

# International Journal for Religious Freedom (IJRF)

## Journal of the International Institute for Religious Freedom

IJRF is published bi-annually and aims to provide a platform for scholarly discourse on religious freedom in general and the persecution of Christians in particular. It is an interdisciplinary, international, peer reviewed journal, serving the dissemination of new research on religious freedom and contains research articles, documentation, book reviews, academic news and other relevant items.

The editors welcome the submission of any contribution to the journal. Manuscripts submitted for publication are assessed by a panel of referees and the decision to publish is dependent on their reports. The IJRF subscribes to the National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals.

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# International Journal for Religious Freedom

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**Graphic Design and Layout:** African Renewal, Ben Nimmo – [www.renewal.org.za](http://www.renewal.org.za)

**Cover art:** The illustration on the cover is taken from the flight to Egypt by Josef, Mary and Jesus, enacted by the Mafa people, a north Cameroonian ethnic group, and painted by an anonymous French artist. The scene also symbolises the topics of this issue, advocacy and law. According to the Gospel of Matthew (Chapter 2, Verses 13-18) God, by means of an angel, advocated for the protection of the newborn baby Jesus from the murderous envy of king Herod. Josef also advocated for his family by fleeing with them to Egypt as instructed and remaining there until it was safe to return. Herod in turn issued a decree to massacre all children under the age of two years in the region of Bethlehem. Both the abuse of power, decrees and laws as well as human (and sometimes divine) advocacy are recurrent issues in present day human rights abuses, including religious persecution.

This is part of a coherent set of pictures illustrating 62 New Testament scenes. Reproduction with kind permission by the association Vie de Jesus Mafa (Life of Jesus Mafa). All rights reserved. Vie de Jésus MAFA, 24 rue du Maréchal Joffre, 78000 Versailles, France, [www.jesusmafa.com](http://www.jesusmafa.com).

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# Editorial

## Advocacy and law

This issue of IJRF focuses on “advocacy and law”, namely issues related to religious freedom advocacy and legal matters surrounding religious freedom. Here is a stimulating general definition which applies well to social justice advocacy, including religious freedom advocacy on behalf of those persecuted for the sake of their religion and/or because of the religious motives of the persecutors:

Advocacy is speaking, acting, writing, with minimal conflict of interest on behalf of the sincerely perceived interests of a disadvantaged person or group to promote, protect and defend their welfare and justice by being on their side and no-one else's; being primarily concerned with their fundamental needs; remaining loyal and accountable to them in a way which is emphatic and vigorous and which is, or is likely to be, costly to the advocate or advocacy group.

(Action for Advocacy Development, based on Wolf Wolfensberger; [www.qla.org.au](http://www.qla.org.au))

Legal matters have a broad and multifaceted connection to religious freedom and religious persecution. This ranges from human rights and constitutions to specific laws that are to protect religious freedom. In other contexts the same entities might be used or abused to restrict religious freedom and/or to justify persecution. Several forms of religious freedom advocacy have a legal nature. In this issue of IJRF we will hear of legislative advocacy and litigation. Beyond legal issues there seems to be rather little scholarly study of religious freedom advocacy.

This issue of IJRF is the result of synergistic cooperation between the editors and Advocates International (AI). Therefore we introduce this largest international network of Christian lawyers with a strong interest in religious freedom. While IJRF sourced its articles through the peer review process as usual, AI has ably arranged a wide distribution and raised diverse sponsorship (see list on page 2 and the introduction of Alliance Defense Fund as the main sponsor).

Thomas Schirrmacher and Thomas K Johnson discuss the reluctance of some Christians to use legal recourse in their opinion piece.

We are pleased to report again about “research in progress”, this time from Taylor University about “responses to persecution”. We welcome other announcements from institutions and individual researchers.

Christine Schirrmacher as a scholar of Islam describes Islamic human rights declarations and discusses the objections to the universal validity of the Sharia by both Muslims and non-Muslims. Janet Epp Buckingham as a law professor examines the recognition of collective religious practices in Canadian law. From the same discipline, but in the South African context, Shaun A de Freitas argues for the protection of the medical practitioner's right to conscientious objection to participating in abortions.

The Director-General of the National Human Rights Commission of Korea, Jae-Chun Won, analyzes the process and phases of religious persecution and oppression in North Korea from 1945 to 2011 and provides evidence from defector testimony. Ann Buwalda together with Godfrey Yogarajah examines the reasons for the lack of justice in Pakistan and decries a culture of impunity, government toleration of religious persecution and the abuse of blasphemy laws to which adherents of all religious groups are falling victim.

Knox Thames discusses various mechanisms at the international level that religious freedom advocates can use and international bodies which can be approached. Iain T Benson describes the genesis of and philosophy behind the South African Charter of Religious Rights and Freedoms, signed by every major religious group in South Africa, which might be emulated in other contexts.

Finally we document a statement issued by the Religious Liberty Partnership on the calls for freedom in the Middle East and North Africa as well as the landmark recommendations for conduct by the three largest Christian world bodies on Christian witness in a multi-religious world.

As usual, this issue is complemented by noteworthy items and book reviews. Several articles needed to be abbreviated and full versions are available online at [www.iirf.eu](http://www.iirf.eu).

## **Personalia**

It is our pleasure to honor the chairperson of the IIRF Academic Board, Prof. Dr John Warwick-Montgomery on the occasion of his 80th birthday. We also feature an article of his, discussing several court cases involving Greek opposition to evangelism, that reveal him as an outstanding advocate of religious freedom.

With hurting hearts we pay tribute to our late publisher and layouter Manfred Jung. With joy we welcome Stephen K Baskerville, PhD, from Washington D.C., USA, who had a great share in producing this issue, assuming the vacant position of managing editor. He teaches as professor of international relations at Patrick Henry College, Purcellville, Virginia.

## **Welcome to new subscribers**

More than 6000 copies of this issue of IJRF will be distributed at continental AI lawyers' conferences in Africa and Asia, and by IIRF at various occasions on four continents. This represents the largest print run and the widest distribution so far in the history of IJRF. We invite all recipients to subscribe to IJRF in print or to be alerted of free online issues.

*Yours for religious freedom, Dr Christof Sauer  
in cooperation with Prof. Dr Dr Thomas Schirrmacher  
and Prof. Stephen K Baskerville, PhD*

## Congratulations

The directors and board members of IIRF congratulate the chair of its academic board on the occasion of his 80th birthday.

### John Warwick Montgomery's contributions to religious freedom advocacy



On 18 October of this year, Professor Dr Dr Dr John Warwick Montgomery will celebrate his 80<sup>th</sup> birthday. This seems incredible not only to him but also to all who know him, since he continues to carry on his academic and legal activities unabated. Just take as an example the annual International Academy of Apologetics, Evangelism and Human Rights, in Strasbourg, France, of which he serves as director and teaches at least two courses ([www.apologetic-sacademy.eu](http://www.apologetic-sacademy.eu)).

For those unacquainted with Professor Montgomery's work or for those who have not seen his website ([www.jwm.christendom.co.uk](http://www.jwm.christendom.co.uk)), here is a brief account of his past and present involvements,

followed by a summary of his important contributions in the field of religious liberty.

Dr Montgomery, though a naturalised English subject and a European resident, holds the position of Distinguished Research Professor of Philosophy and Christian Thought at Patrick Henry College in Virginia, where, one semester each academic year he teaches apologetics (the defense of the Christian faith), philosophy of law, and international human rights. Previous positions include Professor of Law and Humanities, University of Bedfordshire, England (he retains Emeritus status there) and member of the Federated Theological Faculty of the University of Chicago. He holds twelve earned degrees, including three doctorates (Ph.D., Chicago; D.Théol., Strasbourg; LL.D., Cardiff, Wales), and an honorary doctorate from the Institute for Religion and Law, Moscow.

Professor Montgomery is an American lawyer (California, District of Columbia, Virginia, Washington State bars, and the bar of the U.S. Supreme Court), an English barrister, and an *avocat à la Cour*, *barreau de Paris*. He is author or editor of more than 60 books in the fields of Christian theology, apologetics, law, and literature ([www.ciltpp.com](http://www.ciltpp.com)) and over one hundred scholarly journal articles. Studies of his work include Dr Ross Clifford's book-length *John Warwick Montgomery's legal*



*apologetic: An apologetic for all seasons* (Bonn, Germany: VKW); a massive Festschrift honouring him was published a year ago: William Dembski and Thomas Schirrmacher (eds.), *Toughminded Christianity: The legacy of John Warwick Montgomery* (Nashville, TN: B&H).

Dr Montgomery's legal specialty is the defense of religious freedoms, particularly Christian evangelism. He has been involved in landmark cases, such as the case of the "Athens Three," obtaining acquittals at the Athens court of appeal of YWAM missionaries and a Greek evangelical pastor for alleged "proselytism." Professor Montgomery's advocacy produced positive results in a series of Greek cases (*Larissis et al.*) before the European Court of Human Rights in Strasbourg; Greek military officers were vindicated in their evangelistic presentations of the gospel to laymen – though the Court, sadly, refused to upset the Greek anti-proselytism statute or to allow the officers to evangelise military personnel below their rank. (On these Greek cases, see Montgomery, *The Repression of Evangelism in Greece* [Lanham, MD: University Press of America].)

Recently, Dr Montgomery won a religious liberties case before the European Court of Human Rights of such importance that Sir Nicolas Bratza, one of the judges of the Court, in a public lecture at Lincoln's Inn, London, referred to it as the most important Article 9 (religious freedom) case to come before the Court since the new procedures under Protocol 11 came into force in 1998. *Bessarabian Orthodox Church v Moldova* vindicated the right of a small Orthodox church body, under the aegis of the Patriarch of Bucharest (Romania), to be registered in Moldova; the government (consisting largely of ancient U.S.S.R. Marxists) had insisted on just one Orthodox Church – one aligned with the Moscow Patriarchate. This case established the clear precedent that governments cannot exclude church bodies on theological or political grounds: believers must be allowed to form their own churches, to own property, and to engage in evangelistic and other ecclesiastical activities without interference from the state. As a result of this legal victory, Professor Montgomery was invited to Bucharest and received the coveted Patriarch's Medal of the Romanian Orthodox Church. (On the Moldovan case, see Montgomery, "Life can be difficult if you are Bessarabian Orthodox," in his forthcoming book, *Christ as centre and circumference* [Bonn, Germany: VKW].)

We thank God for the grace and talents he has bestowed on Dr Montgomery and we wish him many more years of service to the wider community – particularly in his role as Honorary Chairman of the Academic Board of the International Institute for Religious Freedom.

*Angus Menuge, Ph.D., Professor of Philosophy, Concordia University Wisconsin*

## Tribute to Manfred Jung (1960–2011)



The International Institute for Religious Freedom (IIRF) of the World Evangelical Alliance pays tribute to the publisher of its journal and book series, Manfred Jung, who tragically died in a motor car accident on 25 May 2011 at the age of 51.

He was the Executive Director of AcadSA Publishing (Academic Publishing for Southern Africa) which was founded in 2007 on the suggestion of the Cape Town IIRF Director. When the International Journal for Religious Freedom was founded in 2008, Manfred Jung developed its cover and layout. He worked tirelessly to get five issues

of the journal to press and published on time. He even advanced the funding for some of the issues. He organized bulk shipping for distribution at various events around the world.

He also designed the cover and layout of the Religious Freedom Series of the IIRF and organized its printing.

In fact he was the resource person for all graphics design and publishing work of the IIRF Cape Town Bureau, from its roll-up banner, advertisement of publications, to business cards.

He helped wherever he could, advertising the IIRF publication at various conferences along with other AcadSA publications. In October 2010 he delivered 3,000 copies of the journal and the second volume of the Religious Freedom Series just in time for distribution to the participants of a large world congress in Cape Town. His last trip was to Zimbabwe where he also delivered IIRF publications. On the return journey to Johannesburg he was tragically killed in a head-on collision with an oncoming vehicle passing a truck.

He was an invaluable advisor for the emerging Cape Town Bureau of IIRF and a good friend.

Manfred Jung hailed from a rural town in Germany, Biberach an der Riss (as does the author of this tribute) where he learned the trade of a chef. He worked seasonally in various hotels in Switzerland. He then attended Bible College in Beatenberg, Switzerland. In 1988 he married Friedrun and in 1990 they arrived in Cape Town, South Africa, to do mission work. He learned to interact with Cape Malay Muslims and started to teach Christians to better understand Muslims, something

he would carry on doing for the rest of his life. In this line of work he also developed his publishing skills. On 25 May 2000 he welcomed the author and his family on South African soil, which was followed by three years of intensive ministry together.

During a transition period he completed a Master of Theology degree at the University of Stellenbosch, examining the propagation of Islam in black townships around Cape Town.

The family then moved to Johannesburg, where they focused on assisting Christian workers with literature, training and hospitality. He also embarked on a doctorate at the University of South Africa under the supervision of the author and Prof. Yusuf Dadoo. However, the research remained in the proposal phase, as the growth of the publishing house and the success of his ministry kept him very busy.

Manfred was highly efficient and professional in his work and always willing to help. He possessed great organizational, networking and innovating skills. But above all he will be remembered as a committed Christian. The staff of IIRF express their heartfelt condolences to Friedrun Jung and her four children.

While Manfred was busy completing the layout of the latest IJRF issue, he unexpectedly received an invitation for a ministry trip to Zimbabwe. He accepted the invitation as it also gave him the opportunity to deliver literature. A few days earlier he had mentioned "I might be gone". At 11 pm, an hour before his departure, he wrote with reference to the latest issue of the journal, "This far I managed". These statements have now proved to be true about his life's journey this side of heaven. May God give us grace to also reach our goal.

*Dr. Christof Sauer, Cape Town, South Africa  
with Prof. Dr. Thomas Schirrmacher, Bonn, Germany  
as directors of the International Institute for Religious Freedom  
on behalf of its international and South African boards and staff*

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**FAITH IN THE FACE OF SECULARISM**

## We Introduce ...

This section provides a platform for organisations working in the area of religious liberty to introduce themselves. In this way we seek to raise awareness of the various players in the field. We hope this will lead to appreciation of their work and will ultimately serve the persecuted.



### Advocates' vision and mission

The vision of Advocates International is to be a worldwide fellowship of advocates bearing witness to Jesus Christ through the legal profession.

The mission of Advocates International is encouraging and enabling advocates to meet locally, organize nationally, cooperate regionally and link globally to promote religious freedom, justice for the poor, rule of law, human life and dignity, peace and reconciliation, family and community, and ethical integrity.

### Advocates' development

As recently as 1991, there were ten national Christian lawyer groups in the world but only two, Christian Legal Society (USA) and Christian Legal Fellowship (Canada), were engaged proactively promoting and protecting religious freedom, family, reconciliation, human rights, the sanctity of life, justice for the poor, or the rule of law. Since its founding in 1992 by the late human rights attorney Samuel E. Ericsson, and Professor Lynn Buzzard, a current board member, Advocates International (AI) has grown to be the world's largest international faith-based network of legal professionals networked for these common goods.

Advocates International was launched in response to the fall of communism in Eastern Europe and the subsequent collapse of the Soviet Union. AI is a work in progress. It puts in practice the strategy of Jesus whose chosen method was the formation of small bands of committed friends. He inspires them with a sense of his spirit and vision to build their lives into an intensive fellowship of affection, worship and work.

Through AI's efforts since that time – more fully summarized and chronicled on its website in its “Advocacy & Gatherings Overview” and “Historic Chronology (1991-2011)” – there are now more than 100 active or emerging Christian lawyer groups

among 158 nations linked through AI's six regional networks. Since 1992, 25,000 and more people have attended conferences or other gatherings organized, funded or co-sponsored by AI, its regional networks or national affiliates, including:

- 7,000 delegates who attended 40 or more regional and sub-regional conferences in Africa, Asia, Europe, Latin America, North America and the Balkans, Middle East, and Caribbean; 1,200 delegates attended five Global Convocations in the USA since 1998, joined by
- 2,000 Christian Legal Society/USA members and friends; 3,900 justices, judges and magistrates have participated in 32 judicial conferences or seminars; and
- 7,000 lawyers, judges, clergy, students, business leaders and government officials have participated in more than 100 meetings other than the global, regional or judicial conferences.

Five AI Global Convocations and 35 Regional Conferences since 1998 have been especially instrumental in broadening and strengthening a unique global movement of advocates committed to doing “justice with compassion.”

Today, AI's global network informally links 30,000 lawyers, law professors, jurists, law students and other law professionals and their colleagues in 700 cities, towns and law schools, in 150 nations on six continents. AI's motto, “doing justice with compassion” comes from Jesus' admonitions to the lawyers of his day (Matthew 23:23) and from His good Samaritan parable (Luke 10:25-37). In the 19th century, British Prime Minister Benjamin Disraeli defined justice as “truth in action”. Jesus gave a practical application for “compassion” in the “Golden Rule”: “do to others what you would have them do to you.”

## **Advocates' core functions**

Advocates International encourages followers of Christ within the legal profession to be pro-active locally, nationally, regionally and globally in the collaborative advocacy of AI's six Global Resource Teams (GRTs). These are memorably defined by the acrostic P-R-A-Y-E-R-S, as follows:

1. Peacemaking and conflict resolution promoted through the Peace and Reconciliation GRT (Matthew 5:9);
2. Religious freedom promoted through the Religious Freedom GRT (Galatians 6:9-10);
3. Assisting the poor and oppressed through advocacy, legal intervention and advice through the Justice for the Poor GRT (Luke 10:25-37 and Matthew 25:31-46);
4. Yielding to protecting life at all stages through the Sanctity of Human Life GRT and the Law of Life Project (Deuteronomy 30:19-20);

5. Empowering the family in community through its Family and Community GRT (Ephesians 5:22-33 and 6:4); and
6. Redeeming the rule of law and integrity in the face of governmental incapacity or corruption through its Rule of Law GRT (Romans 13);
7. Saying our prayers for one another around the globe as the under-girding strength of the entire fellowship and each GRT (Psalm 37, 55:17).

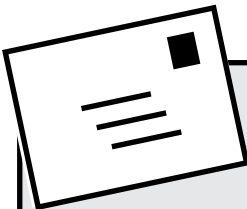
If you are interested in getting involved in or starting a fellowship of Christian advocates in your country, being a part of any of the Global Resource Teams, or playing a leadership role, please contact Advocates' President & CEO, Brent McBurney at [bmburney@advocatesinternational.org](mailto:bmburney@advocatesinternational.org) or Global Council Chairman, Min Choon Lee at [minchoon.lee@gmail.com](mailto:minchoon.lee@gmail.com), or visit [www.advocatesinternational.org](http://www.advocatesinternational.org).

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## Alliance Defense Fund

### Protecting religious freedom around the world

Benjamin W Bull<sup>1</sup>

The Alliance Defense Fund is a servant organization that provides the resources for the legal defense of religious freedom, the sanctity of life, marriage and the family. While founded in the United States of America in 1994 and focusing on that country, it now extends its efforts to legally defending religious freedom around the world.

Alliance Defense Fund and Advocates International have collaborated in a variety of significant cases across the globe.

In *A, B & C v. Ireland*, a major victory was achieved for the most vulnerable at the European Court of Human Rights. Ireland's constitution bans abortion except to save the life of the mother. Abortion advocates launched this case as an effort to create an international and binding right to abortion on demand in all forty-seven European nations subject to the court's jurisdiction. Representing several international pro-life organizations, an intervention action was filed to defend Ireland's law. The international court awarded a significant victory for the right to life in affirming Ireland's abortion restriction.

In *Lautsi v. Italy*, another case at the European Court of Human Rights, a victory was achieved to win the right to display the cross within Italy's public school classrooms. An Italian atheist brought suit for an injunction against the cross on the grounds that it offended him. Representing thirty-three Christian members of the European Parliament, an intervention was filed, helping to win this important victory.

ADF is assisting AI member and prominent UK barrister Paul Diamond in two important cases also at the European Court of Human Rights. The first, *McFarlane v. United Kingdom*, involves a Christian psycho-therapist with a religious belief in opposition to homosexual behavior. The case will test whether his protected right of conscience was violated when he was terminated for being unable, for religious reasons, to counsel a same-sex couple. The second case, *Chaplin v. United Kingdom*, involves a hospital policy banning the wearing of religious cross necklaces by medical personnel, but permitting Muslim hijabs (head coverings). A Christian nurse was terminated for wearing her cross and alleged non-compliance with the policy, which she felt was wrongly discriminatory against Christians. The international court very recently granted review to both cases.

Last year, with the direct participation of AI Indian lawyers, Robin David and Tehmina Aurora, the *India Initiative* was launched. In 2007 and 2008 violent anti-

<sup>1</sup> ADF Chief Counsel, Executive Director of ADF-Global, and member of Advocates International.

Christian fundamentalist Hindu mobs went “on a rampage” in the Indian state of Orissa resulting in the deaths of more than 100 Christians, rapes, and destruction of several thousand Christian homes and churches. More than 60,000 Christians were left homeless. Local law enforcement was widely viewed as complicit in failing to stop the violence. Anti-Christian sentiment has continued with six Indian states enacting “anti-conversion” laws making it a crime, or unduly burdensome, to convert from Hinduism to Christianity.

The initiative was launched to bring criminal and civil actions against the perpetrators of the killings and mayhem, to both punish and stop intimidation against Christians. The very first criminal convictions have been obtained against the perpetrators. More than 100 criminal cases have been brought with 18 convictions to date, including two life-sentences. Over \$100,000 in civil compensation has been recovered for more than 350 victims.

A landmark lawsuit has also been filed challenging the “anti-conversion” laws under the Indian Constitution, which guarantees freedom of religion. An encouraging early ruling has been won but the case will take several years to complete. If successful, it will remove a significant barrier for religious freedom to 300 million Indian Dalits, formerly called “untouchables.”

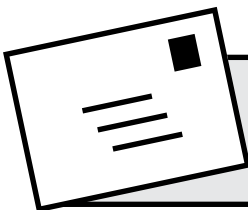
Finally, ADF, AI, and other Christian organizations have collaborated in making two important submissions to the United Nations Office of the High Commissioner for Human Rights, defending the fundamental right of Christians to evangelize and call others to repentance. The submissions respond to arguments raised at the UN that would make any disputation over truth claims of other religions, such as Islam or Hinduism, “hate speech.” We seek to prevent the UN from interfering with Christian expression.

ADF offers various services including legal representation, attorney and law student training, case funding, and resource materials, including books on Common Law and Natural law for lawyers.

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# May Christians go to court?

Thomas Schirmmacher<sup>1</sup> and Thomas K Johnson<sup>2</sup>

## Abstract

Some Christians hesitate to use the courts. Some hesitate all the more to go to court to defend their Christian activities, preaching, and churches. But extreme hesitation to use the courts is not prescribed by biblical injunctions. The apostles set an example by making significant use of the legal process, especially in relation to defending the right to preach the gospel and develop the church, though the example they set included being winsome in relation to the gospel during public conflicts. Jesus' famous statements in the Sermon on the Mount address the problem of revenge and personal retaliation; they do not contradict the example of the apostles.

**Keywords** Ethics, Christian, justice, court, law, Apostles, Paul, Jesus.

## 1. The Apostles used the law!

When Peter (1 Peter 3:15-17) taught Christians to be ready to “give an answer” (Gk. *apologia*), this applied first of all in court; an *apologia* was the technical term for a speech for the defence before a court. Peter wanted Christians to expect to be accused so they would be motivated to get ready. Christians must maintain a clear conscience. In the event that they do evil, the state is the servant of God to lawfully punish all lawbreakers. But Christians should be ready to give an answer when they are accused of wrongdoing simply because of their faith.

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The Book of Acts reports several conflicts of the apostles with courts and judges. The record includes defences made by the apostles and evangelists in court, and in some cases the early Christians took legal initiatives to defend themselves and their churches. Nowhere is there a hint that they should have remained silent. When Peter and John were put in prison by the Sanhedrin (Acts 4:1-22), they answered the court. The same thing happened with the second arrest (Acts 5:27-42), though this infuriated the judge. The indictment, imprisonment, and stoning of Stephen are presented in detail (Acts 6:8-8:2); the longest speech in the New Testament is Stephen's defence before the court (Acts 7: 1-53).

It is not clear if Paul's words against the Jews (Acts 13:46-47) constituted a legal defence. In any case, Paul and Barnabas were driven away and moved to Iconium. In Philippi the Jews again instigated persecution, this time for financial reasons (Acts 16:16-40). After their supernatural release and the conversion of the jailer, Paul took legal initiative, using his rights as a citizen, to have their wrongful torture and confinement publicly retracted. No doubt he wanted the jailer and the newly started church to benefit from the protection of the law which should restrain persecution.

The last eight chapters of Acts recount Paul's unlawful arrest and his defence before Roman judges. Upon arrest in Jerusalem, the Jews beat Paul; they stopped when Roman soldiers intervened (Acts 21:27-32). Paul asked the officer for the opportunity to give a defence (Acts 21:37-39). His speech caused an uproar (Acts 22), such that the officer had Paul taken away. When Paul had been bound in preparation for a flogging, he called upon his rights as a Roman citizen, both to protect himself and to protect the reputation of the gospel: "Is it legal for you to flog a Roman citizen who hasn't even been found guilty?" (Acts 22:25; comp. 26-28). His legal appeal prevented the flogging, including the pain and injury that would result. On the following day, Paul wanted to begin his defence in front of the Sanhedrin (Acts 23:1). However, the High Priest had him struck on the mouth (Acts 23:2), whereupon Paul protested sharply, "God will strike you, you whitewashed wall! You sit there to judge me according to the law, yet you yourself violate the law by commanding that I be struck!" (Acts 23:3). On account of a murderous conspiracy, Paul was placed under the protection of hundreds of soldiers and brought to Caesarea to Roman Governor Felix with a letter explaining the situation (Acts 23:25-33). The legal seesaw among Felix, his successor Festus, and Herod Agrippa II is described in detail (Acts 24-26), whereby Paul's repeated defences play a central role. Since Paul might be taken back to Jerusalem, he used his legal right to appeal to the emperor (Acts 25:10-21). In the end, Agrippa said Paul could have been set free (Acts 26:32) had he not called upon the emperor. Perhaps Paul miscalculated how to best use the courts, but neither Paul nor any other New Testament preacher

is criticized in the Bible for using the courts and their legal rights to defend themselves, their preaching, and their churches.

## 2. Does Jesus teach us to waive legal rights?

“You have heard that it was said, ‘Eye for eye, and tooth for tooth.’ But I tell you, do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give to the one who asks you, and do not turn away from the one who wants to borrow from you” (Matthew 5:38-42).

Here Jesus quotes the *lex talionis* or *ius talionis*.<sup>3</sup> However, Jesus is not contrasting the Old Testament’s “eye for eye, tooth for tooth” with New Testament love. The Pharisees and teachers of the law, whom Jesus was addressing, falsely derived a right of private revenge from this slogan which defined a principle of justice for the courts.<sup>4</sup> In the Old Testament the state has the duty to practice justice and exercise vengeance. The legal tenet “eye for eye, tooth for tooth” (Exodus 21:23-25; Leviticus 24:19-21; Deuteronomy 19:21) was never intended for personal relationships. Instead, the *lex talionis*: 1) expresses pointedly that every wrongdoing deserves just punishment; 2) it is also restrictive, that the penalty may never be more weighty than the deed (proportionality); and 3) it was not generally employed in a literal fashion, such that someone would have lost an eye or tooth.<sup>5</sup> For the life of an animal, for example, one had to make restitution with another animal or like consideration.

Legal justice is not rescinded in the New Testament. In Romans 13:4 the authorities remain “God’s servant, an agent of wrath to bring punishment on the wrongdoer.” The authorities have this task, although Paul later repeats the commandment to love (Romans 13:8-10). The state must still administer justice without respect of persons. In the Sermon on the Mount, Jesus did not reduce this duty of the state. He reaffirmed the historic duties of the state by mentioning judges, officers, prisons, and a law suit (Matthew 5:25-40).

The statement in Matthew 5:39 to “not resist an evil person” can be misunderstood to mean that Christians are not ever to defend themselves against evil. But not every type of evil is meant; otherwise Christians could not even resist the evil inside.

<sup>3</sup> Latin, *lex* = law; *ius* = justice; *talio* = retribution.

<sup>4</sup> Eugen Hühn, *Die alttestamentlichen Citate und Reminiscenzen im Neuen Testament* (Tübingen: J. C. B. Mohr, 1900), pp. 8-9. Hühn demonstrated that the Pharisees incorrectly took a judgment made by a judge and conferred it upon private life; he also demonstrated that at the beginning of the section Jesus was not actually quoting the Old Testament but rather the interpretation of the Pharisees.

<sup>5</sup> Walter C. Kaiser, *Toward Old Testament Ethics* (Grand Rapids: Zondervan, 1983), pp. 72-73.

It has to do with the particular evil described in Matthew 5:39-41. This is evil in the form of insults and coercion. To be hit on “the right cheek” was an enormous affront which can easily rouse people to seek vengeance. Instead, a Christian should let himself be insulted a second time rather than seeking revenge, a most powerful way of ending cycles of retaliation.

Already in the Old Testament personal revenge was not allowed. “Do not seek revenge ... but love your neighbour as yourself” (Leviticus 19:18). Therefore, David did not kill Saul in spite of the injustice suffered and in spite of the favourable opportunities he had (1 Samuel 24:4-8; 1 Samuel 26:7-12). It was considered a virtue to pacify one’s enemy in the case of a dispute (Proverbs 15:18) and to achieve reconciliation prior to a lawsuit (Proverbs 17:14). The Old Testament saints knew one should not repay evil with evil (Proverbs 20:22). Jesus taught what the Old Testament taught, that justice and revenge are the duty of the state, while our personal relationships must be free from all revenge or retaliation.

### **3. Complementary principles**

God-fearing people should seek to follow two complementary principles: 1) The state has the duty of protecting people and avenging wrongs; therefore we may use the state and the courts to protect people and churches, including the open proclamation of the gospel. 2) Imitating Jesus, we must turn the other cheek and accept insults without any desire for personal revenge. Of course attempting arbitration, mediation, and reconciliation are biblical and should always be prior to any course of action that involves courts. And our readiness to receive the short end of the stick should be obvious. But reason demands that we be clear that going to court can be a responsible choice for Christians.



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## Responses to persecution

Nicholas Kerton-Johnson<sup>1</sup>, Aaron Johnson  
and Thomas Weingartner

The Department of Politics and International Relations at Taylor University, Indiana, USA, has initiated a research project analyzing responses to persecution by Christians in eleven Asian, Middle Eastern and African countries. The research will specifically analyze responses to persecution through understanding the following: what forms does persecution take? What responses has the church made to these acts? How have these responses impacted on the persecution? How does the persecution impact on the church's theology? In what ways does the church being persecuted receive support from Christians living in other parts of the world?

There are three primary reasons for conducting this research. First, such a body of knowledge will serve as a resource for the church, deepening our understanding of the dynamics of persecution, and helping to assist in the development of training. Second, such information will serve to familiarize the western church with the operating conditions of the church in contexts of persecution, and will serve to assist organizations bringing the world's attention to the plight of these Christians. Finally, this nuanced and in-depth analysis will assist in the development of an early warning system, to assist the church worldwide in identifying trends and incidences of persecution.

The information gathering effort for this research is reliant on collaboration from two key communities. First, western based anti-persecution organizations are in many cases storehouses of information, representing knowledge of various cases around the world. However, a parallel information gathering effort will be necessary. We seek to establish connections with the persecuted church itself, drawing information directly from them. The most valuable information will ultimately come from Christians in contexts of persecution and missionaries that work in these countries. This research will provide a powerful academic resource to assist Christians persecuted for their faith – a thus far grossly neglected field in academia.

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## Greek opposition to evangelism

John Warwick Montgomery<sup>1</sup>

### Abstract

The Greek anti-proselytism law has posed serious problems for evangelism and for the functioning of non-Greek Orthodox religious activities in that country – so often described as “the cradle of democracy.” In this article, the most important legal cases dealing with Christian evangelism in Greece are analyzed by the law professor who successfully won them at the Court of Appeals in Athens and at the European Court of Human Rights in Strasbourg.

**Keywords** Evangelism, proselytism, European Court of Human Rights, Greek Orthodox Church, Youth with a Mission (YWAM), “Athens 3”, *Larissis*, *Kokkinakis*, church-state relations, established churches.

Greece is generally viewed through the eyes of classical education (Pericles’ Oration on the Athenian Dead) or by way of Byronic 19th-century romanticism: the cradle of freedom cum laissez-faire sensuality ... Socrates and Zorba the Greek. Thus the popularity of the Greek islands for the perfect holiday.

In point of fact, one had better be very careful, at least religiously, while on that holiday. Since Byron’s day, when Anglican missionaries first brought their wares to Greece, an antiproselytising law has made the country anything but an open shop for religions other than the established Orthodox Church.

On holiday, therefore, one must be especially careful not to give a Bible (constituting a “material inducement” to convert) to someone not a member of one’s own church, or to criticise any of his religious ideas (one successful prosecution was for comparing a relic of St. Gerassimos to a “body stuffed with cotton”) or to invite

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children to a daily vacation church school. The law criminalises religious evangelism which takes “advantage of a person’s inexperience, trust, need, low intellect or naivety”; but, last we heard, everyone experiences religious “need” from time to time, and it is difficult to determine ahead of time (by an IQ test and psychological examination?) the intellectual and naivety level of the other person before getting into an evangelical discussion with him or her.

## 1. Background

The present-day attitude of the Greek populace and the Greek Orthodox Church toward issues of religious freedom is remarkably negative. In the early months of the new millennium, an effort by the socialist government to drop church affiliation from Greek national identity cards caused a nationwide row, with the Church claiming that its very existence would be imperilled by such a move. Even though the government noted that it was the Nazis who first introduced faith-designation on identity cards, and that the new regulation was doing little more than to streamline the cards (fingerprints, profession, and spouse’s name are also to be removed), the Church saw the move as a blow to national belief. Church spokesman Metropolitan Theoklitos asserted that “Orthodoxy . . . is an indivisible part of our identity and we want it written on the identity cards.”<sup>2</sup>

To understand such a reaction to what would generally be regarded as a tempest in a teapot, one needs to recall the modern religious history of Greece. Some 97% of the contemporary Greek populace are identified with Eastern Orthodox faith, in spite of low actual church attendance. Historically, the Orthodox Church in Greece held its own and indeed triumphed in bitter conflict with the Muslim-Ottoman empire, and the Greek-Turkish animosity today has a powerful religious component. Anglican missionaries in the 19th century were regarded as no less than heretics on the Greek scene; indeed, the first appearance of the modern Greek antiproselytism statutes (1844) was in large part due to the Greek Orthodox Church’s passion to restrain such organisations as the Society for the Propagation of the Gospel.

When liberal or socialist governments have been in power in Greece, church-state conflict has characterised the Greek scene. In November 1901, fighting between police and demonstrators resulted in eleven deaths and eighty persons being injured – owing to a dispute over the introduction of a demotic Greek translation of the Gospels! In 1907, the Holy Synod claimed (and won) the sole right to appoint and dismiss cantors and sextons, over against government demands for a say in Church councils and Church management. When Yiannis Kordatos’ book, *The*

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<sup>2</sup> Patrick Quinn, Associated Press dispatch, 15 May 2000. Cf. “Greek Church Fights Change in ID Cards,” *New York Times*, 1 June 2000.

*Social Significance of the 1821 Revolution*, was published in 1924, containing negative criticism of the Greek patriarchate and higher clergy, the Church reacted fiercely.

Another row broke out in 1925, when Christian associations and advocates of purist Greek complained of anti-national teaching methods at the Teachers' College and the Marasleio. In 1926, "longhaired communist" teachers were dismissed and the Teachers' College abolished, and in 1930 Nikos Kazantzakis and Dimitris Glinos went on trial for "mocking religion" in an article in a literary journal.

In 1952, the Plastiras government threatened to expropriate Church land and stop clerical pay if the Church did not hand over some of its real estate for the use of 200,000 landless people. Eventually the Church handed over 750,000 stremmas. There was vigorous opposition in 1954, when the Holy Synod excommunicated Nikos Kazantzakis for his books, *Captain Michalis* and *The Last Temptation*, urging the patriarchate to do likewise and calling for the public prosecutor to lay charges. Both refused.

In April 1959, Church and State were at loggerheads again over the transfers of metropolitan bishops. The government abolished the right of transfer in most cases, and empowered the education minister to halt the Holy Synod's proceedings. In May 1960, the crisis peaked with unprecedented episodes in eight bishoprics. In November 1965, when the government refused to recognise elections of bishops that were held despite their postponement by the Council of State, supporters of the Hierarchy clashed with members of religious organizations.

Since the 1967-74 dictatorship, talk of separating Church and State comes up whenever there is a dispute. In the 1980s, large demonstrations protested against legislation to regulate the matter of Church property.<sup>3</sup>

But church-state conflicts in Greece have not persuaded the legislature to get rid of the Greek antiproselytism law, much less to disestablish the Orthodox Church. In most of the small towns and villages, the most influential person is still the local parish priest. Legislators are well aware of this fact, particularly at election time. They realise that to oppose Church influence on a grand scale would be political suicide.

In the last quarter century, the Greek antiproselytism law has been used again and again to suppress religious views other than those of the established Church. The first substantial international opposition to such repression of religious freedom came by way of the *Kokkinakis* case, in which an elderly Jehovah's Witness, who had been arrested more than sixty times and convicted more than eight times for door-to-door proselytism, was criminally prosecuted for making the mistake of

<sup>3</sup> *Kathimerini News*, 14 June 2000.



trying to convert the wife of an Orthodox priest while the priest hid behind a door and took notes! The Strasbourg Court completely exonerated the applicant on the facts but refused to declare the Greek law incompatible with the European Convention on Human Rights.<sup>4</sup>

The “Trial of the Athens 3” in 1986 constituted the first of the significant Christian evangelism cases in Greece to come before the courts. This case was resolved within the Greek court system itself and thus, unlike *Larissis et al.* (which we shall discuss later), it did not reach the European Court of Human Rights in Strasbourg.

However, the arguments set forth – particularly those opposing the Greek anti-proselytising law – laid the basis for subsequent litigation in Strasbourg.

## 2. The “Athens 3” case

### 2.1 The Facts of the Case

In 1979, the M/V Anastasis arrived in the Bay of Eleusis, near Athens, for major refurbishing. The Anastasis is part of Mercy Ships International, a ministry of Youth With A Mission (YWAM) – a non-denominational, Trinitarian Christian missionary organisation of charismatic persuasion. The vessel is a nine-storey tall ship, built in 1953, with a gross tonnage of 11,695. The Christians who run the ship have a twofold mission: the first is to bring food, clothing and medical aid to needy people around the world. With living quarters for 600 crew members and a cargo capacity of 3,000 tons for food, clothing, medical supplies and other basic necessities, the M/V Anastasis is potentially suited to assist in any port city of the world. Secondly, they all share the common goal of presenting the Gospel to whoever will listen.

The leaders of the Anastasis were Don Stephens, an American missionary and the head of Mercy Ships International, and Alan Williams, a British missionary born in New Zealand.

Whilst the ship was in the middle of a three-year refurbishing project, a major earthquake hit the Athens area on February 24, 1981. The Anastasis crew responded to the disaster by distributing clothing and food to the many homeless victims, as well as providing spiritual counsel and relief.

It was at this time that Costas Kotopoulos, a sixteen-year-old Greek whose parents were divorced, made contact with crew members of M/V Anastasis. As Williams would later testify in court, “Young Costas approached us. He looked a bit sad, so we befriended him and accepted him like we would anyone anywhere.” He was given a Bible, at his request, and began reading it diligently. In addition, through his interaction with the Christians from the Anastasis, his life began to change.

<sup>4</sup> Case No. 3/1992/348/421.

Costas, who lived with his father, visited the Anastasis on a number of different occasions, each time either dropped off by or accompanied by his father. A Greek court banned the visits after Costas' mother, Catherine Dougas, accused the members of the Anastasis of violating the Greek antiproselytism law.

In 1982, before the Anastasis left Greece, Don Stephens gave Costas the name and address of Costas Macris, a distinguished Greek evangelical leader and former missionary to New Guinea, who now runs the Hellenic Missionary Center in Athens. In this way, they hoped that Costas would be able to have fellowship with other young Christians. Almost two-and-one-half years later, Don Stephens and Alan Williams were notified, by an interested third party, that they were being tried for proselytism in Greece. They had not received any official notification or court summons. Costas' mother had filed suit against both them and Costas Macris on charges of "proselytism" and "support of the voluntary escape of a minor." The suit also demanded that the defendants be ordered to pay her 50,000 dracmas as pecuniary satisfaction for moral damage which she suffered. Believing it was their duty as Christians to fight for the right of religious expression, Stephens and Williams returned to Greece for the trial in December of 1984. At the trial, Costas' mother testified that the missionaries had ruined her son, that he no longer made the sign of the cross or believed in icons, that he now read his Bible daily and was a religious fanatic, that he no longer had ordinary sexual interests, and that the only time he stayed out late was when he attended meetings and Bible studies with other like-minded fanatics. Despite the fact that Costas was still a member of the Greek Orthodox Church and that the charge of having supported his "voluntary escape" was patently false, the judges found the defendants guilty. Their sentence, the harshest in over 150 years for this type of "offense" was three-and-one-half years imprisonment!

