Why religious freedom matters for asylum seekers and refugees

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Abstract

This article advances a three-pronged argument to demonstrate why religious freedom matters for asylum seekers and refugees. First, it is a fundamental human right owed to everyone. Second, the global crisis of religious freedom, marked by increasing persecution and government restrictions on religion around the world, has a particularly damaging impact on asylum seekers and refugees. Third, higher levels of religiosity tend to be found among asylum seekers. For these reasons, religion should hold a greater place in policies governing the reception of asylum seekers and refugees.

Keywords forced migration, refugees, asylum seekers, human rights, religious freedom.

1. Introduction

Freedom of religion or belief and forced migration are inextricably linked.[2] The persecution of religious minorities around the world plays a central role in asylum seeker and refugee flows. Religious persecution looms large in international refugee law's definition of a refugee, representing one of the grounds on which asylum seekers may apply for refugee status. The fundamental human right to freedom of religion or belief is a *human* right owed to all asylum seekers and refugees, irrespective of their religious beliefs, nationality or immigration status. As the preamble to the Universal Declaration of Human Rights (UDHR) states, this right is a consequence of their membership in "the human family." Moreover, religious beliefs and practices sustain millions of asylum seekers and refugees at all stages in the forced migration process, from displacement to the migration journey, and in the process of settlement in host countries.[3]

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[2] Forced migration refers to the involuntary migratory movements of asylum seekers and refugees from their home countries to other so-called host countries as a result of a myriad of factors, among which religious persecution is a primary factor.

[3] The terms "asylum seeker" and "refugee" are frequently used interchangeably with the latter in particular often used to include the former. In international law, however, there is a clear distinction bet-

Religious freedom, then, matters greatly for asylum seekers and refugees.[4] The purpose of this article is to present a robust justification and defence of that contention with a three-pronged argument. First, as I demonstrate in the next section through an analysis of international human rights law and international refugee law, asylum seekers and refugees have a fundamental human right to religious freedom, which the vast majority of the international community has recognised as of particular value and importance for asylum seekers and refugees. Second, a decline in religious freedom around the world, characterised by increases in religious persecution and in restrictions on religious practice, has resulted in a global crisis of religious freedom, which is having a particularly harmful impact on asylum seekers and refugees. These empirical realities should compel further recognition of the necessity and importance of religious freedom, especially for asylum seekers and refugees. Third, asylum seekers and refugees exhibit relatively high levels of religiosity. Countless studies in the fields of sociology and anthropology have shown the myriad of ways in which religious identity, beliefs, and practices are of significant value and importance to these groups. Accordingly, a reformulation of the dominant version of the hierarchy of needs used to assist asylum seekers and refugees is called for. Such a reformulation should give religion and religious freedom their appropriate place at the heart of reception and assistance policies governing asylum seekers and refugees.

2. The human right to religious freedom

Religious freedom has been described variously as a "classical" human right (Bielefeldt and Wiener 2020:1), as "one of the preeminent fundamental rights (Lindholm et al. 2004:xxxvi), and, along with freedom of thought and conscience, "probably the most precious of all human rights" (Krishnaswami 1960:vii). Moreover, it has been said that religious freedom is "the oldest human right to be internationally recognized" (Cross 2012, cited in Venter 2010:5). While the historical origins of religious freedom can certainly be traced back thousands of years to ancient Greece and are found in a myriad of different religious, philosophical, and cultural traditions (Dickson 1995; Witte and Green 2012; Sternberg 2021), the modern right to freedom of religion or belief has its origins in the Allied campaign against fascism during World War II. Lindkvist explains that the promotion of religious freedom was "an official rationale for engaging in total war against the Axis forces" (Lind-

ween an asylum seeker who is someone seeking international protection but whose claim for refugee status has not yet been determined, and a refugee who is someone who has been recognised as a refugee under the terms of the 1951 Convention Relating to the Status of Refugees.

