Call for adequate recognition of children's right to freedom of religion or belief

November 2015

The report on children and freedom of religion by the Special Rapporteur on freedom of religion or belief was presented to the UN General Assembly in October 2015.

CRIN welcomes the acceptance by the UN Special Rapporteur on freedom of religion or belief in his report[1] that children possess an independent right to freedom of religion and belief.

However, we would like to highlight some areas we feel deserve more attention to ensure consistent and adequate recognition of children's independent right to freedom of religion. These include pressing for an education which increases children's respect for those who do not share their religion; and protecting children from violations on religious grounds, particularly in relation to apostasy and non-consensual, non-therapeutic male circumcision.

We believe fulfilment of these rights is not only important to children themselves, it is also key to achieving the aims of the Rapporteur. The roots of both religious freedom and religious intolerance unquestionably lie in childhood.

One of the goals of our organisation is to ensure that all children's rights are adequately addressed throughout the work of the United Nations. In this vein, we would welcome an opportunity to work with the Rapporteur and the Office of the UN High Commissioner for Human Rights (OHCHR) to develop a coordinated strategy on children's rights.

Children's right to determine their own beliefs

A clear children's rights perspective on freedom of religion is crucial for recognising children's status as individuals with rights. This is particularly important to challenge the current global climate in which open discussion and communication about children's own religion and identity is being suppressed and children are under surveillance because of fears of "radicalisation",[2] leaving them with unanswered questions and limiting their rights to freedom of expression and access to information.

The Special Rapporteur's report recognises children's right to determine their own convictions, with parental guidance - as opposed to control - as set out in article 14 of the UN Convention on the Rights of the Child (CRC).[3] However, children's rights are linked to their parents throughout, including in the title ('The rights of the child and his or her parents

[1] Report of the Special Rapporteur on freedom of religion or belief, 'Elimination of all forms of religious intolerance', (Focus: The rights of the child and his or her parents in the area of freedom of religion or belief), A/70/286. Available at: http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx

[2] The Guardian, "Schools monitoring pupils' web use with 'anti-radicalisation software'", 10 June 2015. Available at: http://www.theguardian.com/uk-news/2015/jun/10/schools-trial-anti-radicalisation-software-pupils-internet

[3] The State must respect the rights and duties of parents or guardians "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child".

in the area of freedom of religion or belief") - this in itself is inconsistent with a children's rights approach.
Parents clearly have a central role in guiding the development of children's beliefs, but a failure to consider children's rights separately risks undermining their recognition as individuals. For example the report recognises that the abduction of girls from religious minorities for forced conversions violates their rights, but goes on to add that this also violates the right of their parents to educate their children according to their own convictions.[4] This detracts from the massive and multiple violations faced by the children themselves in this situation.

Religion and education

In order to determine their own beliefs, children need access to information from diverse sources. The Rapporteur asserts that parents have no obligation to give their child a religiously neutral upbringing,[5] but while a religious upbringing may often be beneficial, this does not pay sufficient attention to the child's right to an education which mitigates the potentially toxic effects of an intensive and exclusive religious upbringing in the family.[6] For example, the UK has recently seen the first case of a girl being removed from her home because the judge concluded she was "radicalised" by her parents.[7]

Parents may not be required to educate their children in tolerance and understanding of other religions, but religious indoctrination taken to extremes clearly conflicts with the best interests of the child which article 18 requires to be parents' basic concern. Providing such education can be seen as part of the "rights and duties of parents", under article 14(2), "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child".

The CRC does, however, oblige States to secure a full education on religious tolerance for all children in its jurisdiction: article 28 sets out the child's right to education and article 29(1) of the CRC sets out the aims of education. These aims include "the development of respect for human rights and fundamental freedoms" (1)(b), "the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own" (1)(c), and "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin" (1)(d) (as quoted on page 14). Article 29(2) requires that privately run schools conform to these aims (the report does not mention this fact, although it does state that private schools must conform to minimum standards).

We are therefore disappointed that the report does not go beyond recommending the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools (and the Madrid Final Act of 1991) as a useful instrument, because the CRC gives children stronger

[4] para. 12
[5] p. 10, para. 35
[6] p. 10, para. 35
[7] *The Guardian*, "Girl, 16, who tried to travel to Syria must be removed from her home", 21 August 2015. Available at: http://www.theguardian.com/uk-news/2015/aug/21/16-year-old-girl-syria-high-court-islamic-state

rights than appear in the Toledo Principles. In particular the Toledo Principles describe children's access to a full and balanced education as a discretionary possibility, not a right under articles 28 and 29:

> "Unlike religious instruction which should never be given against the will of the child or his or her parents, information about religions and beliefs *can be* part of the mandatory curriculum, provided it is taught in a spirit of neutrality." (para. 49)

The report thus fails to recognise that all children have a right to an education which develops respect for all religions (and non-religion) under articles 28 and 29. In turn this affects children's right under article 14 to choose their own religion, consistent with their evolving capacities. A free and proper consent is only obtained when the person has all relevant information. A child who only knows his or her parents' faith is not freely choosing it.