The defendants were freed on bail, pending appeal of their verdict. The conviction of the "Athens Three" became a global story overnight.<sup>5</sup>

As an international groundswell of public opinion rose against the Greek government, Greek officials seemed to harden rather than soften in their stance. Over 400,000 Americans alone signed petitions to Greek Prime Minister Papandreu. A number of U.S. congressmen sent letters asking the Greek government to reevaluate their stand. California governor Deukmejian wrote Greek president Sartzetakis expressing his "deep concern." So did President Reagan. However, the politically powerful Orthodox Church insisted that the government enforce the antiproselytism law and send the missionaries to prison.

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5 See Don Stephens' book on the trial at first instance: *Trial by Trial* (Eugene, Oregon: Harvest House, 1985).

The appeal was scheduled for May 21, 1986. If the defendants lost, they would go to prison immediately. During the interim, YWAM's house counsel in Hawaii, Max Crittenden, contacted this writer. He asked if I could help by submitting a legal brief detailing the reasons the original decision should be overturned. In addition he requested me as former Director of Studies at the International Institute of Human Rights in Strasbourg, France, to come to the appellate trial and testify as an expert on human rights.

The trial lasted for four days – with extensive international press and television coverage (e.g., Reuters News Agency, London, and the European edition of *Time* magazine). The International Commission of Jurists sent an observer to ensure that the human rights of the defendants were upheld. I was on the stand for almost an hour, and my theological and legal arguments were surprisingly echoed by the Greek public prosecutor, who told the judges that, in his opinion, the state had made a mistake in prosecuting the case. Finally, the three-judge panel adjourned to deliberate. After conferring for 2 1/2 hours, they found the defendants innocent of all charges.<sup>6</sup>

## 2.2 The Government's argument

The prosecution in the "Athens 3" case relied upon arguments both of law and of fact to persuade the Athens Court of Appeal to uphold the convictions imposed by the court of first instance.

In law, the prosecution observed that the Greek antiproselytism statute was good law in Greece, and simply fleshed out the undefined but explicit prohibition against proselytism enshrined in the Greek Constitution. To question its validity would be to question the Constitution itself. The statute in its present form is not discriminatory (though prior to the Colonels' regime its application was limited to convincing or attempting to convince Greek Orthodox to leave their church, the existing version *totally* bans improper proselytism, regardless of the religion involved). Moreover, the law is explicit in its definition of proselytism:

By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naivety (Law 1363/1938, as amended by Law 1672/39).

On the factual plane, the prosecution pointed to the age of the alleged victim: sixteen at the time. Clearly, they argued, this was a case of unduly influencing and

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<sup>6</sup> Material in the preceding paragraphs has been adapted from Montgomery, "The Christian Civil Liberties Union Wins Its First Case," *The Greenbag* [Simon Greenleaf School of Law – now the Law School of Trinity International University, Anaheim, California], No. 14 (July/August 1986).

corrupting a minor, to his personal and social detriment, and undermining his relationship with his family.

### 2.3 The successful defence

Against the prosecution's legal position, we argued along two lines. First, the Greek antiproselytism statute as interpreted by the lower court was inconsistent with Greece's commitment to the European Convention on Human Rights. Greece had signed and ratified the European Convention, containing the following two articles on freedom of religion and freedom of speech:

Article 9 (1). Everyone has the right to freedom of thought, conscience and religion; this includes the freedom to change one's religion or belief and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief, in worship, teaching, practice and observance.

Article 10 (1). Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Both of these articles are subject to certain restrictions (the second paragraph of each article sets these forth), but our brief contended that none of these restrictions applied to the facts of this case. Since Greece had accepted the compulsory jurisdiction of the European Court of Human Rights and had also just recently signed an article of the Convention allowing an individual to bring a petition before the Commission and Court in Strasbourg, this case could indeed properly be brought before the human rights legal machinery in Strasbourg, where the judgment of the national court would likely be overturned and perhaps the proselytism law itself struck down. To avoid this embarrassment, the Greek Court of Appeals should declare the defendants innocent.

Our second legal argument reminded the Court that the Greek Constitution of 1975 had incorporated the European Convention on Human Rights into Greek domestic law, giving the Convention priority over any contrary domestic law. This required the Appeals Court, at minimum, to interpret the antiproselytism statute in such a way that it did not contradict Articles 9 and 10 of the European Convention. Such an interpretation would result in an innocent verdict for the defendants.

Were the Appeals Court not to construe the antiproselytism law in a manner consonant with the European Convention (i.e., were it to argue that the law faithfully represented the true intention of the bare prohibition against proselytism in the Greek Constitution), this would put the Constitution and the European Convention on a collision course – resulting in no less than a constitutional crisis in Greek jurisprudence! Thus, the reasonable course of action for the Court of Appeals was to say, in effect, that whatever the undefined prohibition against proselytism means

in the Greek Constitution, it *cannot* mean something contradicting Articles 9 and 10 of the European Convention on Human Rights (as would be the case if Law 1363/1938, as amended by Law 1672/39, were held to apply literally against the defendants).

Furthermore, we raised the question as to whether the antiproselytism law, taken on its face, had any genuine application to the present scenario. The law criminalises attempts to change another's religion. But the crew of the Anastasis never suggested that Costas Kotopoulos cease his connection with the Orthodox Church. His subsequent joining of Pastor Macris' local, independent, evangelical, Protestant church was his own decision. What the defendants sought was that Costas enter into a personal, saving experience with the living Christ – not that he change his denominational affiliation or join any particular church.

On discovering that the chief judge of the Athens Appeals Court had studied in Germany, I made this point clear by using the distinction between the German verbs *wissen* and *kennen*: “to know formally” (as in scientific knowledge, *Wissenschaft*) versus “to know personally/be personally acquainted with.” The object of the evangelism by the crew of the Anastasis was not to alter Costas' formal, doctrinal subscription but to bring about a personal acquaintanceship with the Saviour common to all branches of Christianity, including the Eastern Orthodox Church.

On the factual issue of whether the evangelism had involved the “corrupting of a minor,” the public prosecutor himself, in his closing statement to the Court, conceded our point. He observed that Syntagma (“Constitution”) Square, the central square of Athens, was often populated at night by teenagers looking for thrills and drugs, and he reflected whether perhaps what Costas had received through his contact with the Mercy Ship Anastasis (Greek, not so incidentally, for “Resurrection”) might not be an answer to this. At least there was one sixteen-year-old not engaged in those activities . . .

And there was no way to demonstrate that the evangelism had had a negative effect on Costas' family. That family had been dysfunctional well before the encounter with the Anastasis: the parents had divorced and it was painfully evident that the mother had used the alleged proselytism of her son as a means of getting at her exhusband.

In sum, neither legally nor factually could the convictions of the “Athens 3” be upheld – and they were not.

### **3. Larissis et al.**

We now turn to Greek convictions of evangelical Christians for proselytism which, not being overturned within the Greek court system (i.e., after “all domestic remedies had been exhausted,” as required for a case to be admitted in Strasbourg),

were ultimately consolidated and judged by the European Commission and Court of Human Rights.

### 3.1 The facts

In May of 1992, three Greek Air Force officers, D. Larissis, S. Mandalavidis, and I. Sarandis, all of Protestant Pentecostal persuasion, were cashiered by the Permanent Air Force Court of Athens for violating the antiproselytism statute and thereby not conducting themselves as officers and gentlemen. They were convicted of evangelising fellow Air Force personnel as well as civilians. Subsequent appeals in military and civilian courts did little more than to affirm their convictions, though sentences were reduced. Ultimately, their cases were taken to Strasbourg by the present writer, where the (now defunct) Commission, and later the Court of Human Rights, decided that their Convention rights had been violated relative to the evangelisation of civilians, but did not vindicate their evangelisation of military personnel.<sup>7</sup>

### 3.2 The Government's position

The Greek government argued as to the Greek antiproselytism law (1) that it was not inconsistent with the religious freedom guaranteed by Article 9(1) of the European Convention on Human Rights; (2) that it in fact supported the Convention by protecting the religious rights of the weak and of those who were satisfied with their religious position and did not want to be importuned by other religionists; and (3) that Article 9(2) of the Convention properly allows governments to restrict religious activity for the sake of public order and the rights of others.

On the facts in the case at hand, the Greek government maintained that the civilian proselytism engaged in by the applicants involved undue influence, based in part on the weakness of the subjects of the evangelism and also on the superior societal role a professional military officer represents. As to the applicants' evangelistic efforts within the military, the government argued that such activity *per se* weakened military discipline and therefore went against the interests of the state, must never be engaged in on military bases, and, where an officer evangelised someone of lower rank, undue influence and the consequent violation of the statute were inevitable.

### 3.3 The applicants' arguments

We strove mightily (and, ultimately, unsuccessfully) to convince the Commission and the Court that the Greek antiproselytism statute is in its very nature inconsistent with Article 9 of the European Convention on Human Rights. Our reasoning was –

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<sup>7</sup> Case No. 140/1996/759/958-60.

and continues to be – that the Greek statute is hopelessly ill-defined and overbroad, violating the principle of *nulla poena sine lege* as enshrined in Article 7(1) of the Convention: one cannot, on the basis of the vague language of the statute, predict whether or not one's expression of religious views will or will not transgress the Greek law and therefore trigger criminal sanctions. We repeatedly cited the Greek government's own, bizarre list of past prosecutions under the statute:

Greek Courts have held that certain individuals were guilty of proselytism when they compared the Saints to “figures decorating walls,” Saint Gerassimos to a “body stuffed with cotton” and the Church to “a theatre, a market, a cinema,” when they delivered a sermon by demonstrating a picture showing a multitude of unhappy people dressed in rags and when they said that “this is how they all are who do not accept my faith” (Court of Cassation, Decision No. 271/1932, Themis XVII, page 19), when they promised to Orthodox refugees to give them shelter under particularly favourable terms if they adopted the faith of Uniates (Court of Appeal of the Aegean, Decision No. 2950/1930, Themis B, page 103), when they offered a scholarship for studies abroad (Court of Cassation, Decision No. 2276/1953), when they sent to Orthodox priests pamphlets with the recommendation to read them and to apply their contents (Court of Cassation, Decision No. 59/1956, Law Tribune 1956, No. 4, page 736), when they distributed “so-called religious” books and prospectuses free to “uneducated peasants” or to “young pupils” (Court of Cassation, Decision No. 201/1961, Penal Chronicles XI, page 472) or when they promised to a young seamstress to improve her position if she abandoned the Orthodox Church whereof the priests were accused of exploiting society (Court of Cassation, Decision No. 498/1961, Penal Chronicles XII, page 212). More recently certain courts convicted some Jehovah's Witnesses on the grounds that they proclaimed the doctrine of their sect “with importunity” and because they accused the Orthodox Church that it constituted “the source of troubles for the people” (Court of Appeal of Thessaloniki, Decision No. 2567/ 1988), that they entered other houses under the guise of being Christians who desire to propagate the New Testament (Misdemeanour Court of Florina, Decision No. 128/1989) and that they tried to distribute books and booklets to an Orthodox priest inside his car after having told him to stop (Misdemeanour Court of Lassiithio, Decision No. 357/1990).

Not so incidentally, our same objections have been properly raised to the French Assemblée Nationale's sect criminalisation law of 22 June 2000. That law introduces for the first time into French jurisprudence, in defiance of the historic protections of freedom of speech and of religious expression, the “*délit de manipulation mentale*.” What responsible commentators such as Jean-Claude Kiefer have observed concerning such legislation applies equally to the Greek antiproselytism statute:

Firstly, who is to give the definition – obviously subjective – of such “manipulation”? Where does one start, and where will it end?

The concept is too dangerous. Freedom is not monolithic and cannot be reduced to “mental correctness” – which has already been preceded by “political correctness” in our modern society.

Let us use, to begin with and indeed as our sole recourse, the existing legal statutes. Let us apply the law as it exists now to prosecute the religious cheats, the charlatans, and the sectarian kidnappers. There is no sense in trying to go beyond this.<sup>8</sup>

As to the government’s claim that the antiproselytism statute actually furthers religion by protecting the populace from unwanted interference with existing religious commitments, we pointed out the obvious: that the intent of Articles 9 and 10 of the Convention is to open the doors to freedom of expression both in general and in religious areas, not to offer protectionist possibilities to established or majority viewpoints. Indeed, it is precisely the minority and unpopular positions that require the guarantees contained in these Convention articles. We emphasised that in a pluralistic, democratic Europe, no government should treat its populace like children or the mentally defective who need to be protected from new or even offensive ideas. The Greek people should be considered mature enough to make their own religious decisions, accepting or rejecting the ideological wares offered to them in an open marketplace of ideas.

The government appealed, as we have noted, to the second paragraph of Article 9, which allows limited state interference in religious matters when such interference is “necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” We countered that the antiproselytism law certainly was *not* “necessary” for such purposes, since existing general civil and criminal law was sufficient to prosecute cases of duress, undue influence, false advertising, obtaining property by deception, and similar perversions of legitimate religious evangelism. The public weal in no sense requires overbroad legislation that in effect kills fleas with atomic weaponry – and which patently has a chilling effect upon legitimate religious expression.

The logic should be clear: Article 9 guarantees not merely the freedom of religious belief, but also the freedom to “manifest one’s religion,” and such manifestation expressly includes, according to the Article, “freedom to change one’s religion or belief.” But to have the meaningful opportunity to change one’s religion, one must be able freely to encounter other belief-systems. *Ergo*, the Convention must be seen to guarantee the right to responsible evangelism without governmental obstruction.

<sup>8</sup> *Dernières Nouvelles d’Alsace* [Strasbourg], 23 June 2000, p. 1. The French law as amended by the Senate for final vote in the House omits the expression “manipulation mentale,” but commentators in general agree that the substance of the law remains unchanged by this semantic change.



On the facts of the instant case, the defence had to meet the government's condemnation of both civilian and military evangelisation on the part of the applicants. In presenting their gospel to civilians, the three Air Force officers were engaged in an activity which had previously been upheld by the European Court of Human Rights in the *Kokkinakis* case. We were successful in arguing that our case could not in this respect be distinguished from *Kokkinakis* on the facts: the objects of the civilian evangelism here, as there, were not so deficient in I.Q., understanding, or maturity as to have been improperly importuned religiously by the applicants.

As for applicants' evangelism within the military, we had a much harder, and ultimately unsuccessful, row to hoe. Even civil libertarian Judge de Meyer, who in his concurring opinion strongly agreed with us that "the [Greek] law in the present case is contrary to the Convention in its very principle, since it directly encroaches on the very essence of the freedom everyone must have to manifest his religion" – even Judge de Meyer went along with the majority of his colleagues in holding that, given the existing Greek law, the applicants' evangelistic efforts within the military "abused their position and rank."

We still contend, however, that our counter-arguments should have prevailed, vindicating even applicants' attempts to present Christ to fellow military personnel: (1) Christian work within the armed services has been an international, indeed European, tradition at least since the founding of the Officers' Christian Union in the British armed services in 1923; the OCU by its Articles justifies and encourages evangelism without restriction within and between the military ranks. It follows that evangelism in the military is not foreign to the general European lifestyle which the Strasbourg Court takes into account as background for its rulings. (2) One must not be forced to give up his or her human rights or civil liberties on joining the military. Indeed, for the Christian, evangelism is a universal duty and privilege, as enshrined in Jesus' so-called "Great Commission" (Mark 16:15 and parallel passages): "Go into all the world and preach the gospel to every creature." (3) We agree that if the particular beliefs of the individual engaging in evangelism in the military could be shown to have a potentially deleterious effect upon military discipline, they could legitimately be restrained (e.g., Quaker pacifism, New Age anarchism); but the beliefs of our applicants, standing in the tradition of historic, evangelical, Trinitarian Christian faith, should in no wise have been construed as imperiling military efficiency or state interests, or as undermining the security of the state. (4) The objects of applicants' evangelism (Air Force personnel) were old enough to die for their country, so they were presumably old enough to make mature religious decisions, accepting or rejecting applicants' beliefs – and the facts of the instant case make clear that this was precisely what they did.

#### 4. The current legal position:

##### The Greek cases and the European Court's conservatism

Commentators have quite generally remarked that the European Court of Human Rights hesitates to upset the legal systems of the Member States, even when this would hardly result in a state's departing from the well-established and highly respected human rights club represented by the ECHR.<sup>9</sup> In the Greek proselytism cases, this has meant that, whilst the Court has clearly tried to uphold freedom of evangelism in general by vindicating the applicants, it has (1) refused to declare the Greek antiproselytism statute incompatible with the Convention, in spite of its patent ambiguities and provable chilling effect upon freedom of religious expression, and (2) narrowed permissible evangelism to the minimum, restricting it in effect to "transactions among equals," even though it should be obvious that hierarchical and superior-inferior relationships are part of the very fabric of all societies and that to remove legal protection for evangelism in such contexts is to open a Pandora's box for religious repression and the discriminatory treatment of minority religious positions.

Supporters of the adversarial system have often noted that truth is best defended in the context of opposition. The European Court operates more in the inquisitorial than in the adversarial mode, but we contend that in the cases discussed in this chapter the strongest reasons so far developed have been offered to encourage the Court to move in a more radical, principled, and dynamic direction vis-à-vis issues of religious freedom. Should such argumentation be accepted in future cases, Europe could well become in practice what it is in theory: a level playing field for all belief-systems.<sup>10</sup>

<sup>9</sup> E.g., Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), especially p. 365; and Montgomery, "When Is Evangelism Illegal?," *New Law Journal*, 10 April 1998, pp. 524-25. The Strasbourg Court clearly believes that "too great an interference in the domestic policies of Contracting States would damage its legitimacy" (Jessica Simor, "Human Rights: Strasbourg vs Luxembourg; the Human Rights Act and EC Law," Paper presented at the Bar European Group Annual Conference, Trier, Germany, 6-8 May 1999, p. [12]).

<sup>10</sup> Cf. Montgomery, *Human Rights and Human Dignity* (2d ed.; Edmonton, Alberta: Canadian Institute for Law, Theology & Public Policy, 1995). For a book-length treatment of the Greek evangelism situation, with the full texts of the legal documents and pleadings in the cases discussed in this essay, see Montgomery, *The Repression of Evangelism in Greece: European Litigation vis-à-vis a Closed Religious Establishment* (Lanham, Maryland: University Press of America, 2000).

# Islamic human rights declarations and their critics

## Muslim and non-Muslim objections to the universal validity of the Sharia

Christine Schirmmacher<sup>1</sup>

### Abstract

Islam and human rights – do these two subjects exclude each other? Not at the first glance since there are several Islamic human rights declarations like the “Cairo Declaration of Human Rights in Islam” stemming from 1990 and the “Universal Declaration of Human Rights” from 1981 which guarantee a number of rights for men, women, Muslims and Non-Muslims. At a second glance, however, there are certain areas of concern when comparing both texts with the “Universal Declaration of Human Rights in Islam” adopted and proclaimed by the UN in 1948. The Islamic human rights declarations always prescribe Sharia as the only criterion and leveling board for the acceptance or rejection of human, women’s or minorities’ rights. Nevertheless, we are presently witnessing a growing awareness and fearless activism of Islamic human rights organisations assisting the many victims in Islamic countries who fall prey to the all too often ongoing power struggle between government, police, security forces and orthodox religious leaders.

**Keywords** Human rights, Sharia law, Universal Declaration of Human Rights, Cairo Declaration of Human Rights in Islam, Arab Organisation for Human Rights, Egyptian Organisation for Human Rights.

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## 1. The importance of the topic of human rights

Globalisation, the Middle East conflict and the long-term cohabitation of Muslims and non-Muslims in Europe all combine to make the topic “Islamic Human Rights declarations and their critics” a burning issue, and one which is no longer confined to experts on Islam, historians or students of politics, but affects literally everyone in Europe. The subject is a timely one in the light of the creation on 19 June 2006 of the UN Council of Human Rights as the successor to the Human Rights’ Commission with the stated aim and task of furthering human rights and mutual understanding and dialogue. This UN Council has passed a resolution on 26 March 2009 forbidding any critique of the world religions but in concrete terms only mentions Islam under “religions” (does it mean that Islam and Islam alone has to be protected against any form of critique?); the resolution was passed under protests by the European members. The Council is directly answerable to the UN General Assembly, guaranteeing concern for human rights at the highest level.

On the other hand this top-level concern is counter-balanced by the need for consultation and the fact that fundamental conflicts remain unresolved. At the creation of the 47-member Council of Human Rights observers noted that members include countries with a reputation for numerous human rights’ abuses, while Western democracies with the most comprehensive rights constitute a minority on the Council. Western democratic concepts of human rights are liable to be aggressively questioned while cultural, traditional, religious and not least political differences influence the definition of what constitutes human rights.

### 1.1 Can “Islamophobia” be classed as “the most pernicious form of terrorism”?

At the fourth session of Council of Human Rights from 13 to 30 March 2007, the “Organisation of the Islamic Conference” (OIC) was able to get its resolution adopted outlawing public discrimination against Islam world wide,<sup>2</sup> whereby discrimination is taken to mean anything derogatory to Islam or critical reflection on its possible responsibility for existing abuses or forms of extremism.

This same OIC declared in May 2007 that “Islamophobia”, i.e. “a deliberate defamation of Islam, and discrimination and intolerance against Muslims” especially in Europe and the USA, “is the worst form of terrorism.”<sup>3</sup> Similar language was used by the President of the Turkish Office for Religious Affairs (Diyanet), Ali

<sup>2</sup> See the report in: “Switzerland and the UN Council of Human Rights”. Informationsplattform human-rights.ch. <http://tinyurl.com/CH-UN2007> (27.05.2007).

<sup>3</sup> Siraj Wahab. “Islamophobia worst form of Terrorism.” in: Arab News. The Middle East’s Leading English Daily 17.05.2007 <http://tinyurl.com/Wahab2007> (27.05.2007).

Baradakoglu, in speech on the 1 November 2006 in which he called criticism of Islam a “threat to world peace.”<sup>4</sup>

What poses the greater threat to peace, freedom and human rights: their neglect, or critical reports of such neglect? There is obviously no consensus on this fundamental question. This makes a discussion of the meaning of human rights a burning issue.

## 1.2 Islam and Human Rights

Human rights in Islam – and this is the subject of this paper, not human rights in general – are a burning issue because it is impossible to overlook the fact that even today majority Muslim countries, for whose constitutions the Sharia is declared the main if not sole source of legislation, have a poor human rights record. In many of these countries civil rights – freedom of opinion, of the press, of religion, of assembly or of political opinion – are curtailed and no Arab country can be called a genuine democracy. Yet at the same time the topic of human rights is being hotly debated in Arab countries and numerous groups and individuals of widely differing persuasions are engaged in the struggle for human rights, even if this is often not registered in the West.

There are both encouraging and depressing developments in the human rights issue in Muslim countries, and the most important question is the direction in which they are moving, whether toward even greater curtailment of liberty and human rights or toward reform and enlightenment leading to an improved human rights situation. A prominent German convert to Islam, Murad Wilfried Hofmann, a lawyer who has served in several German embassies in North Africa, has expressed the opinion that the overwhelmingly critical assessment of the relationship between Islam, democracy and human and women’s rights means that “the future of Islam in the West depends on the answers which Muslims themselves give to these three issues.”<sup>5</sup>

The topic of human rights in an Islamic context deserves more than superficial treatment, for the picture is a complex one. On the one hand there are prominent Islamic human rights declarations such as the “Universal Islamic Declaration of Human Rights” published by the “Islamic Council” in 1981 or the “Cairo Declaration of Human Rights in Islam” of 1990 which argue for the concession of numerous human rights, even if the definition of their content in places differs substantially from Western conceptions.

While Sharia-based views often show a marked difference from Western human rights declarations, many critical voices from majority Muslim countries on the

<sup>4</sup> <http://tinyurl.com/vat2006> (28.05.2007).

<sup>5</sup> Murad Hofmann. Islam and Human Rights. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 1.

Internet but also in Western media are demanding that Muslim human rights declarations be extended or even fundamentally re-oriented, basing their arguments in favour of more comprehensive human rights on Islam and the Koran. Moreover the question of human rights abuses committed by the West cannot be excluded from a controversial discussion of the cultural and religious dimension of human rights claims. Frequently indicted are the Second World War, the Shoah, colonialism,<sup>6</sup> the 1991 Second Gulf War, Western military intervention in Afghanistan and the Third Gulf War of 2003, including the Abu Ghraib torture scandal.

Validity, grounds and content of human rights remain a hotly disputed topic between the West and the Muslim world as well as within the Muslim world itself. This paper examines the two most influential Islamic human rights declarations and sets alternative views from the liberal and "Reform" wing of Islam over against them. It concludes with a brief look at the role of the Sharia in the human rights issue.<sup>7</sup>

## 2. Islamic Human Rights Declarations

In contrast to the "Universal Declaration of Human Rights" of 1948 no Islamic declaration of human rights has received universal recognition in the Muslim world, been codified in legislation or achieved binding status as international law. Some Islamic human rights declarations have regional importance, others have failed to get beyond the draft stage, as is the case with the "Arab Charter on Human Rights" of 15 September 1994,<sup>8</sup> a revised version of which was adopted by the Council of the League of 22 Arab States but up to now has been ratified by only a few countries.

The so-called "Cairo Declaration of Human Rights in Islam"<sup>9</sup> of 1990 and the 1981 "Universal Islamic Declaration of Human Rights"<sup>10</sup> enjoy particular prominence.

### 2.1 The 1981 "Universal Declaration of Human Rights in Islam"

The "Universal Islamic Declaration of Human Rights" of 19 September 1981 was drawn up by the "Islamic Council", a London-based NGO and private institution with no right to demand any following. The document originated at the initiative of the Saudi royal family and a number of influential scholars from Sudan, Pakistan and Egypt were involved in its formulation.<sup>11</sup>

<sup>6</sup> According to Ayatollah Khamenei's 1987 justification of the Iranian Islamic revolution: "Human Rights in Islam" <http://tinyurl.com/HRI2005> (21.10.2005).

<sup>7</sup> An analysis of the history and justification of Western declarations of human rights would have exceeded the limits of this paper.

<sup>8</sup> For the text see: <http://tinyurl.com/Dipl2009> (19.02.2009).

<sup>9</sup> For the text see: <http://tinyurl.com/cairo90> (19.02.2009).

<sup>10</sup> For the text see: <http://www.alhewar.com/ISLAMDECL.html> (19.02.2009).

<sup>11</sup> According to Anne Duncker. *Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die*

An examination of its text of the Declaration soon reveals it was drawn up by Muslims (“we Muslims... declare”) with Muslims in view. The basis and claims of human rights are unilaterally derived from Islam. The foreword affirms: “Islam gave to mankind an ideal code of human rights fourteen centuries ago.”<sup>12</sup>

The preamble also sets out Islam’s claim to universal validity by referring to the duty of propagating (Arabic: “Da’wa”) Islam: “... knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God ... in inviting all mankind to the message of Islam.” The claim that Islam is the only true religion runs throughout the text. Only under its direction is reason capable of mastering human existence.

This is because, it is claimed, an Islamic order is necessary “wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language.” This can hardly mean that all differences between Muslims and non-Muslims or between men and women before the law are abolished in Islam, as this would contradict the provisions of the Sharia. What is meant is that these differences cannot be classed as discrimination or privilege, since they are dictated by the Sharia and not by human considerations.

The preamble further emphasizes the inviolable and indissoluble nature of Sharia law, the government’s duty to uphold it, the need to achieve a homogenous society by a universal profession of (Islamic) religion and finally “ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law” i. e., the strict observance of the Sharia.

The 23 articles which follow elaborate in more detail how life looks if based solely on the Sharia. The first two articles deal with the right to life and liberty, the third affirms the equality of all human beings.

Article 4 gives everyone the right “to be treated in accordance with the Law [of Sharia], and only in accordance with the Law” and to reject whatever is in contradiction to it. Subsequent articles deal with the right to a fair trial (Article 5) and to protection from the abuse of power (Article 6), torture (Article 7) and protection of honour and reputation (Article 8), the right of asylum (Article 9) and of minorities (Article 10). This last is qualified by reference to the Sharia, which in fact implies a legal restriction of minority rights.

Article 11, devoted to the topic of participation in the conduct and management of public affairs, grants all Muslims the right to “assume public office”, again

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Menschenrechte. Wissenschaftlicher Verlag: Berlin, 2006, p. 27.

<sup>12</sup> <http://tinyurl.com/ideal2009> (19.02.2009).

raising the question whether this implies such rights are limited or even denied non-Muslims, as is in fact the case in numerous Muslim countries. The freedom of expression and religion guaranteed by Article 12 is again qualified by the corresponding Sharia provisions which for instance prohibit proselytising for another religion among Muslims, and condemn or even persecute people who convert from Islam or behave in a disloyal fashion towards the State, the community or (Islamic) religion. “No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency.”

The next articles deal with freedom of religion (Article 13), the right to free association (Article 14) and property rights (Article 15). “All means of production shall be utilised in the interest of the community (Ummah) as a whole”, implying non-Muslims are excluded. This agrees with the stipulations of the Sharia that non-Muslims may not benefit from alms given by Muslims in accordance with one of the Five Pillars of Islam: “The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah [amount of alms], levied and collected in accordance with the Law.”

Article 16 deals with the protection of property, Articles 17 and 18 with the rights, dignities and social security of workers, Article 19 with the right to found a family. Article 20 refers to wives’ rights (home, maintenance, personal possessions, divorce, inheritance and honour), Article 21 the right to receive education, Article 22 the right of protection of one’s privacy and Article 23 the right to freedom of movement and residence.

It has been pointed out in various quarters that the English and French translations of the text employ more moderate expressions than the Arabic original. Terms such as “law” or in French “loi” could be understood to refer to the law of the land, whereas the Arabic refers only to the Sharia, which of course carries quite different overtones. Critics conclude “it is hard to avoid the impression that the aim of the versions in Western languages is to lull non-Muslims into a false sense of security and to present Islamic ethics in such a way as to make them acceptable to those who have imbibed the spirit of modern principles of human rights.”<sup>13</sup>

## 2.2 The 1990 Cairo Declaration of Human Rights

The Cairo Declaration of Human Rights was promulgated on 4 August 1990 by 45 of the 57 member states of the “Organisation of Islam Conference” (OIC<sup>14</sup>) founded

<sup>13</sup> Ali Merad. Zur “Allgemeinen Islamischen Menschenrechtserklärung.” in: Johannes Schwartländer. Freiheit der Religion. Christentum und Islam unter dem Anspruch der Menschenrechte. Matthias-Grünewald-Verlag: Mainz, 1993, p. 443-449, here p. 449.

<sup>14</sup> The OIC is closely linked to the Muslim World League in Mecca ([www.muslimworldleague.org/name.htm](http://www.muslimworldleague.org/name.htm)).



on 25 September 1969 in Rabat. The following day a copy was handed to the United Nations' High Commissioner for Human Rights.<sup>15</sup> The Cairo Declaration is probably more widely known than the "Universal Islamic Declaration of Human Rights" since it expresses more clearly what is not immediately evident in the "Universal Islamic Declaration of Human Rights" without a knowledge of the Sharia.

The Cairo Declaration also affirms that the Sharia is the sole basis for conceding human rights, whereas Western human rights declarations such as the 1948 Universal Declaration of Human Rights are regarded as Jewish-Christian formulations and thus rejected as purely human laws. As early as 1981 the Iranian government insisted that such "secular interpretations of the Jewish-Christian Tradition have no validity for Muslims", and in 1984 the Iranian representative Rajaie-Khorassani declared to the UN General Assembly that his country regards itself as bound only by God's law, not human laws, and would therefore not hesitate to infringe UN human rights should the two conflict. During the celebrations of the 50th anniversary of the UN declaration on 17 March 1998 the Iranian Foreign Minister let it be known that the 1948 Declaration needed "revision", a view which Iran has repeatedly affirmed since.<sup>16</sup>

The preamble to the Cairo Declaration of Human Rights makes clear it is not a question of tolerating or accepting non-Muslims on an equal basis but of enunciating Islam's claim to superiority on the basis of divine revelation. Alluding to sura 3.110 it states: the "Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith."<sup>17</sup>

The OIC members also underline "the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization." The preamble goes on to say that the OIC would like to make a contribution for everybody "to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah." This immediately raises the question whether life not lived according to the Sharia can also have dignity. The divine and eternal character of the Sharia is then underlined by the reminder that rights and liberties vouchsafed by Islam can be neither abolished, infringed nor disregarded, for this would be "an abominable sin."<sup>18</sup>

The Declaration goes on to speak of the equality of all human beings (Article 1), the right to life and physical inviolability (Article 2), the right to limit war (Article

<sup>15</sup> According to Anne Duncker. *Menschenrechte im Islam. Eine Analyse islamischer Erklärungen über die Menschenrechte*. Wissenschaftlicher Verlag: Berlin, 2006, p. 62.

<sup>16</sup> David Littman. *Universal Human Rights and "Human Rights in Islam"* in: *Midstream* Feb/March 1999 and see <http://tinyurl.com/Littmann99> (27.05.2007), p. 1-2; 5-6.

<sup>17</sup> <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm> (19.02.2009).

<sup>18</sup> <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>, p.1 (19.02.2009).

3), the right to honour (Article 4) and to found a family (Article 5), women's (Article 6) and children's rights (Article 7), legal rights (Article 8), education (Article 9), religion (Article 10), liberty (Article 11), freedom of movement (Article 12), the right to work (Article 13) and make a living (Article 14), property matters (Article 15) and profit (Article 16), how to attain purity in society (Article 17), protection of religion and privacy (Article 17), equality before the law (Article 19), protection from arbitrary measures (Article 20) and kidnap (Article 21), freedom of expression (Article 22), and protection from abuse of authority (Article 23).

What appears *prima facie* hardly to differ from non-Muslim human rights declarations in fact diverges at numerous points from the 1948 UN Declaration of Human Rights.

In its title (or better in the last paragraphs) the Cairo declaration states in Articles 24 and 25 its controlling principle of interpretation: "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shariah" and Article 25 states more generally "The Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this Declaration." This subjection of interpretation to the Sharia is evident in every single one of the remaining 23 articles.

Article 1 affirms that "all men are equal in terms of basic human dignity and basic obligations and responsibilities", yet is obvious that it does not refer to the same "rights" as in the UN's Universal Declaration of Human Rights of 1948.<sup>19</sup> The Cairo declaration adds further that "true faith is the guarantee for enhancing such dignity along the path to human perfection." This raises the question whether this dignity can only be attained by receiving the "true faith" (of Islam). Article 1b seems to suggest this when it affirms "no one has superiority over another except on the basis of piety and good deeds." Piety and good deeds are however frequently referred to in the Koran as signs of genuine (Islamic) faith and fulfilment of (Islamic) religious duties. (e.g. sura 19.96).

The inviolability and protection of human life is again limited by the Sharia according to Article 2a: "it is prohibited to take away life except for a Shari'ah-prescribed reason", which permits taking of life in the case of adultery or apostasy for instance. The Sharia thus takes precedence over all secular legislation.

Referring to equal rights for women, the Cairo declaration notes that a woman should not be prevented from marrying and "no restrictions stemming from race, colour or nationality shall prevent them" (Article 5), yet there is no mention of the free choice of marriage partner regardless of his religion. This reflects the classical interpretation of the Sharia stipulation, which has the force of law in Arabic countries,

<sup>19</sup> <http://www.un.org/Overview/rights.html> (19.02.2009).

that a Muslim woman may not marry a non-Muslim. While it is further affirmed that woman is “equal to man in human dignity”, she evidently does not possess equal rights, which is impossible under the Sharia in its traditional, and thus the majority, interpretation, which denies women equal status in inheritance, marital and divorce law. Neither Islamic tradition nor the Cairo declaration regard this as discrimination against women, then there is a “divinely ordained inequality between man and woman”<sup>20</sup> and “equality in the sight of God... does not necessarily mean equality before the law.”<sup>21</sup>

The stipulations of the Sharia also lie thinly veiled behind Article 7, which affirms a child’s right to “proper nursing, education and material, hygienic and moral care ... in accordance with ethical values and the principles of the Shari’ah,” according to which no Muslim child may be brought up by non-Muslims. A similar expression is found in Article 9 where the aim of education is stated to be to “strengthen his faith in God,” thus excluding on principle the possibility of either a secular or Christian upbringing.

The Sharia’s precedence over national legislation also forms the background to the right to asylum in Article 12, to artistic freedom and freedom of expression in Article 16 as well as to action of behalf of justice and law (Article 22). The emphasis is always that such freedoms can only be granted within the framework of the Sharia and as long as they do not contradict its stipulations.

The Cairo declaration, like the Universal Declaration of Human Rights in Islam, is in no way binding and thus cannot be enforced. Indeed some observers consider it has gained “no broad acceptance in the Muslim world generally.”<sup>22</sup>

## 2.3 Problem areas in Islamic human rights declarations

### 2.3.1 The supremacy of the Sharia

These Islamic human rights declarations are problematic not only because they limit Muslims’ freedoms (and even more so those of non-Muslims) but because of the priority afforded to the Sharia over all other conception of human existence, for “divine law takes precedence over human law – that is the interpretative rule in case of conflict.”<sup>23</sup> As a result Islam is elevated to the sole true religion and rule of

<sup>20</sup> As Hans-Georg Ebert puts it in: *Das Personalstatut arabischer Länder. Problemfelder, Methoden, Perspektiven.* Leipziger Beiträge zur Orientforschung, Bd. 7. Peter Lang: Frankfurt, 1996, p. 44.

<sup>21</sup> According to Gudrun Krämer. *Islam, Menschenrechte und Demokratie: Anmerkungen zu einem schwierigen Verhältnis.* Herta Benz Vorlesung 20. Ladenburg, 10.7.2003. [http://www.daimler-benz-stiftung.de/cms/uploads/images/events/lecture/bbv20\\_kraemer.pdf](http://www.daimler-benz-stiftung.de/cms/uploads/images/events/lecture/bbv20_kraemer.pdf) (27.06.2011), p. 28.

<sup>22</sup> Donna Arzt. *Religiöse Menschenrechte im Nahen Osten und in Nordafrika.* in: *Gewissen und Freiheit*, Vol. 23 No. 46-47/1996, p. 123-143, here p. 125.

<sup>23</sup> Gerhard Höver. *Grundwerte und Menschenrechte im Islam.* in: Bernhard Mensen SVD (ed.). *Grundwerte und Menschenrechte in verschiedenen Kulturen.* Akademie Völker und Kulturen St. Augustin/

life which “by inviting mankind to transcend the lower level of animal life to be able (sic) to go beyond the mere ties fostered by the kinship of blood, racial superiority, linguistic arrogance, and economic privileges.”<sup>24</sup> Life outside Islam is thus denoted a “lower level of animal life” characterized by racism, economic exploitation and arrogance. Such vocabulary hardly permits one to deduce the equality of all human beings on the basis of their common humanity.

The overriding concern in the ordering of society is not human well-being but the will of God as authoritatively laid down in the Koran and the tradition. This means, according to the contemporary lyric poet Ali Ahmed Said, human beings are simply “wiped out.” He states the difference between Islamic and non-Islamic societies as follows: “Western thinkers claim God is dead. We could say that for us man is dead and God alone is alive.”<sup>25</sup> Religion thus becomes the sole criterion of human status, rights and privileges as well as of a country’s politics and social organisation. The logical conclusion is a denial of Western human rights concepts and restrictions of the rights therein expressed.<sup>26</sup>

### 2.3.2 Imprecise formulations

While the Sharia takes priority as a regulative principle, these Islamic definitions of human rights remain vague and imprecise when it comes to concrete statements. One reason for this is that there is no such thing as a codified and unambiguous canon of Sharia law, simply a multitude of interpretations of Koran texts and the traditions by authoritative scholars, especially from the period up to the 10th century AD, regarded as the normative period of the formation of Islamic law.

Hans Zirker’s criticism of the Cairo declaration is therefore justified, that it lays down general moral principles but furnishes neither “practicable norms nor legally sustainable rights.”<sup>27</sup> The concept of human rights in general is conceded, yet at the same time their metaphysical grounding in divine legislation effectively puts them above human criticism and removes them from any possibility of enforcement in a human court of law. Indeed some critics pose the question whether Islamic hu-

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Steyler Verlag: Siegburg, 1988, p. 37-51, here p. 44.

<sup>24</sup> Human Rights in Islam. Institute of Islamic Information and Education (III & E): Human Rights in Islam, Brochure Series; No. 7. <http://www.usc.edu/dept/MSA/humanrelations/humanrights/> (19.05.2007), p. 3.

<sup>25</sup> Adonis. Die Sackgasse der Moderne in der arabischen Gesellschaft. in: Erdmute Heller; Hassouna Mosbahi (ed.). Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker. C. H. Beck: München, 1998, p. 62-71, here p. 70.

<sup>26</sup> See the discussion of the restrictions in: Ann Elizabeth Mayer. Islam and Human Rights. Tradition and Politics. Westview Press: Boulder, 1995, p. 61ff.

<sup>27</sup> Hans Zirker. Die Kairoer Erklärung der Menschenrechte im Islam, in: Moslemische Revue 21/76, Jan-March 2000, p. 54-66, here p. 65.

man rights declarations are intended for a Muslim public or not rather aimed at educated Western elites in order to underline an independent Muslim point of view and the right to affirm it in the light of world opinion.<sup>28</sup> However this may be, it is noteworthy that it was felt necessary to formulate specifically Islamic declarations of human rights and to give them their own markedly different emphases.

