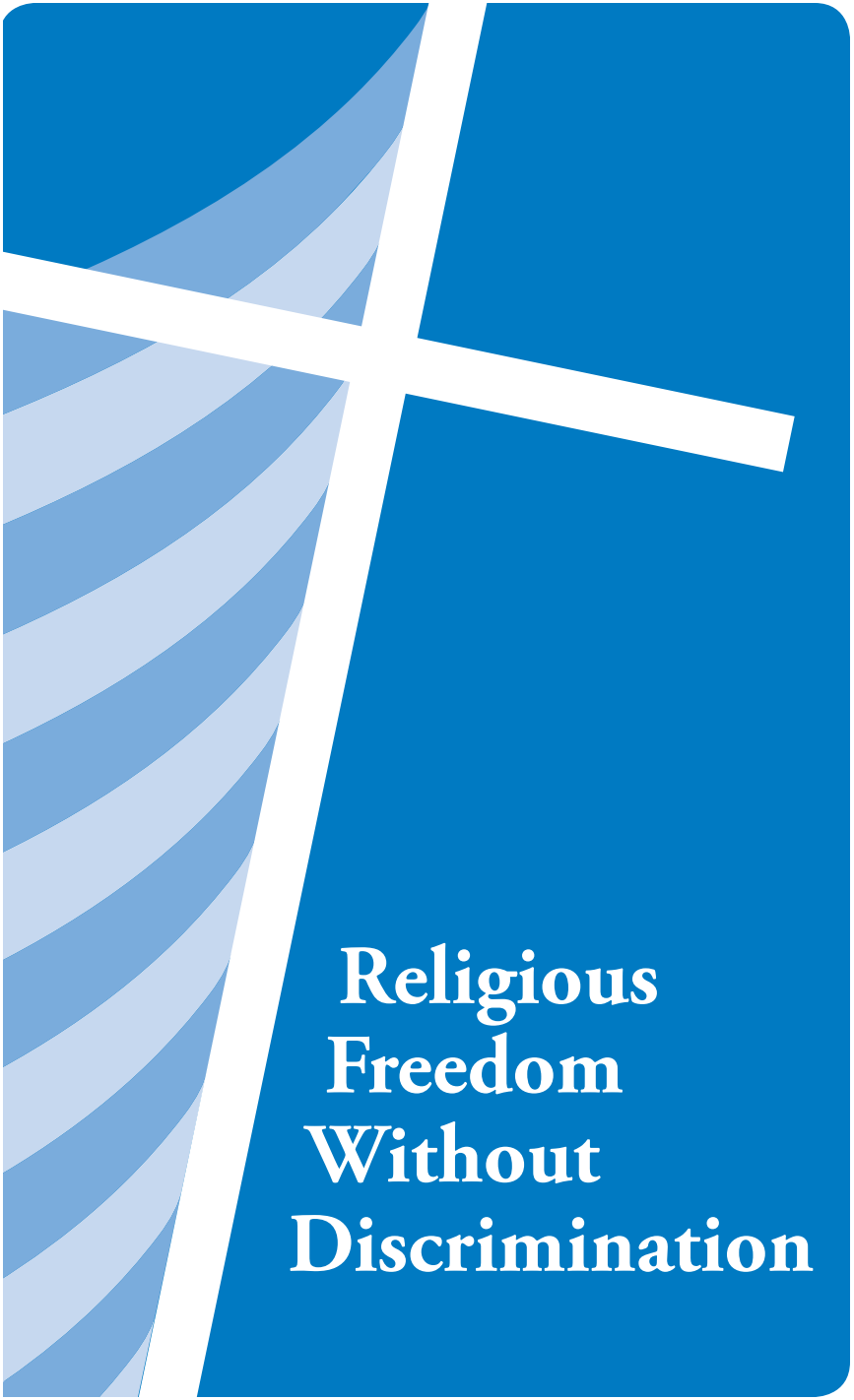
Religious
Freedom
Without
Discrimination

Religious Freedom Without Discrimination

Approved by the 223rd General Assembly (2018)
of the Presbyterian Church (U.S.A.)

Printed with the related resolution, "***The Boundaries of Religious Liberty***."

