to organise education as a collective right, and religious freedom also includes the right to teach the tenants of the religion. There is nothing wrong with the state recognising and facilitating this, as well as attaching conditions in respect to the curriculum, as long as it does not discriminate among different religions and non-religious schools.

It can be difficult for religious schools to accept children of different religions, as this can ultimately undermine the right to organise religious based education in certain contexts. In

⁵ Human Rights Committee, *General Comment No. 22*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 9.

practice, many schools, especially those which follow the majority religion, accept children from all religions and many non-believers without being obliged to do so. Schools following minority religions have more to lose when they are obliged to take in non-believers as it can become extremely difficult to keep the religious character of the school intact. However, this can be justified with good reason, for example, when schools offer a certain curriculum which may not be available in another school or in that region. In these instances, the individual child's right of access to the education of their choice would be more threatened than the damage done to the collective right if admitting a certain amount of pupils.

Schools which provide a neutral exposure to other diverse religions are particularly valuable. States which enforce curriculums introducing all religions to its students promote further tolerance and understanding in society and are compatible with religious freedom. In Belgium, there is a constitutional right for all recognised religions in public schools to teach their own religions, this sees Muslims go to Islamic class, Catholics to Catholic religion, Protestants to Protestant religion, and non-believers to the special ethics class etc., consequently in this system where there is no mutual dialogue, children lose an opportunity to be introduced to each other's beliefs.

Ahmed Shaheed: The 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief makes it clear that every child:

[S]hall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.⁶

Religious schools perform an important function in propagating ideas, values, rituals, practices and traditions based on religions and in promoting tolerance and respect for diversity. Religion clearly plays a vital role in the lives of many individuals and is often seen as providing a moral compass and an ethical charter in the lives of individuals. Religious schools also serve the function of realising the internationally protected right to teach one's religious ideas and values to others, as well as ensure that parents have the ability to provide education to their children in a religion or belief of their choice, with the best interest of the child as the guiding principle.

Here again, there is a positive right that every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his or her parents; as well as the negative right of not being compelled to receive teaching in a religion or belief against the wishes of his or her parents or legal guardians. The positive right does not necessarily mean that such schools need to be state-funded. But where public education includes

6 Article 5(2).

instruction in a particular religion or belief, provision must be made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians. Nevertheless, there is no conflict with the negative right where school instruction in subjects such as the general history of religions and ethics is given in a neutral and objective way. In actual fact, public education that provides a neutral exposure to diverse religions is crucial to promoting understanding, tolerance and mutual respect as well as to combating prejudice and stereotyping.

Nevertheless, where the curriculum and other policies and practices in faith-based schools are not integrated into a human rights framework, they could potentially undermine the universality and indivisibility of human rights, and could foster discrimination and fragmentation. Like all human rights, the operationalisation of the right to freedom of religion must also be accompanied by a commitment to the crosscutting human rights norms of equality, non-discrimination, participation, and accountability.

Equal Rights Trust: Do you think that the limitations on the manifestation of freedom of religion contained in international human rights law lend themselves to discriminatory measures against religious minorities?

Eva Brems: There aren't any significant problems in the standards themselves, they are formulated in a classical way that can work very well. However, their interpretation can be problematic. When a right becomes less popular - as you see with religious freedom - there is a tendency to increase the scope of limitations, and this may require changing the mindset of bodies and individuals interpreting a right. If the European Convention isn't used as guidance, arguments are often made that practising religion in public is absolutely not a part of religious freedom, and in public debate there is a strong denial that elements such as religious dress, not mandated by religion, are religious. I was a member of parliament when the face veil debate was voted and saw the complete denial in that debate that this had anything to do with religion.

Ahmed Shaheed: Although the caseload may appear to be dominated by allegations of violations of the freedom of religion of minorities, we should not forget that these limitations enable the protection of the fundamental rights of others where the religious practices may conflict with human rights. The purpose of those limitations is clearly not to give a preference to the dominant religious views or to sacrifice the rights of religious minorities. Those limitations are to be construed narrowly, to serve a legitimate aim in a democratic society, and be proportionate to achieving that aim. Moreover, the limitations may not be used to vitiate the rights of freedom religion in any of its meanings. In fact, given the universalistic claims made by many religions, and the patriarchal traditions in a number of them, the limitations serve the positive function of upholding other human rights such as gender equality. As Heiner Bielefeldt has pointed out, when there is goodwill on all sides, the principle of reasonable accommodation offers a promising tool to address concrete cases of difficulty. In my view, the permissible limitations on the manifestation of religion do not in themselves lend to discriminatory measures and the growing body of jurisprudence appears to deepen our understanding of the contours

of permissible limitations. What is undeniable is that freedom of religion remains, as Manfred Nowak has pointed out, the most controversial human right, engaging a number of other human rights as well. The permissible limitations offer a means to negotiate that engagement.