### 2.3.3 Specifically religious grounds of human rights

“The consensus of both [Western and Islamic] declarations is that there is such a thing as human rights.”<sup>29</sup> Apart from this there are huge disparities as regards the grounds and the philosophical bases of human rights.

Several Muslim apologists have emphasised that Islamic human rights declarations need to be understood as alternative models to the 1948 Universal Declaration of Human Rights, even though numerous Islamic countries were among its original signatories, since they see the UN declaration as based on Judeo-Christian values whereas the Sharia is, unlike purely human laws, of divine origin, “granted by Allah.”<sup>30</sup> This means it is completely just, since Allah acts justly toward his creatures and commands them to act justly toward one another.<sup>31</sup> Sharia law is therefore ultimately not optional,<sup>32</sup> however many other diverging human rights documents may have been formulated. For this reason Islamic human rights definitions enjoy universal validity regardless of time or place and not only for Muslims and Muslim countries, for “Islam lays down a number of basic rights which are universally valid for the whole of humanity and which are to be observed and respected, irrespective of whether or not a person lives within the territory of an Islamic State.”<sup>33</sup> The thinking behind this is that all human beings are in fact Muslims by birth and belong to Islam unless they have become Jews or Christians by upbringing and environment, for “Every child is born a Muslim . . . The Prophet Muhammad said, ‘No babe is born but upon Fitra (as a Muslim). It is his parents who make him a Jew or a Christian or a Polytheist’ (Sahih Muslim, Book 033, Number 6426) . . . Children are not born out of any sin, original, inherited or derived. They are born on the religion

<sup>28</sup> According to Ridwan al-Sayyid. *Contemporary Muslim Thought and Human Rights*. in: *Islamochristiana* 21(1995), p. 27-41, here p. 37.

<sup>29</sup> Ali al-Nasani. *Menschenrechte im Islam*. amnesty international. <http://tinyurl.com/Nasani02> (19.05.2007), p. 1.

<sup>30</sup> *Die Menschenrechte im Islam*. <http://www.enfal.de/insan-ha.htm> (27.05.2007), p. 2.

<sup>31</sup> As argued by Ja'far Abdul Salam Ali. *Human Rights in Islam*. in: *The Muslim World League Journal*, Vol. 32, No. 7, September 2004, p 11-16, here p. 15.

<sup>32</sup> Murad Hofmann. *Der Islam und die Menschenrechte*. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 8.

<sup>33</sup> *Die Menschenrechte im Islam*. <http://www.enfal.de/insan-ha.htm> (27.05.2007), p. 1.

of their nature, i.e., Islam.”<sup>34</sup> If, however, human rights are religiously based and recognize the unique superiority of Islam over all other religions, then atheists or members of other religions cannot fully enjoy the human rights so defined.

These presuppositions imply that people not living according to the Sharia are not really capable of responsible ethical behaviour, since Islam is the sole source of socially cohesive and just ethics. In the final instance it is the stipulations of the Sharia and not national legislation which settle the question of right and wrong, e.g. that life may “only” be taken if permitted by the Sharia.

These Muslim human rights declarations are less explanations of human rights and more a definition of exceptions and restrictions, since full human rights and social solidarity, evidenced by social security payments from alms, are in most cases the preserve of the Muslim male. Muslim women have graduated rights and solidarity, those who do not belong to the Umma come even further down the scale. Yet the Sharia even restricts the rights of Muslim men, especially freedom of speech and conscience and the right to freedom of religion, since disloyal anti-social behaviour strips him of the rights afforded by the Sharia.

#### 2.3.4 Missing rights

Islam human rights declarations pose problems not only in their definitions of human rights but also in areas they simply omit.

In contrast to the 1948 United Nations’ “Universal Declaration of Human Rights” neither of the two Islamic declarations makes any reference to the equality of human beings, to the equality of men and women or converts before the law, or to full and independent legal rights for women. Also missing is a full and frank acknowledgement of complete freedom of religion and conscience (also in the negative sense), the unrestricted public practice of one’s religion or philosophy, rights to untrammelled liberty, to political opinion, and the fraternity and equality of all human beings irrespective of the boundaries of the Umma.

Another problematic feature of these Islamic human rights declarations is not only the avowed supremacy of the Sharia over all other legislation, including national laws, but also their silence as to corporal punishments promulgated by the Sharia, such as the amputation of a hand or foot as punishment for theft, or flogging or stoning for immorality or adultery. One looks in vain for condemnation or rejection of such practices. While it may be true that there are few Muslim countries where these forms of punishment are applied, even today influential theologians continue strongly to maintain their validity in principle. Therefore it is absolutely justified to speak in this connection of “the paradox of validity in principle and

<sup>34</sup> See e. g. <http://www.islam101.com/dawah/newBorn.htm> (27.06.2011).

practical non-application.”<sup>35</sup> If Islamic human rights declarations were really serious about human dignity, an unambiguous condemnation of corporal punishment on the part of influential Muslim organisations such as the Saudi-Arabian “Muslim World League” would in effect signify a rejection of the norms of the Sharia. Until now the “Organisation of the Islamic Conference” (OIC) has failed to acknowledge as a terrible crime either the capital punishment laid down by the Sharia or the more frequently practiced lynch justice for converts from Islam, yet describes “discrimination against and intolerance towards Muslims” as well as “Islamophobia . . . the worst form of terrorism.”<sup>36</sup>

### 2.3.5 Lack of practical recommendations

A further problem with Sharia-based Islamic human rights declarations is that they offer no practical recommendations as to how to relieve recognised social abuses. Their insistence on society’s conformity to Sharia norms demonstrates the fundamentally ideological character of these draft declarations, and their failure to elaborate how this would lead to improvement show how remote they are from practice. How will introducing the Sharia contribute to combating deficiencies in education (especially widespread illiteracy) and infrastructure and housing, or solve the problems of migration to the cities, overpopulation, foreign debt, under-development and poverty?

Farag Fouda, the well-known Egyptian intellectual and critic of the Sharia-based draft declarations murdered by extremists in 1992, put it like this:

Islam will not meet the challenge of progress by dressing our young people in Pakistani clothes and calling each other by names of the Prophet’s companions. We won’t catch up with scientific progress by chewing a piece of wood instead of using toothbrushes . . . and by wasting time discussing when the awaited and the false Messiah are going to appear . . . If this is the true face of Islam, how shall we face the 21st century?<sup>37</sup>

The ideological character of the declarations referred to becomes apparent when they allege to rescue human rights from human tampering. From the premise that God is the sole source of human rights they deduce that these can neither be granted nor rescinded by human decision and are thus not open to discussion. This sounds

<sup>35</sup> Heiner Bielefeldt. Menschenrechte in der islamischen Diskussion. <http://tinyurl.com/Bi-Islam> (19.05.2007), p. 6.

<sup>36</sup> Siraj Wahab. Islamophobia worst form of Terrorism. in: Arab News. The Middle East’s Leading English Daily, 17.05.2007. <http://tinyurl.com/Waha07> (27.06.2011).

<sup>37</sup> Farag Fouda. Die vergessene Tatsache. in: Erdmute Heller; Hassouna Mosbahi (ed.). Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker. C. H. Beck: München, 1998, p. 167-192, here p. 185-186.

good in theory, but the daily experience especially of critics and opponents of the regime, particularly in Muslim countries, demonstrates that human beings are all too capable of rescinding and disregarding human rights. Where then can such God-given rights be legally enforced? The texts of Islamic human rights declarations are silent on this point. Projecting human rights from an earthly to a metaphysical realm divorces them from practice and reality.

### 3. The apologetic debate over Islamic human rights

Islamic apologists claim Islam is the original source of human rights, Islam secures human rights and its history furnishes numerous examples of their concession,<sup>38</sup> whereas Western countries only discovered them much later. This reasoning supports the view of Islam as the only completely unadulterated religion and Islamic jurisprudence as synonymous with justice and dignity, indeed “Islam as a world-wide valid system of liberty.”<sup>39</sup>

This attribution of human rights to Islam ultimately implies their wholesale re-definition, as in the claim that “Islam... has been familiar with all classical human rights for 1400 years and... codified them better than the West”<sup>40</sup> and “the Holy Qur’an, God’s law for mankind, proclaimed 1400 years in advance the human rights defined by the United Nations General Assembly in 1948.”<sup>41</sup>

“Classic human rights” are thus to be understood as those conceded by Islam, implying outside of Islam there can be no human rights<sup>42</sup> or that genuine human rights are identical with Islam, for Islam “regards human rights to be (sic) more sacred even than divine worship.”<sup>43</sup> It is not the religious basis of human rights which causes problems in this context, as long as they enjoy universal validity, but the fact that in the name of religion human rights are denied especially to women and non-Muslims.

#### 3.1 Are there only minor differences to Western human rights declarations?

The apologetic debate attempts to play down the “minor differences”<sup>44</sup> between the absolute Islamic norms and Western human rights declarations (e.g. with respect

<sup>38</sup> See e. g. <http://tinyurl.com/HDIGHR> (27.06.2011) or <http://tinyurl.com/usc-HRI> (27.06.2011).

<sup>39</sup> Ahmed Kaftaro. Der Islam und die religiöse Toleranz. in: *Gewissen und Freiheit*, 36/1991, p. 59-66, here p. 60.

<sup>40</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 2.

<sup>41</sup> Hadayatullah Hübsch. *Islam und Menschenrechte*. Verlag der Islam: Frankfurt, 1993, S 5.

<sup>42</sup> “There is no such thing as human right (sic) in the abstract”. A. K. Brohi. *Nature of Islamic Law and the Concept of Human Rights*. in: *Human Rights in Islam*. Report of a seminar held in Kuwait, December 1980. International Commission of Jurists, University of Kuwait and Union of Arab Lawyers, op. cit., 1982, p 41-60, here p. 51.

<sup>43</sup> Shaikh Shaukat Hussain. *Human Rights in Islam*. Kitab Bhavan: New Delhi, n.d., p. 83.

<sup>44</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://tinyurl.com/MH-DIM07> (27.05.2007),



to apostasy and women's rights). In this context however it is hard to see how the perhaps currently best-known legal expert Yusuf al-Qaradawi can be called as a witness to the "minor differences", when he has spoken out in favour of the classical limitations of the legal rights for women and has clearly and unambiguously advocated the right to execute apostates and justified suicide attacks against non-Muslims.<sup>45</sup> No less incoherent is Murad Wilfried Hofmann's argument that individual Muslim countries are free to grant Christian and Jewish minorities more rights than have been traditionally conceded, or that women could inherit more than the traditional half-share if their father so determine. They could even be heard as witnesses in court, instead of remaining silent for fear of being regarded as unreliable, if they are "competent".<sup>46</sup> This may well represent Murad Hofmann's personal attempt at reconciling two differing world views or to mitigate the practical application of Sharia law but enjoys no consensus in classical Islamic scholarship and is therefore of no practical importance. And is he not here himself guilty of doing what he elsewhere criticizes, namely of "illegitimately subjecting the Sharia to one's own reason"?<sup>47</sup>

### 3.2 An Islamic basis for Western human rights?

On the other hand Hadayatullah Hübsch, for many years press spokesman of the Ahmadiyya community, goes so far as to look for grounds for some of the 1948 United Nations' Human Rights Declaration in Islam or the Koran<sup>48</sup> and concludes that the right to life, liberty and security in Article 3 correspond to the Islamic duty of proclaiming the truth of Islam to others by example and preaching without compulsion, since Islam does not justify compulsion or aggression, only self-defence.<sup>49</sup> He gives no precise definition of the term defence, which has been subject to various interpretations within political Islam. Also, according to Hübsch, in Islam women enjoy equal status with men,<sup>50</sup> a claim which corresponds neither to the practical daily life of the majority of Muslim women nor to the Sharia prescriptions on Muslim marriage.

Other areas in which Hübsch claims to find congruity between Islamic values and western human rights catalogues are the right to freedom of expression, religion and conscience, the right to family, work and education and the renunciation of violence and torture. He concludes with an appeal to "learn" from the Koran and

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p. 4.

<sup>45</sup> *ibid.* p. 4.

<sup>46</sup> *ibid.* p. 6.

<sup>47</sup> *ibid.*

<sup>48</sup> Hadayatullah Hübsch. *Islam und Menschenrechte*. Verlag der Islam: Frankfurt, 1993, p. 5.

<sup>49</sup> *ibid.* p. 1-2.

<sup>50</sup> *ibid.* p. 2.

Muslim tradition what is the “good” of which sura 41.35-36 speaks, thus deduced from Islamic tradition.<sup>51</sup> Non-Muslims will obviously not be able to follow this contextualised argument for the superiority of Islam.

Conversely, a possible correlation between Islam and the poor human rights situation in Muslim countries is dismissed with the argument that such human rights abuses derive solely from deficiencies in the political system and have nothing to do with religion. As the Muslim convert and apologist Murad Hofmann puts it: “It needs to be made clear that the multifarious abuses of human rights in so-called Islamic countries – including torture, state terror, police brutality, electoral fraud and censorship – are neither motivated nor condoned by Islam.”<sup>52</sup> At the same time it is true that also the West has been guilty of numerous human rights abuses right up to the present day – an argument increasingly propounded since the institution of the prison camp at Guantánamo Bay following 9/11 and the exposure of the use of torture in Abu Ghraib in Iraq in the fall of 2003 – and has no right to take the moral high ground but needs to “come off its high horse.”<sup>53</sup>

#### **4. Muslim opinion independent of Islamic human rights declarations**

The orthodox view referred to above brooks little or no flexibility as regards the validity of the Sharia in principle and can do little more than debate the practical application of its ancient provisions. There is nevertheless a variety of critical views pleading for a wholesale reform of the question of human rights and democracy, held mostly by individuals such as lawyers, intellectuals, writers or journalists and often characterised as “liberals” or “reformers”, “individuals situated outside the dominant elites who distance themselves from Islamism, Arab nationalism and vestiges of various residual shades of Communism.”<sup>54</sup>

One can differentiate between those who regard Islam as fundamentally irreconcilable with Western concepts of human rights and those who consider Islam as such to be compatible with human rights and democracy. For the latter the problem lies in an incorrect interpretation and application of Islam, in other words the abuse of power and misguided developments which cannot be laid at the door of Islam as such. Since Islam signifies peace, equality

<sup>51</sup> Ibid. p. 4

<sup>52</sup> Murad Hofmann. *Der Islam und die Menschenrechte*. <http://tinyurl.com/MH-DIM07> (27.05.2007), p. 2.

<sup>53</sup> Ebd. p. 2.

<sup>54</sup> Ulrich Vogt. *Die Demokratisierungsdebatte*. in: Sigrid Faath (Hg.) *Politische und gesellschaftliche Debatten in Nordafrika, Nah- und Mittelost*. Deutsches Orient-Institut: Hamburg, 2004, p. 273-294, here p. 284.

and justice, the negative human rights record of some Muslim countries can only be regarded as shortcomings capable of being corrected by a return to “authentic” Islam.

#### **4.1 Proposals for reconciling Islam and human rights**

##### **4.1.1 Shirin Ebadi**

Prominent among the advocates of such views is the Iranian lawyer and 2003 Nobel Peace Prize winner Shirin Ebadi (\*1947), whose defence of dissidents and critics of the government has often roused the ire of the religious authorities. Governments with a poor human rights record are backward and repressive for Ebadi, but this is no more the fault of Islam itself than the oppression of women. Shirin Ebadi appeals for moderation and patience in her insistence on the ultimate compatibility of human rights and democracy with Islam. She concedes difficulties with the human rights situation in Iran, for instance equal rights for women and freedom of expression, but points to progress made in the last 25 years.<sup>55</sup>

##### **4.1.2 Mohammed Shabestari**

The contemporary Iranian theologian, Mohammed Shabestari (\*1936), a reformer and advocate of democracy, human rights and freedom of expression, sees human rights and democracy as purely man-made values about which the Koran is silent. Rather than contradicting it, for Shabestari democracy and human rights make sense within the framework of Islam which demands allegiance. Democracy and human rights are simply contemporary applications of the principles of just rule on earth laid down in the Koran.<sup>56</sup>

##### **4.1.3 Abdolkarim Soroush**

The Iranian philosopher and intellectual Abdolkarim Soroush (\*1954, his real name being Hossein Haj Farajollah Dabbagh) is probably more widely known than Shabestari. He is the most significant and indeed the leading representative of the current religious reform debate in Iran. While of the opinion that in Islam essential and eternally valid principles and ethical commands must be distinguished from purely contingent directives and that not all affirmations have the same status, his call for reforms in the unhistorical orthodox approach to the Koran and a modern interpretation of the Sharia does not involve fundamental criticism of the Koran and

<sup>55</sup> Shirin Ebadi; Juju Chang. Islam and Human Rights, in: Council on Foreign Relations. June 7, 2004. <http://www.cfr.org/publication.html?id=7093> (19.05. 2007), p. 2.

<sup>56</sup> Roman Seidel. Porträt Shabestari, Glaube, Freiheit und Vernunft. <http://tinyurl.com/Seid04> (27.06.2011).

the Sharia as such. He sees religion as part of a system whose supreme principle is rationality.

Soroush regards it as rational and the need of the hour to adopt human rights and democracy from other, non-Muslim countries. Reason gives legitimacy to a fresh interpretation of Muslim sources, since what reason approves of cannot contradict Islam. Soroush would like to see a religious democracy emerge in which every citizen can live his faith without coercion.<sup>57</sup>

This is not the first time theologians and intellectuals have sought to retain the eternally valid divine claim of the Sharia without tacitly having to accept the status quo, by distinguishing between God's eternally revealed word and law on the one hand and their fallible human interpretation and application on the other. To discuss not the substance but the interpretation of the Sharia is to define its content as historically contingent and thus open to change, paving the way for reform, critical reflection and possibly the end of the hegemony of orthodox views.

Shabestari and Soroush have thus far avoided open confrontation with the Iranian regime and the rule of the Mullahs. How their views would be received in a context of free discussion without fear of life and liberty, position and family, must remain an open question.

## **4.2 Islam incompatible with human rights**

Other Muslim intellectuals reject the notion that Islam could be compatible with human rights and plead for a fundamental renunciation of the Sharia as a basis for human rights and democracy.

### **4.2.1 Mahmud Muhammad Taha**

One of the most prominent examples is the founder of the Republican Brotherhood, Mahmud Muhammad Taha (\*1909 or 1911). For him, Islam stands for freedom, equal rights for men and women, democracy and freedom. The key to his position is the sole recognition of the early (apolitical) Islam of the Mecca period from 610 to 622 A.D. as normative, rather than the second, highly politicised stage in Muhammad's career in Medina from 622 to 632 A.D. This radical opposition to the classical view of the Sharia cost Taha his life. Despite his advanced age of about 75, he was publicly executed in January 1985 after a power struggle shortly before the then Sudanese president Jafar Muhammad an-Numeiri was deposed. His death caused highly negative signals for critical discussion within Islam which are still present till today.

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<sup>57</sup> Abdolkarim Soroush's biographical and professional details can be found on his own homepage: <http://www.dr.soroush.com/English.htm> (28.05.2007).

#### 4.2.2 as-Sadiq an-Naihum

The Libyan as-Sadiq an-Naihum takes a slightly different approach in denouncing what he sees as lust for power and oppression on the part of Sharia lawyers and their interpretations. He considers Islam can be reconciled with democracy if only the Koran were the sole source of jurisprudence and not the Sunna, the detailed and legally much more inflexible tradition. Muhammad is quoted as saying “Today I have perfected your religion for you” (sura 5.3) and never spoke of a second source of law beside the Koran.<sup>58</sup> an-Naihum believes that without the traditional texts it would be considerably more difficult if not impossible to justify making the Sharia a supreme guiding principle in politics and society.

#### 4.2.3 Muhammad Sa'id al-'Ashmawi

Similarly the Egyptian lawyer Muhammad Sa'id al-'Ashmawi (\*1932) sees Islam with its openness to interpretations as predestined to lead to democratic freedom, since “no one can claim to be in possession of absolute truth . . . Open discussion ought rather to be guaranteed on the basis of the freedom and equality for all human beings which characterised Islam before it became political.”<sup>59</sup>

Other intellectuals and theologians who presuppose the inherent compatibility of Islam with human rights insist on the capacity to develop of a religion designed by God to serve mankind, and if this is best achieved under a democracy then from an Islamic standpoint there can be no objection.

All these models aim to limit the Sharia's curtailment of human rights and liberty, as well as the potential application of corporal punishment and discrimination against women, without however calling in question its claims in principle.<sup>60</sup> Such views have not found a numerous following and only among non-influential theologians of the leading universities, schools of learning and mosques. Anyone who proclaims them openly is often liable to discrimination or persecution, may have his writings proscribed or his licence to teach withdrawn, and require protection due to threats, or even have to save his life by seeking exile in the West.

#### 4.2.4 Taslima Nasrin

Taslima Nasrin (\*1962), the Bangladeshi doctor, human rights activist and writer, believes that Islam is fundamentally irreconcilable with democracy and human

<sup>58</sup> Lorenz Müller. *Islam und Menschenrechte. Sunnitische Muslime zwischen Islamismus, Säkularismus und Modernismus*. Hamburg, Deutsches Orient-Institut, 1996, p 262.

<sup>59</sup> Quoted from: Lorenz Müller, *op. cit.* 230, 210ff.

<sup>60</sup> More examples for alternative views of Muslim theologians trying to relativize the orthodox interpretation of sharia are found at Katerina Dalacoura. *Islam, Liberalism and Human Rights*. I. B. Tauris: London, 2003<sup>2</sup>, p. 58ff.

rights. The poor human rights record of majority Muslim countries is in her opinion due to inequalities between Muslims and non-Muslims and between men and women sanctioned by Sharia law partially incorporated in legislation but even more embedded in the thinking of considerable segments of the population. The fact that there is no separation between religion and state is in her opinion a further reason for the lack of democracy.<sup>61</sup> After persistent threats from representatives of political Islam Taslima Nasrin left Bangladesh in 1994 and fled to Europe.

#### **4.2.1 Mohsen Kadivar**

The Iranian philosopher Mohsen Kadivar (\*1959) gives a similar assessment. He sees no room in Islam as traditionally interpreted, in the Sharia or human rights based on it for democracy and equal rights for everyone irrespective of religion, sex or social status.<sup>62</sup> Kadivar criticises discrimination against women in Muslim countries and particularly condemns terror in the name of Islam. He identifies contradictions between statements in the Koran and the Tradition and human rights. For Kadivar the solution is to regard specific regulations of the Holy Scriptures as conditioned by their time. His criticisms led to him being condemned to 18 months in Teheran's infamous Evin prison.

## **5. Efforts to improve human rights in Muslim countries**

The protest against the poor human rights record in Muslim countries is not limited to more or less theoretical alternative concepts proposed by Muslim intellectuals but includes the many individuals, initiatives and institutions acting practically to improve the human rights situation by exposing, often via the internet, abuse of or arbitrary exercise power and concrete instances of injustice, in assisting victims of torture, imprisonment or arbitrary measures, and informing the public. There are doubtless around two hundred human rights organisations in Muslim countries of differing size, financial clout, ideological orientation and working methods, often operating despite enormous obstacles from the government. Three examples must suffice.

### **5.1 The Moroccan Equity and Reconciliation Commission**

Some of these are government initiatives like the Equity and Reconciliation Commission ("Instance Équité et Réconciliation", in short IER) set up in 2004 by King

<sup>61</sup> A comparison between individual articles of the Universal Declaration of Human Rights and the foundations of the Sharia is to be found in Taslima Nasrin. *Demokratie und Menschenrechte im Islam. Aufklärung und Kritik* 2/1996, p. 108-114 and: [http://www.gkpn.de/nasrin\\_islam.htm](http://www.gkpn.de/nasrin_islam.htm) (27.05.2007).

<sup>62</sup> Bahman Nirumand. *Anpassung an zeitgemäße Lesarten des Islam*. <http://tinyurl.com/niru2003> (27.5.2007), p. 1.

Mohammed VI to investigate the human rights situation in Morocco. The commission is said to have received over 20,000 requests for examination or restitution of injustice suffered within a matter of years, and this is probably only the tip of the iceberg.<sup>63</sup>

The commission's competence and procedures were established by a royal decree of 10 April 2004. Its principal task was to ascertain human rights abuses of past decades, in particular the period from independence in 1956 to 1999, when the first compensatory commission for the victims of arbitrary government measures, the "Instance Indépendante d'Arbitrage" (IIA) was set up. Its task had been primarily to gather information, to ascertain the government's involvement in human rights abuses in cases of arbitrary imprisonment, torture, "disappeared" (abducted) persons, and to determine appropriate compensation or restitution for injustice suffered. The IER also concentrated from 2004 onwards on human rights abuses by organs of the state. Although this limited the commission's frame of reference by excluding private parties, and although the commission had no judicial competence, its work enjoyed popular respect, not least because it was made up of human rights activists and past victims of arbitrary imprisonment.

In addition, from 2004 onwards, colloquies and public political discussion were organised and reports of victims and their families about serious human rights abuses in Morocco were broadcast on radio and television. For all its limitations this was a unique and sensational instance of attempting on such a scale to come to terms with the past in a Muslim country.<sup>64</sup>

This must be qualified by noting that the commission's existence has not yet led to a change in the constitution, to fundamental reforms of state institutions such as the police, the courts or the secret services, or to questioning Islam's absolute status as the state religion. Critics have thus spoken of a smoke-screen to cover up day by day injustice and a merely ostensible opening of public discourse. Nevertheless critical reflection of injustice suffered in full view of society will certainly not be without permanent effect on public consciousness and political perceptions.

The "Equity and Reconciliation Commission" is not the only organisation promoting and defending human rights in Morocco. Mention might be made of the "Moroccan Human Rights Organisation" (Organisation Marocaine des Droits de l'Homme, OMDH), the "Moroccan Human Rights Association" (Association Marocaine des Droits Humains, AMDH) and the "Truth and Justice Forum" (Forum Vérité et Justice, FVJ).

<sup>63</sup> This number is mentioned in the report of Hinnerk Berlekamp. Marokko. Die Folteropfer erhalten das Wort, <http://preview.tinyurl.com/Berl04> (29.05.2007), p. 1.

<sup>64</sup> This is the tenor of Bettina Dennerlein's article *Zwischen Politik und Selbstreflexion Die Versöhnungskommission Instance Equité et Réconciliation*. Inamo 44/2005, p. 11-14.

## 5.2 The Arab Organization for Human Rights (AOHR)

The “Arab Organization for Human Rights” was founded in Limassol, Cyprus, on 1 December 1983, a “milestone in the Arabic human rights movement.”<sup>65</sup> This umbrella organisation with its headquarters in Cairo groups various regional human rights organisations and today has affiliated branches or partners in Morocco, Algeria, Tunisia, Jordan, Lebanon, Yemen, Bahrain und Kuwait.<sup>66</sup>

The stated aim of the AOHR is to support human rights for all inhabitants of Arabic countries on the basis of the Universal Declaration of Human Rights with a particular focus on those who by UN standards are unjustly imprisoned or subject to or threatened with restrictions or repression on the grounds of their religion, sex, political convictions, race, colour or language.

The executive committee, originally made up of a broad spectrum of views ranging from national-liberal, Nasserite, moderate Muslims to Marxists,<sup>67</sup> concentrates its efforts on defending and obtaining the release of political prisoners and supporting their families. Where direct involvement is impossible, it takes account of and documents human rights abuses in publications, conferences and seminars.<sup>68</sup>

The presence of Islamist activists in the leadership of the AOHR before 1990 may seem surprising, yet the statutes lay down that human rights are not to be defined on the basis of the Sharia. In connection with the work of the AOHR only a very general reference to divine revelation and a commitment to fundamental human rights conventions were desirable.<sup>69</sup>

## 5.3 The Egyptian Organization for Human Rights (EOHR)

The “Egyptian Organization for Human Rights” (EOHR) is one of the oldest NGOs (non-government organisations), with observer status at the United Nations and a member of “l’Organisation Mondiale contre la Torture” (OMCT: World Organisation Against Torture), the “Arab Organization for Human Rights” (AOHR), the “Fédération Internationale des Ligues des Droits de l’Homme” (FIDH: International Federation for Human Rights) and the “International Commission of Jurists” (ICJ).

<sup>65</sup> According to Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 33.

<sup>66</sup> Carsten Jürgensen. *Die Menschenrechtsdebatte*. in: Sigrid Faath (ed.). *Politische und gesellschaftliche Debatten in Nordafrika, Nah- und Mittelost*. Deutsches Orient-Institut: Hamburg, 2004, pp. 295-318, here p. 296.

<sup>67</sup> Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 35.

<sup>68</sup> Cf. the self-portrayal of the Arab Organization for Human Rights website at <http://www.aohr.org> (29.10.2006).

<sup>69</sup> According to Carsten Jürgensen. *Demokratie und Menschenrechte in der arabischen Welt. Positionen arabischer Menschenrechtsaktivisten*. Deutsches Orient-Institut: Hamburg, 1994, p. 38, 151.



The EOHR is widely linked, exercises the function of watchdog and documentation in safeguarding human rights in Egypt and acts to promote their wider application. In 2006 the EOHR was said to have 2,300 members in 17 branches in all Egyptian provinces.<sup>70</sup>

The EOHR has had a protracted struggle for official recognition. Founded in 1985 as a branch of the “Arab Organization for Human Rights”, it applied for registration as an NGO in 1987. This was repeatedly refused by the Egyptian Social ministry and the EOHR had to pursue its case through the courts until it finally received its registration number as a legal NGO on 24 June 2003, 18 years after it was founded.

The EOHR documents human rights abuses and presses charges irrespective of the identity of victims and perpetrators, not only when private parties are involved but also representatives of the state. EOHR files record dozens of cases of torture and physical abuse, some of them with fatal outcome. Making use of forensic documents and police reports, eye-witness accounts and records of court cases against police officers as well as its own researches, the EOHR has been able to demonstrate the involvement of security personnel in physical abuse. While clearly by no means exhaustive, the cases on file have over the past two decades exposed the systematic use of torture in Egyptian police stations. The EOHR also seeks to document discrimination against women and to support refugees.

The work of the EOHR not only offers assistance but also breaks a taboo by bringing socially and politically sensitive information into the public arena and calling for solidarity and help for the victims. It seeks to increase public awareness through the press and to involve private institutions as partners.

One of the stated aims of the EOHR is the reform of the Egyptian constitution and legislation to bring them into harmony with the Universal Declaration of Human Rights. This, and the call for an independent judiciary and an end to discrimination of grounds of religion<sup>71</sup> show how radical and substantial is the approach to the problem. These fundamental issues of established power structures, the constitution and the value systems which lie behind it will be the factors which in the long term decide how successful the work of this and similar human rights organisations in Muslim countries will prove to be.

## **6. Human rights – where do we go from here?**

Overall the human rights debate in Muslim countries has intensified in the last ten to fifteen years and there has been an increase both in the number and the

<sup>70</sup> Cf. the self-portrayal of the Egyptian Organisation for Human Rights web site at: <http://www.eohr.org/info/about.htm> (29.10.2006).

<sup>71</sup> The Egyptian Organisation for Human Rights: <http://www.eohr.org/info/about.htm> (29.10.2006), p. 1.

activities of human rights organisations and activists with a number of successes and some progress. The demands of such groups and individuals are in no way matched by the practical reality in most Muslim countries, where human rights groups are often hindered in their work by Islamist groups and repressive regimes. Limited access to a largely censored press renders it difficult for human rights organisations to publicise their concerns and seek the support of the mass of the population. Access to the internet is still too limited for it to play a leading role in increasing public awareness.

In this context mention must also be made of the efforts of Arabic feminists such as Fatima Mernissi or Nawal al-Saadawi and numerous women's organisations, who are involved not only in the struggle for woman's rights but also democracy and human rights in general. Their untiring efforts have in recent years led to reforms in marriage and family law in several Arab countries which have improved women's lot, including raising the marriage age, making it more difficult for husbands to obtain a divorce and the abolition of the wife's duty of obedience, which had been anchored in the traditional concept of marriage.

## **7. The Sharia's influence on the discussion of human rights**

Why does it prove so significantly difficult to improve the human rights situation in Muslim countries whereas at the same time the majority of people desire greater freedom? Does the problem lie in political abuses, economic underdevelopment, the high illiteracy rate or the lack of a civil society which is the necessary condition of political participation? And why does it prove so difficult to develop a civil society?

However much economic, social and political factors may play their part, one problem which cannot be overlooked is the attempt by orthodox theologians to find a basis for human rights in the Sharia as eternally valid divine law, as it is well-nigh uncritically preached from the pulpits of universities and mosques. As long as this traditional, ahistorical interpretation of the Sharia remains the sole unquestionable norm for man's present existence and thus for the definition of human rights, liberal or secular grounds for conceding comprehensive human rights will remain in the shadow of the Islamic human rights declarations referred to above, and critics will continue to be in danger, for "some reforming Islamic theologians believe there is a real chance of human rights standards overcoming certain traditions and reinstating the original humane character of Islam, but their political influence is minimal."<sup>72</sup> The drafts of the 1990 "Cairo Declaration of Human Rights in Islam"

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<sup>72</sup> Ali al-Nasani. Menschenrechte im Islam. amnesty international. <http://tinyurl.com/Nasani02> (19.05.2007), p. 2.

and the 1981 “Universal Islamic Declaration of Human Rights“ clearly leave little room for pluralism, freedom of opinion or any kind of critical discussion.

If democracy is only conceivable if, according to Murad Hofmann, some primitive version of it can be discovered in the Koran as practised by Muhammad and his companions, secular grounds for introducing it are ruled out of court unless a majority, however constituted, is able to discover it there. The argument then runs: “From the fact that the first four Caliphs were elected without being blood relatives of Muhammad one may deduce that an Islamic state can be a democratic republic and at least does not have to be a monarchy.”<sup>73</sup>

At the same time it is important to emphasize that it is not only religion and its powerful representatives who hold back the improvement of human rights but also dictatorial regimes or even a secular state such as Turkey, which for non-religious motives refuses to concede comprehensive rights to minorities. Another aspect of the overall picture is that in most Muslim countries not only the political or ideological opposition but also Islamist groups complain of arbitrary measures and repression.

It is widely known that despite affirmations to the contrary the Sharia is nowhere fully applied in its pristine purity, not even in Afghanistan or Iran, but remains even today a legal ideal, an ideology used by certain groups mainly to underpin the traditional concept of marriage and family law and to consolidate their own power base. The Sharia is codified nowhere and thus remains dependent upon interpretation.

### 7.1 The authority of the Sharia

The Sharia encompasses all legal regulations dealing with every aspect of life and refers to the totality of divine commandments as they are laid down in the Koran and in the Islamic tradition, as interpreted by authoritative theologians, especially up to the 10th century. There is also disagreement among theologians as to what precisely the Koran lays down in specific cases. For instance: does it prescribe or forbid polygamy? This means there cannot be a single Sharia code.

The Sharia contains norms for both vertical and horizontal human relationships, instructions about ethical behaviour and social and family affairs, for example economic, inheritance, association, marriage and criminal law, but also regulations for religious practice and ritual, especially the “Five Pillars of Islam”: the confession of faith, prayers, fasting, almsgiving and the pilgrimage to Mecca. The individual has as little say in the performance of the daily prayer ritual as in the clauses of a

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<sup>73</sup> Murad Hofmann. Der Islam und die Menschenrechte. <http://www.way-to-allah.com/themen/Menschenrechte.html> (27.05.2007), p. 4.

marriage contract laid down by the Sharia, without which the marriage would not be legally valid.

Although there are critical Muslim opinions calling for a fundamentally fresh interpretation of the Sharia, its authority has in theory changed little. Ancient Sharia norms belonging to a pool of decisions already formed in the early centuries of Islam have thus been adopted to varying degrees into the legislation of Muslim countries. But even where legislation has only partially been affected, the Sharia exerts a considerable influence as a norm for social behaviour and in its claim to be the genuine and valid law, as being of divine origin. One may adhere to the law of the land, for instance in Turkey to monogamy, but the comprehensive claim of the Sharia has never been modified or questioned by theologians and it is still regarded by many people as the authentic framework for life and belief. One consequence of this is that, especially in rural Turkey, polygamous marriages permitted by the Sharia are contracted especially in Anatolia, because this corresponds to the way people feel about the Sharia's priority over secular laws.

Another example are the pervasive "Sharia groups" in a relatively secularised country such as Syria. In these groups the application of the Sharia is taught alongside the official legal studies at the university in private classes by a leading religious personality. What such students learn is applied in their personal life and attitudes to the law in their immediate surroundings, and they develop a sense that the Sharia norms they have informally learned are the real ones. The leaders of these Sharia groups, the Sheikhs, exercise public influence as teachers through the media, in the universities or as preachers in the mosque and Muftis (legal experts), so that alongside a fairly moderate state Islam there has spread a conservative, orthodox Islam also which, while not, as in Iran, propagated by the top political leadership, exerts a considerable and widespread influence in many areas of society. By means of this and other channels of communication preoccupation with and application of the Sharia plays a much greater role in social life as would appear from a simple comparison of Syrian legislation with Sharia norms.<sup>74</sup>

## 7.2 The Sharia's influence

It would therefore be a grave error to underestimate the practical significance of the Sharia even if in numerous countries and many areas it has only partially been adopted in legislation or not at all. Its presence in daily life is felt in many areas through sermons in the mosque, passages cited during the marriage ceremony, at

<sup>74</sup> See the description of personal observation in Damascus in Maurits S. Berger's *The Shari'a and Legal Pluralism. The Example of Syria*. in: Baudouin Dupret, Maurits Berger, Laila al-Zwaini (eds.) *Legal Pluralism in the Arab World, Arab and Islamic Laws Series*, vol. 18. Kluwer Law International: The Hague, 1999, p 113-124, here p. 115ff.

funerals and festivities, as well as through tradition and the legal sense influenced by it. "Many Arabic countries are permeated by handed down Sharia law to an extent difficult to imagine . . . so that for the Muslim who is subject to it, every action and aspect of life is assessed on a graduated scale between what is allowed and what is rejected by God. The extent to which the religious Sharia law influences collective and individual convictions and behavioural expectations is difficult for Western social sciences to analyse, since it is not a case of some autonomous field of legal or moral norms, nor a purely 'rational' ethic such as is characteristic of the more or less positivistic continental European legal systems with their separation between religion and state and between politics and morality."<sup>75</sup>

This is why the Sharia as traditionally interpreted continues to some extent to influence the legislation in all Muslim countries, especially in marital and family law. Its social influence is perhaps even greater due to the fact that the majority of the population, theoretically at least, hardly entertains doubts as to the infallibility of the text of the Koran or the fundamental estimation of the Sharia as an indispensable divine norm and thence as a rule for living. Sharia norms are transmitted via Koran schools, mosque sermons, reports of the tradition, fatwas, literature, cassettes, discussion groups and academic circles, and create a legal sense which at least emotionally is closer to those norms than would seem likely given the official university theology or the moderate position of the state, and in which they are not up for discussion, but at best only subject to interpretation.

A fundamental and comprehensive improvement of the human rights situation in Muslim countries is therefore not to be expected as long as the claims of the Sharia cannot be openly discussed in public. To quote Bassam Tibi, "there can be no synthesis between Islam and human rights without a radical reform of religion and jurisprudence which enlightened Muslims such as the Sudanese lawyer Abdullahi An-Na'im have called for."<sup>76</sup>

To leave the unlimited theoretical claim of the Sharia and its influential conservative and political interpretation untouched means on the one hand that its critics continue to be condemned to exile or anonymity, and on the other hand that the scope for extending human rights remains limited and their practical application extremely difficult.

As long as influential theological and political opinion continues to regard Islam as such and the attempt to recreate 7th century Arabic society as identical with justice, progress and genuine civilisation, a critical discussion of the Sharia claims is

<sup>75</sup> Birgit Krawietz. *Die Hurma. Schariarechtlicher Schutz vor Eingriffen in die körperliche Unversehrtheit nach arabischen Fatwas des 20. Jahrhunderts.* Duncker & Humblot: Berlin, 1991, p. 77.

<sup>76</sup> Bassam Tibi. *Im Schatten Allahs. Der Islam und die Menschenrechte.* Piper: München, 1996, p. 45.

hardly to be expected. "From this religious point of view modernity appears to be a backward step, since it leaves behind the real origins and their premises."<sup>77</sup>

One can only hope that the official theological line will open up to a historical-critical discussion of the Sharia in the not too distant future.

## Recommendations for further reading

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<sup>77</sup> Adonis. Die Sackgasse der Moderne in der arabischen Gesellschaft. in: Erdmute Heller; Hassouna Mosbahi (eds.). *Islam, Demokratie, Moderne. Aktuelle Antworten arabischer Denker.* C. H. Beck: München, 1998, p. 62-71, here p. 69.

# Advocacy for religious freedom in Canadian law

Janet Epp Buckingham<sup>1</sup>

## Abstract

Canadians enjoy strong constitutional protection for religious freedom. However, this protection is proving to be only as strong as the courts' interpretations of the Constitution. Early decisions under the Canadian Charter were made without religious organisations being involved. Religious organisations have intervened in more recent court cases to argue for a broad, inclusive understanding of religious freedom that protects individual religious practices but also recognises the communal aspects of religion.