In keeping with its Historic Principles of Church Order (1788), the 223rd General Assembly (2018) of the Presbyterian Church (U.S.A.) adopted the following affirmation and action steps:

Affirmation

Presbyterians have enjoyed the benefits of First Amendment protection to exercise their religious freedom since the Bill of Rights became part of the U.S. Constitution in 1791. Our Historic Principles of Church Order of 1788 state clearly: "We do not (…) wish to see any religious constitution aided by the civil power… (F-3.0101b)." The principle of religious freedom should not mean the right to discriminate against or impose one's views upon others. In our commitment to be disciples of Jesus Christ, the Presbyterian Church (U.S.A.) is called to stand against oppression and in support of human dignity for all people. Because religious freedom must be "equal and common to all," as our Historic Principles further state, it cannot be maintained as a matter of privileged exemption for powerful individuals or groups.

The Synod of New York and Philadelphia considered "the rights of private judgment, in all matters that respect religion, as universal and unalienable," and that every religious body "is entitled to declare the terms of admission to its communion" and other internal matters. We believe it weakens religious freedom when it is invoked in ways that deprive people of their civil and human rights to equal protection under the law, or seek to justify exclusion and discrimination. In the civil rights era, United States civil courts rightly rejected the claims of those who said racial integration would violate their religion.

Initially in 1978, our denomination concluded that the denial of human rights to gay, lesbian, bisexual and transgender persons on the basis of religious belief was inconsistent with our Christian faith, as well as with our commitment to the principles of equality under the law as Americans. In 1987, the 199th General Assembly of the Presbyterian Church (U.S.A.) called for "the elimination … of laws governing the

private sexual behavior between consenting adults [and the passage] of laws forbidding discrimination based on sexual orientation in employment, housing, and public accommodations." In affirming these principles at this time, the General Assembly thus states its understanding of the Christian faith to be opposed to discrimination on matters of gender orientation and identity, and in support of freedom of the conscience in matters of reproductive rights. As a church faithful to Jesus Christ, we cannot let discrimination in the public sphere be tolerated or excused on the basis of "religious freedom."

In order to effectuate the above principles, based upon legal and theological understandings of the First Amendment and free exercise of religion consistent with those of the Reformed tradition in the United States, the General Assembly:

1. Resolves to stand against any invocation of "religious freedom" that deprives people of their civil and human rights to equal protection under the law, or that uses "religious freedom" to justify exclusion and discrimination;

2. Encourages the Stated Clerk to file or co-file *amicus curiae* (Friend of Court) briefs opposing efforts to promote exclusion and/or discrimination in the name of "religious freedom;"

3. Directs the Office of Public Witness (OPW) to oppose legislative and judicial efforts to use "religious freedom" as a justification for discrimination and denial of equal rights and /or equal provision of services or benefits by any legally-chartered entity;

4. Affirms the 214th General Assembly (2002) statement "Guiding Principles for Ethical Decisions Concerning Religious Freedom Around the World" (see note);

5. Directs the Office of the Stated Clerk to send this resolution to every congregation and presbytery, encouraging Presbyterians to distinguish between the historical understanding of religious freedom to practice one's faith and current efforts to discriminate against, exclude, and marginalize

vulnerable people in the name of "religious freedom."

NOTE: In its work with church partners and other religious bodies overseas, the boundaries between church and state are not always along the same lines as in the United States. Often the right to retain specifically Christian or religiously based social services needs to be respected by both US and local governments and foreign donors including the US and international agencies, with protection of both church-related sites and personnel. The underlying Reformed principle is that the church should be independent of the civil power and also of service to the common good.

Rationale

Current challenges

The federal Religious Freedom Restoration Act (RFRA) (1993) was initially intended to protect minority religions, especially Native American religious practice. The Presbyterian Church (U.S.A.) initially supported RFRA, consistent with our respect for its original intent: to allow persons and religious groups to practice their faith without constraint of the government. With the passage of 21 state RFRAs and expansive interpretation by the courts, however, "religious freedom" has become a weapon aimed at excluding, marginalizing, and discriminating against vulnerable populations.

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, pending (as of early 2018) before the United States Supreme Court, brings an intensified threat of harm as the plaintiff seeks to justify discrimination by cloaking it in constitutionally protected "religious freedom." If this baker's religious freedom argument prevails, any business which claimed that its product or service involved religious creativity or expression could attempt to deny service to gay people based on a claim of religious freedom. This "religious freedom" case relies on the First Amendment's protection for freedom of speech. The baker contends that his cakes are works of art and expressions of speech; therefore, he argues that he has the right to refuse to sell them to anyone whom he deems to be outside of his moral boundaries.

