

Learning From Reflection and Looking to the Future Two Years on from the UN Report on Freedom of Religion or Belief and Indigenous Peoples

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Résumé de l'article

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Learning From Reflection and Looking to the Future: Two Years on from the UN Report on Freedom of Religion or Belief and Indigenous Peoples¹

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Abstract: The following article discusses the UN Special Interim Report and its significance to the rights of Indigenous Peoples. The article reviews how the *UN Special Interim Report of the Special Rapporteur on Freedom of Religion or Belief* has been used as a critical tool for promoting and protecting the rights of Indigenous Peoples globally by emphasizing the need for meaningful engagement with Indigenous individuals and communities in decision-making processes, notably on issues that affect their traditional lands, waters and resources and their spiritual practices. The article also discusses how the UN Special Interim Report was developed through extensive consultations with Indigenous Peoples, community groups, and various stakeholders with the scope of revealing the challenges faced by Indigenous Peoples. Finally, the article will reflect upon the positive responses generated by the Report and the ongoing discourse to encourage further engagement with the findings.

Keywords: UN Interim Report, Freedom of Religion or Belief, UN Special Procedures, Indigenous Peoples, Engagement, Dialogue

Rather than purely learning from experiences, we may learn from reflecting on our different experiences themselves. Introspection serves a critical role for developing one's mind and strengthening society overall by encouraging critical discourse in appreciating various strengths and weaknesses of our previous stances, thereby embracing growth as individuals and as a collective. Here, the authors reflect upon a landmark United Nations (UN) report that drew upon extensive consultations with Indigenous Peoples in seeking to strengthen understanding and respect of how Indigenous Peoples may conceptualize and exercise their right to freedom of religion or belief (FoRB). The report in question was the final thematic report of the UN Special Rapporteur on FoRB (2016 – 2022), Ahmed Shaheed (one of the present co-authors), that was delivered to the UN General Assembly on October 25, 2022 (the Report).² The report, which sought to start rather than end this important conversation, was intended to explore the underexamined and relatively poorly understood nexus between Indigenous Peoples and their right to FoRB from the perspective of the UN system and beyond, including obstacles and opportunities faced in exercising this fundamental human right.

This Special Issue provides such a welcome moment to reflect and sustain that conversation. It explores the Report's importance for the academic study of religion, the humanities and social sciences, as well as domestic and international non-governmental organizations (NGOs), but most especially for Indigenous Peoples as rights-holders. With the aim of furthering a universal culture of respect, protect-

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2. Ahmed Shaheed, "Interim Report of the Special Rapporteur on Freedom of Religion or Belief. Indigenous Peoples and the Right to Freedom of Religion or Belief," UN, Freedom of Religion or Belief (New York: United Nations, October 10, 2022), <https://www.ohchr.org/en/documents/thematic-reports/a77514-interim-report-special-rapporteur-freedom-religion-or-belief>.

ion and fulfilment for the right of Indigenous Peoples to their FoRB and other human rights through listening to and elevating the diverse voices of historically marginalized and disenfranchised peoples, the authors have three objectives here. Firstly, to reflect on the impetus for the Report, its significance in the UN system and beyond, and the methodology used. Secondly, to map illustrative, if not exhaustive, examples of responses to the Report in October 2022 and subsequent uses of it by diverse stakeholders, including the UN human rights system, States, regional human rights courts and institutions, international and domestic civil society, scholars and, most importantly, the rights holders; the diverse Indigenous Peoples worldwide whose voices echo throughout and underpin the Report.

Finally, this article looks at what the future holds in terms of existing and emerging challenges facing Indigenous Peoples' enjoyment of their right to FoRB. It particularly elevates their concerns over escalating hate speech, the existential threat of climate change and environmental destruction and the scourge of poor mental health within many Indigenous communities as many struggle with intergenerational trauma stemming from colonial oppression, forced assimilation and displacement, often compounded by changing environments, inequality and human rights violations.

This article reflects on the Report and its findings; it does not repeat verbatim or summarise. The reader is actively encouraged to read and reflect upon that document at their leisure, or at the very least, the concise UN press release.³

In seeking to further a culture where no one is left behind and where everyone, everywhere, can exercise their fundamental human rights, including FoRB, the Report marked a critical juncture in the development of international human rights law while simultaneously amplifying the voices and concerns of Indigenous Peoples. Yet it marks a single step in a long – and potentially incremental – process for shifting these discourses, principles and structures of power to include Indigenous Peoples, to recognize their agency and to further understanding of the immense value of their rich knowledge, culture and outlook for the future of the world, and what the world has lost in disregarding them.

Reflections on the Report

Impetus and Its Significance Within the UN System and Beyond

Delivered from the dais of the UN General Assembly in New York City, New York, on October 25, 2022, by the incumbent UN Special Rapporteur on FoRB, Nazila Ghanea, on behalf of her immediate predecessor, Ahmed Shaheed,⁴ the report constituted a landmark moment as the first dedicated report in the UN human rights system about Indigenous Peoples and the right to FoRB. Previously, that subject was a significant gap within the Special Rapporteur's mandate and for others, including States in respecting the rights of Indigenous Peoples domestically. This is especially concerning given the sustained, systematic and serious marginalization of Indigenous Peoples worldwide in many aspects of their lives across socio-economic, cultural, political, environmental, educational and health spheres. Many actors across local, national, and international levels have diligently worked, and are working, to promote their rights, including Indigenous-led civil society, the UN Special Rapporteur on Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Engaging the mandate of the UN Special Rapporteur on FoRB and invoking that particular right enshrined within international human rights law could add a further layer of solidarity, support, scope and strength to these laudable efforts.

3. "Historical and Ongoing Discrimination Threatens Spiritual, Cultural and Physical Survival of Indigenous Peoples Says UN Report," OHCHR, accessed May 6, 2024, <https://www.ohchr.org/en/press-releases/2022/10/historical-and-ongoing-discrimination-threatens-spiritual-cultural-and>.

4. As his mandate had concluded on July 31, 2022. Shaheed expresses his gratitude to Professor Ghanea.

Broadly, the report was guided by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and extensive interviews and consultations with Indigenous Peoples worldwide as rightsholders and other relevant stakeholders to (1) explore diverse ways how Indigenous Peoples’ conceptualize their spirituality or religion or belief; (2) document key trends concerning obstacles and opportunities for enjoying their right to FoRB and; (3) draw on good practice, including from Indigenous civil society, to provide practical and actionable recommendations to States and other key actors on how to further protect and promote Indigenous Peoples’ right to FoRB, recalling the interdependence of all human rights and the imperative for free, prior, and informed consent, noting concerns of Indigenous Peoples that there is “nothing about us, without us.”

The motivation behind this Report is broadly threefold, fittingly – as his last thematic report–reflecting Shaheed’s priorities throughout his mandate as the UN Special Rapporteur on FoRB, including (1) engaging the broader UN human rights system and providing a platform for voices that were previously neglected or marginalized from advocacy spaces, such as Indigenous Peoples; (2) highlighting key intersections between FoRB and multifaceted issues, including sustainable development and gender equality; and (3) championing the revitalization or development of effective normative and institutional frameworks promoting the right, including how Indigenous Peoples conceptualize and practice religion or belief.⁵

Firstly, through this report, Shaheed specifically sought to ignite and invigorate a conversation within the UN and beyond about the poorly understood and underexplored relationship between Indigenous Peoples and FoRB in seeking to initiate a sustained conversation between advocates of the right to FoRB and advocates of the rights of Indigenous Peoples, amongst other relevant actors. That objective furthered not only Shaheed’s aim of mainstreaming and increasing engagement with FoRB but also increasing state implementation of and engaging diverse stakeholders to advance the fulfilment, protection and respect of the right to FoRB everywhere, for everyone.⁶

Secondly, while foregrounding the voices of Indigenous Peoples, Shaheed highlighted critical intersections between FoRB and multifaceted issues affecting Indigenous Peoples, including climate change, sustainable development and gender equality. Recognizing that these issues are both existing and expanding, reflecting and perpetuating injustices and inequities borne from harrowing historical experiences of colonization, forced assimilation and dispossession from traditional lands, the report intended to provide illustrative, if not exhaustive, examples. Such experiences have simultaneously “shaped and are inseparable from Indigenous Peoples’ contemporary concerns for spiritual, cultural and physical survival.”⁷

By way of example, the report explores how Indigenous Peoples have been disproportionately affected by climate change despite being among those who have contributed the least historically. Tragically, climate change has furthered Indigenous Peoples’ socio-economic disadvantage and marginalization, food insecurity, and displacement from increasingly uninhabitable lands, even as they and experts have repeatedly asserted that the “best way” to protect nature typically is to protect the rights of those living there.⁸ Nature’s vitality is not only intrinsic to their daily survival but also the beating heart of many Indigenous cultures and spirituality, which is part of their worldview and ways of life. Many see their traditional lands, water, and resources as critical sources of life and healing.⁹