**Keywords** Canada, human rights, religious freedom, group rights, advocacy.

The Canadian Charter of Rights and Freedoms came into force in 1982 with great fanfare. Given that Canada had a federal Bill of Rights since 1960, although it was not constitutional, many academics and lawyers were sceptical that the Charter would make a difference in Canadian law. They were wrong. Judges seized on the opportunity to tackle challenges to a wide variety of laws based on their conformity with the Charter. Until 1987, intervener rules at the Supreme Court of Canada were quite limited so religious individuals and organisations did not participate in initial significant court cases. When it became clear that courts would play a new and vital role in developing social policy and religious freedom, and when the rules changed to more readily allow interveners, religious organisations began to intervene in an effort to influence significant court cases.

In the last 30 years, Canada has become a more pluralistic and multicultural country. Note that the multicultural nature of Canadian society was reflected in the Charter in 1982 but immigration has increased the cultures and religions present in Canada. The role of religion has changed in society as well. In 1982, Canada was broadly Christian, although Christian influence was already waning. Shops were closed on Sundays by law. Church services were broadcast on radio stations on Sunday morning. School children

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in public schools started the day with the Lord's Prayer and the national anthem. This was gratifying for Christians, but religious minorities felt marginalised.

The Charter has several provisions that address religion. The Preamble affirms "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." Section 2(a) affirms "freedom of conscience and religion" as "fundamental freedoms". That section also guarantees freedom of association and freedom of expression. Section 15 guarantees, "Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on... religion..." All the rights in the Charter are subject to a general limitation clause, section 1, "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

In the unanimous ruling of the Supreme Court of Canada in the *Reference re Same-sex Marriage* in 2004 the court affirmed strongly, "The protection of freedom of religion afforded by s. 2(a) of the Charter is broad and jealously guarded in our Charter jurisprudence" (Marriage Reference:para. 58). The court has strongly protected individual religious practices. The more public aspects of religion and the communal aspects have had more limited success. Religion, however, is frequently practised as part of a community and in houses of worship that are open to the public (Buckingham 2007:251). Recent cases show an encouraging willingness by courts to address these issues.

In this paper, I will examine the development of the law interpreting religious freedom in Canada. This paper does not begin to analyse the rich case law that has developed under the Charter, but rather focuses on several "waves" of cases that addressed similar themes. The early cases, of course, address the general meaning and content of freedom of religion. Religious individuals and organisations had little involvement in these cases, except Rev. Jones who faced criminal charges. The second wave addressed the place of the dominant religion, Christianity, in public schools and resulted in the secularisation of those schools. Religious individuals and organisations were involved as litigants and interveners in these cases. Indeed, they were involved from hereon. The third wave addressed the place of religious teachers and parents in the now secularised schools. The fourth wave concerned protection for individual religious practices. The fifth wave addressed the communal aspects of religion; including houses of worship. I conclude with some lessons learned from the involvement of religious individuals and organisations in advocating for a robust interpretation of religious freedom.

## **1. Early religious freedom cases under the Charter**

The early cases under the Charter addressing religious freedom were criminal cases challenging Sunday closing laws, a public affirmation of the "sanctity of Sunday"



and reflecting the Christian character of Canada, and dealing with a home schooling parent. *R v Big M Drug Mart*, which challenged the federal Sunday closing law, the Lord's Day Act, was the first case considering s. 2(a) of the Charter to come before the Supreme Court of Canada. The case was provoked by a retail chain that defied the law in order to challenge it. Chief Justice Dickson ruled that the Act had a religious purpose; namely, coercing non-Christians into observing the Christian Sabbath. He struck down the law as violating s. 2(a).

In this first case, Chief Justice Dickson established the definition of religious freedom to be applied in all Charter cases under Canadian law:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that. Freedom can primarily be characterised by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free (*Big M*: para. 94, 95).

This is a strong definition that includes not only individual, but also community aspects of religion.

After the federal legislation was struck down, some provincial governments passed laws to restrict retail opening on Sunday. In a subsequent case, *R v Edwards Books*, decided in 1986, a retail owner again broke the law in order to challenge it. The Supreme Court upheld the provincial common pause day legislation as it did not appear to enforce a Christian Sabbath. The common pause day, now secular, was Sunday but there were exceptions for those observing a different day for their religious Sabbath. The legislation struck an appropriate balance to accommodate the religions of various retail owners.

In a third case, also decided in 1986, a pastor in the province of Alberta, Canada, had a small school in his church where he taught his own and other children. He was accused of "truancy" for not sending his children to the state school. He argued that teaching his own children was part of his religious responsibility. In *R v Jones*, the Supreme Court of Canada agreed that education of children could be part of religious freedom. However, there were provisions in the law for parents to provide alternative education for their children so long as they sought approval from local education officials. This Rev. Jones refused to do. The court said that it was reasonable to require Rev. Jones to obtain approval from local officials.

These cases made it clear that the courts would play a much stronger role in determining the parameters of religious freedom in Canada. However, they were

decided in 1985/86 when there were restrictive intervener rules. In both the cases dealing with Sunday closing laws there were no religious adherents addressing the rationale behind these laws. And while Rev. Jones advocated for parental responsibility over a child's education, the broader issues of religious communities and education were not put before the court.

## **2. The second wave: religion in public schools<sup>2</sup>**

By the late 1980s, religious communities had begun to understand the new reality that important public policy decisions would be made by the courts. In the mid-1980s, a group of parents of minority faiths brought a court action to argue against the mandatory use of the Lord's Prayer as part of opening exercises in public schools in Ontario (Zylberberg). While students could opt out of reciting the Lord's Prayer, the parents sought a more inclusive approach to religious observance in schools. Instead, however, the court simply struck down the use of the Lord's Prayer as violating the religious freedom of non-Christians (Sokhansanj 1992). Other provincial superior courts followed the Zylberberg decision (Russow, Manitoba Association of Rights and Liberties).

A short time later, several parents of minority religions challenged regulations in the province of Ontario allowing for periods of mandatory religious instruction because the instruction given was indoctrinational in the Christian faith. A coalition of religious organisations intervened in the case to argue first that the opt-out clause accommodated religious minorities or, as an alternative, to retain some religious content in the school curriculum. In the decision, the court gave detailed advice on how schools should give religious education, not indoctrination (Elgin County:367). The court declared the regulations to be unconstitutional and ordered that the curriculum not be taught. The Ontario government responded by eliminating all religion from public schools, even to the point of excluding religious clubs during school hours (Ontario Ministry of Education and Training). Christian organisations advocated to the government an inclusive, educational curriculum about religion but it was rejected.

After religion was effectively removed in schools in Ontario, some religious schools that had government funding were de-funded. Parents from a variety of faiths joined together to challenge the lack of funding, arguing that it was discriminatory under s. 15 of the Charter; some religious schools were funded because there was a constitutional guarantee but other religious schools, that were established outside of the constitutional guarantee, were not funded. The court ruled

<sup>2</sup> The place of religion in education has been one of the most controversial issues in Canada for longer than it has been a country. This very brief description of a small number of cases does not begin to analyse the complexity of the issues.

that provisions of the Charter could not be used to challenge other constitutional provisions (Adler). It is significant that Christians advocated alongside those of other faiths for broader religious freedom for all.

The issue of the place of religion in public schools is on-going in Canada. A school in Toronto, Canada, for example, that has 90 per cent Muslim students, allows an imam to conduct prayers on Fridays so students need not go off-site. In parts of the province of Manitoba where there is a high Christian population, schools allow the Lord's Prayer as part of opening exercises. In both these situations, parents and students appreciate the opportunity to have a shared religious observance. However, minority religions and atheists feel alienated. In general, Canadian courts have defaulted to the secularising response rather than trying to find ways to be inclusive of other faiths in a non-coercive manner. Religious parents have often been on both sides of such conflicts: some arguing for an approach inclusive of all religions and others arguing that if their religion is not dominant, they prefer religion to be excluded.

### **3. The third wave – religious parents and teachers**

It was clear by the mid-1990s that public schools were to be secular. "The public school system is now secular. Its goal is to educate, not indoctrinate" (Bal:705). The next cases considered religious teachers and the place of religious parents. In neither case were religious adherents excluded, but there were limits placed on them.

A Christian university, Trinity Western University, established an education programme to train teachers. The British Columbia College of Teachers refused accreditation, on the basis that the university had a lifestyle policy that excluded gays and lesbians. The university brought an action for judicial review. Justices Iacobucci and Bastarache, writing for the majority, said that the lifestyle policy alone was not sufficient to establish that graduate teachers would be discriminatory against gays and lesbians (Trinity Western:para 33; Moon 2003). However, there was an expectation that if teachers were discriminatory, that would be dealt with through normal disciplinary measures applicable to all teachers. "The freedom to hold beliefs is broader than the freedom to act on them" (Trinity Western:para 36). The court ruled in 2001 that the teacher training programme should be accredited.

The issue of parental involvement in decisions about public schools was decided in 2002. A school board made a decision not to approve three books for classroom use because they featured same-sex parents. The decision was based largely on concerns expressed by religious parents, including Christians, Muslims and Sikhs. The B.C. School Act, s. 76, requires schools to be run on "strictly secular and non-sectarian principles." The B.C. Supreme Court ruled that the definition of "secular" meant non-religious so religious concerns could not be considered by the

school board (Chamberlain 1998). On appeal, the Supreme Court of Canada ruled that religious adherents had as much right as anyone else to participate in public decision-making. This was one of the few examples of a case where the reference to “supremacy of God” in the Preamble was used to interpret the parameters of religious freedom (Chamberlain 2002:para 137). However, the court ruled that acting on concerns of religious parents could not have the effect of excluding another group (Chamberlain 2002:paras 19-20; Benson 2007:138-140).

These cases affirm that there is still a place for religious adherents in public institutions, but it is no longer a dominant place. Coalitions of religious organisations intervened in both cases to advocate against the exclusion of religion from public schools.

#### **4. The fourth wave – individual religious practices**

Recent cases from the Supreme Court of Canada have affirmed strong protection for individual religious practices. Coalitions of religious organisations routinely intervene in these cases to advocate for broad protection for religious freedom.

In the 2004 case, *Syndicat Northcrest v Amselem* the Supreme Court of Canada affirmed religious freedom over commercial interests. The issue there was whether Jewish condominium owners could build succah huts<sup>3</sup> on their balconies in contravention of the condominium agreement. A significant question before the court was whether the practice was obligatory. Justice Iacobucci, after examining the meaning of “religion” summarised the law as follows:

[F]reedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials (*Amselem*:579-580).

When the issue first arose at *Syndicat Northcrest*, a high rise condominium, it proposed setting up a communal succah beside the parking lot on the ground floor. The Canadian Jewish Congress, which advocates on behalf of Canadian Jewry but does not have doctrinal authority, approved this resolution. But the court ruled that the individual’s religious practices are what must be accommodated. This definition also neglects the communal aspects of religion (Boonstra and Benson 2008:1).

In a 2006 case, the Supreme Court of Canada upheld the right of a Sikh high school student to wear a kirpan, a ceremonial dagger, at school as an exemption to

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<sup>3</sup> These are temporary shelters for the celebration of the Jewish festival of Succat.

the no-weapons policy (Multani). Again, the issue was raised as to whether wearing an actual dagger was obligatory as some Sikhs wear a plastic replica. The court determined that it was up to the individual to make that decision.

## 5. The fifth wave – group rights

The Supreme Court of Canada has addressed the communal aspects of religion on a number of occasions, but has been reluctant to base decisions on group rights. As early as the 1986 *Edward Books* case, Chief Justice Dickson recognised the collective aspects of religion:

In this context, I note that freedom of religion, perhaps unlike freedom of conscience, has both individual and collective aspects. Legislatures are justified in being conscious of the effects of legislation on religious groups as a whole, as well as on individuals (*Edwards Books*:para. 145).

The ability of a community of faith to build a house of worship was at issue in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*. A Jehovah's Witness congregation had been blocked at every turn by the municipality in their quest to find land to build a Kingdom Hall. During the hearing, the judges wrestled with whether building a house of worship was legitimately protected under s. 2(a) of the Charter. The majority avoided the issue but Justice LeBel, dissenting on another point, was quite clear on this point:

Freedom of religion includes the right to have a place of worship. Generally speaking, the establishment of a place of worship is necessary to the practice of a religion. Such facilities allow individuals to declare their religious beliefs, to manifest them and, quite simply, to practise their religion by worship, as well as to teach or disseminate it. In short, the construction of a place of worship is an integral part of the freedom of religion protected by s. 2(a) of the Charter (*Congrégation des témoins*:para 73).

To religious adherents, the right to build a house of worship seems to be an essential part of freedom of religion, and is a right frequently violated around the world.

A religious community that owns property and farms communally, the Hutterian Brethren, tried to make an argument for an exemption from mandatory photographs on driver's licences. Hutterian Brethren object to being photographed<sup>4</sup> on a religious basis. They argued that having a driver's licence was necessary to preserve their communal way of life, at a minimum to get their farm products to market. The Supreme Court of Canada ruled against them in 2009. The Chief Justice wrote the majority decision and was of the opinion this was not a case of "group rights", but rather individu-

<sup>4</sup> The objection is in relation Exodus 20:4 that commands believers not to make a "graven image".

als wishing to be exempted from the requirement for a photo driver's licence, which would then have an impact on the community (Alberta:para 31). However, two dissenting judgments set out a strong foundation for the communal aspects of Hutterian religious practices (Buckingham 2010:110-112). Justice LeBel states eloquently:

Religion is about religious beliefs, but also about religious relationships. The present appeal signals the importance of this aspect. It raises issues about belief, but also about the maintenance of communities of faith. We are discussing the fate not only of a group of farmers, but of a community that shares a common faith and a way of life that is viewed by its members as a way of living that faith and of passing it on to future generations (Alberta:para. 182).

Justice Abella, also dissenting, drew heavily on cases from the European Court of Human Rights to establish the nature of communal rights for religious communities (Alberta:para 130-131; 170).

## **6. Lessons learned**

### **6.1 Presence**

Proponents of religious freedom can be pro-active in advancing a more inclusive approach to religion. Canada is an example of a country which has a strong legal system and allows interventions in important legal cases. Some of the important decisions defining religious freedom were brought by religious adherents or communities. While some question whether it is right to use the courts in this way, if decisions are being made and religious adherents are not present, the decisions may serve to further limit religious freedom.

In Canada, interventions by religious adherents have made important differences in the definition and interpretation of religious freedom. This is a work in progress and it is vital that religious advocates be present on an on-going basis to advocate for a robust definition of religious freedom.

### **6.2 Working with others**

Promotion of a more robust definition of religious freedom requires that religious adherents be inclusive. This means, for example, that when an argument is made for inclusion of education about religion, it must include all religions, not merely be indoctrination in one religion. Coalitions of religious organisations have been very successful in making arguments advocating for broad and robust definitions of religious freedom. This is very important in Canada due to the social understanding that it is a multi-religious country. It has made a very powerful statement for various religions to stand together to advocate a common position that will advance religious freedom for all. It has sometimes been a challenge when everyone is well

aware that there are disputes between religions; perhaps that is why it is a powerful statement to say, “On this we can agree.”

### 6.3 Presence in public debate

Issues of the place of religion are much debated in Canada. There are multiple points of entry into this dialogue from participation in public consultations through engagement with the media. The debates also take place in legislatures and in courts, and proponents must be prepared to advocate their cause there as well. Courts are only one place where religious freedom is determined.

### 6.4 Awareness

Religious freedom is a global issue. International agreements like the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief protect religious freedom. One can draw on decisions from the UN Human Rights Committee, Resolutions from the UN Human Rights Council, and Statements from the UN Special Rapporteur on Religious Freedom.

Canadian courts have shown a willingness to refer to decisions of other courts and international tribunals (Buckingham 2010:116). Other national courts have looked to comparative and international sources as well (Buckingham 2001:461). Those who advocate for religious freedom should be aware of and use both international law and law from other countries to support their positions.

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# Freedom of conscience, medical practitioners and abortion in South Africa

Shaun A de Freitas<sup>1</sup>

## Abstract

While the South African Constitution, along with most modern standards of human rights, recognises the right to freedom of conscience, there is in reality a concern that medical practitioners in South Africa who strongly believe in the sanctity of the unborn, might be pressurised to act against their beliefs (the same probably applies in many other societies perceived as being democratic and pluralist). Consequently, this article argues for the protection of the medical practitioner's right to conscientious objection to participating in abortions. In this regard, special emphasis is placed on the complexity and gravity of views on the nature of the unborn. This argument, together with some critical thought on the place and nature of religion in a pluralist and democratic society, serves as a strong motivation for the accommodation of those medical practitioners who strongly believe in the unborn as being human (or at least as something worthy of protection).

**Keywords** Freedom of religion, religious rights, conscientious objection, reasonable accommodation, medical ethics, abortion.

## 1. Introduction

While the South African constitution, along with most modern standards of human rights recognises the right to freedom of conscience, there is in reality a concern that, in South African hospitals, medical practitioners with a strong conscientious objection to participating<sup>2</sup> in abortions might be pressurised to act against their beliefs; which in turn may cause much psychological trauma for

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<sup>2</sup> "Participate" means, directly participating in, or performing an abortion. Included is also the removal of the unborn from the pregnant woman's womb after inducement of the abortion procedure. Conscientious objection to any indirect or remote involvement in abortions does not form part of this investigation. In this article, "unborn" refers to the "entity" formed at fertilisation and continuing until birth, while "fertilisation" refers to the union of ovum and sperm.

the medical practitioner.<sup>3</sup> While none of the clauses in international legal instruments or state constitutions dealing with religion, belief and/or conscience refer explicitly to abortion, there are a number of such clauses within various national statutes and constitutions.<sup>4</sup>

On 25 February 2009, Dr Stephanus de Wet Oosthuizen was dismissed from a position he had held for eight years at a hospital in South Africa due to, among other things, his objection to participating in abortions. On appeal, the presiding officer of the Public Health and Social Development Sectoral Bargaining Council found that Dr Oosthuizen was not guilty on any of the charges. Dr Oosthuizen believes that the human zygote created by the formation of the egg and the sperm is an autonomous being, and for him (and many other medical practitioners) that implies certain legal rights and human dignities.

Consequently, this article critically explores the extent to which the right to conscientious objection to participation in abortions should be exercised so as to give maximum effect to such an important right. More specifically and firstly, the unique and complex nature of views pertaining to the unborn is emphasised, together with the importance of the right to exercise freely one's conscience and belief. This has implications regarding the balancing of rights in relation to one another, as well as questions related to the principle of reasonable accommodation. Secondly, this investigation seeks to present important insights as to the relationship between conscientious objection to participating in abortion practices and the exercising of religious rights in the public sphere. In this regard, a more nuanced approach towards the interplay between the private and public sphere in a pluralist and democratic society is argued for so as to accommodate and tolerate those medical practitioners who strongly oppose participating in abortions. It needs to be noted from the outset that this article is not about proving that the unborn is human and therefore worthy of protection. Rather, it is about protecting the medical practitioner's rational and sincere belief that the unborn is a human being (or something of substantial importance) and which consequently requires protection.

## **2. The right to conscientious objection and the unborn**

### **2.1 The nature of the unborn and the gravity of abortion**

The right to freedom of conscience is generally accepted as an important right. According to the South African Constitutional Court: "South Africa is an open and

<sup>3</sup> Section 15 of the South African Constitution is not the only provision in the said Constitution that is applicable to conscientious objection. Section 9 (the equality clause), for example, provides for protection against unfair discrimination, *inter alia*, on religious and other analogous grounds (Ngwenya 2003:9).

<sup>4</sup> See for example, the British *Abortion Act* (of 1967), section 4(1).

democratic state that ... accepts the intensely personal nature of individual conscience and affirms the intrinsically voluntary and non-coerced character of belief ... and does not impose orthodoxies of thought or require conformity of conduct in terms of any particular world-view ...”<sup>5</sup>. However, different factual situations giving rise to the relevance of the right to conscientious objection provide different levels of significance regarding the protection of the conscience, some carrying more weight than others. It is argued that conscientious objection to participating in abortions resides on the more substantive side of the protection of the conscience (and of belief) as a fundamental right. This is explained as follows: The very fact that there are divergent views on the nature of the unborn and the fact that arguments supporting an understanding of the unborn as human can be most credible and rational, lead us to an increased sense of significance of the belief by many that the unborn is a live human being.

It has long been understood that there are diverse views and heated debates on the nature of the unborn, yet this requires some emphasis in the context of conscientious objection to the performing of abortions. Diverse views on the status of the unborn (which result in complexities pertaining to consensus and understanding regarding the legal status of the unborn) are confirmed by the fact that even pertaining to international human rights instruments, one finds on the one hand, a vague understanding of the legal status of the unborn<sup>6</sup>, whilst on the other hand, one finds that some instruments clearly support the protection of the unborn.<sup>7</sup> Courts have also inferred that the investigation as to the nature of the unborn is highly complex, so complex that not even the judiciary deems it appropriate to make a decision thereon.<sup>8</sup>

In the South African Constitutional Court’s judgment of *Prince v President, Cape Law Society, and Others*,<sup>9</sup> it was stated as per Justice Ngobo that: “The beliefs that believers hold sacred and thus central to their religious faith may strike non-believers as bizarre, illogical or irrational. Human beings may freely believe in what they cannot prove”.<sup>10</sup> However, all of us are believers, some being religious believers and others not being religious believers, and it is not only the belief of the religious that may be perceived as being “bizarre, illogical and irrational”, but also the belief of the non-religious that may be viewed as being “bizarre, illogical and irrational”

<sup>5</sup> *S v Lawrence, S v Negali, S v Solberg*, 1997(4) SA 1176 (CC), paragraph 148, pages 1225-1226.

<sup>6</sup> Which can, in fact, be indicative of the sensitivity towards an absolute negation of the protection of the unborn.

<sup>7</sup> For a general overview on international law’s views on the status of the unborn see De Freitas and Myburgh (to be published in the *Potchefstroom Electronic Law Journal* during the latter half of 2011).

<sup>8</sup> The original suggestion in this regard emanated from the 1973 United States Supreme Court decision of *Roe v. Wade* [410 U. S. 113 (1973)].

<sup>9</sup> 2002 (2) SA 794 (CC).

<sup>10</sup> Paragraph 42, page 184 (author’s emphasis).

by those who are religious believers. This is especially true regarding views on the nature of the unborn. Those religious believers who view the unborn as human, find the views of, for example, non-religious believers who support abortion as being “bizarre, illogical and irrational”.

Scholarship for the South African context,<sup>11</sup> which acknowledges the importance of conscientious objection to participating in abortions, whilst strongly supporting the reproductive rights of women where the “health of the woman”<sup>12</sup> is threatened, has yet to convince “those who believe in the sanctity of the unborn” as to why the unborn, during all phases of pregnancy, is not human and therefore does not require protection. This in turn results in a weak argument in justifying the interference of the belief that the unborn is human (as believed in by the medical practitioner), for such a belief is (also) based upon meaningful as well as coherently and consistently applied argumentation. Also, to have a clear-cut distinction between religion (or belief) and reason is impossible regarding the question of whether the unborn is human or not (and this is applicable to all parties saying their say on the nature of the unborn). This causes belief to be inextricably connected to all perspectives on the unborn, and in the process, all perspectives view their beliefs on the status of the unborn as true. It is also the medical practitioner who conscientiously objects to participating in abortions who represents an inseparable marriage between religion (belief) and reason, which should consequently qualify the application and acceptance of such a belief in the public sphere.

## 2.2 The balancing of rights

It is not argued that the medical practitioner's right to conscientious objection to participating in abortions should be absolute, as all rights have the potential to impinge on other rights. The right to conscientious objection (as part of the right to freedom of religion, opinion and conscience as stated in section 15 of the South African Constitution), like any other fundamental right under the South African Constitution, is subject to the limitation clause.<sup>13</sup> A problem frequently arises regarding the attempt at having the limitation clause (or the proportionality determi-

<sup>11</sup> Such as Ngwenya 2003:1-18 and McQuoid-Mason 2010:75-78.

<sup>12</sup> Scholarship which in fact does not give a clear demarcation of what is to be meant by the “health of the woman”.

<sup>13</sup> Section 36 of the South African Constitution states: “The rights in the Bill of Rights may be limited only in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including (a) the nature of the rights; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose”.

nation<sup>14</sup>) serve as a more objective and considerate mechanism, in that views from various religions and beliefs frequently come into opposition with one another. This is especially true regarding whether a medical practitioner should be allowed to conscientiously object to participating in an abortion. On the one hand there is, for example, a doctor who undoubtedly (as well as rationally) views the unborn as human and who consequently refuses to perform an abortion in circumstances where the pregnancy does not seriously threaten the life of the mother. On the other hand, there are those who are adamant that the pregnant woman has a right to decide that the unborn be terminated due to socio-economic circumstances. Although each party calls upon its own rationality, the view that the unborn is human or something worthy of protection cannot be deemed irrational. Individuals and societies differ in their views on the nature and legal status of the unborn.

The abortion issue therefore presents a complex and unique challenge to the objectivity to which section 36 aspires. It is also doubted whether the assumption (as part of the limitation test or the proportionality determination) that only the balancing of the rights and interests of the health practitioner with those of the pregnant woman should be considered, is an accurate (and objective) formula. By assuming from the outset that the unborn does not form part of the limitation test (or the proportionality determination), a substantial subjective element is produced. Consequently, it is argued that the conscientious objection of the medical practitioner to the performing of abortions is especially unique when compared to the balancing act in the limitation of rights exercise as reflected in many other jurisprudential scenarios pertaining to conscientious objection.

Bearing this in mind, it is submitted that the rationality accompanying the belief that the unborn is human, together with the complexities arising from the question as to which rights bearers (or entities of substantial value) should be included in the limitation test (or the proportionality determination) in the first instance, justifies the importance of keeping belief in the sanctity of the unborn intact. Having accepted this, it is confirmed, as mentioned earlier, that only when the life of the pregnant woman is seriously threatened, should the medical practitioner be obligated to participate in an abortion. The limitation clause (or the proportionality determination) can be used to qualify this. For those who sincerely and strongly believe that not only the pregnant woman, but also the unborn is human and therefore worthy of protection, it can only be expected that the nearest that he or she can come to in being instructed to participate in an abortion is when the life of the woman is seriously at risk. For Dr

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<sup>14</sup> Which basically weighs the nature of the right and its limitation on the one hand, with the purpose of the limitation on the other hand.

Oosthuizen, his right to conscientious objection to participating in abortions should only be limited where the pregnant woman's life is seriously threatened.

Pretorius *et al* (2001:chapter 7, page 5) state that the principle of proportionality under section 36 of the South African Constitution is also linked to the principle of "reasonable accommodation".<sup>15</sup> The South African Constitutional Court, in *MEC for Education: KwaZulu Natal v Pillay*<sup>16</sup>, (as per Justice Langa) gave some clarity as to what the parameters should be for "reasonable accommodation".<sup>17</sup> According to the *Pillay* judgment, the "centrality of the practice" by the believer is an important factor to take into consideration.<sup>18</sup> Other evidence, such as an objective investigation as to the centrality of the practice to the community at large is only relevant in so far as it assists in answering the "primary inquiry of subjective centrality".<sup>19</sup> In other words, here the importance of the practice to the believer was emphasised. In Dr Oosthuizen's case, it is clear that, according to him, "we did not come to our workplace to have babies killed in it."<sup>20</sup>

Nevertheless, other important aspects of the principle of reasonable accommodation in the workplace should be followed by the hospitals in South Africa regarding the issue at hand. It is the duty of the hospital to make the necessary arrangements pertaining to the availability of health care practitioners who will be willing to take part in the abortion.<sup>21</sup> It is also the duty of both the government (state hospitals) and the management of any hospital to be responsible for proper planning in this regard. Also, those health care practitioners who oppose abortion should take the necessary steps towards informing the relevant hospital management of their intentions of not participating in abortion, and the management of the hospitals should properly test for the presence of a "sincere" belief on the part of the medical practitioner that the unborn is human or at least of such importance as to not allow "it" to be terminated.<sup>22</sup> Therefore, on the one hand there is the responsibility of the

<sup>15</sup> Reasonable accommodation in the workplace essentially requires the employer to take positive measures and adapt the job or working environment so as to enable a job applicant or existing employee who has a protected characteristic that is adversely served by the employer's job requirements or the working environment, to discharge the inherent requirements of the job. In this regard, see Pretorius *et al* 2001:chapter 7, page 3. Here it is emphasised that ultimately what is determinative is the principle of proportionality (Pretorius *et al* 2001:chapter 7, page 8).

<sup>16</sup> 2008 (1) SA 474 (CC).

<sup>17</sup> The Court postulated that the content of the said principle has at its core the notion that sometimes the community (whether the state, an employer or a school) must take positive measures and possibly incur additional hardship (or expense) in order to allow all people to participate and enjoy all their rights equally (see paragraph 73, page 500).

<sup>18</sup> Paragraph 87, page 504.

<sup>19</sup> Paragraph 88, page 505.

<sup>20</sup> Dr Oosthuizen in an interview on 5 July 2010.

<sup>21</sup> See, Rebecca Cook *et al* (2009:251) for proposed examples.

<sup>22</sup> Also see Ngwenya 2003:9.

institution to pave the way for an optimal provision of medical assistance (which includes the proper determination of the views of its members of staff regarding important matters such as participation in abortion practices),<sup>23</sup> whilst also expecting the medical practitioner herself or himself to make his or her opposition to participating in abortions as a matter of conscience, formally known.

In Dr Oosthuizen's case, the hospital was clearly and timeously informed by Dr Oosthuizen himself of the seriousness of his views pertaining to participating in abortions, and notwithstanding this, the hospital management continued to expect Dr Oosthuizen's participation in the removal of the terminated foetus, which, according to Dr Oosthuizen, was a "dead baby". This approach by the hospital substantially violates any efforts towards the establishment of reasonable accommodation in the medical profession and environment.

In conclusion therefore, it is submitted that conscientious objection to participation in abortions resides on the more substantive side of the protection of the conscience (and of belief) as a fundamental right. Divergent views on the nature of the unborn and the fact that arguments supporting an understanding of the unborn as human can be most credible and rational, lead us to an increased sense of significance of the belief by many that the unborn is a live human being. This in turn opposes the view that a medical practitioner's right to freedom of religion (and consequently of conscience) may justifiably be limited, hereby expecting such a medical practitioner to participate in an abortion. Similarly and as explained earlier, the principle of "reasonable accommodation" can be applied so as to both justify the accommodation of medical practitioners who view the unborn as sacred, and also to improve and add to the responsibilities expected of the hospitals themselves.<sup>24</sup>

### **3. Religion, conscientious objection and the "public sphere"**

As stated earlier, Dr Oosthuizen sincerely believes that the unborn is a human being, and this belief is not only aided by his scientific deductions<sup>25</sup> when analysing the unborn, but more importantly to Dr Oosthuizen, this belief he has is qualified and maintained by his Christian (religious) belief. Consequently, the importance of

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<sup>23</sup> For example, hospitals must be required to keep records of providers to whom patients can be referred for abortion (Cook et al 2009:252).

<sup>24</sup> The hospital can also do more regarding "referrals", where a medical practitioner might object even to referring a pregnant woman to a medical practitioner who is prepared to do the abortion. It is submitted that the hospital management should have the primary responsibility of devising and arranging ways to provide for referrals without having to include the medical practitioner who strongly believes that even the referral of a pregnant woman to another doctor constitutes a substantial violation of his or her belief in the sanctity of life. Irrespective, the author is of the view that referrals may be made by a medical practitioner if the situation truly necessitates it.

<sup>25</sup> As discussed earlier.

religion in matters of conscientious objection and its proper place in society require further discussion. A necessary element of the freedom and dignity of any individual is an “entitlement to respect for the unique set of ends that the individual pursues”, one of these ends being the voluntary religious and cultural practices in which we participate.<sup>26</sup> Justice Sachs stated in *Christian Education South Africa v Minister of Education*<sup>27</sup> that:

There can be no doubt that the right to freedom of religion, belief and opinion in the open and democratic society contemplated by the Constitution is important. The right to believe or not to believe, and to act or not to act<sup>28</sup> according to his or her beliefs or non-beliefs, is one of the key ingredients of any person’s dignity.<sup>29</sup>

It is especially in such indeterminate matters as those related to the abortion question (which in turn deal with a fundamental issue such as the nature of being human against the background of the unborn), that conscience plays an integral role in the well-being and enjoyment of the bearer’s psyche and consequent experience of human dignity. Conscience is also linked to those fundamental beliefs which provide the parameters for the believer in his or her interactions with the world, and for the believer to act contrarily to his or her view that the unborn may not be terminated would constitute, in the eyes of such a believer, an unforgivable and unbearable situation.

Religious motivation in matters of conscientious objection is both substantial and frequent, and this also applies to opposition to participating in abortion practices in the healthcare profession. As stated earlier, Dr Oosthuizen is a devout Christian and firmly believes that the unborn is a human being – the pinnacle of God’s creation. Although religion plays a substantial role in many of the anti-abortion initiatives, the view that “religion” *per se* violates the woman’s reproductive rights presents a skewed picture regarding an understanding of “religion” versus “belief”. In other words, the impression is given that the reproductive rights avenue (which is pro-abortion) is belief-free and therefore “more objective” and “neutral”, which is not the case. There is a real risk in this as it may lead to views that religious motivations in conscientious objection cases are not accepted in the public sphere, and that the policies and laws of the public authorities should have the upper hand, due to their complete separation from the private/religious camp. For example, Rebecca Cook states that hospitals whose administrative officers claim adherence to religious convictions opposed to abortion may properly object in their *private lives*, but not project their personal faith

<sup>26</sup> Paragraph 64, pages 496-497. Also see paragraph 53, page 493.

<sup>27</sup> 2000 (4) SA 757.

<sup>28</sup> Also see Vischer 2010:3.

<sup>29</sup> Paragraph 36, page 779.



onto the hospital, which, unlike a human being, cannot claim a soul that must remain intact against mortal sin (Cook *et al* 2009:250).

It is submitted that the suggestion that one's "religious" convictions are "private" and therefore have no validity in the public sphere, the latter representing "secular obligations" (as opposed to religious convictions) is not an accurate observation. In other words, Cook suggests that conscientious objection due to religious views is only applicable in the personal sphere, whilst the "secular" sphere contains a "faith free" domain, thereby creating the perception that conscientious objection (based on religious conviction) to participating in an abortion belongs to the private or personal sphere and has no place in the hospital, due to the hospital's secular (belief neutral) character. But this entails a skewed picture of the presence of belief (be it religious or irreligious) and consequently provides a false motivation for excluding religious conviction from the act of participating in an abortion. Also, when dealing with fundamental questions relating to "when human life begins" and "what is a human-being" (and which, consequently, implies views on the nature of the unborn), religion as well as belief play a central role.

Iain Benson (2007:155) warns that if we are looking to discuss the relationship between religion and other aspects of society we must be careful to avoid setting up false dichotomies. Religion discussed *in relation to the state* or *within* society is a far cry, says Benson, from the frequently used "religion and the state." Benson explains that when we use the "state" to mean the order of government and the law, and "society" to mean citizens at large, including both religious and non-religious citizens, we must remember that religion, in some sense, is within both, since religious and non-religious citizens make up both the state and society. Benson (2010:16) adds that:

If "religions" and "religious believers" are viewed as outside the public sphere then it is likely that they will be accorded rather different "weight" for their concerns in relation to the distribution of public goods. If, on the other hand, we recognize that "beliefs" (including religious beliefs) are part of being human and the public sphere is made up of believing humans then questions about such things as "public funding" take on a new dimension.

Therefore, the substantial belief that the medical practitioner has that the unborn is a human being (and a live one at that) extends into and forms part of the public arena, and should consequently be accorded the same weight as those "beliefs" that do not view the unborn as human (or as an organism worthy of protection).

There will however, be limitations in this regard, but political (and public) society must endeavour as far as possible the attainment of the ends and goods of each individual and group of individuals in a pluralist, democratic and constitutional

society. This includes the phasing in and maintenance of true tolerance (as a virtue, aligned with other virtues such as humility, respect and courtesy), by which each person or group of persons is entitled to defend his or her understanding of what is good for human beings by rational arguments, and to attempt to persuade others that it is, in fact, true. It is for this very reason that the following view of the Constitutional Court as per Justice Sachs, needs to be understood as also protecting religious rights and freedoms within the public and state sphere namely:

The Constitution, then, is very much about the acknowledgement by the State of different belief systems and their accommodation within a non-hierarchical framework of equality and non-discrimination. It follows that the State does not take sides on questions of religion. It does not impose belief, grant privileges to or impose disadvantages on adherents of any particular belief, require conformity in matters simply of belief, involve itself in purely religious controversies, or marginalise people who have different beliefs<sup>30</sup>

It is also for the very reasons stated above that the view that state-employed health practitioners are contractually bound to render services to such patients on behalf of hospitals employing them because (unlike private practitioners) state-employed practitioners cannot pick and choose their patients, is an understanding that is not sensitive nor nuanced enough (McQuoid-Mason 2010:75). To absolutely exclude substantial interests resulting from foundational beliefs or religions would be to blindly ignore the integrative and representative nature of the public sphere regarding its relationship with religion and belief in a pluralistic and democratic society. The bracketing of religion on entering the public domain is reflective of the bracketing of the very aspect of personality that lends meaning to people's lives. The matter of abortion carries substantial gravity in this regard due to the fundamental philosophical questions and complexities that it gives rise to.<sup>31</sup> To exclude "comprehensive" religious and philosophical loyalties from the public and political sphere would negate the very aims of a liberal and modern-day constitutional paradigm, where the different ends and goods within society should not only be towards the satisfaction and fulfilment of activities in the private sphere, but also in the public sphere. This should be especially relevant regarding beliefs on the nature of the unborn.

#### **4. Conclusion**

As stated at the outset, there is a concern that medical practitioners in South African hospitals (and in the hospitals of many other so-called democratic and pluralist countries) with a strong conscientious objection to participating in abortions might

<sup>30</sup> S v Lawrence, S v Negali, S v Solberg, 1997(4) SA 1176 (CC), paragraph 148, pages 1225-1226.

<sup>31</sup> As discussed earlier.

be pressurised to act against their beliefs; which in turn may cause much psychological trauma for the medical practitioner. A fundamental aspect of human dignity and one of the most basic aspects of human rights and freedoms is to be free to act according to the fundamental precepts of the individual's reason, beliefs, morals and conscience. Two of the many dangers of suppressing unpopular opinions are that it erodes the status of the right to hold opinions for everyone and it limits the moral maturity of the populace (Coady 1997:384). This is especially relevant to the medical practitioner who strongly believes in the sanctity of the unborn. For reasons explained in the above, the relationship between the right to religious freedom (and consequently freedom of the conscience) and the participation in abortions is both unique and loaded with gravity. To limit arguments in this regard to the exclusion of the unborn, the overriding importance of reproductive rights and the rigid distinction between the public and private sphere (in which religion and belief are consequently watered down) simply does not provide an informative, balanced and sensitive approach to such a complex and important issue.

This article, by having argued for the accommodation of conscientious objection by medical practitioners to participation in abortions aims at, in the final instance, promoting the challenge for any democratic and pluralist society to achieve a more tolerant approach.

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# Religious persecution in North Korea

## Process and phases of oppression 1945-2011

Jae-Chun Won<sup>1</sup>

### Abstract

Once called the Jerusalem of Asia, North Korea is one of the most oppressive states suppressing religious freedom. While there is an appearance of religious activity in a few of the government sponsored places of worship, extensive testimonies have shown that the regime treats religious people as national security criminals and prosecutes them accordingly.<sup>2</sup> Many religious leaders and their family members, including children, have been punished without due process, tortured, executed, or sent to political prison camps. Additionally, religious believers have faced systematic socio-political discrimination. This paper will describe the process and phases of religious oppression by the North Korean regime from the independence movement to the Korean War and to the present. To show the overall pattern of religious oppression, the paper is divided into four phases: First Phase – Pre-Korean War (1946 to 1950), Second Phase – Korean War (1950 to 1953), Third Phase – Before the Kimilsungism Movement (1953 to 1971), and Fourth Phase – Era of Juche<sup>3</sup> (1972 to present). The analysis will illustrate the big picture of religious persecution, but the focus will be on Protestant Christianity, which became the main target of oppression. Comparisons between the persecution of Christianity and Buddhism will also be drawn. This paper relies on findings from testimonies of North Korean refugees in addition to traditional research sources.

**Keywords** North Korea, religious freedom, persecution, history, policy.

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<sup>2</sup> WON, Jae-Chun & Kim Byoung Lo, A prison without bars: Refugee and defector testimonies of severe violations of freedom of religion or belief in North Korea, p. 38, United States Commission on International Religious Freedom, (March 2008).

<sup>3</sup> Juche means "self-reliance" and/or "self-sufficiency" in Korean.

## 1. First phase: Conciliation and suppression

From independence until the Korean War (1946-1950) – The significance of the religious group<sup>4</sup> and North Korea's dual policy on religion

At the time of independence from Japan, approximately 24.7% of the North Korean population believed in religion, including Cheondogyo<sup>5</sup>, Buddhism, Protestantism, and Catholicism.<sup>6</sup> The Protestant church was a place of learning,<sup>7</sup> and Christian leaders were actively involved in national activities for independence.<sup>8</sup> In this sense, Christian influence went beyond mere statistics and largely affected society and politics. North Korean policy was two-fold. First, Protestantism, like other religions, had to be eliminated. However, Protestantism's significant social and political influence needed to be exploited.<sup>9</sup> In this sense, the North Korean regime employed a dual policy of conciliation and tempered suppression.