[4] Religious freedom is commonly used as a shorthand for freedom of religion or belief and is used in this way here. It is defined in reference to international human rights law, as discussed in this section.

kvist 2017:1) and, in the aftermath of the war, religious freedom was central to the "post Second World War reconfiguring of the world order" (Evans 2013:567).

The repeated affirmations in support of religious freedom during World War II culminated in the 1948 UDHR, of which Article 18 on religious freedom has been described as "one of the most influential statements of the religious rights of mankind yet devised" (Lindkvist 2017: 4, cited in Evans 1997:192). In the subsequent decades, the religious freedom protections afforded by the UDHR have been reaffirmed, further clarified, and developed, most importantly in 1966 when the United Nations (UN) General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) and in 1981 when it issued the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which importantly led to the creation of a UN Special Rapporteur on freedom of religion or belief in 1986.

Religious freedom, as protected by these international human rights documents, includes the right to "have or adopt a religion or belief" (Article 18 (1) ICCPR). This "entails the freedom to choose a religion or belief" (General Comment No. 22, para 5) and what has been termed the "negative corollary of the right to change" (Bielefeldt 2016:65) – that is, the right not to change or be forced to change religious beliefs (Article 18 (2) and General Comment No. 22, para 5). Moreover, this right protects not only traditional religions but also "theistic, nontheistic and atheistic beliefs" (General Comment No. 22, para 2).[5]

Freedom of religion or belief, however, is not limited to the right to *hold* religious beliefs, or what is described in the legal literature as the *forum internum*, but also necessarily includes the right to *practise* those beliefs, otherwise known as the *forum externum.* The right to practise comprises, among other things, the right to worship and assemble for religious practices; the right to display and wear religious symbols, including religious clothing; the right to observe religious holidays and festivals; the freedom to teach and disseminate religious materials (including missionary activity); and the right of parents to ensure the religious education of their children in accordance with their own religious beliefs.[6]

In contrast to the *forum internum*, which is an absolute and unconditional right subject to no limitations whatsoever (General Comment No. 22, para 3), the *forum externum* can be subject to certain limitations prescribed in Article 18 (3) of the ICCPR. However, as Bielefeldt explains, "It cannot be emphasised enough that

[5] Across most disciplines, "religion" is a notoriously difficult concept to define, and no universally accepted definition of "religion" exists. International human rights law and international refugee law do not provide a precise definition of "religion", but the UN Human Rights Committee's General Comment No. 22 indicates that "the terms 'belief' and 'religion' are to be broadly construed."

[6] See Bielefeldt et al. (2016:107-305) for an elaboration of each of these manifestations.

the *forum externum* aspects of freedom of religion or belief are not in any sense less important than the *forum internum*, even though only the latter is protected unconditionally under international human rights law" (Bielefeldt 2016:93). Bielefeldt further explains, "In order to do justice to freedom of religion or belief these two dimensions should always be seen in conjunction. Although they differ in their degrees of legal protection, they are usually deeply interwoven in practice" (93). Finally, freedom from discrimination on religious grounds, among others, is also prohibited by international human rights law (ICCPR, Article 2 (1), Article 5 (1), Articles 26 and 27).

The right to religious freedom has thus been affirmed and reaffirmed as a fundamental human right countless times in numerous international and regional human rights documents, and it is also protected in the national constitutions and legislation of the vast majority of countries around the world (Finke and Martin 2012). Indeed, religious freedom is so commonly accepted as a fundamental human right that it is generally considered to constitute customary international law (Lindholm et al. 2004).

As religious freedom is a fundamental human right, it is obviously possessed by asylum seekers and refugees. The concept of human dignity, which lies at the heart of international human rights law, is the belief that "all members of the human family" (UDHR, preamble) possess a special value by the simple fact that they are human, regardless of their race, gender, religion, nationality or legal status. As Article 1 of the UDHR declares, "All human beings are born free and equal in dignity and rights." Article 2 adds, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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." The concept of human dignity also serves as the foundation of all the major international human rights instruments that have appeared in the nearly 75 years since the promulgation of the UDHR.