Equal Rights Trust: Do you think that the recent Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence will be a useful tool to tackle religious discrimination?

Ahmed Shaheed: The Rabat Action Plan is a unique and important achievement in that it provides a blueprint for states to navigate through the complex relationship between freedom of expression and protection from incitement. It in fact marks a unique milestone on the conversion of the debate on defamation of religion from a focus on protecting religions to protecting individuals, as demonstrated by the consensus achieved by resolution 16/18 of 2011, and provides a way to operationalise Article 20 of ICCPR.⁷ Although its primary focus is the relationship between freedom of expression and protection from incitement, the Action Plan identifies a number of steps that will increase tolerance, restraint and respect, and enhance protections for religious minorities. Blasphemy laws threaten the freedom of religion rights in many parts of the world, and are often associated with violent consequences. Clarification of normative standards, establishment of judicial safeguards and identification of domestic and international protective measures all have the potential, if implemented in the spirit of the Action Plan, to end discriminatory practices against minorities, improve religious freedom rights, apply a human rights framework for a decade-long demand to protect religions, and address societal prejudices and stereotypes.

Eva Brems: The Plan is valuable as part of an overall framework against discrimination and in order to combat advocacy of hatred. However, this kind of legislation, especially in criminal law, is not commonly applied and has rather taken a somewhat symbolic role. I think it's a lot more crucial to change the everyday intolerance that falls outside of criminal or civil law. Discrimination is particularly damaging when found in the workplace, in education and so on as discrimination in these areas of life results in the exclusion of individuals from their opportunity to integrate in society and have a good life. Tackling everyday intolerance and discrimination requires sensitisation and social measures to enhance understanding and respect. To me, this is a higher priority than the hate speech issue.

Equal Rights Trust: Are there any ways you think the international human rights community could and should respond differently to combat religious discrimination?

Ahmed Shaheed: I believe the international standards have been well articulated, from the Universal Declaration of Human Rights to various subject specific treaties and from a range

7 Human Rights Council, Resolution 16/18, *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*, UN Doc. A/HRC/RES/16/18, 2011.

of jurisprudence to soft law standards and principles. Beyond the formulation of normative standards, the Rabat Action Plan demonstrates a practical approach that could facilitate the operational interventions required to strengthen particular aspects of the debate on religious freedom. Strategies, policies and projects that seek to operationalise the right to freedom of religion must uphold the cross-cutting norms that are applicable to the implementation of all human rights: equality and non-discrimination, participation, accountability and provision of effective remedy.

Despite the breakthrough made by UN resolution 16/18 and the practical approach taken by the Rabat Action Plan, there appears to be a reluctance to engage at the international political level on issues of religious freedom. It is of course prudent to tread carefully on a subject that can raise a variety of sensitivities, yet in my view, intergovernmental forums like the United Nations could give greater impetus to discourses that promote tolerance, mutual respect and commitment to human rights protection. There have of course been numerous initiatives and steps taken to create interfaith harmony, from dialogues amongst civilisations to regional initiatives. But clearly, religious freedom is in my view an area where more talk and mutual exchanges would yield benefit. The alternative is to yield the initiative, by default, to those who take more intolerant positions. One of the aims of the Universal Rights Group for example is to seek more engagement, within a politically neutral space, on dialogues on religion and human rights, in the interest of promoting the universality of human rights.

Eva Brems: For human rights activists there is still a lot of work to be done in terms of building capacity within communities. In Belgium, there is surprisingly little litigation against bans on Islamic religious symbols and Islamic discrimination at work; the small Sikh community actually carries out more litigation than this rather important Muslim community.

There is also a great deal to be done in terms of changing minds, as ultimately the human rights system can only be sustainable if awareness is raised and people understand its importance. The media should also be targeted, particularly in terms of how it represents minorities. At a more local level, possibilities should be created to see discussion ensue between different religions. For example, most people have an opinion on the place of Islam and Muslims in society and what they should or should not do, yet most people do not know Muslims in their everyday lives, they do not have Muslim friends or colleagues and so they do not have the opportunity to meet or interact with other Muslims. I could talk for hours with my university students, citing human rights cases, laws and theory, but it would be far more effective if I introduced them to one of my PhD students who could relay her experiences, and they would realise how similar they are to her. Greater support to taking approaches which change minds and attitudes is needed.