### 1.1 Inducement of the progressive Protestant group and deceitful suppression against anti-party religious groups

North Korea's position on Protestantism can be illustrated by Kim Il Sung's speech delivered during an October 1945 conference for the Communist Party.<sup>10</sup>

We ought to establish a Unified Front involving every patriotic democratic resource including not only proletariat and peasantry but also national enterprises. . . . Intellectuals, religious believers, and capitalist class are also taking actions although

<sup>4</sup> Religious group implies Protestant leaders and churches that possessed potential influence to bring actual change to North Korean society in a pertinent period.

<sup>5</sup> Cheondogyo is a traditional Korean religion based on the "human first" doctrine.

<sup>6</sup> KANG In-cheol, A new understanding of modern North Korean religion history, North Korean Post Independence, Dasan Publications, 1992, p. 149 [Korean].

<sup>7</sup> In May 1910, there were a total of 511 Protestant missionary schools in the Northwestern region. This number accounted for 78% of all Protestant schools, 64% of all religious schools, and 23% of all private schools in Korea. (YUN Kyeong-ro, The passion of Protestantism and the 105 person case, Boseong Publications, 1986, p. 313.) 'The predominant number of schools in the northwestern region leads to a preponderance of intellectuals in the northwestern area of North Korea'; KANG In-cheol, op. cit., p. 149.

<sup>8</sup> Religious distribution of national leaders who signed the Declaration of Independence: Protestant – 16 including LEE Seung-hun; Cheondogyo – 15; Buddhist – 2. The Protestant National Movements were led by two camps and two leaders, Hwangseong YMCA (LEE Seung-man, Seoul region) and Sin-minhoe (AN Chang-ho). Both pursued a free and civilized society based on Christian principles. The three giants of the Korean provisional government, LEE Seung-man, AN Chang-ho, and LEE Dong-hui were all Christians.

<sup>9</sup> BYEON Jin-heung, The North Korean "silence church" and Communism, North Korean Church History in Post Independence, p. 89 [Korean].

<sup>10</sup> Hwajeonchunso (和田春樹), The Soviet Union's Policy on North Korea 1945-1946 [Korean]; Bruce Cumings, Modern history around the division of Korea, Ilwolsaegak Publications, pp. 268-271; BYEON Jin-heung, op. cit., p. 89 [Korean].

they are not very well organized. ... [W]e should not recklessly exclude them or ignore nationalists' capacity to form under our National Unified Front.<sup>11</sup>

In addition, numerous religious representatives were involved in the formation of the "North Korean People's Provisional Committee" in February 1946.<sup>12</sup> Many religious leaders were also elected to Province, City, and District positions during the People's Committee Election on November 3, 1946.<sup>13</sup>

Kim Il Sung endorsed religious leaders' involvement in the election in the following statement:

Religious freedom is officially guaranteed in North Korea and no religion should be persecuted or suppressed. All religious believers in North Korea have [the] complete right and freedom as a citizen to participate in People's Committee Election with equal rights.<sup>14</sup>

Simultaneously, the Communist government, described religious people as "pro-imperialist, pro-feudalist, and malign reactionary religious people who are hostile to democratic revolution." In a speech regarding these "reactionary religious people," Kim Il Sung described them as "[B]ourgeois who owned lands and ate without labor. ... They are all like parasites that exploit and waste money and food with no effort so we don't have to feed them."<sup>15</sup>

The regime strategically held uncooperative religious people in check while they encouraged pro-communist religious believers to take part in social and political activities. This "freedom," however, was short-lived.

## 1.2 Restricted religious freedom: Observance of "Unified Frontal Order and Discipline"

Religious freedom in this period was highly restrictive and only free for those who were cooperative with the "Unified Frontal Order and Discipline." The regime

<sup>11</sup> Kim Il Sung, "On establishing the New Korea and the National Unified Front" (13 October 1945), Kim Il Sung, *Collected speeches volume 1*, 1963, pp. 1-10 (KIM Jun-yeop, KIM Chang-sun's co-editionsip, *Collection of North Korea study volume 1*, Research Institute of Asia Affairs, Korea University, 1969, p. 20), cited in BYEON Jin-heung, *op. cit.*, p. 89 [Korean].

<sup>12</sup> KIM Nam-sik & JO Ae-suk, North Korea's recent policy on religion and tactical use, *A Monthly Policy Study*, November 1982, Research Institute of International Affairs, p. 25, cited in BYEON Jin-heung, *op. cit.*, p. 89 [Korean].

<sup>13</sup> Sawa Masahiko, *History of South and North Korean Protestants*, Japanese Denomination Press, Tokyo, 1982, p. 190, cited in BYEON Jin-heung, *op. cit.*, p. 89 [Korean].

<sup>14</sup> Kim Il Sung, *op. cit.*, pp. 236-237 (KIM Jun-yeop, *op. cit.*, p. 191), cited in BYEON Jin-heung, *op. cit.*, p. 90 [Korean].

<sup>15</sup> GOH Tae-wu, *Religious Policy of North Korea*, Minjok Munhwa Publications, 1989, pp. 108-109 [Korean].

strictly kept religion under control to take maximum advantage and prevent religious groups from hindering the formation of communism.

From 1946 to 1948, the regime implemented a series of policies to suppress religious people directly and indirectly. Among these policies were the seizure of Church and religious believers' land,<sup>16</sup> the denial of political party membership,<sup>17</sup> a campaign to eradicate superstitions,<sup>18</sup> and arrests of church leaders.<sup>19</sup> Administrative persecution in the form of imposed instruction at theology schools,<sup>20</sup> the designation of Monday instead of Sunday as the national holiday,<sup>21</sup> and a 6 p.m. curfew aimed at prohibiting evening service attendance<sup>22</sup> was also implemented.

### 1.3 Changes in policy after the establishment of the government: Within the frame of "limited freedom of religion"

After the government's establishment in September 1948, the regime's policy on religion entered into a new phase. Previously, the Soviet military administration secretly persecuted religion, allowing only nominal religious freedom to preserve its international reputation. Once the government was established, however, a full-scale attack aimed at cleansing out religion commenced in 1949.<sup>23</sup>

As part of this campaign, Article 14 of the Democratic People's Republic of Korea Constitution, which provided religious freedom, became a means to arbitrarily suppress religion by classifying any religious believer who engaged in anti-national activities as a criminal.<sup>24</sup> Additionally, church schools were confiscated<sup>25</sup> and religious leaders were illegally arrested or abducted.<sup>26</sup> Many of these leaders were executed.<sup>27</sup>

<sup>16</sup> Korean central yearbook, 1950, p. 198, cited in BYEON Jin-heung, op. cit., p. 89 [Korean].

<sup>17</sup> History of Pyeongyang Catholic parish, Pyeongyang Catholic Parish Press, Bundo Publication, 1981, p. 183, cited in BYEON Jin-heung, op. cit., p. 98 [Korean].

<sup>18</sup> Korean complete history volume 24, 1981, p. 502, cited in BYEON Jin-heung, op. cit., p. 94 [Korean].

<sup>19</sup> History of Korean Advent Church, LEE Yeong-rin, p. 276, cited in North Korean Church History Writing Committee [NK Committee] in the Institute for Korean Church History [History Institute], North Korean Church History, 1996, p. 405 [Korean].

<sup>20</sup> Institute of North Korea Study, History of North Korea's Democratic Unification I, p. 397 [Korean].

<sup>21</sup> GOH Tae-wu, op. cit., p. 185 [Korean].

<sup>22</sup> Ibid., p. 401 [Korean].

<sup>23</sup> BYEON Jin-heung, op. cit., p. 101 [Korean].

<sup>24</sup> KIM Se-kyun, Unification Policy, Introduction to North Korea, 1990, pp. 658-666, cited in KANG In-cheol, op. cit., p. 149 [Korean].

<sup>25</sup> JANG Byeong-uk, The Church and the invasion in the Korean War, Korea Education Organization, cited in BYEON Jin-heung, op. cit., p. 101 [Korean].

<sup>26</sup> Pyeongyang parish history, pp. 209-213, cited in BYEON Jin-heung, op. cit., p. 105 [Korean].

<sup>27</sup> BYEON Jin-heung, op. cit., p. 105 [Korean].

#### 1.4 Buddhism: The disappearance

Buddhism has remained the most popular religion on the Korean Peninsula since the era of the Three States, and it has greatly influenced Korean culture, spirit, and ideology for more than 1,600 years. This was especially true after Japanese colonial rule ended.

Before the Korean War, Christianity was the subject of a more severe limitation policy as compared to Buddhism. Buddhist temples were located in the mountains, and gatherings were usually personal. In addition, longstanding Eastern ideas of harmony and fate lie behind Buddhism. Conversely, Christianity was introduced from the West, and churches were located in cities. Christian gatherings were usually large, and Christians were active in social and political reforms. Furthermore, unlike Buddhists, Christians were systematically organized.<sup>28</sup>

Due to these differences, Buddhism was not the target of extreme persecution and was utilized by the regime at a relatively early stage. A representative case is the North Korean Buddhism Confederation, which was established on December 26, 1945 and had a membership of 375,438 people.<sup>29</sup>

The material foundations of Buddhism disintegrated with the land reforms of 1946. Land reform had a devastating impact due to the nature of Buddhism's organization. In the case of Seokwang Temple, about 4,000 pyeong (1 pyeong = 3.3 m<sup>2</sup>) of land was confiscated. The regime also restricted the number of monks and rationed food.<sup>30</sup> As a result, many monks left the temple and the number of monks decreased from more than 200 to 30. The situation was similar in Bohyeon, Geonbong, Yujeom, and Gwiju temple where there were more than 100 monks.<sup>31</sup> After the establishment of the North Korean government in 1948, most Buddhist temples were converted into tourist spots or resorts.

In comparison, Buddhism in North Korea suffered a less severe level of suppression and was utilized for political and social purposes much earlier than other religions.

#### 1.5 Conclusion

From Korea's independence until the Korean War, the regime tried to assimilate Christianity for its own social and political needs. At the same time, the regime secretly and skillfully suppressed Christians who would not comply with its needs under the pretense of eradicating superstitions.

<sup>28</sup> GOH Tae-wu, *op. cit.*, p. 57 [Korean].

<sup>29</sup> *Ibid.*, p. 122 [Korean].

<sup>30</sup> Testimony of CHOI Gwang-seok, *op. cit.*, GOH Tae-wu, *op. cit.*, p. 192 [Korean].

<sup>31</sup> HONG Sa-seong, *Reappraisal of North Korea Buddhism*, National Buddhism, 1989, p. 254, cited in KANG In-cheol, *op. cit.*, pp. 163-164 [Korean].



After the government was officially established in September 1948, it took on different forms of oppression. The level and intensity of religious suppression was heightened in order to build up the Communist state.

Buddhism's own characteristics made the regime recognize it as only a minor problem in establishing the Communist state. Unlike Christianity, Buddhism was under the government's control before the Korean War.

## **2. Second phase: Undisguised suppression and war related losses**

The Korean War (1950-1953) – Sufferings of Churches

### **2.1 Illegal abduction of religious people and large-scale massacre**

The North Korean government took advantage of the chaos caused by the war and inflicted selective and malicious suppression on religious people, especially Christian leaders. Many believers became the victims of a large-scale massacre. There were also many cases where believers from one town were collectively slaughtered and entire families of religious workers were killed.

### **2.2 Losses and suppression of North Korean churches**

The losses that churches suffered during the Korean War were exceptionally high due to illegal arrests, imprisonments and massacres done at the hands of the government. The number of North Korean pastors and evangelists who died, disappeared, or were arrested during this time reached a total of 350 people.<sup>32</sup> As the People's Armed Forces were retreating, they massacred church leaders in the occupied area. For example, Pastor Lee Seung-man testified that he had witnessed the deaths of his father and "approximately 50 pastors [who] were driven into a hole (near Daedong River)."<sup>33</sup>

The oppression that North Korean churches experienced during this period is shown in the following testimony by a North Korean defector.<sup>34</sup>

Interviewee 9, born in North Hamgyeong Province in 1939: "My big brother who worked as a pastor before the Korean War took shelter in the mountain and used to worship together with other believers during the war. He was arrested in 1954 because he was a pastor. He was released after spending 16 years in the *gyobwaso*.<sup>35</sup>

<sup>32</sup> Sawa Masahiko, *Christianity post dependence in North Korea*, 1996, p. 34, cited in NK Committee in Korea Christianity History Institute [Korea Institute], op. cit., p. 419 [Korean].

<sup>33</sup> LEE Seung-man, "No war has a human face," *A Monthly Mail*, July 1994, p. 47, cited in NK Committee in Korea Institute, op. cit., p. 419 [Korean].

<sup>34</sup> To protect the identity of the refugees, numbers and letters were assigned.

<sup>35</sup> North Korean prison.

However, he was again taken away and sent to the Political Offence Concentration Camp.”

Due to the massacre, imprisonment and mass exile of a large portion of pastors to the South, less than twenty pastors remained in North Korea.<sup>36</sup> Loss of human resources during the war also included escapees to South Korea in the retreat on 4 January 1951. From the period of independence until the end of the Korean War, the presumed number of Protestant escapees to South Korea totalled approximately 70,000 people.<sup>37</sup> The reasonable estimated number of Protestants remaining in North Korea was less than 50,000 people.

Religious groups were devastated by the Korean War and the North Korean government's full-scale “religion eradication policy.” After the war, public exercise of religion was virtually abolished from North Korea.

### 2.3 Conclusion

Once the official government was established, the regime started to openly suppress and persecute religion. Christianity was especially targeted because it was considered to be strongly connected with the United States. As Christians faced tough persecution after the war, Protestantism struggled to survive.

## 3. Third phase: Systematic persecution and liquidation

Before the Kimilsungism Movement (1953-1971) – Suppressing the remaining religious people

### 3.1 After the Korean War – 1953: Purge of underground churches and the ideological readjustment movement

After the Korean War, the regime started to form an independent socialist system. To stabilize the system politically, a Kim Il Sung-centered unitary government was formed. In addition, the ideology of Jucheism, which focused on independent rule of the government, was established.<sup>38</sup> During this post-war rebuilding period, most of the remaining religious people either fled south or assimilated into the North Korean policy. Among North Koreans, a mood of anti-Protestantism and even religious nihilism prevailed because of the hatred against the United States, which resulted from atrocities allegedly committed by the U.S. military and U.S.

<sup>36</sup> LEE Yeong-bin & KIM Sun-hwan, *Unification and Christianity*, Gonanhamkke Publications, p. 107, cited in NK Committee in Korea Institute, op. cit., p. 419 [Korean].

<sup>37</sup> KANG In-cheol, *The root of Protestantism and Catholicism that came over to South Korea: Revolution and Protestantism in North Korea after the independence*, pp. 134-135, cited in NK Committee in Korea Institute, op. cit., p. 419 [Korean].

<sup>38</sup> Kang In-cheol, op. cit., 169 [Korean].

missionaries during the war.<sup>39</sup> During this period, the North Korean government started to organize a more systematic form of religious persecution and initiated an annihilation policy to root out the remaining religious people who were opposed to the regime.

In the late 1950's North Korea carried out an attitudinal readjustment policy in parallel with a campaign of ideological education in order to coerce religious people to give up their faith. At the same time, the annihilation policy of ferreting out, suppressing, and persecuting the activities of underground churches was conducted.<sup>40</sup> Because the North Korean Worker's Party regarded religious believers who persisted in their faith to be vicious elements, it adopted the hard line policy of execution and persecution.<sup>41</sup>

In the interviews for this paper, testimonies were collected about large-scale religious persecution and execution in 1958. Interviewee J, who fled North Korea in 2001, testified that in July 1958 he saw more than 100 people being taken away in front of the West Pyeongyang Station. Public Security Officers (PSOs) said that they were classified as reactionary and wicked believers because they said that "people should not work on Sundays to observe the Sabbath."

In 1959, the North Korean Worker's Party and Korean Democratic Youth League published numerous books that forthrightly opposed religion<sup>42</sup>. The publishing was done as part of the ideological readjustment movement to encourage people to educate, enlighten and join in socialist activities. The movement also attempted to disclose the reactionary character and unscientific disposition of religions through various forms, such as newspapers, books, dramas, and movies in order to incite people to voluntarily participate in the struggle.<sup>43</sup>

### 3.2 1960-1971: National Resident Registration and Seongbun<sup>44</sup> class system

In 1960, North Korea implemented a more systematic hard-line policy to remove any remaining religious heritage while still maintaining the annihilation policy.<sup>45</sup> As

<sup>39</sup> Ibid., p. 179 [Korean].

<sup>40</sup> SHIN Pyeong-gil, The process of the Workers' Party's anti-religious policy, Monthly North Korea, July, 1995, p. 57 [Korean].

<sup>41</sup> KANG In-cheol, op. cit., p. 179 [Korean].

<sup>42</sup> DOH Hong-yeol, Society and culture: Collection of books for comparison between South Korea and North Korea, Ministry of Unification, 1999, p. 152, cited in NK Committee in the Institute for Korean Church History [History Institute], op. cit., p. 430 [Korean].

<sup>43</sup> JEONG Ha-cheol, Why do we have to oppose the religion?, The Workers' Party's Publication, 1959, cited in NK Committee in the History Institute, 1996, op. cit., p. 429 [Korean].

<sup>44</sup> Seongbun is a Korean word for a person's background or status.

<sup>45</sup> SHIN Pyeong-gil, op. cit., p. 58 [Korean].

part of this policy, National Resident Registration was conducted from April 1964 to 1969. Additionally, the Seongbun Survey Project, which reorganized people's class based on their family background at the time of 1945 and the personal degree of faithfulness to the Party, was conducted. In 1971, the North Korean population was divided largely into three classes (the core class, the wavering class, and the hostile class) and sub-divided into 51 categories. The official purpose of the seongbun class system was to revolutionize and classify workers, but the actual purpose was to research people's political inclination and to control them efficiently.<sup>46</sup>

Religious people – Protestants, Buddhists, Catholics, and Confucians – were classified as “hostile” and were discriminated against in treatment related to job positions, opportunities for education, moving, obtaining travel permission, and so on.

According to the interviewees of this report, National Resident Registration and the seongbun class system brought about discriminative treatment<sup>47</sup> and were tied to religious coercion. The following are specific testimonial responses.

Interviewee E: “In the 1960’s and 1970’s, Kim Il Sung asserted that one’s competence should be considered more important than one’s seongbun or family background. However, only children of party members can go to college in Pyongyang or enter Kim Il Sung University. If one’s father is a common worker like my father, then that person can enter just a mining college or a forestry college, so . . . society makes him work under the ground. Thus, seongbun is prior to all other things in reality so there are no talented people. I worked in NSA from 1964 to 1975. I joined the Department of Resident Registration in [the] Public Security Agency (PSA) and made [official] documents on residents through secret investigation. The documents still exist and play an important role in oppressing [North Korean] human rights. I [wrote them down] . . . when I was in PSA. I was the first son and my father was a coal miner when I was born and my mother did something and so on. I was in charge of one village and I investigated residents in that village secretly. Then I made a document called “residents register” after investigating what people did in the past and what their parents did in the old times and [filed] . . . it. North Koreans are classified according to their background in [the] residents register. Families of POW are listed as number 43, families that have been exiled and were brought back are listed as number 49, people who committed a flagrant offence during the war or before independence are a hostile group and they are listed as number 49. Therefore, people think number 49 should be killed first in case of a war. Religious people are not classified because . . . [they should be liquidated first].”

<sup>46</sup> www.nkchosun.com, News Encyclopedia, Seongbun: Seongbun Survey Project [Korean].

<sup>47</sup> www.nkchosun.com, News Encyclopedia, Seongbun: Classification and treatment [Korean].

Interviewee I: “My family background as ‘a family of the people who fled to South Korea’ was found in National Resident Registration that started in 1965. Since I was classified as a descendent of people who fled to South Korea, my entire family was forced to live in a secluded mountainous area. My [oldest] . . . daughter complained a lot about why she had to suffer because of her grandmother and grandfather whom she had never seen . . . My daughter was so smart that she used to win second prize in a mathematics competition and so on. However, she complained a lot to me saying that her teacher said that ‘How can a granddaughter of a person who had fled to South Korea dare to go to a university?’”

### 3.3 Conclusion

After the Korean War, North Korea strengthened its ideological education and focused on purging the remaining religious people who had not assimilated. The regime reinforced its socialist ideology and anti-Protestant propaganda through various publications. In the 1960’s, National Resident Registration and the seongbun class system were implemented. Religious people were designated as the lowest level class and were subjected to social discrimination.

## 4. Fourth phase: Advent of the religion-friendly policy

Era of Juche (1972-present) – Religion as a Government  
Departmental function

Throughout its existence, North Korea has pursued the traditional Communist principles of continuous revolution, totalitarianism, and hostility toward any contrary view. After attempting to subjugate religion entirely, North Korea began to use it as a political tool to engage South Korea and the Western World. After holding the South-North dialogue in 1972, the World Youth Festival in 1989, and receiving aid from various international religious organizations in response to the country’s food shortage crisis in the 1990’s, North Korea instituted a religion-utilization policy.<sup>48</sup>

### 4.1 Anti-religion propaganda

Although North Korea’s anti-religious propaganda continued in the 1970’s, its negative attitude toward religion softened. In 1972, North Korea amended its constitution to separate the “freedom of anti-religion propaganda” clause from the “freedom of religion” clause. Since the amendment, the number of administrative sanctions against religion has decreased. Instead, methods of persuasion through movies, plays and other media have been introduced.<sup>49</sup>

<sup>48</sup> www.nkchosun.com, News Encyclopedia, Religion: Policy change [Korean].

<sup>49</sup> NK Committee in the History Institute, op. cit., p. 467 [Korean].

Along this same policy line, the Supreme People's Assembly, which was held on 22 April 1990, accepted six government sponsored religious associates as representatives among the total of 687 representatives.

In 1992, the socialist constitution was amended to soften the anti-religious language. However, many oppressive practices continued because there was no freedom of expression. It should be noted that North Korea started to engage international religious organizations only in accordance with its communist agenda.<sup>50</sup>

#### 4.2 The advent of so called religion-friendly policy

North Korea has used religious organizations' activities as a channel to communicate with the international society. The Korean Christian Federation, Korean Buddhist Federation, and Korean Cheondogyo Association have resumed their activities. In addition, Jangchung Cathedral and Bongsu Church were built in Pyongyang in 1988, and a Christmas service was held in Bongsu Church. In 1989, Chilgol Church was also built in Pyongyang. Christianity became an important foreign affairs channel in the 1990's due to its remarkable ability to mobilize material supplies.

The external work of North Korea's religious organizations has also been actively developed. In 2003, the chairman of the Korean Religious People's Association, the vice chairman of the Cheondogyo Central Committee, and the vice chairman of the Korean Buddhist Federation jointly celebrated the "March 1 People's Declaration" in Seoul with South Korea's religious representatives.<sup>51</sup> Additionally, a delegation of the Korean Christian Federation visited Tokyo, Japan to attend the "Christian International Conference Supporting Peace and Unification of Korea" in 2004.<sup>52</sup> Despite these religion-friendly movements in North Korea, these religious organizations' activities have been limited within the Worker's Party's policy line.<sup>53</sup> When the United States Commission on International Religious Freedom's Annual Report designated North Korea as a country of religious oppression on 21 October 2001, the official North Korean religious organizations denounced the United States through an official statement.

#### 4.3 Ongoing religious suppression and persecution

While North Korea has used religion as a quasi-government ministerial branch, the actual religious life of ordinary people has not improved much according to the

<sup>50</sup> KANG In-cheol, A new understanding of modern North Korean religion history, cited in KIM Heung-su, op. cit., p. 222 [Korean].

<sup>51</sup> The "March 1, 1919 Declaration" supported liberation from Japan. Of the 33 signatories, more than half were Christians, a much larger proportion than in the Korean population, which created the impression that the independence movement was a Christ-inspired cause. cf. Encyclopedia Britannica, citation: <http://www.britannica.com/EBchecked/topic/364173/March-First-Movement>.

<sup>52</sup> [www.nkchosun.com](http://www.nkchosun.com), News Encyclopedia, Religion: Policy change [Korean].

<sup>53</sup> SHIN Pyeong-gil, op. cit., p. 62 [Korean].

testimonies of North Korean defectors.<sup>54</sup> Interestingly, most of the cases of religious oppression in the testimonies were related to Christianity, whereas suppression of other religions such as Buddhism was barely found. There is much evidence to support the notion that the regime has perceived Christianity differently from other religions and tailored its focus of oppression accordingly.

North Korean defectors have testified that their religious life was extremely limited. If religious books or meetings were discovered by the government, the offenders would be publicly or secretly executed or sent to the *gyohwaso* or the Political Penal Concentration Camp. The defectors also testified that there has been no distinguishable change in anti-religion propaganda education as compared to the past. A North Korean's daily life, including religious life, is under strict government surveillance.

#### 4.3.1 Public execution

Interviewee 19: "When I was serving in the army, I found the list of member[s] in [the] underground church so after investigation 25 people were arrested and five leaders were executed in Southern Nampo on December 20, 1996."

Interviewee 42: "Christians were seen being tied to a wooden post and shot in front of their neighbors. I heard that someone shouted 'I'm going to Heaven' and another just smiled in his/her last moment (in around 1997)."

Interviewee H: "I heard from a North Korean defector who escaped North Korea in 2006 that in 2000 an old woman was caught reading a Bible and [the] government hanged her in public."

#### 4.3.2 Imprisonment in *gyohwaso* and Political Penal Concentration Camp

Interviewee 47: "My brother was sent to jail and spent 10 years in jail because he contacted Christians and he is in North Korea now."

Interviewee 63, a woman in her 40's whose husband worked at NSA: "In 1997, a man who worked for my husband gave us a Bible and taught [us] how to pray. My cousin who lives [in] China came to pray for us. I heard from my husband that some people were sent to the *gwalliso* (political penal-labor colony) No. 22 because of the religious incident. [Later the Bible was found and the man was caught.] As a [result] ..., I was charged with many different crimes that I could not even think of, such as human trafficking and illegal money laundering, etc. I was sentenced to 15 years at the first trial."

<sup>54</sup> Reliable current information from North Korea is scarce and reports from defectors are basically the main source available. As some have accused defectors of exaggerating and only reporting hearsay, we have taken care to concentrate on first hand eye-witness accounts and to quote several sources for each type of oppression.

### 4.3.3 Anti-religion instructions, lecture sessions and education

Interviewee 44, a woman in her 30's: "I've heard of the Bible. I've never seen them but heard that they are displayed at Bongsu Church respectively. There is also 'Movie Literature Study.' [We learn to] be watchful against a pretty child with faith in religion who propagates religion not in public but in secret. Believing religion is said to make you confused and hysterical."

Interviewee 57, a man in his 30's: "There was a public announcement made once in 2000 or 2001. It said, 'If you exercise religion, you will be sentenced to severe punishment.' On a big piece of paper, things like superstition exercise, and such and such exercise were written."

Interviewee A, a former NSA member: "There is another instruction that says, 'Believe in Korean god rather than foreign god if you want to believe in a god! Kim Il Sung is god himself.' Also, there was a mass arrest in Pyeongyang ... [and those arrested] were sent to the Concentration Camp due to Kim Il Sung's instruction in 1974, most were liquidated and were sent to [the] countryside."

### 4.3.4 Discrimination against North Korean defectors who encountered religion

Interviewee 45: "In around 1999 to 2000 one lady went to China to earn some money and returned to North Korea carrying two Bibles with her. She was arrested and sent to the NSA. Then, her whole family disappeared."

Interviewee 54, a man in his 30's: "They don't even ask about Buddhists anymore because its culture is preserved [in North Korea]. [However], they are sensitive to Christianity. Once they confirm the fact that they have contacted [Christians], they transfer those people to another place in vehicles."

Interviewee A, a former NSA member: "When a person is repatriated to North Korea, the very first question he is asked is whether he went to church in China. If he says 'yes' to that question, preliminary investigation no longer means anything. [The authorities] regard him as an anti-revolutionary element and they are marked as a special group."

## 4.4 Conclusion

North Korea has allowed religious activities to resume so that they may be used as communicative channels. As a part of this policy, the government has begun to build places of worship like cathedrals, churches and Buddhist temples. In addition, government sponsored religious organizations have been allowed to participate in various international conferences.

However, recent North Korean defectors who have crossed the border since 2003 have testified that in spite of the "religion-friendly policy" and external re-



ligious activities, actual religious freedom in North Korea is extremely limited. The North Korean regime is closely watching the religious lives of ordinary people through an extensive surveillance network. If any secret religious activity is caught, it is punished harshly.

Furthermore, ordinary people cannot enter the religious places built in Pyongyang, and one of the interviewees testified that all of the members of Bongsu Church and Chilgol Church are also members of the Worker's Party.<sup>55</sup>

## 5. Conclusion

Ever since Communism has taken hold in North Korea, religious people and their family members have been subjected to systematic social and political discrimination. They have been classified as the bottom of society and denied jobs, education opportunities, and other basic necessities of life. One can even argue that there is evidence of crimes against humanity and even genocide.

Some argue that there is enough evidence that the North Korean state responsibility to protect its citizens has failed, and humanitarian intervention is warranted. In March 2011, the National Human Rights Commission of Korea started to archive incidents of human rights violations and document those responsible for atrocities.<sup>56</sup> This could lead to criminal and civil liability similar to cases in Rwanda, Yugoslavia, Tokyo, Cambodia and the Nuremberg trials.

Without freedom of religion and freedom of expression, there is no true freedom and democracy. North Korea is one of the least free countries in the world. Nevertheless, we are hopeful that there will come a time when North Korea will once again serve as an example of restoration of freedom of thought, consciousness, and religion in the not so distant future.

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<sup>55</sup> Interviewees 41, 54, 56, 64, B.

<sup>56</sup> RAMSTAD, Evan, "Hey Kim Jong Il, Seoul is now taking names," *The Wall Street Journal* (March 16, 2011): <http://tinyurl.com/HRCK> (last checked 2 July 2011).

## No justice for minorities in Pakistan

### The destabilizing consequences of impunity

Ann Buwalda<sup>1</sup> and Godfrey Yogarajah<sup>2</sup>

#### Abstract

Pakistan suffers a “culture of impunity” and government toleration of religious persecution. Blasphemy laws are a leading instrument. Though the state has not executed anyone under this law, the punishment for those convicted is severe. Persons identified as blasphemers are also targeted for violence which goes unpunished by the government. Christians have been attacked and killed, and efforts have been made to ban the Bible. Hindus find their young girls subject to forced conversions and marriages. Ahmadis also suffer persecution, and blasphemy laws are increasingly used by Muslims against one another, sometimes as weapons in private quarrels. The government of Pakistan should repeal the blasphemy law, punish perpetrators of religious violence, and practice greater transparency.

**Keywords** Pakistan, blasphemy, law, impunity, Bible, Muslims, Ahmadiyya, Hindus, Christians.

A young girl walks to the store to buy her father some juice. It is a beautiful, sunny Easter morning as she walks through the streets of Lahore, Pakistan. The rest of her family is at church, but she has stayed home to take care of her father who is ill. A group of men walk past, and the girl skirts around them, anxious to complete her task and be safely back at home. Soon however, she hears a rough laugh from behind her and realizes that the men are following her. She tries to run, but they box her in. As a noxious cloth covers her mouth, she hears one of the men raise a concern about being caught and charged with the rape they have planned. Then, as her world fades away, she hears the leader of the group respond with a laugh as he

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allays his accomplice's fears. "We can do anything we want with her, even kill her! Nothing will happen to us. She is a Christian!" The girl is kidnapped off a public street in the full light of day, and no one intervenes or even notices.<sup>3</sup>

As it turned out, Shaheena Masih, on whom this story is based, was not killed.<sup>4</sup> Through her own personal bravery and her family's unceasing pursuit, she was rescued and returned to her home and loved ones.<sup>5</sup> However, the leader of the group of men was correct about the probable consequences, or lack thereof, for him and his men. While the four men involved in her kidnapping, gang rape, and beatings were initially arrested, three were released almost immediately. There is no evidence that the police are pursuing the case.<sup>6</sup> This kind of judicial inattention is referred to as impunity – the "[e]xemption and protection from penalty or punishment."<sup>7</sup> In Pakistan, the problem of impunity presents itself as a systematic failure to prosecute those who victimize minority groups to an extent that encourages nongovernmental, societal actors to target said minority groups, having confidence that there will be no recriminations.

The government of Pakistan is responsible for the persecution of its religious minorities. However this persecution often takes place through inaction rather than action. In Pakistan impunity in cases of persecution of religious minorities has become the pervading culture. Blasphemy laws are consistently used as weapons of persecution, and the government turns a blind eye when violence is perpetrated against the alleged blasphemers. Because of this pattern of impunity, Christians fear increased persecution following the recent high profile murders of government officials seeking to amend or abolish the blasphemy laws. This culture of impunity has a tragic effect on all communities involved. Therefore, the government of Pakistan must take immediate and transparent action to reverse the culture of impunity in order to protect religious minorities and the stability of its society as a whole.

## 1. Blasphemy laws and the problem of impunity

In order to understand the way that Pakistan persecutes its minorities, we must examine the blasphemy law. Section 295-B of the Pakistan Penal Code addresses "Defiling The Copy of the Holy Qur'an" and states:

Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.<sup>8</sup>

<sup>3</sup> Dramatization based on a true story.

<sup>4</sup> *Christians targeted [sic] in Pakistan over Easter period; Twelve year-old Pakistani Christian girl gang-raped on Easter Day*, Christian Solidarity Worldwide (April 27, 2007), <http://tinyurl.com/62x4cqf>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Black's Law Dictionary 520 (abridged 6th ed. 1991).

<sup>8</sup> Pakistan Penal Code Act, No. 45 of 1860, Pak. Penal Code, v. 295-B inserted by Criminal Law

Section 295-C of the Pakistan Penal Code reads:

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to a fine.<sup>9</sup>

The exceptionally broad legal language here and in other sections<sup>10</sup> has been stretched to cover some truly absurd cases. For example, Irshad Bibi, a Muslim woman, was accused of blasphemy because a local cleric claimed she had “insult[ed] his beard, which is considered an insult to the Prophet Mohammed.”<sup>11</sup>

Despite the high number of false charges brought under the blasphemy laws<sup>12</sup>, the courts find the accused guilty in most cases,<sup>13</sup> issuing harsh penalties including life imprisonment and the death penalty. Though the state has yet to execute anyone under the blasphemy laws,<sup>14</sup> there are several in jail awaiting execution and fighting to appeal their sentences. One example is in the notorious case of Asia Noreen (Bibi), a Christian mother of five falsely accused of blasphemy.<sup>15</sup> Many others, as in the case of Qamar David, are burdened with enormous fines in addition to life imprisonment.<sup>16</sup>

The factors relating to this high conviction rate include not only the vagueness of the law, but also a general lack of evidentiary rules and an absence of any intent requirement.<sup>17</sup> The fact that only Muslims may be attorneys and witnesses<sup>18</sup> and that there is “no legal recourse for false accusations,”<sup>19</sup> intensifies this problem. Furthermore, the judiciary has a complete lack of will to execute justice in these

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(Amendment) Act, No. 3 of 1986.

<sup>9</sup> Pakistan Penal Code Act, No. 45 of 1860, Pak. Penal Code, v. 295-C *inserted by Criminal Law (Amendment) Act, No. 3 of 1986.*

<sup>10</sup> Pakistan Penal Code Act, No. 45 of 1860, Pak. Penal Code, v. 295-A, B *inserted by Criminal Law (Amendment) Act, No. 3 of 1986 and 298-A added by Pakistan Penal Code (Second Amendment) Ordinance, No. 44 of 1980.*

<sup>11</sup> Pakistan International Religious Freedom Report 2003, U.S. Department of State, <http://tinyurl.com/3dj4xkm> (last visited June 21, 2011).

<sup>12</sup> See, Pakistan International Religious Freedom Report 2010, U.S. Department of State (Nov. 17, 2010), <http://tinyurl.com/365zoar> (listing multiple examples of cases brought on false accusations).

<sup>13</sup> Benedict Rogers, *Blasphemy laws and the persecution of minorities in Pakistan*, Religion Compass Exchange (Jan. 2009), <http://tinyurl.com/3rjbzgj>.

<sup>14</sup> Pakistan International Religious Freedom Report 2010, *supra* note 10.

<sup>15</sup> Jibran Khan, Asia Bibi still in prison. Government u-turn on law against blasphemy, *Help Asia News* (Jan. 3, 2011, 11:04) <http://tinyurl.com/33qbg7d>.

<sup>16</sup> See, e.g., Pakistan International Religious Freedom Report 2010, *supra* note 10.

<sup>17</sup> Rogers, *supra* note 11.

<sup>18</sup> See Felix 2001: 58.

<sup>19</sup> Religious Liberty Partnership, *Virginia Statement on the Islamic Republic of Pakistan*, 3:2 IJRF 154, 156 (2010).

cases. Some judges exhibit an extremist mindset,<sup>20</sup> while others are often intimidated into indefinitely detaining or convicting innocent people.<sup>21</sup> Suspects detained indefinitely without bail are often brutally mistreated by the police and inmates and kept in deplorable conditions while the courts refuse to hear their cases.<sup>22</sup>

Pakistan also fails to prosecute and punish those who perpetrate violence against judges and others who have acquitted individuals charged with violating the blasphemy laws. The infamous case of Salman Taseer, governor of Punjab Province, illustrates the systematic impunity with which these perpetrators of violence and terrorism are treated. Governor Taseer called for the repeal of the blasphemy laws and the release of Asia Noreen (Bibi).<sup>23</sup> On January 4, 2011, his efforts led not to Asia's release, but to his assassination at the hands of his own bodyguard.<sup>24</sup> Although the bodyguard is still being held in jail at the writing of this article, the governor's murderer has not been prosecuted despite the availability of eye witnesses and extensive forensic evidence, exemplifying the lack of will to pursue justice on the part of the judiciary.<sup>25</sup>

Law enforcement officials also contribute to the problem by arresting suspects based on false accusations and giving in to pressure from extremists. One example of mob control over law enforcement comes from Gujranwala, where on April 18, 2011, the police responded to brutal mob violence against a Christian community by arresting the victims.<sup>26</sup> In January 2011 Mushtaq Gill and his son Farrukh Mush-taq Gill had been falsely accused of desecrating the Quran and insulting the Prophet Mohammed. The police determined that the allegations were false.<sup>27</sup> Four months later accusations were made against them again under similar circumstances, but this time an extremist mob violently attacked a Christian community proclaiming outrage over the blasphemy. The police arrested Mustaq and Farrukh Gill and filed

<sup>20</sup> Rogers, *supra* note 11 ("Some members of the police and the judiciary are themselves extremists involved in condoning or perpetrating violence against people accused of blasphemy. In 2000, Acting Chief Justice of the Lahore High Court, Justice Mian Nazir Akhtar, said that no one had authority to pardon blasphemy and that anyone accused of blasphemy should be killed on the spot, as a religious obligation").

<sup>21</sup> *Id.* ("Regularly, mobs of Muslims, often led by Mullahs, crowd into the courtroom, shouting threats at the judge if he does not rule in their favor"); Pakistan International Religious Freedom Report 2010, *supra* note 10 (Lower courts were frequently subjected to intimidation, delayed issuing decisions, and refused bail for fear of reprisal from extremist elements")

<sup>22</sup> *Id.* (recalling the example of Aslam Masih who was beaten so badly by police and inmates that he sustained permanent damages from his injuries, including memory loss).

<sup>23</sup> See *supra* text accompanying note 13.

<sup>24</sup> *Punjab Governor Salman Taseer assassinated in Islamabad*, BBC (Jan. 4, 2011 at 17:54), <http://tinyurl.com/33u8jlr>.

<sup>25</sup> Shehribano Taseer, Address to the Pakistan-American Christian Coalition (June 27, 2011).

<sup>26</sup> CLAAS, Brutal Attack in Gujranwala (April 18, 2011)(on file with author).

<sup>27</sup> *Id.*

blasphemy charges because it was easier than arresting the mob.<sup>28</sup> In other instances the police have been known to exhibit extremist beliefs by torturing and even killing prisoners in their custody who had been accused of blasphemy.<sup>29</sup>

The problem of intimidation and violence not only affects the judiciary and law enforcement, but also the accused, the attorneys, and the acquitted. Blasphemy laws and other discriminatory practices have led to countless deaths and function as societal targeting mechanisms for extremists. Since 2003, over 35,000 people have died from religious violence as nongovernmental, societal actors take action against the minorities that the government, in practice, refuses to protect.<sup>30</sup> As Benedict Rogers, a human rights campaigner, wrote in a report on Pakistan's blasphemy laws: "In the eyes of extremists, once a person is accused of blasphemy they are marked for life . . . In addition to the threats and violence against lawyers and blasphemy suspects, allegations of blasphemy often provoke mass communal violence directed against Christian and other non-Muslim communities."<sup>31</sup>

Generally, once an accusation of blasphemy is leveled, violence erupts against the accused individual or community. The perpetrators of this violence are not prosecuted, but are either not charged or acquitted. There are some rare exceptions where justice is delivered,<sup>32</sup> but a more common story is the outcome of a case that has been working its way through the Pakistan justice system for two years. The original accusation alleged that the "Christians had burnt pages of the Quran during a wedding."<sup>33</sup> The local Muslims acted on this mere allegation without further investigation and attacked the Christian community. They burned over 100 homes and killed eight Christians.<sup>34</sup> According to some sources, the Christians in Gojra were "burned alive."<sup>35</sup> While the police arrested forty-two people initially, they shortly released all but eight.<sup>36</sup> As the case progressed slowly to its conclusion,

<sup>28</sup> *Id.*

<sup>29</sup> See CLAAS, Appeal from CLAAS-Pakistan at 2 (Apr. 29, 2011)(on file with author); Rogers, *supra* note 11 (recounting the case of Samuel Masih who was assassinated by his police guard while receiving treatment for tuberculosis that he contracted while incarcerated. "Faryad Ali, the killer later said that he wanted to earn a place in heaven by killing Samuel the blasphemer and was reportedly calm after the attempt").