Numerous other claims of "religious freedom" have sprung up in the courts, most frequently involving women's reproductive rights and lesbian, gay, bisexual, and transgender issues. Two examples where religious reasons are given for the denial of legal services are:

* In 2014 the U.S. Supreme Court ruled that an employer can deny birth control coverage for religious reasons (Burrell v. Hobby Lobby), even though no-copay birth control is guaranteed under the Affordable Care Act (ACA) and business entities, whatever their governance or ownership, should not impose particular faith claims on their employees;

* In a 2016 Texas ruling, U.S. District Judge Reed O'Connor held that doctors could refuse to treat transgender persons as well as women who had previously had abortions. He accepted the argument of self-described Christian medical associations and insurance companies that treating these patients constituted "material cooperation with evil." This judgment implies that the government cannot require doctors and insurance companies to treat or cover anything they believe to be "evil," in exception to generally understood professional standards and public licensing obligations.

See additional examples of "religious freedom" claims used to deny essential services and discriminate in the areas of reproductive health and LGBTQ rights in the Appendix to this rationale.

Christian Theological Bases

The fundamental principle of universal human dignity rests on the Biblical foundation that humankind is created in the image of God (Genesis 1:27). From this *imago Dei*, we conclude that no form of discrimination is defensible on religious grounds. When Presbyterians confess our faith in *A Brief Statement of Faith* (Book of Confessions), we affirm our calling to "hear the voices of people long silenced and to work with others for justice, freedom, and peace" (lines 70-71). Additionally, *The Belhar Confession*, added to the Book of Confessions by the 222nd General Assembly (2016), calls us to resist all behavior that is dehumanizing. There can be no religious freedom without equal respect for the dignity of all persons, a dignity that is denied when services are denied. When claims of "religious freedom" become public efforts to exclude and discriminate, we are called to speak up for justice and stand with the oppressed.

Presbyterians have historically valued religious liberty and continue to support the freedom to act according to one's religious beliefs. However, in cases involving the refusal of goods and services, false claims of "religious freedom"

cause direct harm to those who are denied access. Legislating such claims as cases of protected religious freedom would undermine years of progress in state and federal civil rights and anti-discrimination law. The key distinction lies in whose choice is being limited or protected. Personally choosing not to have an abortion or use birth control, for example, is religious freedom. Making that choice for someone else, on the basis of one's own religious principles, is religious oppression—as is done when an insurance company denies health care coverage for birth control or a doctor refuses to prescribe contraceptives. Using one's own idea of "religious freedom" to limit the lawful choices of others through your own economic leverage creates a dense pattern of religiously sanctioned discrimination. In this way, some religious groups believe they can have politically what they failed to accomplish through persuasion in the "culture wars" of the 1980's and 1990's.

The 200th General Assembly (1988) approved the social witness policy, "God Alone is Lord of the Conscience." (https://www.presbyterianmission.org/wp-content/uploads/1-god-alone-is-lord-1988.pdf) The first principle espoused in the study is that "each worshipping community has the right to govern itself and order its life and activity free of government intervention" (p. 12). The First Amendment's Free Exercise Clause protects the ability of church members to live out their faith, in the community's life as well as privately. Since 1988, there has been much debate about what the "exercise of religion entails," such as whether it could include refusing to bake a cake for a gay couple's wedding or refusing to provide emergency contraception based on an opposition to abortion. These examples are mentioned, not because they push the limits of the Free Exercise Clause, but because they have become the recent test cases that seek to change the legal understanding of religious freedom in the United States.

Historically, religious freedom has meant protection from oppression, rather than economically imposing one's religious convictions on others. People committed to nonviolence claim "conscientious objection" to fighting in wars on the basis of religious beliefs; however, these individual stands involve the refusal to harm others and are in no way the same as refusal to provide services to others.

The 211th General Assembly (1999) approved the study, "Building Community Among Strangers," which stressed the tension between building community across religious lines while maintaining the commitment to our own faith beliefs.