A further example is how the Report explores diverse gender roles and dynamics intersecting with spirituality. Initially, it maps how several Indigenous Peoples from diverse regions have emphasized the key – even primary – role of women as carriers and custodians of Indigenous spirituality,

5. Shaheed, “Interim Report of the Special Rapporteur,” para. 4.

6. Shaheed, “Interim Report of the Special Rapporteur,” para. 4.

7. Shaheed, “Interim Report of the Special Rapporteur,” para. 21.

8. Shaheed, “Interim Report of the Special Rapporteur,” paras. 33–34.

9. Shaheed, “Interim Report of the Special Rapporteur,” paras. 12, 61 and 83.

consistent with many Indigenous belief systems historically being matriarchal or egalitarian in nature.¹⁰ Yet, often through colonial practices, structures and attitudes, particular State and non-State actors “have invalidated or undermined gender dynamics within Indigenous communities,” undermining the “elevated status and role of women,” affecting their ability to live freely, equally and in accordance with their right to FoRB.¹¹ During his mandate and in the report, Shaheed deliberately adopted an intersectional lens to analyse alleged violations and issue recommendations to relevant stakeholders. Gender and other identifying characteristics may be targeted with multiple, intersecting forms of discrimination, violence and hostility (e.g. religion or belief, race, ethnicity, sexual orientation, gender identity), as further reflected in his dedicated report on gender equality and FoRB to the UN Human Rights Council.¹²

Thirdly, the impetus for the Report was to spur the revitalization or development of international law to effectively promote the right to FoRB for Indigenous Peoples, engaging those historically sidelined and silenced by listening and amplifying their voices. As the Report has observed, “[w]hile Article 18 of the International Covenant on Civil and Political Rights [ICCPR] protects followers of every religion or belief system, a frequently recurring question [...] is whether its application has been adequate or appropriate for Indigenous Peoples.”¹³ The Report further highlighted the historical exclusion of Indigenous Peoples and their perspectives as States were drafting the right to FoRB in the Universal Declaration of Human Rights (UDHR).¹⁴ As a Special Rapporteur on Indigenous Peoples has observed, a lack of awareness of Indigenous rights has often created serious situations damaging their enjoyment of spirituality, culture, and traditional knowledge,¹⁵ which in turn contributes to a culture of complicity and impunity towards violations. Thus, in seeking to revitalize or develop international law to recognise and further Indigenous Peoples’ realization of their right to FoRB, the Special Rapporteur considered three important elements: (1) foregrounding Indigenous voices and the conceptualization of their religion or belief systems; (2) his role as an independent human rights expert; and (3) the persuasive status of Special Procedures’ reports in shaping international law.

Firstly, to further understand the diverse ways that Indigenous Peoples have manifested their religion or belief, the Report sought to draw on their deliberative language and framing, observing that many prefer the term “spirituality” to characterize their religion or belief identity for various reasons.¹⁶ While a deeply held connection to Indigenous lands, territories, waters, coastal seas, and other resources commonly feature in so-called “Indigenous spirituality,” it emphasized that such “practices are often localized and should not be homogenized into a [single] globalizing discourse.” Many Indigenous Peoples subscribe to theistic and other belief systems that they do not necessarily consider “Indigenous” and may practice their beliefs in combination with Indigenous spirituality “rooted in [their] lived reality and practices” as rights holders.

Moreover, Shaheed was guided by the UNDRIP, a universally accepted soft-law international instrument developed in consultation with Indigenous Peoples to articulate their rights, including in relation to spiritual practices.¹⁷ Many actors, including States, regional and domestic courts, scholars and rights holders, have employed UNDRIP to interpret the ICCPR vis-à-vis Indigenous Peoples.

10. Shaheed, “Interim Report of the Special Rapporteur,” para. 47.

11. Shaheed, “Interim Report of the Special Rapporteur,” paras. 48–49.

12. Ahmed Shaheed, “Gender-Based Violence and Discrimination in the Name of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief,” UN, Freedom of Religion or Belief (New York: United Nations, August 24, 2020), <https://www.ohchr.org/en/documents/thematic-reports/ahrc4348-report-freedom-religion-or-belief-and-gender-equality>.

13. Shaheed, “Interim Report of the Special Rapporteur,” para. 3.

14. Shaheed, “Interim Report of the Special Rapporteur,” para. 16.

15. Shaheed, “Interim Report of the Special Rapporteur,” para. 84.

16. Shaheed, “Interim Report of the Special Rapporteur,” 11–13.

17. Shaheed, “Interim Report of the Special Rapporteur,” para. 15.

Scholars have extolled such an approach for its ability to overcome the actual or perceived tensions between ostensibly more individualistic conceptions of human rights and religion in international law and the holistic, interconnected and diverse worldviews of Indigenous Peoples. For example, the eminent scholar Michael McNally has emphasized that “Indigenous Peoples’ religions are better understood in terms of duties and obligations, not simply in terms of rights and freedoms.”¹⁸ Moreover, Winnifred Sullivan has postulated that the “religion” that has been most legally cognizable within the USA’s domestic legal approach to FoRB has been that which is private, voluntary, individual, textual, and believed, not that which is generally public, obligatory, collective, oral, and characterized most by practice, as are Indigenous religious traditions.¹⁹ Ultimately, protecting the right to FoRB is stronger for everyone when we collectively protect and promote the right, building a community of mutual respect, understanding and solidarity.

Secondly, Shaheed was cognizant that this Report would assume a global resonance and significance for duty bearers and rights-holders alike due to his official mandate as a UN Special Rapporteur and, accordingly, its own status as a soft law instrument in international law. As a UN Special Rapporteur, Shaheed was an independent human rights expert, duly appointed by the UN Human Rights Council to serve his maximum six-year term as its metaphorical “eyes and ears,” specifically, in his case, in relation to the right to freedom of thought, conscience and religion or belief that is enshrined in Article 18 of the UDHR. He delivered two thematic reports annually to the UN Human Rights Council and UN General Assembly, typically addressing a human rights issue in-depth and followed with an Interactive Dialogue with States (in addition to civil society, in the case of the UN Human Rights Council).

The independence of UN Special Procedures mandate-holders ensures that their views are both, in reality and perception, impartial, objective and credible and can reflect the conscience of the world, befitting the UN and the universal nature of human rights. The UN Office of the High Commissioner of Human Rights (OHCHR) has even described Special Procedures as “the most directly accessible mechanism of the international human rights machinery,” whilst the former UN Secretary-General, Kofi Annan, lauded them as its “crown jewel.”²⁰ Notably, Special Procedures perform a “supervisory, consultative, advisory or monitoring function rather than one of enforcement” as, like many other international quasi-judicial or political bodies, they make recommendations that are not legally binding on States.²¹ Thus, mandate holders have been critical in protecting and promoting human rights worldwide “through not only monitoring and fact-finding, but also standard-setting.” Consequently, as Surya Subedi has observed:

They have significantly influenced the elaboration, interpretation and implementation of international human rights law and have brought the human rights work of the United Nations to ordinary men and women around the globe. The institution of [special procedures] is indeed a vibrant, autonomous, and flexible mechanism whose work can produce speedy and tangible

18. Michael McNally, “Comments Delivered to the UN Special Rapporteur on Freedom of Religion or Belief,” *Journal of the Council for Research on Religion* 5, no. 2 (2024): 46–53, <https://doi.org/10.26443/jcreor.v5i2.114>; Shaheed, “Interim Report of the Special Rapporteur,” para 9.

19. See Winnifred Fallers Sullivan, *Prison Religion: Faith-Based Reform and the Constitution* (Princeton: Princeton University Press, 2009), and *Ministry of Presence: Chaplaincy, Spiritual Care, and the Law* (Chicago: University of Chicago Press, 2014).

20. Cited in Surya P. Subedi, “Protection of Human Rights through the Mechanism of UN Special Rapporteurs,” *Human Rights Quarterly* 33, no. 1 (2011): 201–203, <https://doi.org/10.1353/hrq.2011.0011>.