<sup>30</sup> David Alton, *The plight of Pakistan's minorities Ahmadis, Christians, Hindus, Buddhists and Zoroastrians facing campaign of relentless violence*, David Alton.net (June 12, 2011, 5:04 PM), <http://tinyurl.com/3n5ygyd>.

<sup>31</sup> Rogers, *supra* note 11.

<sup>32</sup> See, for example, the case of Maqsood Ahmed who was sentenced to death for the murder of two Christians who were being transported back to jail after a blasphemy hearing, *Killer of Christian brothers given death penalty in Pakistan*, Barnabas Aid (Apr. 21, 2011), <http://tinyurl.com/44we8yq>.

<sup>33</sup> *Id.*

<sup>34</sup> Pakistan International Religious Freedom Report 2010, *supra* note 10.

<sup>35</sup> Pakistani Christians condemn acquittal of Muslim culprits of burning alive Christians in Gojra, *Pakistani Christian Post* (June 7, 2011), <http://tinyurl.com/3ot8te6>.

<sup>36</sup> Pakistan International Religious Freedom Report 2010, *supra* note 10.

the perpetrators were treated with the typical impunity seen in these cases. On June 7, 2011, a Pakistani anti-terrorism court cleared all those involved.<sup>37</sup>

Cases such as these can only embolden those who believe their violence to be divinely sanctioned to begin with. With such an overwhelming amount of religious violence and impunity in Pakistan, the government has no need to directly attack the minority communities. They can simply deny these peaceful communities justice, and the extremists fervently take violent action against them.

## 2. The Bible as blasphemy and fear of future impunity

This pattern of impunity leads to minority religious communities living in constant fear of new incidents of persecution. The Christian community in Pakistan, a mere three percent or less of the population, is currently at risk due to ongoing developments regarding the blasphemy laws. International attention has been focused on Pakistan because of a recent attempt by some of its more radical clerics to ban the Christian Bible. The ban was proposed by members of the Jamiat Ulema-e-Islam (Sami Ul Haq),<sup>38</sup> a splinter group of the Parliamentary coalition currently in power in Pakistan. Historically the JUI has had close ties to extremist groups. It even “gave rise to ... terrorist organizations like Harkat-ul-Mujahideen (HM), Jaish-i-Muhammad (JM), Sipah-e-Sahaba Pakistan (SSP) and Lashkar-e-Jhangvi (LJ).”<sup>39</sup> With such a background it is not surprising that this party is calling on the Supreme Court of Pakistan to ban the Bible on the grounds that it is a blasphemous document.<sup>40</sup>

While it appears this demand is more of a publicity stunt, responding in kind to Terry Jones’ burning of the Quran,<sup>41</sup> the Christian community both inside and outside of Pakistan is concerned that this could presage even greater persecution of the Christian minorities in Pakistan.<sup>42</sup> Banning the Bible would effectively “criminalize Pakistani Christians,”<sup>43</sup> a very serious step even for an Islamic republic. Banning the Bible would violate the very religion on which Pakistan’s government claims to be based because the Quran appears to contradict such a policy in verses that refer

<sup>37</sup> 70 People accused of anti-Christian violence acquitted in Pak, *supra* note 27.

<sup>38</sup> Jamiat Ulema-e-Islam Assembly of Islamic Clergy, Global Sec., <http://tinyurl.com/4x68fpn> (last visited June 21, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> Atika Rehman, JUI-S Urges SC to ban Bible within 30 Days, *International Herald Tribune*, June 9, 2011, <http://tinyurl.com/3de7d5q>.

<sup>41</sup> Anugrah Kumar, *Now Bible faces blasphemy charges in Pakistan*, The Christian Post.com (June 03, 2011, 11:19 AM), <http://tinyurl.com/3pqdmk4>.

<sup>42</sup> Amy Shank, *Call for Bible ban in Pakistan concerns Christians*, Christian Today.com (June 10, 2011, 17:31 (BST)), <http://tinyurl.com/3lu9jal>.

<sup>43</sup> *Id.*

to Christians and Jews as “people of the book”<sup>44</sup> and recognizes the Torah and the Gospel as revealed by Allah for guidance.<sup>45</sup> According to the explanation of former Prime Minister of Pakistan, Benazir Bhutto:

Islam accepts as a fundamental principle the fact that humans were created into different societies and religions, and that they will remain different ... God created diversity and asked believers to be just and to desire justice in the world ... Freedom of choice, especially in matters of faith, is a cornerstone of Quranic values. This freedom, of course, leads to pluralism in religion, both within Islam and outside.<sup>46</sup>

Both the current blasphemy laws and this new proposal to ban the Christian Bible directly contradict this concept. If the current attempt to ban the Bible in Pakistan is successful, it is highly probable that an increased wave of persecution will occur in the same manner as past religious violence based on blasphemy allegations. Every Christian would be accused of blasphemy for having a Bible and widespread violence and murder would break out.<sup>47</sup>

### 3. Impunity affects all communities

The negative effects of impunity touch not only the Christian community, but all of Pakistani society at large. Other persecuted religious minorities in Pakistan include the Hindus and the Ahmadiyya.<sup>48</sup> The Muslim community has developed the custom of using these tools of persecution against its own members as well.<sup>49</sup> The ongoing impunity has led to an overall culture of violence and instability.

In the Hindu community, persecution often takes the form of severe discrimination and mob violence. Last year in Karachi, Pakistan, almost sixty people were forced to flee the area to escape an Islamic mob. When a thirsty Hindu boy drank from a “cooler outside a mosque,”<sup>50</sup> the local Muslims attacked and beat him. The violence spread, and eventually the entire extended family was forced to leave

<sup>44</sup> Benazir Bhutto, *Reconciliation: Islam, democracy and the West* 37 (New York: Harper Collins. 2008).

<sup>45</sup> *Id.* at 36. (quoting excerpts of the Quran for the proposition that Islam is tolerant and inclusive of Judaism and Christianity.)

<sup>46</sup> *Id.* at 30-31.

<sup>47</sup> It appears that the current efforts to ban the Bible have been condemned by Jamiat Ulema-e-Islam party leaders and the clerics responsible for the proposal censured; however, this does not mean that the threat of future efforts in this direction or increased persecution of Christians has disappeared. See *Leaders appreciate lifting of Bible threat: Praise for Islamic Party for reversing decision to demand ban in wake of Qur'an burning*, UCA News (June 15, 2011), <http://tinyurl.com/3z97bct>.

<sup>48</sup> U.S. Commission on International Religious Freedom, 2011 Annual Report, May 2011, 114, <http://tinyurl.com/3k94dvy>. [Hereinafter USCIRF 2011].

<sup>49</sup> Rogers, *supra* note 11.

<sup>50</sup> Mohammad S. Solanki, “Hounded” Hindus take shelter in Karachi cattle pen after drinking water from Mosque, Pakistan, PAK HINDU POST, (July 9, 2010 5:44 PM). <http://tinyurl.com/3y25z4r>.



their homes. “Police officials . . . failed to take any steps to stop the atrocities being meted out to the minority community.”<sup>51</sup> Without protection from local authorities, people cannot live normal lives.

Another way in which the Hindu community is commonly victimized is the practice of Muslim’s kidnapping, “converting,” and “marrying” their young women. According to the Human Rights Commission of Pakistan, an estimated 20 to 25 Hindu girls are kidnapped and forcibly converted every month.<sup>52</sup> One example is the case of Gajri Ram who was kidnapped by a Muslim neighbor in December 2009.<sup>53</sup> Sometime later, her parents were informed that she had “converted” to Islam, married the Muslim man, was sequestered in the Madrassa (Islamic seminary), and was not allowed to see her parents.<sup>54</sup> Since Gajri was fifteen years old, her parents attempted to file an abduction report with the police. However, the police refused to accept the application stating that “their daughter was now the ‘property of the madrassa’”.<sup>55</sup> Prominent human rights activists are currently pursuing this case; but, even if they succeed, winning the case will take years during which this little girl will live in a “marriage” which is nothing more than a license for rape.<sup>56</sup> This pattern of impunity and police inactivity, leads to frequent forced conversion and marriages.

Another community that suffers in this culture of impunity is the Ahmadyya. The Ahmadis consider themselves Muslim, but some of the tenets of their doctrine draw the ire of mainstream Muslims who see them as apostates.<sup>57</sup> There are even laws in effect that discriminate against Ahmadis, ban them from all public life, and restrict their freedom to practice their religion.<sup>58</sup>

As with other minorities, the Ahmadis are most harmed by the inaction of the government to protect them from violent extremists. According to the US Commission on International Religious Freedom (USCIRF), during the “largest incident of anti-Ahmadi violence in recent years,” the government ordered its Rangers “not to intervene.”<sup>59</sup> The culture of impunity has created a situation in which there is

<sup>51</sup> *Id.*

<sup>52</sup> Pakistan International Religious Freedom Report 2010, *supra* note 10.

<sup>53</sup> *Hindu girl forced to convert to Islam*, ExpressIndia.com (Apr 23, 2010, 17:55 hrs IST), <http://tinyurl.com/3llorhx>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* See also, *Pakistani Christians condemn acquittal*, *supra* note 30 (exemplifying the slow process of the justice system).

<sup>57</sup> Saba Imtiaz, Ahmadis in Karachi: Pulpit pounding, barricades, prayers but no peace, *International Herald Tribune*, June 19, 2011, <http://tinyurl.com/3m6r5c6>.

<sup>58</sup> See, Pakistan Penal Code Act, No. 45 of 1860, Pak. Penal Code, v. 298-B, 298-C, *inserted by* Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. 20 of 1984.

<sup>59</sup> USCIRF 2011, *supra* note 46.

“no justice ... [as] [t]here seems to have been no determined effort on the part of authorities in Punjab to track down those responsible or to ensure that such an incident never takes place again.”<sup>60</sup> Ahmadis in Karachi and elsewhere sneak into their places of worship, leaving their women and children at home for fear that this type of incident will be repeated.<sup>61</sup> Ahmadis are discriminated against in government employment and business. They are frequently assassinated simply for owning businesses or participating in certain professions, and the perpetrators go unpunished.<sup>62</sup>

The Muslim community itself is also harmed by this culture of impunity. When systematic impunity is in effect, the only safe position becomes that of an accuser who can use and abuse his power to force others to give way to him. In Benedict Rogers’ analysis of Pakistan’s blasphemy law he addresses this phenomenon:

“It is important to note that when the blasphemy laws were first introduced, the majority of accused were non-Muslims, and particularly Christians. However, in recent years Muslims themselves have started using the law against each other, and it is estimated that 49 percent of the total number of blasphemy cases since 1986 affect Muslims.”<sup>63</sup>

One of the reasons for this may be that as these patterns of impunity become established, the issue is no longer religion, but is simply human vice. Those who desire to take what they want now have a means of sidestepping the rules of civilized society. Thus, it comes as no surprise that “[m]any, perhaps most, blasphemy cases are not even directly related to religion – they usually revolve around land-grabbing disputes or personal vendettas.”<sup>64</sup>

Overall, this culture of impunity has led to a destabilization of Pakistan and made it an “epicenter of religious intolerance and religiously-motivated violence in the region and beyond ...”<sup>65</sup> This has even led to the assassinations of public officials who have fought for the rights of minority communities or called for the repeal of the blasphemy laws, including Federal Minister Shabaz Bhatti on March 2, 2011, Punjab Governor Salman Taseer in January 2011, and Benazir Bhutto, former Prime Minister and wife of President Asif Ali Zardari in December 2007.<sup>66</sup> The recent assassinations of these key advocates for change have led to unprecedented levels of

<sup>60</sup> One year after attack on Ahmadis, editorial, *International Herald Tribune*, May 29, 2011, <http://tinyurl.com/3v336hz>.

<sup>61</sup> Imtiaz, *supra* note 55.

<sup>62</sup> *Id.*

<sup>63</sup> Rogers, *supra* note 11.

<sup>64</sup> *Id.*

<sup>65</sup> Religious Liberty Partnership, *supra* note 17, at 156.

<sup>66</sup> *Id.* at 154-55.

attacks on minorities and have not been meaningfully prosecuted, according to the pattern of impunity so prevalent in Pakistan.<sup>67</sup>

#### 4. Recommendations for change

“Central to the achievement of civil society and the maintenance of public order is the upholding of the rule of law.”<sup>68</sup> Through its practice of impunity, Pakistan has failed to uphold the rule of law and the principles upon which it was founded. Quaid-e-Azam Mohammed Ali Jinnah, considered the founder of Pakistan, had a vision of freedom of religion and equal rights of all citizens no matter what their religion or class.<sup>69</sup> He stated that “Minorities are the sacred trust of Pakistan.”<sup>70</sup> Some of his vision was included in the preamble of the 1973 Constitution of Pakistan:

[I]t is the will of the people of Pakistan to establish an order ...  
Wherein the principles of democracy, freedom, equality, tolerance and social justice ... shall be fully observed;...  
... adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures;...  
... [there] shall be guaranteed fundamental rights, including equality of status, of opportunity before the law, social, economic and political justice, and freedom of thought, expressions, belief, faith, worship and association, subject to law and public morality;  
... [and] adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes ... .<sup>71</sup>

Unfortunately, the constitution also restricted the participation of minorities in the highest government offices, and subsequently Pakistan restricted minority electoral rights, established blasphemy laws, and established Sharia Islamic Law as applicable to all citizens.<sup>72</sup> By these measures, combined with an attitude of impunity in regard to religious persecution and violence, Pakistan has abandoned the principles espoused by its early leaders. However these words from the Pakistan Constitution of 1973 can be “the means through which reconciliation and the restoration of trust can be re-established in Pakistan today.”<sup>73</sup>

<sup>67</sup> Randolph Marshall Bell, President, First Freedom Ctr., Minority religious communities at risk abroad, Panel Discussion (June 15, 2011).

<sup>68</sup> Letter from Jubilee Campaign, Advocates International, & American Center for Law and Justice to Ambassador Husain Haqqani, Embassy of Pakistan (Aug. 17, 2009) (on file with author). [*hereinafter* Letter to Ambassador Husain Haqqani].

<sup>69</sup> Felix, *supra* note 16, at 8-14, 22-23.

<sup>70</sup> *Id.* at 58.

<sup>71</sup> Pakistan Constitution. 1973, pmbi. (emphasis added).

<sup>72</sup> See, Felix, *supra* note 16, at 29-32; Religious Liberty Partnership, *supra* note 17, at 156.

<sup>73</sup> Letter to Ambassador Husain Haqqani, *supra* note 66 at 1.

In order to restore public peace and order Pakistan's governing instruments must follow the lead of its founders and of those heroes who have given their lives in the fight to bring religious freedom, equality, and the rule of law to Pakistan. The government of Pakistan must reverse this culture of impunity and religious persecution by actively pursuing, prosecuting and punishing cases of mob violence and assassinations; establish a policy of transparency in regard to reports and prosecutions on such incidents; abolish and repeal all blasphemy laws and other discriminatory laws and constitutional sections; and adopt international standards of freedom of religion and conscience.

The failure of the Pakistani government to properly investigate and prosecute cases of persecution, murders, and mob violence against Christians and other religious minorities must cease. Pakistan must train their judicial and law enforcement systems to take reports of crimes committed against minority communities seriously. Currently, "[t]he minorities must struggle and obtain the help of NGOs . . . just to obtain the registration of [first incident reports] . . ." <sup>74</sup> Federal and local police must be instructed to file reports and thoroughly investigate these cases. They must also stop releasing perpetrators and dropping charges against them. Often "[t]he victims are badgered or bribed into agreeing not to testify against those responsible for instigating the mob violence – a crime in itself under Pakistan law that is rarely investigated or enforced against those who unlawfully lie or bribe their way out of justice." The government should not only prosecute the perpetrators for violence against minorities, but also for attempting to bribe officials and victims. Furthermore, any official who accepts or offers a bribe and refuses to execute proper justice should be severely punished or removed from their post, especially in the case of the judiciary.

It is not enough, however, to simply investigate and prosecute these cases. "To stop the cycle of mob violence and restore public order, transparency in the arrest, conviction, and punishment of perpetrators is essential." <sup>75</sup> One group of human rights advocacy organizations has called for "public transparency regarding the arrests and prosecution of the perpetrators of the mob violence, . . . and publication of the findings and recommendation of any judicial or other commissions established to investigate and make recommendations for the prevention of such incidents in the future" <sup>76</sup> They have urged the government of Pakistan to make all "incident reports and judicial inquiry reports . . . public. . . Such reports are important to bring transparency to the justice process and restore public confidence in the government [ 's ability and willingness] to bring justice." <sup>77</sup>

<sup>74</sup> Letter to Ambassador Husain Haqqani, *supra* note 66, at 2.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

The recent tragic deaths of two government officials who were assassinated for their stances on religious liberty, protection of minorities, and the abolishment of blasphemy laws offers Pakistan an opportunity to reverse the message of impunity that has become engrained within their society. These high profile cases should be thoroughly and publicly investigated and the perpetrators brought to justice. The Religious Liberty Partnership has called for the Pakistani government to “establish a judicial inquiry into the murders of Shahbaz Bhatti and Salman Taseer and to release and publicize the resulting report, release and publicize prior investigative reports of anti-Christian violence, and follow up previous Federal level requests to the Punjab government for this information.”<sup>78</sup> The government should make it clear that this kind of prosecution will be the norm, not only for violence against public officials and champions for change, but also for any violence against religious minorities or blasphemy suspects.

Furthermore, the blasphemy laws and other discriminatory laws should be abolished. As we have seen, the blasphemy laws are “used with deliberate and malicious intent”<sup>79</sup> not only against Christians, but other religious minorities and members of the Muslim majority. The government of Pakistan should

work towards abolishing the blasphemy laws and, until they are abolished, to expeditiously pass . . . measures to prevent the misuse of these laws, such as procedural and evidential safeguards for the accused, consideration of the question of intent, penalties for false accusations, as well as support and protection for those who defend or support victims of blasphemy laws.<sup>80</sup>

The track record in Pakistan and other countries that have tried to enforce blasphemy laws has led to the destabilization of society including, “mob violence, bribery, lying, injury to police and property, injury to members of the majority or state-established religion, violation with impunity of the religious liberties of the adherents to the minority religions . . . .”<sup>81</sup> The abolition of these laws and other constitutional and statutory provisions discriminating against minorities in the political and social spheres should also be repealed as they only cause tension and discord instead of reconciliation and peace.

Finally, the government of Pakistan should actively “implement international standards of non-discrimination based on race, religion, and gender, found in Article 2 of the Universal Declaration of Human Rights, the ICCPR [the International Covenant on Civil & Political Rights], and other U.N. instruments.”<sup>82</sup> Pakistan is signatory to

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<sup>78</sup> Religious Liberty Partnership, *supra* note 17, at 156.

<sup>79</sup> Felix, *supra* note 16, at 58.

<sup>80</sup> *Id.*

<sup>81</sup> Letter to Ambassador Husain Haqqani, *supra* note 66, at 2-3.

<sup>82</sup> Religious Liberty Partnership, *supra* note 17, at 157.

the ICCPR and otherwise bound by U.N. documents, but clearly the rights of their people are not being protected as called for by these international laws. The Religious Liberty Partnership has called on Pakistan not only to implement these laws but also to “remove [their] reservations to the . . . ICCPR.”<sup>83</sup> The government of Pakistan should actively promote the protection of all minorities by publicly denouncing all mob violence, persecution, and discriminatory action. In promoting these ideals, they should make it clear to the people that religious intolerance and persecution harms the majority as well as the minority and that it is in the best interest of their society as a whole to allow for freedom of religion and protection of minorities.

## 5. Conclusion

The widespread culture of impunity in Pakistan has led to the destabilization of society and the abandonment of the rule of law. Blasphemy laws have devolved into an excuse for persecuting minorities and taking revenge on social rivals. The systematic impunity within Pakistan regarding religious violence and the misuse of the law has become a license to pillage, plunder, rape and kill. When perpetrators go free and victims are ignored, violence, instead of law, becomes the foundation of a society. The rule of law has grown weaker and the judicial system has become a tool of repression instead of an instrument of justice. In the long run, discrimination, mistreatment, and denial of justice to one group always create the capacity to deny justice to all.

For Pakistan to move forward, change is necessary. The citizens of Pakistan, whether Muslim, Hindu, Ahmadi, or Christian must all come together and realize that this culture of impunity is a cancer on their nation’s stability which threatens them all. The government of Pakistan must reform its legal system, for without public confidence in its strength and impartiality, an increasing number of people will give way to hopelessness and violence, further destabilizing Pakistani society. The impunity which has been perpetuating this cycle of violence must end so that reconciliation and restoration may begin.

## Recommendations for further reading

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# Mechanisms for religious freedom advocacy

Knox Thames<sup>1</sup>

## Abstract

While domestic options for redress of violations of religious freedom may be few or futile, there is an array of mechanisms at the international level that religious freedom advocates can access to help bring relief to those suffering persecution and repression. However, to be effective, advocates must have an understanding of international law and be precise with their facts and terminology. The article highlights key points for those who wish to engage, and points to resources that can equip individuals for effective advocacy, including international bodies which can be approached.

**Keywords** Advocacy, United Nations, European Union, Organization for Security and Cooperation in Europe, Council of Europe, African Union, Organization of American States, United States, persecution.

Having worked in the religious freedom field for almost a decade for the U.S. government, I have observed a real need to equip would-be religious freedom advocates with the knowledge to effectively engage for their coreligionists or other persons of faith being persecuted for their beliefs. I have repeatedly met with many good people from across faith lines who wanted to help their friends, but did not know where to begin or how to present their information in a way that could be effectively used by policymakers. This led to a book *International Religious Free-*

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*dom Advocacy: A Guide to Organizations, Law, and NGOs*, published by Baylor University Press in 2009.<sup>2</sup>

The purpose of the book is to be a user-friendly, straightforward tool for empowering would-be advocates to effectively promote religious freedom. It surveys international organizations and highlights relevant mechanisms and offices that can be activated on religious freedom concerns. The book also highlights the unique array of American governmental institutions that exist to promote religious freedom internationally, along with two studies that contextualize how advocates have used international mechanisms to successfully promote and defend this fundamental right.<sup>3</sup>

## **1. Using international standards and mechanisms for religious freedom**

Around the world persons of faith continue to face serious obstacles to the full and free enjoyment of religious freedom, whether from Christian, Muslim, or other religious communities.<sup>4</sup> Religious freedom is perhaps the most personal of human rights, as it goes to the very core of a human being. Yet limitations, abuse, and persecution are a daily occurrence, with some estimating that more than half of the world's population cannot fully enjoy this cherished fundamental freedom.

At the same time, religious freedom protections are well established at the international level. International law recognizes religious freedom as a universal human right.<sup>5</sup> Treaties and international agreements guarantee and reinforce the right of individual and communal religious freedom. Placing limitations on individual belief is never permitted, and communities of believers must be allowed to congregate for worship and study. Because of these wide protections, religious freedom is considered a part of "customary international law,"<sup>6</sup> and thereby every country in

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<sup>2</sup> Thames, H. Knox, et al., *International religious freedom advocacy: A guide to organizations, law, and NGOs*. Waco, TX: Baylor UP, 2009, <http://tinyurl.com/GE2009>.

<sup>3</sup> There are a host of titles that explore the "philosophy" of religious freedom. See Thomas F. Farr, *World of faith and freedom: Why international religious liberty is vital to American national security*, Oxford University Press (2008).

<sup>4</sup> Brian Grimm, *The price of freedom denied: Religious persecution and conflict in the 21st century*, Cambridge University Press (2011). Also see 2011 Annual Report of the U.S. Commission on International Religious Freedom, [www.uscirf.gov](http://www.uscirf.gov).

<sup>5</sup> For a good overview of the UN and the Universal Declaration on Human Rights see Mary Ann Glendon, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House (2001).

<sup>6</sup> Customary international law is a set of rules derived from the practice of states on issues that are generally accepted as law. It is not founded on international treaties, and in fact exists independent of treaty law. Also see J.L. Kunz, "The Nature of Customary International Law," *The American Journal of International Law*, Vol. 47, No. 4, Oct., 1953.

the world must protect this human right, even if they have not signed any treaties or joined international organizations. Of course, despite states pledging to uphold and defend these norms, implementation is inconsistent, even among European countries.

By moving governments and international institutions to act, religious freedom advocacy can save lives, free prisoners, and increase religious liberties. Within the international system, there are many ways for religious freedom advocates to engage effectively and push for change – they can conduct direct advocacy, meet with governmental and international policymakers, publicize, report on compliance to monitoring bodies, and use international complaint mechanisms. To be effective, advocates generally undertake these activities by joining or working with NGOs committed to religious freedom.

While it is difficult for individuals and NGOs to convince governments to change policies, international organizations can be a force multiplier. A government will care little about the views of private citizens or foreign advocates, but it will become much more focused on problematic policies when an organ of the United Nations (UN) or another international body raises concerns. Advocates should therefore concentrate on engaging international institutions and mobilizing their political leverage towards a government that is violating religious freedom. NGOs often act as the vital catalyst and go-between.

When developing a plan of action, religious freedom advocates should consider the following:

First, before rushing to international organizations, advocates should initially work to resolve the matter domestically. States are primarily responsible for their own compliance with international religious freedom standards. Relationships with local policymakers can often be more effective in resolving a situation than all the international attention in the world. NGOs with strong, positive relationships with governments can play an important role in this process. However, if the situation is life threatening, or if domestic remedies have been exhausted or will not result in a proper response, then advocates should look abroad.

Second, advocates should determine whether the country is a member of any regional multilateral organizations. Many countries are part of regional organizations that have established their own human rights standards, with some maintaining complaint mechanisms that allow individuals to bring petitions about religious freedom violations. Advocates should also research what monitoring bodies receive human rights complaints and take their concerns there, typically under the auspices of a recognized and reputable NGO. If regional systems fail or the country in question does not participate, then one should look higher.

Lastly, at the global level is the UN. There are a variety of UN tools available, providing either some type of redress mechanism or investigative procedure. Advocates should work to activate one of these UN monitoring bodies or complaint mechanisms on behalf of the victims they represent. Advocates can also look for support from sympathetic governments, among others from U.S. institutions and agencies.

## 2. Standards of excellence

Anyone wishing to advocate for the oppressed and persecuted must act wisely and with great discernment. For every good story about international advocacy freeing a religious prisoner or reforming laws, there is another about an overly aggressive or troublingly ill-informed activist causing more harm than good. The Hippocratic Oath for advocates is “do no harm.” This rule is an absolute. Advocates must coordinate their efforts with the victims or the victims’ families, as they will bear the brunt of any response to international advocacy. Victims and their families must be fully aware of the possible ramifications and consent to action – their lives may literally be at stake.

It is also important for religious freedom advocacy groups to speak out against all forms of religious persecution and repression, even if their coreligionists are not affected or persons of no faith are targeted. There is strength in numbers, and often a positive conclusion in one case will be useful to others in similar situations. Governments will try to “buy” the silence of groups by providing benefits or freedoms exclusive to their communities. Advocates should avoid this temptation: if everyone cannot enjoy religious freedom, then there is not complete religious freedom for anyone.<sup>7</sup>

Advocates must also be very careful about the facts. If they are found to exaggerate or misrepresent, or to be ill informed, then they will have a difficult time persuading persons of power and influence. One key issue is the use of vocabulary. Sometimes, in an attempt to induce a faster international response, advocates are tempted to exaggerate and make a situation sound more compelling. For instance, the word *persecution* is often carelessly thrown around without any thought as to its true meaning. This overuse only cheapens the term and lessens the impact when describing an actual situation of persecution, hindering an advocate’s effectiveness. It is an issue of trust. Once policymakers and monitoring bodies become aware of the loose usage of terminology, they will be much more difficult to persuade and motivate to action.<sup>8</sup>

<sup>7</sup> Thames (2009) *International Religious Freedom Advocacy* provides cases studies on Turkmenistan and Vietnam, outlining how advocates successfully engaged to bring about improvements in freedom of religion.

<sup>8</sup> Cf. Boyd-Macmillan (2006:231-253) Ch. 9 “The tricky business of doing more good than harm”.

### 3. Fundamental human right

Religious freedom is well entrenched in numerous UN human rights treaties, covenants, and conventions. Many jurists therefore agree that religious freedom has risen to the level of customary international law, which means it is a universal right that governments must respect, even if they have not signed any human rights treaties. For instance, Article 18 of the UN Universal Declaration of Human Rights speaks directly to religious freedom.<sup>9</sup> It recognizes that: “Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” Similar language on religious freedom is found in other UN agreements.<sup>10</sup>

In addition to the UN, groups of countries have developed regional organizations, similar in structure to the UN, but limited in geographical scope. These are recognized under Chapter VIII of the UN Charter and bind states together into regional arrangements and agreements.<sup>11</sup> Three regions of the world – Europe, the Americas, and Africa – have created specific agreements establishing additional human rights and religious freedom protections that overlap with the Universal Declaration.

Religious freedom is unique from other human rights in that, for its full enjoyment, a variety of other rights must also be protected.<sup>12</sup> The multifaceted and interdependent nature of this right can be seen in several ways: to meet collectively for worship or religious education, the freedom of association must be respected; to allow the sharing of religious views, which is often a part of a belief system, speech freedoms must be enjoyed; to provide for some type of community legal status, laws must not discriminate on religious grounds; to maintain or own a place of worship, property rights must be respected; to obtain sacred books and disseminate religious publications, media freedoms must be protected.

In touching these other rights, it can be either easier or harder to advocate for religious freedom. It may be easier, as activists can attack limitations from a variety of angles and build broader coalitions with organizations not solely focused on religious freedom. It may be harder, however, if religious freedom limitations are an

<sup>9</sup> <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>10</sup> Cf. Article 18 of the International Covenant on Civil and Political Rights or the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>11</sup> Article 52, Chapter VIII, Charter of the United Nations, <http://www.un.org/en/documents/charter/chapter8.shtml>.

<sup>12</sup> Cf. Alfred C. Stepan, “Religion, democracy, and the ‘twin tolerations,’” *Journal of Democracy* 11:4 (2000).

unintended casualty of a broader governmental policy focused on other domestic political concerns.

#### 4. Distinguishing types of violations

Violations of religious freedom come in a variety of pernicious forms and are not limited to any one region. The most egregious actions are usually found under nondemocratic regimes, yet even in Western countries, lesser forms of religious freedom violations can arise from governmental and private harassment, limitations, and discrimination.<sup>13</sup> As the UN Special Rapporteur on Freedom of Religion or Belief stated in a 2006 report, “Acts of religious intolerance or other acts that may violate the right to freedom of religion or belief can be committed by States but also by non-State entities or actors. States have an obligation to address acts that are perpetrated by non-State actors and which result in violations of the right to freedom of religion of others. This is part of the positive obligation under article 18 [of the Universal Declaration].”<sup>14</sup>

There is a continuum advocates should be aware of when describing a situation: Persecution – Repression – Harassment – Limitations – Discrimination.

Persecution is ground zero for religious freedom violations. *Webster’s Dictionary* defines persecution as “to harass or punish in a manner designed to injure, grieve, or afflict; specifically to cause to suffer because of belief.” Religious persecution is the most violent, egregious, and extreme repression of religious freedom and can include torture, beatings, imprisonment, loss of property, rape, slavery, murder, and forced conversion. If the circumstances are especially grave, persecution can come in the form of prohibition of religious activities, such as corporate worship, education, and proselytizing. Persecution can occur at the hands of government agents or non-state actors. It can be interreligious, intrareligious or a combination of both. For acts to constitute religious persecution, they should be systemic, ongoing, and on account of religious or nonreligious beliefs. In these circumstances, religious groups are often forced underground and must meet secretly, fearing for their well-being and their lives.<sup>15</sup>

The key distinction between persecution and repression is how governments enforce these limitations. *Repression* would describe situations in which believers are prohibited from meeting publicly, religious practice is made illegal, and proselytiz-

<sup>13</sup> Not all private discrimination is problematic, as some religious discrimination is permissible, and even necessary, for a religious group to function.

<sup>14</sup> A/HRC/2/3, para. 35.

<sup>15</sup> This presentation risks treating these categories as an oversimplification, but provides an overview of how these issues exist on a continuum. However, these categories often overlap and can change positions depending on the situation.

ing is banned. Repressive governments would use temporary detention, fines, court cases not resulting in prison sentences, and police raids to intimidate believers into submission. These actions violate international norms, but they would not evidence a systematic policy using violent force to bring compliance.

Harassment, limitations, and discrimination, while not rising to the level of persecution, can come in a variety of forms that inappropriately limit religious freedom. Examples of harassment would include over-application of neutral laws to limit religious activity, as well as police unexpectedly attending religious services or taking photographs of participants as they leave. Threatening actions taken by non-state actors, through vandalism with little or no response from law enforcement, would also qualify. These incidents would not be part of a wider policy and would occur sporadically. Limitations would include problems with obtaining permits to meet publicly or to use buildings for worship, or restrictions limiting religious speech. Discrimination could come in the form of laws benefiting certain religious communities over others, or through societal actions against particular religious communities.

## 5. Taking action

A range of international mechanisms exist that advocates can access to promote religious freedom, and there are several special rapporteurs that can engage on behalf of the persecuted or human rights more generally. Every corner of the world is either covered by the UN or regional bodies such as the European Union (EU), the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), and the African Union (AU). While these advocacy avenues are not perfect and cannot force a country to change its abusive ways, they can help create the political pressure needed to see real change.

The United States has a unique commitment to religious freedom and a variety of special offices that can be engaged.<sup>16</sup>

The religious freedom-specific entities in the U.S. government were created by the International Religious Freedom Act (IRFA) in 1998.<sup>17</sup> IRFA concretized religious freedom as a priority in all bilateral and multilateral talks and created new institutions, foremost of which is a special office within the State Department to monitor religious freedom worldwide, headed by the Ambassador-at-Large for In-

<sup>16</sup> There has been increasing discussion about how the United States should engage religion. See R. Scott Appleby et al., "Engaging religious communities abroad: A new imperative for U.S. foreign policy," *The Chicago Council on Global Affairs* (2010).

<sup>17</sup> Cf. Eric Patterson, "Increasing the effectiveness of religious freedom advocacy: a perspective from the U.S." *IJRF* 3:2 (2010):105-125. For a useful review of how IRFA came to pass, see Allen D. Hertzke, *Freeing God's children: The unlikely alliance for global human rights*, Rowman & Littlefield (2004).

ternational Religious Freedom.<sup>18</sup> If religious freedom advocates can successfully mobilize the State Department, it will be a force multiplier to their efforts. IRFA also created the U.S. Commission on International Religious Freedom to act as a watchdog of the State Department's handling of religious freedom concerns.<sup>19</sup>

Just recently, Congressman Frank Wolf, a Republican from the state of Virginia, introduced legislation<sup>20</sup> to strengthen IRFA and to reauthorize the Commission, which is set to expire in September 2011.<sup>21</sup> The bill would correct what are perceived as weaknesses in IRFA or make explicit what Congress intended to be implemented by the executive branch. For instance, the bill specifically places the Ambassador-at-Large in the office of the Secretary of State,<sup>22</sup> to ensure the Ambassador has a direct line of communication with the United States' top diplomat. It also specifically gives the Ambassador oversight and management authority of the Office of International Religious Freedom and other religiously oriented positions and programs at the State Department, which would include the special envoys on anti-Semitism, to the Muslim communities, and to the Organization of the Islamic Conference.<sup>23</sup>

Importantly, the bill would also create a specific timetable for designating countries as "countries of particular concern," which is the worst of the worst list created by IRFA.<sup>24</sup> Both Republican and Democratic administrations have been slow in naming countries on this list. The bill would require designations within 90 days of the issuance of the State Department's annual religious freedom report. The bill would also ensure that funds are made available for programmatic grants on religious freedom,<sup>25</sup> and requires religious freedom training for every Foreign Service officer at the State Department.<sup>26</sup>

Outside of the IRFA construction, other bodies exist within the panoply of U.S. government agencies. Regarding the European and Eurasian context, the U.S. Commission on Security and Cooperation in Europe, also known as the Helsinki Com-

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<sup>18</sup> [www.state.gov/g/drl/irf/index.htm](http://www.state.gov/g/drl/irf/index.htm).

<sup>19</sup> [www.uscirf.gov](http://www.uscirf.gov).

<sup>20</sup> H.R. 1856, "International Religious Freedom Act Amendments of 2011," <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1856>.

<sup>21</sup> *Ibid.*, Sec. 206.

<sup>22</sup> *Ibid.*, Sec. 101(a)(1).

<sup>23</sup> *Ibid.*, Sec. 101(b)(5). "The Ambassador at Large shall seek to coordinate all programs, projects, and activities of the United States Government to promote religious freedom and religious engagement abroad, including programs, projects, and activities of the Department of Defense, the Department of State, the Department of Homeland Security, the Department of the Treasury, and the United States Agency for International Development."

<sup>24</sup> *Ibid.*, Sec. 302(a)(1)(A)(i).

<sup>25</sup> *Ibid.*, Sec. 401.

<sup>26</sup> *Ibid.*, Sec. 103.

mission, monitors respect for human rights and religious freedom in Europe and the former Soviet Union.<sup>27</sup> The Congressional Executive Commission on China also follows a range of political developments in China, including religious freedom.<sup>28</sup> These institutions all represent places where advocates can advance their concerns and push for real action. Congress itself is another valuable venue, with its members and committees engaged on questions of religious persecution.<sup>29</sup>

## 6. Conclusion

In short, religious freedom matters. It is often the “canary in the coal mine” for human rights abuses, as religious freedom stands atop other fundamental rights. While persecution will continue, there are international mechanisms that advocates can access to bring about positive results, but they will take persistence and commitment. Using the various legal avenues referred to above can make a difference.

<sup>27</sup> [www.csce.gov](http://www.csce.gov).

<sup>28</sup> [www.cecc.gov](http://www.cecc.gov).

<sup>29</sup> [www.senate.gov](http://www.senate.gov); [www.house.gov](http://www.house.gov).

# Conference on Law and Religion in South Africa

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## Annual Meeting of the SA Council for the Protection and Promotion of Religious Rights and Freedoms

**20-23 September 2011, Stellenbosch, South Africa**

Dates: Tuesday 20 September 14:30 – Friday 23 September 13:00  
Wednesday afternoon 21 September: Annual meeting

Venue: Faculty of Theology, University of Stellenbosch,  
171 Dorp Street, Stellenbosch, South Africa

Contact: Prof (emeritus) Pieter Coertzen, Faculty of Theology,  
University of Stellenbosch, Tel: +27 21 887 2619 (home),  
eMail: [pc@sun.ac.za](mailto:pc@sun.ac.za)



# South African Charter of Religious Rights and Freedoms

Constitutional framework, formation and challenges

Iain T Benson<sup>1</sup>

## Abstract

The creation, under Section 234 of the *Constitution of South Africa* (1996) of a *South African Charter of Religious Rights and Freedoms*, signed by every major religious group in South African as well as representatives of leading South African Constitutional Commissions and others is a development of some importance and potential world significance. It will be, once passed into law, the first Charter created under this section. The civil society initial phase of discussions, consultations, meetings and drafting and re-drafting led to the public signing ceremony at the University of Johannesburg on 21 October 2010. The next phase moves to the more formal political phase of government consultations and, presumably further discussions and, it is hoped, eventual passage into law. The governmental part of this looks to be the most challenging. This introductory article discusses some of the relevant background to the formation of the South African Charter and appends the document for wider circulation, and perhaps, emulation in other settings.

**Keywords** South Africa, constitution, charter, religious freedom, rights, dialogue, policy-making.

## 1. Why a Charter in addition to the Enumerated Rights?

The role that religions could play in relation to the ongoing formation of the South African Constitution was understood early on by Justice Albie Sachs when he wrote:

Ideally in South Africa, all religious organizations and persons concerned with the study of religion would get together and draft a charter of religious rights and responsibilities. . . it would be up to the participants themselves to define what they consider to be their fundamental rights.<sup>2</sup>

<sup>1</sup> Iain T Benson (\*1955), B.A. (Hons), M.A., J.D., Ph.D. (Cand.). Barrister & Solicitor, Senior Associate Counsel, Miller Thomson LLP, Toronto, Canada; Extraordinary Professor of Law, Department of Constitutional Law & Philosophy of Law, Faculty of Law, University of the Free State, Bloemfontein; Research Associate South African Institute For Advanced Constitutional Human Rights, Public and International Law Johannesburg. Long article received: February 2010. Short version received: 16 July 2011. Accepted: 18 July 2011. Private contact: Iain T Benson, Ferme Loudas, 65270 St. Pé de Bigorre, France, Phone: +33 (0) 5 62 41 88 12, Fax: +33 (0) 5 62 41 84 67, E-mail: iainbenenson2@gmail.com.

<sup>2</sup> A. Sachs, Protecting human rights in a new South Africa. *Contemporary South African debates* (1990), at 46-47.