Why is a full religious education in school central to the Rapporteur's goals?

Children's right to freedom of religion in the school setting does *not* mean that schools in either the public or private sector are not allowed to give greater attention to the religion practised by their students or to the national religion, in the same way that schools are allowed to give particular attention to their country's particular culture, history and language. However this fact must not bias a school's activities to the extent that it impairs the ability of parents of different (or no) faith to impart their own beliefs to pupils in the school.

Furthermore, all schools and education systems must also teach children about other religions and cultures, not just in a spirit of understanding and tolerance but actively to develop children's respect for different beliefs (provided these respect human rights).

The duty of the State is to ensure, by regulation and by inspection, that all schools (including private schools and home schooling by parents) provide this broad, respect-promoting education to all pupils.

This is a fundamental obligation of States in relation to education and religion. But in addition, integrated, religiously-neutral state schools have been shown to be one of the most effective measures for combating xenophobia and religious intolerance (for example in the integrated schools in Northern Ireland and Israel[8]). After all, how can children be expected to develop respect for other faiths if they never associate with children who practise those faiths? And how can a State justify spending public money on segregated systems?

Finally on this point, the report expresses concern about the discriminatory treatment of religious minorities, but it spends much less time on large religious conflicts that are devastating the lives of children across the world – Jewish/Muslim and Shia/Sunni conflicts in the Middle East, Hindu/Muslim conflict in the Indian subcontinent, Protestant/Catholic conflict in Northern Ireland, etc. In sum, the roots of all religious prejudice are, to a large

[8] Donnelly, C.; Hughes, J., Queen's University Belfast, "Mixed Religion Schools in NI and Israel" in *Comparative Education Review*, Vol. 42, No. 4, 11., 2006, p. 493-516. Available at: http://pure.qub.ac.uk/portal/en/publications/mixed-religion-schools-in-ni-and-israel(87326746-2cba-48af-bafb-4dcc25d493c8).html

extent, the result of children being brought up to regard other faiths as alien, inimical and inferior.

Children with atheistic beliefs or who do not profess any religion

The rights of children from theistic minorities are addressed throughout the report, but violations against children with atheistic beliefs as well as those who do not profess any religion or belief are scarcely mentioned (though recommendation 79c acknowledges that CRC article 14 also applies to these children).[9] While adults with such beliefs also face violations, these have particular consequences for children because adult family members as well as the State have power over them. For example, in October 2015 a 15-year-old boy in Erbil, Iraq was held in solitary confinement after telling his father that as a result of his reading he "no longer believed in God and religion is just a myth" - his father reported him to the police.[10] Reports have emerged in a number of countries of children, as well as adults, who are being imprisoned for blasphemy.[11]

Children as apostates

The report nowhere addresses children as apostates, yet apostasy is fundamentally incompatible with a child's (and everyone else's) freedom of religion. Children must have the right to change or renounce their religion or belief and this freedom should be available to children with "capacity". That "capacity" should be determined in relation to the specific decision of the child to change religion and not to an overall assessment of the child's capacity in all spheres of life (as, for example, occurs in relation to medical assessment of children's capacity in many countries).

Penalties for apostasy further violate this right (penalties for children include persecution and being ostracised by family members and the former religious community, public beatings, head-shaving, being forced to recite the statement of belief of the former religion). The penalties inflicted on the children of converts or non-believers include being forced to receive religious instruction in the former faith of their parents. A recent Pew Research analysis found that as of 2013, 23 nations treat apostasy under their criminal laws (2013). Legal punishments for such "transgressions" vary from fines and corporal punishment to death.[12]

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[9] And a reference is made to article 18 of the International Covenant on Civil and Political Rights which "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion", in paragraph 18.

[10] Atheist Alliance International, "Trial of a 15 years old teenager charged with 'Blasphemy' in Erbil city, Iraqi Kurdistan," 21 May 2014. Available at: https://atheistalliance.org/regional-reports/middle-east-english/672-trial-of-a-15-years-old-teenager-charged-with-blasphemy-in-erbil-city-iraqi-kurdistan.html

[11] See, for example, *Freedom of Thought 2014: A global report on the rights, legal status, and discrimination against humanists, atheists and the non-religious*, p. 95: http://freethoughtreport.com/download-the-report/ and Pakistan, "Christian boy in Pakistan arrested for blasphemy", 11 October 2012. Available at: http://www.bbc.co.uk/news/world-asia-19906528

[12] Pew Research Center, "Which countries still outlaw apostasy and blasphemy", 28 May 2014. Available at: http://www.pewresearch.org/fact-tank/2014/05/28/which-countries-still-outlaw-apostasy-and-blasphemy/

Harmful practices justified in the name of religion

The report recognises that many violations of children's rights derive from the State's refusal to intervene because violations are justified on grounds of religion or belief - both within the family and community (child and/ or forced marriage, female genital mutilation, polygamy, etc). However, it neglects practices that are also prevalent in Western societies, for example cases in which children are deprived of medical care because of their parents' beliefs. According to the Canadian Medical Association, in 2011, 19 US states have faith healing exemptions.[13]

The report condones initiation rites for children who have "not reached religious maturity"... "provided they take place with the free consent of the parents" as falling within the right to manifest one's religion or belief, and with limitations to prevent harmful practices. No definition of "religious maturity" is provided; children's beliefs, like everyone else's, evolve.