21. Subedi, “Protection of Human Rights,” 203; Bertrand G. Ramcharan, *The Protection Roles of UN Human Rights Special Procedures* (Leiden, The Netherlands: Brill | Nijhoff, 2009), <https://doi.org/10.1163/ej.9789004171473.i-214>.

benefits for the victims of human rights violations and can attract attention to such violations in both national and international media.²²

Finally, as soft law instruments, thematic reports of UN Special Procedures are widely recognized as “one way that [they] play a role in the normative development of human rights”²³ typically exploring a human rights issue in depth, clarifying the normative content of rights, and furthering the development of soft law instruments within and beyond themselves.²⁴ Thus, the UN Special Rapporteur on FoRB’s reports, *inter alia*, “aim at clarifying systematic questions in the understanding of freedom of religion or belief.”²⁵ While scholars have critically analysed the merits of soft vs. so-called “hard law” instruments in international law,²⁶ these mandate reports hold a certain weight globally, often proving persuasive in swaying States’ understanding and implementation of human rights even if they are not legally binding *per se*.

Through thematic reports, UN Special Procedures “identify root causes, patterns and complexities relating to particular human rights violations, highlight good practices around the world, and issue recommendations for States and other relevant actors”²⁷ such as UN agencies, businesses, and civil society. These diverse stakeholders may subsequently reflect, reform and/or strengthen their own practices and principles. Rights holders, human rights defenders and broader civil society may utilize them for advocacy within domestic and global spheres as an authoritative, independent source bestowed with international recognition and credibility of the UN human rights system. Since the mandate of the UN Special Rapporteur on FoRB was created in 1986 (entitled “Special Rapporteur on religious intolerance” until the title changed in 2000), its mandate holders have cumulatively delivered over 115 thematic or country reports.²⁸ Yet this Report is the first dedicated report within that significant corpus to engage this specific, underexplored and important subject matter of Indigenous Peoples and FoRB.

Methodology

For the report, Shaheed was guided by the UNDRIP and extensive consultations with rights-holders worldwide in developing “a framework for productive, sustained exchange” that “should be supported and sustained by an analysis of the obstacles and opportunities of Indigenous Peoples in

22. Subedi, “Protection of Human Rights,” 204.

23. “Understanding the Special Procedures: Thematic Reports – What Do the Special Procedures Do?,” ISHR Academy, accessed May 6, 2024, <https://academy.ishr.ch/learn/special-procedures/what-do-the-special-procedures-do-thematic-reports>. “A Rough Guide to the Special Procedures of the Human Rights Council,” Universal Rights Group, accessed May 6, 2024, <https://www.universal-rights.org/a-rough-guide-to-the-special-procedures-of-the-human-rights-council/>.

24. Christophe Golay, Claire Mahon, and Ioana Cismas, “The Impact of UN Special Procedures on the Development and Implementation of Economic, Social and Cultural Rights,” *The International Journal of Human Rights* 15, no. 2 (2011): 299–318, <https://doi.org/10.1080/13642987.2011.537472>.

25. Heiner Bielefeldt, Nazila Ghanea, and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford Academic, Online Edition, 2016), 43–44, <https://doi.org/10.1093/law/9780198703983.001.0001>.

26. For example, Kenneth W. Abbott and Duncan Snidal, “Hard and Soft Law in International Governance,” *International Organization* 54, no. 3 (2000): 421–456.

27. By way of one example, “[t]he findings and recommendations of special procedures’ reports represent important resources and reference materials for UN planning and programming. They provide legal, policy and operational guidance on human rights issues for development and humanitarian actors and provide clarification on the applicable legal framework. They provide concrete analytical tools to inform UN country analysis and programming processes on the ground, as well as contributing to advocacy efforts and as such are a valuable tool for UNCTs [UN country teams].” See: “UN Charter-Based Institutions Including Special Procedures,” United Nations Sustainable Development Group, accessed May 6, 2024, <https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-special-procedures>.

28. Bielefeldt, Ghanea, and Wiener, *Freedom of Religion or Belief*, 43–44.

exercising their fundamental right to [FoRB].”²⁹ Historically, States and powerful interests have excluded Indigenous Peoples from the design and development of international law, including core human rights treaties and their provisions on FoRB, largely shaped by hegemonic discourses about religion or belief. In developing the research methodology for the Report, Shaheed and his team were cognizant of this context and the imperative to chart a more inclusive course befitting the nature of human rights. Extensive consultations with Indigenous Peoples and key stakeholders across every region worldwide, in addition to UNDRIP, guided and informed every step of their research process.

Key findings were drawn from extensive engagement with survivors of rights violations, Indigenous spiritual leaders and influencers, human rights defenders, policymakers, academic experts, and officials of the UN and other intergovernmental organizations, covering all five geographic regions of the world. Drawing on a combination of desk-based research and outreach through existing networks to identify relevant participants, the then-UN Special Rapporteur and his team convened 16 bilateral meetings and 29 consultations that covered all five geographical regions of the UN (18 virtual, 4 hybrid, and 7 in-person³⁰). In response to his official Call for Submissions circulated by the OHCHR, Shaheed and his team received and reviewed 80 written submissions, including 39 submissions from civil society, 36 from individuals, four from States, and one from a multilateral organization.³¹

This extensive consultative research process was not without its methodological challenges. As the Report acknowledged, “[d]espite limited Internet connectivity and language barriers, the Special Rapporteur sought to engage indigenous peoples in geographically remote locations wherever possible.”³² Limited Internet connectivity was often due to sparse telecommunications infrastructure and services, but on occasion, it was due to State-imposed Internet blackouts and other restrictions within majority Indigenous populated regions, typically seeking to curtail their ability to organize and coordinate peaceful protests in-person and online in the name of national security. Security was a concern in several contexts since Indigenous Peoples living in conflict-afflicted or insecure situations potentially feared violent retribution. Further challenges in preparing the Report included the lack of comprehensive or disaggregated data mapping Indigenous Peoples’ experiences with the FoRB framework, noting that “researchers may overlook concerns or hold certain biases towards Indigenous spirituality.”

Shaheed extends his deepest gratitude to all who shared their time, insights and lived experiences to create this report, which sought to listen to and amplify the voices of Indigenous Peoples from the grassroots to the global stage. Some of them are participating in this important Special Issue. Consultative engagement with stakeholders, particularly affected rights-holders, embodying the litmus test of credibility, transparency and accountability for Special Procedures, as stressed in the call of Indigenous Peoples of “nothing about us without us.” To ensure that the Report represents the start but not the end of an important conversation, the continued leadership and agency of Indigenous Peoples and the support of other relevant stakeholders are imperative.

Responses to the Report and Thematic Developments

Initial Responses

Since the Report was delivered to the UN General Assembly on October 25, 2022, the authors have been gratified by the constructive responses from diverse Indigenous Peoples and key stakeholders

29. Shaheed, “Interim Report of the Special Rapporteur,” para. 84.

30. Those in-person consultations were in Canada, Ecuador, Greenland, Kenya, Norway and the United States of America.

31. Shaheed, “Interim Report of the Special Rapporteur,” para. 7.

32. Shaheed, “Interim Report of the Special Rapporteur,” para. 8.

ranging from States to regional organizations and civil society, and we have been receptive to their feedback. Immediate responses from UN Member States were recorded during the Interactive Dialogue with the incumbent UN Special Rapporteur on FoRB, Nazila Ghanea. As is often common within this forum, the responses varied in their degree of substantive engagement with the Report and introspection on their own internal practices, depending on their geopolitical outlook and objectives.³³

The following day, October 26, 2022, saw a more sustained exchange with Indigenous, civil society, and religious or belief leaders at a side event for the Report's launch, hosted by the Center for Earth Ethics.³⁴ Gathered to discuss the Report's key findings and recommendations, key representatives spoke alongside Shaheed about what the Report meant to them, what especially resonated, and how they see its significance in terms of moving the meter forward.³⁵ The responses were varied and overwhelmingly positive. For instance, Karenni Gore emphasized that appreciation for the Report has stemmed from its long-missing, yet critical, framing for this topic, remembering the role of human rights in that framing. Betty Hill (Lyons), president and executive director of the American Indian Law Alliance, spoke about the Doctrine of Discovery and why it was important that the Report discussed it. Finally, deeply resonating with the authors' objective and methodology, one Indigenous audience member reflected that "I could hear the voices of Indigenous Peoples [in the Report]."

Subsequently, Indigenous speakers at the event series entitled "Freedom to Be" – a Center for Earth Ethics' initiative following up on the Report's examination of how Indigenous Peoples manifest FoRB and its impacts on our relationship with the Earth and our climate future³⁶ – have reflected on the strengths and gaps of the Report. They highlighted important aspects, including how it:

1. Highlights the fraught relationship between Indigenous Peoples and the concept of "religion," frequently employed as tools of colonizers for oppression and assimilation;
2. Explores how Indigenous spirituality often entails a close connection to nature, taking a holistic worldview that encapsulates their culture, spirituality, health, community and beyond; and
3. Elevates considerations of how colonial principles and practices, including through religious institutions, have affected the experiences of gender equality, sexual orientation and gender identity within Indigenous communities.