Section 234 of the *Constitution of South Africa* stipulates as follows:

In order to deepen the culture of democracy established by this Constitution, Parliament may adopt Charters of Rights consistent with the provisions of the Constitution.

Section 234 gives South Africans a means to offer guidance to both politics and the courts though, since it has not been used until now, it is not certain what the political process will do to the work with which civil society (in terms of the major religions) has already been involved.

In principle, however, Section 234 gives those who come up with such Charters, emerging from civil society, the chance to specify in greater detail what they think matters, and the location of Section 234 in the Constitution suggests that legislation passed under this provision will be accorded a kind of “super statutory” or constitutional status by virtue of that inclusion.

So what has happened in South Africa to date in terms of the South African Charter of Religious Rights and Freedoms?

## **2. History of the South African Charter of Religious Rights and Freedoms**

The first formal substantive step towards the formation of the South African Charter of Religious Rights and Freedoms was when a group of legal and theological academics called a meeting in Stellenbosch in October 2007 at which a variety of groups (primarily Christian at the beginning though this changed over time) met to discuss the background to such a document and whether it would be advisable to develop such a document. The author spoke about the Canadian experience of “inter-faith cooperation” and how such cooperation is essential in constitutional democracies formed around notions of pluralism and multiculturalism.<sup>3</sup>

One conclusion of that meeting was that representation had to be extended further afield to invite all the major religions (including African customary religions) to attend to comment upon a basic Draft that was to be prepared prior to that meeting and that particular care should be taken to invite all religions to the table.

The Draft was prepared by a small working group and a further meeting called for 14 February 2008. Prior to that meeting an invitation was sent out to every major religion in South Africa inviting participation and stressing that the Draft was completely open for discussion and was not in any way “set in stone”.

One of the principle rationales for the Charter was the realization that by leaving the right to religious freedom undefined in the Constitution, one actually accepts that the

<sup>3</sup> Both terms are open to a variety of interpretations. Whatever interpretations are given, however, extension of cooperation beyond simply one racial or religious group is implied and important.

content of the right will be determined through court decisions and other measures on an *ad hoc* basis, in other words, as issues and difficulties occur. This is a process over which religious institutions have little control. Section 234, on the contrary, created, so it was successfully argued, the possibility to propose a Charter of Religious Rights in which the content of the right is spelled out fully in a single charter.

Throughout history conflict between religion and the state occurred from time to time in most countries and there were even periods of large scale religious persecution. In South Africa, it was noted, as well, that issues sometimes occurred over which religious institutions differed from the state or where the state takes steps that limit or may limit religious freedom. By defining and stipulating clearly some of the major concerns to religious groups, it was hoped that the Charter would provide a guide both to legislators and to courts and tribunals about the interpretations that religions believed to be most important to protect religious freedom.

In the course of the preparation of the Charter, significant consultations with every major religious organization (and many that would be considered minor) and many sub-groups occurred and comments were assiduously considered by the Continuity Committee and the Draft amended many times in response to these comments. The Continuity Committee is made up of some eight persons – one of whom is the writer of this article. The author has been involved in this process since near the beginning, and this article sets out some of the background to this work which remains, in some ways, a work in progress. Beyond the utility of the process to date (which has been most useful already in establishing links and discussion between widely diverse groups), should the Charter become a legal document, it will be the first such Charter created in South Africa and, because of the unique provision in the South African Constitution, likely the first of its kind anywhere. It will be possible, perhaps, to emulate it through laws in other countries, but that is beyond the scope of this article; such initiatives, when they do arise, will rely on the ingenuity of those who bring the provisions together. One thing is sure, such motivations are likely to emerge from the same concerns that animated those of us involved in the creation of the South African Charter: that laws reflect the genuine wishes of the various associations that make up democratic societies and that the piece-meal approach of litigation is not the best way to articulate shared and overlapping concerns about the roles that religions play in society and how best to recognize those in law before tensions resort to litigation or worse.

Time alone will tell the significance of the Charter, but in view of the number of groups consulted, the time spent considering the language of the text and the number of areas covered, it has no equal in South African Constitutional history.<sup>4</sup>

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<sup>4</sup> Religions, like all human institutions, have ways of determining the rules and representations. Whe-

The public signing of the document on 21 October 2010 at the main Board Room of the University of Johannesburg<sup>5</sup> was followed by a meeting of the signatories that established a South African Council for the Protection and Promotion of Religious Rights and Freedoms pursuant to Section 185 (1) (c) of the Constitution and other relevant provisions of the Promotion and Protection of Cultural, Religious and Linguistic Communities Act 19 of 2002. At the time of this writing a Steering Committee has been established of members and experts that will continue to raise support for the Charter and draft a constitution for the Council to move ahead in discussions with the government. Those who have invested so

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ther dogmatic or administrative, questions of who has authority to speak on behalf of a particular religion makes consultation with some sorts of religious bodies, at times, a complicated matter. While it is fairly easy to ascertain the leadership and, if clarified, what the doctrines are within some traditions, Roman Catholicism for example, it is not so clear with others that are either less well organized or who do not have any kind of hierarchical structure (such as Buddhism or some Christian denominations). With respect to denominations, some may be embroiled in the very question of “who speaks?” and “who has or should have authority?” making their involvement even more complicated. In addition those with dissenting and/or “prophetic” voices within traditions pose challenges, not only to those who seek to speak on behalf of the faithful, as well as to those who seek to involve as many groups as possible in civil society projects of the sort the Charter represented. Similarly, those with an axe to grind against religion may wish only to be involved if the document says negative things about religion – this poses yet another challenge. While consulting with as many groups as possible, the drafters of the South African Charter provided an opportunity for leaders to sign on behalf of groups and others to sign as individuals and many individuals did sign on their own behalf. Those who are professionally or psychologically (or both) driven towards the negative side will not like the kind of co-operation such a process and document produce: in relation to the South African Charter see for an illustration of various viewpoints: A. Leatt, C. Jeanerrat and N. Erlank “Public faith and the politics of faith: A review essay” in *Journal for the Study of Religion*, Volume 23, Number 1 & 2 (2010) at 5 -15. The author’s own position is badly characterized in the opening essay – perhaps because the radical nature of the re-thinking of central terms such as “secular” and “secularism” poses a great challenge to existing articulations that do not interrogate sufficiently their own core language presuppositions. For from arguing, as suggested, that “secular public is anti-religious”, I have argued that the idea of “secular” is an illusion as it is often used, since all citizens are “believers” and a dualistic use masks the beliefs of agnostic and atheist citizens, thereby giving them an inappropriately superior cultural position. I also, nowhere, argue that “the beliefs of sexual or gender equality ought not to be held against religious groups” (p. 8) but rather, a far more nuanced position, that some sorts of claims for equality ought not properly to be recognized by the law if associational diversity (different religious beliefs) are to be tolerated in an open society. I do argue that the male-only priesthood in Catholicism or male-recognition congregational rules in Judaism are not the sort of thing that courts should overturn. These debates and their resolution (or not) should occur within the religions themselves and be resolved either by internal development or by the person leaving the particular religious group so as to join one more in agreement with their own thinking (the “right of exit”).

<sup>5</sup> The event was attended by over a hundred delegates representing all the major religions of South Africa and several of the key NGO’s including the Section 185 (1) (of the Constitution of the Republic of South Africa, 1996) Commission for the Promotion and Protection of the Rights of Culture, Religious and Linguistic Communities.

much time and work in the process are hopeful that it will be passed into law for the guidance of South African society in future cases.

What has occurred has been deep, meaningful and, might well be in the long run of great importance, not only within South Africa but in many other countries as well.<sup>6</sup> The process, document and meetings have shown both that religions can cooperate at a high level of sophisticated and mature discussion and that principles important to each religion can be shared and recognized as important to all religions. These principles are a substantive contribution to the principles of *modus vivendi* as they include not only the right to join a religion, but also to leave one.

Finally, the process, which is ongoing, shows that there are alternatives to political and legal avoidance of key aspects when the civil society organizations themselves show leadership in important areas in the context of a constitutional document set up so as to encourage the involvement of civil society in its ongoing development. The process also provides a means of more holistic principled development than the *ad hoc* nature of litigation on a case by case basis.

In this respect, use of Section 234 of the South African Constitution provides an important landmark for those who are concerned that constitutional development has become the property of a small number of judges and activist litigation strategists.

It remains to be seen how the political process will respect the hard work that has been done by civil society. A sign of respect would be to recognize that the Charter represents an extraordinary cooperation between as wide a set of interest groups as could be assembled. It did not include every possible group – that goal would be impossible to realize. It is for the government, in conversation with the Council for Religious Rights and Freedoms that has been established to determine whether Section 234 of the Constitution will prove to be useful and usable in South Africa.

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<sup>6</sup> The author has met with officials at the Ministerial level provincially and federally in Canada to discuss whether, in principle, enactments could be developed that might serve in a manner akin to 'Interpretation Acts' in such a way that civil society initiatives could be both encouraged and effective in crafting greater delineation of the meaning of the general rights in the Canadian Charter of Rights and Freedoms. Should this occur it will be in no small part due to the South African experience in relation to that country's Section 234. In addition, discussions of the Charter and its processes have occurred in the UK, Italy and the United States and with delegates from some thirty-five other countries. In addition to the six African, English and Afrikaans versions of the Charter, plans are afoot to have it translated into Khoi/San, Italian, Spanish, French, German and Arabic. At the signing ceremony on October 21, 2010 portions of a letter in support of the process and its cultural importance from the Hon. Noel Kinsella, Speaker of the Senate of Canada was read by the author who gave a short presentation on the international significance of the South African Charter.

## Appendix

General outline of the South African Charter of Religious Rights and Freedoms  
(NB: This is not part of the Charter as signed)

Particularly notable amongst the provisions are the following:

1. Preamble, particularly #7;
2. Right to change religion 2.1;
3. Principle of religious accommodation 2.2;
4. Medical services or procedure protections 2.3;
5. Non-establishment provision 3.1;
6. Free-exercise provision 4.0 (including access to sacred places 4.2);
7. Freedom of expression (including public debate 6.1);
8. Right to share religious faith (6.1) including to attempt to convert others (6.2);
9. Access to public media (6.3) [a recent addition after representations from African customary religions about difficulty getting access to public media];
10. Advocacy of hatred “that constitutes incitement to immediate violence or physical harm” (6.4) [narrowing from “hate speech” which should be abolished from human rights according to Moon Report recently released in Canada<sup>7</sup>];
11. Education, primary parental, right of information, etc. (7.0);
12. Conditions of employment (9.1);
13. Relationship between Church and state recognizing autonomy (9.3) and confessional protection (9.4);
14. Religion not defined by “service to adherents” so includes “whether they serve persons with different convictions” (12).

Further documents and Charter found at <http://academic.sun.ac.za/theology/religious-charter/>

## South African Charter of Religious Rights and Freedoms

*(as amended 6 August 2009 and signed 21 October 2010)*

### Preamble

1. Whereas human beings have inherent dignity, and a capacity and need to believe and organize their beliefs in accordance with their foundational documents, tenets of faith or traditions; and
2. Whereas this capacity and need determine their lives and are worthy of protection; and
3. Whereas religious belief embraces all of life, including the state, and the constitutional recognition and protection of the right to freedom of religion is an important mechanism for the equitable regulation of the relationship between the state and religious institutions; and

<sup>7</sup> This Report of Professor Richard Moon (dealing with hate speech laws and recommending their abolition in a human rights context) may be found at: [http://www.chrc-cddp.ca/publications/report\\_moon\\_rapport/toc\\_tdm-eng.aspx](http://www.chrc-cddp.ca/publications/report_moon_rapport/toc_tdm-eng.aspx) (accessed 11 November 2010).

4. Whereas religious institutions are entitled to enjoy recognition, protection and co-operation in a constitutional state as institutions that function with jurisdictional independence; and
5. Whereas it is recognized that rights impose the corresponding duty on everybody in society to respect the rights of others; and
6. Whereas the state through its governing institutions has the responsibility to govern justly, constructively and impartially in the interest of everybody in society; and
7. Whereas religious belief may deepen our understanding of justice, love, compassion, culture, democracy, human dignity, equality, freedom, rights and obligations, as well as our understanding of the importance of community and relationship in our lives and in society, and may therefore be beneficial for the common good; and
8. Whereas the recognition and effective protection of the rights of religious communities and institutions will contribute to a spirit of mutual respect and tolerance among the people of South Africa; and

**Therefore the following**

**Charter of Religious Rights and Freedoms is hereby adopted**

1. Every person (where applicable in this Charter “person” includes a religious institution or association) has the right to believe according to their own religious or philosophical convictions, and to choose which faith, worldview, religion, or religious institution to subscribe to, affiliate with or belong to.
2. No person may be forced to believe, what to believe or not to believe, or to act against their convictions.
  - 2.1. Every person has the right to change their faith, religion, convictions or religious institution, or to form a new religious community or religious institution.
  - 2.2. Every person has the right to have their religious beliefs reasonably accommodated.
  - 2.3. Every person may on the ground of their religious or other convictions refuse to (a) participate or indirectly assist in or refer for certain activities, such as of a military or educational nature, or (b) perform certain duties or deliver certain services, including medical or related (including pharmaceutical) services or procedures.
  - 2.4. Every person has the right to have their religious or other convictions taken into account in receiving or withholding of medical treatment.

- 2.5. Every person has the right not to be subjected to any form of force or indoctrination that may cause the destruction of their religion, beliefs or worldview.
3. Every person has the right to the impartiality and protection of the state in respect of religion.
  - 3.1. The state must create a positive and safe environment for the exercise of religious freedom, but may not as the state promote, favour or prejudice a particular faith, religion or conviction, and may not indoctrinate anyone in respect of religion.
  - 3.2. No person may be unfairly discriminated against on the ground of their faith, religion, or religious affiliation.
4. Subject to the duty of reasonable accommodation and the need to provide essential services, every person has the right to the private or public, and individual or joint, observance or exercise of their religious beliefs, which may include but are not limited to reading and discussion of sacred texts, confession, proclamation, worship, prayer, witness, order, attire, appearance, diet, customs, rituals and pilgrimages, and the observance of religious and other sacred days of rest, festivals and ceremonies.
  - 4.1. Every person has the right to private access to sacred places and burial sites relevant to their religious or other convictions. Such access, and the preservation of such places and sites, must be regulated within the law and with due regard for property rights.
  - 4.2. Persons of the same conviction have the right to associate with one another, form, join and maintain religious and other associations, institutions and denominations, organise religious meetings and other collective activities, and establish and maintain places of religious practice, the sanctity of which shall be respected.
  - 4.3. Every person has the right to communicate nationally and internationally with individuals and institutions on religious and other matters, and to travel, visit, meet and enter into relationships or association with them.
  - 4.4. Every person has the right to single-faith religious observances, expression and activities in state or state-aided institutions, as regulated by the relevant institution, and as long as it is conducted on an equitable and free and voluntary basis.
5. Every person, religious community or religious institution has the right to maintain traditions and systems of religious personal, matrimonial and family law that are consistent with the Constitution and are recognised by law.
6. Every person has the right to freedom of expression in respect of religion.



- 6.1. Every person has the right to (a) make public statements and participate in public debate on religious grounds, (b) produce, publish and disseminate religious publications and other religious material, and (c) conduct scholarly research and related activities in accordance with their religious or other convictions.
- 6.2. Every person has the right to share their religious convictions with others on a voluntary basis.
- 6.3. Every religious institution has the right to have access to public media and public broadcasting in respect of religious matters and such access must be regulated fairly.
- 6.4. Every person has the right to religious dignity, which includes not to be victimised or slandered on the ground of their faith, religion, convictions or religious actions. The advocacy of hatred that is based on religion, and that constitutes incitement to imminent violence or to cause physical harm, is not allowed.
7. Every person has the right to be educated or to educate their children, or have them educated, in accordance with their religious or philosophical convictions.
  - 7.1. The state, which includes any public school, has the duty to respect this right and to inform and consult with parents on these matters. Parents may withdraw their children from school activities or programs inconsistent with their religious or philosophical convictions.
  - 7.2. Every educational institution may adopt a particular religious or other ethos, as long as it is observed in an equitable, free, voluntary and non-discriminatory way, and with due regard to the rights of minorities. The preference for a particular religious ethos does not constitute discrimination in breach of the Constitution with respect to religious education.
  - 7.3. Every private educational institution established on the basis of a particular religion, philosophy or faith may impart its religious or other convictions to all children enrolled in that institution, and may refuse to promote, teach or practice any religious or other conviction other than its own. Children (or their parents) who do not subscribe to the religious or other convictions practised in that institution waive their right to insist not to participate in the religious activities of the institution.
8. Every person has the right on a voluntary basis to receive and provide religious education, training and instruction. The state may subsidise such education, training and instruction.
9. Every religious institution has the right to institutional freedom of religion.
  - 9.1. Every religious institution has the jurisdictional independence to (a) determine its own confessions, doctrines and ordinances, (b) decide for itself in

all matters regarding its doctrines and ordinances, and (c) in compliance with the principles of tolerance, fairness and accountability regulate its own internal affairs, including organisational structures and procedures, the ordination, conditions of service, discipline and dismissal of office-bearers and members, the appointment, conditions of employment and dismissal of employees and volunteers, and membership requirements.

- 9.2. Every religious institution is recognised and protected as an institution that functions with jurisdictional independence, and towards which the state, through its governing institutions, has the responsibility to govern justly, constructively and impartially in the interest of everybody in society.
- 9.3. The state, including the judiciary, must respect the jurisdictional independence of every religious institution, and may not regulate or prescribe matters of doctrine and ordinances.
- 9.4. The confidentiality of the internal affairs and communications of a religious institution must be respected. Specifically, the privileged nature of any religious communication that has been made with an expectation of confidentiality must be respected in legal proceedings.
- 9.5. Every religious institution is subject to the law of the land, and must justify any disagreement, or civil dissent, on the basis of its religious convictions or doctrines.
10. Every religious institution that qualifies as a juristic person has the right to participate in legal matters, for example by concluding contracts, acquiring, maintaining and disposal of property, and access to the courts. The state may allow religious institutions tax, charitable and other benefits.
11. Every person has the right, for religious purposes and in furthering their objectives, to solicit, receive, manage, allocate and spend voluntary financial and other forms of support and contributions. The confidentiality of such support and contributions must be respected.
12. Every person has the right on religious or other grounds, and in accordance with their ethos, and irrespective of whether they receive state-aid, and of whether they serve persons with different convictions, to conduct relief, upliftment, social justice, developmental, charity and welfare work in the community, establish, maintain and contribute to charity and welfare associations, and solicit, manage, distribute and spend funds for this purpose.

## **On the calls for freedom in the Middle East and North Africa**

**A statement issued by the Religious Liberty Partnership – May 2011**

As members of the Religious Liberty Partnership (RLP), we have closely observed the protests held in many Middle Eastern and North African countries over the past few months. We welcome the widespread calls for greater freedom and strongly endorse these aspirations. We believe that freedom, equality and justice for all are essential for the development and cohesion of societies. We also welcome the response of some governments in lifting emergency laws and enacting constitutional change. However, we note with concern the violence against peaceful protesters at different times and places.

### **1. The RLP acknowledges that:**

- 1.1. There have been high levels of commitment and sacrifice by many in pursuing their desire for greater freedom and improved economic opportunities.
- 1.2. There has been cooperation across religious communities to work for justice and equality for all.
- 1.3. There can be no true freedom without freedom of thought, conscience and religion. The essence of humanity requires the ability to investigate the origin and meaning of human existence, and to adopt a belief of one's choosing.
- 1.4. The 2004 Arab Charter on Human Rights reaffirms the principles of the Universal Declaration of Human Rights (UDHR) and the provisions of the International Covenant on Civil and Political Rights (ICCPR), both of which uphold the fundamental nature of freedom of religion.
- 1.5. Constitutions and legal systems in many Middle Eastern and North African countries recognise some Christian and other indigenous minority religious communities. However, these communities often continue to face marginalisation, discrimination or persecution.

### **2. The RLP calls on governments in Middle Eastern and North African countries to:**

- 2.1. Ensure that the principles of freedom, equality and justice for all underpin the changes to constitutions, legal frameworks and social structures being made in response to the protests.

- 2.2. Ensure that all citizens are granted the full enjoyment of all human rights, including the foundational human right to adopt a religion or belief of their choice. This includes the right to believe or not to believe, and the right to change one's religion.
- 2.3. Ensure that all citizens have the freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching, as enunciated in the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
- 2.4. Ensure equality under the law for all religious groups with respect to recognition, registration and regulation, including the establishment and maintenance of places of worship.
- 2.5. Recognise the right to teach, manifest, and disseminate one's religion or belief. This right must be exercised in a manner that respects the rights of others, refrains from all forms of coercion, inducements or other undue pressure.
- 2.6. Ensure that all citizens have the right to take their religious faith into the public sphere to inform public policy debate, recognising that it is a common feature of many faiths that ethical aspects of the faith should impact all aspects of life.
- 2.7. Respond promptly to any incident of violence against a religious community or members thereof, ensuring prompt and effective investigation that brings perpetrators to justice, provides protection, and allows victims to obtain due redress.
- 2.8. Ensure that all citizens are treated equally in every area of public life, including access to economic opportunity, and that education systems actively promote understanding, tolerance and respect for all.

### **3. The RLP calls on the international community to:**

- 3.1. Ensure that religious freedom is emphasised in engagement with Middle Eastern and North African governments, including its fundamental importance for long-term stability and as a bulwark against religious extremism.
- 3.2. Ensure that the provision of all humanitarian and security assistance, and support for civil society is undertaken in a manner that supports and endorses religious freedom, and affirms the equality of all citizens.

### **4. The RLP calls on the church in the Middle East and North Africa to:**

- 4.1. Pray for their countries, national leaders and fellow citizens.

- 4.2. Stand united to constructively engage in public life, and to work for equality and the promotion of religious freedom for all.

## **5. The RLP calls on the worldwide church to:**

- 5.1. Remember that “injustice somewhere is injustice everywhere” (Martin Luther King Jr.)
- 5.2. Uphold in prayer the church throughout the Middle East and North Africa.
- 5.3. Support by all other appropriate means the church as it endeavours to secure equality and full civil rights for Christians and other religious communities in the Middle East and North Africa.
- 5.4. Recognise that the church in many Middle Eastern and North African countries has little recent experience of engagement in public life, and therefore to provide encouragement and training in this area.

## **6. The RLP commits to:**

- 6.1. Facilitate informed prayer for the region, its leaders and people, its church and the introduction of freedom, equality and justice for all.
- 6.2. Continue raising awareness of the plight of minority religious communities throughout the Middle East and North Africa.
- 6.3. Empower and stand alongside those working for greater freedom, equality and justice for Christians and other religious communities in the Middle East and North Africa.

[Editorial note: The list of signatory members of the Religious Liberty Partnership can be viewed at <http://tinyurl.com/MENA2011>]

The Religious Liberty Partnership (RLP) is a collaborative effort of Christian organizations from around the world focused on religious liberty. The RLP seeks to more intentionally work together in addressing advocacy, assistance, and in raising the awareness of religious persecution globally. Members of the RLP are substantially involved (time, personnel, and resources) with ministry to persecuted Christians and/or on religious liberty issues in whatever context and strategy. For more information on the Middle East and North Africa Statement or on the Religious Liberty Partnership, see <http://www.rlpartnership.org> or contact Brian O’Connell, RLP Facilitator at: [Brian@RLPartnership.org](mailto:Brian@RLPartnership.org); +1 425-218-4718, [www.RLPartnership.org](http://www.RLPartnership.org).

# Christian witness in a multi-religious world

## Recommendations for conduct

World Council of Churches, Pontifical Council  
for Interreligious Dialogue, World Evangelical Alliance<sup>1</sup>

### Preamble

Mission belongs to the very being of the church. Proclaiming the word of God and witnessing to the world is essential for every Christian. At the same time, it is necessary to do so according to gospel principles, with full respect and love for all human beings.

Aware of the tensions between people and communities of different religious convictions and the varied interpretations of Christian witness, the Pontifical Council for Interreligious Dialogue (PCID), the World Council of Churches (WCC) and, at the invitation of the WCC, the World Evangelical Alliance (WEA), met during a period of 5 years to reflect and produce this document to serve as a set of recommendations for conduct on Christian witness around the world. This document does not intend to be a theological statement on mission but to address practical issues associated with Christian witness in a multi-religious world.

The purpose of this document is to encourage churches, church councils and mission agencies to reflect on their current practices and to use the recommendations in this document to prepare, where appropriate, their own guidelines for their witness and mission among those of different religions and among those who do not profess any particular religion. It is hoped that Christians across the world will study this document in the light of their own practices in witnessing to their faith in Christ, both by word and deed.

### A basis for Christian witness

1. For Christians it is a privilege and joy to give an accounting for the hope that is within them and to do so with gentleness and respect (cf. 1 Peter 3:15).
2. Jesus Christ is the supreme witness (cf. John 18:37). Christian witness is always a sharing in his witness, which takes the form of proclamation of the

<sup>1</sup> JRF editorial comment: This document is of historical significance as the first ever joint statement of these three world bodies, who together are speaking for the overwhelming majority of Christians. The topic has a high relevance for religious freedom issues, which are also directly addressed in the statement. The IIRF played an important role in the genesis of the document, mainly through Prof Dr Thomas Schirmacher, who was the chief negotiator on behalf of WEA.

Press releases with links: <http://tinyurl.com/BQ172e>; <http://tinyurl.com/wea2011-6>; <http://tinyurl.com/wcc2011-6>; WEA speeches and commentary: <http://tinyurl.com/wea-comm>.

kingdom, service to neighbour and the total gift of self even if that act of giving leads to the cross. Just as the Father sent the Son in the power of the Holy Spirit, so believers are sent in mission to witness in word and action to the love of the triune God.

3. The example and teaching of Jesus Christ and of the early church must be the guides for Christian mission. For two millennia Christians have sought to follow Christ's way by sharing the good news of God's kingdom (cf. Luke 4:16-20).
4. Christian witness in a pluralistic world includes engaging in dialogue with people of different religions and cultures (cf. Acts 17:22-28).
5. In some contexts, living and proclaiming the gospel is difficult, hindered or even prohibited, yet Christians are commissioned by Christ to continue faithfully in solidarity with one another in their witness to him (cf. Matthew 28:19-20; Mark 16:14-18; Luke 24:44-48; John 20:21; Acts 1:8).
6. If Christians engage in inappropriate methods of exercising mission by resorting to deception and coercive means, they betray the gospel and may cause suffering to others. Such departures call for repentance and remind us of our need for God's continuing grace (cf. Romans 3:23).
7. Christians affirm that while it is their responsibility to witness to Christ, conversion is ultimately the work of the Holy Spirit (cf. John 16:7-9; Acts 10:44-47). They recognize that the Spirit blows where the Spirit wills in ways over which no human being has control (cf. John 3:8).

## Principles

Christians are called to adhere to the following principles as they seek to fulfil Christ's commission in an appropriate manner, particularly within interreligious contexts.

1. Acting in God's love. Christians believe that God is the source of all love and, accordingly, in their witness they are called to live lives of love and to love their neighbour as themselves (cf. Matthew 22:34-40; John 14:15).
2. Imitating Jesus Christ. In all aspects of life, and especially in their witness, Christians are called to follow the example and teachings of Jesus Christ, sharing his love, giving glory and honour to God the Father in the power of the Holy Spirit (cf. John 20:21-23).
3. Christian virtues. Christians are called to conduct themselves with integrity, charity, compassion and humility, and to overcome all arrogance, condescension and disparagement (cf. Galatians 5:22).
4. Acts of service and justice. Christians are called to act justly and to love tenderly (cf. Micah 6:8). They are further called to serve others and in so doing to

recognize Christ in the least of their sisters and brothers (cf. Matthew 25:45). Acts of service, such as providing education, health care, relief services and acts of justice and advocacy are an integral part of witnessing to the gospel. The exploitation of situations of poverty and need has no place in Christian outreach. Christians should denounce and refrain from offering all forms of allurements, including financial incentives and rewards, in their acts of service.

5. Discernment in ministries of healing. As an integral part of their witness to the gospel, Christians exercise ministries of healing. They are called to exercise discernment as they carry out these ministries, fully respecting human dignity and ensuring that the vulnerability of people and their need for healing are not exploited.
6. Rejection of violence. Christians are called to reject all forms of violence, even psychological or social, including the abuse of power in their witness. They also reject violence, unjust discrimination or repression by any religious or secular authority, including the violation or destruction of places of worship, sacred symbols or texts.
7. Freedom of religion and belief. Religious freedom including the right to publicly profess, practice, propagate and change one's religion flows from the very dignity of the human person which is grounded in the creation of all human beings in the image and likeness of God (cf. Genesis 1:26). Thus, all human beings have equal rights and responsibilities. Where any religion is instrumentalized for political ends, or where religious persecution occurs, Christians are called to engage in a prophetic witness denouncing such actions.
8. Mutual respect and solidarity. Christians are called to commit themselves to work with all people in mutual respect, promoting together justice, peace and the common good. Interreligious cooperation is an essential dimension of such commitment.
9. Respect for all people. Christians recognize that the gospel both challenges and enriches cultures. Even when the gospel challenges certain aspects of cultures, Christians are called to respect all people. Christians are also called to discern elements in their own cultures that are challenged by the gospel.
10. Renouncing false witness. Christians are to speak sincerely and respectfully; they are to listen in order to learn about and understand others' beliefs and practices, and are encouraged to acknowledge and appreciate what is true and good in them. Any comment or critical approach should be made in a spirit of mutual respect, making sure not to bear false witness concerning other religions.
11. Ensuring personal discernment. Christians are to acknowledge that changing one's religion is a decisive step that must be accompanied by sufficient time for adequate reflection and preparation, through a process ensuring full personal freedom.



12. Building interreligious relationships. Christians should continue to build relationships of respect and trust with people of different religions so as to facilitate deeper mutual understanding, reconciliation and cooperation for the common good.

## Recommendations

The Third Consultation organized by the World Council of Churches and the PCID of the Holy See in collaboration with World Evangelical Alliance with participation from the largest Christian families of faith (Catholic, Orthodox, Protestant, Evangelical and Pentecostal), having acted in a spirit of ecumenical cooperation to prepare this document for consideration by churches, national and regional confessional bodies and mission organizations, and especially those working in interreligious contexts, recommends that these bodies:

1. *study* the issues set out in this document and where appropriate formulate guidelines for conduct regarding Christian witness applicable to their particular contexts. Where possible this should be done ecumenically, and in consultation with representatives of other religions.
2. *build* relationships of respect and trust with people of all religions, in particular at institutional levels between churches and other religious communities, engaging in on-going interreligious dialogue as part of their Christian commitment. In certain contexts, where years of tension and conflict have created deep suspicions and breaches of trust between and among communities, interreligious dialogue can provide new opportunities for resolving conflicts, restoring justice, healing of memories, reconciliation and peace-building.
3. *encourage* Christians to strengthen their own religious identity and faith while deepening their knowledge and understanding of different religions, and to do so also taking into account the perspectives of the adherents of those religions. Christians should avoid misrepresenting the beliefs and practices of people of different religions.
4. *cooperate* with other religious communities engaging in interreligious advocacy towards justice and the common good and, wherever possible, standing together in solidarity with people who are in situations of conflict.
5. *call* on their governments to ensure that freedom of religion is properly and comprehensively respected, recognizing that in many countries religious institutions and persons are inhibited from exercising their mission.
6. *pray* for their neighbours and their well-being, recognizing that prayer is integral to who we are and what we do, as well as to Christ's mission.

## Appendix: Background to the document

1. In today's world there is increasing collaboration among Christians and between Christians and followers of different religions. The Pontifical Council for Interreligious Dialogue (PCID) of the Holy See and the World Council of Churches' Programme on Interreligious Dialogue and Co-operation (WCC-IRDC) have a history of such collaboration. Examples of themes on which the PCID/IRDC have collaborated in the past are: Interreligious Marriage (1994-1997), Interreligious Prayer (1997-1998) and African Religiosity (2000-2004). This document is a result of their work together.
2. There are increasing interreligious tensions in the world today, including violence and the loss of human life. Politics, economics and other factors play a role in these tensions. Christians too are sometimes involved in these conflicts, whether voluntarily or involuntarily, either as those who are persecuted or as those participating in violence. In response to this the PCID and IRDC decided to address the issues involved in a joint process towards producing shared recommendations for conduct on Christian witness. The WCC-IRDC invited the World Evangelical Alliance (WEA) to participate in this process, and they have gladly done so.
3. Initially two consultations were held: the first, in Lariano, Italy, in 2006, was entitled "Assessing the Reality" where representatives of different religions shared their views and experiences on the question of conversion. A statement from the consultation reads in part: "We affirm that, while everyone has a right to invite others to an understanding of their faith, it should not be exercised by violating others' rights and religious sensibilities. Freedom of religion enjoins upon all of us the equally non-negotiable responsibility to respect faiths other than our own, and never to denigrate, vilify or misrepresent them for the purpose of affirming superiority of our faith."
4. The second, an inter-Christian consultation, was held in Toulouse, France, in August 2007, to reflect on these same issues. Questions on *Family and Community*, *Respect for Others*, *Economy, Marketing and Competition*, and *Violence and Politics* were thoroughly discussed. The pastoral and missionary issues around these topics became the background for theological reflection and for the principles developed in this document. Each issue is important in its own right and deserves more attention that can be given in these recommendations.
5. The participants of the third (inter-Christian) consultation met in Bangkok, Thailand, from 25 to 28 January 2011 and finalized this document.

## Noteworthy

The noteworthy items are structured in three groups: Annual reports and global surveys, regional and country reports (sorted alphabetically), and specific issues. They are preceded by an item of current concern. Though we apply serious criteria in the selection of items noted, it is beyond our capacity to scrutinise the accuracy of every statement made. We therefore disclaim responsibility for the contents of the items noted. The compilation was produced by George Bransby-Windholz assisted by Arie de Pater and Dr Christof Sauer. More noteworthy items at [www.iirf.eu](http://www.iirf.eu). Submissions welcome to: [noteworthy@iirf.eu](mailto:noteworthy@iirf.eu).

### European Parliament: activities on religious freedom

*www.europarl.europa.eu*, *www.consilium.europa.eu*. The European Parliament has repeatedly been concerned with the problem of religious persecution. Its most recent activities are:

- Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter. A7-0339/2010, 23 November 2010, 69 p. <http://tinyurl.com/ARHR2009>.
- European Parliament resolution of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter. T7-0489/2010 (195 bullet points). <http://tinyurl.com/EP2010-12-16>.
- EP resolution of 20 January 2011 on the situation of Christians in the context of freedom of religion. P7\_TA-PROV(2011)0021. 5 p. <http://tinyurl.com/EP2011-01-20>.
- Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief. 3069th Foreign Affairs Council meeting. Brussels, 21 February 2011. 2 p, <http://tinyurl.com/EU-FAC2011-2>.
- EP Resolution of 10 March 2011 on Pakistan, in particular on the murder of Minister for Minorities, Shahbaz Bhatti; P7\_TA-PROV(2011)0098. 4 p. <http://tinyurl.com/EP2011-03-10>.
- Hearing of the Human Rights Sub-Committee on religious freedom on 26. May 2011. Programme: <http://tinyurl.com/EP2011-05-26Prog>.

### EP Subcommittee on Human Rights

Dates and recordings of meetings found here: <http://tinyurl.com/DROI-Dates>.

### **European Platform on Religious Intolerance and Discrimination. [www.eprid.eu](http://www.eprid.eu)**

- Why freedom of religion or belief matters. European Parliament Human Rights Sub-Committee, Freedom of religion or belief hearing, 26 May 2011. 8 p. <http://tinyurl.com/EPRID-WFRBM>. EPRID was invited to contribute to the panel discussion. EPRID's interventions focused on why freedom of religion or belief matters, including recommendations to the different EU institutions, and on examples of infringements of that freedom.
- EPRID press release on 26 May 2011 DROI hearing: "Call on the EU to streamline its future policy on freedom of religion or belief in all its human rights actions". 2 p. <http://tinyurl.com/EPRID-Call2011>.

### **COMECE report on Religious Freedom in EU External Relations**

Religious freedom. Pillar of the human rights policy in the external relations of the European Union. A report to the Bishops of the Commission of Bishops Conferences of the European Community. Brussels, May 2010. 32 p. <http://tinyurl.com/COMECE2010>; [www.comece.eu](http://www.comece.eu).

### **Annual global surveys**

#### **The World's Most Repressive Societies 2011**

Freedom House, Washington DC, USA, 1 June 2011, 37 p. [www.freedomhouse.org/uploads/special\\_report/101.pdf](http://www.freedomhouse.org/uploads/special_report/101.pdf).

Freedom House, a research institution dedicated to worldwide promotion of the concept of liberal democracy, supported primarily by the US administration, publishes global surveys on "Freedom in the World" yearly, in which single countries are given ratings for political rights and civil liberties (among these also religious freedom). It has now published a supplement "Worst of the Worst 2011 - The World's Most Repressive Societies 2011", containing data on 20 countries.

#### **Failed States Index for 2011**

<http://www.fundforpeace.org/global/?q=fsi-grid2011>. The Fund for Peace periodically publishes a ranking of failing states. According to the edition of 2011, the worst states in this ranking are Somalia and Chad, with Libya suddenly falling down too. The Failed States Index measures the social, economic, political and military pressures to which a state is exposed, specifically population explosion, group conflicts, emigration, economic decline, lack of legitimacy of the state, low level of public services and human rights, rule of law, security, divided elites and interventions from abroad.

**Global Sikh Civil and Human Rights Report 2010**

New York, USA, June 2011, 150 p. <http://tinyurl.com/sikhs-HRR2010>; [www.united-sikhs.org](http://www.united-sikhs.org). Sikhs are a religious community originating in India; the report documents alleged discrimination.

**Regional and country reports****China: Muslims and a harmonious society: Selected papers from a three-conference series on Muslim minorities in Northwest China**

Ethnic Minority Group Development Research Institute within the Development Research Center of China's State Council and The Religion and Security Research Project of the Center on Faith and International Affairs, Institute for Global Engagement, 2011, 176 p., US\$10.00, ISBN 978-0615446592. <http://tinyurl.com/IGEMHS2011>; [www.globalengage.org](http://www.globalengage.org). Conferences in Gansu Province (2008), Shaanxi Province (2009), and Xinjiang Autonomous Region (2009) hosted by local groups convened governmental, academic, and religious leaders examined the historical and contemporary status of Muslim minorities.

**Hungary: Restrictive legislation on churches**

<http://tinyurl.com/HUlaw14>; Commentary: <http://tinyurl.com/HUlaw15>.

According to the Institute of Religion and Public Policy the Hungarian parliament approved new rules on religious organisations on 14 July 2011 which gravely hinder the activity of free churches. The Institute appeals to the President of Hungary not to sign the law. In an extensive analysis the institute comments that this "law contains provisions that create the most oppressive religion law and the most burdensome registration system in the entire OSCE region."

**Indonesia: Dr Intan on Pancasila**

<http://tinyurl.com/Intan2011>; [www.thejakartapost.com](http://www.thejakartapost.com). Dr Benyamin F Intan (Executive Director of Reformed Center for Religion and Society), in an article in Jakarta Post, the largest English language newspaper in Indonesia (22 June 2011), discusses the role of Pancasila, the Indonesian national ideology, in governing the practice of public religion. Religious conflict particularly between Muslims and Christians continues in this country with the largest Muslim population in the world.

**Pakistan: Blasphemy Laws**

<http://tinyurl.com/P-Bandow2011>. The American Spectator, 23 May 2011, a conservative US political journal, contains a special report by Doug Bandow on Paki-

stan's blasphemy laws. He shows how these laws are misused for harassing Christians.

### **Vietnam: Report of IGE delegation**

<http://tinyurl.com/IGE-Vietnam2011>; [www.globalengage.org](http://www.globalengage.org) The Institute of Global Engagement (IGE) has sent a delegation to Vietnam for a series of conferences and meetings on the role of Protestantism in Vietnam after 1975 and published a resumé on its website including links to TV reports on the 100th anniversary of Protestantism in Vietnam (23.6.2011). – IGE is a think tank with its seat in Arlington/VA, which aims to promote sustainable environments for religious freedom worldwide. It was founded in 2000 by Bob and Ann-Margareth Seiple (Bob Seiple had been the first U.S. Ambassador at Large for International Religious Freedom in 1998-2000). It is directed by Chris Seiple, PhD, a scholar in diplomacy and former marines officer.

### **Special issues**

**United Nations Human Rights Council: Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and against persons based on religion or belief (sic!)**

Draft resolution A/HRC/16/L.38, submitted by Pakistan (on behalf of the Organization of the Islamic Conference) at the Sixteenth session of UNHRC on 21 March 2011 as agenda item 9: Racism, racial discrimination, xenophobia and related form of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action. [http://ap.ohchr.org/documents/E/HRC/d\\_res\\_dec/A\\_HRC\\_16\\_L.38.pdf](http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_16_L.38.pdf).

### **Report of the Special Rapporteur on freedom of religion or belief (A/HRC/16/53)**

UN Human Rights Council: Geneva, 15 December 2010/ 11 March 2011, 19 p., <http://tinyurl.com/HRC1653>. In the present report, the Special Rapporteur on freedom of religion or belief gives an overview of the mandate activities since the submission of the previous report to the Human Rights Council (A/HRC/13/40). The Special Rapporteur then focuses on the theme of freedom of religion or belief and school education. In this regard he refers to relevant international human rights documents, the elimination of stereotypes and prejudices, the issue of religious symbols in the school context and religious instruction in schools. In his conclusions, the Special Rapporteur notes that freedom of religion or belief and school education is a multifaceted issue that entails significant opportunities as well as far-reaching challenges. He recommends that States should favourably consider a number of principles in this regard and explicitly refers to the final document adopted at the International Consultative

Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-discrimination and to the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools.