Moreover, the United Nations Human Rights Committee, which monitors states' compliance with the ICCPR, has repeatedly made clear that human rights are also asylum seeker and refugee rights. In General Comment No. 15 (1986), the Committee reaffirmed the principle that "the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness." Additionally, in General Comment No. 31 (2004), the Committee made this point even more explicit when it explained that rights may not be limited to citizens of a state but rather "must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers [and] refugees."

While the "inclusive" and "universal" characteristics of international human rights law (Chetail 2014:44) mean that all human rights, including the right to religious freedom, are owed to asylum seekers and refugees, these groups' right to religious

freedom is also protected by international refugee law and specifically by the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. Scholars of international human rights and refugee law have engaged in extensive debate over the precise relationship between these two sources of law and particularly with regard to the efficacy of these regimes for protecting asylum seekers and refugees.[7] It is not necessary here to rehearse this debate in detail; it should be sufficient to observe that both sources of law generally provide supplementary and complementary sources of protection for refugees and asylum seekers. With regard to religious freedom protections, international human rights law arguably provides a greater level of protection, but international refugee law also contains a highly significant and symbolic statement of religious freedom's importance for asylum seekers and refugees.

The Refugee Convention represents the cornerstone of the international refugee protection regime, and religious freedom has an important and special place in it. Religion is a protected category for seeking asylum, in recognition of the role that religious persecution plays in creating asylum seeker and refugee flows. As Hathaway explains, freedom of religion was included "as a basic matter of principle … since a lack of religious freedom was frequently a cause of refugee flights" (Hathaway 2005:571). Moreover, religious freedom appears first in the list of substantive rights granted to asylum seekers and refugees, and it is the only one regarding which states are required to take measures to protect asylum seekers and refugees beyond those in place for their own citizens (Hathaway 2005; Walter 2011). As such, at the time of the Convention's formulation, a distinction was made between, on one hand, simple formal equality of treatment with the nationals of the host country and, on the other hand, substantive equality that compels states to consider "the specificity of the religious needs of refugees" and the fact that "they would in some instances need to make special efforts to enable refugees to practice their religion" (Hathaway 2005:573). However, in practice, states are not legally bound to provide religious freedom protection to asylum seekers and refugees beyond the national treatment standard, because the idea of substantive equality has instead taken the form of an "abstract recommendation" or "moral principle" (Hathaway 2005:573; Walter 2011:662). Nevertheless, the idea of substantive equality highlights the unique vulnerabilities and particular challenges faced by asylum seekers and refugees in their access to and enjoyment of religious freedom in host countries, as well as the crucial importance of this freedom to many members of these groups.

Although religious freedom for asylum seekers and refugees is a fundamental human right, a clear expression of the overwhelmingly will of the international

[7] For a discussion of the main arguments and points of contention in this debate, see Chetail 2014; Hathaway 2005; Harvey 2015.

community, and a recognition of its significance and value in the lives of millions of people, unfortunately there is still a gap between the commitments made in these legal documents and the reality of religious freedom violations around the world. As Jonathan Fox explains, religious freedom "is often present in theory more than in practice" (Fox 2021:321).

3. The global crisis of religious freedom

Many have recently remarked that religious freedom is in a state of global crisis (Farr 2019; Friedman and Shah 2018; Thames 2014), and the evidence shows that the situation is generally not improving. In 2015, the non-partisan Pew Research Center reported that approximately 75 percent of the world's population was living in countries with "high" or "very high" government restrictions on religion and social hostilities related to religion. More recently, Pew has found that while social hostilities related to religion, which includes violence and harassment against religious groups by private individuals and groups, have slightly declined in recent years, the total number of countries with "high" or "very high" levels of government restrictions has increased and is at the highest level in a decade (Pew Research Center 2021).