Shaheed has welcomed all constructive reflections on the strengths and gaps of his Report as a positive indication that this important conversation is evolving and ongoing, rather than having met an endpoint. Given the UN's strictly mandated word count, the Report may have certain gaps and topics that necessitate further attention from rightsholders, policymakers, scholars and others. Based on feedback from different interlocutors, such topics may include the nexus between FoRB as practiced

33. "Myanmar Crisis Taking Huge Toll on People, Military Using Disproportionate Force, Burning Civilian Structures, Third Committee Hears Today," United Nations Meetings Coverage and Press Releases, Seventy-Seventh Session, 31st & 32nd Meetings, October 25, 2022, <https://press.un.org/en/2022/gashc4358.doc.htm>.

34. Timothy Cross, "Our Sacred Relationships to the Natural World: Indigenous Leaders Discuss UN Report on Freedom of Religion or Belief," *Center for Earth Ethics*, November 11, 2022, <https://centerforearthethics.org/blog/our-sacred-relationships-to-the-natural-world-indigenous-leaders-discuss-un-report-on-freedom-of-religion-or-belief/>.

35. Speakers included Fred Davie, Roberto Múkaró Borrero, Betty Hill (Lyons), Chief Dwaine Perry, Mona Polacca, Tadodaho Sid Hill, Nazila Ghanea, Karenni Gore, and Ahmed Shaheed. See Betty Lyons, "Freedom of Religion or Belief: Betty Lyons' Remarks on the UN Special Rapporteur's Report," *Center for Earth Ethics*, November 22, 2023, <https://centerforearthethics.org/blog/freedom-of-religion-or-belief-the-thanksgiving-address-and-doctrine-of-discovery-betty-lyons-delivers-remarks-following-the-un-special-rapporteur-report/>.

36. "Freedom to Be," *Center for Earth Ethics*, Our Work, accessed April 28, 2024, <https://centerforearthethics.org/our-work/freedom-to-be/>.

by Indigenous Peoples with diverse conceptions of sustainable development and the mental health epidemic affecting Indigenous youth.

Utilisation of the Report

Beyond these initial responses to the Report, continuing assessment of its significance and impact in practice demands that the authors explore (i) different illustrative ways in which the Report has been utilized between October 25, 2022, and this article's date of publication, and (ii) other relevant thematic developments. Accordingly, this section focuses on how Indigenous Peoples as rightsholders and key stakeholders, including States, UN Special Procedures, regional human rights courts and scholars, have drawn upon and utilized its key findings and recommendations to further the clarification, advocacy for or implementation of Indigenous Peoples' right to FoRB. These examples are illustrative, not exhaustive, and drawn from desk-based research and input from relevant parties. Sharing these examples two years after the Report's publication may inspire others to engage substantively with the Report's key findings and recommendations, whether in local, national, regional or multilateral spheres, to steadily strengthen the protection and promotion of FoRB for Indigenous Peoples worldwide.

Firstly, Indigenous Peoples and their civil society organizations have embraced and leveraged the Report's key findings and recommendations to advocate for better protection and fulfillment of their right to FoRB and other human rights. For instance, the Report was cited in Huy's submission to the Human Rights Council,³⁷ and in a September 2023 statement from Indigenous Peoples Rights International on the forced sterilization of Indigenous Women, calling upon courts to "strongly condemn this persistent form of gross violence against Indigenous women, their families and their communities."³⁸ These are only some of the diverse ways that civil society may engage with UN Special Procedures to advocate for their human rights at home and abroad.³⁹

Secondly, States, regional commissions and multilateral human rights mechanisms have engaged the Report in varied settings and for varied purposes. For State entities, this occurred on several occasions, including in (1) the United States Commission on International Religious Freedom's (USCIRF) June 2023 report on "Religious Freedom For Indigenous Communities in Latin America,"⁴⁰ (2) the Canadian Human Rights Commission's October 2023 discussion paper on religious intoler-

37. Huy Advisory Board, "Huy Submission to the UN Human Rights Committee Concerning Religious Freedoms of Indigenous Persons Deprived of Their Liberty in the United States of America in Relation to the United States' 5th Periodic Report," 139th Session, 09 October – 03 November 2023, Submitted September 12, 2023.

38. "Statement: Forced Sterilization of Indigenous Women: Courts Should Strongly Condemn This Persistent Form of Gross Violence against Indigenous Women, Their Families and Their Communities," *Indigenous Peoples Rights International*, September 5, 2023, <https://iprights.org/index.php/en/all-news/forced-sterilization-of-indigenous-women-courts-should-strongly-condemn-this-persistent-form-of-gross-violence-against-indigenous-women-their-families-and-their-communities>.

39. Human Rights Institute, *Engaging U.N. Special Procedures to Advance Human Rights at Home: A Guide for U.S. Advocates* (Columbia Law School Human Rights Institute, 2015), https://scholarship.law.columbia.edu/human_rights_institute/33.

40. USCIRF is an independent, bipartisan U.S. federal government commission created by the 1998 International Religious Freedom Act, which uses international standards to monitor violations of religious freedom or belief abroad and makes policy recommendations to the President, the Secretary of State, and Congress. United States Commission on International Religious Freedom, *Religious Freedom For Indigenous Communities in Latin America* (United States Commission on International Religious Freedom, June 2023), 19, <https://www.uscifr.gov/publications/religious-freedom-indigenous-communities-latin-america>.

ance;⁴¹ and (3) the German Bundestag (German Federal Parliament)'s 2023 report on the global situation of the right to FoRB between 2020 and 2022.⁴²

Looking at regional human rights mechanisms, the Report was cited in the Inter-American Commission on Human Rights (IACHR) February 2024 report on Inter-American Standards Concerning Freedom of Religion or Belief.⁴³ In a dedicated press release, the Commission noted that their “report complements the standards concerning freedom of religion or belief that have been developed in the international human rights system” and thanked the incumbent UN Special Rapporteur on FoRB, Nazila Ghanea, for her contributions to their report.⁴⁴

Moreover, the UN High Commissioner of Human Rights and the UN Secretary General invoked the Report in their respective 2023 reports on “combating intolerance based on religion or belief.”⁴⁵ Choosing a more legalistic approach to clarifying the scope and application of the international human rights framework for Indigenous Peoples, they adopted identical language to one another in elevating the key finding that:

[W]hile “sacred sites” as per article 6 (a) of the Declaration on the Elimination of All on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (i.e. freedom to establish and maintain places of worship) seemingly applied to manufactured structures, experts argued that protections must also extend to traditional lands that were integral to Indigenous spirituality.

Ending the similarities there, the High Commissioner and Secretary General then highlighted different Report recommendations in their respective reports. The High Commissioner emphasized the imperative to establish “collaborative, consultative mechanisms for Indigenous Peoples to influence decision-making effectively on issues that affected them.”⁴⁶ Meanwhile, the UN Secretary General extolled that “States regularly review and revise their legal and policy frameworks to tackle discrimination, undue restrictions on spiritual manifestations, and impediments to access and use of Indigenous Peoples’ lands.”⁴⁷ That divergence might speak to their differing approaches, roles or thematic priorities.

Notably, the USCIRF, German and IACHR reports above all cited the Report for its definition and framing of what “spirituality” means to Indigenous Peoples, how they often describe their religion

41. “Discussion Paper on Religious Intolerance,” Canadian Human Rights Commission, October 23, 2023, <https://www.chrc-ccdp.gc.ca/resources/publications/discussion-paper-religious-intolerance>.

42. Beauftragter der Bundesregierung für Religions und Weltanschauungsfreiheit, *Dritter Bericht Der Bundesregierung Zur Weltweiten Lage Der Religions - Und Weltanschauungsfreiheit* (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, 2020 Bis 2022), 10, <https://religionsfreiheit.bmz.de/religionsfreiheit-de/der-bericht>.

43. Comisión Interamericana de Derechos Humanos, *Libertad de Religión y Creencia*, OEA/Ser.L/V/II (Comisión Interamericana de Derechos Humanos, September 10, 2023), para. 213.

44. “IACHR Publishes Report on Inter-American Standards Concerning Freedom of Religion or Belief,” Inter-American Commission on Human Rights, Press Release, February 14, 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/032.asp.

45. UN High Commissioner for Human Rights, “Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence against, Persons Based on Religion or Belief,” United Nations General Assembly, Human Rights Council, twenty-eighth session, agenda items 2 and 9, January 19, 2015, para. 52, https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_47_en.doc; UN Secretary General, “Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence against, Persons Based on Religion or Belief,” United Nations General Assembly, seventy-eighth session, agenda item 73, July 27, 2023, para 47, <https://docs.un.org/en/A/78/241>.