(https://www.presbyterianmission.org/wp-content/uploads/4-building-community-among-strangers-1999.pdf) This tension asks Presbyterians to remain committed to their own faith beliefs while recognizing the complicated nature of living in community with those who do not share the same faith. Being a good neighbor means being a good listener, particularly with those who do not agree with us. It also requires us to ensure that our neighbors can practice their own faith without fear of reprisal or interference from government or those who wish to harm them.

Religious Freedom and Human Rights

The 214th General Assembly (2002) utilized a human rights framework with its statement "Guiding Principles for Ethical Decisions Concerning Religious Freedom Around the World." This movement towards a human rights framework allows the Presbyterian Church (U.S.A.) to advocate internationally and domestically for the protection of everyone's rights. Within the statement, the church calls on governments to "to promote and protect religious freedom" and writes:

> *"Governments have responsibility to promote and protect religious freedom and should:*
> *a. give specific protections concerning religious freedom in their official policies, constitution and practices; and should not:*
> *b. co-opt, manipulate or constrain religious practice by any persons, groups or religious bodies except as may properly be necessary for the protection of human rights for all;*
> *c. limit or deny religious participation in public life; or*
> *d. discriminate either for or against any religious tradition or organization."*

Current examples show that some state laws and interpretations of federal laws have enabled discrimination against certain groups--often marginalized minorities--with the goal of privileging a specific interpretation of Christianity—an interpretation which our denomination has rejected (an interpretation of Christianity that makes heterosexual orientation a matter of faith). This resolution calls on individual churches, presbyteries, and synods to stand against religious oppression and for religious freedom for all in their local contexts.

The human rights framework was introduced with the Universal Declaration of Human Rights (UDHR) in 1948. The freedom of religion and belief was codified in Article 18 of the declaration, which stated that all persons have

the freedom to hold their own beliefs in regard to religious and nonreligious matters, to change their beliefs, and to practice their beliefs. This was further developed in the 1966 International Covenant on Civil and Political Rights (ICCPR). The ICCPR expands on UDHR Article 18 to include a freedom from coercion in either practice or belief. While the Article 18 does allow governments to put limits on this freedom in the name of public health and safety, the ICCPR calls on governments to tread lightly in limiting religious freedom. The United States has signed onto both of these documents. One implication is that the United States agrees to implement these agreements in both practice and law within the United States. Presbyterians must distinguish between the UN's intended protection, which is in accord with our historical understanding of our religious freedom to practice our faith, and current efforts to discriminate, exclude, and marginalize vulnerable people in the name of "religious freedom."

The United Nations expanded further on the concept of religious freedom with the 1985 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which the United States did not sign. As pertains to our current discussion, Articles 3 and 4 of the declaration discuss the elimination of discrimination on the basis of religion or belief. Article 4 calls on governments to remove any forms of religious discrimination, including current examples where religion is used as an excuse to refuse to serve customers who hold different beliefs than the business owner.

If accepted, the expansive interpretation of religious freedom opposed here *could*, through ever-expanding exemptions granted to more and more persons and entities—pastors, priests, doctors, nurses, pharmacists, florists, restaurant workers, hotel wonders, rental car companies, travel agents, and county clerks who issue and sign marriage licenses— effectively authorize a parallel legal order with re-inscribed discrimination against women (and men), LGBTQ persons, and marginalized others. Rather than protecting the freedom of religious practice, following these precedents would place courts in danger of blurring the separation of church and state by sanctioning religiously-motivated discrimination. The initial intent of "religious freedom" was to be like a defensive shield protecting the diverse practices of religious faith. It was not intended to be used as a hostile sword to discriminate against people seeking legal services and equitable resources. Such practices of inequality perpetuate second-class citizenship in the name of religion, a violation of the First Amendment's prohibition of government establishment of religion.