Around the world, religious minorities are frequently targeted because of their religious identity, beliefs, and practices. In some countries, they are subject to state-sponsored brutality and violence. Grimm and Finke write that in the twenty-first century, violent religious persecution is "pervasive" and "pernicious" (Grimm and Finke 2013:18). Religious minorities also face arbitrary arrest and imprisonment, illegal seizures of their houses and land, and the destruction of their religious property and cultural heritage. In other cases, they lack access to effective legal protections on an equal footing with the wider population and their religious practices are restricted or completely suppressed.

The situation of the mostly Muslim Rohingya in Myanmar represents a particularly egregious example of the persecution of religious minorities. The government and military have engaged in the systematic discrimination and violent persecution of the country's minority Rohingya population. The situation has led the Rohingya to be called "the most persecuted minority in the world" (Faye 2021). Recently, a UN-mandated fact-finding mission has found enough evidence of "genocidal intent" against the Rohingya to warrant an investigation and prosecution of senior military officials in the country (UN Human Rights Council 2018). At the start of 2022, the International Court of Justice began hearing allegations of a Rohingya genocide ("Myanmar Rohingya Genocide Case to Resume" 2022). The situation has forced thousands of Rohingya to flee Myanmar and seek sanctuary in neighbouring Bangladesh. The latest figures indicate that nearly one million Rohingya asylum seekers

and refugees are in Bangladesh alone, with others seeking asylum in other countries in the region ("Bangladesh: New Restrictions on Rohingya Camps" 2022).

In the Middle East, the ability of Christians and other religious minorities to freely practice their religious beliefs is severely restricted or completely prohibited, and they are routinely discriminated against on account of their religious identity and beliefs. The horrific atrocities carried out by the terrorist group called Daesh against Muslims, Christians, Yazidis, and other religious minorities has been labelled a genocide ("Yazidi Genocide" 2021) and as constituting crimes against humanity and ethnic cleansing ("Iraq Crisis: Islamic State Accused of Ethnic Cleansing" 2014). The result of these varied forms of religious violations and persecution has been referred to as an "exodus" of religious minorities seeking asylum in other countries. The dramatic decline in the Christian share of the population of most countries in the region, as a result of forced migration, has resulted in Christians in the region being referred to as "a vanishing people" (Rasche 2020).

According to Kolbe and Henne, "There is a discernible connection between the level of religious restrictions in a country and the number of individuals leaving the country as forced migrants" (Kolbe and Henne 2014:666). It should therefore not be surprising that countries with some of the worst religious freedom records in the world, including Syria, Iraq, Iran, and Pakistan, are also some of the primary countries of origin for the large numbers of asylum seekers and refugees who have arrived in Europe since 2015. Religious freedom is, of course, not the only cause of forced migration and often there is a complex interplay involving a range of different causes such as culture, nationality, and politics. However, religious persecution is frequently a root cause precipitating asylum seeker and refugee flows.[8]

Restrictions on religious freedom are by no means limited to the Middle East and Asia. Indeed, one can speak of a global crisis of religious freedom precisely because even in Europe, where human rights are generally better protected,[9] religious freedom generally and the religious freedom of asylum seekers and refugees specifically are subject to significant restrictions. Indeed, in a study by Jonathan Fox, no country in Europe was found to fully protect freedom of religion (Fox 2021). Moreover, the hundreds of thousands of asylum seekers and refugees who have arrived in Europe, particularly since summer 2015,[10] have contributed to the intensification of xenophobic rhetoric and rising levels of far-right extremism and populism across

[8] See also the reports from the AMAR Foundation, such as Winterbourne and Quilliam (2018).

[9] According to the 2021 Human Freedom Index, Europe is one of the regions in the world with the highest levels of freedom, and seven out of the ten countries with the highest freedom index are located in Europe. See Vásquez et al. (2021).

[10] Fewer than 10 percent of all the world's refugees live in Europe, and they account for only 0.6 percent of the total population of the EU. See European Commission 2021.