46. UN High Commissioner, “Combating Intolerance, Negative Stereotyping,” para. 52.

47. UN Secretary General, “Combating Intolerance, Negative Stereotyping,” para. 47.

or belief system as “spirituality” and what broader terms (e.g. “worldview,” “way of life,” or “culture”) they may use interchangeably.⁴⁸ They may be seeking to overcome a lack of understanding or appreciation of the diverse ways that Indigenous Peoples express and manifest their beliefs. Language and vocabulary are part of the mental furniture that also enables or undermines the freedom of thought that is not only closely aligned to FoRB but also to autonomy, agency and personhood. While that engagement may represent cause for cautious optimism insofar as there is a shifting discourse on making space for and seeking implementation of Indigenous rights, one should wait and see what changes transpire in practice. Worldwide, interlocutors repeatedly observed to the then-UN Special Rapporteur on FoRB and his team that notable gaps persist between State rhetoric and the reality of their failure to recognize the rights of Indigenous Peoples, including FoRB.⁴⁹

Thirdly, scholars hailing from diverse disciplines and backgrounds have engaged constructively with the Report, including through publications,⁵⁰ lecture series⁵¹ and, indeed, the existence of this Special Issue. The purpose of this Special Issue is to highlight the Report’s importance for the academic study of religion, the humanities and social sciences, as well as international NGOs. This admirable interdisciplinary and forward-looking exercise would help to reflect past lessons to further promote and protect the rights of Indigenous Peoples worldwide. Reflecting on the success of the “Freedom to Be” series, the Center for Earth Ethics’ Director, Karenna Gore, stated that it “is a testament to the fact that the Report itself is a portal of sorts, opening a deeper discussion about the very purpose of economic development, among other things.”⁵²

Evidently, Indigenous Peoples and diverse stakeholders ranging from States to civil society and scholars have been substantively drawing upon and leveraging the key findings and recommendations of the Report for various purposes, including their advocacy, scholarship, engagement and legal clarification of how the international human rights framework applies to Indigenous Peoples.

Recent Thematic Developments

Yet, there are broader ways in which the Report’s theme, key issues, and recommendations have been invoked and explored by relevant stakeholders, including UN Special Procedures, States and international civil society, even without directly relying upon it. Three illustrative examples are offered here. Firstly, the UN Special Rapporteur on FoRB, Nazila Ghanea, has issued at least two Communications jointly with fellow UN Special Rapporteurs where the rights of Indigenous Peoples were reportedly violated by the Philippines (in a case involving “red-tagging” from October 2023)⁵³ and Brazil (concerning allegations of systemic acts of violence, threats, harassment, and discrimination against Guarani and Kaiowá Indigenous Peoples and religious or belief minorities, in Mato Grosso do

48. Shaheed, “Interim Report of the Special Rapporteur,” paras. 11–12.

49. Shaheed, “Interim Report of the Special Rapporteur,” para. 69.

50. Several publications have cited the Report in examining thematic and principled matters arising between Indigenous Peoples and FoRB, law and religious studies, ranging from a book chapter on the legacy of the UN Declaration of Human Rights at its 75th anniversary to a publication on ESG Capitalism. See Nazila Ghanea and Michael Wiener, “Freedoms of Thought, Conscience, Religion or Belief at 75,” in *Shaping a World of Freedoms: 75 Years of Legacy and Impact of the Universal Declaration of Human Rights*, ed. Nelu Burcea and Liberato C. Bautista (New York: UNEQUAL World Research Center, 2023), 7; Matteo Corsalini, “ESG Capitalism from a Law and Religion Perspective,” *Religions* 14, no. 3 (March 2023): 418, <https://doi.org/10.3390/rel14030418>.

51. For instance, the Center for Earth Ethics’ “Freedom to Be” series draws upon the Report as its epistemic foundation for examining FoRB as it relates to Indigenous peoples and its greater impacts on our relationship with the Earth and our climate future.

52. Email from Karenna Gore dated April 26, 2024.

53. UN Special Procedures, *Communication to the Government of the Philippines AL PHL 4/2023* (October 10, 2023), distributed by the OHCHR Communication Report and Search Database, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28339>.

Sul, particularly women spiritual leaders and human rights defenders).⁵⁴ Secondly, alongside the UN Special Rapporteur on the rights of Indigenous Peoples, Francisco Cali Tzay, she delivered a keynote address at a conference on Indigenous Peoples and their right to FoRB that was hosted on November 21, 2022, by the German Ministry of Economic Cooperation and Development. Such sustained engagement between the UN Special Rapporteur on FoRB and Indigenous Peoples is welcomed to ensure their active participation and inclusion regarding their FoRB rights. Finally, the G20 Interfaith Forum and International Partnership on Religion and Sustainable Development have organized their Annual Forums for August 2024 in Brazil, which shall engage Indigenous Peoples and FoRB within the theme of “Leave No One Behind: The Well-Being of the Planet and Its People.”⁵⁵

Overall, it is heartening to witness rightsholders and key stakeholders continue the global conversation that the Report has initiated on the various obstacles and opportunities facing Indigenous Peoples in enjoying and exercising their right to FoRB. Ranging from advocacy of Indigenous civil society to statements from States and a regional human rights body clarifying how FoRB applies to Indigenous Peoples, these diverse initiatives showcase the Report’s ongoing utility and importance.

Looking to the future

Today, the future of Indigenous Peoples and humanity at large are facing critical challenges, from climate change to rising intolerance and hatred, often disproportionately affecting many Indigenous Peoples by virtue of their historical and ongoing disenfranchisement and dispossession of their lands. This poses a threat not only to their exercise of FoRB but also to their daily survival. Simply, “[u]nderstanding Indigenous Peoples and their diverse religions or beliefs is impossible without acknowledging historical and ongoing experiences of discrimination, violence and hostility, and marginalization, which threaten their spiritual, cultural and physical survival.”⁵⁶ This section focuses on three critical challenges raised by Indigenous rightsholders as existing and evolving concerns for their future: climate change and environmental destruction, rising hate speech, and deteriorating mental health, especially among Indigenous youth. It concludes that decolonizing FoRB and human rights more broadly requires that Indigenous Peoples continue to exercise their agency and voice in challenging the structures, norms and narratives that have historically excluded and sidelined them.

Firstly, the plight of many Indigenous Peoples worldwide in the face of climate change has persisted as the gap between many States and other stakeholders’ rhetoric and the reality of their actions continues to fall short in curbing greenhouse gas emissions and mitigating their devastating effects. Protecting their FoRB and other human rights of Indigenous Peoples is especially imperative in an age of widespread environmental destruction and degradation. With nature’s vitality as the beating heart of many Indigenous cultures and spirituality, as well as their daily survival, Indigenous Peoples frequently “bear an unfair share” of costs arising from environmentally destructive activities.⁵⁷ Indeed, Indigenous Peoples are among those who have historically contributed greenhouse gases yet are especially at risk from climate change, exacerbating their socioeconomic marginalization, food insecurity and displacement.

54. UN Special Procedures, *Communication to the Government of Brazil AL BRA 2/2023* (May 9, 2023), distributed by the OHCHR Communication Report and Search Database, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27968>.

55. *Leave No One Behind: The Well-Being of the Planet and Its People The 2024 G20 Interfaith and PaRD Annual Forum on Religion and Sustainable Development* (G20 Interfaith Forum and International Partnership on Religion and Sustainable Development, 2024), https://www.partner-religion-development.org/wp-content/uploads/2024/03/IF20-PaRD_Annual-Forum-2024_Concept-Note.pdf.