APPENDIX: Case Examples

Some additional cases involving a "religious freedom" defense for refusing services and discriminating against particular categories of persons:

Reproductive Health Care
Since Roe v. Wade became the law of the land, the idea of "religious freedom" has been used to deny safe, legal abortions to women and endanger women's health. In this way, laws have been enacted to override medical standards of care that are in the best interests of patients.
* In Kansas, a patient can't sue her doctor for withholding accurate information about her pregnancy if the doctor believes that the patient would have an abortion after receiving the information.
* In South Dakota, a pharmacist can refuse to provide contraceptives even when a patient has a prescription from a health care provider.
* In Maryland, a hospital can refuse to provide permanent birth control services to women who have decided that this type of contraception is right for them.
* A U.S. District Judge in Texas ruled in 2016 that doctors could refuse to treat women who had previously had abortions. Judge Reed O'Connor contended that the nondiscrimination rule in the ACA violated the "religious freedom" of doctors and insurance companies that consider abortion to be "evil." (These citations are adapted from Planned Parenthood Action Fund Report, "Religious Refusal and Reproductive Health;" and January 3, 2017, article by Mark Joseph Stern in *Slate*, "Judge: Doctors Have 'Religious Freedom' to Refuse to Treat Trans Patients, Women Who've Had Abortions.")

Lesbian, Gay, Bisexual, and Transgender Rights
The rights of LGBT persons are being challenged on many fronts under the banner of "religious freedom."
* In October 2017, the Justice Department released a sweeping "license to discriminate allowing federal agencies, government contractors, government grantees, and even private businesses to engage in illegal discrimination, as long as they can cite religious reasons for doing so.
*The Supreme Court will soon hear the case of Masterpiece Cakeshop v. Colorado Civil Rights Commission. The bakery owner refused to sell wedding cakes to same-sex couples, claiming that Colorado's Anti-Discrimination laws violated his freedom of speech and exercise of religion.
* In Washington state, a gay couple approached Arlene's Florist to purchase flower arrangements for their wedding in 2013. They were denied on the basis of the owner's religious beliefs.
* A New Mexico case in 2006 involved a refusal by the co-owner of Elaine Photography to film a lesbian commitment ceremony, claiming that doing so violated her Christian beliefs.
* Innkeepers at the Wildflower Inn in Vermont in 2012 refused to host the

reception of a lesbian couple due to their personal feelings and a no-gay receptions policy.
* An Illinois couple were denied by two facilities in 2011 to host their civil commitment ceremony, and in one case were subjected to a Biblical lecture on homosexuality.
* Catholic Charities in Illinois excludes unmarried couples, especially same-sex couples, who were qualified to act as foster or adoptive parents.
* Currently there are 32 states that have marriage equality laws regarding same-sex couples. Even in some of those states, and elsewhere, government officials refuse service to gay couples based on their religious beliefs.
* A graduate student in a university counseling program in Michigan refused to work with a gay client on the grounds that it violated her religious beliefs.
* In 2016, North Carolina passed a law requiring transgender people to use bathrooms corresponding to the sex on their birth certificate. In Mississippi an even broader law allows people and institutions to deny services to gay people on the basis of their religious beliefs. (These citations are adapted from the 2017 ACLU Annual Report; January 3, 2017, article by Mark Joseph Stern in *Slate*, "The National Center for Transgender Equality Blog."

RELATED RESOLUTION OF THE 223rd GENERAL ASSEMBLY (2018):

THE BOUNDARIES OF RELIGIOUS LIBERTY

The 223rd General Assembly voted to affirm and clarify the position of the Presbyterian Church (U.S.A.) regarding the appropriate boundaries of religious liberty:

1. Affirm the "Guiding Principles for Ethical Decisions Concerning Religious Freedom Around the World" as approved by the 214th General Assembly (2002) (Minutes, 2002, Part I, pp. 666ff), as the Presbyterian Church (U.S.A.)'s position regarding the intersection of religious freedom and human rights, and a sound application of the denomination's policy statement, *God Alone Is Lord of Conscience*, as adopted by the 200th General Assembly (1988);

2. Affirm, consistent with these actions of previous assemblies, and the principles of the *Confession of Belhar*, that religious freedom is not a license for discrimination against any of God's people, and cannot justify the denial of secular employment or benefits, healthcare, public or commercial services or goods, or parental rights to persons based on race, ethnicity, sex, gender, sexual orientation, gender identity, religion, or gender expression.

3. Direct the Stated Clerk and the Office of Public Witness to oppose legislative, judicial, and administrative efforts at the state and federal levels to limit the protection of persons based upon race, ethnicity, sex, gender, sexual orientation, gender identity, religion, or gender expression in the guise of religious freedom.