Also see the reporting on various statements made at the “Dialogue with experts on situation of human rights defenders and on freedom of religion or belief” on 11 March 2011. <http://tinyurl.com/UNOG11March>.

### **WEA-RLC Research & Analysis Report**

The World Evangelical Alliance (WEA) Religious Liberty Commission (RLC) sponsors the WEA-RLC Research & Analysis Report to help individuals and groups pray for and act on religious liberty issues around the world. WEA has a consultative status with the UN Economic and Social Council.

Most of the reports are researched and written by Fernando Perez, India, and moderated by the WEA-RLC Executive Director, Godfrey Yogaraja, Colombo, Sri Lanka. Apply for subscription via: [owner-wea-religiousliberty@hub.xc.org](mailto:owner-wea-religiousliberty@hub.xc.org); view online: [www.worldevangelicals.org](http://www.worldevangelicals.org) > news.

### **Quran scholar supports abolition of penal laws against apostasy**

Deutsche Welle, World Media Forum, Bonn, Germany, 20 June 2011. Panel on “Freedom of religion and belief in the age of fundamentalism”. Link to Soundcloud – recording of panel W10: <http://soundcloud.com/dwgmf>.

At the Global Media Forum in Bonn, Germany, an important annual conference of journalists, the director of IIRF chaired a panel discussion with three experts who expounded the position of their religions on religious freedom: Prof. Somseen Chanawangsa from Thailand (Buddhist), Prof. Thomas Schirrmacher from Germany (Christian) and the Quran scholar Abdullah Saeed, originally from the Maledives and Saudi Arabia, professor of Islamic Studies at the University of Melbourne on a chair financed by Oman.

Prof. Saeed invited the Islamic theologians and Islamic states to stop punishing apostasy, the renunciation of Islam, entirely, to abolish the laws concerning it and to allow Muslims and non-Muslims to choose their religion freely. The speaker admitted that this is still a minority view in Islamic theology presently, but he is confident that in time it will be understood that the persecution of people for their faith does not derive necessarily from the Quran and the life of the Prophet, but had been added centuries later.

### **Hudson Institute – Annual Report 2010**

<http://tinyurl.com/HI2010AR>. Washington, DC, USA: The Hudson Institute has published its annual report for 2010, which, among other topics, deals also with the problems of religious freedom (p. 24-27). Hudson Institute is a think tank which

was established in 1961 by the strategist and futurologist Herman Kahn. Originally it prevalently dealt with attempts to formulate a rational theory on thermonuclear war, but since the eighties has been mostly concerned with the future development of market society.

### **The Voice of Martyrs**

www.persecution.com. The Voice of Martyrs is a group of Christian agencies dedicated to the documentation of persecution against Christians and to helping its victims worldwide. It was founded by Rev. Richard Wurmbbrand (1909-2001), a Romanian Lutheran minister, who spent 14 years in prison (see his book "Tortured for Christ"), until he was bought free by Western Christian friends and moved to the US. The Voice of Martyrs consist of a number of national organisations acting independently in the US (www.persecution.com), Australia (same website as the US), Canada (www.persecution.net), New Zealand (www.persecution.co.nz), South Africa (www.persecution.co.za) and the UK (www.releaseinternational.org), as well as a number of agencies in non-English speaking countries, each of which publishes news bulletins and documentations.

### **Restricted Nations Series**

A series of well-written booklets of 100-110 pages covers individual countries with the worst persecution of Christians. The surveys offer a historical overview of persecution from the first contact with Christian missionaries until today. Knowledge of the historical background gives a deeper insight for understanding present-day religious persecution. Some of the latest are dedicated to the following countries:

- China: history of missions in China, from Catholic to Protestant missions, secret societies, Boxer revolt, cultural revolution, hidden house churches, evil cults, "New Face and Old Ways", etc.
- Pakistan: the arrival of Islam, Christianity's beginnings, freedom's failure, intimidation of infidels, Islamisation of Pakistan, etc.
- Iran: Zoroastrism, the first Christians, Arab invasion, Protestant missions, Mullahs, the end of the Shah, Christianity under fire, the rhetoric of hate, etc.
- Colombia: the Catholic Church, Protestant mission, the insurgency of leftist guerilla, the forgotten victims, etc.
- India: first arrival of Christians, Islam hits the subcontinent, persecution under the Mughal Empire, upsetting the social order, India's anti-conversion legislation, etc.
- Ordering information: Living Sacrifice Book Company, P.O. Box 2273, Bartlesville, OK, 74005-2273, USA. Available from Voice of the Martyrs member agencies or its respective online books stores.



## Book Reviews

### **God's century: Resurgent religion and global politics**

Monica Duffy Toft, Daniel Philpott & Timothy Samuel Shah

*New York: W.W. Norton, 2011, 276 p., ISBN 978-0393069266, US\$16.35.*

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This is a rare and excellent book from three American academics and tilted towards the policy and opinion making elite of the USA, which still struggled to come to terms with religion as an independent and increasingly significant factor in public life – at home and abroad.

This well written book seeks to establish two theses, one is simple, the other more sophisticated. Thesis one is simply to marshal evidence for the fact, “that a dramatic and worldwide increase in the political influence of religion has occurred in roughly the last forty years” (p. 9). This shift occurred in the sixties according to the authors when after three centuries of galloping secularisation, religion made its astonishing comeback. This trend is put down to a number of important factors, ranging from a new determination among believers themselves to resist their historic marginalisation, coinciding with a vacuum created by secular and nationalistic ideologies running out of steam, and given impetus by a new ability among savvy religious actors to harness the new powers of globalisation and technology to redefine their relationship to the state.

All well stated and well argued, and the stress is that this resurgence into the public sphere is permanent. The authors know their primary audience, which still struggles to accept this single fact. Douglas Johnston, President of the International Center for Religion and Diplomacy, lamented in a June lecture in New York that only David Petraeus among the entire US military establishment “gets” the importance of treating religion as an independent factor that needs to be understood and enlisted in the fight against terrorism in Afghanistan.

However, if this was all the book was saying it would not be any better, or substantially different, to Micklethwait and Wooldridge’s rather bug-eyed account of the same phenomenon in “God is Back,” published by Penguin Books in 2009. It is the second, more sophisticated thesis that turns this book into essential reading even for those for whom God never went away in the first place.

This second thesis is ambitious, seeking to explain why religions act so differently in relation to the public sphere; “why some fly airplanes into buildings while others destroy dictatorial regimes; why some strive to erect theocracies while others seek to create peace settlements.” There are two general areas to look at in their

explanation: the first is to examine the type of political theology the religious actors have, the second is to correlate the degree and kind of independence religious institutions preserve with political authority. Once this is worked out, they claim, “a religious actor will tend to adopt a certain kind of politics.”

The independence factor is plotted along two axes. One measures whether the degree of independence between the state and religious authorities is high or low; high is classed as “independent,” low as “integrated,” i.e., where religious actors and institutions are in thrall to the state, such as the Orthodox Church in Russia, or Islam in Saudi Arabia. The other axis measures whether the relationship is consensual (i.e., friendly) between state and religion, or conflictual, where the two are quite hostile or opposed to each other, such as in communist states. This gives four quadrants – consensual-independent, as in the USA; consensual-integration, such as Saudi Arabia; conflictual-independent such as Turkey post 2002, and conflictual-integration, such as the church under the USSR. It is their view that civil wars and terrorism are likely to arise from the kind of religion-state relationship to be found in the consensual-integration quadrant, where a religion is dominated by the state and where religious minorities have a hard time of it, such as in Saudi Arabia. By contrast, the best relationship, they contend, is in the consensual-independent quadrant, where religion and the state have worked out a mutually beneficial relationship, such as in the USA. The conflictual-independent quadrant is where one finds religion fighting effectively for its space and freedom, whereas in the conflictual-integration quadrant religion is too weak to mount this fight effectively.

This theory is worked out historically as well as with contemporary examples. It is a relatively short book for such a complex argument, and not everyone will be convinced by it, especially as its historical treatment will be viewed by some as cavalier. But there are just too few books like this around – books that are readable, erudite and provocative on perhaps the most important political megatrend of our time, the irruption of religion back into the essential socio-political fabric of the nations of the world. While this irruption has been seen in negative terms, and deservedly so in the case of Islamic, Buddhist, and Hindu extremist movements, the authors hold their nerve to keep the larger analytical picture in view, showing that the potential for religion to be a solution-factor, rather than a problem-factor, must be faced and embraced.

*Dr Ronald Boyd-MacMillan, Chief Strategy Officer, Open Doors International, Santa Ana, USA; Author of “Faith that Endures: The Essential Guide to the Persecuted Church” (Grand Rapids, Michigan: Revell, 2006)*

## **A new inquisition: Religious persecution in Britain today**

Jon Gower Davies

*London: Civitas – Institute for the Study of Civil Society, 2010, 53 p., ISBN 978-1-906837-15-0, £ 8.46*

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The United Kingdom is regarded by many as a liberal democracy based on centuries-old principles of free speech and as a model of tolerance. That has now changed. From 1997 to 2010 the UK Labour Government set out to dismantle the historic freedoms which are the attributes of a liberal society, including the freedom of speech. In this short essay, Davies, former Head of Religious Studies Department, University of Newcastle, England, vividly demonstrates how the change has been accomplished. He shows how Islamic militants are seeking to destroy the foundations of liberal society in order to turn the UK into an Islamic state governed by Sharia law. He takes as his starting point the prosecution of Ben and Sharon Vogelenzang, proprietors of a hotel, who got into conversation with a hotel guest, Mrs Erica Tazi, who married a Muslim, converted to Islam and adopted Muslim dress. One morning the Vogelenzangs had a perfectly reasonable discussion with Mrs Tazi about Islam and Christianity. The Muslim convert said she was offended by what the Vogelenzang had said. She made a complaint to the police under the malicious “hate speech” laws. Davies shows how by every available means the illiberal political establishment aided and abetted by extremist groups, the far-from-impartial police and a radicalised Crown Prosecution Service prosecuted the Vogelenzangs. Fortunately the court found them not guilty – but the fight does on. The anti-Christian establishment continues to seek to use all means to silence the right of free speech and in so doing reverse legal principles that have been upheld for centuries, such as the burden of proof in court and the presumption of innocence until found guilty - all inconceivable in the UK twenty years ago. Sadly the UK population are lulled into thinking that what is happening is impossible, but imperceptibly, little by little, intolerance is taking over. Davies shows why the liberal majority needs to reassert the principle that the law should be used not as a weapon to suppress unpopular opinions, but as the protector of free speech. This short book is a “must-read” for all who need to understand the unholy alliance between intolerant politicians, extremist groups and far-from-impartial police and Crown Prosecution Service, even in a “liberal” country like the United Kingdom. It is a warning to us all.

*Advocate John Langlois, Human rights lawyer, Chairman of Advocates International, Chairman of the WEA Religious Liberty Commission, and a member of the IIRF Board of Supervisors, Guernsey, Channel Islands*

## **Mass trauma and emotional healing around the world: Rituals and practices for resilience and meaning-making**

Ani Kalayjian & Dominique Eugene (eds.)

*Santa Barbara, CA: Praeger, 2010, 2 vols, 476 p., ISBN 978-0313375446, US\$ 105.*

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In light of such overwhelming trauma faced by survivors of religious persecution, how do we help families, churches and communities heal and find meaning in the face of both pernicious and direct forms of brutality? This book is a comprehensive collection from an array of specialists around the world in the field helping people heal and find meaning against both catastrophic natural disasters and unmitigated acts of mass violence.

Volume 1 deals with natural disasters and is helpful material concerning how survivors respond to direct trauma and how they can be best cared for. Research of disaster survivors revealed that some were able to find positive meaning by focusing on the present moment and on how the disaster opened a door for them to either help others or receive help from people all over the world. Other survivors struggled to find meaning, for example, some connected the Armenian earthquake in 1988 to the genocide of the previous generation and “globalized all their historic unresolved traumas in one and felt even more overwhelmed by their memories” (p. 16).

Volume 2 is dedicated to the result of violent conflict and its effect on succeeding generations. Chapters on the ongoing impact of colonization, slavery and persecution within marginalised communities are helpful when working within Christians facing exclusion, alienation or political oppression. There are two noteworthy chapters researching the effectiveness of forgiveness as part of a psycho-educational approach in Sierra Leone and helping Cambodian refugees find meaning after the Khmer Rouge. Although the role of forgiveness in the healing process is de rigueur for Judeo-Christian theologians, it is good to see a further substantiated integration of psychology and theology. Finally, there are chapters on issues of gender and genocide, terrorism, cross-cultural issues, healing intergenerational trauma and transforming humiliation into constructive meaning.

Volume 2 can be particularly helpful for those who are working with survivors of the trauma of religious persecution. There continues to be a large gap in the research on best practice for therapeutically supporting and counselling Christians who are subjected to torture, imprisonment, forced displacement and genocide. It is my hope that these books will stimulate more interest and research on this far-reaching, multi-generational subject, so that many more will be strengthened and many more will find meaning and healing in Christ.

*Roger Foster (pen name), Clinical Social Worker and Trauma Support Coordinator for a Religious Liberty Organisation in the Middle East*

**International religious freedom advocacy:  
A guide to organizations, law, and NGOs**

H. Knox Thames, Chris Seiple & Amy Rowe

Waco, Texas: Baylor University Press, 2009, 262 p., ISBN 9781602581791, US\$ 21.86.

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According to the authors, this book is meant to be a user-friendly, straightforward tool for empowering would-be advocates to effectively promote religious freedom. After a general introduction on the right to Freedom of Religion or Belief, it covers the United Nations, the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe, the Organization of American States, the African Union, and United State Bodies and Institutions. Further, it describes the various roles NGOs can play advocating for religious freedom. These roles are illustrated by two case studies, one on Turkmenistan and one on Vietnam. The guidebook is completed by over hundred pages of relevant appendices including a list of NGOs.

Each chapter consists of a brief introduction of the institution covered, followed by a description of the relevant entities or procedures and means for advocates to interact with these bodies. In most cases, contact details and website are provided.

The authors have earned their credits in International Religious Freedom advocacy and their hands-on experience jumps off the pages. Therefore, it is a valuable guide for those who want to understand international advocacy better, both freshmen and more experienced advocates.

Inevitably, a guidebook with a host of practical details such as this, will become outdated sooner or later or at least parts of it will. This is especially true for the chapter on the European Union. Under the Lisbon treaty, the power of the European Parliament has been increased and there is a European High Commissioner for Foreign Affairs and Security Policy serving both the Council of the European Union and the European Commission. As the African Union is equally very much work in progress, this chapter might need some updating as well. However, we cannot blame the authors for these changes to occur. Most of the suggestions dating from 2009 are still valuable and worthwhile considering for International Religious Freedom advocates.

*Arie de Pater, Advocacy Department, Open Doors International, Harderwijk, Netherlands*

## **Persecution, persuasion and power: Readiness to withstand hardship as a corroboration of legitimacy in the New Testament**

James A Kelhoffer

*Tübingen: Mohr Siebeck, 2010, 443 p., ISBN 978-3-16-150612-3, 99 p.*

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This monograph addresses one aspect of New Testament constructions of legitimacy. It examines the significance and value of Christians' withstanding suffering and persecution as a means of corroborating and affirming their identity and status. It does not address historical constructions of early Christian persecution, but rather offers "... an examination of how the NT's assorted claims about persecution function in the formation of religious identity – confirming believers' standing in Christ because they withstood persecution in the past, or if they will remain faithful amidst present or anticipated oppression" (vii).

The first chapter describes the problem and draws on the concept of cultural, social and symbolic capital which was developed by the sociologist Pierre Bourdieu (1-29). The remaining chapters offer a detailed exegetical analysis of the descriptions of suffering in Paul's epistles (faithfulness in withstanding persecution as corroboration of believers' standing in Christ and of Paul's apostleship, Paul as instigator and recipient of persecution), First Peter (the audacity of hope that faithfulness amidst persecution will "win" one's oppressors and thereby further the Christian mission), Hebrews (persecution, perseverance and perfection), Revelation (the offer of authentication by withstanding the coming great tribulation), the four Gospels (e.g. readiness to suffer as a confirmation of standing as Jesus' followers in Mark) and the book of Acts (persecution as a basis for questioning, confirming and deriving legitimacy and as critique of the oppressors' standing).

The final chapter offers a summary (353-61), examines the ascription of value to martyrdom and persecution in later Christian contexts (e.g. maimed "confessors" at the Council of Nicaea), John Foxe's famous *Book of Martyrs* of 1563 (anti-Catholic tendencies and appeals to persecution as corroboration of the Protestant cause). It also raises the important ethical and hermeneutical problems involved in asserting the withstanding of persecution as a basis for legitimacy and status in ancient and modern contexts (376-443).

The volume offers interesting methodology and questions for the study of religious persecution and its inner-community consequences as well as a fine up-to-date survey of persecution in the New Testament. Kelhoffer raises several crucial questions for present day issues of religious freedom and the persecution of Christians. How do Christians who came through the fire of persecution present themselves? What authority do they derive from their fate and faithfulness? How do

others see them and construct their identity and status – at times to promote their own interests? Next to the challenge of actual suffering and persecution and strategies for coping with them, the consequences of such events for the identity of those who remained faithful, of those who failed or who were not affected need further attention.

*Prof. Dr Christoph Stenschke, Forum Wiedenest, Bergneustadt, Germany;  
Department of New Testament and Early Christian Studies, University of  
South Africa, Pretoria, South Africa*

## **Suffering, persecution and martyrdom: Theological reflections Religious Freedom Series Vol. 2**

Christof Sauer & Richard Howell (eds.)

*Johannesburg: AcadSA, 2010, 356 p., ISBN 978-1-920212-58-2,*

*ISBN 978-3-86269-008-4, Rand 250, US\$ 39.*

*Free online: <http://tinyurl.com/Sauer-Howell>.*

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Many of the most challenging mission fields today are places where the presence of a missionary may be resented as a foreign invasion, and those who embrace the Christian faith may be seen as traitors of their family and community. We need to be wise, acting with love, respect and humility, following Jesus' example of incarnation, seeking to understand the culture. But even missionaries who faithfully follow Jesus' example can be persecuted or cause persecution among the people they love. This book is a timely and necessary contribution to the church in its mission today.

It is the fruit of the vision and efforts of a number of theologians and missiologists who are concerned with the growing persecution Christians are suffering today, and with the need to develop a pastoral theological response to this reality. It helps the evangelical church to understand the theology of the cross as it relates to suffering, persecution and martyrdom for Christ.

Twenty-four participants from eighteen different countries met from 16 to 18 September 2009 in Bad Urach, Germany, for a consultation on "Developing an evangelical theology of suffering, persecution and martyrdom for the global church in mission". This was organized by the International Institute for Religious Freedom. Christof Sauer and Richard Howell were the conveners of the consultation.

The consultation produced the Bad Urach Statement, a deep, broad, biblical and practical theological reflection on suffering, persecution and martyrdom. It is

the fruit of evangelicals struggling with such issues, having a special pastoral commitment to those who suffer. The purpose is to reach especially theologians and Christian leaders committed to fulfill the mission to which God has called us.

The book also offers a number of articles written by participants and discussed among them, reflecting biblically, theologically and pastorally on issues of suffering and martyrdom.

*Dr Antonia Leonora van der Meer, Viçosa, Brasil wrote a doctorate in missiology on "Understanding and supporting missionaries serving in contexts of suffering" Asia Graduate School of Theology, Philippines 2005*

## **Christianity and resistance in the 20th century: From Kaj Munk and Dietrich Bonhoeffer to Desmond Tutu**

Søren von Dosenrode (ed.)

*(International Studies in Religion and Society, Vol. 8). Leiden: Brill Academic Publishers, 2009, 290 p., ISBN: 978-9004171268, US\$ 130.*

What are Christians to do in the face of an unjust and oppressive Government—suffer or resist? That is this book's fundamental question. The editor's Introduction sets the scene with the disagreement between the pastor and author, Kaj Munk, and a civil servant, Paul Petersen, in Denmark. When Munk called for resistance against the Nazis, Petersen wrote to ask him how a priest could urge the use of deadly weapons against his fellow men. Munk replied with exasperation: in the face of the sufferings of the Jews and of Poland and Norway how could one piously keep one's hands in one's pockets? (Munk later paid with his life.)

The book is a collection of papers delivered at a seminar with the same title at Aalborg University in Denmark in 2006. The first chapter (22 pp.) is the editor's synopsis of Christian thought on the issue until the Reformation and then secular thought until the French Revolution. Nine other authors provide chapters:

- Johannes Nissen on the meaning and effect of Rom. 13, the Sermon on the Mount and other texts, and on pacifism and the theory of the just war;
- Erna Putz on Franz Jägerstätter, the Austrian whom the Nazis executed for refusing military service;
- Arne Munk on Kaj Munk's resistance to Nazism;
- Annette Mertens on Henning von Tresckow's part in the plot to assassinate Hitler;
- Ulrik Nissen on Dietrich Bonhoeffer's "journey from pacifism to resistance";
- Ole Hartling on Paul Gerhard Braune's resistance against Nazi euthanasia;



- Enikő Böröcz on Bishop Lajos Ordass's resistance against Nazi and Communist totalitarianism in Hungary;
- Paul G. Schoenborn on Oscar Romero's struggle for the poor in San Salvador;
- Peter Lodberg on Desmond Tutu's resistance against apartheid.
- The editor concludes with a final brief chapter, "Instead of a Conclusion".

The subjects of these essays were not victims of religious persecution in the narrow sense. But they took their stand out of Christian commitment (though von Tresckow's motives have been disputed, and Mertens's essay weighs the evidence critically). All except Kaj Munk were reluctant to use or advocate violent resistance. Some resisted oppressive regimes non-violently, by refusing co-operation or by making a strong public stand. Others reluctantly resorted to violence as the only moral option they saw in their situations. Five, or at least four, of them died as Christian martyrs. (The reviewer would have loved to see a chapter on the Christian SS officer Kurt Gerstein included for the moral puzzle he poses.)

The essays are well researched. On the negative side the English of a few contributions (the editor's and Arne Munk's in particular) is a bit rough in places. Despite this the book is a fascinating and profoundly moving resource that certainly deserves wide use.

*Douglas S Bax, Cape Town, South Africa, a retired Moderator of the Presbyterian Church of Southern Africa*

## **Liberty to the captives – Freedom from Islam and dhimmitude through the cross**

Mark Durie

*Australia: Deror Books, 2010, 96 p., ISBN 978-0980722321, US\$ 14.95.*

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This book provides tools for Christians (particularly those living under the dominance of Islam) to adopt a biblical understanding of the cross in order to set them free from the influence of Islam, especially from the covenantal declaration of the shahada (Muslim confession of faith) and from the dhimma pact of surrender to Islam, which determines the status of Christians and others who refuse to convert to Islam under sharia.

Reciting the shahada obligates a Muslim to follow Muhammad's example and to obey the classical Islamic law designed to impose inferiority and vulnerability upon non-Muslims. For example, "the witness of dhimmis is not accepted in sharia courts; dhimmis were allowed no means of self-defence; no public displays of re-

ligious symbols or rituals were permitted . . .” (p. 14). In this way the dhimmitude was designed to weaken and humiliate non-Muslims as an integral part of Islam, even in the West as a form of jihad terror.

Durie describes Muhammad as the root and the body of Islam and some aspects of his life story which lie behind the dhimma pact, e.g., painful experiences of family life, self-rejection and other rejection reactions leading to “a wounded spirit, a spirit of offense, a victim mentality, a spirit of violence and a will to dominate others” (p. 65), driven by this oppressed ‘spiritual’ condition. Muhammad systematically eliminated all manifestations of rejection expressed towards him and his religious community through an ideological and military program. By contrast compare this to the life of Jesus who also had a story of rejection but responded to persecution without retribution, offense, violence, dominating other, nor adopting a wounded spirit. Jesus’ life culminated in the cross, without any aggression or violence. Jesus rather embraced rejection because the cross was the central part of God’s plan. He showed that submission to rejection was “an essential part of his vocation as God’s suffering Messiah” (p. 40). Jesus renounced the use of force to achieve his goal, paying the ultimate price. In contrast to the teaching of Muhammad which encourages Muslims to respond to suffering with violence, Jesus taught his followers not to tarnish their testimony when suffering persecution. They should be at peace and return good for evil and rejoice when they are persecuted.

It teaches that non-Muslims who live under sharia rule should reject and renounce Islam’s demand for them to surrender to the shahada or the dhimma pact. They should not react with violence but rather with “political and community action, human rights advocacy, academic inquiry, and the use of media to communicate the truth” (vi). This book, moreover, considers the power of Christ and his cross as the key to overcoming these two ‘spiritual’ claims. It helps Christians to apply the power of the cross to all bitterness and rejection. In this way it is possible for Christians to engage in nailing the dhimma pact to the cross and expose its false claims, confronting the power of Satan, who is the ultimate spiritual force behind all rejection. This book challenges Christians to renounce through prayer the dhimma pact, setting people free from fear, breaking generational strongholds, and releasing people from the suffering under the spiritual bondage. Christians may thus be released from the oppressive effects of dhimmitude and become bold witnesses to Muslims of the saving power of Christ. The book asserts the Christian prayers and declarations are powerful and effective and that complete freedom through Christ is a possibility.

## **Missions in contexts of violence**

Keith E Eitel (ed.)

*Pasadena, CA: WCL, 2008, 415 p., ISBN 978-0-87808-389-3, US\$ 14.99.*

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This book speaks to a significant current missiological challenge: doing missions in contexts of violence. Part of an Evangelical Missiological Society series, it is a collection of 19 articles by 21 authors and co-authors. The articles are arranged under four headings related to the book's theme: general reflections, biblical and theological foundations, life-style strategies and practices, and area or thematic studies.

The sources of violence covered in this book include Islamic and communist contexts, as well as pervasive inter-ethnic conflicts. All of these infringe significantly on religious freedom and complicate missionary work. Some articles suggest principles and methods for coping with violence or mitigating it, as in peacekeeping.

Readers can expect considerable diversity in the text – diversity that extends to definitions of key terms, quality of research and documentation, style and length, and even relevance to the main topic. The contributions demonstrate that suffering and violence are normative for Christians and have been experienced throughout history.

Three strong articles are historical studies of mission (and church) in contexts of violence. Paul and Lila Balisky's "The Ethiopian Church and Mission in Contexts of Violence" is a succinct summary of a valuable longer work. The treatment of ancient Celtic missionary spirituality by David Strong should be required reading for missionary preparation. John Moldova's work on ministry in the context of communist Eastern European violence has important implications for church and mission in other communist contexts.

Charles Tieszen's recent work on definitions for this area of study is an important inclusion because it attempts to provide common definitions for this discussion.

Worth the price of the book is missionary-to-Japan Hau Chuang Chua's "Divine Suffering and Divine Grace: a Missiological Interpretation of Kitamori Kazo's Pain of God theology". This chapter makes a significant contribution to the theodicy question. Aply mediated by a missionary in this case, the experiences and reflections of those actually in contexts of violence, need more to be directly heard on the topic of mission in contexts of violence.

Clearly, if it ever existed, the chronological window when the Christian missionary movement could expect to work without concern for violence is over. Both in-service and missionaries-in-training will find this book useful.

*Reginald E Reimer, Abbotsford, British Columbia, Canada*

## Selected media on North Korea

### **Escaping North Korea: Defiance and hope in the world's most repressive country**

Mike Kim

*Lanham, Maryland: Rowman & Littlefield. 2008, 239 p., ISBN 0742556204, \$ 16.95.*

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Mike Kim focuses on the question why such a large number of North Koreans are seeking refuge in China. He describes their flight and their situation in China as well as the living conditions in North Korea, including the situation of Christians under the North Korean regime. Among their sufferings are the following: poverty, famine, unemployment, violence, alcoholism, theft, corruption, bribery, oppression, gambling, abuse, rape, human trafficking, child soldier slavery, etc. According to Kim, famine and the search of food is the most common reason why North Koreans defect.

Kim is an American Korean who has worked for four years (2003-2006) in the North Eastern Provinces of China bordering on North Korea. He founded an agency, Crossing Borders Ministry ([www.crossingbordersnk.org](http://www.crossingbordersnk.org)), that is supporting North Korean refugees there. He was also one of the first US Americans to be allowed entry into North Korea. North Korean migrants and defectors are not recognized as refugees in China and are repatriated when caught. Girls and women succeeding to cross the border from North Korea into China, are often abducted by human traffickers operating in the area, who sell them into forced marriages, prostitution and slavery. Chinese police and North Korean agents are also hunting for the refugees who, once repatriated, face the prospect of labour camp and sometimes execution. Contact with Christians is particularly harshly punished, conversion even more so. In China it is forbidden to help and harbour North Korean refugees, and Christian churches are among the few who do so. For numerous North Koreans this is their first ever contact with Christians and some are choosing to become Christians.

Kim's account, while partly autobiographical, is well researched and tries to present the best current information available on a country that is so highly secretive and blocking out the outside world, that it is often called "the Hermit Kingdom". Due to reports of migrants and refugees some of whom return to North Korea or are forcibly repatriated, the author foresees the brainwashing and lack of exposure to the truth potentially slowly losing their influence. "They are learning the truth about the world situation and there is great potential for change as the regime's grip loosens further." (p .201)

The author writes for an American audience, particularly focusing on the enmity between North Korea and the United States. In the closing chapter “The future of North Korea” Kim collates what he deems the best advice from experts on how to engage with North Korea. This gives the book an edge for policy makers.

### **North Korea: Good news reaches the Hermit Kingdom**

The Voice of the Martyrs with P. Todd Nettleton

*Bartlesville, OK: Living Sacrifice. 2008, 112 p., ISBN 978-0882640303, \$ 6.09.*

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This little booklet in the “Restricted Nations” series of The Voice of the Martyrs has a Christian focus. It recounts the history of Christian witness and the church in Korea, starting with Korean prisoners of war in Japan who had become Christians around 1600 A.D. and focusing on North Korea after 1945. The narrative is interspersed with testimonies and stories of Christians in North Korea: a teenage beggar who was arrested for passing on a Bible and later died in a political prisoner camp – not without “infecting” many with his faith; adults whose only crime was spreading Christianity; Christian merchants from China who visit North Korea bringing the Gospel. One chapter gives a short introduction to the North Korean Juche ideology. This book gives a good overview of the facts available, while its main purpose is to encourage the reader to pray for North Korea.

### **Crossing**

Directed by Kim Tae-kyun

*Big House/ Vantage Holdings 2008. US\$ 20.00. [www.crossingnk.com](http://www.crossingnk.com),  
[info@wakingupmedia.com](mailto:info@wakingupmedia.com).*

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This screenplay narrates the story of a former soccer player in a small coal mining village in North Korea. When his pregnant wife becomes critically ill, he travels to China to buy medicine for her. However, he finally ends up in the South Korean Embassy and then in South Korea itself, somewhat against his will. His wife dies unbeknown to him. His young son embarks on a search for him in China but is caught at the border and held in a detention facility. The father pays a ransom which results in the son’s release. The son crosses the border to China and later to Mongolia. However, he dies in the Mongolian desert and his father who had flown there from South Korea to be reunited with his son, sadly has to

bury him. A tragic and convincing story that well illustrates the facts documented in the books above.

## **Escape from North Korea**

Paul Estabrooks

*Santa Ana, California, USA: Open Doors International 2006, 158 p., ISBN 978-0-901644-25-1, (www.od.org).*

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This is a true story of a family who lived under the North Korean regime. It describes their experiences in escaping to China where they are helped by Christians. It is written like a novel.

## **The aquariums of Pyongyang: Ten years in the North Korean Gulag**

Kan Chol-hwan & Pierre Rigoulet

*New York: Basic Book, 2nd ed. 2005, 238 p. ISBN 978-0-465-01104-9, US\$ 16.95.*

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This autobiographical account, originally published in French in 2000, was at the time the most detailed report on life in a North Korean labour camp between 1977-1987. At the age of 9 the author was deported along with members of his family to the notorious Yodok labour camp, through guilt by association. After 1945 his grandparents returned from Japan as rich emigrants. His grandmother was a committed communist who wanted to help build up North Korea. One day his grandfather became a victim of an intrigue and disappeared. Ten years later he died in a different camp where the conditions were much harsher. His relatives were only released after his death. In 1992, Kan fled as a 25 year old to South Korea “in order to expose to the world the unimaginable crimes committed in the political prison camps by the Pyongyang regime” (viii). Kan has been working as a journalist in Seoul for the leading newspaper Chosun Ilbo since 2000, and has “met and reported on approximately 500 North Korean refugees and defectors”, both in China and in South Korea. He not only relates his family’s story but also other North Koreans’ experiences whilst giving general information. While he seems to have become a Christian in South Korea this does not play a major role in the book. He is the co-founder of the Democracy Network against the North Korean Gulag, [www.nkgulag.org](http://www.nkgulag.org). The title of the book is inspired by his boyhood passion for exotic fish which he held in his numerous aquariums in Pyongyang.

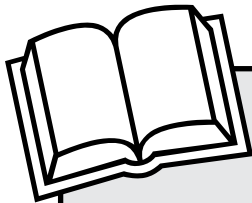
## **Eyes of the tailless animals: Prison memoirs of a North Korean woman**

Soon Ok Lee

*Bartlesville, OK, Living Sacrifice 1999, 160 p., ISBN 0-88264-335-5, US\$ 10.00.*

The author was a devoted member of the Communist party in a supervisory position at a distribution centre. She was imprisoned on trumped-up charges owing to the greed of her superiors. For six years she suffered in the North Korean prison system (1986-1992). Her prison memoirs, originally published in Korean in 1996, are an account of inhumane atrocities. Prisoners were regarded as sub-human – as “tailless animals”. Lee gives a vivid account of interrogations, torture, forced labour of a minimum of 19 hours a day, beatings for no reason or the slightest offenses, solitary confinement, malnutrition, epidemics, forced abortions and executions. The prisoners were forced to work as slaves. They were dispensable and could be replaced by a new quota of prisoners any time. The regime only needed to arrest people on trumped-up charges in order to keep the system going. The conditions in the prison factories were intolerable, where goods had to be produced for export in order to enrich the regime. The author also witnessed the loving behaviour of Christian prisoners who were given the most dangerous jobs and treated even more severely than the other prisoners. Only after her escape to South Korea in 1995 together with her son did the author become a Christian herself and discover the Christian roots of her parents. Her determination to inform the free world about the abuse and system of lies in North Korea, and her desire for revenge, were replaced by a mission “to ask Christians around the world to pray for the persecuted people in North Korea”. Her memoirs without any literary embellishments make for very disturbing reading.

*Dr Byeong Jun and Dr Christof Sauer, Cape Town, South Africa*



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## Introducing the International Institute for Religious Freedom

The International Institute for Religious Freedom (IIRF) is an Institute of the World Evangelical Alliance and its Religious Liberty Commission with the aim of working towards:

- The establishment of reliable facts on the restriction of religious freedom worldwide;
- The introduction of the subject of religious freedom into academic research and theological curricula;
- The study of pastoral issues relating to those who are affected.

**IIRF** exists to cultivate the understanding of religious freedom. It affirms the right to religious freedom for all people, particularly for Christians.

**IIRF** maintains a global network of researchers and experts and seeks to ensure that:

- Its work covers religious freedom concerns wherever they occur in the world,
- It serves persecuted believers and academics studying religious freedom wherever they are located. Publications and other research will be made available as cheaply and readily as possible.

**IIRF** aims to work collaboratively with all who share its aims of supporting religious freedom through providing the necessary foundations of accurate information and understanding.

**IIRF's** academic approach is inter-disciplinary, appreciating the contributions that different disciplines add to the understanding of and response to religious freedom issues. It will maintain a balance, in particular, between theological, legal and political study.

**IIRF** differentiates between advocating the rights of members of other religions (religious freedom) and evaluating the truth of their beliefs (religious truth). Advocating the freedom of others can be done without accepting the truth of what they believe. **IIRF** encourages all activities that contribute to the understanding of religious freedom. These include :

1. Dissemination of existing literature, information about archives, compilation of bibliographies etc.
2. Production and dissemination of new papers, journals and books
3. Gathering and analysis of statistics and stories
4. Supplying of ideas and materials to universities, seminaries and Bible colleges to encourage the inclusion of religious freedom issues into curricula
5. Networking to find, support and involve researchers in the work of IIRF, including the creation of research groups



6. Attendance at key events that provide an opportunity to strengthen connections with the wider religious liberty community and with politicians, diplomats and media with an interest in human rights

The **IIRF** is guided by the principles (1) of the Old and New Testament, which anchor human freedom in the person and nature of the creator God, and (2) the Universal Declaration of Human Rights which enshrines the universality of human rights, including such core values as non-discrimination, equality and fairness. We recognise the need to affirm and proclaim the divinely appointed universal principles of justice, freedom and equality for all in a world threatened by religious division.

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## Guidelines for authors

Version 2011-03 (25 May 2011)

This document combines essential elements of the editorial policy and the house style of IJRF which can be viewed on [www.iirf.eu](http://www.iirf.eu).

### Aims of the journal

The IJRF aims to provide a platform for scholarly discourse on religious freedom in general and the persecution of Christians in particular. The term persecution is understood broadly and inclusively by the editors. The IJRF is an interdisciplinary, international, peer reviewed journal, serving the dissemination of new research on religious freedom and is envisaged to become a premier publishing location for research articles, documentation, book reviews, academic news and other relevant items on the issue.

### Editorial policy

The editors welcome the submission of any contribution to the journal. All manuscripts submitted for publication are assessed by a panel of referees and the decision to publish is dependent on their reports. The IJRF subscribes to the National Code of Best Practice in Editorial Discretion and Peer Review for South African Scholarly Journals (<http://tinyurl.com/NCBP-2008>) as well as to the supplementary Guidelines for Best Practice of the Forum of Editors of Academic Law Journals in South Africa (<http://tinyurl.com/GBP-2008>).

### Submission addresses

- Book reviews or suggestion of books for review: [bookreviews@iirf.eu](mailto:bookreviews@iirf.eu)
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### Selection criteria

All research articles are expected to conform to the following requirements, which authors should use as a checklist before submission:

- **Focus:** Does the article have a clear focus on religious freedom/ religious persecution/ suffering because of religious persecution? These terms are understood broadly and inclusively by the editors of IJRF, but these terms clearly do not include everything.

- **Scholarly standard:** Is the scholarly standard of a research article acceptable? Does it contribute something substantially new to the debate?
- **Clarity of argument:** Is it well structured, including sub-headings where appropriate?
- **Language usage:** Does it have the international reader, specialists and non-specialists in mind and avoid bias and parochialism?
- **Substantiation/Literature consulted:** Does the author consult sufficient and most current literature? Are claims thoroughly substantiated throughout and reference to sources and documentation made?

### Submission procedure

1. Submissions must be complete (see no.6), conform to the formal criteria (see no. 8-10) and must be accompanied by a cover letter (see no.3-4).
2. The standard deadlines for the submission of academic articles are 1 February and 1 August respectively for the next issue and a month later for smaller items such as book reviews, noteworthy items, event reports, etc.
3. A statement whether an item is being submitted elsewhere or has been previously published must accompany the article.
4. Research articles will be sent to up to three independent referees. Authors are encouraged to send the contact details of 4 potential referees with whom they have not recently co-published. The choice of referees is at the discretion of the editors. Upon receiving the reports from the referees, authors will be notified of the decision of the editorial committee, which may include a statement indicating changes or improvements that are required before publication.
5. Should the article be accepted for publication, the author will be expected to submit a finalized electronic version of the article.
6. Include the following:
  - An abstract of no more than 100 words.
  - Between 3 and 10 keywords that express the key concepts used in the article.
  - Brief biographical details of the author in the first footnote, linked to the name of the author, indicating, among others, year of birth, the institutional affiliation, special connection to the topic, choice of UK or American spelling, full contact details including e-mail address.
7. Authors are expected to also engage with prior relevant articles in IJRF, the Religious Freedom Series, and IIRF Reports ([www.iirf.eu](http://www.iirf.eu)) to an appropriate degree. So check for relevant articles as the peer reviewers will be aware of these.
8. Articles should be spell-checked before submission, by using the spellchecker on the computer. Authors may choose either 'UK English' or 'American English' but must be consistent. Indicate your choice in the first footnote.

9. Number your headings and give them a hierarchical structure. Delete all double spaces and blank lines. Use as little formatting as possible and definitely no “hard formatting” such as extra spaces, tabs. All entries in the references and all footnotes end with a full stop. No blank spaces before a line break.
10. Research articles should have an ideal length of 4 000 words and a maximum of 6 000 words. Articles longer than that are not normally accepted, but may be published if, in the views of the referees, it makes an exceptionally important contribution to religious freedom.
11. Research articles are honoured with two complimentary printed copies.
12. For research articles by members of the editorial team or their relatives, the full editorial discretion is delegated to a non-partisan editor and they are submitted to the same peer review process as all other articles.

### **Style requirements**

1. IJRF prefers the widely accepted ‘name-date’ method (or Harvard system) for citations in the text. Other reference methods are permissible if they are fully consistent.
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