Europe that have often focused on the religion of asylum seekers and refugees. The overwhelming majority of asylum seekers and refugees reaching Europe since 2015 have come from Muslim-majority countries, and this fact has been repeatedly highlighted by European politicians (Goździak 2019; Monella 2019) to claim that Europe's supposedly Christian roots are under threat (Schmiedel and Smith 2018). Consequently, many governments in Europe have adopted increasingly restrictive asylum policies, and some have even declared their intention to prioritise Christian over Muslim asylum seekers simply on the basis of religion, despite the obvious illegality of any policy to this effect (Eghdamian 2017). Moreover, the right to asylum on the grounds of religious persecution has come under increasing focus as national asylum authorities have employed so-called religious tests or "Bible tests" in an attempt to ascertain the veracity of asylum applications from recent converts to Christianity (*The Economist* 2016; Sherwood 2016; Zatat 2017).

Furthermore, reports have detailed harassment, intimidation and, in some cases, even violent attacks against religious minority asylum seekers and refugees, particularly people who have exercised their human right to convert from Islam to Christianity, at asylum centres in Germany (Open Doors Germany 2016) and Sweden (Open Doors Sweden 2017). My own investigation found the managers of Red Cross-operated asylum centres in Denmark to have very limited knowledge and understanding of the right to religious freedom and highly inconsistent and contradictory approaches towards the regulation of religious practice at their centres (McDonald 2019). Moreover, in 2016 Heiner Bielefeldt, then UN Special Rapporteur on freedom of religion or belief, warned against "excessively cautious" approaches towards religion and "unduly restrictive" approaches to religious practice employed by Danish asylum centre managers. In 2019, Ahmed Shaheed, then Special Rapporteur on freedom of religion or belief, identified similar religion-related restrictions at asylum centres in the Netherlands.

These developments have caused asylum seekers and refugees in Europe to experience a "double penalty" (European Evangelical Alliance 2017): having fled religious persecution in their countries of origin, they are discriminated against at their new location on account of their religious identity and beliefs, and restrictions are placed on their ability to practise their religious beliefs in their host countries in Europe. In other words, they have been forced to accept the denial of the very freedom the lack of which forced them to become asylum seekers and refugees in the first place. These developments stand in strong contrast to the largely non-restrictive and compassionate responses towards Ukrainian asylum seekers and refugees since the Russian invasion of Ukraine in February 2022, thereby reinforcing the religiously influenced variation in Europe's responses to asylum seekers and refugees (Jakes 2022; John 2022).

The specific vulnerability of asylum seekers and refugees to violations of their right to religious freedom has also been acknowledged by the UN General Assembly (Resolution 65/211, para 8, 2010) and highlighted by successive UN Special Rapporteurs for freedom of religion or belief.[11] Religious freedom, then, is clearly in a state of global crisis, and the consequences are particularly damaging for asylum seekers and refugees. This simple empirical reality alone should be enough to illustrate the particular importance of religious freedom in limiting the need for forced migration, and for asylum seekers and refugees to be able to enjoy freedom from further persecution, restrictions, and discrimination.

4. Reformulating the hierarchy of refugee needs

Third, religious freedom matters for asylum seekers and refugees because religion is highly likely to play an important and valuable role in their daily lives. Most of the asylum seekers and refugees coming to Europe since 2015 have arrived from countries in Africa and the Middle East, where levels of religiosity are much higher than in most of Europe. In particular, countries in these regions have much higher weekly worship attendance and daily prayer than most countries in Europe. Asylum seekers and refugees are therefore more likely to be religious than the populations of most European host countries (Pew Research Center 2018; see also Cesari 2017; Ager and Ager 2017).

Moreover, countless studies from the fields of anthropology and sociology have demonstrated the myriad of ways in which religious identity, beliefs, and practices represent a powerful and beneficial force in the daily lives of asylum seekers and refugees. For example, religious beliefs can be an important source of strength in dealing with trauma and stress (Kaiser et al. 2020). Religion is also often a source of emotional support and an important way to deal with loneliness and depression (McMichael 2002). Religion can serve as a fundamentally important and enduring part of an asylum seeker's identity through a time of great upheaval and change (Fiddian-Qasmiyeh et al. 2010). Religious beliefs are a source of resilience and a method of coping (Khawaja et al. 2008) while also providing asylum seekers with an alternative framework within which they can undersand their suffering (Goździak 2002).