4. Encourage synods and presbyteries to oppose legislative, judicial, and administrative efforts at the state and federal levels to limit the protection of persons based upon race, ethnicity, sex, gender, physical limitations, sexual orientation, gender identity, religion, or gender expression in the guise of religious freedom.

5. Encourage all Presbyterians to distinguish between our historical understanding of our religious freedom to practice the essential tenets of our faith, and the misuse of the term religious freedom as a justification for discrimination in the provision of secular employment or benefits, healthcare, public or commercial services or goods, or parental rights to persons based on race, ethnicity, sex, gender, physical limitations, sexual orientation, gender identity, religion, or gender expression.

Rationale

The misuse of "religious liberty" is costing lives and depriving individuals of basic human rights. The federal government and state legislatures are considering and passing legislation, and adopting administrative rules and regulations, under the guise of religious freedom, that in reality are nothing more (or less) than a targeted attempt to promote a singular religious viewpoint that does not believe LGBTQ individuals are entitled to the full scope of human rights to employment, healthcare, and parenting rights. These laws give businesses, service and healthcare providers, government workers, and private citizens engaged in commercial activities the unfettered right to discriminate against others, deny them needed services, and impose their own religious beliefs on others, so long as they cite their religious or moral belief as the reason for doing so. Similarly, individuals found to have violated laws guaranteeing against discrimination in public accommodations and the delivery of commercial services are claiming a right to assert religious freedom as a shield against liability for such discrimination.

Categorizing discrimination against individuals on the basis of such individuals' race, ethnicity, physical limitations, gender, sexual orientation, gender identity, or gender expression as an exercise of religious freedom flies in the face of the foundation of such freedom—the assurance of the dignity and basic human rights of all human beings—and should not be condoned by the Presbyterian Church (U.S.A.).

The General Assembly, in its previous approval of "Guiding Principles for Ethical Decisions Concerning Religious Freedom Around the World" by the 214th General Assembly (2002), and of the policy statement, *God Alone Is Lord of Conscience* by the 200th General Assembly (1988), has laid a firm foundation for the necessity of and boundaries for the exercise of religious freedom. However, neither statement addressed the misuse of religious freedom to justify denial of basic human rights to individuals based upon race, ethnicity, physical limitations, gender, sexual orientation, gender identity, or gender expression.

Recent executive and legislative actions—such as the "Presidential Executive Order Promoting Free Speech and Religious Liberty," issued May 4, 2017, and the so-called "First Amendment Defense Act"—seek to justify discrimination against individuals, particularly individuals who face discrimination based on their sexual orientation, gender identity, or gender expression under the guise of religious freedom. Likewise, in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the United States Supreme Court is currently determining whether individuals can avoid liability for violating state anti-discrimination laws regarding public accommodations and the delivery of commercial goods and services by claiming a religious right to engage in such discrimination.

The Presbyterian Church (U.S.A.) should speak with a clear voice for "the destitute, the poor and the wronged" (*Book of Confessions*, Confession of Belhar, 10.7) to affirm that "religious freedom" can never be a pretext for denying all of God's children basic human rights and freedom from discrimination in secular employment or benefits, healthcare, public or commercial services or goods, or parental rights.

The Role of Social Witness Policy Statements in Church & Society

Religious Freedom without Discrimination and *The Boundaries of Religious Liberty* approved on June 22, 2018, at the 223rd General Assembly, meeting in St. Louis, Missouri. These resolutions are commended as guidance to the free conscience of all members, congregations, and councils of the

Presbyterian church (U.S.A.), thus they are advisory and not compulsory. The policy sections, however, are directive to the agencies and staff of the General Assembly, including the Presbyterian Mission Agency, its Office of Public Witness in Washington, D.C., the Presbyterian Ministry at the United Nations, and its World Mission ministries. These statements are distributed to members and all persons of good will as part of our Reformed Christian belief that just governments are instituted to be God's agents for human good, and that disciples of Jesus Christ are to pursue "social righteousness" as well as other gifts of the Spirit.

NOTE

This booklet is available online at: *https://www.pc-biz.org/#/search/3000261*. It has been laid out for ease in congregational and personal use by the Communications office of the Presbyterian Mission Agency and is also free download at: *presbyterianmission.org/resources/topics/acswp*. Print copies can be ordered for $2 each from: *www.pcusastore.com* PDS# 24-052-18-003

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