56. Shaheed, “Interim Report of the Special Rapporteur,” sec. Summary.

57. Shaheed, “Interim Report of the Special Rapporteur,” para. 33.

Recognizing Indigenous Peoples' central role in climate responsiveness and policymaking is both strategic and a matter of equality and human rights. Furthermore, experts have repeatedly emphasized that the "best way" to protect nature typically is to protect the rights of those living there. Therefore, climate change and other environmentally destructive forces not only disproportionately affect many Indigenous Peoples, but also the effectiveness of climate response and mitigation would benefit from their rich spiritual and traditional knowledge and their vital intrinsic connection to the natural world. Calling for drastic action on climate change at COP28 in Dubai, Indigenous representatives from the International Indigenous Peoples' Forum on Climate Change, hailing from seven socio-cultural regions, set out their core concerns and asserted their "inherent, distinct, internationally recognized rights" to influence the negotiations.⁵⁸ Echoing those important principles in the spirit of interfaith dialogue, in March 2024, the Pope extolled the importance of "[l]istening to indigenous peoples in order to learn from their wisdom and from their lifestyles" in tackling climate change.⁵⁹

Befitting the nature of climate change as an existential threat to present and future generations on Earth, the UN Secretary General's flagship initiative "Summit for the Future" reiterates that coordinated and collaborative action is imperative to tackle climate change as a collective action problem and moving towards a world "in which humanity lives in harmony with nature."⁶⁰ However, several States and other key stakeholders are not only failing to meaningfully engage Indigenous Peoples in developing and implementing solutions with their full, prior and informed consent, but also excluding and targeting them contrary to human rights. During outreach for the Report, Indigenous Peoples across every region shared challenging experiences of State and non-State actors restricting their access and use of traditional and often spiritually significant territories, including through forced evictions, extractive and development projects and so-called "fortress conservation" projects. In certain parts of the world, Indigenous Peoples and environmental defenders face serious and systematic violence for and during their vital human rights work, representing one-quarter to half of human rights defenders killed.⁶¹ Many such violations remain unrecognized or unremedied and are even escalating in severity as climate change-induced conflict and competition for natural resources heat up.

Secondly, hateful speech continues to sow the seeds of division globally, a favoured weapon of State and non-State actors alike to incite discrimination, violence and intolerance against marginalized communities in pursuing their political, socio-economic and other objectives. While hatred and its effects are nothing new, the scale and speed of its spread worldwide have been turbocharged across and within communities through the rise of digital technologies, including social media platforms. This pernicious phenomenon has real-world consequences, such as travelling from online to offline contexts and vice versa. State and non-State actors have scapegoated, stigmatized and negatively stereotyped Indigenous Peoples and their spirituality across every region, thereby furthering and compounding their

58. Liza Gross, "Indigenous Leaders Urge COP28 Negotiators to Focus on Preventing Loss and Damage and Drastically Reducing Emissions," *Inside Climate News*, Justice and Health, December 2, 2023, <https://insideclimatenews.org/news/02122023/cop28-indigenous-leaders-agenda/>.

59. Lisa Zengarini, "Pope Upholds Indigenous Knowledge to Address Climate Crisis," *Vatican News*, March 14, 2024, <https://www.vaticannews.va/en/pope/news/2024-03/pope-upholds-indigenous-knowledge-to-address-climate-crisis.html>.

60. "Pact for the Future Zero Draft," United Nations Summit of the Future, Pact for the Future, January 26, 2024, para. 30, <https://www.un.org/en/summit-of-the-future/pact-for-the-future-zero-draft>.

61. For example, "In Memoriam: 33 Indigenous Rights Defenders Murdered in 2021 in Latin America," *Cultural Survival*, January 13, 2022, <https://www.culturalsurvival.org/news/memoriam-33-indigenous-rights-defenders-murdered-2021-latin-america>; Ali Hines, "Decade of Defiance: Ten Years of Reporting Land and Environmental Activism Worldwide," *Global Witness*, September 28, 2022, updated May 10, 2023, <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#a-global-analysis-2021>.

marginalization.⁶² Indigenous Peoples have shared their concerning experiences of derogatory and threatening language for their perceived “failure” to assimilate, especially where they express their Indigenous cultural and spiritual identity and advocate for their human rights and the protection of their traditional lands and waters. Civil society has raised concerns over many States’ delayed, partial or otherwise lacklustre responses to hateful speech for failing to staunch the flow of abuse and provide adequate protection for victims.⁶³

Upticks of hateful and abusive language have continued around prominent public debates and key events, including protests and elections. For example, prior to Australia’s 2023 constitutional referendum on “The Voice” – a proposed constitutional amendment that would create a body called the Australian and Torres Strait Islander Voice to “make representations” to the Federal Government on matters relating to them – misinformation and disinformation, racist conspiracy theory and outright abuse against Indigenous Australians drastically increased.⁶⁴ While that vote ultimately failed, the harmful effects from that abusive tirade have reverberated amongst Indigenous Australians and democracy in Australia more broadly, bearing implications for their enjoyment of their human rights, including FoRB.

These complex and systematic challenges related to hate speech may seem nigh impossible to counter. However, it is important to remember good practices from Indigenous civil society and others, in addition to existing national, regional and international mechanisms and initiatives developed to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, such as the UN Human Rights Council Resolution 16/18, the Rabat Plan of Action, the Fez Plan of Action and the United Nations Strategy and Plan of Action on Hate Speech. Although those instruments may offer incomplete solutions or are partially implemented, they nevertheless represent a critical avenue for multilateral coordination on this critical transboundary challenge that should be periodically reviewed and revitalized – listening to Indigenous voices as part of that process.

Numerous Indigenous Peoples have spoken about their struggles to survive within a culture of widespread discrimination, let alone enjoy their rights, including FoRB. The ramifications for health and wellbeing are pronounced. Several have spoken of their experiences of intergenerational trauma stemming from colonial legacies of violence, forced displacement and forced assimilation, resulting in lost connections to one’s culture, land, community and spirituality. Forbidden to practice their culture and spirituality for many years, some report feeling a sense of shame and stigma. In one “Freedom to Be Seminar,” one speaker mourned the epidemic of mental health, especially affecting youth, and how her community often sees suicide as instances where “the spirit is lost.”⁶⁵ Both hate speech and climate change bear serious and material consequences for physical and mental health, including where the

62. Shaheed, “Interim Report of the Special Rapporteur,” paras. 56–58.

63. Dev Kumar Sunuwar, “Japan Urged to Address Discrimination Against Ainu and Other Indigenous Peoples during Universal Periodic Review,” *Cultural Survival*, April 3, 2023, <https://www.culturalsurvival.org/news/japan-urged-address-discrimination-against-ainu-and-other-indigenous-peoples-during-universal>; Sophia Bain, Graham Paradis, and Catherine Stockall, “What We Heard Report: Indigenous Online Safety,” Department of Canadian Heritage, February 28, 2024, <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard-online-safety.html>.

64. Lisa Jackson Pulver et al., “How Hate Speech during the Voice Campaign Can Harm Personal Wellbeing, as Well as Democracy,” *The Conversation*, September 4, 2023, <http://theconversation.com/how-hate-speech-during-the-voice-campaign-can-harm-personal-wellbeing-as-well-as-democracy-211730>; Joseph Dunstan and Andi Yu, “Victoria’s Aboriginal Treaty Body Urges Facebook Parent Company Meta to Clamp Down on Racist Abuse,” *ABC News*, May 25, 2023, <https://www.abc.net.au/news/2023-05-26/aboriginal-treaty-first-peoples-assembly-facebook-racist-abuse/102394960>.

65. “Freedom to Be: Indigenous Perspectives on How the Mainstream Development Model Affects Their Right to Freedom of Religion or Belief,” *Center for Earth Ethics*, April 24, 2024, <https://centerforearthethics.org/event/freedom-to-be-indigenous-perspectives-on-how-the-mainstream-development-model-affects-their-right-to-freedom-of-religion-or-belief/>.

former causes abuse, exclusion and discrimination or where post-traumatic stress disorder is triggered in the aftermath of climate change related natural disasters.⁶⁶ To echo the May 2024 concluding resolution of the 76th World Health Assembly, such challenges often weigh especially heavily on the shoulders of Indigenous youth amidst rapidly “changing living environments including social, cultural, economic and environmental determinants.”⁶⁷

As the Report has highlighted, the Indigenous Peoples’ holistic concept of health – “encompassing physical well-being and the spiritual, intellectual and emotional health of the whole community, which depends on Indigenous lands as a critical source of life and healing” – is frequently disregarded within non-Indigenous health systems, resulting in reduced efficacy and potentially even proving detrimental.⁶⁸ Given this holistic worldview held by many Indigenous Peoples, obstacles affecting both their ability to survive and thrive in accordance with the enjoyment of their rights, including FoRB, are often interconnected. They necessitate holistic, rights-based solutions borne from collaboration and free, prior and informed consent as decreed in Article 19 of UNDRIP, embracing the spirit of “nothing about us, without us.” Having witnessed exceptional leadership of Indigenous communities around the world in pursuing reform, outreach, education and human rights advocacy to further their rights and needs, the authors are heartened and inspired. State and non-State actors alike are encouraged to lend their support to these community-driven and community-minded processes. Moreover, several Indigenous representatives have spoken about the importance of outreach and education of youth on culture, language and spirituality in building and strengthening their sense of identity and community.