In addition, the report pays particular attention to the practice of non-consensual, non-therapeutic male circumcision which is condoned provided this is performed under safe medical conditions.

Male circumcision is an irreversible operation; to argue that parents' freedom of religion enables them to consent to the irreversible cutting of their child for religious reasons negates the child's freedom to consent - or refuse consent - to such an action once they have the capacity to make an informed decision.

Furthermore, under article 14, the State must respect the rights and duties of parents or guardians "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". In this way the Convention makes clear that these parental rights and duties to provide "direction" relate to the child's right to freedom of religion: such "direction" plainly cannot justify a serious irreversible operation. Some argue that to be circumcised is part of the child's right to identity (CRC article 8) – but having a circumcised penis is a mark of the parent's religion, not of the child's freely chosen religion. And any assumption that a child will follow his parents' religion conflicts with his independent freedoms.

Indeed, the Committee on the Rights of the Child has condemned the use of religion as a justification for overruling the child's right to refuse consent to practices that affect a child's physical integrity, through a negative interpretation of children's best interests, both in its General Comment No.14 on best interests[14] and General Comment No.8 on the right of the child to protection from corporal punishment.[15] The Committee on the Rights of the Child

[13] Glauser, W., "United States still too lenient on 'faith healing' parents, say children's rights advocates", *Canadian Medical Association Journal*, 11 August 2011. Available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3153535/

[14] Committee on the Rights of the Child (2013). General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, p.3. Available at: www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

[15] Committee on the Rights of the Child (2007). General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, p.8. Available at: https://www.crin.org/en/node/27984/

further expressed concern for the first time[16] about the short and long-term impact of male circumcision in its concluding observations to Israel, recommending a study into its complications.[17]

What now?

A lack of consistency in how children's rights are addressed is evident across UN bodies - a fact made plain by research we released earlier this year which revealed that children's rights violations are rarely addressed with the same consistency and rigour as those of adults, and where they are, general comments and recommendations sometimes these fall short of those set out by the Committee on the Rights of the Child.[18]

This is dangerous at a time when some States are seeking to subvert the UN human rights system to override the rights of individuals, in particular those of children, in favour of the family interests.[19] This ignores the fact that while the majority of families want the best for their children and play a key role in their upbringing and development, children's rights can be and are violated within the family.[20] While this is acknowledged by the Special Rapporteur on freedom of religion, children's own status as individuals with independent rights must be highlighted not only in relation to their parents.

This report highlights the need to develop a coordinated children's rights strategy within the OHCHR. It is true that there is a specific UN body tasked with overseeing States' compliance with children's rights in the UN Committee on the Rights of the Child; but children's rights issues should be addressed across the board. Children's rights are human rights and they must be recognised and fully respected throughout the UN system.

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[16] Committee on the Rights of the Child (2013). Concluding observations on Israel's 2nd-4th periodic report, CRC/C/ISR/CO/2-4, p. 10, paras. 41-2. Available at: https://www.crin.org/en/node/38297

[17] Male circumcision has been successfully challenged on children's rights grounds in several courts. The first clear legal challenge to non-therapeutic male circumcision was made by regional court in Cologne, Germany, in 2012: www.crin.org/en/node/39967. This was followed by a ruling by the the Higher Regional Court of Hamm in Germany which ruled that doctors must appropriately inform a child about circumcision to be carried out. In June 2014, the High Court of Israel rejected a ruling by the Supreme Rabbinical Court that required a woman to circumcise her one-year-old son in compliance with a demand made by the child's father in divorce proceedings: http://www.ynetnews.com/articles/0,7340,L-4487436,00.html.

[18] CRIN, *Children's Rights and UN Human Rights Committee: An analysis*, August 2015. Available at: https://www.crin.org/sites/default/files/crin_ccpr_narrative_30july_1.pdf. Page 20 explains that the Committee's few concluding observations on children's right to freedom of religion relate to discrimination on the basis of religion in schools including the prohibition of wearing religious symbols, discrimination against children from religious minorities, discrimination on the basis of religion in the funding of schools and religious integrated curriculum in schools.

[19] CRIN, "UN Resolution on protection of the family threatens children's rights", June 2015. Available at: https://www.crin.org/en/node/41620

[20] See "Where violence occurs: In the home and family," UN Secretary-General's Study on Violence against Children, 2006. Available at: http://www.unviolencestudy.org/