Recent years have seen an increase in the volume of literature exploring the role of religion at asylum centres in Europe. Robleda (2020) has highlighted the importance of religion in everyday life for female asylum seekers at Norwegian centres. Another study in Norway (Abraham 2018) has shown the importance of religious beliefs in coping, resilience, and post-traumatic growth among Eritrean

[11] See the "Rapporteur's Digest on Freedom of Religion or Belief" for excerpts from reports by the UN Special Rapporteur on freedom of religion or belief from 1986–2011. In particular, see the section on "Refugees," pp. 72-76. Available at: https://bit.ly/3pFjTyD.

female refugees. Mim's empirical study of eight asylum camps in Bangladesh demonstrates how Muslim refugees rely on their faith to, *inter alia*, "protect their cultural identities, negotiate with local governing agents, and maintain solidarity with the host communities in their camp lives" (Mim 2020:422). Mim's research also highlights how refugees in these camps often challenge and reject secular humanitarian projects because they do not address the prospective recipients' religious identity and needs.

Despite the higher levels of religiosity found among asylum seekers and refugees and the demonstrable value and benefits of religious identity and beliefs for asylum seekers and refugees, the hierarchy of refugee needs, as generally constituted at present, fails to recognise and take into account the role that religion and religious freedom can play in the reception and care of asylum seekers. This neglect hinders their long-term integration in the host countries. Trigg, in remarks about society generally but which can certainly be applied to this hierarchy of refugee needs, writes that "any idea of freedom in the context of human society has to take a realistic view of what it is that drives all humans. Just as no policy can ignore the fact that people need food, drink, and shelter, it will be critically important to face up to the force of religion in human lives" (Trigg 2012:17). Although physical needs such as food, clothing, and physical protection are undoubtedly important, the religious and spiritual needs of asylum seekers and refugees cannot be ignored, especially when these concerns are of demonstrable importance to so many of them. As such, we need a reformulation of the refugee needs hierarchy and the secular worldview that dominates much of the humanitarian assistance delivered to asylum seekers and refugees. The present approach views religion and religious beliefs and needs as, at best, secondary concerns or, even worse, as of no concern at all, as largely irrelevant, and belonging entirely to the people's private and individual lives. Secular approaches that relegate religion entirely to the private sphere will not make sense to asylum seekers and refugees for whom religion is an important part of everyday life. Consequently, the effectiveness of humanitarian assistance framed in a secular lense can be seriously limited (Mim 2020; McDonald 2019; Ager and Ager 2017; Wilson and Mavelli 2014).

5. Conclusion

Religious freedom matters for asylum seekers and refugees for three primary reasons. First, it is a fundamental human right. Second, the global crisis of religious freedom is a primary cause of forced migration, and the so-called "double penalty" denies asylum seekers and refugees the very freedom they fled their home countries in search of. Third, religious identity, beliefs, and practices are highly important and valuable for asylum seekers and refugees and therefore, engaging with the religiosity of asylum seekers and refugees can result in more effective reception policies.

Religious freedom is an important human right, but it is routinely violated in various ways and to varying degrees around the world. Thus, we must make continued efforts to promote and encourage support for all human rights, recognising their inter-connectedness, and strengthening the effectiveness of protections of these rights – including religious freedom – around the world. We need to create a culture in which religious freedom is respected as a right relevant to everyone, everywhere – including governments around the world that are interested in fostering peaceful and prosperous societies, as well as those seeking to welcome and care effectively for asylum seekers and refugees. A true atmosphere of inclusion and a culture of genuine plurality will encourage the use of various approaches, including religious approaches, to serve these populations.

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