In engaging with the right to FoRB specifically, Indigenous Peoples may continue to utilize and leverage the international human rights system, including UN Special Procedures, treaty bodies and other UN human rights accountability mechanisms. Utilizing the language, networks, and mechanisms available through FoRB supporters and advocates may achieve a greater enjoyment of this right amongst Indigenous Peoples worldwide and explore avenues of justice and remedies for historic violations. Yet, in pursuing this course, one can remain aware and critical of how Indigenous Peoples have been excluded from the corridors of power of international law. Through mainstreaming decolonial lens and structures, such as engaging Third World Approaches to International Law scholarship, one can remain cognizant and critical of how colonial powers and structures have “helped to erect and defend a world of deep injustice characterized by violence, exploitation, and inequality.”⁶⁹ In a similar vein of critical deconstruction of legal principles and structures, the UN Special Rapporteur on the rights of Indigenous Peoples, Calí Tzay, has welcomed the Holy See’s rejection of the papal “Doctrine of Discovery” which was used to claim Indigenous territories in the Americas, Africa and other parts of the world.⁷⁰ Notably, he urged all States that still embrace and apply the doctrine to follow suit “in formally repudiating the decree and reviewing all jurisprudence and legislation that relies on it.”

Finally, Indigenous Peoples could continue to raise and amplify their voices to protect their right to FoRB and other interrelated human rights and concerns in emerging multilateral initiatives and instruments. For example, the UN Secretary General’s Summit for the Future, including its Global

66. Alessandro Massazza, “Explained: How climate change affects mental health,” *Welcome*, News, November 8, 2023, <https://welcome.org/news/explained-how-climate-change-affects-mental-health>.

67. World Health Organization, “The Health of Indigenous Peoples,” Seventy-Sixth World Health Assembly, Agenda Item 16.3, May 30, 2023, https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_R16-en.pdf.

68. Shaheed, “Interim Report of the Special Rapporteur,” paras. 61–62.

69. Balakrishnan Rajagopal, “International Law and Its Discontents: Rethinking the Global South,” *Proceedings of the Annual ASIL Meeting* 106 (2012): 176, <https://doi.org/10.5305/procanmeetasil.106.0176>.

70. “UN Expert Hails Vatican Rejection of ‘Doctrine of Discovery’, Urges States to Follow Suit,” United Nations Human Rights Office of the High Commissioner, Press Releases Special Procedures, April 6, 2023, <https://www.ohchr.org/en/press-releases/2023/04/un-expert-hails-vatican-rejection-doctrine-discovery-urges-states-follow>.

Digital Compact, is his flagship multilateral initiative for redefining global governance and expediting the Sustainable Development Goals to address existential risks that threaten the “well-being of present and future generations and the welfare of our planet.”⁷¹

Conclusion

While preparing this landmark report, Shaheed and his team were guided throughout by the perspectives and lived experiences of diverse Indigenous Peoples from every region worldwide. Such an approach befitted their widespread concern and rallying cry that there is “nothing about us, without us.” By listening and amplifying their views on opportunities and obstacles in enjoying their right to FoRB through the auspices of the UN Special Rapporteur on freedom of religion or belief mandate, the Report was intended to develop “a framework for productive, sustained exchange” on this relatively poorly understood and underexplored subject.

During Shaheed’s mandate, he often stressed that when the human rights of one community are compromised, all of society suffers. The rights of all individuals must be respected to build democratic, secure and just societies, paying particular attention to the voices of those who have historically been silenced and sidelined. By better appreciating diverse religious and belief identities and lived realities of rights-holders, including Indigenous Peoples, it was his hope that the UN and beyond would be better positioned to identify, mitigate and prevent challenges to the enjoyment of this fundamental human right of Indigenous Peoples – and to promote good practices. A stronger understanding of Indigenous Peoples’ right to FoRB will not only benefit Indigenous Peoples but “allow a broader appreciation of what a fuller realization of freedom of religion or belief for all entails.” As the Report observed, the right “equally protects everyone, without a hierarchy of belief identity, whether enjoyed by millions or hundreds or exercised in buildings or sacred groves on indigenous territories.”⁷²

In the spirit of critical self-reflection, the authors have embraced an opportunity to critically reflect on the purpose and utility of this landmark UN Report, its thematic strengths and weaknesses, and enduring obstacles and opportunities for Indigenous Peoples’ ability to realize their fundamental right to FoRB. Throughout Shaheed’s mandate, he has dedicated himself to engaging the broader UN system and providing a platform for voices that were previously neglected or marginalized from advocacy spaces – including Indigenous Peoples. He was gratified to see the positive and constructive responses to the report and, most importantly, see the action of rightsholders and other relevant stakeholders as they engage the key findings and implement the recommendations.

Ultimately, the Report is a conceptual and practical tool for rights holders and duty bearers alike, advocates, educators, regional human rights courts, policymakers, lawyers, and academics studying religion and belief and beyond. Since the examples canvassed in this article are illustrative rather than exhaustive, it is hoped that others may continue to explore different ways in which to leverage the key findings and recommendations contained therein to further Indigenous’ Peoples enjoyment of the right to FoRB worldwide. The Report has started a global conversation rather than representing an end point. Likewise, others are encouraged to sustain this critical and constructive discourse beyond this article as Indigenous Peoples worldwide pursue equal enjoyment of their right to FoRB and other universal human rights.

71. “Pact for the Future Zero Draft,” 1.

72. Shaheed, “Interim Report of the Special Rapporteur,” para. 82.

Bibliography

- “A Rough Guide to the Special Procedures of the Human Rights Council.” Universal Rights Group. Accessed May 6, 2024. <https://www.universal-rights.org/a-rough-guide-to-the-special-procedures-of-the-human-rights-council/>.
- Abbott, Kenneth W., and Duncan Snidal. “Hard and Soft Law in International Governance.” *International Organization* 54, no. 3 (2000): 421–456.
- Bain, Sophia, Graham Paradis, and Catherine Stockall. “What We Heard Report: Indigenous Online Safety.” Department of Canadian Heritage. February 28, 2024. <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard-online-safety.html>.
- Beauftragter der Bundesregierung für Religions und Weltanschauungsfreiheit. *Dritter Bericht Der Bundesregierung Zur Weltweiten Lage Der Religions- Und Weltanschauungsfreiheit*. Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, 2020 Bis 2022. <https://religionsfreiheit.bmz.de/religionsfreiheit-de/der-bericht>.
- Bielefeldt, Heiner, Nazila Ghanea, and Michael Wiener. *Freedom of Religion or Belief: An International Law Commentary*. Oxford Academic, Online Edition, 2016. <https://doi.org/10.1093/law/9780198703983.001.0001>.
- Comisión Interamericana de Derechos Humanos, Libertad de Religión y Creencia, OEA/Ser.L/V/II. Comisión Interamericana de Derechos Humanos, September 10, 2023.
- Corsalini, Matteo. “ESG Capitalism from a Law and Religion Perspective.” *Religions* 14, no. 3 (March 2023): 418. <https://doi.org/10.3390/rel14030418>.
- Cross, Timothy. “Our Sacred Relationships to the Natural World: Indigenous Leaders Discuss UN Report on Freedom of Religion or Belief.” Center for Earth Ethics, November 11, 2022. <https://centerforearthethics.org/blog/our-sacred-relationships-to-the-natural-world-indigenous-leaders-discuss-un-report-on-freedom-of-religion-or-belief/>.
- “Discussion Paper on Religious Intolerance.” Canadian Human Rights Commission. October 23, 2023. <https://www.chrc-ccdp.gc.ca/resources/publications/discussion-paper-religious-intolerance>.
- Dunstan, Joseph, and Andi Yu, “Victoria's Aboriginal Treaty Body Urges Facebook Parent Company Meta to Clamp Down on Racist Abuse.” *ABC News*. May 25, 2023. <https://www.abc.net.au/news/2023-05-26/aboriginal-treaty-first-peoples-assembly-facebook-racist-abuse/102394960>.
- Fallers Sullivan, Winnifred. *Prison Religion: Faith-Based Reform and the Constitution*. Princeton: Princeton University Press, 2009.
- . *Ministry of Presence: Chaplaincy, Spiritual Care, and the Law*. Chicago: University of Chicago Press, 2014.

“Freedom to Be.” Center for Earth Ethics, Our Work. Accessed April 28, 2024. <https://centerforearthethics.org/our-work/freedom-to-be/>.

“Freedom to Be: Indigenous Perspectives on How the Mainstream Development Model Affects Their Right to Freedom of Religion or Belief.” Center for Earth Ethics. April 24, 2024. <https://centerforearthethics.org/event/freedom-to-be-indigenous-perspectives-on-how-the-mainstream-development-model-affects-their-right-to-freedom-of-religion-or-belief/>.

Ghanea, Nazila and Michael Wiener. “Freedoms of Thought, Conscience, Religion or Belief at 75.” In *Shaping a World of Freedoms: 75 Years of Legacy and Impact of the Universal Declaration of Human Rights*, edited by Nelu Burcea and Liberato C. Bautista, 1–17. New York: UNEQUAL World Research Center, 2023.

Golay, Christophe, Claire Mahon, and Ioana Cismas. “The Impact of UN Special Procedures on the Development and Implementation of Economic, Social and Cultural Rights.” *The International Journal of Human Rights* 15, no. 2 (2011): 299–318. <https://doi.org/10.1080/13642987.2011.537472>.

Gross, Liza. “Indigenous Leaders Urge COP28 Negotiators to Focus on Preventing Loss and Damage and Drastically Reducing Emissions.” *Inside Climate News*, Justice and Health. December 2, 2023. <https://insideclimatenews.org/news/02122023/cop28-indigenous-leaders-agenda/>.

Hines, Ali. “Decade of Defiance: Ten Years of Reporting Land and Environmental Activism Worldwide.” *Global Witness*. September 28, 2022. Updated May 10, 2023. <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/#a-global-analysis-2021>.

Human Rights Institute. *Engaging U.N. Special Procedures to Advance Human Rights at Home: A Guide for U.S. Advocates*. Columbia Law School Human Rights Institute, 2015. https://scholarship.law.columbia.edu/human_rights_institute/33.

Huy Advisory Board. “Huy Submission to the UN Human Rights Committee Concerning Religious Freedoms of Indigenous Persons Deprived of Their Liberty in the United States of America in Relation to the United States’ 5th Periodic Report.” 139th Session, 09 October – 03 November 2023. Submitted September 12, 2023.

“IACHR Publishes Report on Inter-American Standards Concerning Freedom of Religion or Belief.” Inter-American Commission on Human Rights, Press Release. February 14, 2024. https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/032.asp.

“In Memoriam: 33 Indigenous Rights Defenders Murdered in 2021 in Latin America,” *Cultural Survival*. January 13, 2022. <https://www.culturalsurvival.org/news/memoriam-33-indigenous-rights-defenders-murdered-2021-latin-america>.

Jackson Pulver, Lisa, et al. “How Hate Speech during the Voice Campaign Can Harm Personal Wellbeing, as Well as Democracy.” *The Conversation*, September 4, 2023. <http://theconversation.com/how-hate-speech-during-the-voice-campaign-can-harm-personal-wellbeing-as-well-as-democracy-211730>.

Leave No One Behind: The Well-Being of the Planet and Its People The 2024 G20 Interfaith and PaRD Annual Forum on Religion and Sustainable Development. G20 Interfaith Forum and International Partnership on Religion and Sustainable Development, 2024. https://www.partner-religion-development.org/wp-content/uploads/2024/03/IF20-PaRD_Annual-Forum-2024_Concept-Note.pdf.

Lyons, Betty. “Freedom of Religion or Belief: Betty Lyons’ Remarks on the UN Special Rapporteur’s Report.” Center for Earth Ethics. November 22, 2023. <https://centerforearthethics.org/blog/freedom-of-religion-or-belief-the-thanksgiving-address-and-doctrine-of-discovery-betty-lyons-delivers-remarks-following-the-un-special-rapporteur-report/>.

Massazza, Alessandro. “Explained: How Climate Change Affects Mental Health.” *Welcome*. November 8, 2023. <https://wellcome.org/news/explained-how-climate-change-affects-mental-health>.

McNally, Michael. “Comments Delivered to the UN Special Rapporteur on Freedom of Religion or Belief.” *Journal of the Council for Research on Religion* 5, no. 2 (2024): 46–53, <https://doi.org/10.26443/jcreor.v5i2.114>.

“Myanmar Crisis Taking Huge Toll on People, Military Using Disproportionate Force, Burning Civilian Structures, Third Committee Hears Today.” United Nations Meetings Coverage and Press Releases. Seventy-Seventh Session. 31st & 32nd Meetings. October 25, 2022. <https://press.un.org/en/2022/gashc4358.doc.htm>.

“Pact for the Future Zero Draft.” United Nations Summit of the Future, Pact for the Future. January 26, 2024. <https://www.un.org/en/summit-of-the-future/pact-for-the-future-zero-draft>.

Rajagopal, Balakrishnan. “International Law and Its Discontents: Rethinking the Global South.” *Proceedings of the Annual ASIL Meeting* 106 (2012): 176–181. <https://doi.org/10.5305/procanmeetasil.106.0176>.

Ramcharan, Bertrand G. *The Protection Roles of UN Human Rights Special Procedures*. Leiden, The Netherlands: Brill | Nijhoff, 2009. <https://doi.org/10.1163/ej.9789004171473.i-214>.

Shaheed, Ahmed. “Gender-Based Violence and Discrimination in the Name of Religion or Belief. Report of the Special Rapporteur on Freedom of Religion or Belief.” UN. Freedom of Religion or Belief. New York: United Nations, August 24, 2020. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4348-report-freedom-religion-or-belief-and-gender-equality>.

———. “Interim Report of the Special Rapporteur on Freedom of Religion or Belief. Indigenous Peoples and the Right to Freedom of Religion or Belief.” UN. Freedom of Religion or Belief. New York: United Nations, October 10, 2022. <https://www.ohchr.org/en/documents/thematic-reports/a77514-interim-report-special-rapporteur-freedom-religion-or-belief>.

“Statement: Forced Sterilization of Indigenous Women: Courts Should Strongly Condemn This Persistent Form of Gross Violence against Indigenous Women, Their Families and Their Communities.” Indigenous Peoples Rights International. September 5, 2023. <https://iprights.org/index.php/en/all-news/forced-sterilization-of-indigenous-women-courts-should-strongly->

condemn-this-persistent-form-of-gross-violence-against-indigenous-women-their-families-and-their-communities.

Subedi, Surya P. “Protection of Human Rights through the Mechanism of UN Special Rapporteurs.” *Human Rights Quarterly* 33, no. 1 (2011): 201–228. <https://doi.org/10.1353/hrq.2011.0011>.

Sunuwar, Dev Kumar. “Japan Urged to Address Discrimination Against Ainu and Other Indigenous Peoples during Universal Periodic Review.” *Cultural Survival*. April 3, 2023. <https://www.culturalsurvival.org/news/japan-urged-address-discrimination-against-ainu-and-other-indigenous-peoples-during-universal>.

“UN Charter-Based Institutions Including Special Procedures.” United Nations Sustainable Development Group. Accessed May 6, 2024. <https://unsdg.un.org/2030-agenda/strengthening-international-human-rights/un-special-procedures>.

“UN Expert Hails Vatican Rejection of ‘Doctrine of Discovery’, Urges States to Follow Suit.” United Nations Human Rights Office of the High Commissioner, Press Releases Special Procedures. April 6, 2023. <https://www.ohchr.org/en/press-releases/2023/04/un-expert-hails-vatican-rejection-doctrine-discovery-urges-states-follow>.

UN High Commissioner for Human Rights. “Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence against, Persons Based on Religion or Belief.” United Nations General Assembly. Human Rights Council. Twenty-eighth session. Agenda items 2 and 9. January 19, 2015. https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_47_en.doc.

UN Secretary General. “Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence against, Persons Based on Religion or Belief.” United Nations General Assembly. Seventy-eighth session. Agenda item 73. July 27, 2023. <https://docs.un.org/en/A/78/241>.

UN Special Procedures. *Communication to the Government of Brazil AL BRA 2/2023*. May 9, 2023. Distributed by the OHCHR Communication Report and Search Database. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27968>.

UN Special Procedures. *Communication to the Government of the Philippines AL PHL 4/2023*. October 10, 2023. Distributed by the OHCHR Communication Report and Search Database. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28339>.

“Understanding the Special Procedures: Thematic Reports – What Do the Special Procedures Do?” ISHR Academy. Accessed May 6, 2024. <https://academy.ishr.ch/learn/special-procedures/what-do-the-special-procedures-do-thematic-reports>.

United States Commission on International Religious Freedom. *Religious Freedom For Indigenous Communities in Latin America*. United States Commission on International Religious Freedom, June 2023. <https://www.uscifr.gov/publications/religious-freedom-indigenous-communities-latin-america>.

World Health Organization. “The Health of Indigenous Peoples.” Seventy-Sixth World Health Assembly, Agenda Item 16.3. May 30, 2023. https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_R16-en.pdf.

Zengarini, Lisa. “Pope Upholds Indigenous Knowledge to Address Climate Crisis.” *Vatican News*. March 14, 2024. <https://www.vaticannews.va/en/pope/news/2024-03/pope-upholds-indigenous-knowledge-to-address-climate-crisis.html>.